

LEGAL PROFESSION BILL 2007

EXPLANATORY MEMORANDUM

This Bill will repeal the *Legal Practice Act 2003* and the *Legal Contribution Trust Act 1967*. The Bill has been drafted in accordance with the National Model Bill on the Legal Profession ("National Model Bill") and in doing so brings Western Australia ("WA") into the common national framework for the regulation of the legal profession.

The provisions of the National Model Bill are categorised as follows:

- Core Uniform (CU) – a compulsory clause requiring textual uniformity with the model. This is for those key provisions where uniformity is required to ensure consistency across jurisdictions;
- Core Non-Uniform (CNU) – a compulsory provision but one which can allow for some textual variation to reflect local requirements; and
- Non-Core (NC) – an optional provision.

The equivalent clauses of this Bill are annotated accordingly. The absence of an annotation signifies that the clause is not derived from the National Model Bill. These are generally provisions based on current provisions of the *Legal Practice Act* and the *Legal Contribution Trust Act* which are being retained. These provisions reflect features of the current regulatory framework in WA which must be preserved for continuity.

Part 1 - Preliminary

1. Short title

This is the title by which the Act will be known.

2. Commencement

The Act will commence upon proclamation with allowance for different divisions commencing on different days.

Part 2 – Interpretation

3. Definitions

This clause sets out the most commonly used definitions used in the Act.

4. Terms relating to lawyers (CU)

The term "lawyer" is applied to persons admitted to the legal profession under Australian law. There are three categories of "lawyer": an "Australian lawyer" being someone admitted under WA law or under the law of another Australian jurisdiction; a "local lawyer" being someone admitted under WA law and who may or may not have also been admitted in another Australian jurisdiction; and, "interstate lawyer" being someone admitted under the laws of another Australian jurisdiction but not under WA law.

5. Terms relating to legal practitioners (CU)

In order to practise law, a lawyer must hold a practising certificate to also be termed a “legal practitioner”. There are three categories of “legal practitioner”: an “Australian legal practitioner” being a lawyer who holds a practising certificate from any of the Australian jurisdictions; a “local practitioner” being a person holding a practising certificate issued in WA; and an “interstate legal practitioner” being a lawyer who holds a practising certificate from another Australian jurisdiction but not from WA.

6. Terms relating to associates and principals (CU)

Various individuals can be an “associate” of a law practice including sole practitioners, partners, employees, agents and persons who derive income from the practice. This clause defines who falls within each category of “associate”. If an associate is also an Australian legal practitioner, they are defined in clause 6(2) as being a “legal practitioner associate”. If an associate is not an Australian legal practitioner, then they are a “lay associate”. To be a principal of a law practice, a person must be an Australian legal practitioner. A principal can be a sole practitioner, a partner in a law firm, a legal practitioner director of an incorporated legal practice, or a legal practitioner partner in a multi-disciplinary partnership.

7. Home jurisdiction (CU)

Because legal practitioners increasingly practise across jurisdictions (hence the need for a national regulatory framework) it is necessary to set criteria to establish which is the practitioner’s home jurisdiction. This determines which State/Territory’s legal profession legislation has primary coverage over a person. For Australian legal practitioners, the home jurisdiction is where their only or most recent practising certificate was granted. For Australian-registered foreign lawyers, it is where their only or most recent registration was granted. Criteria are also provided for determining the home jurisdiction of associates of law practices.

8. Suitability matters (CNU)

Suitability matters are those factors taken into account when decisions such as whether a person should be admitted to the legal profession or issued with a practice certificate are taken. They include whether the person is of good fame and character, if they are or have been insolvent, whether they have been convicted of an offence or subject to disciplinary proceedings, and so on.

9. Information notices (CNU)

These are written notices given to a person to inform them of a decision affecting them, the reasons for the decision and their rights of appeal.

10. References to conviction and quashing a conviction (CNU)

“Conviction” includes a finding of guilt or acceptance of a guilty plea, regardless of whether a conviction is recorded. If a finding of guilt or acceptance of a guilty plea has been quashed, then for the purpose of this Bill a conviction is also quashed. However, if a conviction is quashed but without a finding of guilt or acceptance of a guilty plea also being quashed, for the purpose of this Bill the conviction still applies.

Part 3 – Reservation of legal work and related matters

Division 1- Preliminary

11. Purposes (NC)

Legal work is to be carried out only by persons qualified and entitled to do so. This is in the interests of upholding the integrity of the justice system and of consumer protection.

Division 2 – General prohibition on unqualified practice

12. Prohibition on engaging in legal practice when not entitled (CU except (1), (3)(b), (d)-(h), (4), (5))

Only Australian legal practitioners are entitled to engage in legal practice. Exemptions to this restriction include legal practice authorised under another law (eg agents appearing before an industrial tribunal), conveyancing, public officers in their official capacity, or employees of a law practice doing legal work under the supervision of a legal practitioner. A person breaches this prohibition, but has not or does not expect to be paid for the legal, can use non-payment as a defence. However, a person not entitled to engage in legal practice cannot seek payment for any legal work done, and if they have been paid, the client can recover any amounts that may have been paid.

13. Prohibition on representing or advertising entitlement to engage in legal practice when not entitled (CU)

Only people entitled to engage in legal practice can create an impression or advertise that they can do so.

14. Presumptions about taking or using name, title or description specified in regulations (NC)

The regulations can specify that only certain persons are entitled to use titles such as “lawyer”, “legal practitioner”, “solicitor”, and so on.

15. Associates who are disqualified or convicted persons (NC)

Lay associates who have been disqualified or convicted of a serious offence, cannot be an associate of a law practice unless the Legal Practice Board (“the Board”) has given approval. They must also notify the law practice of their status if they seek to become a lay associate of the practice.

16. Sharing income with unqualified person

The rules and regulations may restrict with whom an Australian legal practitioner can share the income derived from providing legal services.

17. Permitting or assisting unqualified persons to practice

Australian legal practitioners are not to enable an unqualified person engage in legal practice. If they do so, they are liable to a penalty.

Division 3 – General

18. Prohibited person must not act as executor or trustee

This clause prevents a person from becoming an executor or trustee of a will or trust if they are a “prohibited person” ie a person whose name has been removed from the roll or whose practising certificate has been suspended or cancelled in WA or elsewhere in Australia. However, the Supreme Court can grant leave for a prohibited person to take on this role.

19. Professional discipline (CU)

A person who is an Australian lawyer is not necessarily an Australian legal practitioner as well. This clause makes it clear that should an Australian lawyer contravene this Part concerning reservation of legal work and titles, this contravention is capable of being unsatisfactory professional conduct or professional misconduct.

Part 4 – Admission of local lawyers

Division 1 – Preliminary

20. Purposes (NC)

This Part sets out the requirements for persons to be admitted to the legal profession.

Division 2 – Eligibility

21. Eligibility for admission (CNU)

This clause sets out the academic and practical legal training requirements for admission to the legal profession. These requirements can have been fulfilled elsewhere and recognised for admission in WA if they are comparable.

22. Suitability for admission (CNU (1); NC (2))

The suitability matters in clause 8 are to be taken into consideration by the Supreme Court and Board when they consider whether a person is fit and proper to be admitted to the legal profession. They may take into account other matters, and can admit a person to whom a suitability matter applies if the circumstances warrant this.

23. Early consideration of suitability (NC)

Should a person believe that a suitability matter may preclude them from being admitted, they can, even before completing their legal studies, apply to the Board for a declaration as to whether or not the suitability matter would prevent them from being assessed a fit and proper person for admission. This is to assist people decide if they wish to continue to seek entry to the legal profession or to pursue some other path. If the Board declares that an early applicant is a fit and proper person for admission then it must abide by this declaration, in relation to the matters disclosed, when the applicant formally applies for admission.

24. Referral of matters to the State Administrative Tribunal (NC)

If, in considering an application for early suitability the Board becomes aware of a particularly serious matter in relation to the application, it may refer the application to the State Administrative Tribunal (“SAT”) for determination. Any decision made by

SAT is binding on the Board and the costs of the proceeding before SAT are to be borne by the applicant.

Division 3 – Admission to the legal profession

25. Application for admission (CNU)

Applications for admission are made to the Supreme Court and must comply with the admission rules.

26. Admission by the Supreme Court (CNU)

The criteria to be met before the Supreme Court may admit a person to the legal profession are that the person has met the eligibility requirements, that they are a fit and proper person, and that they have taken the oath or affirmation required by the Court. The Supreme Court may follow the advice of the Board in order to determine if is eligible and a fit and proper person. Applications for admission which do not comply with the admission rules can be refused by the Court.

27. Objection to admission

An objection can be made against a person being admitted, if the person making the objection believes they have reasonable grounds for doing so.

28. Roll of persons admitted to the legal profession (NC)

When a person is admitted to the legal profession they are to sign the roll of practitioners maintained by the Supreme Court. Their admission takes effect from the date of signing the roll and the roll is to show their name. Once a person has signed the roll, the Principal Registrar of the Supreme Court is to forward their name, date of birth and date of admission to the Board as soon as practicable.

29. Local lawyer of the Supreme Court (CNU)

On being admitted as a lawyer, a person becomes an officer of the Supreme Court. However, if their name is removed from the roll, they are no longer so.

Division 4 – Functions of Legal Practice Board in relation to admissions (NC)

30. Board to advise on applications for admission (NC)

The Board's role is to assist the Supreme Court in determining whether an applicant should be admitted to the legal profession. It considers the applications, and advises the Court as to whether an applicant is eligible and a fit and proper person, and whether the application complies with the admission rules.

31. Compliance certificates (NC)

If the Board decides that an applicant meets the criteria for admission, the Board is to issue a compliance certificate. If it decides not to do so, the Board must give the Supreme Court and the applicant an information notice to this effect. The Board can request further information from the applicant. If the Board does not decide whether to issue a compliance certificate within 6 months of the original application or the applicant providing additional information, the Board is taken to have refused to issue the certificate. The applicant can apply to the SAT to have a refusal reviewed.

32. Consideration of applicant's eligibility and suitability (NC)

The Board can request from an applicant additional documents and information to assist in determining if they are eligible for admission and a fit and proper person, and whether the application complies with the admission rules. A compliance certificate can be refused on the ground that a request under this clause is not complied with.

Division 5 - Miscellaneous

33. Board is respondent to application under this Part (NC)

The Board is a respondent to every application made by someone else under Part 4.

Part 5 – Legal practice by Australian legal practitioners

Division 1 – Preliminary

34. Purposes (NC)

This Part enables Australian (not just local) legal practitioners to practice in WA. This is in the interests of national approach to the practice of law. For local practitioners, this Part governs the granting and renewing of WA practising certificates.

Division 2 – Legal practice in this jurisdiction by Australian legal practitioners

35. Entitlement of holder of Australian practising certificate to practise in this jurisdiction (CU)

Anyone holding a practising certificate issued by any Australian jurisdiction is entitled to engage in legal practice in WA.

36. WA government lawyers taken to be Australian legal practitioners

WA government lawyers are people admitted to practice and are employed by the State Solicitor's Office, Parliamentary Counsel's Office or the Office of the Director of Public Prosecutions or any other prescribed government agencies. WA government lawyers may engage in legal practice in the performance of their duties for one of these offices or agencies. It is not necessary for them to hold a practising certificate as this clause gives them the status of being a legal practitioner. As such, WA government lawyers still fall within the scope of this legislation for purposes such as complaints and discipline, but they are not required, for example, to pay professional indemnity insurance which is intended as a protection for clients and government lawyers do not have clients.

Division 3 – Local practising certificates generally

37. Local practising certificates (CNU (1); NC (2))

The Board issues WA practising certificates and will be able to introduce different categories of practising certificates (eg a different certificate for partners of law firms which may attract a higher fee than that for a practitioner who is an employee of a law firm). So that it is clear as to which jurisdiction's *Legal Profession Act* applies to a

given practitioner, a legal practitioner can only hold one practising certificate at a given time. They cannot hold multiple practising certificates, either local or from other jurisdictions, at a time.

38. Suitability to hold practising certificates (CNU)

Similar to the suitability matters taken into account when a person applies for admission, there are suitability matters which the Board is to take into account when a lawyer applies for a practising certificate. These include whether the person has contravened a condition placed on a practising certificate or an order of a disciplinary body; whether the person has not met the requirements regarding professional indemnity insurance; and generally whether the person has contravened the legislative requirements for practice. A person who fails to meet the standard in relation to these suitability matters would not be considered a fit and proper person to practice, unless, in the context of the circumstances, the Board determines otherwise. If in the course of applying for admission, a person disclosed a matter which did not warrant refusal to admit the person, this matter cannot be used to refuse to issue them with a practising certificate although it can be taken into account for other matters.

39. Duration of local practising certificate (CU (1) & (2); NC (3))

Local practising certificates operate on the basis of the financial year and expire at the end of the financial year in which they are granted or renewed, unless the certificate is suspended or cancelled beforehand. It is possible that the Board may not make a decision on whether to renew an existing practising certificate in time for the start of a new financial year. In this event, the old certificate continues to be valid until such time as the certificate is renewed or cancelled or the holder withdraws their application. If the application for renewal is made before 1 July but the decision to grant the renewal is not made until after 1 July, the date of effect of the renewal, once made, is 1 July.

40. Professional indemnity insurance (CNU)

An applicant for the grant or renewal of a practising certificate must demonstrate to the Board's satisfaction that they hold professional indemnity insurance as required under Part 11; otherwise, the Board cannot issue them with a practising certificate. Through the regulations, certain persons or classes of persons, can be exempted from this requirement.

41. Local legal practitioner is officer of the Supreme Court (CU)

If a person is not already an officer of the Supreme Court, they become one upon being granted a local practising certificate. This would principally apply to persons admitted in another jurisdiction (where they would be an officer of that jurisdiction's Supreme Court) but who take out a WA practising certificate.

Division 4 – Grant or renewal of local practising certificate

42. Application for grant or renewal of local practising certificate (CU (1)-(6); NC (7)-(9))

An eligible Australian lawyer may apply for a WA practising certificate in accordance with the regulations and legal profession rules. If the lawyer does not already have a practising certificate they are eligible to apply for a WA practising certificate if this is where they intend to practice solely or principally, or if their sole/principal place of

practice cannot be determined and this is where they reside, or they have no place of residence in Australia (eg an Australian lawyer returning to Australia after a period of residence overseas).

43. Manner of application and fees (NC)

Application for practising certificates must comply with the requirements set out in the legal profession rules. The legal profession rules can also empower the Board to set different fees for different categories of practitioners.

44. Timing of application for renewal of local practising certificate (NC)

The legal profession rules stipulate the time by which practitioners must lodge their applications for practising certificates and also the extended time limit beyond this date which attracts a late fee. The Board has some discretion to accept an application up to 6 months after the end of the late fee period if there are justifiable circumstances.

45. Grant or renewal of local practising certificates (NC)

This clause sets out what the Board may do in considering an application for the grant or renewal of a practising certificate. If the Board refuses to grant or renew a practising certificate, the Board must issue an information notice.

Division 5 – Conditions on local practising certificates

46. Conditions generally (NC)

There are numerous conditions which can be applied to a practising certificate. Conditions to which a practising certificate is subject are to be shown on the certificate.

47. Conditions imposed by Board (NC)

There are specific conditions on a practising certificate which may be imposed by the Board. These can be concerned with matters such as continuing legal education, restrictions on dealing with trust money, a requirement to undergo counselling or medical treatment, and so on. The Board can only require that a practitioner undergo specific legal education if this is reasonable in the context of the practitioner's qualifications, experience and conduct, or if it is a general condition imposed on practitioners.

48. Imposition or variation of conditions pending criminal proceedings (NC)

The Board may apply to SAT for the imposition or variation of conditions on a practising certificate if the practitioner is the subject of outstanding charges.

49. Conditions imposed on interstate admission (CNU)

If a practitioner holding a WA practising certificate was admitted under the laws of another jurisdiction and that admission was the subject of conditions which still apply, the practitioner is to comply with those conditions. Failure to comply constitutes a contravention of the WA practising certificate.

50. Restricted legal practice (CNU)

Until such time that a legal practitioner has obtained "required experience", they are only entitled to engage in restricted legal practice. If a person completed practical

legal training as an articled clerk, or in some other way under the supervision of a legal practitioner, the required experience for unrestricted practice is 18 months supervised legal practice. If their practical legal training was in some other form, they are required to complete 2 years' supervised practice. Even though a person has obtained the required experience, it can still be a condition of their practising certificate that they are to engage in supervised legal practice. The Board has some discretion to exempt people from the supervised legal practice requirement.

51. Notification of offence (NC)

It is a requirement that legal practitioners convicted of certain categories of offences notify the Board. This must be done within 7 days of conviction or charge, otherwise the practitioner commits an offence under this legislation.

52. Conditions imposed by legal profession rules (NC)

This clause provides that the legal profession rules are a vehicle by which conditions can be imposed on practising certificates.

53. Compliance with conditions (NC)

If there is a condition attached to a legal practitioner's practising certificate, the practitioner is to comply with the condition.

Division 6 – Amendment, suspension or cancellation of local practising certificate

54. Application of this Division (NC)

Division 6 does not deal with show cause events which are dealt with in Division 7.

55. Grounds for amending, suspending or cancelling local practising certificate (NC)

This clause sets out the grounds for amending, suspending or cancelling a practising certificate ie the practitioner is no longer a fit and proper person, does not have appropriate professional indemnity insurance or is engaging in legal practice in a form to which they are not entitled to practice.

56. Amending, suspending or cancelling local practising certificate (NC)

If the Board considers that a ground (of the kind referred to in clause 55) exists for amending, cancelling or suspending a practising certificate, it must issue a notice to the holder. This notice must, amongst other things, specify the kind of action that the Board may take in respect of the practising certificate and give the holder the opportunity to respond. After considering the response, the Board may cancel, suspend or amend the practising certificate and in doing so must give the holder an information notice.

57. Operation of amendment, suspension or cancellation of local practising certificate (NC)

This clause sets out the date of effect of amendment, suspension or cancellation of a practising certificate under clause 56 which is the day of the notice or a day specified in the information notice, whichever is the latter. There is provision for SAT to grant a stay of the amendment etc during any appeal period if the amendment etc is the result of a conviction for an offence. In the event of a conviction being quashed, an amendment etc is cancelled.

58. Immediate suspension of local practising certificate (NC)

Should there be a public interest reason for doing so, the Board may take immediate action to suspend a practitioner's practising certificate. The Board is to notify the practitioner of the immediate suspension and the practitioner has the right to make representation to the Board about the suspension. Such representation is to be in writing, and must be considered by the Board.

59. Other ways of amending, suspending or cancelling local practising certificate (CNU)

The Board may amend a practitioner's practising certificate in accordance with a request of the practitioner. The Board must cancel a local practising certificate if the practitioner's name has been removed from the WA roll or if the practitioner ceases to be an Australian lawyer.

60. Relationship of this Division with Part 13 (NC)

A complaint can be actioned under Part 13 even if it relates to a matter on which action has been taken under this Division.

Division 7 – Special powers in relation to local practising certificates – show cause events

61. Applicant for local practising certificate – show cause event (CNU)

"Show cause event" is a defined term in clause 3. An applicant for a practising certificate who is subject to a show cause event must provide, as part of the application process, an explanation as to why they are still a fit and proper person to hold a practising certificate. However, this explanation only has to be provided once and if previously provided, does not have to be provided again.

62. Holder of local practising certificate – show cause event (CNU)

If the holder of a local practising certificate is the subject of a show cause event, the holder must provide the Board with notice of the event and with reasons why they are a fit and proper person to hold a practising certificate.

63. Refusal, amendment, suspension or cancellation of local practising certificate – failure to show cause (CNU)

The Board may refuse to grant or renew a practising certificate or may amend, cancel or suspend a practising certificate if a person has failed to provide information about a show cause event or has failed to adequately respond about a show cause event.

64. Restriction on making further applications (NC)

Having refused to grant or renew a person's practising certificate, the Board may decide that the person may not apply for the grant of another practising certificate for a period of up to 5 years.

65. Power to renew practising certificate or defer action in special circumstances

It is possible that a person's application may be subject of a determination by the Board, but that the Board will not have had the opportunity to make its determination before the end of the financial year for which the person's current practising certificate is valid. Should the Board renew the person's certificate for the following

financial year without having made the determination, the Board can still make a determination later on to cancel, amend or suspend the person's practising certificate.

66. Relationship of this Division with Part 13 (NC)

The general provisions relating to complaints and investigations (Part 13) apply to matters which also fall within the scope of this Division.

Division 8 – Further provisions relating to local practising certificates

67. Return of local practising certificate (NC)

If a practising certificate is amended, suspended or cancelled as a result of disciplinary action or otherwise replaced, the Board may require that the certificate be returned to the Board. Failure to comply is an offence.

Division 9 – Interstate legal practitioners

68. Requirement for professional indemnity insurance (CNU)

An interstate legal practitioner is not entitled to engage in legal practice in WA or advertise as such practice unless they have professional indemnity insurance covering practice in WA. WA cannot impose higher levels of insurance than those imposed on local practitioners. This provision does not apply to lawyers who are employed by the governments of other States or Territories if the practitioner is only undertaking government work.

