

**NORTHERN TERRITORY OF AUSTRALIA**

**LEGAL PRACTITIONERS ACT**

As in force at 21 July 1999

**Table of provisions**

<b>Part I</b>	<b>Preliminary</b>	
1	Short title .....	1
2	Commencement .....	1
6	Definitions.....	1
<b>Part II</b>	<b>The Law Society</b>	
7	Incorporation of Law Society .....	4
<b>Part III</b>	<b>Legal practitioners of the Supreme Court</b>	
<b>Division 1</b>	<b>The Admission Board</b>	
8	Legal Practitioners Admission Board.....	5
9	Vacation of office of members of Admission Board .....	6
10	Meetings of Admission Board .....	6
<b>Division 2</b>	<b>Admission of legal practitioners</b>	
11	Rules of admission .....	6
12	Mutual recognition of entitlement to practise .....	7
13	Functions and powers of Admission Board.....	7
14A	Admission fees .....	7
15	Law Society may object to admission.....	7
16	Counsel to practise independently.....	8
19	Right to practise.....	8
<b>Division 3</b>	<b>Queen's Counsel</b>	
20	Her Majesty's Counsel.....	8
<b>Division 4</b>	<b>Precedence of legal practitioners</b>	
21	Precedence of legal practitioners .....	9
<b>Part IV</b>	<b>Practising certificates</b>	
22	Certain practitioners to hold practising certificates .....	9
23	Application for practising certificate .....	11
24	Issue of practising certificates.....	11
25	Limitations on issue of unrestricted practising certificates .....	12

---

26	Practising certificates not to be issued unless certain examinations taken.....	13
27	General grounds for refusal, cancellation or suspension of practising certificates .....	13
27A	Restriction on issue of practising certificate.....	14
29	Court may direct issue of certificate or revoke cancellation or suspension .....	15
30	Persons to be deemed to hold practising certificates .....	15
31	Expiry, &c., of certificate .....	16
32	Fees for practising certificates .....	16
33	Register of holders of practising certificates .....	17
33A	Notice of change of name or address.....	17
34	Fidelity fund contributions, &c., to be paid before issue of practising certificate.....	18
35	Cancelled certificate to be delivered to Master .....	18
35AA	Mutual recognition registration authority.....	18

#### **Part IVA Professional indemnity insurance**

35A	Interpretation .....	19
35B	Professional indemnity insurance .....	19

#### **Part VI Discipline**

##### **Division 1 Definition**

45	Meaning of <i>professional misconduct</i> .....	21
----	---	----

##### **Division 2 Proceedings before Law Society**

46	Complaint to Law Society .....	23
46A	Direction by Attorney-General .....	23
46B	Investigations.....	23

##### **Division 3 Functions and powers of Law Society**

47	Functions and powers of Law Society .....	23
47A	Power of delegation.....	24
47B	Offence to delay .....	24
47C	Confidentiality.....	25

##### **Division 4 Legal Practitioners Complaints Committee**

48	Establishment of the Legal Practitioners Complaints Committee .....	25
48A	Appointment &c., of members .....	26
48B	Quorum, &c. ....	27
48C	Validity of Acts and protection of members.....	27
48D	Secretary of Complaints Committee .....	27

48E	Confidentiality .....	28
<b>Division 5 Appeals from the Law Society</b>		
49	Appeal against finding, admonishment or fine .....	28
49A	Appeal by rehearing .....	28
<b>Division 6 Proceedings before Complaints Committee</b>		
50	Charges before Complaints Committee .....	29
50A	Notice of inquiry .....	30
51	Powers of Complaints Committee .....	31
51A	Costs .....	34
51B	Appeal to Supreme Court .....	34
51C	Operation of order may be suspended .....	35
51D	Rules of Complaints Committee .....	35
<b>Division 7 Proceedings before the Supreme Court</b>		
52	Proceedings before Supreme Court .....	36
52A	Practising whilst disqualified .....	37
<b>Part VII Trust moneys and trust accounts</b>		
<b>Division 1 Preliminary</b>		
53	Definitions .....	37
54	Joint and several responsibility of partners .....	38
<b>Division 2 Trust moneys</b>		
55	Moneys received by legal practitioner to be held in trust .....	38
<b>Division 3 Trust bank accounts</b>		
56	General trust accounts .....	39
57	Payment into trust bank account .....	39
58	Special trust accounts .....	39
59	Payments out of trust bank accounts .....	40
60	Advice of opening or change in name of trust bank accounts .....	40
61	Protection of trust moneys .....	40
62	Provision applicable to banks .....	41
<b>Division 4 Legal practitioners' records</b>		
63	Accounting records .....	41
64	Receipts for trust moneys .....	42
65	Half-yearly statements of trust moneys .....	42

---

**Division 5          Audit**

66	Interpretation .....	43
67	Audit of trust accounts .....	43
68	Qualifications of auditors .....	43
69	Legal practitioner to furnish documents, &c., to auditor .....	44
70	Auditor to report.....	44
71	Interim report by auditor .....	45
72	Provisions applicable in case of default of auditor .....	45
73	Statutory declaration that no trust moneys held.....	46
74	Secrecy.....	46

**Division 6          Examination of legal practitioners' records**

75	Appointment of examiner.....	46
76	Production of books, &c.....	47
77	Order to stop payments from trust bank accounts .....	48
78	Secrecy.....	48

**Division 7          Deposits with the Trust Committee**

79	Interpretation .....	48
79A	Incorporation of Trust Committee .....	50
79B	Removal of member from office.....	51
79C	Quorum of Trust Committee and voting.....	51
79D	Investments by Trust Committee .....	51
80	Legal practitioner to deposit portion of trust moneys with Committee .....	51
81	Repayment of deposit.....	52
82	Obligation to deposit subject to availability of trust funds .....	53
83	Variation of notional amount by Trust Committee .....	54
84	Keeping of records and audit, &c.....	54
84A	Payment of investment income by Trust Committee .....	55

**Part VIII          The Fidelity Fund****Division 1          General**

85	Interpretation .....	55
86	Incorporation of Fidelity Fund Committee .....	55
87	Removal of member from office.....	57
88	Quorum of committee and voting.....	57
89	Fidelity fund .....	57
89A	Allocation from Fidelity Fund .....	58
90	Annual contributions to Fund .....	58

**Division 2          Claims against the Fidelity Fund**

91	Persons who may apply for compensation .....	59
----	--	----

92	Law Society may call for claims .....	59
93	Time for making applications .....	59
94	Manner of making claims .....	60
95	Committee to consider applications .....	60
96	Review of Committee's determination .....	61
97	Payment of compensation .....	61
98	Subrogation .....	62
99	Legal practitioners may claim in certain cases .....	62
100	Interim payments of compensation .....	63

### **Division 3          Levies**

101	Levies to supplement Fund.....	63
-----	--------------------------------	----

### **Part IX              Appointment of receivers**

102	Interpretation .....	64
103	Appointment of receiver.....	65
104	Powers of receiver in relation to trust moneys and trust property .....	66
105	Notice to bank.....	67
106	Examination of legal practitioner and other persons as to trust moneys and trust property .....	67
107	Power of court to order delivery of trust property to receiver .....	68
108	Power of receiver to take delivery of property receivable by legal practitioners after appointment of receiver .....	68
109	Right of legal practitioner, partnership or persons to apply to court for an order in respect of property .....	69
110	Liens for costs on property held by receiver .....	70
111	Receiver to report to Court .....	71
112	Power of Court to give directions.....	71
113	Unclaimed money.....	71
114	Termination of receivership .....	72
115	Remuneration of receiver .....	73
116	Payments by receiver to be deemed to be made by legal practitioner.....	73
117	Destroying or concealing records .....	73
118	Reimbursement of receiver.....	73
118A	Interpretation .....	74

### **Part X              Costs**

119	Costs and disbursements not recoverable until statement delivered.....	74
120	Taxation of costs and disbursements on application to Master .....	75
121	Form of notice, &c. ....	76
122	Taxation in absence of party.....	76
123	Matters to be considered on taxation.....	76
124	Costs of taxation.....	77

125	Certificate of taxation .....	77
126	Review of taxation .....	78
127	Stay of proceedings .....	78
128	Amount due by legal practitioner recoverable as a debt .....	78
129	Agreements as to costs .....	78
130	Powers of court where contract not fair and reasonable.....	79

## **Part XI            Offences by unqualified persons**

131	Persons other than legal practitioners not to hold themselves out to be qualified .....	80
132	Preparation of certain documents by persons who are not legal practitioners .....	80
133	Preparation of papers relating to application for probate .....	81
134	Offences by corporations .....	82

## **Part XII            Practice of foreign law**

### **Division 1           Preliminary**

135	Object .....	82
135A	Definitions .....	82
135B	Operation of Part .....	84

### **Division 2           Local registration of foreign lawyers**

135C	Registration requirement .....	84
135D	Registration notice .....	84
135E	Fee for registration .....	87
135F	Entitlement to registration .....	88
135G	Conditions.....	88
135H	Notification of decision.....	89
135J	Duration of registration and annual fee.....	89
135K	Register .....	90
135L	Cancellation of registration .....	90
135M	Appeals.....	91

### **Division 3           Legal practice**

135N	Scope of practice .....	92
135P	Form of practice.....	92
135Q	Application of professional ethical and practice standards .....	93
135R	Offences and disciplinary action .....	93
135S	Letterhead and other identifying documents.....	93
135T	Designation.....	94
135U	Advertising.....	95
135V	Employment of domestic lawyers by foreign lawyers .....	95
135W	Indemnity insurance .....	96
135X	Trust accounts and Fidelity Fund contributions .....	96

---

**Part XIII            Miscellaneous**

136	Legal practitioner not to share receipts with persons not practising as legal practitioners .....	96
137	Employment of persons who have ceased to be legal practitioners .....	97
138	Unclaimed trust moneys .....	97
138A	General offence .....	98
139	Fines to be paid into fidelity fund .....	98
140	Service of documents .....	98
141	Regulations.....	98

**First Schedule**

**ENDNOTES**





# NORTHERN TERRITORY OF AUSTRALIA

---

As in force at 21 July 1999

---

## LEGAL PRACTITIONERS ACT

### An Act relating to legal practitioners

#### Part I Preliminary

##### 1 Short title

This Act may be cited as the *Legal Practitioners Act*.

##### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice published in the *Gazette*.

##### 6 Definitions

In this Act, unless the contrary intention appears:

**Admission Board** means the Legal Practitioners Admission Board of the Northern Territory.

**Chairman** means the person appointed under section 48(5)(a) as the Chairman of the Legal Practitioners Complaints Committee and includes the Deputy Chairman when acting as Chairman.

**Complaints Committee** means the Legal Practitioners Complaints Committee established by section 48(1).

**Counsel** means a person whose name is on the Roll of Legal Practitioners together with a notation that he is to practise as Counsel.

**Court** means the Supreme Court of the Northern Territory of Australia.

**Deputy Chairman** means the person appointed under section 48(5)(b) as the Deputy Chairman of the Legal Practitioners Complaints Committee.

**Fidelity Fund** or **Fund** means the Legal Practitioners' Fidelity Fund of the Northern Territory established by section 89.

**Fidelity Fund Committee** or **Committee** means the Legal Practitioners' Fidelity Fund Committee established under section 86.

**Full Court** means the Full Court within the meaning of the *Supreme Court Act*.

**Law Society** means The Law Society of the Northern Territory as constituted by section 7.

**legal aid services** means the provision of legal assistance (including the giving of legal advice) without charge to the person to whom the legal assistance is provided, whether or not the person actually makes a payment in respect of the assistance.

**legal practitioner:**

- (a) except in Parts VII, VIII, IX and X, means a person whose name is on the Roll of Legal Practitioners;
- (b) in Parts VII, VIII, IX and X, means a person whose name is on the Roll of Legal Practitioners and who holds an unrestricted practising certificate, save that:
  - (i) it does not in any of those Parts include a local Counsel or visiting Counsel; and
  - (ii) it does not in Part VII, VIII or IX include the Solicitor-General of the Northern Territory, the Director of Public Prosecutions, a person acting in the name of the Solicitor for the Northern Territory, the holder for the time being of the office of Director of the Australian Legal Aid Office, Northern Territory, Commonwealth Attorney-General's Department, or the Director of Legal Aid within the meaning of the *Legal Aid Act*; and
- (c) includes a person whose name is not on the Roll of Legal Practitioners but who has notified the local registration authority under section 19(1) of the *Mutual Recognition Act 1992* of the Commonwealth and whose application under that Act has not been determined.

**Master** means the Master of the Court.

**professional conduct rules** has the meaning given by section 45(2)(a)(ii).

**Registrar** means the Registrar appointed under the *Supreme Court Act*.

**restricted practising certificate** means a restricted practising certificate class 1, class 2 or class 3.

**restricted practising certificate class 1** means a practising certificate certifying to the entitlement of the holder to perform the functions of a legal practitioner whilst in the employ of another person.

**restricted practising certificate class 2** means a practising certificate certifying to the entitlement of the holder to practise as a legal practitioner on his own account subject to the conditions that he shall so practise:

- (a) as a barrister only; and
- (b) whilst under the pupillage, for a period, commencing on the date on which the practising certificate is expressed to take effect, of not less than 12 months but not more than 2 years, of a local Counsel who holds an unrestricted practising certificate.

**restricted practising certificate class 3** means a practising certificate certifying to the entitlement of the holder, whilst in the employ of another person, to perform the functions of a legal practitioner to the extent authorized by regulations made for the purposes of section 22(3B).

**Roll of Legal Practitioners** means the roll kept in pursuance of the Rules.

**Rules** means the Rules made under this Act.

**Secretary of the Complaints Committee** means the person appointed under section 48D to be the Secretary of the Legal Practitioners Complaints Committee.

**Trust Committee** means the Legal Practitioners' Trust Committee established under section 79A.

**trust moneys** means moneys that are, by virtue of section 55, to be deemed to be held by a legal practitioner in trust for a client of that legal practitioner.

**unrestricted practising certificate** means a practising certificate certifying to the entitlement of the holder to practise as a legal practitioner on his own account or in partnership with another legal practitioner.

## **Part II                    The Law Society**

### **7                    Incorporation of Law Society**

- (1) The Law Society of the Northern Territory is hereby constituted a body corporate by the name "The Law Society of the Northern Territory".
- (2) The Law Society:
  - (a) has perpetual succession;
  - (b) shall have a common seal;
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Law Society affixed to a document and shall presume that it was duly affixed.
- (4) The first members of the Law Society shall be the persons who, immediately before the commencement of this Part, were members of The Law Society of the Northern Territory.
- (5) The Constitution of the Law Society is, subject to this Act, the Constitution of The Law Society of the Northern Territory as in force immediately before the commencement of this Act.
- (6) An amendment of the Constitution of the Law Society shall not take effect unless it is approved by the Attorney-General.
- (7) An amendment of the Constitution of the Law Society that is approved by the Attorney-General takes effect:
  - (a) where the amendment specifies a day on which it is to take effect, being a day not earlier than the day on which the Attorney-General approves the amendment – on the day so specified; and
  - (b) in any other case – on the day on which the Attorney-General approves the amendment.
- (8) Any property held, immediately before the commencement of this Part, by a person, in trust or otherwise, for or on behalf of The Law Society of the Northern Territory is, subject to any charge or liability affecting the property, vested in the Law Society.

- (9) A person is not entitled to be a member of the Law Society unless his name is on the Roll of Legal Practitioners.
- (10) A person who holds a practising certificate is entitled, on application to the Law Society, to be admitted to membership of the Society on payment of such fee for admission as is fixed by the Law Society.
- (11) A member of the Law Society is, while he holds a practising certificate, liable to pay to the Society any annual subscription to the Society's funds.

## **Part III            Legal practitioners of the Supreme Court**

### **Division 1        The Admission Board**

#### **8                  Legal Practitioners Admission Board**

- (1) There shall be a Legal Practitioners Admission Board of the Northern Territory consisting of the Master and not more than 6 other members, being legal practitioners appointed by the Chief Justice, at least 2 of whom shall be legal practitioners practising in the Territory on their own account or in partnership and one of whom shall be appointed on the nomination of the Attorney-General.
- (2) Subject to section 9, a member of the Admission Board other than the Master holds office for the period that:
  - (a) commences on the date of the instrument of his appointment or, where the appointment is expressed to commence on some later date, on that later date; and
  - (b) ends on the next succeeding 30 September.
- (3) A member of the Admission Board other than the Master is eligible for reappointment.
- (4) In the event of there being a vacancy in the office of a member of the Admission Board, the Chief Justice may appoint a legal practitioner to hold the vacant office, and a person so appointed holds office from the date of his appointment to the next succeeding 30 September.
- (5) The Chief Justice may appoint a person to be the Secretary to the Admission Board.

## **9 Vacation of office of members of Admission Board**

- (1) The Court may, on the application of the Attorney-General, remove a member of the Admission Board, other than the Master, from office for misbehaviour or incapacity.
- (2) If a member of the Admission Board, other than the Master:
  - (a) becomes bankrupt;
  - (b) ceases to be a legal practitioner;
  - (c) ceases to hold the qualification for which he was appointed under section 8 and there is no other member of the Board holding that qualification; or
  - (d) is absent, except on leave granted by the Admission Board, from 3 consecutive meetings of the Board,the Court may remove him from office.

## **10 Meetings of Admission Board**

- (1) At a meeting of the Admission Board, 3 members constitute a quorum.
- (2) The Master shall preside at all meetings of the Admission Board at which he is present.
- (3) In the absence of the Master from a meeting of the Admission Board, the members present at the meeting shall elect one of their number to preside at that meeting.
- (4) The Admission Board shall hold meetings at such times and places as the Master directs or the Board determines.