69. Extent of entitlement of interstate legal practitioner to practise in this jurisdiction (CU)

An interstate legal practitioner cannot practice in WA to a greater extent that they would be entitled to practise under a WA practising certificate. Conditions imposed in the practitioner's home jurisdiction also apply to their practice in WA. If there are WA and home jurisdiction conditions that are inconsistent, the conditions that prevail are those that, in the opinion of the Board, are the more onerous.

70. Additional conditions on practice of interstate legal practitioners (CU)

The Board may impose additional conditions on interstate legal practitioners. Such conditions must be notified to the interstate legal practitioner along with an information notice.

71. Notification requirements for interstate legal practitioners

It is a requirement that interstate legal practitioners who open an office in WA notify the Board within 28 days of doing so. The information to be provided as part of this notification includes their personal details, their address for serving documents, business names and so on.

72. Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction (CNU)

A newly admitted interstate legal practitioner must not engage in legal practice in WA unless they have first completed the required periods of supervised practice (or have been exempted in their home jurisdiction).

73. Interstate legal practitioner is officer of Supreme Court (CU)

Interstate legal practitioners have the duties and obligations of officers of the Supreme Court when they are engaged in legal practice in WA.

Division 10 – Miscellaneous provisions relating to practice

74. Jurisdiction protocols (NC)

The Board may enter into protocols with the regulators of other jurisdictions for determining issues relating to the home jurisdiction of legal practitioners. Such protocols have no effect unless embodied in or identified in the Regulations.

75. Consideration and investigation of applicants or holders (NC)

The Board may require applicants for practising certificates or holders of practising certificates to provide documents and information and to co-operate with inquiries. Failure to co-operate is a ground for an adverse finding.

76. Register of local practising certificates (NC)

The Board has an obligation to maintain a register of persons to whom it has granted local practising certificates. The Regulations specify what is required to be in the register. The register must contain the conditions to which a practising certificate is subject except where those conditions relate to an infirmity, injury or mental or physical injury not affecting the right to engage in legal practice. However, the legal practitioner may consent to such information being included on the register.

77. Orders about conditions (NC)

If an Australian lawyer is the subject of condition imposed under Part 5, the Board may apply to SAT for an order that the lawyer not contravene the condition.

78. Review of decisions of Board (NC)

Some decisions of the Board may be subject to review by SAT. These include the Board's refusal to grant or renew a practising certificate and refusing a request to amend a practising certificate.

79. Interstate government lawyers (CNU)

Government lawyers from other States/ Territories are exempt from certain provisions of this Bill if they are exempt from such provisions in their home jurisdiction. They are not required to pay contributions and levies to the Guarantee Fund.

80. Fees (NC)

This clause empowers the Board to charge fees for its services and to include these fees in the legal profession or admission rules.

Part 6 – Inter-jurisdictional provisions regarding admission and practising certificates

Division 1 – Preliminary

81. Purpose (NC)

This clause provides for notifications to and from other States/Territories regarding admission and rights to practice.

82. Other requirements not affected (NC)

The functions under Part 13 (complaints and discipline) are not affected by this Division.

Division 2 – Notifications to be given by local authorities to interstate authorities

83. Official notification to other jurisdictions of applications for admission and associated matters (NC)

The Board may provide other admissions authorities with information about applications for admission made in WA as well as information about refusals and withdrawals of such applications.

84. Official notification to other jurisdictions of removals from local roll (CNU)

The Principal Registrar of the Supreme Court must give various notifications to other States/Territories if a person's name is removed from the WA roll.

85. Board to notify other jurisdictions of certain matters (NC)

The Board must give notice to its corresponding authorities in other States/Territories about refusals to issue practising certificates, about suspensions or cancellations or about conditions that are imposed on a practitioner's practising certificate.

Division 3 – Notifications to be given by lawyers to local authorities

86. Lawyer to give notice of removal of name from interstate roll (CNU)

A WA lawyer must notify, in writing, the Principal Registrar and the Board if their name has been removed from an interstate roll (unless clause 90 applies). Failure to do so attracts a penalty.

87. Lawyer to give notice of interstate orders (NC)

A WA lawyer must notify, in writing, the Board if an order is made under a corresponding law in another State/Territory that the lawyer's name be removed from the WA roll. If a WA legal practitioner is the subject of an order under a corresponding law that their practising certificate be cancelled or suspended, not renewed or be subjected to conditions, then the practitioner is to notify the Board. Failure to do so attracts a penalty.

88. Lawyer to give notice of foreign regulatory action (CNU)

A WA lawyer must notify the Board in writing if the lawyer is the subject of foreign regulatory action. Failure to do so attracts a penalty.

89. Provisions relating to requirement to notify (CNU)

This clause sets out the information that must be provided when a provision of this Division requires information to be provided, eg personal details and details of the relevant action. The person in question is also required to provide copies of relevant official notifications.

Division 4 – Taking of action by local authorities in response to notifications received

90. Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction (CNU)

If a WA practitioner's name has been removed from the roll of another State or Territory, the Principal Registrar must remove the person's name from the WA roll, unless the Supreme Court (under section 94(1)) has ordered otherwise. The person is to be notified by the Principal Registrar if their name is removed from the WA roll.

91. Peremptory cancellation of local practising certificate following removal of name from interstate roll ((NC)

The Board must cancel a practitioner's practising certificate if their name has been removed from a roll in another State or Territory, unless the Supreme has (under section 95(1)) ordered otherwise. The practitioner is to be notified of any such action taken by the Board.

92. Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action (CNU)

If foreign regulatory action is taken against a WA lawyer, the Board may seek an order of the Supreme Court that the lawyer's name be removed from the WA roll unless the lawyer shows cause to the Board as to why this should not happen.

93. Show cause procedure for cancellation of local practising certificate following foreign regulatory action (CNU)

If foreign regulatory action is taken against a WA practitioner, the Board may require the practitioner to show cause why the practising certificate should not be cancelled. The Board may cancel the practising certificate. The practitioner may seek to have the Board's decision reviewed by SAT.

94. Order for non-removal of name (CNU)

The Supreme Court may, on application from a lawyer, make an order that a lawyer's name not be removed from the roll under clauses 90 or 92. The lawyer may make application if they believe that their name is to be removed from an interstate roll or that they are to be the subject of foreign regulatory action. The Supreme Court, if it is also of the view that such action is to be expected, but considers that it does not relate to disciplinary action, can make the order or refuse to do so.

95. Order for non-cancellation of local practising certificate (CNU)

SAT may, on application from a practitioner, make an order that the practitioner's practising certificate not be cancelled under clauses 91 or 93. The practitioner may make application if they believe that their name is to be removed from an interstate roll or that they are to be the subject of foreign regulatory action. SAT, if it is also of the view that such action is to be expected, but considers that it does not relate to disciplinary action, can make the order or refuse to do so.

96. Local authorities may give information to other local authorities (CNU)

The WA regulatory authorities may share other regulatory authorities of this State, information provided by interstate regulatory authorities.

Part 7 – Incorporated legal practices and multi-disciplinary partnerships

Division 1 – Preliminary

97. Purposes (NC)

The purposes of Part 7 are to regulate legal services provided by corporations and legal services provided in conjunction with other non-legal services.

98. Definitions (CU)

This clause defines the key terms used in this Part.

Division 2 – Incorporated legal practices providing legal services

99. Nature of incorporated legal practice (CU; except NC (2)(a))

An incorporated legal practice (ILP) is a corporation that provides legal services. However, a corporation is not an ILP if the services are not provided for gain or if the services are in house legal services. Other exceptions may be prescribed.

100. Non-legal services and businesses of incorporated legal practices (CU)

ILPs may provide any other service except conducting a managed investment scheme or other services as may be specified in the regulations.

101. Corporations eligible to be incorporated legal practice (CU)

Any corporation is entitled to be an ILP except if prohibited by legislation. ILPs are not required to hold practising certificates in their own name (ie the requirements for practising certificates rest with the legal practitioner directors and legal practitioner employees).

102. Notice of intention to start providing legal services (CU; except NC (5)-(7))

An ILP must, before providing legal services in WA, notify the Board in writing of its intention to do so. Failure to do so attracts a penalty.

103. Prohibition on representations that corporation is incorporated legal practice (NC)

A corporation must not represent or advertise that it is an ILP unless it has given notice under clause 102. Failure to comply with this provision attracts a penalty for the corporation and its directors, officers, employees and agents.

104. Notice of corporation ceasing to engage in legal practice (CU)

It is an offence for an ILP to fail to notify the Board when it ceases to provide legal services. The time limit for such notifications is prescribed through the regulations.

105. Incorporated legal practice must have legal practitioner director (CU)

Each ILP must have a legal practitioner director who is responsible for the management of the legal services provided in WA by the ILP. The director is to ensure that management systems are in place, that breaches of legislation do not occur, and that should there be a breach that appropriate remedial action is taken.

106. Obligations of legal practitioner director relating to misconduct (CU)

A legal practitioner director may be guilty of unprofessional conduct (UPC) or professional misconduct (PMC) if an employee is guilty of such conduct unless the

director can show that they took all reasonable steps to prevent this happening. Similarly, if another director's conduct or suitability is called into question, this could constitute UPC or PMC on the part of the legal practitioner director.

107. Incorporated legal practice without legal practitioner director (CU)

The legal services of an ILP are to be overseen by a legal practitioner director. An ILP that is without a legal practitioner for more than 7 days is in breach. The Board is to be notified in the event of an ILP having no legal practitioner directors.

108. Obligations and privileges of practitioners who are officers or employees (CU)

Employees of ILPs who are legal practitioners are subject to the same professional obligations and professional privileges of any legal practitioner.

109. Professional indemnity insurance (CNU)

The professional indemnity insurance provisions (Part 11) apply to ILPs. Individual legal practitioners who are legal practitioner directors and legal practitioner employees of an ILP must also comply with the professional indemnity insurance provisions as they apply to them individually. A breach could result in the legal practitioner director's practising certificate being suspended.

110. Conflicts of interest (CU)

The interests of an ILP are also the interests of individual legal practitioner directors and legal practitioner employees of the ILPs.

111. Disclosure obligations (CU)

When an ILP takes on a client, it is to disclose to the client which of the services to be provided will be provided by a legal practitioner. This clause deals with the situation where the advice sought could be given either by a legal practitioner or by some other professional.

112. Effect of non-disclosure on provision of certain services (CU)

If the disclosure required under clause 111 is not provided, the standard of care owed by the ILP is the standard that would apply if the services were provided by a legal practitioner.

113. Application of legal profession rules (CU)

The legal profession rules apply to legal practitioners who are officers and employees of ILPs.

114. Requirements relating to advertising (CU)

The normal restrictions applying to advertising by legal practitioners apply to ILPs as far as the provision of legal services is concerned.

115. Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices (CU)

An ILP is vicariously liable for the acts and omissions of its employees and officers as if the ILP were a partnership.

116. Sharing of receipts, revenue or other income (CU)

A legal practitioner can share with an ILP receipts, revenue and income. The exceptions to this are set out in clause 117.

117. Disqualified persons (CU)

Disqualified persons are not to be associated with an ILP as an officer, employee, partner or a person engaged or paid in connection with legal services provided by the ILP; nor is a disqualified person to share the receipts, revenue or other income of an ILP. If there is such an association or sharing of receipts etc the legal practitioner director(s) are liable to being found to have committed UPC or PMC.

118. Audit of incorporated legal practice (CU)

The Board or Legal Practitioners Complaints Committee ("Complaints Committee") may audit an ILP for compliance with the Act, regulations or rules. This clause sets out the procedures applying to such an audit. An audit can be instigated in the absence of a complaint.

119. Banning of incorporated legal practices (CU)

The Board and the Complaints Committee are authorised to apply to SAT to have an ILP banned if they believe there are justifiable grounds for this eg a legal practitioner director or legal practitioner employee being found guilty of PMC, unsatisfactory management and supervision of legal services at the ILP, and so on.

120. Disqualification from managing incorporated legal practice (CU)

The Board may apply to SAT for an order that an individual be disqualified from being a manager of an ILP. The grounds for making the order are that the person would be subject to disqualification under the relevant sections of the *Corporations Act 2001* (Cth) or is otherwise justified.

121. Disclosure of information to Australian Securities and Investments Commission (CU)

The WA regulatory bodies may provide information to the Australian Securities and Investment Commission.

122. External administration proceedings under Corporations Act (CU)

The Board may intervene in proceedings involving an ILP under Chapter 5 of the *Corporations Act*.

123. External administration proceedings under other legislation (CU)

The Board may intervene in other proceedings concerning ILPS.

124. Incorporated legal practice is subject to receivership under this Act and external administration under Corporations Act (CU)

This clause sets out the procedures for resolving issues that arise if an ILP is subject to the appointment of a receiver under Part 14 or an administrator under the *Corporations Act*.

125. Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation (CU)

This clause sets out the procedures for resolving issues that arise if an ILP is subject to the appointment of a receiver under Part 14 or an external administrator.

126. Cooperation between courts (CU)

In exercising their powers under this Part, WA courts may make co-operative arrangements with other courts and tribunals.

127. Relationship of Act to constitution of incorporated legal practice (CU)

This clause provides that the provisions of this Bill prevail where there is an inconsistency with the constitution of the ILP

128. Relationship of Act to legislation establishing incorporated legal practice (CU)

For an ILP that is not a company under the *Corporations Act*, this legislation prevails over any legislation that otherwise applies to the ILP.

129. Relationship of Act to Corporations legislation (CU)

This clause provides for displacement of the *Corporations Act*. Notification of this clause is to be given under the *Corporations Agreement 2002*.

130. Undue influence (CU)

A person, being a legal practitioner director or a legal practitioner who works for an ILP, commits an offence if they induce another person to breach this legislation or their professional obligations. To do so attracts a penalty.

Division 3 – Multi-disciplinary partnerships

131. Nature of multi-disciplinary partnership (CU)

A multi-disciplinary partnership (MDP) is a partnership of legal practitioners and persons who are not legal practitioners.

132. Conduct of multi-disciplinary partnership (CU)

This clause permits a legal practitioner to enter into a partnership for the provision of legal services with a person who is not a legal practitioner. The regulations may exclude some types of occupations from being included in a MDP.

133. Notice of intention to start practice in multi-disciplinary partnership (CU)

It is an offence for a person to start a MDP without first notifying the Board. A penalty applies.

134. General obligations of legal practitioner partners (CU)

Each legal practitioner partner is responsible for the management of the MDP and must ensure that appropriate management systems are implemented and maintained.

135. Obligations of legal practitioner partner relating to misconduct (CU)

A legal practitioner partner may be guilty of PMC or UPC in respect of the activities of legal practitioners employed by the MDP or of other partners. The legal practitioner partner is also responsible for taking all reasonable action to deal with PMC or UPC.

136. Actions of partner who is not Australian legal practitioner (CU)

This clause protects non-lawyers who are partners in MDPs that provide legal services. They are protected from prosecution in respect of various activities that would apply to legal practitioners.

137. Obligations and privileges of practitioners who are partners or employees (CU)

A legal practitioner working in a MDP is subject to the same professional obligations and privileges that apply to other legal practitioners.

138. Conflicts of interest (CU)

For the purpose of dealing with conflict of interest issues, a legal practitioner partner or employee of a MDP is deemed to have the same interest as the MDP.

139. Disclosure obligations (CU)

When a MDP takes on a client, it is to disclose to the client which of the services to be provided will be provided by a legal practitioner. This clause deals with the situation where the advice sought could be given either by a legal practitioner or by some other professional.

140. Effect of non-disclosure of provision in certain circumstances (CU)

If disclosure is not provided under clause 139, the standard of care is that expected of a legal practitioner regardless of who has provided the service.

141. Application of legal profession rules (CU)

The legal profession rules apply to legal practitioners who are partners in or employees of MDPs.

142. Requirements relating to advertising (CU)

The restrictions on advertising under this legislation apply to MDPs.

143. Sharing of receipts, revenue or other income (CU)

A legal practitioner can share revenue with MDP partners who are not legal practitioners.

144. Disqualified persons (CU)

It is an offence for a legal practitioner partner of a MDP to knowingly be the partner of a disqualified person, to share income with a disqualified person, or to employ or pay a disqualified person in respect of the provision of legal services.

145. Prohibition on partnership with certain partners who are not Australian legal practitioners (CU)

The Board may apply to SAT to prohibit a person being involved with a MDP on the grounds that the person is not a fit and proper person to be a partner, the person is guilty of conduct equating to PMC or UPC, or, if a corporation is involved, the corporation has been disqualified from providing legal services or there are grounds for this.

146. Undue influence (CU)

It is a breach for a person to induce a legal practitioner partner or legal practitioner employee of a MDP to contravene this legislation or their professional obligations.

Division 4 - Miscellaneous

147. Obligations of individual practitioners not affected (CU)

This clause provides that nothing in this part affects obligations imposed on a legal practitioner director or a legal practitioner partner under any other Act, unless this Part provides otherwise.

148. Regulations (CU)

Regulations may be made in respect of legal services provided by ILPs and MDPs.

Part 8 – Legal practice by foreign lawyers

Division 1 – Preliminary

149. Purpose (NC)

The purpose of Part 8 is to provide a framework for the regulation of the conduct of foreign law in WA.

150. Definitions (CU)

This clause defines key terms used in this Part. In particular, an “overseas-registered foreign lawyer” is a person registered in some other country for the purpose of engaging in legal practice.

151. This Part does not apply to Australian legal practitioners (CU)

An Australian legal practitioner cannot be registered to practise foreign law in WA. This does not prevent an Australian legal practitioner from practising foreign law. However, should they do so; this Part does not apply to them.

Division 2 – Practice of foreign law

152. Requirement for registration (CU)

A person must not practise foreign law in WA unless they are a registered foreign lawyer or an Australian legal practitioner.

153. Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction (CU)

A person who has registered as a foreign lawyer in Australia is entitled to practise foreign law in WA.

154. Scope of practice (CU)

The services that may be provided by Australian registered foreign lawyers are limited to practising law of the foreign jurisdiction in which the lawyer is registered or providing arbitration, conciliation or mediation proceedings as set out in the regulations, or appearances in tribunals and other forums (except for courts) where the rules of evidence do not apply.

155. Form of practice (CU)

An Australian registered foreign lawyer may provide services in a partnership with another Australian registered foreign lawyer, as part of an ILP or MDP, as an

employee of an Australian legal practitioner or as an employee of an Australian registered foreign lawyer.

156. Application of Australian professional ethical and practice standards (CU)

Conduct which would equate to UPC or PMC on the part of an Australian legal practitioner is prohibited in the case of registered foreign lawyers.

157. Designation (CU)

This clause sets out the titles/names that registered foreign lawyers may use. They include titles that could be used in the relevant foreign jurisdiction and names that are descriptive of the role. This clause operates subject to legislation dealing with business names, and subject to the other provisions of this legislation and other legislation relating to names.

158. Letterhead and other identifying documents (CU)

Letterheads etc used by registered foreign lawyers are to make it clear that, in respect to the practice foreign law, the author is a registered foreign lawyer and is only entitled to practise foreign law.

159. Advertising (CU)

Registered foreign lawyers must comply with restrictions on advertising as set by legislation or by the Board. There is a general prohibition on advertising that is false, misleading or deceptive, or which suggest that the Australian registered foreign lawyer is an Australian legal practitioner.

160. Foreign lawyer employing Australian legal practitioner (CU)

Registered foreign lawyers may employ Australian legal practitioners. However, in this situation, the Australian legal practitioner cannot provide legal advice in relation to Australian law (including advice to the employing Australian registered foreign lawyer).

161. Trust money and trust accounts (CU; except (3) CNU)

This clause provides that Part 9 (Trust moneys) applies to registered foreign lawyers in the same way that it applies to Australian legal practitioners.

162. Professional indemnity insurance (CU)

Australian registered foreign lawyers must have professional indemnity insurance that complies with the requirements of any Australian jurisdiction.

163. Fidelity cover (CU)

Regulations may provide for the extent to which the provisions relating to fidelity cover (Part 12) apply to registered foreign lawyers.

Division 3 – Local registration of foreign lawyers generally

164. Local registration of foreign lawyers (CU)

This clause states the principle that overseas-registered foreign lawyers may be registered as Australian registered foreign lawyers.

165. Duration of registration (CU)

This clause provides that registration of a registered foreign lawyer lasts from the date of registration to the end of the relevant financial year.

166. Locally registered foreign lawyer is not officer of Supreme court (CU)

This clause states that an Australian registered foreign lawyer is not an officer of the Supreme Court.

Division 4 – Application for grant or renewal of local registration

167. Application for grant or renewal of registration (CU)

An overseas-registered foreign lawyer who wishes to become, or continue to be, a registered foreign lawyer, may apply to the Board.

168. Manner of application (CU)

This clause sets out the manner of making applications to the Board for the grant or renewal of registration. For example, an application must be in an approved form and any fees set by the Board are to be paid.

169. Requirements regarding applications for grant or renewal of registration (CU)

An application for registration as an Australian registered foreign lawyer must follow the requirements set out in this clause. In essence, the application must provide details of the foreign registration and various details about any disciplinary action and the like that may be pending in respect of the applicant.

Division 5 – Grant or renewal of registration

170. Grant or renewal of registration (CU)

This clause requires the Board to consider applications for registration as an Australian registered foreign lawyer. If the Board imposes a condition or refuses an application, the Board must provide an information notice.

171. Requirement to grant or renew registration if criteria satisfied (CU)

This clause sets out the basis on which the Board must grant registration of a person as an Australian registered foreign lawyer. It must do so if satisfied that the applicant is registered under an effective overseas regulatory system, and if satisfied that the applicant is not subject to any conditions or circumstances in the overseas jurisdiction that would make it inappropriate that the person be registered in WA.

172. Refusal to grant or renew registration (CU)

The circumstances under which the Board may refuse an application for registration as an Australian registered foreign lawyer are broadly similar to those that apply in respect of decision about Australian legal practitioners.

Division 6 – Amendment, suspension or cancellation of local registration

173. Application of this Division (CNU)

Division 7 deals with special powers in relation to local registration (show cause events). This clause provides that Division 6 does not apply to the matters dealt with under Division 7.

174. Grounds for amending, suspending or cancelling local registration (CNU)

This clause sets out the various grounds on which the Board may amend, suspend or cancel the registration of an Australian registered foreign lawyer. The grounds include registration based on incorrect or misleading information, disciplinary proceedings in the foreign jurisdiction, absence of professional indemnity insurance and any other ground that the Board considers sufficient justification.

175. Amending, suspending or cancelling registration (CNU)

If the Board considers that there is a reasonable ground to amend etc a registration, it is to give notice of its intention to do so and its proposed course of action to the registered foreign lawyer. After considering representations from the Australian registered foreign lawyer, the Board may take the action referred to in the notice.

176. Operation of amendment, suspension or cancellation of registration (CNU)

This clause provides for the time when amendments etc of the registration of Australian registered foreign lawyers take effect and the circumstances in which such actions may be stayed or reversed.

177. Other ways of amending or cancelling registration (CNU)

This clause permits the Board to amend or cancel the registration of an Australian registered foreign lawyer on application of the lawyer, or for formal or clerical reasons, or in ways that do not adversely affect the lawyer.

178. Relationship of this Division with Part 13 (CNU)

Part 13 deals with complaints and discipline. This clause provides that this Division does not prevent complaints being made or investigations conducted under Part 13.

Division 7 – Special powers in relation to local registration – show cause events

179. Applicant for local registration – show cause event (CNU)

A person seeking registration in WA as an Australian registered foreign lawyer must give notice of any show cause event that has occurred after their initial registration (which may have occurred in another jurisdiction), unless they have previously provided this information.

180. Locally registered foreign lawyer – show cause event (CNU)

If a show cause event occurs in relation to an Australian registered foreign lawyer registered in WA, the lawyer must notify the Board within 7 days and, within 28 days, give reasons as to why they are still a fit and proper person to be registered.

181. Refusal, amendment, suspension or cancellation of local registration – failure to show cause (CNU)

If an Australian registered foreign lawyer fails to provide the information required under clauses 179 or 180, or the Board, on having received this information determines that the person is not fit and proper to be registered, the Board may refuse to grant or renew an application for registration, or amend, suspend or cancel a registration.

182. Restriction on making further applications (CNU)

If a person's registration as an Australian registered foreign lawyer is cancelled, the Board may decide that the person cannot apply for registration for a specified period (for up to 5 years).

183. Relationship of this Division with Part 13 (CNU)

This clause provides that this Division does not prevent complaints being made or investigations conducted under the provisions of Part 13 (complaints and discipline).

Division 8 – Further provisions relating to local registration

184. Immediate suspension of registration (CNU)

This clause sets out the circumstances under which the Board may immediately suspend the registration of a person as an Australian registered foreign lawyer. The basic principle is that such action is in the public interest. The Board has to notify the person of its intention and stating its reasons. The person has the right to make a written representation to the Board which the Board is obliged to consider. The suspension can be revoked by the Board.

185. Automatic cancellation of registration on grant of practising certificate (CNU)

If an Australian registered foreign lawyer becomes an Australian legal practitioner, their registration as an Australian registered foreign lawyer is automatically cancelled.

186. Suspension or cancellation of registration not to affect disciplinary processes (CNU)

Disciplinary action may continue despite the fact that the registration as an Australian registered foreign lawyer has been suspended or cancelled.

187. Return of local registration certificate on amendment, suspension or cancellation of registration (CNU)

On being required to do so by the Board, a person whose registration as an Australian registered foreign lawyer has been amended etc, must return the certificate of registration to the Board. Failure to do so attracts a penalty.

Division 9 – Conditions on registration

188. Conditions generally (CNU)

Conditions may be applied to someone's registration as an Australian registered foreign lawyer by the Board, under the legal profession rules, under Part 13 (or the equivalent Part in a corresponding law), and any other legislation.

189. Conditions imposed by Board (CNU)

This clause sets out when the Board can impose a condition on the registration of an Australian registered foreign lawyer and what can be the subject of a condition. A condition must be reasonable and relevant, and cannot be more onerous than would apply if the lawyer was a local legal practitioner.

190. Imposition or variation of conditions pending criminal proceedings (NC)

This clause sets out the conditions that may be imposed by SAT (upon application by the Board) if an Australian registered foreign lawyer is charged with an offence but the charge has not been determined.

191. Condition regarding notification of offence (CNU)

It is a requirement that an Australian registered foreign lawyer notifies the Board on being convicted of certain offences or on being charged with a serious offence.

192. Conditions imposed by legal profession rules (CNU)

This clause provides that the legal profession rules can be used to impose conditions.

193. Compliance with conditions (CNU)

It is an offence to fail to comply with a condition of registration. A penalty applies.

Division 10 – Interstate-registered foreign lawyers

194. Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction (CNU)

This clause sets out the general limitations on the scope of practice of an interstate Australian registered foreign lawyer. They cannot practice in WA beyond the scope that would be allowed if they were registered in this State, and any conditions applying to the interstate registration continue to apply in WA.

195. Additional conditions on practice of interstate-registered foreign lawyers (CNU)

The Board may impose on interstate Australian registered foreign lawyers conditions that it may impose on Australian registered foreign lawyers who are registered in WA.

196. Notification requirements for interstate-registered foreign lawyers

If an interstate registered foreign lawyer sets up office in WA, they must notify the Board of having done so within 28 days. Failure to do so attracts a penalty. The notification must provide information such as personal details, business names, any conditions applying the lawyer from their overseas jurisdiction and so on.

Division 11 – Miscellaneous

197. Consideration and investigation of applicants and locally registered foreign lawyers (CNU)

The Board may require information and co-operation from an applicant for the purpose of considering applications for registration or renewal of registration. The Board may also require information from registered foreign lawyers for the purpose of considering amending, suspending or cancelling registrations.

198. Register of locally registered foreign lawyers (CNU)

The Board is to keep a public register of those registered foreign lawyers who are registered in WA. The register is to include relevant conditions or other information required under the regulations, and is to be available to the public at no cost.

199. Publication of information about locally registered foreign lawyers (CNU)

The Board may publish details of locally registered foreign lawyers as it considers fit.

200. State Administrative Tribunal orders about conditions (CNU)

The Board may apply to SAT for an order that an Australian registered foreign lawyer not contrive a condition imposed under Part 8.

201. Exemption by Board (CNU)

The Board may exempt an Australian registered foreign lawyer from compliance with any provision of this legislation.

202. Membership of professional association (CNU)

An Australian registered foreign lawyer is not required to join any professional association (eg the Law Society), but may do so if they are otherwise eligible.

203. Review by State Administrative Tribunal (CNU)

This clause lists those decisions by the Board under this legislation which are subject to review by SAT upon application by an Australian registered foreign lawyer.

Part 9 – Trust money and trust accounts

Division 1 – Preliminary

204. Purposes (NC)

The purposes of Part 9 are to provide for the regulation of trust money in a way that minimises compliance burdens and enables the Board to work in co-operation with interstate regulatory bodies.

205. Definitions (CU)

This clause defines the key terms used in Part 9. In particular, “controlled money” is money subject to a written direction that it be deposited in an account controlled by the law practice, and “transit money” is money received by a practice which the practice is required, in accordance with a written direction, to pay to a third party.

206. Money involved in financial services or investments (CNU)

Certain money held by law practices is not trust money for the purpose of this legislation, eg money held by a person who has or should have an Australian financial services licence, and money held for or in connection with a managed investment scheme or mortgage financing. Additionally, money held for investment purposes is only trust money if it is held as part of and in relation to legal practice, and if the investment is made for the ancillary purpose of maintaining or enhancing the value of the money pending the completion of the matter in respect of which it has been held.

207. Determinations about the status of money (CU)

The Board may make a binding determination as to whether certain money is trust money for the purpose of this legislation. This binding determination operates subject to any decision of a court or SAT.

208. Application of Part to law practices and trust money (CU)

This clause sets out the basis for determining whether this legislation, or some other State or Territory Act, applies to the holding of trust monies by a law practice. This legislation applies if the trust money is received in WA (regardless of where the practice has its office(s)); if the money is received outside of WA but this State is the only jurisdiction where the practice has an office; or the money is received outside of WA and the practice has an office in this State but not where the money is received. The application of Part 9 can be varied by regulation.

209. Trust money protocols (CU)

The Board is empowered to enter into protocols with regulatory bodies in other jurisdictions for determining which jurisdiction has responsibility for trust money and for the sharing of information.

210. When money is received (CU)

This clause defines the various ways in which it is determined when money has been received by a practice eg when it has directly or indirectly taken possession or control of the money, it has been given the power to deal with the money.

211. Discharge by legal practitioner associate of obligations of law practice (CU)

This clause sets out the various actions that, if taken by a legal practitioner associate of a law practice, discharge the obligations of the law practice eg establishing a trust account.

212. Liability of principals of law practices (CU)

A provision of Part 9 which is binding on law practices imposes the same obligations on the principals of the law practice.

213. Former practices, principals and associates (CU)

Part 9 applies to former law practices and their principals and associates, but only in relation to conduct that took place whilst they were performing their former functions.

Division 2 – Trust accounts and trust money

214. Maintenance of general trust account (CU)

A law practice is required to have a general trust account if it receives trust money. This does not apply if the only money held by the practice is controlled and/or transit money. The regulations set out how general trust accounts are to be established, maintained and closed.

215. Certain trust money to be deposited in general trust account (CU)

As a general principle, trust money must be deposited in a trust account as soon as practicable after it is received. This principle does not apply if there is an appropriate written direction to the contrary, if the money is controlled or transit money, or if the money is to be handled by another person under a power of attorney. If there is a

written direction in relation to the money, the law practice must comply with the direction and must keep a copy of the direction for the prescribed period. Breaches of this clause attract a range of penalties.

216. Holding, disbursing and accounting for trust money (CU)

Trust money in a general trust account must be held exclusively for the client and must be disbursed in accordance with the directions of the person on whose behalf the money has been received. If there is a written direction in relation to the money, the law practice must comply with the direction and must keep a copy of the direction for the prescribed period. Breaches of this clause attract a range of penalties.

217. Manner of withdrawal of trust money from general trust account (CU)

The only permitted means for withdrawing trust money from a general trust account are cheques and electronic funds transfer. Cash withdrawals are not permitted. Nor is it permissible to make withdrawals or transfers using ATMs and telephone banking. These prohibitions apply even if a person who is legally entitled to give a law practice directions regarding trust money directs it to act in this manner.

218. Controlled money (CU)

A law practice must deposit controlled money in accordance with the written direction relating to such money. The money is to be held exclusively for the client and must not be disbursed except in accordance with the appropriate written direction. Other than in accordance with the regulations, controlled money must be kept in separate controlled accounts. Breaches of this clause attract a range of penalties.

219. Manner of withdrawal of controlled money from controlled money account (CU)

The only permitted means for withdrawing controlled money from an account are cheques and electronic funds transfer. Cash withdrawals are not permitted. Nor is it permissible to make withdrawals or transfers using ATMs and telephone banking. These prohibitions apply even if a person who is legally entitled to give a law practice directions regarding trust money directs it to act in this manner.

220. Transit money (CU)

If there is an instruction that transit money be paid by a certain time, a law practice must abide by this instruction. If there is no instruction, then the payment must be made as soon as practicable. Failure to comply attracts a penalty.

221. Trust money subject to specific powers (CU)

Where a law practice is acting under a power of attorney, the practice must ensure that the money is only dealt with by the practice in accordance with the power. Failure to comply attracts a penalty.

222. Trust money received in the form of cash (CU)

As a general rule, trust money (other than money subject to a power of attorney and controlled money) that is in the form of cash, must be deposited in the general trust account. Even though a law practice may have received a direction to deal with trust money in some other way, in the first instance the money is to be deposited in a general trust account; afterwards, the direction can be followed to the extent that it does not conflict with the requirement to deposit the money in a general trust account. Transit money received as cash is also to be deposited in a general trust account

before being dealt with as directed, but controlled money received as cash is to be deposited in a controlled money account. Penalties apply to non-compliance.

223. Protection of trust money (CU)

Trust money cannot be used to satisfy the claims of third parties against the law practice.

224. Intermixing money (CU)

A law practice must not mingle trust money unless permitted to do so by the Board. Failure to comply attracts a penalty.

225. Dealing with trust money: legal costs and unclaimed money (CU)

A law practice may, in respect of trust money, exercise a lien, withdraw money to pay for amounts owing to the practice, and deal with any balance as unclaimed money in accordance with the *Unclaimed Money Act 1990*.

226. Deficiency in trust account (CU)

If a legal practitioner causes any deficiency in a trust account of the practitioner or of the practice, or fails to pay or deliver any trust account, then they have committed an offence and subject to a penalty.

227. Reporting certain irregularities and suspected irregularities (CU)

This clause imposes a duty on legal practitioner associates of a law practice to inform (in writing) the Board, or an interstate regulatory body if it is the relevant body in relation to the trust accounts concerned, of any irregularities in a trust account or trust ledger account of the practice.

228. Keeping trust records (CU)

Trust records are to be kept in a permanent form and maintained in accordance with the regulations. They are to show the true position of any trust money, and be kept in a way so as to be readily examined and for a prescribed period. Failure to comply attracts a penalty.

229. False names (CU)

It is an offence to receive or record trust moneys under a name that is known to be false. Where a person has more than one name, any trust money received from them has to be recorded in a way that shows all the names used by the person. Failure to comply attracts a penalty.

Division 3 – Investigations

230. Appointment of investigators (NC)

For the purpose of an investigation of a law practice's affairs, the Board and the Complaints Committee can appoint an investigator. The Legal Contribution Trust can request the Board to appoint an investigator. The Board and Complaints Committee are to inform each other if they make such an appointment.

231. Investigations (NC)

This clause sets out the contents of the instrument of appointment used to appoint an investigator and give them the required authority to investigate whether a practice is

in compliance with Part 9. Investigations can be of a regular or routine nature, or for a specific purpose.

232. Application of Part 15 (NC)

Part 15 contains the provisions relating to investigations, and these apply to investigations under this Division as well.

233. Investigator's report and confidentiality (NC)

An investigator must give a written report to the body which appointed them (ie the Board or the Complaints Committee). It is an offence for an investigator to disclose information other than as permitted under this legislation other than to the practice or person being investigated, for the purpose of the investigation or as permitted under clause 529 (Permitted disclosure of confidential information). A penalty applies if the investigator makes unauthorised disclosure.

234. When costs of investigation are debt (NC)

In some circumstances, the costs of an investigation are payable by the law practice being investigated; these being where the investigator finds that there has been a breach of this legislation or that there has been a fraud or defalcation.

Division 4 – External examinations

235. Designation of external examiners (NC)

For the purpose of an external examination, the Board may designate an accountant who is either a registered company auditor or an employee or agent of the Board to be an external examiner.

236. Designation and appointment of associates as external examiners (NC)

If the Board considers it appropriate, an associate of a law practice may be designated as an external examiner. However, such an associate cannot examine the trust records of the law practice of which they are an associate.

237. Trust records to be externally examined (NC)

A law practice must, once a year, have its trust records examined externally. If the Board believes that a practice has failed in this obligation, it may appoint an external examiner to perform this function.

238. Examination of affairs in connection with examination of trust records (NC)

The examination of a law practice's trust records can be extended to include an examination of the affairs of the practice. In the case of an ILP or MDP that is being examined, only those affairs relevant to trust money, trust records and associated matters can be examined.

239. Final examination of trust records (NC)

An external examiner must be appointed by a law practice to examine its trust records if the practice ceases to be authorised to receive trust money or ceases to practice in WA. A report is to be prepared and given to the Board within a specified time. Penalties apply to non-compliance.

240. Carrying out examination (NC)

Part 15 contains the provisions relating to investigations, and these apply to external examinations under this Division as well.

241. External examiner's report and confidentiality (NC)

An examiner must give a written report to the Board. It is an offence for an examiner to disclose information other than as permitted under this legislation other than to the practice or person being examined, for the purpose of the examination or as permitted under clause 529 (Permitted disclosure of confidential information). A penalty applies if the examiner makes unauthorised disclosure.

242. Law practice liable for costs of examination (NC)

A law practice is responsible for the costs of external examinations, and the Board has the authority to specify how much is to be paid. If the law practice fails to pay, this is a debt to the Board.

Division 5 – Provisions relating to ADIs

243. ADI not subject to certain obligations and liabilities (NC)

Authorised deposit-taking institutions (ADI), eg banks, are not obliged to control or otherwise supervise trust account transactions, and do not (in respect of money owed by a law practice) have any right of action or set off in respect of trust moneys.

244. Reports, records and information (NC)

The ADI at which trust moneys are held is obliged to report certain matters (eg deficiencies in trust accounts and suspected offences) to the Board. They are also obliged to provide reports to the Board as required under the regulations. If an ADI is required to provide documents etc for the purpose of an investigation or external examination, it must do so and do so without charge. If someone suffers loss or damage because an ADI has complied with the reporting obligations of this clause, the ADI is not liable. The same protection applies to the officers and employees of an ADI. Failure to comply with this clause attracts a range of penalties.

Division 6 – Miscellaneous

245. Restrictions on receipt of trust money (NC)

A law practice can only receive trust money if a principal of the practice holds a practising certificate that authorises the holding of trust money.

246. Restrictions on receipt of trust money by interstate legal practitioners

Only if an interstate legal practitioner is authorised to receive trust money in their home jurisdiction and have met their obligations with respect to the WA guarantee fund, can they receive trust money in WA.

247. Application of Part to incorporated legal practitioners and multi-disciplinary partnerships (NC)

ILPs and MDPs only fall within the scope of Part 9 with respect to the legal services they provide. Should the regulations so prescribe, they may also be outside the scope of specified provisions of Part 9.

248. Disclosure to clients – money not received or held as trust money (NC)

If a law practice receives money that is not trust money or ceases to be trust money, the practice must disclose this status to the client. Failure to do so attracts a penalty.

249. Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate (NC)

If a practice maintains accounts at any ADI for the purpose of holding money entrusted to it, it must provide the Board with the details of each such account as prescribed. Failure to do so attracts a penalty.

250. Regulations (NC)

This clause provides for the making of regulations necessary for the operation of Part 9.

Part 10 – Costs disclosure and assessment

Division 1 – Preliminary

251. Purposes (NC)

The purposes of Part 10 are to provide for the disclosure of costs by law practices to clients, to regulate the making of costs agreements, to regulate billing, and to provide for the review of legal costs.

252. Definitions (NC; except CU as marked)

This clause defines key terms used in Part 10. In particular, “uplift fee” is defined as meaning additional legal costs (excluding disbursements) payable under a costs agreement on the successful outcome of the matter to which the agreement relates. A core uniform definition is “sophisticated client” ie a client who, under clause 263, can be excepted from the requirements for costs disclosure.

253. Terms relating to third party payers (CU)

A “third party payer” is a person who is not the actual client, but who nevertheless carries the obligation of paying the costs of providing legal services to the client. An “associated third party payer” is someone whose obligation to pay is to the law practice, whereas a “non-associated third party payer” is someone whose obligation to pay is to some other person (perhaps the client) but not the law practice. An associated third party payer could be, for example, a friend or family member of the client who gives an undertaking to the law practice to pay the client’s bill. A non-associated payer may be, for example, a tenant who in a lease agreement with a landlord agrees to pay the landlord’s bill if there is any dispute that results in the landlord engaging a legal practitioner.

Division 2 – Application of this Part

254. Application of Part – first instructions rule (CU)

Part 10 applies if a client first instructs a law practice in this jurisdiction.

255. Part also applies by agreement or at client's election (CU)

Where the legal services are to be either primarily provided in WA, or where the matter has a substantial connection with WA, the client can either agree to Part 10 of this legislation applying or give written notice to the law practice that they require Part 10 to apply.

256. Displacement of Part (CU)

This clause provides that clauses 254 and 255 do not apply if, in effect, the client agrees to another jurisdiction's Act applying to the matter or notifies the practice under another jurisdiction's corresponding Act that they require the other jurisdiction's Act to apply.