## **Division 2 Admission of legal practitioners**

### **11 Rules of admission**

- (1) The Judges appointed under section 32(1) of the *Supreme Court Act* who are not additional Judges, or a majority of them, may make rules, not inconsistent with this Act, for and in relation to:
  - (a) the qualifications, requirements and procedure to be followed for admission to practise;
  - (b) all matters and things incidental or relating to such admissions;

- (c) the establishing and maintaining of the Roll of Legal Practitioners; and
  - (d) articles of clerkship.
- (2) The Rules may confer on the Admission Board or the Registrar powers and functions in relation to the matters specified in subsection (1) and the Admission Board or the Registrar may exercise those powers or perform those functions accordingly.

## **12 Mutual recognition of entitlement to practise**

For the purposes of the *Mutual Recognition Act 1992* of the Commonwealth, the Admission Board is the local registration authority in respect of an application for admission under that Act.

## **13 Functions and powers of Admission Board**

The Admission Board shall, in respect of an application for admission to practise, not being an application under the *Mutual Recognition Act 1992* of the Commonwealth, make a report in writing to the Court stating whether, in the opinion of the Board:

- (a) the applicant is of good fame and character and a fit and proper person to be admitted to practise;
- (b) the applicant has completed the academic requirements for admission as prescribed by the Rules; and
- (c) the applicant has complied with the practical requirements for admission.

## **14A Admission fees**

- (1) The Regulations may prescribe:
- (a) classes of applicants for admission; and
  - (b) an admission fee in respect of a class of applicants for admission.
- (2) An applicant for admission under the Rules shall pay to the Law Society the prescribed admission fee under subsection (1) in respect of the class of applicants to which he belongs.

## **15 Law Society may object to admission**

The Law Society is entitled to object to an application for admission under the Rules and to be heard on the hearing of the application.

**16 Counsel to practise independently**

A person whose name is entered on the Roll of Legal Practitioners with a notation that he is a Counsel shall not practise in the Territory otherwise than as a barrister and independently of another legal practitioner.

Penalty: 50 penalty units.

**19 Right to practise**

Subject to this Act, a person whose name is on the Roll of Legal Practitioners:

- (a) is entitled to practise in the Territory:
  - (i) as a barrister and solicitor;
  - (ii) as a barrister; or
  - (iii) as a solicitor; and
- (b) has the right of audience in any court of the Territory.

**Division 3 Queen's Counsel**

**20 Her Majesty's Counsel**

- (1) The Administrator may, by commission, appoint a person who is a legal practitioner to be one of Her Majesty's Counsel for the Territory.
- (2) A person so appointed has, in and in relation to the Territory, the same status, rights, privileges and responsibilities as he would have had if he had been appointed by Her Majesty as one of Her Majesty's Counsel for the Territory.
- (3) There is payable to the Territory by a legal practitioner appointed as one of Her Majesty's Counsel such fee, in respect of his appointment, as is prescribed.



**Division 4      Precedence of legal practitioners****21      Precedence of legal practitioners**

- (1) Subject to the rights of precedence of the Attorney-General, the Solicitor-General and the Director of Public Prosecutions, Her Majesty's Counsel for the Commonwealth or for the Territory, have, in and in relation to the Territory:
  - (a) precedence over other legal practitioners; and
  - (b) precedence amongst themselves according to the respective dates of their appointment as Her Majesty's Counsel for the Commonwealth or for the Territory.
- (2) If, on the date of his appointment as one of Her Majesty's Counsel for the Territory, a person is one of Her Majesty's Counsel for a State or another Territory, the date on which that person was first appointed as one of Her Majesty's Counsel for a State or another Territory shall, for the purposes of this section, be deemed to be the date on which that person was appointed one of Her Majesty's Counsel for the Territory.
- (3) Subsection (2) applies whether the date on which a person was first appointed as one of Her Majesty's Counsel for a State or another Territory is a date before, on or after the date of commencement of this Part.
- (4) Where the date on which one person is, or is to be deemed to have been, appointed as one of Her Majesty's Counsel for the Territory is the same date as the date on which another person is, or is to be deemed to have been, appointed as one of Her Majesty's Counsel for the Territory, those persons have, in and in relation to the Territory, precedence amongst themselves according to the respective dates of their first admission to practise in Australia, either as a barrister or solicitor, or both.
- (5) Subject to this section legal practitioners have, in and in relation to the Territory, precedence amongst themselves according to the respective dates of their first admission to practise in Australia, whether as a barrister or solicitor, or both.

**Part IV      Practising certificates****22      Certain practitioners to hold practising certificates**

- (1) A legal practitioner shall not practise in the Territory as a legal practitioner on his own account or in partnership with another legal

practitioner unless he holds, or is, in pursuance of section 30, to be deemed to hold, a current unrestricted practising certificate or restricted practising certificate class 2.

- (2) For the purpose of subsection (1), a person shall not be taken to practise as a legal practitioner in the Territory by reason only that he is a member of a partnership whose practice in the Territory is conducted by another member or other members of the partnership.
- (3) A legal practitioner shall not be employed in the Territory by another legal practitioner who is practising as a legal practitioner unless the first-mentioned legal practitioner holds, or is, in pursuance of section 30 of this Act, to be deemed to hold, a current unrestricted practising certificate or restricted practising certificate class 1.
- (3A) Subject to the *Judiciary Act 1903* of the Commonwealth, a legal practitioner who is an officer or employee of a department, body or organization for the time being prescribed for the purposes of section 25(1)(c) shall not practise in the Territory as a legal practitioner unless he holds, or is in pursuance of section 30 to be deemed to hold, a current unrestricted practising certificate or restricted certificate class 1.
- (3B) A legal practitioner who is employed by another person otherwise than as mentioned in subsection (3) or (3A) shall not practise in the Territory as a practitioner unless:
- (a) he holds, or is in pursuance of section 30 to be deemed to hold, a current restricted practising certificate class 3; and
- (b) the functions he performs in that respect are of a description or descriptions which he is authorized to perform by regulations under this Act,

and regulations prescribing functions for the purposes of this subsection may make different provision with respect to different classes or descriptions of employment.

- (4) A legal practitioner is not entitled to recover any costs or disbursements in respect of any work of a professional nature done by him as a legal practitioner if, at the time at which the work was done, he was not the holder of a current unrestricted practising certificate or restricted practising certificate class 2.
- (5) Notwithstanding subsection (4) and subject to subsection (6), an organisation whose main purpose is to provide legal aid services is entitled to recover costs and disbursements in respect of work of a professional nature done by a legal practitioner who is the holder of a current unrestricted practising certificate or a restricted practising

certificate class 1, employed by the organisation.

- (6) For the purposes of subsection (5), the making or enforcement of an order for costs, or the determination of an entitlement to costs, in a proceeding before a court or tribunal to which a person to whom legal assistance provided is a party, the person shall be deemed to be liable to pay the ordinary professional costs of the legal services provided to that person or in connection with the proceeding and any disbursements and out-of-pocket expenses incurred in or in connection with the provision of those services.

### **23 Application for practising certificate**

An application for the issue of a practising certificate may be made only by a person whose name is on the Roll of Legal Practitioners, shall be in writing addressed to the Law Society and shall state:

- (a) in the case of an application for an unrestricted practising certificate where the person practises or proposes to practise in the Territory:
- (i) the address at which he practises or proposes to practise in the Territory; and
  - (ii) in partnership with other persons – the names of the other partners and the name under which the partnership is, or will be, carried on;
- (c) in the case of an application for:
- (i) a restricted practising certificate class 1 or a restricted practising certificate class 3 – the name and address of the person's employer or proposed employer; and
  - (ii) a restricted practising certificate class 2 – the address at which the person practices or proposes to practise in the Territory.

### **24 Issue of practising certificates**

- (1) Subject to sections 25, 26, 27 and 27A the Law Society shall, upon:
- (a) payment to it of the fee referred to in section 32(1); and
  - (b) being satisfied that the contribution referred to in section 90 and levy (if any) referred to in section 101 have been paid,
- issue to the applicant the practising certificate sought by the applicant.

- (2) Where, in pursuance of section 25, 26,27 or 27A, the Law Society refuses to issue a practising certificate of the kind sought by the applicant, it shall forthwith give to the applicant notice of the refusal and of the ground on which it has refused to issue the practising certificate.

## **25 Limitations on issue of unrestricted practising certificates**

- (1) An unrestricted practising certificate shall not be issued to a legal practitioner unless, during the period of 5 years immediately preceding the date of his application for the practising certificate he has, for a period of not less than 2 years or for periods which, in the aggregate, are not less than 2 years:
- (a) served in a State or Territory under articles of clerkship;
  - (b) served as an employee of a legal practitioner in a State or Territory in the performance of work of a legal nature;
  - (c) served as an officer or employee in a department (including a department of the Commonwealth or of a State of the Commonwealth), body or organization prescribed for the purposes of this paragraph in the performance of work of a legal nature;
  - (e) practised in a State or Territory as a legal practitioner either on his own account or in partnership with another person; or
  - (f) served or practised, as the case may be, in any 2 or more of the capacities referred to in paragraphs (a), (b), (c), (d) and (e).
- (2) Notwithstanding subsection (1), the Law Society may issue an unrestricted practising certificate to a legal practitioner if it is satisfied:
- (a) that that person has, during the period of 5 years immediately preceding the date of his application for the practising certificate:
    - (i) practised in a State or Territory as a barrister for a period of not less than 2 years; or
    - (ii) practised in a State or Territory as a barrister for a period of not less than one year and served or practised, as the case may be, in any one or more of the capacities referred to in subsection (1) for a period of not less than one year or for periods which, in the aggregate, are not less than one year; and

- (b) that he has gained such experience that an unrestricted practising certificate should be issued to him.
- (3) Notwithstanding subsections (1) and (2), the Law Society may issue an unrestricted practising certificate to a legal practitioner if that person has at any time held an unrestricted practising certificate or its equivalent in a state or Territory and the Law Society is satisfied that that person has gained such experience that an unrestricted practising certificate should be issued to him.

**26 Practising certificates not to be issued unless certain examinations taken**

A practising certificate shall not be issued to a legal practitioner (not being a person referred to in section 25(3)) unless he has satisfied the Law Society by passing examinations or otherwise that he has an adequate knowledge of accounts and legal ethics.

**27 General grounds for refusal, cancellation or suspension of practising certificates**

- (1) The Law Society may refuse to issue a practising certificate, or may cancel a practising certificate or suspend it for a specified period, if the applicant for or holder of the certificate:
  - (a) is undergoing imprisonment;
  - (b) has been found guilty:
    - (i) in the Territory – of a crime, or of a simple offence involving dishonesty on his part; or
    - (ii) elsewhere – of an offence which would fall within subparagraph (i) if committed in the Territory;
  - (c) is or has become bankrupt, has compounded with his creditors or made an assignment of his remuneration for their benefit, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
  - (d) has contravened or failed to comply with a provision with respect to trust moneys or trust accounts contained in this or any other Act, in any regulations, or in the professional conduct rules;
  - (e) being an employee of another legal practitioner, or of a firm of legal practitioners, has in the opinion of the Law Society:
    - (i) acted dishonestly in relation to the trust accounts of that practitioner or firm; or

- (ii) by any act or omission caused (whether directly or indirectly) that practitioner or any member of that firm to contravene or fail to comply with any such provision as is mentioned in paragraph (d);
  - (f) has contravened or failed to comply with, or is in any respect in default under, a provision relating to his practise as a legal practitioner contained in this or any other Act, in any regulations, or in the professional conduct rules;
  - (g) has failed:
    - (i) to produce any book, account, document or writing when required to do so for the purposes of section 47(3) or 51(9); or
    - (ii) to comply with a summons issued by the Complaints Committee under section 51(1);
  - (h) has failed to comply with an order of the Court, the Complaints Committee or the Law Society;
  - (j) has failed to pay, within the time specified for payment or, if no time was specified, within a reasonable time, a fine imposed on him, or any costs, fees or expenses ordered to be paid by him, under this Act; or
  - (k) has in the opinion of the Law Society shown by his conduct in relation to his practise of the law (whether conduct in respect of a particular matter or a pattern of conduct) that he is not a fit and proper person to practise as a legal practitioner on his own account or in partnership.
- (2) The Law Society may also exercise its powers under subsection (1) where a report of an audit under Division 5 of Part VII or an examination under Division 6 of that Part discloses a deficiency in the trust moneys held by a legal practitioner, except where the deficiency was in the opinion of the Master excusable, and was made good before the date of the report.
- (3) Where the Law Society cancels or suspends a person's practising certificate, it shall give him notice in writing of the cancellation or suspension and the reasons therefor.

### **27A Restriction on issue of practising certificate**

Where legal practitioners are required, by the Regulations, to be insured against liabilities that may arise in the course of, or in relation to, legal practice, the Law Society shall not issue or renew a practising certificate unless the applicant for the issue or renewal

of a practising certificate produces evidence, to the satisfaction of the Law Society, that throughout the term for which the certificate is to be issued or renewed the legal practitioner is or will be insured to the prescribed extent against such liabilities.

## **29 Court may direct issue of certificate or revoke cancellation or suspension**

- (1) Where the Law Society has refused to issue a practising certificate of the kind sought by a person, that person may, within 14 days after he is given notice of the refusal, apply to the Court for an order under subsection (4).
- (2) A person whose practising certificate has been cancelled or suspended by the Law Society may apply to the Court for an order under subsection (5).
- (3) The Law Society shall be the respondent to an application under this section.
- (4) On an application under subsection (1) the Court may direct the Law Society to issue to the applicant a practising certificate of the kind sought by him or, if the applicant sought the issue of an unrestricted practising certificate, the issue to the applicant of a restricted practising certificate.
- (5) Where, on an application under subsection (2) the Court is satisfied that the circumstances are such that the cancellation or suspension of the applicant's practising certificate ought to be revoked, the Court may, subject to such terms and conditions (if any) as it thinks fit, by order revoke the cancellation or suspension of the applicant's practising certificate.
- (6) Where the Court makes an order under subsection (5), the revocation of the cancellation or suspension of the applicant's practising certificate shall take effect on and from the date of the order or such other date as is specified in the order.

## **30 Persons to be deemed to hold practising certificates**

- (1) Where the Law Society has refused to issue a practising certificate to a person or has cancelled or suspended a practising certificate held by a person, and the person has made application to the Court for an order under section 29(4) or (5), the Court, on an application made by the person for an order under this section, may in its discretion, order that that person shall, until the determination of that first-mentioned application, be deemed to be a person who holds a practising certificate of the kind specified in the order.

- (2) The Law Society shall be respondent to an application under this section.

### **31 Expiry, &c., of certificate**

- (1) A practising certificate takes effect on the date on which the certificate is expressed to take effect.
- (2) A practising certificate expires on 30 September next following the date on which the certificate takes effect.
- (3) Where the name of a person is removed from the Roll of Legal Practitioners, a practising certificate held by that person is, by force of this section, cancelled.
- (4) Where the right of a legal practitioner to practise in the Territory is suspended, a practising certificate held by the legal practitioner is, by force of this section, cancelled.

### **32 Fees for practising certificates**

- (1) The fee payable on an application for the issue of an unrestricted practising certificate or a restricted practising certificate is such amount as is from time to time prescribed as the fee payable for that type of certificate.
- (2) Where an application for the issue of a practising certificate is made after 1 October in any year and before the next succeeding 30 September, the fee payable for the issue of the practising certificate is an amount that bears to the fee applicable under subsection (1) the same proportion as the number of months in the period between the date of the application and the next succeeding 30 September bears to 12.
- (3) Where the Law Society issues a practising certificate to a person who has, within the period of 12 months immediately preceding the date of issue of the certificate, had his practising certificate cancelled or suspended:
  - (a) the fee payable in respect of the application for the issue of the practising certificate may be reduced or payment of the fee may be waived by the Law Society; and
  - (b) where the person has already paid a contribution to the Fidelity Fund in respect of a period including the period for which the certificate will be in force, the person is not required to pay a contribution to the Fidelity Fund.



**33 Register of holders of practising certificates**

The Law Society shall keep a register of the names of all persons holding current unrestricted practising certificates and a register of the names of all persons holding current restricted practising certificates.

**33A Notice of change of name or address**

- (1) The holder of an unrestricted practising certificate who:
- (a) commences to practise at an address, or under a name, other than that stated in the application for the practising certificate;
  - (b) commences to practise, as a member of a partnership, under a name different from the name stated in the application for the practising certificate; or
  - (c) ceases to practise at an address at which he was previously practising,

shall, within 14 days of commencing or ceasing so to practise, notify the Law Society and Master of the fact and of the new name or address, as the case may be.

- (2) The holder of a restricted practising certificate class 1 or a restricted practising certificate class 3 who:
- (a) commences employment with an employer other than the employer stated in the application for the practising certificate; or
  - (b) ceases employment with the employer so stated or with any subsequent employer,

and the holder of a restricted practising certificate class 2 who:

- (c) commences to practise at an address other than that stated in the application for the certificate; or
- (d) ceases to practise at an address at which he was previously practising,

shall, within 14 days of commencing or ceasing the employment in question or, as the case may be, so to practise, notify the Law Society of the fact and, in a case falling within paragraph (a) or (c), of the name and address of the new employer or the new address at which he practises.

**34 Fidelity fund contributions, &c., to be paid before issue of practising certificate**

Subject to section 32(2), the Law Society shall not issue a practising certificate unless the applicant for the certificate has paid:

- (a) the fee payable in respect of the application;
- (b) any contribution payable by him to the Fidelity Fund in respect of the period for which the practising certificate will be in force; and
- (c) any levy payable by him under section 101.

**35 Cancelled certificate to be delivered to Master**

(1) Subject to subsection (2), a legal practitioner who is given notice of the cancellation or suspension of his practising certificate shall forthwith deliver the certificate to the Law Society.

(2) Where:

- (a) a practising certificate has been cancelled or suspended;
- (b) an order has been made under section 30; and
- (c) on an application under section 29, the Court refuses to make an order under subsection (5) of that section,

the person who held the practising certificate shall, forthwith after the refusal, deliver the certificate to the Law Society.