257. How and where a client first instructs a law practice (CU)

The criterion for determining where a client has first instructed a law practice is the place where the first instruction is received. That is, if the client is in WA and the law practice receives the instruction in another jurisdiction, it is the other jurisdiction's Act which applies.

258. When a matter has substantial connection with this jurisdiction (CU)

The regulations may set out the rules for determining whether or not, for the purposes of Part 10, a matter has a substantial connection with WA.

259. What happens when different laws apply to a matter (CU)

This clause deals with the situation where Part 10 only applies to a matter for a period of time (with some other jurisdiction's law applying for the remainder of the period of the matter). In essence, in the absence of an agreement of the client to something else, Part 10 applies in respect of legal costs incurred whilst this Part applied and does not apply to any subsequent period (so long as a corresponding law applies). However, the client may agree to either Part 10 or some other jurisdiction's law applying to the entire proceedings.

Division 3 – Costs disclosure

260. Disclosure of costs to clients (CU; except NC (1)(b)(ii) & (iii))

It is a requirement that clients are appropriately informed as to the extent of legal costs that they will be liable for upon engaging a law practice. Therefore, there are clear obligations on the part of the practice to disclose to the client the basis for calculating the costs and to provide an estimate of the costs or range of costs. The client is also to be informed of their rights to negotiate the costs, to receive a bill, to request an itemised bill, to be notified of any changes to the costs, to be informed of billing intervals, to receive progress reports and so on.

261. Disclosure if another law practice is to be retained (CU)

This clause sets out what a law practice (eg a solicitor) is required to do if it intends to retain another law practice (eg a barrister) on behalf of a client. The retained law practice (ie the barrister) must disclose to the retaining law practice (ie the solicitor) sufficient information to enable the retaining law practice to disclose the relevant information about the costs to be charged by the retained law practice.

262. How and when disclosure must be made (CU)

Once a law practice has been retained, it must make a costs disclosure to the client as soon as practicable afterwards.

263. Exceptions to requirement for disclosure (CU)

This clause sets out various exceptions to the disclosure requirements under clauses 260 and 261. The most significant exceptions include:

- Where the total legal costs are less than \$1,500 (or another figure as prescribed);
- Where there has been disclosure in the previous 12 months, the client waives further disclosure and the principal of the law practice agrees;
- Certain sophisticated clients (eg corporations, government departments and the like);
- Costs determined as part of a tender process; and
- Costs that will not be paid by the client (eg pro bono services).

However, all clients, including those otherwise excepted from the disclosure provisions, are entitled to progress reports in accordance with clause 269, have the right to information about the matters referred to in clause 260, and have the right to negotiate a costs agreement and receive a bill.

264. Additional disclosure – settlement of litigious matters (CU)

With respect to the settlement of litigious matters, a law practice must disclose a reasonable estimate of legal costs and any contribution that another party is likely to make to those costs.

265. Additional disclosure – uplift fees (NC)

This clause sets out the disclosure obligations regarding uplift fees. The client is to be informed of the law practice's costs, the uplift fee or the basis upon which the fee is calculated, and the reasons justifying an uplift fee. Where the client is a sophisticated client, there is no requirement for the law practice to disclose an uplift fee.

266. Form of disclosure (CU)

This clause provides that disclosure must be in writing but does not have to be in English. However, if the client is not able to read and the law practice is aware of this, the disclosure must be given orally as well as in writing.

267. Ongoing obligation to disclose (CU)

A law practice must notify a client of any substantial changes to matters that have been disclosed.

268. Effect of failure to disclose (CU)

If a law practice fails to comply with the disclosure requirements:

- The client need not pay the legal costs unless assessed in accordance with Division 8 (costs assessment);
- The costs agreement may be set aside; and
- Such conduct may constitute UPC or PMC.

Where a law practice (eg a solicitor) has retained another law practice (eg a barrister) on behalf of a client, and the barrister fails to provide relevant information to allow the solicitor to make the required costs disclosure, the above consequences do not apply to the solicitor's legal costs to the extent that the solicitor's failure to disclose was caused by the barrister. The consequences do, however, apply to the barrister.

269. Progress reports (CU)

This clause provides that on the reasonable request of a client the law practice must give a written progress report or a written report on costs incurred.

270. Disclosure to associated third parties (CU)

This clause provides that disclosure must also be made to third party payers.

Division 4 – Legal costs generally

271. Basis on which legal costs are recoverable (CU)

Costs can be recovered in accordance with a costs agreement, and in the absence of a costs agreement, a relevant costs determination (eg scale of costs). Should there be neither a costs agreement nor relevant costs determination, then the law practice is entitled to payment based on the fair and reasonable value of the services provided.

272. Security or legal costs (NC)

This clause provides that a law practice may take securities for the payment of legal costs (including for interest on those legal costs).

273. Interest on unpaid legal costs (NC)

If a client has not paid their legal costs within 30 days of receiving their bill, the law practice may charge interest. This includes costs payable under a costs agreement. The regulations prescribe the maximum rate of interest.

Division 5 – Legal costs determinations

274. Terms used in this Division

This clause defines the key terms used in Division 5.

275. Legal costs determinations

This clause specifies the types of work for which the Legal Costs Committee may make costs determinations. Costs determinations regulate the costs that may be charged by law practices for these types of work. The scope includes all non-contentious business and contentious business in a wide range of court jurisdictions. The Attorney General may declare other court jurisdictions as falling within the scope of this clause, with the exception of dispute resolution authorities under the *Workers' Compensation and Injury Management Act 1981*. Costs determinations can set scales of costs, specified amounts, maximum amounts, a combination of these forms, or any other form.

276. Review of costs determinations

Costs determinations must be reviewed by the Legal Costs Committee at least every two years and at any time as directed by the Attorney General.

277. Inquiries by Legal Costs Committee

This clause sets out the procedures to be followed by the Legal Costs Committee for making or reviewing costs determinations. For example, it is to give public notice, can take note of submissions received, is not bound by the rules of evidence and may inform itself in any way it thinks fit.

278. Notice and submissions in respect of determination

The notice required under clause 277 takes two forms: the Law Society is to be informed; and publication in a newspaper. The period for accepting submissions is to be not less than 30 days after publication of the notice in a newspaper.

279. Report and publication of costs determination

The Attorney General is to receive a report on a costs determination and the reasons for the determination after it has been completed by the Legal Costs Committee. The report of a determination is then published in the *Gazette*, at which time the costs determination comes into force.

280. Effect of costs determination

Costs determinations generally regulate the costs that law practices may charge and are used to regulate the taxation of bills of law practices (ie costs assessments). However, due to factors such as the complexity of some matters, a court may order that costs higher than those in a determination are payable.

281. Reports

As well as making costs determinations, the Legal Costs Committee can investigate other aspects of costs and make recommendations to the Attorney General.

Division 6 – Costs agreements

282. Making costs agreements (CU (1), (2) & (5); NC (3) & (4))

This clause provides for the making of costs agreements. They must be in writing or evidenced in writing, must clearly indicate that they are costs agreements and cannot provide that costs are not subject to assessment under Division 8.

283. Conditional costs agreements (NC)

Costs agreements may provide that the payment of costs is conditional on a specified successful outcome of the matter. However, certain provisos apply, including:

- Conditional costs agreements cannot be used for criminal matters and matters under certain legislation such as family law and child protection law;
- The agreement must set out what is a successful outcome, must have a cooling off period of not less than 5 days, and must state that the client has a right to seek independent legal advice; and
- If the client calls off the agreement during the cooling off period, the law practice is not able to recover the uplift fee.

284. Conditional costs agreements involving uplift fees (NC)

An uplift fee can form part of a conditional cost agreement. The basis for calculating the uplift fee is to be clearly evident and an estimate of the uplift fee is to be in the

agreement. A conditional costs agreement can only be used for a litigious matter if the law practice has reasonable belief that a successful outcome is likely and the uplift fee is capped at 25% of the costs otherwise payable. A law practice which enters into a costs agreement in contravention of this clause is liable to a penalty.

285. Contingency fees are prohibited (CU)

A law practice must not enter into a costs agreement where the amount of costs payable is determined on the basis of the financial outcome in a litigious matter.

286. Effect of costs agreement (CU)

This clause provides that costs agreements are enforceable as contracts subject to this Division and Division 8 (costs assessment).

287. Certain costs agreements void (CU; except NC (4))

A costs agreement that breaches this Division is void. Legal costs under a void costs agreement can be recovered in accordance with clause 271 subject that the amount recovered cannot exceed the amount that would have been recovered if the costs agreement had not been void. None of an uplift fee can be recovered if there has been a breach of clause 284. No legal costs are recoverable if there has been a breach of clause 285.

288. Setting aside costs agreements (CNU)

A client may apply to the Supreme Court for an order that a costs agreement be set aside if the agreement is not fair or reasonable. The clause sets out the matters which the Court is to take into account in reaching its determination.

Division 7 – Billing

289. Legal costs cannot be recovered unless bill has been given (NC)

If a law practice wishes to take legal action to recover costs from a client, it cannot do so until at least 30 days after the client has been given a bill in accordance with clauses 290 and 291. However, in the event that the client is about to leave the jurisdiction, a court may order that the law practice can commence proceedings.

290. Bills (NC)

This clause provides that a bill can be a lump sum bill showing the total amount payable only or an itemised bill showing the amount payable for the various components of the work done. A bill is to be signed. Because subclause 290(6)(d) provides for a bill to be sent electronically by fax or email, that subclause invokes section 9 of the *Electronic Transactions Act 2003* to satisfy the requirement that a bill be signed.

291. Notification of client's rights (CU)

A bill must be accompanied by an explanation of the rights of a client to dispute a bill.

292. Request for itemised bill (NC)

If a law practice provides a lump sum bill, the client may, within 30 days, request that an itemised bill be provided.

293. Interim bills (NC)

A law practice may give interim bills covering a part of the legal service that has been provided.

Division 8 – Costs assessment

294. Meaning of “client” (NC)

For the purpose of Division 8, a “client” is a person to whom or for whom legal services are or have been provided. The notion that a client includes a person “for whom legal services are or have been provided” is particularly relevant to the situation where one law practice (eg a solicitor) retains another (eg a barrister) on behalf of a client. This gives the client the right to apply for an assessment of the barrister’s costs.

295. Application by clients or third party payers for costs assessment (CNU; except CU(6))

“Client” and “third party payer” are further defined in this clause to bring in executors, administrators or trustees of the estate of clients and third party payers. This clause then sets out the entitlements of clients and third party payers to apply to a taxing officer for a costs assessment. In the case of third party payers, this can only relate to that part of a bill for which they are payable. The time limit for applying for a cost assessment is within 12 months of the bill being given or the costs were paid irrespective of whether a bill had been given. The taxing officer has the discretion to accept out of time applications if, taking into account the reasons for the delayed application, this seems just and fair. However, if the applicant is a sophisticated client or a third party payer who also meets the criteria for a sophisticated client, then an out of time application cannot be dealt with. The clause provides further details on the entitlements of third party payers (both associated and non-associated) to apply for a costs assessment.

296. Application for costs assessment by law practice retaining another law practice (CNU)

If a law practice (eg a solicitor) has retained another law practice (eg a barrister) on behalf of a client, the solicitor can apply to have the costs of the barrister assessed by a taxing officer. The application has to be made within 60 days of the bill being given or the costs paid irrespective of whether a bill has been given. This is a shorter time period than that allowed for other clients, but this reflects that law practices can be expected to be more familiar with the requirements relating to bills and their payment than other clients.

297. Application for costs assessment by law practice giving bill (CNU)

Law practices which have given bills are also entitled to apply to have them assessed by a taxing officer.

298. Consequences of application (CNU)

Once an application for a costs assessment has been made, no money can be paid into court in relation to the costs in question, and the law practice can only commence proceedings to recover the costs once the costs assessment has been completed.

299. Persons to be notified of application (CNU)

A costs assessor must provide copies of the application to those with a valid interest in the matter.

300. Procedure on assessment (NC)

A costs assessment may proceed despite one of the parties not attending.

301. Criteria for assessment (CU)

This clause sets out the criteria to be applied by a taxing officer in a costs assessment eg whether the work was necessary and whether it was undertaken in a reasonable manner. Another criterion is whether the work was “fair and reasonable”, and in determining this the taxing officer is to consider factors such as whether the practice has complied with this legislation, whether and what costs disclosures were made, any advertisements of the practice and so on. A taxing officer is also to have regard to the fairness and reasonableness or otherwise for a non-associated third party to be charged the amount claimed.

302. Assessment of costs by reference to costs agreement (CU)

Costs must be assessed in accordance with a costs agreement unless the agreement does not comply with the disclosure provisions or Division 6 precludes the recovery of costs by the law practice.

303. Assessment of costs by reference to costs determination (NC)

If there is a costs determination which applies to a matter, then the assessment of the costs is to take regard of the relevant costs determination.

304. Costs of assessment (CNU)

The responsibility for determining the costs of a costs assessment lies with the taxing officer. If, as a result of a costs assessment, the taxing officer reduces the costs payable by 15% or more, or, if in the opinion of the taxing officer, the law practice did not comply with Division 3, the cost of the assessment are to be paid by the law practice. The taxing officer has the discretion to order otherwise, and anyone ordered by the taxing officer to pay the cost of assessment must do so. The taxing officer can also refer a matter to the Supreme Court for an order regarding the payment of the costs of assessment.

305. Certification and interest

The outcome of a costs assessment is to be certified by the taxing officer and is binding on the parties to the costs assessment. The certification is to state the amount of the disputed costs allowed and the costs of the cost assessment. Interest is payable on the costs included in the certificate.

306. Assessment of Legal Aid Commission bill

Section 14(1) of the *Legal Aid Commission Act 1976* provides that the Legal Aid Commission is to pay legal practitioners whose services it engages. The amount payable is determined by reference to the relevant scales, or in the absence of any relevant scales, what would ordinarily be payable and approved. Apart from the reference to non-scale fees being approved, a taxing officer is to assess any costs involving the Legal Aid Commission by reference to section 14(1) of the *Legal Aid Commission Act*.

307. Referral for disciplinary action (CNU)

Should a taxing officer consider that a law practice has been grossly excessive in the level of costs that it has charged a client, the taxing officer is obliged to refer the overcharging to the Complaints Committee for possible disciplinary action if the Complaints Committee considers this appropriate. If the taxing officer is of the view that the practitioner has in some way engaged in UPC or MPC, then the taxing officer has the discretionary power to refer the matter to the Complaints Committee.

308. Review of assessment (CNU)

Costs assessments are liable to review by the Supreme Court, and any orders issued by the Supreme Court as a result of a review are binding on the parties.

309. Contracting out of Division by sophisticated clients (CU)

Costs assessments are a consumer protection measure. However, sophisticated clients and third party payers who also fit the criteria of a sophisticated client, have the option of contracting out of Division 8 so that costs assessments would not be applicable to them.

Division 9 – Legal Costs Committee

Subdivision 1 – Establishment

310. Legal Costs Committee

This clause establishes the Legal Costs Committee and provides that it is to have a chairperson (a Judge of the Supreme Court or District Court or an Australian legal practitioner of at least 8 years' standing), 2 members who are local legal practitioners from private practice and nominated by the Law Society in accordance with clause 311, and 3 members who are not Australian lawyers. At least one of the members who are not Australian lawyers is to be an accountant. The chairperson and all members are appointed by the Governor.

311. Nominations

The Attorney General is responsible for calling for nominations as legal practitioner members and deputy members of the Legal Costs Committee. The process is that the Attorney General invites the Law Society to nominate potential appointees. In doing so, the Law Society is to put forward at least twice the number of names as required to fill the appointments. The Attorney General is to appoint only someone who has been nominated by the Law Society, unless the Law Society has failed to provide the names of nominees within the time limit (not less than 28 days) which takes effect from the time the request is made.

312. Term of office

The term of office for a member of the Legal Costs Committee is not more than 3 years. A member is eligible to be reappointed to the Committee. The same applies to deputy chairpersons and deputy members appointed under clauses 313 and 314 respectively.

313. Deputy chairperson

The Governor has the discretion to appoint a deputy chairperson. A deputy chairperson must meet the same criteria for appointment as the chairperson, and their

role is to take the place of the chairperson for a reason such as the chairperson being ill. The validity of what the deputy chairperson does or does not do whilst acting in the role of chairperson cannot be disputed on the basis of whether or not they should have been in this role at the time.

314. Deputy members

The Governor has the discretion to appoint deputy members. A deputy member must meet the same criteria and go through the same nomination process for appointment as a member. Their role is to take the place of a member for a reason such as the member being ill. The validity of what the deputy member does or does not do whilst acting in the role of member cannot be disputed on the basis of whether or not they should have been in this role at the time.

315. Removal and resignation

There are certain circumstances under which a member or deputy member of the Legal Costs Committee can be removed by the Governor. These are that the person is solvent under administration; that, due to a mental or physical incapacity, they are not able to carry out their duties in a satisfactory manner; and they have committed a neglect of duty or misconduct. A member who wishes to resign from the Committee may do so by giving written notice to the Governor.

316. Leave of absence

Members of the Legal Costs Committee may be given a leave of absence by the Attorney General.

317. Remuneration and allowances

The Attorney General and the Minister for Public Sector Management may set remuneration and allowances payable to members of the Legal Costs Committee.

Subdivision 2 – Procedure

318. Meetings

The Legal Costs Committee sets the time and places for its meetings. Meetings are chaired by the chairperson, or in the chairperson's absence by the deputy chairperson, or if neither is at the meeting by another member appointed by those in attendance for the purpose of that meeting. Minutes of Committee meetings are to be kept.

319. Voting

All members of the Legal Costs Committee have a deliberative vote. In the event of a tied vote, the chairperson has a casting vote. However, if both the chairperson and deputy chairperson are absent from a meeting, a tied vote must be held over until the next meeting when the chairperson or deputy chairperson is in attendance.

320. Quorum

A quorum is set for the meetings of the Legal Costs Committee; this being 2 Australian legal practitioner members and 2 non-legal practitioner members (as appointed under clause 310(2)(c)), totalling 4 members.

321. Legal Costs Committee to determine procedures

Unless this legislation lays down a procedure that the Legal Costs Committee is to follow, the Committee sets its own procedures.

Subdivision 3 – Support and financial provisions

322. Use of staff and facilities of departments

The Committee can enter into arrangements with government departments in the Attorney General's portfolio to use the staff and facilities of the department. Such arrangements require the approval of the Attorney General.

323. Funds

The Legal Costs Committee is funded through an appropriation made by Parliament and other sources. These funds are managed through an account established under the *Financial Management Act 2006*.

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

The Legal Costs Committee is subject to the provisions of the *Financial Management Act* and the *Auditor General Act 2006*.

Division 10 - Miscellaneous

325. Application of Part to incorporated legal practice and multi-disciplinary partnerships (CNU)

Unless the regulations disapply or modify the provisions of Part 10 with respect to ILPs and MDPs, then this Part does apply to them.

326. Imputed acts, omissions or knowledge (CU)

This clause provides that things done or not done by Australian legal practitioners and Australian registered foreign lawyers, as a general rule, are taken to be acts or commissions of the law practice for whom they were acting.

Part 11 – Professional indemnity insurance

327. Terms used in this Part (NC)

This clause defines key terms used in this Part, in particular “Law Mutual Fund” which is a Fund of which the Law Society is a trustee and “PII management committee” which is a committee of the Law Society.

328. Regulations as to professional indemnity insurance

The detail of the requirements for PII is set by regulation and this clause sets out what can be covered in these regulations eg the Law Society's authority to enter into arrangements with insurance companies to provide PII for WA legal practitioners and law practices; the circumstances under which the Legal Practice Board can exempt practitioners from the requirement to hold PII; the information which practitioners and practices are obliged to supply to the Law Society in relation to PII; the authority to impose levies on practices and practitioners, and so on.

329. Law Mutual (WA)

This clause continues the existence of Law Mutual (WA)

330. Law Mutual Fund

This clause continues the existence of the Law Mutual Fund which is the fund into which legal practitioners pay their PII contributions.

331. PII management committee

Law Mutual is to be governed by a management committee comprising 7 members: a chairperson who has a background in insurance; and 6 other members appointed by the Law Society Council (with no less than 2 having a background in insurance or accounting). At least 4 members of the committee are to be members of the Law Society Council. The chairperson can either be or not be a member of the Law Society or its Council.

332. Delegation

This clause empowers the Law Society to delegate its PII powers and duties to the PII management committee. However, any powers delegated to this committee cannot be further delegated. In exercising a delegation, the committee is taken to have complied with the delegation unless otherwise shown. Although the Law Society has delegated a function to this committee, it can still fully exercise its functions.

Part 12 – Fidelity cover

Division 1 – Preliminary

333. Purpose (NC)

The purpose of Part 12 is to provide for a fund to cover compensation for defaults of law practices in WA.

334. Definitions (NC; except CU as marked)

This clause defines key terms used in this clause.

335. Time of default (CU)

This clause sets out the time when a default or omission has occurred ie the time of occurrence is when it happened. When that fact is ascertained, the place of the fault can then be determined for the purpose of working out which jurisdiction's law is to apply.