(3) Where the cancellation or suspension of a practising certificate is revoked before the expiry of the certificate under section 31(2), the Law Society shall forthwith cause the certificate to be returned to the legal practitioner concerned.

**35AA Mutual recognition registration authority**

For the purposes of the *Mutual Recognition Act 1992* of the Commonwealth, the Law Society is the local registration authority in respect of an application for a practising certificate under this Part.

## **Part IVA Professional indemnity insurance**

### **35A Interpretation**

- (1) In this Part, unless the contrary intention appears:

**authorized insurer** means a person who carries on insurance business and is for the time being approved by the Law Society for the purposes of this Part.

**professional indemnity insurance** means insurance against loss arising from claims in respect of any description of civil liability (other than a prescribed description of civil liability) incurred by a legal practitioner or former legal practitioner in connection with:

- (a) his practice;
- (b) the practice of a firm of legal practitioners of which he is or formerly was a member;
- (c) a practising company of which he is or formerly was a director;  
or
- (d) a trust of which he is or formerly was a trustee,

or by an employee or former employee of that legal practitioner, firm, company or trust.

- (2) Nothing in this Part shall derogate from Division 2 of Part VIII.

### **35B Professional indemnity insurance**

- (1) The Law Society and an authorized insurer may enter into an arrangement for or with respect to the provision by the authorized insurer to legal practitioners or former legal practitioners who are members of a class prescribed for the purposes of this Part, of professional indemnity insurance.
- (2) Where an arrangement is made under subsection (1), the Law Society and the authorized insurer may:
- (a) do anything necessary or convenient for carrying out or giving effect to the arrangement; and
  - (b) by subsequent arrangement, rescind or vary the arrangement.

- (3) An arrangement under subsection (1) or (2) may include provisions with respect to:
- (a) the terms and conditions to which the provision of professional indemnity insurance is to be subject;
  - (b) the amount of insurance cover to be provided;
  - (c) the amount payable by way of premiums;
  - (d) the circumstances in which insurance cover is to be limited or denied;
  - (e) the period during which the professional indemnity insurance is to be provided;
  - (f) the issue of certificates to persons covered by professional indemnity insurance and the form of those certificates;
  - (g) the payment by or on behalf of the authorized insurer to the Law Society for its own benefit of an amount by way of brokerage or profit commission;
  - (h) the payment by or on behalf of the authorized insurer to the Law Society of an amount by way of reimbursement for expenses incurred by the Law Society in connection with the arrangement; and
  - (j) other matters in connection with professional indemnity insurance agreed between the Law Society and the authorized insurer.
- (4) Without limiting the generality of section 141, the Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular prescribing matters for or in relation to:
- (a) requiring legal practitioners and former legal practitioners, or persons who are members of a specified class of legal practitioners or former legal practitioners, to take out and maintain with an authorized insurer professional indemnity insurance on the terms and conditions specified in and in accordance with an arrangement under subsection (1) or (2);
  - (b) the issue of certificates in relation to professional indemnity insurance and the form of those certificates;

- (c) empowering the Law Society, with the prior approval of the Attorney-General:
  - (i) to exempt from compliance with the Regulations legal practitioners or former legal practitioners or persons who are members of a specified class of legal practitioners or former legal practitioners;
  - (ii) to grant an exemption referred to in subparagraph (i) indefinitely or for a specified period or subject to any other conditions determined by the Law Society; and
  - (iii) to revoke an exemption granted by the Law Society or vary conditions referred to in subparagraph (ii);
- (d) making provisions that, in consequence of a substantial change in the nature of the practice of a legal practitioner, are necessary;
- (e) providing for the making of such declarations by legal practitioners or former legal practitioners as may be necessary to determine premiums in relation to professional indemnity insurance and for the interrogation of a legal practitioner or former legal practitioner where the Law Society believes that a declaration is or may be false or inaccurate;
- (f) exempting arbitration agreements that are related to the arbitration of disputes between legal practitioners and insurers in relation to professional indemnity insurance from a statutory provision that would, apart from the exemption, have the effect of invalidating such an agreement or a provision of such an agreement; and
- (g) prescribing penalties, not exceeding 50 penalty units, for breach of, or noncompliance with, a regulation made in pursuance of this Part.

## **Part VI            Discipline**

### **Division 1        Definition**

#### **45            Meaning of *professional misconduct***

- (1) In this Part, ***professional misconduct*** means misconduct in a professional capacity.

- (2) Without prejudice to the generality of subsection (1), **professional misconduct** includes in particular:
- (a) a legal practitioner's contravention of, or failure to comply with, a provision of:
    - (i) this Act or any regulations under this Act; or
    - (ii) any rules relating to the professional conduct of legal practitioners made by the Law Society and approved by the Chief Justice (in this Act referred to as the professional conduct rules),where the contravention or failure was wilful or reckless;
  - (b) an act or neglect by a legal practitioner in connection with his practise as such which constitutes a gross breach of duty to a client or the Court;
  - (c) a failure by a legal practitioner to comply with an undertaking given by him for the purposes of this Act, or in connection with any inquiry, investigation or other proceeding under this Act, or in the course of his practise as a legal practitioner;
  - (d) the making by a legal practitioner of a statement which purports to be one of fact and is to his knowledge false in a material particular, where the statement is made:
    - (i) to a client of the legal practitioner, in connection with a matter with respect to which the practitioner is acting for the client professionally;
    - (ii) to another legal practitioner, in the course of the first-mentioned practitioner's practise and with respect to a matter in respect of which he acts, or holds himself out as acting, for a client; or
    - (iii) in the course of an inquiry or investigation under this Act concerning the professional conduct of the legal practitioner, and with respect to conduct relevant to that inquiry or investigation; and
  - (e) the charging by a legal practitioner in respect of professional services rendered to a client of fees or costs which are in the circumstances grossly excessive.

## **Division 2            Proceedings before Law Society**

### **46            Complaint to Law Society**

A person may complain, in writing, to the Law Society regarding the professional conduct of a legal practitioner or former legal practitioner.

### **46A          Direction by Attorney-General**

Where the Attorney-General believes that the professional conduct of a legal practitioner or former legal practitioner should be investigated, he may direct the Law Society to investigate the conduct.

### **46B          Investigations**

The Law Society:

- (a) may, of its own motion;
- (b) shall, upon receipt of a complaint under section 46; and
- (c) shall, at the direction of the Attorney-General under section 46A,

investigate the professional conduct of a legal practitioner.

## **Division 3            Functions and powers of Law Society**

### **47            Functions and powers of Law Society**

(1) The Law Society may:

- (a) receive, consider and investigate a complaint regarding the professional conduct of a legal practitioner;
- (b) where, in its opinion, the subject matter of a complaint is capable of resolution by conciliation – attempt to resolve the matter by conciliation;
- (ba) where it finds a complaint proved, but is of the opinion that it is justified in doing so having regard to the circumstances of the case and the record of the legal practitioner against whom the complaint was made, record the finding but take no further action in the matter;
- (c) where it finds a complaint proved, but is of the opinion that the complaint may be adequately dealt with by either admonishing or fining the legal practitioner against whom the complaint was

made – admonish the legal practitioner or fine him up to an amount of 50 penalty units;

- (d) subject to section 50(1A) lay charges of professional misconduct before the Complaints Committee; and
  - (e) engage such persons as it thinks fit, including the Ombudsman, to assist it in carrying out its functions.
- (2) The Ombudsman may accede to a request of the Law Society, made under subsection (1)(e), to assist it.
- (3) Without limiting the generality of the powers of the Law Society under subsection (1), it may, for the purposes of an investigation under section 46B, at any time during ordinary business hours:
- (a) inspect books, accounts, documents or writings in the custody or control of the legal practitioner or of a person employed by the legal practitioner; and
  - (b) make notes or copies of, or take extracts from, such books, accounts, documents or writings.

#### **47A Power of delegation**

- (1) The Law Society may, by instrument in writing, delegate to a person any of its powers or functions under this Division other than this power of delegation and the power to admonish, fine and lay charges before the Complaints Committee.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purpose of this Act, be deemed to have been exercised by the Law Society.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Law Society.

#### **47B Offence to delay**

A person who:

- (a) wilfully delays or obstructs; or
- (b) being a legal practitioner, or a person employed by him, refuses without reasonable excuse to produce any book, account, document or writing when required to do so by,



the Law Society when it is investigating a complaint, or a delegate of the Law Society when the delegate is exercising a power of the Society under section 47(3), is guilty of an offence.

Penalty: 100 penalty units or imprisonment for 12 months.

#### **47C Confidentiality**

A person, including a member or employee of the Law Society, engaged on work relating to a complaint on behalf of the Law Society shall not disclose information that comes to his knowledge by virtue of his office or position except -

- (a) in the course of discharging the duties or performing the functions of his office or position; or
- (b) as may be authorized under this Act.

Penalty: 100 penalty units.

### **Division 4 Legal Practitioners Complaints Committee**

#### **48 Establishment of the Legal Practitioners Complaints Committee**

- (1) There is hereby established a committee called the Legal Practitioners Complaints Committee.
- (2) The Complaints Committee shall consist of:
  - (a) the Ombudsman; and
  - (b) 6 other members appointed under subsection (3).
- (3) The Attorney-General shall appoint to be members of the Legal Practitioners Complaints Committee:
  - (a) one person who is not a legal practitioner;
  - (b) 3 legal practitioners nominated by the Law Society (at least one of whom shall, at the time of his nomination, be a local Counsel); and
  - (c) 2 other legal practitioners.
- (4) A legal practitioner is not eligible to be appointed under subsection (3) unless he holds a current practising certificate.

- (5) The Attorney-General shall appoint:
- (a) one member of the Complaints Committee who is a legal practitioner of not less than 7 years standing to be the Chairman; and
  - (b) another member of the Complaints Committee who is a legal practitioner to be the Deputy Chairman,
- of the Legal Practitioners Complaints Committee, for such term as is specified in the instrument of appointment.
- (6) Where the Chairman is absent from duty or from the Territory or unable to perform his duties, the Deputy Chairman shall act as Chairman.
- (7) An act done by the Deputy Chairman in pursuance of subsection (6) shall not be called in question on the ground that the occasion for the Deputy Chairman so acting had not arisen or had ceased.

#### **48A Appointment &c., of members**

- (1) Subject to this Act, a person appointed under section 48(3) shall be a member of the Complaints Committee:
- (a) for the period, not exceeding 3 years, specified in the instrument of his appointment; or
  - (b) where no period is specified in the instrument of his appointment for 3 years from the date of appointment or such later date as is specified in the instrument.
- (2) A member of the Complaints Committee is eligible for re-appointment and such re-appointment may be made before the expiration of a current period of appointment.
- (3) The Attorney-General may terminate the appointment of a member of the Complaints Committee for misbehaviour or incapacity.
- (4) Where a member of the Complaints Committee:
- (a) in the case of a member who is a legal practitioner – ceases to hold a current practising certificate; or
  - (b) becomes bankrupt,
- the Attorney-General shall terminate the appointment of the member.

- (5) A member of the Complaints Committee may resign by written notice to the Attorney-General.

**48B        Quorum, &c.**

- (1) In proceedings before the Complaints Committee:
- (a) 4 members constitute a quorum;
  - (b) decisions shall be by vote of the majority of members present and voting and, in the event of an equality of votes, the person presiding at the proceedings shall have a casting vote; and
  - (c) the procedure to be followed shall be determined, subject to section 51D of this Act, by the Complaints Committee.
- (2) The Chairman shall preside at proceedings of the Complaints Committee at which he is present and, in the absence of the Chairman and the Deputy Chairman, the members present shall elect a member who is a legal practitioner and is present to preside at the proceedings.

**48C        Validity of Acts and protection of members**

- (1) Subject to section 48B(1)(a), the exercise of a power or the performance of a function of the Complaints Committee is not affected by reason only of there being a vacancy in the membership of the Complaints Committee or a defect in the nomination or appointment of a member.
- (2) A member of the Complaints Committee is not personally liable in respect of any matter or thing done if the matter or thing was done in good faith for the purpose of executing this Act or another Act conferring or imposing functions on the Complaints Committee.

**48D        Secretary of Complaints Committee**

The Complaints Committee, with the prior approval of the Attorney-General, shall appoint a person to be the Secretary of the Legal Practitioners Complaints Committee.

**48E            Confidentiality**

A member of the Complaints Committee or a person employed or engaged on work related to the affairs of the Complaints Committee shall not disclose information obtained in the course of his duties as a member or by virtue of the duties of his office or position unless that disclosure is made in the course of carrying out the duties as a member or of his office or position.

Penalty:        100 penalty units.

**Division 5            Appeals from the Law Society**

**49            Appeal against finding, admonishment or fine**

- (1) A legal practitioner may appeal to the Complaints Committee against a finding recorded by the Law Society under section 47(1)(ba) or an admonishment or fine imposed by the Law Society under section 47(1)(c) by lodging a notice of appeal with the Secretary of the Complaints Committee.
- (2) A notice of appeal under subsection (1) shall:
  - (a) be in writing;
  - (b) state the grounds of appeal; and
  - (c) be lodged with the Secretary of the Complaints Committee within 21 days from the date of the recording of the finding or imposition of the admonishment or fine which is the subject of the appeal.

**49A            Appeal by rehearing**

- (1) Where a legal practitioner appeals under section 49, the Complaints Committee shall hear the appeal by way of rehearing the complaint.
- (2) On the rehearing of a complaint, the Complaints Committee may:
  - (a) confirm or quash a finding, admonishment or fine recorded or imposed by the Law Society; or
  - (b) exercise any of its powers under section 50(4),

and the exercise by the Complaints Committee of a power under section 50(4) shall have effect in substitution for anything done by the Law Society in its disposal of the complaint.

- (3) Costs of an appeal under section 49 are in the discretion of the Complaints Committee.

## **Division 6            Proceedings before Complaints Committee**

### **50            Charges before Complaints Committee**

- (1) The Attorney-General or, subject to subsection (1A), the Law Society or a person who lodged a complaint under section 46 and who is not satisfied with the Law Society's disposal of the matter may lay a charge of professional misconduct against a legal practitioner or a person who, at the time of the alleged professional misconduct, was a legal practitioner.

- (1A) A charge of professional misconduct in which the misconduct alleged consists solely of a contravention of, or failure to comply with, a provision of the professional conduct rules may be laid only by the Attorney-General or by the Law Society with the consent of the Attorney-General.

- (2) A charge under subsection (1) shall be:

- (a) laid before the Complaints Committee; and
- (b) in the prescribed form.

- (3) Where a charge has been laid under subsection (2), the Complaints Committee shall:

- (a) summarily dismiss a charge which, in its opinion, is frivolous or vexatious; or
- (b) inquire into the professional conduct of the legal practitioner or former legal practitioner to whom the charge relates.

- (4) Where the Complaints Committee has inquired into the professional conduct of a legal practitioner or former legal practitioner under subsection (3), and it is satisfied:

- (a) that the legal practitioner is guilty of professional misconduct it may:
  - (i) where it is of the opinion that it is justified in doing so having regard to the circumstances of the case and the record of the legal practitioner, record a finding that that legal practitioner has been guilty of professional misconduct but take no further action in the matter;
  - (ia) admonish or reprimand that legal practitioner;

- (ii) order that legal practitioner to pay a fine not exceeding 100 penalty units;
  - (iii) by order, suspend the right of that legal practitioner to practise the profession of the law for a period not exceeding one year;
  - (iv) order that that legal practitioner shall not, during a period stipulated in the order (but not exceeding 6 months), practise the profession of the law otherwise than in accordance with conditions stipulated in the order; or
  - (v) recommend that disciplinary proceedings be commenced against that legal practitioner in the Supreme Court; or
- (b) that that former legal practitioner was, while he remained a legal practitioner, guilty of professional misconduct, it may order that former legal practitioner to pay a fine not exceeding 100 penalty units.
- (4A) Where the conduct to which a charge under subsection (1) relates has been the subject of a complaint against the legal practitioner under section 46:
- (a) the powers of the Complaints Committee include power to confirm or quash a finding, admonishment or fine recorded or imposed by the Law Society under section 47(1)(ba) or (c); and
  - (b) the exercise by the Complaints Committee of a power under subsection (4) has effect in substitution for anything done by the Law Society in its disposal of the complaint.
- (5) The Complaints Committee shall transmit the evidence taken by it upon the inquiry, together with a memorandum of its findings, to the Attorney-General and the Law Society as soon as is practicable.

#### **50A Notice of inquiry**

- (1) The Complaints Committee shall give to a legal practitioner or former legal practitioner whose conduct is subject to inquiry under this Part, and to a person upon whose application an inquiry is to be held, not less than 7 days' written notice of the time and place at which it intends to conduct the inquiry, and shall afford such a person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses and to make submissions to the Complaints Committee.

- (2) Where a person to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Complaints Committee may proceed with the inquiry in his absence.
- (3) A person whose conduct is subject to an inquiry under this Part, or upon whose application an inquiry is to be held, shall be entitled to be represented by counsel at the inquiry.

## **51 Powers of Complaints Committee**

- (1) For the purposes of an appeal or inquiry under this Part, the Complaints Committee may:
  - (a) by summons signed on its behalf by the Chairman, require the attendance before it of a person (including a party to the proceedings) whom the Complaints Committee thinks fit to call before it;
  - (b) by summons signed on its behalf by the Chairman, require the production of books, papers or documents;
  - (c) inspect books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them or of any of their contents;
  - (d) require a person to make an oath or affirmation that he shall truly answer a relevant question put to him by the Complaints Committee, or by any person appearing before the Complaints Committee, (which oath or affirmation may be administered by a member of the Complaints Committee); or
  - (e) require a person appearing before the Complaints Committee (whether he has been summoned to appear or not) to answer a relevant question put to him by a member of the Complaints Committee or by another person appearing before the Complaints Committee.
- (2) A summons may be issued under subsection (1) on the application of a party to proceedings before the Complaints Committee, notwithstanding that the Complaints Committee has not met to authorize the issue of the summons.
- (3) Where a person:
  - (a) who has been served with a summons requiring his attendance before the Complaints Committee, neglects or fails without reasonable excuse to attend in obedience to the summons;

- (b) who has been served with a summons requiring him to produce books, papers or documents before the Complaints Committee, neglects or fails without reasonable excuse to comply with the summons;
- (c) misbehaves himself before the Complaints Committee, wilfully insults the Complaints Committee or a member of the Complaints Committee or interrupts the proceedings of the Complaints Committee; or
- (d) refuses to be sworn, to affirm or to answer a relevant question when required to do so by the Complaints Committee,

he is guilty of an offence.