Division 2 – Solicitors' Guarantee Fund

336. Establishment of Guarantee Fund (CNU)

This clause provides that there is such a thing as the Solicitor's Guarantee Fund by establishing it. The Guarantee Fund has various sources of money including interest its earns, investments, fees, and so on. The Legal Contribution Trust is authorised to make certain payments out of the Fund including the payment of claims, the costs of investigating claims, insurance premiums, and administrative costs.

337. Payment of contributions by local legal practitioners

A local legal practitioner is required to pay into the Guarantee Fund once they have held a practising certificate for 2 years. The amount payable is set in the legal profession rules and is payable when they pay their practising certificate fee. Once a practitioner has paid into the Fund 5 times (or an equivalent amount) they no longer need to make contributions.

338. Payment of contributions by interstate legal practitioners (NC)

Clause 71 requires an interstate legal practitioner to notify the Board if they intend to establish an office in WA. At the same time, they are to contribute to the Guarantee Fund as if they were a local legal practitioner under clause 339. This requirement to pay continues for another 4 years, which is consistent with the requirement for local legal practitioners.

339. Levy to supplement Guarantee Fund

Levies may be imposed on local legal practitioners if the Legal Contribution Trust believes that there may be insufficient funds in the Guarantee Fund to meet its liabilities. The levy can vary between categories of practitioners, but does not apply to WA government lawyers (government lawyers do not deal with clients' trust accounts and money as do those in private practice). Notification of the levy is by way of publication in the *Gazette* and by written notice to the Board and the Law Society.

340. Failure to pay levy

If a local legal practitioner fails to pay a levy, the Board can suspend their practising certificate for as long as the levy is not paid. It is necessary for the Legal Contribution Trust to inform the Board of the non-payment of levies so that the Board can take this action. Until the levy is paid, it is a debt to the Trust.

341. Insurance (CNU)

The Guarantee Fund can be insured. The insurance can relate to particular claims or classes of claims. The insurance is taken out by the Legal Contribution Trust and if it receives a payout under this insurance, the payout is to be paid into the Guarantee Fund. A claimant with a connection to the insured claim(s) does not have direct access to any part of the insurance payout. The Trust itself or a trustee of the Trust are not liable for any action done in good faith with respect to insuring the Fund.

342. Investment of Guarantee Fund

Division 3 deals with fidelity cover. Any part of the Guarantee Fund not needed immediately for this purpose can be invested by the Legal Contribution Trust by depositing it with an ADI, as a loan to the Treasurer, or as a trust fund.

343. Borrowing (CNU)

The Legal Contribution Trust is not authorised to borrow money to be used for the Guarantee Fund.

Division 3 – Fidelity cover

Subdivision 1 – Application provisions

344. Application to Australian-registered foreign lawyers (CU)

As prescribed by the regulations, Part 12 and the legal profession rules in relation to the Guarantee Fund can be applied to Australian-registered foreign lawyers.

345. Application to incorporated legal practices (NC)

As prescribed by the regulations, Part 12 and the legal profession rules in relation to the Guarantee Fund can be applied to ILPs but only with respect to the legal services provided by the ILP. Legal practitioners who are officers or employees of ILPs still retain their individual responsibilities towards the Guarantee Fund despite any obligation on the part of the ILP.

346. Application to multi-disciplinary partnerships (NC)

As prescribed by the regulations, Part 12 and the legal profession rules in relation to the Guarantee Fund can be applied to MDPs but only with respect to the legal services provided by the MDP. Legal practitioners who are partners or employees of MDPs still retain their individual responsibilities towards the Guarantee Fund despite any obligation on the part of the MDP.

347. Application to sole practitioners whose practising certificates lapse (NC)

For the purposes of this Part, certain former Australian legal practitioners (ie persons who once had, but no longer have, a practising certificate) are deemed as Australian legal practitioners. This does not apply if the person's practising certificate has been cancelled or if the renewal of it has been refused. This deeming lapses if a manager or receiver is appointed or if 6 months have elapsed since the person ceased to be an Australian legal practitioner or if the lawyer's application for the grant or renewal of a practising certificate is refused.

Subdivision 2 – Defaults to which this Division applies

348. Meaning of “relevant jurisdiction” (CU)

This clause sets out the rules for determining what is the relevant jurisdiction for an associate of a law practice who has led to a default by the law practice. In the case of trust money received in Australia, if the associate was authorised to make withdrawals from the trust account, then the relevant jurisdiction is the one under whose law the trust account was maintained. If the associated did not have this authorisation, then the laws of the associate's home jurisdiction apply. The same applies to trust money received outside Australia except that the trust money must have gone into an Australian trust account. For trust property received in Australia or brought to Australia, the relevant jurisdiction is the associate's home jurisdiction.

349. Defaults to which this Division applies (CU)

Division 3 applies to defaults of law practices arising from associates of law practices if WA is the “relevant jurisdiction” as determined in accordance with clause 350. It does not matter where the default occurs or that the default does not constitute an offence.

350. Defaults relating to financial services or investments (CNU)

As a general rule, losses from defaults involving the provision of financial services, managed investment schemes and mortgage financing are not covered by the Guarantee Fund. Losses arising from investments are only covered if the losses occurred as part of the ordinary course of legal practice.

Subdivision 3 – Claims about defaults

351. Claims about defaults (CNU)

A person who suffers a pecuniary loss from a default may lodge with the Legal Contribution Trust a claim against the Guarantee Fund. If required to do so by the Trust, the claimant must provide the Trust with additional information in relation to the claim.

352. Time limit for making claims (CNU)

Claims against the Guarantee Fund must be made within 6 months of the claimant having become aware of the default. The Legal Contribution Trust has the discretion to permit a claim outside this time limit.

353. Advertisements (CNU)

The Legal Contribution Trust has the discretion to publish information about a suspected default and invite claims to be made within a certain time (at least 3 months but not more than 12 months). Those involved in publishing this information are protected from liability provided they have acted in good faith.

354. Time limit for making claims following advertisement (CNU)

The Legal Contribution has the discretion to waive the time limit in clause 353 and a claimant can apply to the SAT for a review of a time limit imposed by the Trust.

355. Claims not affected by certain matters (CNU)

Claims are not affected by any change of status of the law practice or an associate.

356. Investigation of claims (CNU)

If a claim is made to the Legal Contribution Trust, the Trust may investigate the claim.

357. Advance payments (CNU)

The Legal Contribution Trust may make payments in relation to a claim notwithstanding that it has not finalised its consideration of an application. Any decision of the Trust to make or not make such a payment cannot be challenged. If a claim is eventually disallowed, any advanced payment must be repaid.

Subdivision 4 – Determination of claims

358. Determination of claims (CNU)

The Legal Contribution Trust must allow, disallow or partly allow or disallow claims. There are principles on which a claim may be partly or wholly disallowed eg contributory negligence on the part of the claimant.

359. Maximum amount allowable (CNU)

The amount paid to a claimant must not exceed the claimant's pecuniary loss (subject that additional amounts can be paid by way of costs and interest under clauses 360 and 361).

360. Costs (CNU)

A successful applicant is entitled to be paid their reasonable legal costs in relation to the making of a claim. These amounts are paid from the Guarantee Fund.

361. Interest (CNU)

A successful applicant is entitled to be paid interest on the amount payable. The rate of interest is 5% unless otherwise specified in the regulations. Interest is paid from the Guarantee Fund.

362. Reduction of claim because of other benefits (CNU)

If a claimant has received payment from some other sources in relation to a claim, the payment from the Guarantee Fund is reduced by this amount.

363. Subrogation (CNU)

The Legal Contribution Trust may take action to recover monies from a person who have caused a default which is the subject of a claim.

364. Repayment of certain amounts (CNU)

If the claimant, after receiving compensation from the Guarantee Fund, receives additional monies from another source they have an obligation to repay the difference to the Guarantee Fund.

365. Notification of delay in making decision (CNU)

If a claim is not likely to be determined within 12 months, the Legal Contribution Trust must notify the applicant of that fact and give reasons for the delay.

366. Notification of decision (CNU)

The Legal Contribution Trust must give written notice of decision about claims to the claimant including reasons for the decision.

367. Proceedings against Trust restrained

A claim can only be made against the Legal Contribution Trust itself if the Trust has wholly or partly disallowed a claim against the Guarantee Fund, if all other avenues have been exhausted by the claimant and if the Trust has given leave for the claim against it to proceed. If the Trust does not give leave for a claim against it, the claimant can apply to the Supreme Court for an order that the claim proceed.

368. Proceedings to establish claim

If the Supreme Court finds that a default has occurred, it is to issue an order declaring that the default did occur, when it occurred and the amount of the claimant's loss. The order is to direct the Legal Contribution Trust to deal with the claim under Division 3. The Court has the discretion to award costs and the payment of interest.

369. Court proceedings (CNU)

In court proceedings under clauses 363 and 368, evidence such as an admission or confession is admissible despite the fact that the person who provided the evidence is not a party to the proceedings. The Legal Contribution Trust can also use the same defences that anyone else can use.

Subdivision 5 – Payments from Guarantee Fund for defaults

370. Application of Guarantee Fund (CNU)

The Guarantee Fund is the vehicle by which the Legal Contribution Trust makes payments resulting from claims against defaults. A claimant may direct that the amounts payable to them from the Guarantee Fund be paid to another person.

371. Caps on payments (CNU)

With the approval of the Minister, the Trust may stipulate a maximum amount for the payment of claims. However, should the circumstances warrant it, a payment exceeding the stipulated maximum can be authorised by the Trust.

372. Sufficiency of Guarantee Fund (CNU)

The Legal Contribution Trust can only draw on the Guarantee Fund, and no other of its property, for the payment of claims. If the Trust considers there are insufficient funds in the Guarantee Fund, it may take a number of actions including postponement of or partial payment of claims, and imposing levies on legal practitioners.

Subdivision 6 – Claims by law practices or associates

373. Claims by law practices or associated about defaults (CNU)

A law practice or an associate of a law practice may make a claim under clause 351 if they have suffered a default due to the actions of another associate of the law practice.

374. Claims by law practices or associates about notional defaults (CNU)

If a law practice or an associate of a law practice has compensated a person who has suffered a loss because of another associate of the law practice, the associate or the law practice may be compensated from the Guarantee Fund.

Subdivision 7 – Defaults involving interstate elements

375. Concerted interstate defaults (CU)

This clause deals with defaults of 2 or more associates with one of the associates being a WA legal practitioner and the other being a practitioner from another jurisdiction (meaning that both the WA Guarantee Fund and another jurisdiction's fidelity fund may be liable). In such cases, the claims are to be treated as if the fidelity funds are equally liable (despite the fact that the capping provisions may result in differing amounts being payable in each jurisdiction). The amount payable in WA will not exceed the cap set by clause 371.

376. Defaults involving interstate elements where committed by one associate only (CU)

This clause deals with defaults of one associate which occur in 2 or more jurisdictions (meaning that both the WA Guarantee Fund and another jurisdiction's fidelity fund may be liable). In such cases, the claims are to be treated as if the fidelity funds are equally liable (despite the fact that the capping provisions may result in differing amounts being payable in each jurisdiction). The amount payable in Western Australia will not exceed the cap set by clause 371.

Subdivision 8 – Inter-jurisdictional provisions

377. Fidelity protocols (CNU)

Regulations may be made permitting the Legal Contribution Trust to enter into protocols with equivalent bodies in other jurisdictions concerning fidelity cover.

378. Forwarding of claims (CNU)

Claims made to the Legal Contribution Trust about defaults under corresponding laws are to be forwarded by the Trust to the relevant authority in the other jurisdiction. If the Trust receives such a claim from another jurisdiction it must treat the claim as if it has been made under this Division.

379. Investigation of defaults to which this Division applies (CNU)

For claims that appear to have interstate elements, the Legal Contribution Trust may appoint corresponding authorities in other jurisdictions to act as its agent.

380. Investigation of defaults to which a corresponding law applies (CNU)

For claims arising out of events in WA, but which should be dealt with under the corresponding law of another jurisdiction, the Legal Contribution Trust may act as an agent for the corresponding authority of that jurisdiction.

381. Investigation of concerted interstate defaults and other defaults involving interstate elements (CNU)

In the case of concerted interstate defaults or interstate defaults by an associate, the Legal Contribution Trust may appoint corresponding authorities in other jurisdictions as its agent or act as an agent on behalf of those corresponding authorities.

382. Recommendations by Trust to corresponding authorities (CNU)

The Legal Contribution Trust can make recommendations to any interstate corresponding authority on whose behalf it is acting as an agent in WA.

383. Recommendations to and decision by Trust after receiving recommendations from corresponding authorities (CNU)

When a corresponding authority in another jurisdiction is acting as agent for the Legal Contribution Trust, the Trust may adopt the recommendations made by the corresponding authority.

384. Request to another jurisdiction to investigate aspects of claim (CNU)

This clause permits the Legal Contribution Trust to request a corresponding authority in another jurisdiction to arrange for investigations. The results of such investigations can be used by the Trust.

385. Request from another jurisdiction to investigate aspects of claim (CNU)

This clause permits the Legal Contribution Trust to act as agent on the request of a corresponding authority from another jurisdiction to arrange for investigations.

386. Cooperation with other authorities (CNU)

This clause permits the Legal Contribution Trust to cooperate with other persons or bodies with powers under corresponding laws.

Division 4 – Interest on trust accounts paid to Fund

387. ADI to pay interest on trust accounts to Trust

The regulations may require ADIs with whom trust accounts are held to pay a set proportion of the interest from those accounts to the Legal Contribution Trust.

388. Application of interest

The Legal Contribution Trust is required to deposit money received under clause 387 in a “Trust Interest Account”. The money is first to be used for administering the Trust and then as payment into the Guarantee Fund. If the level of funds in the Guarantee Fund has reached \$100,000, the money from the Trust Interest Account is to be used as funds for the Legal Aid Commission, law reform organisations, community legal centres, and the Law Society for purposes such as legal education.

389. Audit of expenditure

Money received by an organisation under clause 388 is to be kept in an account which is to be audited annually. The audit report is to be given to the Minister who is to table it in Parliament.

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

The Legal Contribution Trust is subject to these two Acts.

Division 5 – Legal Contribution Trust

391. Establishment of Trust

This clause establishes the Legal Contribution Trust as a body corporate with perpetual succession.

392. Relationship to Crown

The Legal Contribution Trust neither represents nor is an agent of the Crown.

393. Constitution of the Trust

The Governor is to appoint 3 trustees to the Trust. Two trustees are to be Australian lawyers, one a nominee of the Law Society and the other a nominee of the Board. The third trustee is to be someone other than an Australian lawyer and is the nominee of the Minister.

394. Chairperson

The chairperson of the Legal Contribution Trust is the Law Society's nominee. However, the Minister is to appoint someone to act as chairperson if there is no nominee from the Law Society.

395. Deputies

Trustees may have a deputy appointed. The appointments are made by the Governor. A deputy is to take on the functions of a trustee when the latter is unable to do so because of illness or some other reason. In doing so, a deputy is afforded the same protections as a trustee. The validity of what the deputy chairperson does or does not do whilst acting in the role of chairperson cannot be disputed on the basis of whether or not they should have been in this role at the time.

396. Vacation of office

The office of trustee may be vacated if the trustee resigns, if they are removed from office by the Governor on the request of their nominator, or if the trustee dies.

397. Meetings

Meetings of the Legal Contribution Trust are to be convened and presided over by the chairperson as required to enable the Trust to perform its functions. The quorum is normally 3 trustees, but if a trustee position is vacant, the quorum is 2 trustees. In the absence of the chairperson from a meeting, the chairperson's deputy is to preside.

398. Voting

Decisions of the Legal Contribution Trust are determined by the majority decision of trustees. In the event of a tied vote, the vote is taken to have been lost.

399. Functions of Trust

The Legal Contribution Trust has specified functions which are to receive and invest money, apply the proceeds of the investments in accordance with Part 12, administer and control the Guarantee Fund, and any other functions as legislated. To assist in the performance of these functions, the Trust is permitted to engage or employ people.

400. Execution of documents by the Trust

The Legal Contribution Trust has a common seal. There are two ways for a document of the Trust to be duly executed. First, the common seal is affixed in the presence of 2 trustees who must sign the document affirming that this has happened. Second, the Trust may authorise trustees or staff to sign documents on its behalf and such authorisation is given in writing under the common seal.

Part 13 – Complaints and discipline

Division 1 – Preliminary

401. Purposes (NC)

The purpose of Part 13 is to provide a nationally consistent scheme for professional standards, competence and honesty of legal practitioners, and for the redress of complaints against lawyers.

Division 2 – Key concepts

402. Unsatisfactory professional conduct (CU)

This clause defines “unsatisfactory professional conduct”. It is conduct that, from the perspective of a member of the public, is not of a standard of competence and diligence of a reasonably competent Australian legal practitioner. Clause 404 sets out the type of conduct which could be taken to be UPC.

403. Professional misconduct (CU)

This clause defines “professional misconduct” which is more serious than UPC. It applies where a legal practitioner has substantially or consistently failed in meeting a reasonable standard of competence and diligence, and also applies if the conduct of the practitioner is such that the practitioner could be justifiably considered to no longer be a fit and proper person to engage in legal practice. Clause 404 sets out the type of conduct which could be taken to be PMC.

404. Conduct capable for constituting unsatisfactory professional conduct or professional misconduct (CU)

Conduct involving the contravention of this legislation; charging excessive legal costs; committing serious offences (indictable offences as defined in clause 3), tax offences, or offences involving dishonesty; insolvency under administration; disqualification from managing a corporation under the *Corporations Act*; failure to comply with an order of regulatory bodies including SAT and the Supreme Court; and non-compliance with a compensation order, can all be taken to be UPC or PMC.

Division 3 – Application

405. Practitioners to whom this Part applies (CNU)

Part 12 applies to all Australian legal practitioners. It does not matter if the practitioner holds a practising certificate which means that it applies to government lawyers as well as those in private practice.

406. Application of Part to lawyers, former lawyers and former practitioners (NC)

Australian lawyers fall within the scope of Part 13. If a legal practitioner ceases to be so, this Part applies to their conduct during the time they were a legal practitioner as if they were still a legal practitioner.

407. Conduct to which this Part applies – generally (CNU)

This clause identifies the conduct that is subject to Part 13. In general terms, the conduct must occur in WA. However, subject to appropriate agreements of clients, practitioners and other regulatory authorities, conduct occurring in another jurisdiction or outside Australia may be dealt with under Part 13. In some situations, conduct occurring in WA can be handled under the corresponding law of another State or Territory.

408. Conduct to which this Part applies – insolvency, serious offences and tax offences (CNU)

Certain conduct, that is, the committing of serious offences, tax offences or offences of dishonesty, insolvency under administration or disqualification under the *Corporations Act*, is subject to Part 13 regardless of where it occurred.

Division 4 – Complaints about Australian legal practitioners

409. Complaints (NC)

Complaints can be made under Part 13 in respect of conduct that is subject to Part 13.

410. Making of complaints (NC)

This clause sets out who can make complaints. The Attorney General, the Board, the Executive Director of the Law Society, any legal practitioner, or anyone with a direct personal interest in a matter, are all entitled to lodge a complaint. Complaints, which generally must be in writing, can be made directly to the Complaints Committee or through the Law Complaints Officer. They are to identify the complainant and the legal practitioner in question (if this is possible) and set out the alleged conduct. A complainant can lodge a complaint through a legal practitioner or a representative if they are unable to do so themselves. Where a person has died before being able to make a complaint, someone else may lodge the complaint as their representative. Even if a legal practitioner is already the subject of criminal or civil proceedings, a complaint can go ahead.

411. Time of complaint (NC)

There is no final time limit on when a complaint can be made after the alleged conduct occurred. However, if more than 6 years has passed since the conduct allegedly occurred, the Complaints Committee is not obliged to act unless the complaint meets certain criteria: it would be just and fair to do so (taking into account the timing and the reasons for this); the allegation is one of PMC; and it would be in the public interest to deal with the complaint.

412. Further information and verification (NC)

A complainant may be required by the Complaints Committee to provide additional information about the complaint and to verify the details in a statutory declaration.

413. Practitioner to be notified of complaint (NC)

The Complaints Committee must give a copy of a complaint to the legal practitioner concerned. However, this is not required if the complaint is summarily dismissed (clause 415) or if the giving of the information could prejudice the investigation of the complaint, some other law enforcement action or court proceedings. It is also not required if there is a risk that doing so could result in harassment of the complainant.

414. Submissions by practitioner (NC)

A legal practitioner who is the subject of a complaint is entitled to make a submission to the Complaints Committee. The Complaints Committee is obliged to consider any such submission before deciding on what action to take in respect of the complaint.

415. Summary dismissal of complaints (NC)

The Complaints Committee can dismiss a complaint which it considers to be vexatious, misconceived, frivolous or lacking in substance, or where dismissal would be in the public interest.

416. Withdrawal of complaint (NC)

Complainants have the right to withdraw complaints unless the complaint has been referred to SAT. Even if a complainant withdraws a complaint, someone such as the Attorney General can continue the complaint.