Penalty: 50 penalty units.

- (4) Where a person summoned under subsection (1):
  - (a) refuses or fails to attend before the Complaints Committee as required by the summons; or
  - (b) having attended, refuses to be sworn, to affirm or to answer a relevant question when required to do so by the Complaints Committee,

a certificate of the refusal or failure, signed by the Chairman, may be filed in the Supreme Court.

- (5) Where a certificate has been filed under subsection (4), a party requiring the attendance of the person may apply (either ex parte or on notice) to the Supreme Court for an order directing that person to attend, to be sworn, to affirm or to answer questions and on that application the Court may make such orders as it thinks fit including an order for costs.
- (6) A person may be required by the Complaints Committee to answer a question notwithstanding that the answer to that question might tend to incriminate him, or to produce books, papers or documents notwithstanding that their contents might tend to incriminate him, but if that person objects to answering a question a note of that objection shall be taken down in the minutes of the proceedings, and the answer shall not be admissible against him in a criminal proceeding, except in proceedings for perjury.



- (7) In the course of an appeal or inquiry, the Complaints Committee may:
- (a) receive in evidence a transcript of evidence taken in proceedings before a court of the Commonwealth, a State or a Territory of the Commonwealth, and draw such conclusions of fact from the evidence as it thinks fit; and
  - (b) adopt, as in its discretion it thinks fit, a finding, decision, judgment or reason for judgment, of such a court which may be relevant to the inquiry.
- (8) The Complaints Committee may engage a legal practitioner and such other persons as it thinks fit for the purpose of assisting it in the exercise or performance of its powers or functions under this Act, and may in particular direct a legal practitioner or other person so engaged to investigate a matter that is the subject of an appeal under section 49(1) or a charge under section 50(1) or is incidental to such a matter.
- (9) A legal practitioner or other person who is investigating a matter under subsection (8) and is authorized in writing by the Complaints Committee to exercise the powers conferred by this subsection may at any reasonable time:
- (a) inspect books, accounts, documents or writings in the custody or control of:
    - (i) the legal practitioner or former legal practitioner by or against whom the appeal or charge in question has been lodged or laid; or
    - (ii) a person employed by that legal practitioner or former legal practitioner; and
  - (b) make notes or copies of, or take extracts from, such books, accounts, documents or writings.
- (10) A legal practitioner or former legal practitioner, or person employed by a legal practitioner or former legal practitioner, who refuses without reasonable excuse to produce any book, account, document or writing when required to do so in the exercise of a power conferred by subsection (9) is guilty of an offence.

Penalty: 50 penalty units.

**51A        Costs**

- (1) The Complaints Committee may make such orders as to costs as it thinks fit against:
  - (a) a person upon whose application an inquiry has been held; or
  - (b) a legal practitioner or former legal practitioner whose conduct has been subject to inquiry.
- (2) Costs of proceedings before the Complaints Committee may be taxed in the Supreme Court.
- (3) Where the Complaints Committee has ordered payment of a fine or costs, a certificate of the fine or costs shall be filed in the Supreme Court.
- (4) Where a certificate has been filed under subsection (3), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.
- (5) The costs of discharging the functions and exercising the powers of the Complaints Committee under this Part and the costs of enforcing the rights conferred upon the Complaints Committee by this Part shall be payable out of the Fidelity Fund.

**51B        Appeal to Supreme Court**

- (1) Subject to subsection (2), a right of appeal to the Supreme Court shall lie against a finding, admonishment or fine confirmed by the Complaints Committee under section 49A(2)(a) or 50(4A)(a), or a finding recorded, admonishment or reprimand administered or order made by the Complaints Committee in the exercise or purported exercise of its powers or the performance or purported performance of its functions under this Act.
- (2) An appeal under subsection (1) shall be instituted within one month from the date on which the Complaints Committee confirmed the finding, admonishment or fine appealed against or, as the case may be, recorded, administered or made the finding, admonishment, reprimand or order appealed against, but the Supreme Court may, where it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.
- (2A) Where an appeal under subsection (1) puts in issue conduct of a legal practitioner which has been the subject of a complaint under section 46 or a charge under section 50(1), the Supreme Court shall hear the appeal by way of rehearing the complaint or charge.

- (3) The Supreme Court may, on the hearing of an appeal under subsection (1):
- (a) confirm, vary or quash the finding, penalty or order appealed against, or substitute or make any finding, penalty or order that could have been made by the Complaints Committee;
  - (b) remit the subject matter of the appeal to the Complaints Committee for further hearing or consideration or for re-hearing; or
  - (c) make any further or other order as to costs or other matter that the case requires.

#### **51C Operation of order may be suspended**

- (1) Where an order under section 50(4) has been made by the Complaints Committee, and the Complaints Committee or the Supreme Court is satisfied that an appeal against the order has been, or is intended to be, instituted, it may suspend the operation of the order until the determination of the appeal.
- (2) Where the Complaints Committee has suspended under subsection (1) the operation of an order, the Complaints Committee may terminate the suspension and, where the Supreme Court has suspended under subsection (1) the operation of an order, the Supreme Court may terminate the suspension.

#### **51D Rules of Complaints Committee**

The Judges who are appointed under section 32(1) of the *Supreme Court Act* and are not additional Judges, or a majority of those Judges, may make rules, not inconsistent with this Act, for:

- (a) regulating the practice and procedure of the Complaints Committee;
- (b) conferring on the Complaints Committee additional powers necessary or convenient for carrying out its functions; and
- (c) making any other provision that is necessary or convenient for carrying into effect the provisions of this Part relating to the Complaints Committee.

## **Division 7            Proceedings before the Supreme Court**

### **52            Proceedings before Supreme Court**

- (1) The Attorney-General or the Law Society may, whether or not acting on a recommendation of the Complaints Committee under section 50(4), institute disciplinary proceedings in the Supreme Court against a legal practitioner.
- (2) In any proceedings against a legal practitioner, however instituted, the Supreme Court may:
  - (a) reprimand the legal practitioner;
  - (b) suspend the right of the legal practitioner to practise the profession of the law for a specified period, or until further order of the Supreme Court;
  - (c) order that the legal practitioner shall not practise the profession of the law otherwise than in accordance with conditions specified in the order;
  - (d) order that the name of the legal practitioner be struck off the Roll of Legal Practitioners; and
  - (e) make other orders (including an order as to the costs of proceedings before the Court and the Complaints Committee) that it thinks fit.
- (3) Nothing in this Part shall derogate from the inherent jurisdiction of the Supreme Court to discipline legal practitioners.
- (4) In disciplinary proceedings the Supreme Court may refer a matter to a Judge or to the Complaints Committee for investigation and report.
- (5) In disciplinary proceedings:
  - (a) the Supreme Court may, without further inquiry, accept and act upon a finding of the Complaints Committee or of a Judge to whom a matter has been referred for investigation and report under subsection (4); and
  - (b) the Supreme Court may:
    - (i) receive in evidence a transcript of evidence taken in any proceedings before a court of the Commonwealth, a State or a Territory of the Commonwealth, and draw such conclusions of fact from the evidence as it thinks fit; and

- (ii) adopt, as it thinks fit, a finding, decision, judgment or reason for judgment of such a court that may be relevant to the proceedings.
- (6) Where the Supreme Court is satisfied, upon the application of the Attorney-General or the Law Society, that a legal practitioner is disqualified or suspended from practice under the law of the Commonwealth, a State or other Territory of the Commonwealth, it may, without further inquiry, impose under section 52(2) such disqualification or suspension as it thinks fit.
- (7) Where the Supreme Court is satisfied that a legal practitioner has been found guilty of an offence of sufficient gravity to justify invoking the provisions of this subsection, the Supreme Court may, of its own motion or on the application of the Attorney-General or the Law Society, suspend the legal practitioner from practice pending the investigation and determination of disciplinary proceedings or until a further order.

**52A Practising whilst disqualified**

A legal practitioner shall not:

- (a) practise the profession of the law whilst his right to do so is suspended under section 50(4)(a)(iii) or 52(2)(b) or (7); or
- (b) contravene or fail to comply with an order under section 50(4)(a)(iv) or 52(2)(c) made in respect of him.

Penalty: 500 penalty units or imprisonment for 12 months.

**Part VII Trust moneys and trust accounts**

**Division 1 Preliminary**

**53 Definitions**

In this Part, unless the contrary intention appears:

**bank** includes a building society, a credit union and the Territory Insurance Office.

**trust bank account** means a general trust bank account and includes a special trust bank account;

**year** means a period of 12 months commencing on 1 July.

**54 Joint and several responsibility of partners**

A provision of Division 4, 5 or 7 that requires a legal practitioner to do, or to refrain from doing, an act or to carry out an obligation shall, in a case where 2 or more legal practitioners practise in partnership in the Territory, be read as imposing jointly and severally on those legal practitioners a like requirement to do, or to refrain from doing, the act or to carry out the obligation, as the case may be in relation to the practice of the partnership.

**Division 2 Trust moneys**

**55 Moneys received by legal practitioner to be held in trust**

- (1) All moneys received by a legal practitioner, in connection with his practice in the Territory, from, or on behalf of, a client of the legal practitioner shall, for all purposes, be deemed to be held in trust for that client to be disbursed, or otherwise dealt with, by the legal practitioner in accordance with the instructions of the client.
- (2) Where a legal practitioner receives, in the course of his practice in the Territory, moneys from a person who is not a client of the legal practitioner on the condition that the moneys are to be held by the legal practitioner and are subsequently to be disbursed or otherwise dealt with by the legal practitioner in accordance with the directions of that person or another person, those moneys shall, for the purposes of this Act, be deemed to be held by the legal practitioner in trust for that person as if that person were a client of the legal practitioner and this Part applies to and in relation to those moneys as if that person were a client of the legal practitioner.
- (3) Subsection (1) does not apply to moneys received by a legal practitioner for or on account of his legal costs, whether already due or to become due.
- (4) Subsection (1) does not apply to or in relation to a cheque, bank cheque, bank draft or money order made payable to or to the order of a specified person, or to a specified person or bearer, (not being a cheque, bank cheque, bank draft or money order in which the payee is the legal practitioner, a partner of the legal practitioner or his firm) received from or on behalf of a client with instructions, express or implied, that the cheque is to be delivered to the person to whom it is payable.
- (5) Nothing in this Part affects a lien that a legal practitioner would, apart from the provisions of this Part, have over moneys held by him.

### **Division 3 Trust bank accounts**

#### **56 General trust accounts**

- (1) A legal practitioner, shall, for the purposes of his practice, open and maintain a trust bank account at a bank in the Territory under a title which includes the name or style under which the legal practitioner practises and words that indicate that it is the general trust account of the legal practitioner.
- (2) Where 2 or more legal practitioners practise in partnership in the Territory, it is sufficient compliance with subsection (1) where a trust bank account is opened and maintained on behalf of the partnership under a title that includes:
  - (a) the name or style of the partnership;
  - (b) the full name of each partner in the partnership; and
  - (c) words that indicate that it is the general trust bank account of the partnership.

#### **57 Payment into trust bank account**

Subject to section 58, a legal practitioner shall cause all trust moneys received by him, in connection with his practice in the Territory, from, or on behalf of, a client of the legal practitioner to be paid into the general trust bank account maintained by him or, if the legal practitioner maintains 2 or more general trust bank accounts, into one of those accounts, as soon as is reasonably practicable after the moneys are received by the legal practitioner.

#### **58 Special trust accounts**

- (1) If a client of a legal practitioner has given instructions to the legal practitioner that all trust moneys or specified trust moneys received or to be received by the legal practitioner in connection with his practice in the Territory from, or on behalf of, the client are to be paid into a special trust bank account maintained or to be maintained by the legal practitioner for the client, the legal practitioner:
  - (a) if such an account is already maintained by him for the client, shall pay trust moneys to which the instructions relate into that account; or
  - (b) if such an account is not already maintained by him for the client, shall open such an account and shall pay trust moneys to which the instructions relate into the account so opened,

as soon as is reasonably practicable after the day on which the trust moneys are received by the legal practitioner.

- (2) The title under which a trust bank account referred to in subsection (1) is maintained shall include the name or style under which the legal practitioner practises, the words "trust account" and the name of the client for whom the account is maintained.

#### **59 Payments out of trust bank accounts**

- (1) A legal practitioner shall not pay money out of a trust bank account maintained by him for the purposes of his practice except by means of a cheque that is payable to, or to the order of, a specified person, or to a specified person or bearer, and is crossed and marked "Not Negotiable".
- (2) Subject to subsection (3) and to Division 7, a legal practitioner shall not withdraw any money from a trust bank account except for the purposes of payment to, or disbursement according to the direction of, the person for whom the money is, by virtue of section 55 to be deemed to be held in trust.
- (3) Subsection (2) does not prevent a legal practitioner enforcing any lien held by him in respect of, or any other lawful claim that the legal practitioner has against, moneys standing to the credit of a trust bank account maintained by the legal practitioner for the purposes of this Part.

#### **60 Advice of opening or change in name of trust bank accounts**

- (1) A legal practitioner who opens a trust bank account in connection with his practice in the Territory shall, within 7 days after the account is opened, give notice under subsection (2) to the Master.
- (2) A notice under subsection (1) shall be in writing addressed to the Master informing him of the name and address of the bank at which the account is maintained and of the title under which it is maintained.
- (3) When a change is made in the title under which a trust bank account is kept, the legal practitioner by whom it is maintained shall, within 7 days after the change, give notice in writing to the Master informing him of the title as so changed.

#### **61 Protection of trust moneys**

Moneys standing to the credit of a trust bank account maintained by a legal practitioner are not available for the payment of debts of the legal practitioner by whom it is maintained (other than debts payable out of those moneys) and those moneys are not liable to



be attached or taken in execution for the purpose of satisfying a judgment against the legal practitioner other than a judgment for a debt so payable.

**62 Provision applicable to banks**

- (1) Subject to section 77, a bank at which a trust bank account is maintained in accordance with this Division is not under any obligation to control or supervise transactions in relation to the trust bank account or to see to the application of money paid out of the account.
- (2) A bank at which a trust bank account is maintained in accordance with this Division does not have, in respect of any liability of the legal practitioner to the bank, any recourse or right, whether by way of set-off, counter claim, charge or otherwise, against money standing to the credit of the account.
- (3) Nothing in this section relieves a bank from any liability to which it is subject apart from this Act.

**Division 4 Legal practitioners' records**

**63 Accounting records**

- (1) A legal practitioner shall keep such accounting and other records as disclose particulars of all trust moneys received or paid by him.
- (2) A legal practitioner shall:
  - (a) keep those records:
    - (i) at the place at which he carries on business in the Territory;
    - (ii) if he carries on business at more than one place of business in the Territory, at his principal place of business; or
    - (iii) with the approval of the Master, at another place in the Territory;
  - (b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
  - (c) preserve those records for a period of 7 years.

- (3) It is sufficient compliance with subsection (1) if a legal practitioner, within 7 days after the day on which any trust moneys are received or paid by him, enters in the records referred to in that subsection the particulars of those moneys.
- (4) Where 2 or more legal practitioners practise in partnership in the Territory, it is sufficient compliance with this section where the accounting or other records are kept on behalf of the partnership.

#### **64 Receipts for trust moneys**

- (1) A legal practitioner shall issue to a person from whom he receives trust money a receipt for the money specifying briefly the subject matter or purpose in respect of which the money was received.
- (2) A legal practitioner shall in the records referred to in section 63 keep particulars of each receipt issued by him.

#### **65 Half-yearly statements of trust moneys**

- (1) Within 14 days after the end of the period of 6 months ending on 30 June in each year, and within one month after the end of the period of 6 months ending on 31 December in each year, a legal practitioner shall prepare a statement setting out, as at the close of business on the last day of the period:
  - (a) the name of each person on behalf of whom the legal practitioner held trust moneys;
  - (b) the amount shown in the records kept by the legal practitioner in accordance with this Division as the amount of trust money held by the legal practitioner on behalf of each of those persons;
  - (c) the amount of trust money held by the legal practitioner and not paid into a general trust bank account maintained by the legal practitioner in accordance with this Part; and
  - (d) the amount standing to the credit of each trust bank account kept by the legal practitioner in accordance with this Part.
- (2) For the purpose of subsection (1), in ascertaining the amount standing to the credit of a trust bank account, cheques drawn on the account but not presented for payment shall be regarded as having been paid.

## **Division 5 Audit**

### **66 Interpretation**

In this Division, unless the contrary intention appears, **auditor** includes a firm of auditors.

### **67 Audit of trust accounts**

- (1) A legal practitioner shall, not later than 7 days after the end of each year, engage an auditor to audit his records in respect of trust moneys held in that year and shall, within one month after the date on which he engages an auditor, notify the Master of the name of the auditor.
- (2) Where 2 or more legal practitioners practise in partnership in the Territory and keep accounting or other records on behalf of the partnership, it is sufficient compliance with subsection (1) where an auditor is engaged to audit the records kept on behalf of the partnership.

### **68 Qualifications of auditors**

- (1) A person shall not be engaged to conduct an audit under this Division if:
  - (a) he is not a registered company auditor within the meaning of the Corporations Law;
  - (b) he is an employee of the legal practitioner by whom the records are kept;
  - (c) he is the spouse of the legal practitioner by whom the records are kept; or
  - (d) he is an employee of another legal practitioner.
- (2) A firm of auditors shall not be engaged to conduct an audit under this Division if:
  - (a) any of its partners is not a registered company auditor within the meaning of the Corporations Law;
  - (b) any of its partners is an employee of a legal practitioner; or
  - (c) any of its partners is a spouse of a legal practitioner by whom the records are kept or of any of the legal practitioners in a firm of legal practitioners by whom the records are kept.

**69 Legal practitioner to furnish documents, &c., to auditor**

- (1) An auditor engaged by a legal practitioner may, for the purposes of an audit under this Division, require the legal practitioner:
  - (a) to produce forthwith to the auditor the books, papers, accounts, registers of receipts, securities and documents in his possession that relate to trust moneys received or paid by the legal practitioner during the period to which the audit relates; and
  - (b) to furnish to the auditor such information as the auditor requires and to answer all questions put to him by the auditor, in relation to:
    - (i) books and other documents referred to in paragraph (a); and
    - (ii) all transactions by the legal practitioner in the course of his practice in the period to which the audit relates; and
  - (c) to give to the auditor such authorities as are necessary to enable the auditor to inspect and make copies of documents or records kept at the bank at which the legal practitioner maintains a trust bank account in accordance with this Part and relating to that trust bank account.
- (2) A legal practitioner shall comply with a requirement under this section.
- (3) For the purposes of an audit under this Division the legal practitioner shall furnish to the auditor a copy of the auditor's report in respect of the last preceding audit.

**70 Auditor to report**

- (1) For the purposes of this Division, an auditor engaged by a legal practitioner is only required to examine such of the accounting and other records of the legal practitioner relating to trust moneys as he considers necessary for the purpose of ascertaining whether the preceding Divisions of this Part have been complied with.
- (2) An auditor shall prepare a report of an audit in the prescribed form.
- (3) The auditor shall prepare the report before 1 September, unless he has a reasonable excuse for not doing so, in which case he shall prepare the report as soon as practicable after that day.

- (4) The auditor shall, as soon as practicable after the preparation of the report, deliver the report in duplicate to the legal practitioner to whose records the report relates.
- (5) A legal practitioner shall, within 7 days after a report is delivered to him in accordance with subsection (4), send the duplicate of the report to the Master.

#### **71 Interim report by auditor**

If the auditor engaged by a legal practitioner to examine and report on the accounting and other records of the legal practitioner relating to trust moneys considers that the records of the legal practitioner have not been kept in such a manner as to enable him to audit them conveniently and properly or the auditor has reason to believe:

- (a) that there is any loss or deficiency of trust moneys;
- (b) that there has been any failure to pay or account for trust moneys; or
- (c) that there has been a failure to comply with any provision of this Part,

the auditor shall as soon as practicable, report in writing accordingly to the legal practitioner and shall, immediately after furnishing the report to the legal practitioner, forward a copy of the report to the Master.

Penalty: 20 penalty units.

#### **72 Provisions applicable in case of default of auditor**

- (1) Where:
  - (a) a legal practitioner applies for an unrestricted practising certificate;
  - (b) the provisions of this Division apply to the legal practitioner in respect of the period of 12 months that ended on 30 June immediately preceding the date of the application; and
  - (c) a report under section 70 has not been delivered to the legal practitioner,

he shall send to the Master a statutory declaration by him stating:

- (d) the name and address of the auditor whom he has engaged to audit his records of trust moneys in respect of the period referred to in paragraph (b);
  - (e) the date on which the auditor was so engaged; and
  - (f) that a report under section 70 has not been delivered to him.
- (1A) A legal practitioner who is required by subsection (1) to send a statutory declaration to the Master shall send a copy of the declaration to the Law Society.
- (2) A legal practitioner who has furnished a statutory declaration in accordance with subsection (1) shall take such steps as are necessary to ensure that a report by an auditor in respect of the period referred to in the statutory declaration is obtained by him and a copy of the report furnished to the Master as soon as practicable after the furnishing of the declaration.

### **73 Statutory declaration that no trust moneys held**

The provisions of this Division do not apply to a legal practitioner in respect of a year if he did not, at any time during the year, receive or hold any trust moneys and the legal practitioner, within 14 days after the end of that year, makes and delivers to the Master a statutory declaration to that effect.

### **74 Secrecy**

A person who conducts an audit under this Part shall not, except in accordance with this Act or in, or for the purpose of, any proceedings in a court or an investigation under section 46, communicate to any person any matter that comes to his knowledge in the course of the audit.

Penalty: 50 penalty units.

## **Division 6 Examination of legal practitioners' records**

### **75 Appointment of examiner**

- (1) The Master may, at any time, appoint a person to examine the records of trust moneys kept by a legal practitioner or by 2 or more legal practitioners practising in partnership in respect of a period specified by the Master.

- (2) A person shall not be appointed under subsection (1) unless he is a registered company auditor within the meaning of the Corporations Law.
- (3) A person who makes an examination under this section shall furnish to the Master a report of the examination and, in particular, shall state in the report:
  - (a) whether or not, in his opinion, the records of the legal practitioner have been kept in such a manner as to enable him to examine them conveniently and properly;
  - (b) whether or not, in his opinion, there is any loss or deficiency of trust moneys;
  - (c) whether or not, in his opinion, there has been any failure to pay or account for trust moneys; and
  - (d) whether or not, in his opinion, there has been any failure to comply with any provision of this Part.
- (4) The costs of an examination under this section shall be paid by the Master out of the Fidelity Fund.
- (5) Where, as a result of an examination of records under this section, a legal practitioner is:
  - (a) found guilty of an offence against this Act or any other law in force in the Territory; or
  - (b) an order is made against a legal practitioner under Part VI,the Master may recover the costs of the examination from that legal practitioner as a debt due to the Territory and any amount so recovered shall be paid into the Fidelity Fund.

## **76 Production of books, &c.**

- (1) For the purposes of this Division, section 69 applies as if:
  - (a) a reference in that section to an auditor were a reference to a person appointed under section 75(1); and
  - (b) a reference to an audit were a reference to an examination under section 75.
- (2) The Master may cause to be served on the manager, or other person in charge of a bank, a signed demand in writing, requiring the manager or that other person to permit a person specified in the demand, being a person appointed under section 75(1), to inspect

and make copies of the documents or records of the bank relating to a trust bank account kept in accordance with this Part by the legal practitioner or legal practitioners specified in the demand.

- (3) The manager, or other person in charge, of a bank shall comply with a requirement made in accordance with subsection (2).

Penalty: 50 penalty units.

## **77 Order to stop payments from trust bank accounts**

- (1) The Master may apply to the Court for an order directing the manager, or other person in charge, of a bank not to make any payment out of a trust bank account kept in accordance with this Part by the legal practitioner or legal practitioners specified in the order except in accordance with the order or with the consent of the Master.
- (2) If the Court is satisfied that the trust bank account has or is likely to be depleted otherwise than in accordance with the provisions of this Act the Court may grant the order sought under subsection (1) upon such conditions as are expressed in the order.
- (3) An order granted under subsection (2) shall remain in force for the period of time expressed in the order.
- (4) The manager, or other person in charge, of a bank shall comply with the order granted under subsection (2).

Penalty: 50 penalty units.

## **78 Secrecy**

A person who conducts an examination under section 75 shall not, except in accordance with this Act or in, or for the purposes of, any proceedings in a court or an investigation under section 46, communicate to any person any matter that comes to his knowledge in the course of the examination.

Penalty: 50 penalty units.

## **Division 7 Deposits with the Trust Committee**

### **79 Interpretation**

- (1) In this Division, a reference to the notional amount standing to the credit of the general trust bank account of a legal practitioner on the day immediately preceding the date fixed for the purposes of section 80(1) shall be read as a reference to the lowest amount that stood to the credit of that account at any time during the period of



6 months immediately preceding that date.

- (2) In this Division, a reference to the notional amount standing to the credit of the general trust bank account of a legal practitioner on the last day of a year shall be read as a reference to the lowest amount that stood to the credit of that account at any time during that year.
- (3) In relation to the period commencing on the date fixed for the purposes of section 80(1) and ending on the next succeeding 30 June, the provisions of this Division apply as if that period were a year.
- (4) In the application of this Division to 2 or more legal practitioners carrying on, or deemed to be carrying on, practice in partnership with one another, a reference to a legal practitioner shall be read as a reference to those legal practitioners.
- (5) Where a legal practitioner maintains more than one general trust bank account in accordance with this Part, a reference in this Division to a general trust bank account maintained by the legal practitioner shall be read as a reference to the general trust bank accounts maintained by the legal practitioner.
- (6) Where a legal practitioner has:
  - (a) in the period of 6 months immediately before the date fixed for the purposes of section 80(1); or
  - (b) in any year,maintained 2 or more general trust bank accounts, the legal practitioner shall, for the purposes of this Division, be deemed to have maintained, during the period for which he maintained those general trust bank accounts, only one general trust bank account and the amount that stood, on any day during that period, to the credit, of the general trust bank account that the legal practitioner is to be so deemed to have maintained shall be deemed, for the purposes of this Division, to be the total of the amounts that stood to the credit of the bank accounts that were in fact maintained by him on that day.
- (7) For the purposes of this Division, in ascertaining the amount standing to the credit of a general trust bank account on any day, cheques drawn on the account and not presented to the bank for payment shall be regarded as having been paid.
- (8) For the purposes of this Division, the amount of any trust moneys paid into the general trust bank account maintained by a legal practitioner and subsequently paid by the legal practitioner into a special trust bank account in accordance with the instructions of the

client from, or on whose behalf, those moneys were received shall not be taken into account in ascertaining the lowest amount that stood to the credit of that general trust bank account at any time.

### **79A Incorporation of Trust Committee**

- (1) There is hereby constituted a body corporate by the name of the Legal Practitioners' Trust Committee.
- (2) The Trust Committee:
  - (a) has perpetual succession;
  - (b) shall have a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Trust Committee affixed to a document and shall presume that it was duly affixed.
- (4) The Trust Committee shall consist of the Master and 2 legal practitioners appointed by the Council of the Law Society.
- (5) A member of the Trust Committee appointed by the Law Society shall, subject to section 79B, hold office during the pleasure of the Law Society.
- (6) A person is not eligible for appointment as a member of the Trust Committee unless not less than 5 years have elapsed since he was first admitted to practise as a legal practitioner (however described) in a State or Territory and he holds a current unrestricted practising certificate.
- (7) The Master shall be Chairman of the Trust Committee.
- (8) The Trust Committee shall have the following powers:
  - (a) to open and operate bank accounts; and
  - (b) to do all things that are, in the opinion of that Committee, necessary or convenient for the proper administration of moneys deposited with that Committee in accordance with this Division.
- (9) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Trust Committee shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any member of the Trust Committee or in such other manner as the Trust Committee

from time to time determines.

- (10) The Trust Committee may appoint a person to be the Secretary to the Trust Committee.

#### **79B Removal of member from office**

- (1) The Court may, on the application of the Master, remove a member of the Trust Committee from office for misbehaviour or incapacity.
- (2) If a member of the Trust Committee:
  - (a) becomes bankrupt;
  - (b) ceases to be a person referred to in section 79A(6); or
  - (c) is absent, except on leave granted by the Trust Committee, from 3 consecutive meetings of the Committee,

the Court may remove him from office.

#### **79C Quorum of Trust Committee and voting**

- (1) At a meeting of the Trust Committee the Master and one other member constitute a quorum.
- (2) Decisions of the Trust Committee shall be by vote of the majority and, if the vote is evenly divided, the Master shall, in addition to his vote as a member of the Committee, have a casting vote.
- (3) The Trust Committee shall hold meetings at such times and places as the Master directs or that Committee determines.

#### **79D Investments by Trust Committee**

The moneys received by the Trust Committee under this Division shall, so far as practicable, be invested by that Committee in any manner in which trust funds may, for the time being, be invested under any law in force in the Territory.

#### **80 Legal practitioner to deposit portion of trust moneys with Committee**

- (1) Subject to this Division, where the notional amount standing to the credit of the general trust bank account kept by a legal practitioner on the day immediately preceding a date fixed for the purposes of this subsection by the Attorney-General by notice published in the *Gazette* is not less than \$3,000, the legal practitioner is under an obligation to deposit, within one month after that date, with the Trust Committee an amount which is equal to one-half of that notional

amount. (See back note 4)

- (2) Subject to this Division, where, on the last day of a year:
- (a) the notional amount standing to the credit of the general trust bank account kept by a legal practitioner is not less than \$3,000; and
  - (b) no trust moneys of the legal practitioner are on deposit with the Trust Committee,

the legal practitioner is under an obligation to deposit, within 3 months after that day, with the Trust Committee an amount which is equal to one-half of the notional amount referred to in paragraph (a).

- (3) Subject to this Division, where, on the last day of a year:
- (a) trust moneys of a legal practitioner are on deposit with the Trust Committee; and
  - (b) the amount of those moneys is less than one-half of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that legal practitioner,

the legal practitioner is under an obligation to deposit, within 3 months after that day, with the Trust Committee such an amount as will bring the amount of the moneys on deposit with the Trust Committee to an amount equal to one-half of the aggregate referred to in paragraph (b).

- (4) Subsections (2) and (3) do not apply to or in relation to a year that ends before the date fixed for the purposes of subsection (1).

## **81 Repayment of deposit**

- (1) Subject to subsection (2), moneys on deposit with the Trust Committee in accordance with this Division are repayable on demand to the legal practitioner by whom they were deposited.
- (2) A legal practitioner shall not make a demand for the repayment of moneys under subsection (1) unless:
- (a) the repayment of the moneys is required to enable necessary payments to be made out of his general trust bank account; and

- (b) the legal practitioner has reasonable grounds for believing that the payment is to be made within 7 days after the day on which the demand is made.

(3) Where, on the last day of a year:

- (a) trust moneys of a legal practitioner are on deposit with the Trust Committee; and
- (b) the amount of those moneys exceeds one-half of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that legal practitioner,

the legal practitioner is entitled to be repaid an amount equal to the amount of the excess.

(4) Where, on the last day of a year:

- (a) trust moneys of a legal practitioner are on deposit with the Trust Committee; and
- (b) the aggregate of the amount of those moneys and the notional amount standing to the credit of the general trust bank account kept by that legal practitioner on that day is less than \$3,000,

the legal practitioner is entitled to have repaid to him the amount that he has on deposit.

## **82 Obligation to deposit subject to availability of trust funds**

(1) Where:

- (a) a legal practitioner has not, before the expiration of a period within which he is required to discharge an obligation imposed on him by this Division, discharged that obligation; and
- (b) on the last day of that period, the moneys standing to the credit of his general trust bank account are not sufficient for the discharge of the obligation,

the period within which the legal practitioner is required to discharge the obligation is extended until there is standing to the credit of his general trust bank account on a subsequent half-year day occurring in the year in which the end of the period occurs an amount sufficient for the discharge of the obligation.

(2) In subsection (1), **half-year day** means 31 December.

### **83 Variation of notional amount by Trust Committee**

- (1) Where the Trust Committee is during a year satisfied, on an application made to that Committee by a legal practitioner who is under an obligation to deposit, or has on deposit, with the Trust Committee moneys in accordance with this Division, that, having regard to the amount of trust moneys standing, on the date of the application, to the credit of the general trust bank account of the legal practitioner, it is appropriate that the notional amount standing to the credit of the general trust bank account of the legal practitioner on the last day of the year preceding that year should be reduced, the Trust Committee may determine that that notional amount be reduced to such amount as is specified by that Committee in the determination.
- (2) Where the Trust Committee has made a determination referred to in subsection (1) in relation to a legal practitioner:
  - (a) this Division, in its application to and in relation to the obligations imposed on the legal practitioner, shall apply, during the remainder of the year in which the determination is made, as if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the legal practitioner on the last day of the preceding year; and
  - (b) if, on the date on which the determination is made, the legal practitioner has on deposit with the Trust Committee moneys exceeding the amount that he would have been required to have on deposit with the Trust Committee if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the legal practitioner on the last day of the preceding year, the legal practitioner is entitled to be re-paid an amount equal to the amount of the excess.

### **84 Keeping of records and audit, &c.**

- (1) The Trust Committee shall cause records to be kept showing particulars of all moneys deposited with it in accordance with this Division, of all interest and other income received by it from the investment of those moneys and of all payments made by it out of those moneys, and shall cause those records to be audited annually by an auditor who is a registered company auditor within the meaning of the Corporations Law.
- (2) The Trust Committee shall forward a copy of each report of an auditor under this section to the Solicitor for the Northern Territory.

#### **84A Payment of investment income by Trust Committee**

- (1) In this section, *investment income* means moneys received by the Trust Committee representing interest and other income earned on moneys deposited with that Committee in accordance with this Division and includes accretions realized from the investment of moneys.
- (2) Subject to this section, the Trust Committee shall, as soon as practicable after the first day of January and the first day of July in each year, pay the whole of the investment income into the Fidelity Fund.
- (3) Notwithstanding subsection (2), the Trust Committee may at any time during a year pay into the Fidelity Fund the whole or any part of the investment income.
- (4) Where at any time the amount of the Fidelity Fund is greater than \$250,000, the Trust Committee may, with the consent in writing of the Attorney-General given either generally or in a particular case, use up to one-half of the investment income:
  - (a) to assist in the conduct of a scheme for the provision of legal aid; and
  - (b) to assist and promote legal education and legal research.
- (5) The costs of discharging the functions, and exercising the powers, of the Trust Committee under this Division and the costs of enforcing the rights conferred upon that Committee by this Division shall be paid out of the investment income in priority to any other use of those moneys authorized by this section.

## **Part VIII The Fidelity Fund**

### **Division 1 General**

#### **85 Interpretation**

In this Part, a reference to a defalcation committed by a legal practitioner includes a reference to a defalcation committed by an employee of the legal practitioner or, in the case of legal practitioners practising in partnership, of those legal practitioners.