Division 5 - Mediation

417. Mediation of complaints (NC)

The Complaints Committee can propose to a complainant and the legal practitioner in question that they attempt to resolve a complaint by mediation. Mediation cannot be attempted if the conduct could be found to constitute PMC if the matter proceeded to SAT.

418. Facilitation of mediation (NC)

If the parties agree to mediation, the Complaints Committee may facilitate such mediation.

419. Admissibility of evidence and documents (NC)

Whatever is said during mediation or whatever documents are prepared to be used in mediation is not admissible in any court proceedings. However, an agreement resulting from mediation can be admitted as evidence.

420. Orders following mediation

The Complaints Committee can issue an order to give effect to a mediated agreement. This requires the consent of all parties.

Division 6 – Investigation by Complaints Committee

421. Investigations (NC)

It is not necessary for a complaint to be lodged in order for the Complaints Committee to investigate a legal practitioner. The Complaints Committee may do so on its own volition. Where a complaint has been made, the Complaints Committee is required to investigate it with certain exceptions eg a dismissed or withdrawn complaint.

422. Application of Part 15 (NC)

Part 15 deals with provisions relating to investigations. This clause applies Part 15 to investigations carried out under clause 421.

423. Referral of matters for costs assessment

The Complaints Committee, as part of an investigation under clause 421, is authorised to seek a costs assessment from a taxing officer in relation to a matter. Other than the normal time limits on seeking costs assessments, the provisions in Part 10 Division 8 apply to these costs assessments.

Division 7 – Decision of Complaints Committee

424. Decision of Complaints Committee after investigation (NC)

Upon completion of an investigation the options open to the Complaints Committee are to dismiss the complaint, exercise summary jurisdiction to make a finding against the legal practitioner and impose a penalty, or refer the matter to SAT.

425. Dismissal of complaint (NC)

The circumstances under which the Complaints Committee may dismiss a complaint upon completion of an investigation are where it considers the complaint is vexatious, misconceived or frivolous, or there is not reasonable likelihood that the legal practitioner would be found guilty by SAT, or that it is in the public interest to do so.

426. Summary conclusion of complaint procedure (NC)

The Complaints Committee may summarily impose a fine or reprimand on a legal practitioner rather than refer the complaint to SAT. This can occur if the Complaints Committee has completed an investigation, is satisfied that SAT would find the practitioner guilty of UPC or PMC, is satisfied that the practitioner is generally competent and diligent, and the circumstances warrant summary action. The practitioner must give their consent to the Committee exercising its summary powers. The penalties available to the Committee are a public reprimand, a fine of not more than \$2,500, a compensation order or an order directing the practitioner to obtain advice on how to conduct their practice.

427. Record of decision (NC)

The Complaints Committee is to keep a record of its decision in respect of its investigations.

428. Referrals to State Administrative Tribunal

The Complaints Committee can refer matters to SAT, and can do so even if it has not conducted an investigation into a matter.

429. Costs (NC)

A legal practitioner can be ordered by the Complaints Committee to pay the costs of the complainant and the Committee. This can occur even if no finding is made against the practitioner but there was reasonable cause for an investigation because of the conduct of the practitioner.

Division 8 – General procedural matters

430. Procedure (NC)

Subject to the provisions of this legislation, the rules of procedural fairness apply to the procedures of the Complaints Committee in exercising its summary jurisdiction. The Committee is not bound by the rules of evidence.

431. Duty to deal with complaints efficiently and expeditiously (NC)

It is in the interests of all parties that complaints be dealt with quickly, and the Complaints Committee is obliged to do so as far as practicable.

432. Complainant and practitioner to be informed of action taken (NC)

Once the Complaints Committee has decided what action it is to take in relation to a complaint or investigation, it is required to notify the complainant (if there is one) and the legal practitioner in question of that decision and give reasons for that decision.

433. Parties (NC)

In proceedings before the Complaints Committee the parties are the legal practitioner who is the subject of the complaint and the complainant. The former is entitled to appear before the Committee, and at the Committee's discretion the latter can also appear. Those appearing before the Committee may have legal representation.

434. Proceedings generally not to be public

Generally, the proceedings of the Complaints Committee are not to be open to the public. The Committee may decide otherwise in relation to a particular matter.

435. Review of Complaints Committee decision

A complainant or a legal practitioner who is the subject of a complaint, may apply to SAT for a review of a decision by the Complaints Committee to dismiss a complaint or conclude a matter summarily under clause 426.

Division 9 – Immediate suspension of local practising certificate

436. Interim restrictions on practice

For very serious complaints, the Complaints Committee may apply to SAT for an order suspending a legal practitioner's practising certificate with immediate effect.

Division 10 – Proceedings in State Administrative Tribunal

437. Constitution of State Administrative Tribunal under this Act

Matters dealt with by SAT under this legislation require SAT to be constituted in one of two ways. First, the members are to be the President, a Deputy President or legally qualified senior member, and a member who is not a legal practitioner but has a knowledge and understanding of the interests of a person dealing with a legal practitioner. The second alternative is that the members are a Deputy President, a legally qualified senior member, and a member who is not a legal practitioner but has a knowledge and understanding of the interests of a person dealing with a legal practitioner. Hearings held for purposes such as interlocutory and interim orders, directions hearings or procedural hearings, can be dealt with by the President or a Deputy President by themselves.

438. Jurisdiction of State Administrative Tribunal

SAT can find that a legal practitioner is guilty of UPC or PMC. Having made a finding of guilt, SAT may report on the matter to the Supreme Court or make an order that action be taken against the practitioner under clauses 439, 440 or 441.

439. Orders requiring official implementation in this jurisdiction (CNU)

The orders that SAT can impose on a legal practitioner who has been found guilty of UPC or PMC include suspension or cancellation of the practitioner's practising

certificate, imposition of conditions on the practitioner's practising certificate, or a public reprimand.

440. Orders requiring official implementation in another jurisdiction (CNU)

It is possible that a legal practitioner who has been found guilty of UPC or PMC by SAT appears on an interstate roll and/or holds an interstate practising certificate. In this situation, SAT may issue orders including a recommendation that the practitioner's name be removed from the interstate roll, that the practitioner's interstate practising certificate be cancelled or suspended, or that conditions be imposed on the practitioner's practising certificate.

441. Orders requiring compliance by practitioner (CNU)

If a legal practitioner has been found guilty of UPC or PMC, SAT may impose an order on the practitioner with which the practitioner is required to comply. These vary in nature and include payment of a fine (to a maximum of \$2,500), a requirement that the practitioner provides certain legal services to the complainant with no fee, a requirement that the practitioner obtain advice from a particular person on managing their practice and so on.

442. Alternative finding (CNU)

A matter may be referred to SAT with an allegation that a legal practitioner has committed PMC. Despite PMC being specified in the allegation, SAT can find the practitioner guilty of UPC.

443. Interlocutory and interim orders (NC)

SAT may make interlocutory or interim orders.

444. Court may punish

As provided for in clause 438, SAT may, upon making a finding of guilt, report a matter to the full bench of the Supreme Court. The Court can impose the same orders on the legal practitioner as can SAT and, if the person concerned is a local lawyer, order their name removed from the local roll. The Court can also order costs against the practitioner.

445. Official notification to Board and Complaints Committee of removals from local rolls

The Principal Registrar of the Supreme Court is responsible for notifying the Board and the Complaints Committee that a person's name has been removed from the local roll.

446. Compliance with orders (NC)

It is a requirement that any individual or body exercising powers or functions under this legislation gives effect to and enforce orders of SAT or the Supreme Court. The Complaints Committee is responsible for notifying relevant individuals and bodies who exercise equivalent powers or functions under the corresponding laws of other jurisdictions of orders made by SAT and the Supreme Court.

447. Other remedies not affected (NC)

A complainant can seek redress through other means even if they have lodged a complaint under this Division.

Division 11 – Compensation

448. Compensation orders (NC)

Compensation orders compensate complainants for losses suffered because of the conduct that is the subject of a complaint. The compensation is one or other of an order that costs are not payable or may be recovered, or that a lien can be discharged, or that there be monetary compensation.

449. Prerequisites to making of compensation orders (NC)

A compensation order can only be made if the complainant has suffered loss and it is in the interests of justice that the order be made. Amounts that have been ordered elsewhere by a court or payable from the Guarantee Fund must be discounted from a compensation order.

450. Effect on other remedies (NC)

Compensation orders do not affect other remedies; however, a complainant cannot double dip for compensation.

Division 12 – Publicising disciplinary action

451. Definitions (CNU)

This clause defines key terms used in this Division.

452. Register of Disciplinary Action (CNU)

The Board is to maintain a Register of Disciplinary Action. The Register is to be published on the internet and can be provided to members of the public by other means as approved by the Board. The Register is to contain details of disciplinary action taken after the commencement of this Bill and can contain details of earlier disciplinary action.

453. Other means of publicising disciplinary action (CNU)

The Board may, in addition to the publications referred to in clause 452, publicise disciplinary action in other ways it considers appropriate.

454. Quashing of disciplinary action (CNU)

If disciplinary action against a legal practitioner is quashed, the details of it must be removed from the Register of Disciplinary Action.

455. Liability for publicising disciplinary action (NC)

Persons involved in the publication of decisions are protected from liability provided they have acted in good faith. Those protected include the Board and the internet service provider used to house the Register of Disciplinary Action.

456. Disciplinary action taken because of infirmity, injury or illness (CNU)

This clause sets out special rules concerning the publication of disciplinary decisions based on matters arising from infirmity, injury or mental or physical illness. Generally, such disciplinary action is not to be publicised except to the extent of stating if the disciplinary action is in the form of suspension or cancellation of the practitioner's practising certificate, refusal to grant or renew a practising certificate, or a restriction on a person's right to engage in legal practice. In these circumstances,

whilst the nature of the disciplinary action can be publicised, the reasons for the disciplinary action are not to be stated or information about the infirmity etc provided. This is to protect the privacy of the practitioner so that any treatment they are receiving for the infirmity etc is not jeopardised.

457. Effect of secrecy provisions and non-disclosure orders (CNU)

SAT may order that disclosure of information be prohibited or restricted. The provisions of Division 12 are subject to such an order except to the extent that a person's name and details are to be recorded on the Register of Disciplinary Action.

Division 13 – Inter-jurisdictional provisions

458. Conduct protocols (CNU)

The Complaints Committee may enter into protocols with corresponding authorities in other jurisdictions relating to the investigation of complaints. Such a protocol is ineffective unless it is contained in or defined in regulations.

459. Request to another jurisdiction to investigate complaint or conduct (CNU)

The Complaints Committee may request a corresponding authority in another jurisdiction to investigate complaints.

460. Request from other jurisdiction to investigate complaint or conduct (CNU)

The Complaints Committee is permitted to act on a request from a corresponding authority from another jurisdiction to investigate a complaint being conducted under the law of that other jurisdiction.

461. Sharing of information with corresponding authorities (CNU)

The Complaints Committee may enter into arrangements for exchanging information with corresponding authorities from other jurisdictions in relation to complaints.

462. Cooperation with other authorities (CNU)

The Complaints Committee may consult and cooperate with other Australian and non-Australian regulatory authorities in relation to complaints and investigations.

463. Compliance with recommendations or orders made under corresponding laws (CNU)

WA regulatory bodies have a duty to implement decisions affecting them made under corresponding laws in other jurisdictions.

464. Others powers and functions not affected (CNU)

Other powers and functions of an individual or a body are not affected by the provisions of Division 13.

Division 14 – Miscellaneous

465. Jurisdiction of Supreme Court (NC)

The inherent powers of the Supreme Court cover interstate legal practitioners engaged in legal practice in WA and are not affected by anything in Part 13.

466. Failure to comply with orders (NC)

Failure to comply with a disciplinary order is capable of constituting UPC or PMC.

467. Confidentiality of client communications (NC)

An Australian legal practitioner must answer questions and provide information despite any duties of confidentiality to a client.

468. Claims of privilege (NC)

If, in the course of an investigation or proceedings, a person claims privilege, the Complaints Committee or SAT may require them to disclose the information. However, if this results in information adverse to the interests of that person, no questions or answers may be used in connection with proceedings relating to a complaint or report or disclosure under section 584.

469. Waiver of privilege or duty of confidentiality (NC)

Professional privilege is waived if a client makes a complaint against a legal practitioner. This is limited so as to permit the legal practitioner to disclose information necessary for the investigation of the complaint.

Part 14 – External intervention

Division 1 – Preliminary

470. Purposes (NC)

The purpose of Part 14 is to provide options for external intervention into the affairs of law practices in order to protect the interests of the general public, clients and lawyers.

471. Definitions (CU)

This clause sets out key terms used in this Part. In particular, “regulated property” means trust money or trust property received, receivable or held by a legal practitioner; interest etc derived from trust money or trust property; and documents, records, computers and so on which relate to or contain information about this trust money or trust property.

472. Application of Part to Australian-registered foreign lawyers (CU)

Australian-registered foreign lawyers fall within the scope of Part 14.

473. Application of Part to other persons (CU)

Former law practices, executors, administrators, liquidators and the like of law practices fall within the scope of Part 14.

Division 2 – Initiation of external intervention

474. Circumstances warranting external intervention (CU)

The various circumstances in which external intervention may take place include a death, imprisonment or insolvency of a legal practitioner, the winding up of a law practice, trust account problems and ceasing to engage in legal practice.

475. Determination regarding external intervention (CU)

The Board, on becoming aware that there is a ground for external intervention, may appoint a supervisor of trust money or a manager the practice. It can also apply to SAT for a receiver to be appointed.

Division 3 – Supervisors of trust money

476. Appointment of supervisor of trust money (CU)

This clause provides for the appointments of supervisors of trust money by the Board. A supervisor must be either a legal practitioner with an unrestricted practising certificate or someone who is both qualified in accounting and experienced in dealing with the trust accounts of law practices. The scope of the appointment (eg the term of appointment, any remuneration for the appointee, and any reporting requirements) are to be contained in an instrument of appointment.

477. Notice of appointment (CU)

This clause provides for the service of a notice of appointment on the law practice, on any other person operating the trust accounts, any external examiner, any relevant ADI and any other person that the Board considers should be served with the notice. The notice is to include the rights of appeal.

478. Effect of service of notice of appointment (CU)

The effect of the service of a notice on an ADI is that the ADI cannot permit dealings with trust money except with the approval of the supervisor of the trust money. Similarly with anyone else who may have been able to deal with the trust money of the law practice.

479. Role of supervisor of trust money (CU)

The role of the supervisor of trust accounts is to receive trust money and to open and close trust accounts. The supervisor has no role in the management of the law practice except to the extent necessary in respect of trust money.

480. Records of and dealing with trust money of law practice under supervision (CU)

The supervisor of trust money must keep separate records to those maintained prior to their appointment. Regulations can also be made setting out the manner of maintaining records.

481. Termination of supervisor's appointment (CU)

A supervisor's appointment ends when the term of their appointment ends, when a manager is appointed to the practice, or when the Board determines that the appointment is to end. Those who were notified by the Board of the appointment must also be notified of the termination of the appointment.

Division 4 – Managers

482. Appointment of manager (CU)

This clause provides for the appointments of managers of law practices by the Legal Practice Board. A manager must be a legal practitioner with an unrestricted practising

certificate. Employees of the Board are eligible to be appointed as managers. The scope of the appointment (eg that an appointment has been made, the term of appointment, any remuneration for the appointee, and any reporting requirements) are to be contained in an instrument of appointment.

483. Notice of appointment (CU)

This clause provides for the service of a notice of appointment on the law practice, on any other person operating the trust accounts of a practice, any external examiner, any relevant ADI and any other person that the Board considers should be served with the notice. The notice is to include details such as the name of the practice in question and the person appointed as manager, and the entitlement of the practice to seek a review of the decision to appoint a manager.

484. Effect of service of notice of appointment (CU)

Once a notice appointing a manager has been served, any legal practitioner associate of the practice named in the notice is to cease to have any involvement in the affairs of the practice unless they do so under the direct supervision of the manager.

485. Role of manager (CU)

The role of a manager appointed to a law practice is wide-ranging and can include operating the law practice's business (paying particular attention to urgent business), accepting new business, and winding up the practice. The manager has extensive powers for the purpose of fulfilling this role.

486. Records of and dealing with trust money of law practice under supervision (CU)

A manager appointed to a law practice must keep separate records to those maintained prior to their appointment. Regulations can also be made setting out the manner of maintaining records.

487. Deceased estates (CU)

In relation to deceased estates, a manager appointed to a law practice must cooperate with the legal personal representative of the deceased legal practitioner.

488. Termination of manager's appointment (CU)

A manager's appointment ends when the term of their appointment ends, when a receiver is appointed to the practice, or when the Board determines that the appointment is to end. Those who were notified by the Board of the appointment must also be notified of the termination of the appointment.

Division 5 – Receivers

489. Appointment of receiver (CU)

Receivers for law practices are appointed by SAT upon application by the Board. It is not necessary for the practice to be notified of the application beforehand. To be appointed as a receiver a person must be a legal practitioner holding an unrestricted practising certificate or a person both qualified in accounting and with experience in dealing with the trust accounts of law practices. The scope of the appointment (eg that an appointment has been made, the term of appointment, any remuneration for

the appointee, and any reporting requirements) are to be contained in an instrument of appointment.

490. Notice of appointment (CU)

This clause provides for the service of a notice of appointment of a receiver on the law practice, on any other person operating the trust accounts of a practice, any external examiner, any relevant ADI and any other person that the Board considers should be served with the notice. The notice is to include details such as the name of the practice in question and the person appointed as receiver and any conditions imposed by SAT at the time of the appointment.

491. Effect of service of notice of appointment (CU)

Once a notice appointing a receiver has been served, any legal practitioner associate of the practice named in the notice is to cease to have any involvement in the affairs of the practice. Should they do so, they are liable to a penalty. ADIs are to allow only the receiver (or their nominee) or a manager appointed for the practice (or their nominee) to withdraw or transfer funds from the trust accounts of a practice in receivership. Similarly with anyone else who may have been able to deal with the trust money of the law practice.

492. Role of receiver (CU)

The role of a receiver appointed for a law practice is to receive the regulated property (see clause 471) of the practice and to wind up the practice. The receiver has extensive powers for the purpose of fulfilling this role.

493. Records of and dealing with trust money of law practice under supervision (CU)

A receiver appointed for a law practice must keep separate records to those maintained prior to their appointment. Regulations can also be made setting out the manner of maintaining records.

494. Power of receiver to take possession of regulated property (CU)

This clause permits the receiver to take possession of regulated property.

495. Power of receiver to take delivery of regulated property (CU)

The receiver can take delivery of regulated property that may be in the hands of another person. It is an offence for such other person to not deliver the property.

496. Power of receiver to deal with regulated property (CU)

This clause permits the receiver to deal with regulated property.

497. Power of receiver to require documents or information (CU)

This clause gives the receiver the power to require the provision of documents and information. It is an offence to fail to comply with any such requirement.

498. Examinations (CU)

This clause permits the Supreme Court to order, on application of a receiver, that an associate or former associate of a law practice appear before the Court for examination about the regulated property of the law practice.

499. Lien for costs of regulated property (CU)

A receiver may request information in relation to regulated property or bills of costs. It can disregard a lien for costs over regulated property from a law practice or a legal practitioner associate if either fails to provide this information required.

500. Recovery of regulated property where there has been a breach of trust (CU)

If regulated property is unlawfully transferred to a person the receiver is entitled to recover the property if that person did not provide any consideration for the property or was aware that the transfer of the property was done in breach of trust, improperly or unlawfully.

501. Regulated property not to be attached (CU)

This clause provides that regulated property is not liable to any legal process in the way of debt recovery against the law practice.

502. Improperly destroying property (CNU)

It is an offence to destroy, conceal etc property with the view of defeating the operation of Part 14. To do so attracts a penalty.

503. Deceased estates (CU)

In relation to deceased estates, a receiver appointed to a law practice must cooperate with the legal personal representative of the deceased legal practitioner.

504. Termination of receiver's appointment (NC)

A receiver's appointment ends when the term of their appointment ends or when SAT determines that the appointment is to end. Those who were notified by the Board of the appointment must also be notified of the termination of the appointment.

Division 6 - General

505. Conditions on appointment of external intervener (CU)

The appointment of an external intervener is subject to any conditions imposed by the Board in the case of supervisors and managers and those imposed by SAT in the case of receivers.

506. Status of acts of external receiver (CU)

Acts and omissions of an external intervener are taken to be the acts and omissions of the law practice. However, associates of the law practice have no personal liability in respect of them.

507. Eligibility for reappointment or authorisation (CU)

Persons appointed as external interveners may be re-appointed.

508. Review of appointment (CU)

Applications can be made to SAT for a review of a decision to appoint a manager or supervisor. Those eligible to make such application are the practice itself, an associate of the practice, anyone authorised to operate a trust account of a practice, and anyone else whose interests may be adversely affected by the appointment.

509. Directions of State Administrative Tribunal (CU)

This clause provides that, on application, SAT may give directions in respect of the powers, duties or functions of external interveners.

510. Manager and receiver appointed for law practice (CU)

Where, in relation to a law practice, there is both a manager and a receiver, any decision of a receiver will prevail over that of the manager.