#### **86 Incorporation of Fidelity Fund Committee**

- (1) There is hereby constituted a body corporate by the name of the Legal Practitioners' Fidelity Fund Committee.

- (1A) The Fidelity Fund Committee:
- (a) has perpetual succession;
  - (b) shall have a common seal; and
  - (c) may sue and be sued in its corporate name.
- (1B) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Fidelity Fund Committee affixed to a document and shall presume that it was duly affixed.
- (1C) The Fidelity Fund Committee shall consist of the Master and 2 legal practitioners appointed by the Council of the Law Society.
- (2) A member of the Fidelity Fund Committee appointed by the Law Society shall, subject to section 87 hold office during the pleasure of the Law Society.
  - (3) A person is not eligible for appointment as a member of the Fidelity Fund Committee unless not less than 5 years have elapsed since he was first admitted to practise as a legal practitioner (however described) in a State or Territory and he holds a current unrestricted practising certificate.
  - (4) The Master shall be Chairman of the Fidelity Fund Committee.
  - (5) The Fidelity Fund Committee shall have the following powers:
    - (a) to open and operate accounts with a bank or banks, a building society or building societies, a credit union or credit unions or the Territory Insurance Office; and
    - (b) to do all things that are, in the opinion of that Committee, necessary or convenient for the proper administration of moneys paid into the Fund.
  - (6) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Fidelity Fund Committee shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any member of the Fidelity Fund Committee or in such other manner as the Fidelity Fund Committee from time to time determines.
  - (7) The Fidelity Fund Committee may appoint a person to be the Secretary to the Fidelity Fund Committee.



**87 Removal of member from office**

- (1) The Court may, on the application of the Master, remove a member of the Fidelity Fund Committee from office for misbehaviour or incapacity.
- (2) If a member of the Fidelity Fund Committee:
  - (a) becomes bankrupt;
  - (b) ceases to be a person referred to in section 86(3); or
  - (c) is absent, except on leave granted by the Fidelity Fund Committee, from 3 consecutive meetings of the Committee,the Court may remove him from office.

**88 Quorum of committee and voting**

- (1) At a meeting of the Fidelity Fund Committee the Master and one other member constitute a quorum.
- (2) Decisions of the Fidelity Fund Committee shall be by vote of the majority and, if the vote is evenly divided, the Master shall in addition to his vote as a member of the Committee, have a casting vote.
- (3) The Fidelity Fund Committee shall hold meetings at such times and places as the Master directs or that Committee determines.

**89 Fidelity fund**

- (1) A fund is hereby established to be known as the Legal Practitioners' Fidelity Fund of the Northern Territory.
- (2) The Fidelity Fund Committee shall cause records to be kept showing particulars of all moneys held to the credit of the Fidelity Fund, of all interest received by it from the investment of those moneys and of all payments made by it out of those moneys, and shall cause those records to be audited annually by an auditor who is a registered company auditor within the meaning of the Corporations Law.
- (2A) The Fidelity Fund Committee shall forward a copy of each report of an auditor under this section to the Solicitor for the Northern Territory.
- (3) The Fund shall consist of:
  - (a) contributions and levies paid under this Part;

- (b) interest received from the investment of moneys standing to the credit of the Fidelity Fund;
  - (c) moneys paid into the Fidelity Fund under section 84A;
  - (d) moneys recovered by the Committee under this Act; and
  - (e) such other moneys as may lawfully be paid into the Fidelity Fund.
- (4) The Fidelity Fund Committee may invest any part of the Fidelity Fund in any manner in which trust funds may for the time being be invested under any law in force in the Territory.
- (5) The costs of discharging the functions, and exercising the powers of the Committee under this Part and the costs of enforcing the rights conferred upon the Committee by this Part shall be payable out of the Fidelity Fund.

#### **89A Allocation from Fidelity Fund**

- (1) Where the amount in the Fund is greater than \$1,000,000, the Attorney-General may, subject to subsection (2), direct the Fidelity Fund Committee to allocate moneys from the Fund:
- (a) to assist in the conduct of a scheme for the provision of legal aid; and/or
  - (b) to assist and promote legal education and legal research,
- on such terms and conditions as the Attorney-General thinks fit.
- (2) An allocation of moneys under subsection (1) shall be made only within a period of 6 months after the commencement of the *Legal Practitioners Amendment Act 1995*.
- (3) The balance of the Fund after an allocation under subsection (1) shall be not less than \$1,000,000.

#### **90 Annual contributions to Fund**

- (1) Subject to this Act, a legal practitioner shall, not later than each 30 September, pay to the Committee such contribution to the Fidelity Fund as is fixed by the Committee in respect of the period of 12 months commencing on the following 1 October.
- (2) A legal practitioner who applies for a practising certificate for a period of less than 12 months shall, in respect of that period, pay to the Committee such contribution to the Fidelity Fund as is fixed by the Committee.

## **Division 2      Claims against the Fidelity Fund**

### **91      Persons who may apply for compensation**

- (1) Subject to this Part, a person who suffers pecuniary loss arising out of a defalcation of trust moneys committed by a legal practitioner after the date fixed for the purposes of this section by the Attorney-General by notice published in the *Gazette* may apply to the Committee for compensation under this Part in respect of that loss.
- (2) For the purposes of this Part, the pecuniary loss in respect of which compensation may be paid to an applicant under this Part is the amount of the pecuniary loss suffered by the applicant less any amount that the applicant has recovered in respect of the loss.

### **92      Law Society may call for claims**

- (1) The Committee may cause to be published in a daily newspaper published in the Territory a notice requiring persons entitled to apply for compensation under this Part in respect of losses arising out of a defalcation committed by a legal practitioner named in the notice to make their application within the period specified in the notice.
- (2) The period to be specified in a notice published under this section shall be not less than 3 months commencing on the date of publication of the notice.
- (3) No action for damages lies against the Committee, or any of its members, in respect of the publication in good faith of a notice under this section.

### **93      Time for making applications**

- (1) Subject to subsection (2), an application for compensation under this Part shall not be accepted unless it is made within a period of 6 months after the applicant becomes aware of the defalcation or within such further time as the Committee, in its discretion and either before or after the expiration of that period, allows.
- (2) Where a notice is published under section 92, an application for compensation under this Part in respect of a defalcation committed before the publication of the notice by the legal practitioner named in the notice shall be made before the expiration of the period specified in the notice or within such further time as the Committee, in its discretion and either before or after the expiration of that period, allows.

**94 Manner of making claims**

- (1) An application for compensation under this Part shall be made by the delivery to the Committee of full particulars of the claim supported by a statutory declaration.
- (2) The Committee may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant:
  - (a) to give to the Committee information in the possession of the applicant with regard to any matter relating to the application; and
  - (b) to deliver to the Committee any documents in the possession of the applicant which tend to establish the fact of the defalcation and the amount of the loss to which the application relates.
- (3) The Committee may retain a document delivered to it in accordance with a requirement under subsection (2) for as long as is necessary for the purposes of this Part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy certified by the Master to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.
- (4) Where the Committee makes a requirement under subsection (2), it is not required to take any further steps in relation to the application until the requirement is satisfied.

**95 Committee to consider applications**

- (1) Subject to section 94(4), the Committee shall consider each application made in accordance with this Part and shall determine:
  - (a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
  - (b) that there is no pecuniary loss in respect of which compensation may be so paid.
- (2) Subsection (1) does not require the Committee to be satisfied:
  - (a) that any person has been found guilty of an offence arising out of the defalcation; or
  - (b) that there is evidence upon which a person might be found guilty of such an offence.

- (3) Before making a determination under subsection (1), the Committee may, if it is of the opinion that the circumstances so warrant, require the applicant to institute against the legal practitioner to whose defalcation the claim relates or any other person considered to be liable in respect of the loss arising out of the defalcation, or both, proceedings for the recovery of the money the subject of the defalcation, including proceedings to follow assets and any property into which the money may have been converted.
- (4) Where the Committee requires a person to institute proceedings under subsection (3), the Committee is liable to pay out of the Fidelity Fund all costs and expenses necessarily incurred by the person by reason of the institution of the proceedings.
- (5) An amount recovered by a person as costs in proceedings instituted by him at the request of the Committee under this section shall be paid into the Fidelity Fund.
- (6) The Committee shall, as the case requires, give to an applicant for compensation under this Part notice in writing stating:
  - (a) the amount that the Committee has determined is the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
  - (b) that the Committee has determined that there is no pecuniary loss in respect of which compensation may be so paid.
- (7) In a notice given under this section, the Committee shall state the grounds on which it has made the determination referred to in the notice.

## **96 Review of Committee's determination**

- (1) An applicant for compensation under this Part to whom the Committee gives notice under section 95(6) may, within 21 days after the date on which notice is so given, make application to the Court for an order under this section.
- (2) The Court, on application under this section, may, if it thinks fit, by order vary a determination of the Committee under section 95(1).

## **97 Payment of compensation**

- (1) Subject to this section, where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this Part, the Committee shall pay to the applicant an amount equal to the amount so determined.

- (2) The amounts paid under subsection (1) to applicants for compensation in respect of defalcations by the same legal practitioner shall not exceed, in the aggregate, \$50,000.
- (3) Where the aggregate of the amounts that the Committee would, but for this subsection, be required by subsection (1) to pay to applicants for compensation in respect of defalcations by the same legal practitioner exceeds the amount available under subsection (2), the Committee shall divide the amount available under that subsection amongst those applicants in proportion to the amounts determined under section 95 as the pecuniary loss in respect of which compensation may be paid to those applicants.
- (4) Where, at any time, the amount of the Fidelity Fund is insufficient for the payment of all amounts that the Committee would, but for this subsection, be required by this section to pay, the Committee shall divide the amount in the Fidelity Fund amongst the persons to whom it would be required to pay those amounts in proportion to those amounts.

## **98 Subrogation**

Where the Committee has paid compensation to a person under this Part, the Committee is, to the extent of the payment, subrogated to the rights of that person against the legal practitioner in respect of whose defalcation the compensation was paid.

## **99 Legal practitioners may claim in certain cases**

- (1) Where:
  - (a) the Committee has paid all the amounts of compensation that it is required to pay in respect of defalcations committed by a legal practitioner; and
  - (b) the sum of those amounts is less than \$50,000,a legal practitioner who was, at the time at which any of those defalcations was committed, a partner of the first-mentioned legal practitioner and has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of those defalcations may apply to the Committee for compensation under this Part in respect of that payment.
- (2) Section 93 does not apply in relation to an application made under this section.
- (3) Where:
  - (a) an application is made under this section; and

- (b) the Committee is satisfied that:
  - (i) the legal practitioner by whom the application is made is entitled to make an application under this section; and
  - (ii) in relation to the defalcation to which the claim relates, the legal practitioner acted in good faith,

the Committee may pay compensation out of the Fidelity Fund to that legal practitioner.

- (4) The amount to be paid under subsection (3) is such an amount, not exceeding the difference between the amount of \$50,000 and the sum of the amounts referred to in subsection (1)(a), as the Committee thinks proper.

### **100 Interim payments of compensation**

- (1) Where, in relation to an application made under this Part (other than an application under section 99), the Committee has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant, the Committee may, if it thinks fit, make an interim payment of compensation to the applicant.
- (2) An amount paid to a person under this section shall be set off against the compensation that the Committee is required by section 97 to pay to the person.

## **Division 3 Levies**

### **101 Levies to supplement Fund**

- (1) If, at any time, the Committee considers that the Fund is not sufficient to satisfy the liabilities of the Committee in relation to the Fund, the Committee may impose a levy of such amount not exceeding \$100 as it thinks fit for payment into the Fund.
- (2) Subject to this section:
  - (a) a levy imposed under subsection (1) is payable on the date fixed by the Committee; and
  - (b) a levy imposed under subsection (1) is payable by each legal practitioner who, on that date, holds an unrestricted practising certificate.

- (3) The Committee may, if it thinks the circumstances so warrant, extend the time for the payment of a levy by a legal practitioner, and, in such a case, the levy is payable by that legal practitioner on the date fixed by the Committee under this subsection.
- (4) A legal practitioner who has paid by way of levies under this section \$500 in the aggregate during the whole period of his practice is not required to pay any further levies under this section.
- (5) Notwithstanding subsection (1), the Committee may not impose a levy where the Fund is not sufficient to satisfy the liabilities of the Committee due to moneys having been allocated under section 89A.

## **Part IX Appointment of receivers**

### **102 Interpretation**

- (1) In this Part **bank** and **trust bank account** have the same meaning as in Part VII.
- (2) In this Part, a reference to trust property of a legal practitioner or of legal practitioners practising in partnership shall be read as a reference to personal property that has been entrusted to, or received on behalf of any other person by the legal practitioner or those legal practitioners in the course of, or in connection with, the practice of the legal practitioner or those legal practitioners other than personal property that has been delivered by the legal practitioner or legal practitioners in accordance with directions of the person entitled to give directions with respect to the delivery of the property.
- (3) Without limiting its generality, the term **personal property** includes, for the purposes of this Part:
  - (a) trust moneys;
  - (b) documents evidencing the title to land; and
  - (c) all other documents, instruments, securities and writings.
- (4) For the purposes of this Part, a reference to a legal practitioner shall, in the case where a person has ceased to be a legal practitioner, be read as including a reference to such a person.



**103 Appointment of receiver**

- (1) Where the Court is satisfied:
- (a) that a legal practitioner has failed to allow access by a person appointed under section 75, to the records of trust moneys kept by the legal practitioner or 2 or more legal practitioners practising in partnership of which the legal practitioner is one;
  - (b) that there are reasonable grounds for believing that a defalcation of trust moneys of a legal practitioner or of legal practitioners practising in partnership has been committed or that an offence involving fraud or dishonesty has been committed in relation to trust moneys; or
  - (c) that, through:
    - (i) the mental or physical infirmity of a legal practitioner;
    - (ii) the death of a legal practitioner;
    - (iii) the cancellation or suspension of an unrestricted practising certificate issued to a legal practitioner; or
    - (iv) a legal practitioner ceasing, for any other reason, to practise as a legal practitioner,

a person to whom trust moneys of the legal practitioner or of the partnership of which the legal practitioner is or was a member are payable is unable to obtain payment of the trust moneys or a person entitled to delivery of trust property of the legal practitioner or of the partnership of which the legal practitioner is or was a member is unable to obtain delivery of the trust property,

the Court may by order appoint a person specified in the order to be receiver of the trust property of the legal practitioner or of the partnership.

- (2) Where the Court makes an order under section 52 that the name of a legal practitioner be struck off the Roll of Legal Practitioners or the Court or the Complaints Committee makes an order under Part VI that the right of a legal practitioner to practise be suspended, the Court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the legal practitioner or, if the legal practitioner carried on practice in partnership with other legal practitioners, of the partnership.

- (3) An application for an order under either subsection (1) or (2) shall not be made except by the Master.
- (4) The Court may give directions as it thinks fit with respect to the person or persons on whom, and the manner in which, an application for an order under subsection (1) and a copy of an order made under subsection (1) or (2) are to be served.

**104 Powers of receiver in relation to trust moneys and trust property**

- (1) A receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership may:
  - (a) take possession of all books, accounts and other documents relating to trust moneys of the legal practitioner or partnership together with all cash representing trust money held by the legal practitioner or partnership;
  - (b) take possession of all trust property of the legal practitioner or partnership;
  - (c) require a person who has in his possession any trust property of the legal practitioner or partnership or books, accounts or other documents relating to the trust property or trust money of the legal practitioner or partnership to deliver that property or those books, accounts or documents to the receiver; and
  - (d) require the legal practitioner or a member of the partnership, or any person whom the receiver believes may be in a position to do so, to give to the receiver information in respect of the trust moneys or trust property of the legal practitioner or partnership or in respect of the books, accounts or other documents relating to those moneys or that property.
- (2) A requirement under this section shall be in writing and shall be delivered to the legal practitioner or other person to whom it is directed.
- (3) A legal practitioner or other person to whom a requirement under this section is delivered shall not, without lawful excuse, fail to comply with the requirement.

Penalty: 50 penalty units.

**105 Notice to bank**

- (1) A receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership may, by instrument in writing:
  - (a) give to the manager, or other person in charge, of the bank at which the legal practitioner or partnership maintains a trust bank account in accordance with Division 3 of Part VII notice of his appointment; and
  - (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the trust bank account.
- (2) Where a receiver of the trust property of a legal practitioner or of a partnership has reasonable grounds for believing that there is, in a bank account maintained by the legal practitioner or a member of the partnership, whether in his own name or any other name, a credit arising from the payment into that account of moneys received for or on behalf of any person by a legal practitioner or arising from the payment into the bank account of moneys paid out, otherwise than in accordance with the directions of the person or persons on whose behalf the moneys were held, from a trust bank account maintained by the legal practitioner in accordance with Division 3 of Part VII, the receiver may, by instrument in writing:
  - (a) give to the manager, or other person in charge, of the bank at which the account is maintained notice of his appointment; and
  - (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the bank account.
- (3) A copy of an instrument given by a receiver under this section shall, except where the receiver has been appointed after the death of a legal practitioner, be delivered to the legal practitioner.
- (4) The receiver may withdraw all the moneys in an account referred to in this section, or from time to time withdraw any of such moneys, and pay them into a trust bank account opened for the purpose and may operate on and otherwise deal with the account in accordance with directions given under section 112.

**106 Examination of legal practitioner and other persons as to trust moneys and trust property**

- (1) The Court may, on application by a receiver of the trust property of a legal practitioner, by order direct that the legal practitioner, or a person to whom a requirement under section 104(1)(c) has been delivered, appear before the Court for examination in relation to the

trust moneys and trust property of the legal practitioner.