511. ADI disclosure requirements (CU; except (2) NC)

An external intervener may require an ADI to disclose various information and make copies of documents. Failure to comply with such a requirement attracts a penalty.

512. Fees, legal costs and expenses (CU)

This clause provides for the fees, legal costs and expenses that an external intervener is entitled to be paid. If the law practice cannot pay the expenses, then they are to be paid by the Guarantee Fund with the Legal Contribution Trust having the right to recover such money from the law practice.

513. Reports by external intervener (CU)

An external intervener must report to the Board. If the instrument of appointment does not set out the reporting requirements, at a minimum the external intervener is to report as required by the Board and at the end of their appointment. They are also to update the Board on any significant developments in relation to an investigation.

514. Confidentiality (CU)

This clause makes it an offence for an external intervener to illegally disclose information. If they do so, a penalty applies.

515. Provisions relating to requirements under this Part (NC)

This clause provides that an external intervener has access to documents regardless of any lien that is held over the documents.

516. Obstruction of external intervener (NC)

It is an offence to obstruct an external intervener. To do so attracts a penalty.

Part 15 – Provisions relating to investigations

Division 1 – Preliminary

517. Definitions (NC)

This clause defines the key terms used in Part 15.

Division 2 – Requirements relating to documents, information and other assistance

518. Application of this Division (NC)

Part 15 applies to trust account investigations and examinations, complaint investigations and compliance audits of ILPs.

519. Requirement to provide access to documents and information relating to affairs of law practices (NC)

Practices, associates and former associates of practices, and others who have exercised some control over documents relating to the practice are required to provide them to an investigator if the investigator asks for them. Failure to comply attracts a penalty.

520. Requirements in relation to complaint investigations (NC)

An investigator may, in the course of investigating a complaint against an Australian lawyer, require the production of specified documents, written information or co-operation from the lawyer. Similar requirements can be placed on associates of law practices and others (eg financial institutions). Failure to comply attracts a penalty.

521. Provisions relating to requirements under this Division (NC)

A requirement to produce a document is not affected by the fact that a law practice may have a lien over the document. The Board may suspend a practising certificate if the legal practitioner fails to comply with a requirement.

Division 3 – Entry and search of premises

522. Application of Division (NC)

Division 3 applies to trust account investigations and examinations, complaint investigations and compliance audits of ILPs.

523. Investigator's power to enter premises (NC)

An investigator's powers to enter premises varies according to the type of investigation and the type of premises. For a trust account investigation, if the premises are not residential premises, no search warrant is required. However, if the premises are residential premises the investigator can only enter with the consent of the occupier. If they do not have the consent of the occupier they can only enter if they have a search warrant, unless there are urgent and reasonable grounds for entering without a warrant. In the case of complaint investigations, an investigator may enter any premises but only with the consent of the occupier or with a search warrant.

524. Search warrant (NC)

Applications for search warrants by investigators are to be made to justices of the peace. The warrant can only be issued if the justice of the peace is satisfied that there are reasonable grounds to suspect that relevant material is on the premises. If a investigator fails to produce a copy of the warrant on request, the investigator has committed an offence and is liable to a penalty.

525. Powers of investigators while on premises (NC)

Investigators have a range of powers that they can exercise once they have entered premises. These include searching the premises and examining the contents, searching for documents and other material relevant to the investigation, taking copies of relevant material, taking away relevant material and so on.

Division 4 – Additional powers in relation to incorporated legal practices

526. Application of Division (NC)

Division 4 applies specifically to ILPs and investigations involving trust accounts and complaints, as well as ILP compliance audits.

527. Powers relating to investigation and audits to which this Division applies (NC)

A person conducting an investigation or a person conducting an audit under Division 4 may exercise the powers contained in this Divisions.

528. Examination of persons (NC)

This clause gives investigators certain powers, in relation to ILPs, possessed by the Australian Securities and Investment Commission under the *Australian Securities and Investment Commission Act 2001*.

529. Inspection of books (NC)

This clause gives investigators certain powers, in relation to the inspection of books of ILPs, possessed by the Australian Securities and Investment Commission under the *Australian Securities and Investment Commission Act 2001*.

530. Power to hold hearings (NC)

An investigator may hold hearings for the purposes of investigations and audits. These hearings are conducted as if certain provisions of the *Australian Securities and Investment Commission Act 2001* apply.

Division 5 - Miscellaneous

531. Obstruction or misleading of investigator (NC)

It is an offence to obstruct an investigator and to do so attracts a penalty.

532. Obligations of Australian lawyers (NC)

An Australian lawyer is not to mislead an investigator, the Board or the Complaints Committee when they are exercising a power or function under this legislation.

533. Permitted disclosure of confidential information (NC)

This clause sets out the circumstances in which the Board, the Complaints Committee or an investigator may disclose information. This clause protects a person from liability in respect of information disclosed in good faith.

Part 16 – Regulatory authorities

Division 1 – Legal Practice Board

Subdivision 1 – Establishment

534. Board established

This clause establishes the Legal Practice Board as a body corporate with perpetual succession.

535. Relationship to the Crown

The Board is not a representative or agent of the Crown.

536. Board members

The membership of the Board comprises the Attorney General, the Solicitor General, each Queen's Counsel and Senior Counsel who practise principally in WA and who are not full-time judicial officers, and 12 elected members who must be local legal practitioners of at least 3 years' standing and practice. Those elected to the Board hold office for 2 years.

537. Who may vote in election

In relation to the election of the 12 elected members of the Board, any local legal practitioner is eligible to vote.

538. Vacation of office by member

Members of the Board may resign from the Board. If a member of the Board is, without the leave of the Board, absent from 3 consecutive meetings of the Board, they

can be removed from the Board by the Attorney General. Leave of absence can be granted for any reason the Board considers appropriate.

539. Functions

The Board's functions are those imposed on it by this or any other legislation.

540. Powers

As well as having an all-encompassing broad based power to perform its functions, the Board is specifically empowered to acquire, manage etc property, to enter into leases, contracts etc, to provide, take and arrange security, to employ and engage staff, and anything incidental to its powers.

541. Chairperson and deputy chairperson

The chairperson and deputy chairperson of the Board are elected from and by the membership of the Board. The term of office for both offices is one year and one individual cannot serve more than 5 consecutive terms as chairperson or as deputy chairperson. The deputy is to take on the functions of the chairperson if so directed by or in the absence of the chairperson. The validity of what the deputy chairperson does or does not do whilst acting in the role of chairperson cannot be disputed on the basis of whether or not they should have been in this role at the time. The chairperson can be remunerated as determined by the Board.

542. Casual vacancies

Local legal practitioners can be appointed by the Board should a vacant position as elected member occur.

Subdivision 2 – Performance

543. Presiding at meetings

Meetings of the Board are to be presided over by the chairperson or the deputy chairperson if they are acting as chairperson. However, if neither the chairperson nor the deputy chairperson are chairing a meeting, those members of the Board who are at the meeting are to appoint one of those present to chair the meeting.

544. Quorum

The quorum for a meeting of the Board is 4 members.

545. Voting

Each member of the Board has one vote. The chairperson has a deliberative vote but can also exercise a casting vote if voting is tied. When a matter is being dealt with at a meeting of the Board, decisions are made on the basis of the majority of votes of those present at the meeting.

546. Procedure at meetings

The Board can set its own meeting procedures, subject to this legislation.

547. Delegation

The Board can delegate its powers and duties to a member of the Board, a committee of the Board and officers and employees of the Board. Any such delegation cannot be further delegated.

Subdivision 3 – Financial and reporting provisions

548. Application of funds

The Board can only use its funds for purposes such as providing services and facilities, administering and enforcing subsidiary legislation, and the Law Library at the Supreme Court. The books and other assets of the Law Library are vested in and are the property of the Board.

549. Accounts and records

The Board is to maintain financial accounts and business records. Financial statements are to comply with the Australian Accounting Standards.

550. Audit

The Board's accounts and financial statements are subject to an annual audit.

551. Annual and other reports

The Board is required to produce an annual report on its activities. The annual report is to be tabled in Parliament by the Attorney General.

Subdivision 4 - Miscellaneous

552. Committees

The Board can establish committees comprising members of the Board.

553. Secretary of the Board

This clause provides for the position of secretary of the Legal Practice Board. The Board is to engage or employ the secretary and direct them as to their functions.

554. Execution of documents by the Board

The Board has a common seal. There are two ways for a document of the Board to be have been duly executed. First, the common seal is affixed in the presence of 2 Board members who must sign the document affirming that this has happened. Second, the

Trust may also authorise members or staff to sign documents on its behalf and such authorisation is given in writing under the common seal.

Division 2 – Legal Profession Complaints Committee

Subdivision 1 – Establishment

555. Legal Profession Complaints Committee established

This clause creates the Legal Profession Complaints Committee which is a committee of the Board.

556. Complaints Committee members

The Complaints Committee has a chairperson who is appointed by the Board. The Board also appoints at least 6 legal practitioners as members of the Committee. The Attorney General, in consultation with the Minister responsible for consumer affairs, appoints 2 members, neither of whom are to be or to have been a lawyer, as community representatives.

557. Functions of the Complaints Committee

The Complaints Committee is to supervise the conduct of legal practitioners. It is to hold inquiries on the conduct of legal practitioners and matters relating to legal practice in response to complaints or at its own instigation. It can refer disciplinary matters to SAT. Although the Committee is a committee of the Board, it undertakes its functions independently from the Board and the Board cannot interfere with the Committee in the performance of its functions. The Board, however, is required to ensure that the Committee has the resources it requires to fulfil its functions. The Law Complaints Officer is subject to the supervision and direction of the Committee.

558. Term of appointment – representative of the community

The community members of the Complaints Committee serve a term of no more than 3 years. Although they can be reappointed, they cannot serve on the Committee for a total of more than 6 years.

559. Deputy chairperson

The Board has the discretion to appoint a deputy chairperson to the Complaints Committee. This person is to be a member of the Board.

560. Deputies of representatives of the community

Deputies may be appointed for the community representatives on the Complaints Committee. Deputies must meet the same eligibility criteria as the actual community representatives.

561. Removal or resignation

There are various grounds upon which the Attorney General may remove someone from membership of the Complaints Committee. These include the person being insolvent under administration, the person having some mental or physical incapacity adversely affecting their ability to perform their functions, and neglect of duty and misconduct. If any member of the Complaints Committee is absent without the leave of the Committee for 3 consecutive meetings, they can be removed from the Committee by the Attorney General. In the case of those members appointed by the Board, the Board can remove those members if they fail to attend 3 consecutive meetings without leave. A member of the Committee may also tender their resignation to the Attorney General.

562. Leave of absence

The Attorney General may also grant a leave of absence if the Attorney General considers this appropriate.

563. Termination of office may be deferred

A member of the Complaints Committee can continue to serve on the Committee beyond the expiry date of their appointment until they are reappointed or a successor is appointed, and to enable them to continue to participate in any part-heard proceedings.

564. Remuneration and allowances

The Attorney General, in consultation with the Minister for Public Sector Management, may authorise that a community representative be paid.

565. Saving

The validity of what the deputy chairperson or a deputy community representative does or does not do whilst acting in the role of chairperson or community representative cannot be disputed on the basis of whether or not they should have been in this role at the time.

Subdivision 2 – Performance

566. Quorum

The quorum for a meeting of the Complaints Committee is 3 members of whom 2 are to be members appointed by the Board and 1 is to be a community representative. If a member who was present when proceedings commenced in relation to an investigation instigated by the Committee on its own volition (ie under Part 13 Division 6), can no longer participate, or if in these same type of proceedings a community representative can no longer participate so that there is no quorum, the other members of the Committee can continue to deal with and determine the matter.

567. Meetings

The chairperson of the Complaints Committee, the Law Complaints Officer and the Committee itself may convene meetings of the Committee. If the chairperson is present, they are to preside over the meeting. In the absence of the chairperson and deputy chairperson, an acting chairperson can be appointed by those present.

568. Divisions

The Complaints Committee may sit as a Division.

569. Voting

Each member of the Complaints Committee present at a meeting has a deliberative vote. The chairperson can also exercise a casting vote if voting is tied.

570. Complaints Committee may determine its own procedures

The procedures of the Complaints Committee are determined by the Committee and need not be formal.

571. Reports

The Complaints Committee is required to produce an annual report on its activities. The report is to be presented to the Attorney General who is required to table it in Parliament.

Division 3 – Law Complaints Officer and staff

572. Law Complaints Officer

This clause creates the office of Law Complaints Officer who is appointed by the Board. It is a requirement that the Law Complaints Officer is a legal practitioner who has worked in a legal practice. Part 5 deals with legal practice by Australian legal practitioners and provides for various hearings such as applications from the Board to SAT to have conditions imposed on practising certificates. The Law Complaints Officer can appear at such hearings or be represented at them by a legal practitioner.

573. Delegation to Law Complaints Officer

With the exception of its power to conclude a matter summarily (clause 426), the Complaints Committee can delegate any of its powers and duties to the Law Complaints Officer. The Complaints Committee can authorise the Law Complaints Officer to further delegate to a member of staff employed by the Board for the purpose of assisting the Committee and the Law Complaints Officer. However, this staff member cannot further delegate these powers and duties.

574. Staff

To assist the Complaints Committee and the Law Complaints Officer, the Board can employ staff for this purpose.

Part 17 – Rules

Division 1 – Admission rules

575. Admission rules

The Board can make rules in relation to the procedures, requirements, applications and other matters relating to the admission of persons to the legal profession.

Division 2 – Legal profession rules

576. Subject-matter of legal profession rules

Legal profession rules can be made in relation to any aspect of legal practice including matters beyond those specifically provided for in this legislation. Rules can be made regarding standards of conduct.

577. Rules for Australian legal practitioners

Rules relating to legal practice by Australian legal practitioners are to be made by the Board.

578. Rules for Australian-registered foreign lawyers

Rules relating to Australian-registered foreign lawyers are to be made by the Board.

579. Rules for incorporated legal practices and multi-disciplinary partnerships

Rules can be made to apply to the legal services provided by ILPs and MDPs especially in relation to possible conflicts of interest. The rules cannot apply to the non-legal services of an ILP or MDP except in relation to conflicts of interest.

580. Rules for Board, Law Library and Complaints Committee

The Board has a rule making power in relation to elections, meetings, the Law Library and the functions of the Complaints Committee. Where proceedings, other than proceedings before SAT, are taken under this legislation, the Board may set a scale of fees to apply to these proceedings.

Division 3 – General provisions

581. Binding nature of legal profession rules

If a legal profession rule applies to an Australian legal practitioner or a locally registered foreign lawyer, that rule is binding on that person.

582. Rules inconsistent with regulations

If there is inconsistency between a rule and a regulation made under this legislation, the regulation prevails.

583. Rules are subsidiary legislation

The rules are classified as subsidiary legislation.

Part 18 – General provisions

584. Liability of principals

Principals of law practices are responsible for the actions of their practices. Therefore, if a practice commits a breach then the principal(s) are also considered to have committed the breach. However, if the principal can establish that the practice acted without their knowledge, or that they could not prevent the action, or they had done their best to prevent the action, then the principal is not in breach. If a law practice is the subject of a requirement imposed under this legislation and it fails to comply with the requirement, the principal(s) could be found guilty of UPC or PMC.

585. Injunctions

If someone is or is intending to engage in conduct that is tantamount to contravening, attempting to contravene or aiding etc someone else to contravene this legislation and so on, the Board can apply to the Supreme Court for an injunction to prevent the person from doing so.

586. Disclosure of information by local regulatory authorities (NC)

To enable WA regulatory authorities to properly perform their functions, this clause permits them to exchange information with each other and to provide information to their interstate counterparts.

587. Confidentiality of personal information (CNU)

Regulatory authorities and their current and former members and staff, cannot disclose personal information about someone unless this is in the interests of performing their functions or as provided for in legislation or in the course of legal proceedings etc.

588. Professional privilege or duty of confidence does not affect validity or compliance with certain requirements (NC)

The obligations under clauses 227 (reporting of irregularities), 497 (requiring documents and information) and 519 (requiring of documents) are not affected by legal professional privilege or duty of confidence.

589. Duty to report suspected offences (NC)

If, in handing a complaint, the Board or the Complaints Committee are of the view that an offence has been committed (whether or not against this Act) they must report the matter to the relevant prosecuting authority.

590. Contempt of the Supreme Court

The power of the Supreme Court to punish a contempt of court is not affected if penalty is imposed for a breach of this legislation.

591. Protection from liability

So that persons exercising responsibilities under this legislation can properly exercise their powers they are protected from being held personally liable as long as they acted in good faith. This clause sets out who these “protected persons” are eg the Board, its members and employees; the Legal Contribution Trust, its members and employees; and the Law Society.

592. Legal proceedings

The Board can authorise someone to take an action under this legislation in the Board’s name. The jurisdiction in which proceedings in relation to offences under this legislation are to take place is that of a court of summary jurisdiction constituted by a magistrate.

593. Evidentiary certificates

If the Board or a regulatory body in another Australian jurisdiction issue a certificate to the effect that, on particular date or period of time, a person did or did not hold a practising certificate or their practising certificate was subject to conditions, the certificate so issued is taken to be proof of these facts unless there is evidence that says otherwise. Certificates of this kind can also be accepted from overseas registration authorities.

594. Approved forms

This clause provides that entities under this legislation may approve forms used for or in connection with their powers and functions.

595. Laying documents before House of Parliament that is not sitting

Where the Attorney General is to table a document in Parliament, the Attorney General is to provide a copy of the document to the Clerk of the House for each of the Houses.

596. Regulations

This clause confers a general regulation making power on the Governor in relation to this legislation.

597. Review of Act

This legislation is to be reviewed after it has been in operation for 5 years.

Part 19 – Repeal, savings, transitional and other provisions

Division 1 – Repeals

598. *Legal Practice Act 2003* repealed

This clause provides for the repeal of the *Legal Practice Act 2003*.

599. *Legal Contribution Trust Act 1967* repealed

This clause provides for the repeal of the *Legal Contribution Trust Act 1967* (“the LCT Act”).

600. *Interpretation Act 1984* not affected

This clause provides that this legislation does not affect the application of the *Interpretation Act 1984* unless there is an express provision for this.

Division 2 – Savings and transitional provisions relating to repeal of *Legal Practice Act 2003*

601. Definitions

This clause defines the key terms used in Division 2.

602. Articles and other practical legal training

The transitional provisions relating to practical legal training already underway when this legislation commences are to be dealt with through the admission rules.

603. Admission

Anyone who has already been admitted to legal practice remains admitted as a local lawyer when this legislation commences. This does not affect their date of admission.

604. Existing applications for admission

If a person had already applied to be admitted before this legislation commences but the admission process had not been completed, as long as they meet the requirement for admission they can be admitted under this legislation.

605. The Roll

The current Roll of Practitioners continues as the local roll when this legislation commences.

606. Practising certificates

Practising certificates issued under the previous Act continue to be valid after the commencement of the new Act and any conditions attached to a practising certificate also continue to apply. Applications for practising certificates being processed at the time of the commencement of the new Act will be processed under the new Act.

607. Actions for the commencement day that continue to have effect

If the Board, the Complaints Committee or the Law Complaints Officer have taken action in relation to a person before this legislation commences but it has not been finalised, the action continues under this legislation.

608. Restricted legal practice

This legislation increases the period of time which a legal practitioner must spend as a restricted practitioner before they can practice on their own account. Therefore, if the person commenced their restricted practice under the provisions of the *Legal Practice Act* but have not completed it by the time the new Act commences, they complete the period of restricted practice set for them under the old Act. Someone who has not commenced their restricted practice at the time the new Act commences, even if they have a practising certificate, is to comply with the restricted practice requirements of the new Act.

609. Foreign lawyers

Persons registered as foreign lawyers at the time of commencement continue to be registered under this legislation. If an application for registration had not been finalised at the time of commencement, it is processed under this legislation.

610. Incorporated legal practices

ILPs are not required to repeat the obligations regarding the giving of notice or in respect of the disclosure requirements of the *Legal Practice Act*. Any disqualification imposed under that Act continues under the new Act.

611. Orders in relation to multi-disciplinary partnerships

Any orders made against a MDP under the *Legal Practice Act* continue to apply under the new Act.

612. Approvals under section 133 of 2003 Act

Section 133 of the *Legal Practice Act* precludes legal practitioners having prohibited persons as associates unless they have approval from the Board. Any such approval in place at the time of commencement continues under the new Act.

613. Authority to receive trust money

A legal practitioner who holds a practising certificate that continues in operation at the time of commencement is taken to be authorised to receive trust money. This is subject to any conditions attached to the practising certificate.

614. Deficiencies in trust accounts

Clauses 226 and 227 are concerned with deficiencies in trust accounts and obligations to report certain irregularities and suspected irregularities. These will apply to any trust money regardless of whether the deficiency or irregularity in question occurred before, on or after this legislation commences.

615. Investigations

Trust account investigations can be conducted under the new Act regardless of when a trust account was established.