- (2) On an examination under this section, the receiver and the legal practitioner or other person are each entitled to be represented by a legal practitioner.
- (3) The examination of a legal practitioner or other person under this section shall be conducted on oath or affirmation.
- (4) On an examination under this section, the legal practitioner or other person shall answer all questions that the Court allows to be put to him.
- (5) On an examination under this section, a legal practitioner or other person is not excused from answering a question on the ground that the answer might tend to incriminate him, but his answer is not admissible against him in any criminal proceedings other than:
  - (a) proceedings for an offence arising out of the falsity of the answer; or
  - (b) proceedings under this Act.

**107 Power of court to order delivery of trust property to receiver**

- (1) Where the Court is satisfied, on application made by the receiver of the trust property of a legal practitioner or a partnership of legal practitioners that a person who has in his custody or under his control trust property of the legal practitioner or of the legal practitioners practising in the partnership has failed to deliver the trust property to the receiver in accordance with a requirement under section 104(1), the Court may by order direct that person to deliver the trust property to the receiver.
- (2) A failure by a person to comply with an order made by the Court under subsection (1) is punishable as a contempt of the Court.

**108 Power of receiver to take delivery of property receivable by legal practitioners after appointment of receiver**

- (1) Where:
  - (a) a receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership has been appointed under this Part; and
  - (b) the receiver has reason to believe that another person is under an obligation or will, at some future date, be under an obligation to deliver to the legal practitioner or to the partnership personal property to be received by the legal

practitioner or the partnership on behalf of some other person,

the receiver may, by notice in writing given to the first-mentioned person, require that person to deliver the personal property to the receiver.

(2) Where:

- (a) a person has knowledge of the appointment of a receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership; and
- (b) that person is under an obligation to deliver personal property to the legal practitioner or to the partnership to be received by the legal practitioner or the partnership on behalf of some other person,

that first-mentioned person may deliver the personal property to the receiver.

- (3) A document signed by the receiver of the trust property of a legal practitioner or legal practitioners practising in partnership acknowledging the receipt of personal property delivered to him in accordance with either subsection (1) or (2) is as valid and effectual as if it had been given by the legal practitioner or the legal practitioners practising in partnership.
- (4) Personal property delivered to a receiver in accordance with this section shall be dealt with and disposed of by the receiver as if it were trust property of which he has taken possession under this Part.

**109 Right of legal practitioner, partnership or persons to apply to court for an order in respect of property**

(1) Where:

- (a) a receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership has been appointed; and
- (b) the receiver has taken into his possession property which he claims to be trust property,

the legal practitioner, any member of the partnership, the personal representative in the case where a legal practitioner has died, of a deceased legal practitioner or any other person who has delivered the property to the receiver may apply to the Court for an order under this section.

- (2) The Court may, if it is satisfied that the property referred to in the application is not trust property of the legal practitioner or of the legal practitioners practising in partnership, order the receiver to return the property to the person making the application or to such other person as the Court directs.

### **110 Liens for costs on property held by receiver**

- (1) Where:
- (a) a receiver of trust property of a legal practitioner or legal practitioners practising in partnership has been appointed under this Part; and
  - (b) the legal practitioner or the partnership claims a lien for costs on personal property held by the receiver,

the receiver may, by notice in writing, require the legal practitioner or the partnership to give to the receiver, within a period specified in the notice (being a period of not less than 30 days after the date upon which the notice is given), particulars of the property on which a lien is claimed together with a detailed bill of costs in respect of each lien claimed.

- (2) The receiver may, by the same or a subsequent notice in writing, require the legal practitioner or the partnership claiming the lien to lodge, within a time specified in the notice or within such further time as the receiver or the Court on an application made for the purpose allows, such a bill for taxation.
- (3) If the legal practitioner or the partnership fails to comply with a requirement contained in a notice given under either subsection (1) or (2), the lien is discharged.
- (4) The receiver of the trust property of a legal practitioner or legal practitioners practising in partnership shall, if requested so to do, give to the legal practitioner or those legal practitioners or a person authorized for the purpose by the legal practitioner or those legal practitioners such access to all documents and books as is reasonably necessary to enable a bill of costs referred to in subsection (1) to be prepared and, where such a request is made, time does not, for the purposes of this section, run in the period commencing on the day on which access is requested and ending on the day on which access as requested is given.

**111 Receiver to report to Court**

- (1) A receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership shall, as soon as is practicable, make a report to the Court setting out:
- (a) the amount of trust moneys held by the legal practitioner or legal practitioners on the appropriate date;
  - (b) the amount of moneys on deposit with the Master by the legal practitioner or legal practitioners on the appropriate date;
  - (c) the amounts of money paid to the receiver which, if paid to the legal practitioner or legal practitioners, would have been trust moneys;
  - (d) the liabilities of the legal practitioner or legal practitioners in respect of trust moneys on the appropriate date and in respect of moneys referred to in paragraph (c);
  - (e) if moneys are held by the receiver, the manner in which the receiver recommends that those moneys be dealt with; and
  - (f) particulars of all other trust property held by the receiver.
- (2) In this section, ***the appropriate date*** means the date of appointment of the receiver or, in a case where a legal practitioner has died, the date of the death of the legal practitioner.

**112 Power of Court to give directions**

Subject to section 113, where:

- (a) a receiver has made a report to the Court in accordance with section 111; and
- (b) that report discloses that moneys or trust property is held by the receiver,

the Court may, from time to time, give to the receiver directions as to the manner in which those moneys or that trust property are to be dealt with.

**113 Unclaimed money**

- (1) Where it appears to the Court that:
- (a) a person is entitled to moneys or trust property held by a receiver; and
  - (b) that person cannot be found,

the Court shall direct the receiver to pay those moneys to the Trust Committee or to deliver that property to the Trust Committee.

- (2) Moneys paid to the Trust Committee in pursuance of a direction under subsection (1) shall be held by it as if they were moneys deposited with it under Division 7 of Part VII.
- (3) Where trust property is delivered to the Trust Committee in accordance with this section, the Trust Committee shall deal with the property in such a manner as the Court, on the application of the Trust Committee directs, and, if, in accordance with the directions of the Court, the property is sold, the proceeds shall be held by the Trust Committee as if they were moneys deposited with it under Division 7 of Part VII.
- (4) Where the Court is satisfied that a person is entitled to moneys paid, or property delivered, to the Trust Committee in accordance with a direction given under subsection (1), it shall, on application by that person, by order direct the Trust Committee to repay the moneys, or to deliver the property to that person.

#### **114 Termination of receivership**

- (1) Where, for any reason, a receiver appointed under this Part is unable to continue to perform his functions as receiver, the Court may by order terminate his appointment and appoint another person to be receiver in his place.
- (2) The Court may, before making an order under subsection (1), require the receiver to submit a full report of his conduct of the receivership.
- (3) Where a receiver appointed under this Part has:
  - (a) complied with the directions of the Court;
  - (b) filed with the Master accounts of all moneys received or paid by him in his capacity as receiver; and
  - (c) filed with the Master a report showing the manner in which trust property (other than money) received by him has been disposed of,

the Court, may, by order, terminate the appointment of the receiver.

- (4) The Master shall cause a copy of an order made under subsection (3) together with copies of the accounts and reports filed by a receiver to be delivered to the legal practitioner or the legal practitioners practising in partnership in respect of whose trust property the receiver was appointed.



- (5) Where the Court makes an order under subsection (3) the Court may give directions with respect to the disposal by the receiver of any books, accounts or other documents that have come into his possession in the course of the receivership.

**115 Remuneration of receiver**

- (1) A receiver appointed under this Part shall be paid such fees as are agreed with the Master or, in default of agreement, as the Court, on the application of the Master, determines.
- (2) The fees payable to the receiver and his disbursements are payable out of the Fidelity Fund.
- (3) The amount of the fees and disbursements paid in pursuance of this section are recoverable as a debt due to the Fidelity Fund Committee from the legal practitioner, or from the legal practitioners, in respect of whose trust property the receiver was appointed.
- (4) Where an amount is recoverable under subsection (3) from 2 or more persons, the liability of those persons is joint and several.
- (5) An amount recovered under subsection (3) shall be paid into the Fidelity Fund.

**116 Payments by receiver to be deemed to be made by legal practitioner**

Moneys paid, or trust property delivered, by a receiver in accordance with a direction of the Court shall, for all purposes, be deemed to have been paid, or delivered, by the legal practitioner or legal practitioners in respect of whose trust property the receiver was appointed.

**117 Destroying or concealing records**

A person shall not destroy or conceal any book, account or other document relating to trust property received or held by a legal practitioner or legal practitioners with the intention of preventing the book, account or other document coming into the possession of a receiver appointed under section 103 of this Act.

Penalty: 100 penalty units.

**118 Reimbursement of receiver**

The Master may direct that a receiver appointed under this Part be paid out of the Fidelity Fund an amount equal to the amount of any liability incurred by the receiver for costs, charges, expenses or

damages for any act or omission done or made in good faith by the receiver, his servants or agents and in the execution or purported execution of powers conferred, or duties imposed, on the receiver by or under this Part.

### **118A      Interpretation**

In this Part, a reference to a legal practitioner includes a reference to an organisation referred to in section 22(5).

## **Part X            Costs**

### **119      Costs and disbursements not recoverable until statement delivered**

- (1) Except in a case to which section 129 applies, this section has effect with respect to proceedings by a legal practitioner to recover costs or disbursements for or in respect of work of a professional nature.
- (2) A legal practitioner may not commence proceedings unless he has delivered to the party to be charged:
  - (a) an itemized statement of the costs or disbursements; or
  - (b) a statement of the amount claimed in respect thereof as a lump sum,being (in either case) a statement signed in accordance with subsection (7).
- (3) A statement referred to in subsection (2) may be an interim statement covering part only of the work which the legal practitioner has been retained or employed to do.
- (4) Where a legal practitioner has delivered an itemised statement of costs or disbursements in the first instance, he may commence proceedings for their recovery at any time after the expiry of one month after the statement was delivered.
- (5) Where a legal practitioner has in the first instance delivered a statement in lump sum form:
  - (a) he may not commence proceedings until the expiry of one month after its delivery, and the person to be charged may at any time during that month request him for an itemized statement;

- (b) if during the month after delivery of the lump sum statement an itemized statement is requested, he may not commence proceedings until the expiry of one month after he has delivered that statement, but is not then bound in any proceedings by any amount or matter in the lump sum statement; and
  - (c) if during the month after delivery of the lump sum statement an itemized statement is not requested, he may commence proceedings at any time thereafter, but the court may on the application of the party to be charged stay those proceedings until the expiry of one month after the practitioner has delivered an itemized statement.
- (6) Notwithstanding anything in subsection (4) or (5), where the Court is satisfied on the application of a legal practitioner that there are reasonable grounds for believing that a person to whom a statement has been delivered for the purposes of this section is about to leave the Territory, the Court may make an order authorizing the practitioner to commence proceedings at any time after delivery of the statement.
- (7) A statement delivered for the purposes of this section must be signed by the legal practitioner or, if the costs or disbursements are due to a firm, by a partner of the firm in either his own name or that of the firm.
- (8) Where it is proved that a statement referred to in subsection (2) was signed in accordance with subsection (7) and delivered in accordance with section 140, it is not necessary for the legal practitioner to prove the contents of the statement, and it shall be presumed unless the contrary is shown that the statement complies with this section.

## **120 Taxation of costs and disbursements on application to Master**

- (1) A person to whom an itemized statement of costs or disbursements is delivered for the purposes of section 119 may:
- (a) within one month after the delivery of the statement; or
  - (b) within such further time as the Master allows,
- give notice to the Master and to the legal practitioner by whom the statement was delivered that he wishes to have the amount payable by him determined by taxation.

- (2) Notwithstanding subsection (1) a person is not entitled to give notice under that subsection after judgment has been entered in proceedings for the recovery of the costs or disbursements, or any part of the costs or disbursements, specified in the statement.
- (3) Subsection (1) applies whether or not the costs or disbursements to which a statement relates have been paid.
- (3A) A statement covering part only of the work which a legal practitioner has been retained or employed to perform may, notwithstanding that it has been already taxed pursuant to a notice under subsection (1), be taxed as part of the taxation pursuant to such a notice of a statement covering the whole of the work.
- (4) The Master shall not allow further time for the giving of notice under subsection (1) unless he is satisfied that it was not practicable for notice to be given within one month after the delivery of the statement.

#### **121 Form of notice, &c.**

- (1) A notice under section 120(1) shall be in writing and shall be accompanied by the statement to be taxed and a copy of the statement.
- (2) Where notice is given to the Master under section 120(1), he shall fix a time and place for the taxation and shall give notice of the time and place so fixed to the person requesting the taxation and to the legal practitioner concerned.

#### **122 Taxation in absence of party**

- (1) Where a person gives notice under section 120(1) and he fails to appear at the time and place fixed by the Master in pursuance of section 121(2), the notice shall be deemed to have been withdrawn.
- (2) Where a person gives notice under section 120(1) that he wishes to have a statement taxed and the legal practitioner who delivered the statement does not appear at the time and place fixed by the Master under section 121(2), the Master shall subject to subsection (1), proceed with the taxation.

#### **123 Matters to be considered on taxation**

- (1) The Master shall, in assessing the proper sum to be charged for doing any act in respect of which no charge is provided for in a scale of costs prescribed by or under a law in force in the Territory, allow such sum as is fair and reasonable having regard to all the circumstances of the case.

- (2) In determining what sum is fair and reasonable for the purposes of subsection (1), the Master shall take into account the amount, if any, from time to time recommended by the Law Society as the appropriate charge for the doing of that act.
- (3) The Master shall not reduce the amount specified in a statement in respect of a disbursement unless he is satisfied that the amount of the disbursement is unreasonable.
- (4) Where a legal practitioner has, before delivering an itemized statement for the purposes of section 119, delivered a statement of the amount claimed in respect of the costs or disbursements in question as a lump sum, the practitioner is not on taxation bound by any amount or matter in the lump sum statement.

#### **124 Costs of taxation**

- (1) Where the amount claimed in a statement is reduced on taxation by a sixth part or more, the legal practitioner who delivered the statement is liable to pay to the person to whom the statement was delivered his costs of the taxation.
- (2) Where the amount claimed in a statement is not reduced on taxation or is reduced by less than a sixth part, the person to whom the statement was delivered is liable to pay to the legal practitioner who delivered the statement his costs of the taxation.
- (3) The amount to be paid under subsection (1) or (2) shall be assessed by the Master forthwith after the completion of the taxation.

#### **125 Certificate of taxation**

- (1) On the taxation of a statement under this Part, the Master shall certify in writing the amount (if any) that, having regard to the result of the taxation and the amount payable under section 124 is, in his opinion, due to the legal practitioner who delivered the statement or, if the legal practitioner has received payment of the amount specified in the statement, the amount due by the legal practitioner.
- (2) The Master shall deliver a copy of his certificate under subsection (1) to each of the persons who appeared, or was represented, on the taxation.
- (3) In an action by a legal practitioner for the recovery of any amount as costs, a certificate by the Master given under subsection (1) is conclusive with respect to the amount due to the legal practitioner.

- (4) A reference in either subsections (2) or (3) to a certificate given under subsection (1) includes a reference to such a certificate as amended under section 126(3).

#### **126 Review of taxation**

- (1) A person aggrieved by the decision of the Master as to any item in a statement delivered for the purposes of section 119 may, within 14 days after the date on which a copy of the Master's certificate under section 125 is delivered to him or within such further time as the Court allows, make application to the Court for a review of the decision of the Master.
- (2) On an application under this section, the Court may affirm or vary the decision of the Master and may give such directions as it thinks necessary in respect of the amendment of the certificate given by the Master under section 125.
- (3) The Master shall comply with any directions given by the Court under subsection (2) and shall deliver a copy of the amended certificate to each of the persons to whom the certificate was delivered in accordance with section 125(2).

#### **127 Stay of proceedings**

Where notice is given under section 120(1) in respect of a statement delivered for the purposes of section 119, any proceedings commenced by the legal practitioner in relation to costs or disbursements claimed in the statement are, by force of this section and so long as the notice is not deemed under section 122(1) to have been withdrawn, stayed until the expiration of 14 days after the date of the certificate of the Master under section 125 or, where application is made under section 126, until the determination of the application.

#### **128 Amount due by legal practitioner recoverable as a debt**

Where a certificate of the Master under section 125 or such a certificate as amended under section 126(3), specifies an amount as the amount that is, in the opinion of the Master, due to a person to whom a statement has been delivered under this Part, the amount so specified is recoverable by that person as a debt due to him by the legal practitioner by whom the statement was delivered.

#### **129 Agreements as to costs**

- (1) The preceding provisions of this Part do not apply in respect of the cost to be paid to a legal practitioner for work to which an agreement under this section relates.

- (2) A legal practitioner may make an agreement with a person that the amount of the costs (excluding disbursements) payable, or to be payable, by the person to the legal practitioner for work of a professional nature already undertaken, or to be undertaken, for the person by the legal practitioner shall be the amount specified in, or ascertainable in accordance with, the agreement.
- (3) An agreement referred to in subsection (2) is not enforceable unless a note or memorandum containing the terms of an agreement is signed by the person liable to pay the costs to which the agreement relates.
- (4) A note or memorandum of an agreement signed in accordance with subsection (3) is evidence of the terms of the agreement.
- (5) A legal practitioner who is a party to an agreement under this section is not entitled, in respect of work to which the agreement relates, to receive an amount for his costs (including disbursements) greater than the amount specified in, or ascertainable in accordance with, the agreement.

### **130 Powers of court where contract not fair and reasonable**

- (1) Where, on an application by a person who has made an agreement with a legal practitioner under section 129, the Court is satisfied that the agreement is not fair and reasonable, the Court may, by order:
  - (a) direct that the amount payable under the agreement be reduced to an amount specified in the order; or
  - (b) declare that the agreement is not binding on the parties to the agreement.
- (2) Where, under subsection (1), the Court directs that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order of the Court were specified in the agreement as the amount payable under the agreement.
- (3) Where, under subsection (1), the Court declares that an agreement is not binding on the parties to the agreement:
  - (a) the Court may make such further orders as it thinks necessary to restore the parties to the agreement to the position in which they would have been if the agreement had not been made; and
  - (b) the provisions of this Part (other than section 129) apply as if the agreement had not been made.