616. Client information and legal costs

If a client first instructed a law practice before the new Act commences and when the *Legal Practice Act* was still in force, the costs disclosure and assessment provisions of the *Legal Practice Act* will apply even after the new Act commences. The new Act applies if the first instructions are given after the commencement of the new Act. However, if a law practice engages another law practice on behalf of the client, it does not matter when this occurs; the factor which determines whether the costs provisions of the *Legal Practice Act* or the new Act apply is when the client instructed the first practice. That is, if the client instructed the first practice before the new Act commences but the first practice does not instruct the second until after the commencement date, the *Legal Practice Act* applies.

617. Legal costs determinations and Legal Costs Committee

Existing legal costs determinations continue in force after the commencement date and membership of the Legal Costs Committee carries over from the *Legal Practice Act* to the new Act.

618. Legal Practice Board continued

The Board is continued with the same rights and liabilities as under the *Legal Practice Act*.

619. Membership of Board

Membership of the Board is carried over from the *Legal Practice Act* to the new Act.

620. Complaints Committee continues

The Complaints Committee is continued and membership of the Committee is carried over from the *Legal Practice Act* to the new Act.

621. Complaints and investigations under Act of prior conduct

Complaints which were made under the *Legal Practice Act* but not completed when the new Act commences, continue to be dealt with under the new Act. In order to prevent duplication or unnecessary delay, changes to how a complaint is handled can be made by way of regulation. A person may not make a complaint or an investigation cannot be instigated under the new Act if the matter is already being dealt with under the *Legal Practice Act* or the *Legal Practitioners Act 1893*.

622. Discipline

Conduct which occurred before the commencement of the new Act is subject to the disciplinary provisions of the new Act.

623. Examiners

Appointments as examiners are carried over from the *Legal Practice Act* to the new Act.

624. Orders under section 149 of 2003 Act

Section 149 of the *Legal Practice Act* provides for the Board to apply to a judge for an order restraining dealings in relation to the bank accounts of a legal practitioner. Orders made under this section continue in force after the commencement of the new Act.

625. Orders under section 150 of 2003 Act

Section 150 of the *Legal Practice Act* provides for the Board to apply to a judge for an order empowering the Legal Contribution Trust to take possession of funds in a bank account. Orders made under this section continue in force after the commencement of the new Act.

626. Appointments and authorisations under section 151 of the 2003 Act

Section 151 of the *Legal Practice Act* provides for the Legal Practice Board to appoint a supervising solicitor to a law practice. Appointments made and actions authorised under this section continue in force after the commencement of the new Act.

627. Appointments and authorisations under section 154 of the 2003 Act

Section 154 of the *Legal Practice Act* provides for the Board to appoint a legal practitioner to conduct an inquiry into a law practice. Appointments made under this section continue in force after the commencement of the new Act.

628. Appointments and orders under section 156 of the 2003 Act

Appointments as a supervising solicitor under section 156 of the *Legal Practice Act* continue in the form of appointment as a manager for a law practice after the commencement of the new Act.

629. Board may give directions

The Board may give written directions regarding procedure under the new Act to people whose appointments have been continued under clauses 626 to 628.

630. References to 1893 and 2003 Acts and related matters

Where a document may refer to the *Legal Practice Act* or the *Legal Practitioners Act* this is to be taken as a reference to the new Act. References to legal practitioner, solicitor, solicitor and barrister, barrister, counsel and lawyer are all generally to be taken as a reference to an Australian lawyer.

Division 3 – Savings and transitional provisions relating to repeal of *Legal Contribution Trust Act 1967*

631. Terms used in this Division

This clause defines key terms used in Division 3.

632. Legal Contribution Trust continued

The Legal Contribution Trust established under the LCT Act continues under the new Act.

633. Solicitors' Guarantee Fund

The Solicitors' Guarantee Fund established under the LCT Act continues under the new Act.

634. Contributions

Contributions to the Guarantee Fund under the new Act are to take account of any contributions paid under the *Legal Practice Act*.

635. Claims for acts happening before the commencement day

Claims made against the Guarantee Fund before the commencement of the new Act are to continue to be dealt with under the LCT Act. If a claim is made after the commencement of the new Act, but relates to actions that occurred prior to this, it is dealt with under the new Act but the Guarantee Fund's liability is as provided for in the LCT Act.

636. References to *Legal Contribution Trust Act 1967*

Where a document may refer to the LCT Act this is to be taken as a reference to the new Act.

Division 4 – Transitional regulations

637. Transitional regulations

Regulations may be made by the Governor to overcome any deficiencies in the transitional provisions of this legislation.

Part 20 – Consequential amendments

638. *Adoption Act 1994* amended

References to “lawyer” have been changed to mean an Australian legal practitioner when they are in connection with legal proceedings. Other references to “lawyer” such as being able to witness the signing of consent forms for adoption have been changed to mean an Australian lawyer.

639. *Agricultural Practices (Disputes) Act 1995* amended

The definition of “legal practitioner” has been changed to mean an Australian legal practitioner. The provisions using this term are connected with legal proceedings.

640. *Australian Crime Commission (Western Australia) Act 2004* amended

The definition of “legal practitioner”, meaning an Australian legal practitioner, has been inserted. The provisions using this term are connected with legal proceedings.

641. *Builders’ Registration Act 1939* amended

References to “legal practitioner” have been changed to mean an Australian legal practitioner when they are in connection with legal proceedings. Other references to “legal practitioner” such as the requirement that the chairperson of the Builders’ Registration Board be a legal practitioner have been changed to mean an Australian lawyer.

642. *Children and Community Services Act 2004* amended

The definition of “lawyer” has been changed to “legal practitioner” meaning an Australian legal practitioner. The provisions using this term are connected with legal proceedings.

643. *Children’s Court of Western Australia Act 1988* amended

The definition of “legal practitioner”, meaning an Australian legal practitioner, has been inserted. This term is used in defining the prerequisite experience required for appointment as judge of the Children’s Court. This amendment also has the effect of removing any distinction between local and interstate standing and experience.

644. *Chiropractors Act 2005* amended

The reference to “legal practitioner” has been changed to “Australian lawyer”. The relevant provision is concerned with the need to have a lawyer as a member of the Chiropractors’ Registration Board.

645. *Civil Judgments Enforcement Act 2004* amended

The definition of “lawyer” has been changed to “legal practitioner” meaning an Australian legal practitioner. The term is used in relation to legal proceedings.

646. *Civil Liability Act 2002* amended

“Legal practitioner” has been defined to mean an Australian lawyer and “firms of legal practitioners” have been changed to “law practice” as defined in the *Legal Profession Act*. The terms are used in relation to restrictions on advertising legal services.

647. *Coal Industry Tribunal of Western Australia Act 1992* amended

The definition of “legal practitioner” has been changed to mean an Australian legal practitioner. The provisions using this term are connected with legal proceedings.

648. *Commercial Arbitration Act 1985* amended

The definition of “legal practitioner” has been changed to mean an Australian legal practitioner. The provisions using this term are connected with legal proceedings. The reference to “legally qualified person” in relation to parties to proceedings has been changed to “Australian lawyer”. If one of the parties is an Australian lawyer, the other party may be represented by a legal practitioner.

649. *Companies (Co-operative) Act 1943* amended

The term “solicitor” has been defined so as to mean an Australian legal practitioner. The relevant provisions are concerned with matters such as signing documents relating to the registration and incorporation of companies.

650. *Constitutions Acts Amendment Act 1899* amended

References to the *Legal Contribution Trust Act* have been changed to the “*Legal Profession Act 2007*”.

651. *Consumer Affairs Act 1971* amended

The section which refers to services under the *Legal Practice Act* has been changed to refer to the *Legal Profession Act*.

652. *Coroners Act 1996* amended

The term “legal practitioner” has been defined as meaning an Australian legal practitioner. The relevant provisions relate to such things as the prohibition on the State Coroner to practise as a legal practitioner.

653. *Corporations (Western Australia) Act 1990* amended

References to “barrister and solicitor” have been amended to be an Australian legal practitioner within the meaning of the *Legal Profession Act*. The relevant provisions are concerned with legal proceedings.

654. *Corruption and Crime Commission Act 2003* amended

The definition of “legal practitioner” is to be defined as meaning an Australian legal practitioner. The relevant provisions are concerned with legal proceedings.

655. *Criminal Injuries Compensation Act 2003* amended

The definition of “lawyer” has been replaced with the definition of “legal practitioner” as meaning an Australian legal practitioner. The relevant provisions are concerned with legal proceedings. The requirement that the Chief Assessor and Assessors be lawyers has been changed to them being required to be Australian lawyers.

656. *Criminal Investigation Act 2006* amended

The definition of “lawyer” has been replaced with the definition of “legal practitioner” as meaning an Australian legal practitioner. The relevant provisions are concerned with legal proceedings.

657. *Criminal Procedure Act 2004* amended

The definition of “lawyer” has been replaced with the definition of “legal practitioner” as meaning an Australian legal practitioner. The relevant provisions are concerned with legal proceedings. References to the *Legal Practice Act* have been replaced with references to the *Legal Profession Act*.

658. *Debt Collectors Licensing Act 1964* amended

References to “certificated practitioner” have been changed to “Australian legal practitioner”.

659. *Director of Public Prosecutions Act 1991* amended

“Australian lawyer” has been inserted as a defined term and is used in relation to the requirement for appointment. The term legal practitioner is defined as meaning an Australian legal practitioner and is also used in relation to the type of experience required for appointments. To be appointed as the Director a person is to be an Australian lawyer but is also required to have had not less than 8 years’ legal experience which is defined as having been a legal practitioner. To be appointed as Deputy Director a person is to be an Australian lawyer with 5 years’ legal experience. This would allow someone such as a retired practitioner, who is still an Australian lawyer, to be appointed. The term legal practitioner is also used in provisions relating to legal proceedings.

660. *District Court of Western Australia Act 1969* amended

“Australian lawyer” has been inserted as a defined term and is used in relation to the requirement for appointment. The term legal practitioner is defined as meaning an Australian legal practitioner and is also used in relation to the type of experience required for appointments. To be appointed as a judge a person is to be an Australian lawyer but is also required to have had not less than 8 years’ legal experience which is defined as having been a legal practitioner. This would allow someone such as a retired practitioner, who is still an Australian lawyer, to be appointed. The reference to “certificated practitioners” being entitled to appear in the District Court on someone’s behalf has been changed to “legal practitioner”.

661. *Equal Opportunity Act 1984* amended

The definition of “legal practitioner” is deleted. Although the term is defined, it is not used in the Act and is, therefore, redundant.

662. *Evidence Act 1906* amended

The amendment deals with a section that enables legal practitioners from other jurisdictions to participate in Western Australian proceedings by, for example, video link. It replaces references to “barrister” and “solicitor” to “Australian legal practitioner”.

663. *Family Court Act 1997* amended

The term “certificated practitioner” which is used in the definition of “independent children’s lawyer” is changed to an Australian legal practitioner. “Australian lawyer” has been inserted as a defined term and is used in relation to the requirement for appointment as a Judge to the Court. “Legal practitioner” is defined as meaning an Australian legal practitioner and is also used in relation to the type of experience required for appointments. To be appointed as a judge a person is to be an Australian lawyer but is also required to have had not less than 8 years’ legal experience which is defined as having been a legal practitioner. This would allow someone such as a retired practitioner, who is still an Australian lawyer, to be appointed.

664. *Finance Brokers Control Act 1975* amended

The “certificated practitioner” has been replaced by “Australian legal practitioner”. The relevant provisions relate to a legal practitioner who is also engaged in finance broking.

665. *Gas Pipeline Access (Western Australia) Act 1998* amended

The definition of “legal practitioner” as meaning a certificated practitioner is changed to meaning an Australian legal practitioner. The relevant provisions relate to appointment of legal practitioners to the Western Australian Gas Review Board.

666. *Gender Reassignment Act 2000* amended

The reference to “legal practitioner” has been changed to “Australian lawyer”. The relevant provision is concerned with the need to have a lawyer as a member of the Gender Reassignment Board.

667. *Guardianship and Administration Act 1990* amended

Legal practitioner is now defined as meaning an Australian legal practitioner. The relevant provisions are concerned with legal proceedings. References to the *Legal Practice Act* have been replaced with references to the *Legal Profession Act*.

668. *Industrial Relations Act 1979* amended

The definition of “legal practitioner” as meaning a certificated practitioner is changed to meaning an Australian legal practitioner. “Australian lawyer” has been inserted as a defined term and is used in relation to the requirement for appointment as President of the WA Industrial Relations Commission. The term legal practitioner is defined as meaning an Australian legal practitioner and is also used in relation to the type of experience required for appointments. To be appointed as a President a person is to be an Australian lawyer but is also required to have had not less than 5 years’ legal experience which is defined as having been a legal practitioner. This would allow someone such as a retired practitioner, who is still an Australian lawyer, to be appointed.

669. *Juries Act 1957* amended

The definition of “prosecuting officer” and other provisions relating to legal proceedings have been changed to make reference to an Australian legal practitioner. The reference to legal practitioners being ineligible to serve on juries has been changed to Australian lawyers being ineligible.

670. *Jurisdictions of Courts (Cross-vesting) Act 1987* amended

The terms “barrister” and “solicitor” which are used in relation to legal proceedings are changed to “legal practitioner”.

671. *Land Valuers Licensing Act 1978* amended

The term “lawyer” is inserted and defined as meaning an Australian lawyer. It is used in relation to the qualifications for being appointed as chairperson of the Land Valuers Licensing Board. “Legal practitioner” is now defined as meaning an Australian legal practitioner and is used in provisions relating to legal proceedings as well as to appointments. In relation to the chairperson, the appointee must be an Australian lawyer with at least 7 years’ legal experience which means experience as a legal practitioner.

672. *Law Reform Commission Act 1972* amended

Reference to “legal practitioner” is now changed to having the meaning of an Australian legal practitioner. The terms “barrister” and “solicitor” have been changed

to Australian legal practitioner. The relevant provisions relate to membership of the Commission.

673. *Law Society Public Purposes Trust Act 1985* amended

The term “bank” is inserted in the definitions. It has the meaning of an authorised deposit-taking institution under banking legislation. References to the *Legal Practice Act* have been replaced with references to the *Legal Profession Act*.

674. *Legal Aid Commission Act 1976* amended

The terms “Australian legal practitioner” are used in provisions relating to legal proceedings and “Australian lawyer” in other instances.

675. *Liquor Control Act 1988* amended

The term “legal practitioner” has been replaced by “lawyer” which is defined as an Australian lawyer. The relevant provisions relate to the membership of the Liquor Commission.

676. *Long Service Leave Act 1958* amended

The “certificated practitioner” has been replaced by “Australian legal practitioner”. The relevant provisions relate to legal proceedings.

677. *Magistrates Court Act 2004* amended

“Legal practitioner” is now defined as meaning an Australian legal practitioner. It is used in relation to appointments as a magistrate.

678. *Magistrates Court (Civil Proceedings) Act 2004* amended

“Lawyer” is replaced by “legal practitioner” which is defined as meaning an Australian legal practitioner. The relevant provisions relate to legal proceedings.

679. *Medical Radiation Technologists Act 2006* amended

The requirement that one of the Registration Board members be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

680. *Mental Health Act 1996* amended

“Legal practitioner” is now defined as an Australian legal practitioner, and the definition of “lawyer” as meaning an Australian lawyer has been inserted. “Australian lawyer” is used in provisions such as those relating to appointment to boards. “Legal practitioner” is used in relation to matters such as payment for legal representation.

681. *Mining Act 1978* amended

References to legal costs determinations under the *Legal Practice Act* have been changed to references to costs determinations under the *Legal Profession Act*.

682. *Motor Vehicle (Third Party Insurance) Act 1943* amended

References to legal costs determinations under the *Legal Practice Act* have been changed to references to costs determinations under the *Legal Profession Act*.

683. *Nurses and Midwives Act 2006* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

684. *Oaths, Affidavits and Statutory Declarations Act 2005* amended

The term “experienced lawyer” is now defined as an Australian legal practitioner with at least 2 years’ experience. Other references to “lawyer” have been replaced with “legal practitioner”. The relevant provisions relate to witnessing documents such as statutory declarations.

685. *Occupational Therapists Act 2005* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

686. *Official Prosecutions (Accused’s Costs) Act 1973* amended

References to legal costs determinations under the *Legal Practice Act* have been changed to references to costs determinations under the *Legal Profession Act*.

687. *Optometrists Act 2005* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

688. *Osteopaths Act 2005* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

689. *Physiotherapists Act 2005* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

690. *Planning and Development Act 2005* amended

“Legal practitioner” is now defined as an Australian legal practitioner. The relevant provisions relate to legal representation.

691. *Podiatrists Act 2005* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

692. *Police Act 1892* amended

The definition of “legal practitioner” is deleted. Although the term is defined, it is not used in the Act and is, therefore, redundant.

693. *Psychologists Act 2005* amended

The requirement that one of the Board members under this Act be a legal practitioner has been changed to one member being an Australian lawyer. The definition of “legal practitioner” has, therefore, been deleted.

694. *Public Notaries Act 1979* amended

The definition of “Australian lawyer” is inserted and is used in relation to qualification for appointment.

695. *Racing Penalties (Appeals) Act 1990* amended

The requirement that the chairperson of the Appeal Tribunal be a legal practitioner has been changed to them being an Australian lawyer. The definition of “legal practitioner” now has the meaning of an Australian legal practitioner and is used in provisions relating to legal representation.

696. *Real Estate and Business Agents Act 1978* amended

The definition of legal practitioner now has the meaning of an Australian legal practitioner.

697. *Registration of Deeds Act 1856* amended

“Legal practitioner” is now defined as having the meaning of an Australian lawyer. The relevant provisions relate to the signing of documents.

698. *Residential Tenancies Act 1987* amended

The definition of “legal practitioner” has been changed to mean an Australian legal practitioner. The provisions using this term are connected with legal proceedings. The reference to “legally qualified person” in relation to parties to proceedings has been changed to “Australian lawyer”. If one of the parties is an Australian lawyer, the other party may be represented by a legal practitioner.

699. *Restraining Orders Act 1997* amended

“Legal practitioner” is now defined as meaning an Australian legal practitioner. The relevant provisions relate to legal representation.

700. *Royal Commission (Police) Act 2002* amended

“Legal practitioner” is now defined as meaning an Australian legal practitioner. The relevant provisions relate to legal proceedings.

701. *Sale of Goods (Vienna Convention) Act 1986* amended

“Legal practitioner” is now defined as meaning an Australian legal practitioner. The relevant provisions relate to certifying documents.

702. *Sale of Land Act 1970* amended

“Certificated practitioner” is changed to “Australian legal practitioner”. The relevant provisions relate to the payment of money from land sales.

703. *Security and Related Activities (Control) Act 1996* amended

“Certificated practitioner” is changed to “Australian legal practitioner”. The relevant provisions relate to investigations undertaken in accordance with what will now be the *Legal Profession Act*.

704. *Settlement Agents Act 1981* amended

“Legal practitioner” now defined as meaning an Australian legal practitioner. The term is in relation to the membership of the Supervisory Board and also in relation to legal representation.

705. *Solicitor-General Act 1969* amended

“Lawyer” is defined as meaning an Australian lawyer and “legal experience” is defined as standing and practice as a legal practitioner. To be Solicitor General a person must be a lawyer and have had at least 8 years’ legal experience, so they would have had to been a legal practitioner.

706. *State Administrative Tribunal Act 2004* amended

“Legal experience” is defined as standing and practice as a legal practitioner, “legal practitioner” is defined as an Australian legal practitioner and a “qualified person” is defined as meaning an Australian lawyer. The relevant provisions relate to legal representation.

707. *Strata Titles Act 1985* amended

The requirement that the Commissioner of Titles be a legal practitioner, barrister or solicitor has been changed to one member being an Australian lawyer.

708. *Suitors' Fund Act 1964* amended

References to the *Legal Practice Act* have been changed to references to the *Legal Profession Act*.

709. *Supreme Court Act 1935* amended

"Lawyer" is defined as meaning an Australian lawyer and "legal experience" is defined as standing and practice as a legal practitioner. To be appointed to the Supreme Court a person must be a lawyer and have had at least 8 years' legal experience, so they would have had to been a legal practitioner. This amendment, however, gives the flexibility to appoint a person who has ceased to practice but who is still an Australian lawyer.

710. *Terrorism (Preventative Detention) Act 2006* amended

The definition of "lawyer" is not defined as meaning an Australian lawyer. This is in keeping with national model legislation.

711. *Transfer of Land Act 1893* amended

The definition of "Australian lawyer" is inserted. The relevant provisions relate to the Commissioner of Titles and other offices.

712. *Western Australian College of Teaching Act 2004* amended

"Certificated practitioner" has been changed to "an Australian legal practitioner". The relevant provisions relate to representation at appearances before an inquiry.

713. *Workers' Compensation and Injury Management Act 1981* amended

References to legal costs determinations under the *Legal Practice Act* have been changed to references to costs determinations under the *Legal Profession Act*. References to the *Legal Practice Act* have been changed to references to the *Legal Profession Act*.

714. *Young Offenders Act 1994* amended

"Lawyer" is defined as an Australian lawyer. The relevant provision deals with matters such as prohibiting lawyers from participating in juvenile justice team meetings.