- (4) Except by leave of the Court, a person is not entitled to make an application under this section in respect of an agreement after the institution of proceedings for the recovery from that person of the amount payable under the agreement.

## **Part XI                    Offences by unqualified persons**

### **131            Persons other than legal practitioners not to hold themselves out to be qualified**

Except in accordance with Part XII, a person other than a legal practitioner shall not:

- (a) hold himself out to be, or to be qualified to perform any of the functions of, a legal practitioner; or
- (b) permit his name to be so used as to suggest that he is, or is qualified to perform any of the functions of, a legal practitioner, unless the person is permitted by or under a law of the Territory to perform the function for reward.

Penalty:        500 penalty units.

### **132            Preparation of certain documents by persons who are not legal practitioners**

- (1) Subject to subsection (2), a person other than a legal practitioner shall not, for reward:
- (a) draw or cause to be drawn by an employee a will or other testamentary instrument; or
  - (b) draw or cause to be drawn by an employee an instrument creating or regulating rights between persons or relating to real or personal property or to a legal proceeding.

Penalty:        500 penalty units.

- (2) It is not an offence against subsection (1):
- (a) for a public officer to draw an instrument in the course of his employment;
  - (aa) if the person is permitted under Part XII to draw, or cause to be drawn, the instrument;
  - (b) for a person to engross an instrument in the course of his employment;



- 
- (c) for a person who is employed to draw an instrument of a kind referred to in subsection (1) as part of his ordinary duties to draw such an instrument if the employer of the person is a legal practitioner and the person drawing the instrument does not receive, in respect of the drawing of the instrument, any fee or reward other than his salary; or
- (d) if the drawing of the instrument is involved in the performance of prescribed work, or of work included in a prescribed class of work.
- (3) In this section:

**draw** includes prepare and fill in and **drawn** has a corresponding meaning.

**prescribed work** includes work lawfully performed by a conveyancing agent within the meaning of the *Agents Licensing Act*.

**public officer** means:

- (a) a person employed under an Act or Ordinance; and
- (b) a member of the Defence Force.

### 133 Preparation of papers relating to application for probate

- (1) A person other than a legal practitioner shall not, for reward:
- (a) take instructions, either on his own behalf or as agent for another person, for the preparation of papers to be used in support of, or in opposition to, an application for the grant of probate or letters of administration; or
- (b) draw or prepare such papers.

Penalty: 500 penalty units.

- (2) Subsection (1) does not apply to:
- (a) the Curator of Estates of Deceased Persons holding office under the *Administration and Probate Act* or a person performing the duties of the Curator;
- (aa) a person who is permitted under Part XII to take the instructions or prepare the papers;
- (b) a person employed in the office of the Curator of Estates of Deceased Persons;

- (c) the Public Trustee within the meaning of the *Public Trustee Act*;
- (d) a person employed in the office of the Public Trustee;
- (e) a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act 1981*; or
- (f) a person employed in the office of a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act 1981*.

**134 Offences by corporations**

- (1) Where a body corporate does an act which, if done by a natural person, would be an offence against section 131, 132 or 133, the body corporate is guilty of an offence and punishable, upon being found guilty, by a fine not exceeding 500 penalty units.
- (2) Where, by virtue of subsection (1), a body corporate is guilty of an offence, every person who, at the time of the commission of the offence, was a director or officer of the body corporate is also guilty of the offence and punishable as if the offence had been committed by him unless he proves that the offence was committed without his knowledge and that he took reasonable steps to prevent the commission of the offence by the body corporate.

**Part XII Practice of foreign law**

**Division 1 Preliminary**

**135 Object**

The object of this Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in Australia by foreign-qualified lawyers as a recognised aspect of Australian legal practice.

**135A Definitions**

In this Part, unless the contrary intention appears:

***Australia*** includes the external Territories.

***Australian law*** means the law of the Commonwealth or a State or Territory of the Commonwealth.

**commercial legal presence** means an interest in a law firm practising foreign law.

**domestic lawyer** means a person (including a foreign lawyer) who is registered to practise law in the Territory.

**foreign law** means the law of a place outside Australia.

**foreign lawyer** means a person who is registered to practise law in a place outside Australia by a foreign registration authority.

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

**home registration authority**, in relation to a foreign lawyer, means the foreign registration authority stated in the lawyer's registration notice under section 135D(2)(b).

**law firm** means:

- (a) a person practising as a lawyer on the person's own account;
- (b) a partnership of 2 or more persons practising as lawyers; or
- (c) an incorporated legal practice that is permitted by a law of the Territory.

**locally registered foreign lawyer** means a person who is registered as a foreign lawyer under this Part.

**practising foreign law** means doing work, or transacting business, in the Territory concerning foreign law, being work or business of a kind that, if it concerned the law of the Territory, would ordinarily be done or transacted by a domestic lawyer.

**registered:**

- (a) when used in connection with a place outside Australia – means having all necessary licences, approvals, admissions, certifications or other forms of authorisation (including practising certificates) required by or under legislation for the carrying on of the practice of law in that place; or
- (b) when used in connection with the practice of law in the Territory (other than by or under this Act), means –
  - (i) admitted to practise law in the Territory under the Legal Practitioners Rules or by virtue of the *Mutual Recognition Act 1992* of the Commonwealth; and

- (ii) holding a current practising certificate under this Act.

### **135B Operation of Part**

- (1) This Part applies to a natural person (other than a domestic lawyer) who practises foreign law in the Territory.
- (2) Nothing in this Part requires a domestic lawyer to be registered as a foreign lawyer under this Part in order to practise foreign law in the Territory.

## **Division 2 Local registration of foreign lawyers**

### **135C Registration requirement**

- (1) A person must not practise foreign law in the Territory unless the person:
  - (a) is a locally registered foreign lawyer and practises foreign law in the Territory in accordance with this Part;
  - (b) is a foreign lawyer who practises foreign law in the Territory on a temporary basis or is subject to a migration restriction and who:
    - (i) does not maintain an office for the purpose of practising as a lawyer in the Territory; or
    - (ii) does not have a commercial legal presence in the Territory; or
  - (c) is a domestic lawyer or is a person employed by a domestic lawyer to provide advice on foreign law to, and for use by, the domestic lawyer.

Penalty: 500 penalty units.

- (2) In this section, **migration restriction** means a restriction imposed on a person who is not an Australian citizen under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person.

### **135D Registration notice**

- (1) A foreign lawyer may lodge a written notice with the Law Society seeking registration as a foreign lawyer under this Part.

- (2) A notice under subsection (1) is to:
- (a) state the lawyer's educational and professional qualifications;
  - (b) specify the place outside Australia in which the lawyer is registered to practise law by a specified foreign registration authority and in relation to which the lawyer wishes to practise foreign law;
  - (c) state that the lawyer is not the subject of any disciplinary proceedings in the place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration;
  - (d) state that the lawyer is not a party in any pending criminal or civil proceedings that is likely to result in disciplinary action being taken against the lawyer in the place;
  - (e) state that the lawyer's registration in the place is not cancelled or currently suspended as a result of any disciplinary action;
  - (f) state that the lawyer:
    - (i) is not otherwise personally prohibited from carrying on the practice of law in the place or bound by any undertaking not to carry out the practice of law in the place; and
    - (ii) is not subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in the place;
  - (g) specify any special conditions imposed as a restriction on the practice of law by the lawyer in the place or any undertaking given by the lawyer restricting the lawyer's practice of law in the place;
  - (h) give consent to the making of inquiries of, and the exchange of information with, the home registration authority regarding the lawyer's activities in practising law in the place or otherwise regarding matters relevant to the notice; and
  - (j) contain evidence that demonstrates the lawyer's intention to practise foreign law in the Territory and to establish an office or commercial legal presence in the Territory within a reasonable period after registration for that purpose.

- (3) A notice under subsection (1) is to be accompanied by an original instrument, or a copy of an original instrument, from the home registration authority in the place specified under subsection (2)(b):
- (a) verifying the lawyer's educational and professional qualifications;
  - (b) verifying the lawyer's registration by the authority to practise law in the place and the date of registration; and
  - (c) describing anything done by the lawyer in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the lawyer's professional standing within the legal profession of that place.
- (4) The lawyer must certify in the notice under subsection (1) that the instrument accompanying the notice under subsection (3) is the original or a complete and accurate copy of the original, as the case may be.
- (5) If the foreign lawyer is, or has been in the 10 years immediately before the notice is lodged under subsection (1), registered to practise law, or has practised law, in a place outside Australia (other than the place specified under subsection (2)(b)), his or her notice under subsection (1) is to be accompanied by an affidavit specifying:
- (a) the place;
  - (b) whether or not the lawyer is or has been the subject of any disciplinary proceedings in the place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to his or her registration or practise as a lawyer;
  - (c) whether or not the lawyer is or has been a party in any pending criminal or civil proceedings that is likely to result in disciplinary action being taken against the lawyer in the place;
  - (d) whether or not the lawyer's registration in the place has been cancelled or suspended as a result of any disciplinary action;
  - (e) whether or not the lawyer:
    - (i) is or has been personally prohibited from carrying on the practice of law in the place or bound by any undertaking not to carry out the practice of law in the place; and

- (ii) is or has been subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in the place;
  - (f) whether or not there are or have been in the place any special conditions imposed as a restriction on the practice of law by the lawyer in the place or any undertaking given by the lawyer restricting the lawyer's practice of law in the place; and
  - (g) that the lawyer consents to the making of inquiries of, and the exchange of information with, the foreign registration authority of the place regarding the lawyer's activities in practising law in the place or otherwise regarding matters relevant to the affidavit or the notice under subsection (1).
- (6) The Law Society may require the lawyer to verify the statements in a notice under subsection (1) or an affidavit under subsection (5) by a statutory declaration or other proof acceptable to the Law Society.
- (7) If an instrument under subsection (3) or (5) is not in English, it is to be accompanied by a certified translation in English.
- (8) A notice under subsection (1) is to be accompanied by proof that, for at least the 12 month period following the lodgement of the notice, the applicant will hold the professional indemnity insurance he or she is required to hold under section 135W.
- (9) The Law Society may conduct an investigation as it thinks fit in relation to an applicant for registration under this Part.

**135E Fee for registration**

- (1) A notice under section 135D is to be accompanied by the fee determined by the Law Society.
- (2) The fee under subsection (1) is not to be greater than the sum of –
- (a) the highest admission fee prescribed for the purposes of section 14A; and
  - (b) the fee prescribed under section 32 in relation to an unrestricted practising certificate.

### **135F Entitlement to registration**

- (1) A person is entitled to be registered under this Act as a foreign lawyer if:
  - (a) the person lodges the notice and other documents required to be lodged in accordance with section 135D;
  - (b) the Law Society is satisfied that the person is registered to practise law in a place outside Australia specified under section 135D(2)(b) in the notice;
  - (c) the Law Society considers that an effective system exists in the place specified under section 135D(2)(b) for the regulation of the practice of law in the place;
  - (d) the Law Society considers that the person is not, as a result of criminal, civil or disciplinary proceedings, subject to any special conditions in carrying on the practice of law in a place specified in a notice under section 135D(2)(b) or any undertakings concerning the person's practice of law in that place that would make it inappropriate to register the person;
  - (e) the Law Society considers that the person is not a person whose practise of law in a place specified in an affidavit under section 135D(5) would make it inappropriate to register the person; and
  - (f) the person demonstrates an intention to practise foreign law in the Territory and to establish an office or commercial legal presence in the Territory within a reasonable period after registration for that purpose.
- (2) Residence or domicile in the Territory is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign lawyer under this Part.

### **135G Conditions**

- (1) The Law Society may impose a condition on the registration of a foreign lawyer under this Part that is equivalent to a special condition of carrying on practice imposed on the lawyer by the home registration authority.
- (2) The Law Society may not impose any other conditions on registration of a foreign lawyer under this Part.



**135H Notification of decision**

- (1) The Law Society must give a foreign lawyer who lodges a notice in accordance with section 135D written notice of its decision:
  - (a) to grant registration under this Part;
  - (b) to grant registration subject to conditions; or
  - (c) to refuse registration.
- (2) The Law Society may, within 28 days after a notice is lodged under section 135D, notify the foreign lawyer that the application for registration has not yet been determined because the Law Society has not completed the inquiries of or exchange of information with the home registration authority or a foreign registration authority in respect of a place specified in an affidavit made by the foreign lawyer under section 135D(5).
- (3) The Law Society is to be taken to have refused registration if registration is not granted:
  - (a) within 28 days after a notice is lodged under section 135D; or
  - (b) if a notice is given to a foreign lawyer under subsection (2) – within 28 days after that notice is given to the foreign lawyer.

**135J Duration of registration and annual fee**

- (1) Registration under this Part is to be taken to have come into effect on and from the day on which the notice under section 135D was lodged.
- (2) Registration remains in force, unless sooner cancelled, for one year on and from the day on which it takes effect.
- (3) Registration may be renewed by payment of an annual fee determined by the Law Society.
- (4) A person's registration may only be renewed if he or she provides to the Law Society proof that, in respect of the period to which the renewal relates, he or she will hold the professional indemnity insurance required to be held by him or her under section 135W.
- (5) Payment of the annual fee is to be made on or before a date notified in writing to the locally registered foreign lawyer by the Law Society.

- (6) The annual fee is not to be greater than the fee payable by domestic lawyers under section 32 for the issue of an unrestricted practising certificate.

**135K Register**

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

**135L Cancellation of registration**

- (1) The Law Society may, by notice in writing to a locally registered foreign lawyer, cancel the lawyer's registration under this Part if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for cancellation, registration may be cancelled if:
- (a) the foreign lawyer's home registration authority cancels registration of the foreign lawyer as a result of criminal, civil or disciplinary proceedings;
  - (b) the foreign lawyer fails to comply with a requirement of this Act;
  - (c) the registration of the foreign lawyer by the lawyer's home registration authority has lapsed;
  - (d) the foreign lawyer has not established an office to practise foreign law or a commercial legal presence in the Territory within a reasonable period after registration;
  - (e) the foreign lawyer fails to comply with a condition imposed on the lawyer's registration under this Part; or
  - (f) the foreign lawyer's practice of law in a place specified in a notice under section 135D(5) would make it inappropriate to permit the lawyer to remain registered as a foreign lawyer.
- (3) Registration is not to be cancelled under subsection (1) unless the foreign lawyer has been given reasonable opportunity to make written submissions to the Law Society.

- (4) Registration is not to be cancelled on the ground specified in subsection (2)(c) if the lawyer demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer but from circumstances beyond the lawyer's control.
- (5) Registration as a foreign lawyer under this Part is automatically cancelled if the lawyer:
  - (a) is registered as a domestic lawyer; or
  - (b) requests cancellation.
- (6) Cancellation of registration at the request of a foreign lawyer does not affect the exercise by the Law Society or the Complaints Committee of a power relating to disciplinary proceedings brought against the lawyer before the cancellation.

### **135M Appeals**

- (1) If the Law Society:
  - (a) refuses to register, or renew the registration of, a foreign lawyer under this Part;
  - (b) cancels the registration of a foreign lawyer under this Part; or
  - (c) takes any disciplinary action against a foreign lawyer under this Part,the foreign lawyer may appeal to the Supreme Court.
- (2) The Supreme Court may make an order in relation to the refusal, cancellation or disciplinary action that might be made in relation to an appeal by:
  - (a) an applicant for registration as a domestic lawyer who is refused registration as a domestic lawyer under this Act;
  - (b) a domestic lawyer whose practising certificate is cancelled under this Act; or
  - (c) a domestic lawyer against whom disciplinary action has been taken under this Act by the Law Society or the Complaints Committee.

## **Division 3 Legal practice**

### **135N Scope of practice**

- (1) A locally registered foreign lawyer may provide only the following legal services:
  - (a) doing any work, or transacting any business, in the Territory concerning the law of the place in which the lawyer is registered by the lawyer's home registration authority;
  - (b) legal services (including appearances) in relation to arbitration proceedings in the Territory of a kind prescribed by the Regulations;
  - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;
  - (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the Territory of a kind prescribed by the Regulations.
- (2) Nothing in this Part authorises a locally registered foreign lawyer to practise Australian law or to appear in a court (except on the lawyer's own behalf).
- (3) Despite subsection (2), a locally registered foreign lawyer may advise on the effect of an Australian law if the giving of advice on Australian law is necessarily incidental to the practice of foreign law and the advice is expressly based on the advice given on the Australian law by a domestic lawyer who is not an employee of the foreign lawyer.

### **135P Form of practice**

- (1) A locally registered foreign lawyer may practise:
  - (a) as a foreign lawyer on the lawyer's own account;
  - (b) in partnership with other locally registered foreign lawyers or with domestic lawyers or both; or
  - (c) as a member of an incorporated legal practice that is permitted by a law of the Territory.

- (2) An affiliation referred to in subsection (1) does not entitle the locally registered foreign lawyer to practise domestic law in the Territory.

**135Q Application of professional ethical and practice standards**

A locally registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by a domestic lawyer in practising Australian law in the Territory, constitute professional misconduct within the meaning of section 45.

**135R Offences and disciplinary action**

- (1) A locally registered foreign lawyer who contravenes or fails to comply with a provision of this Part, other than section 135C or 135W, is not to be taken to have committed an offence against the provision.
- (2) Subject to subsection (3), Part VI applies to and in relation to a locally registered foreign lawyer who is alleged to have contravened section 135Q as if the registered foreign lawyer were a domestic lawyer who has engaged in or is alleged to have engaged in professional misconduct within the meaning of section 45.
- (3) In determining the action, if any, to be taken under Part VI in relation to a foreign lawyer who has contravened section 135Q, regard is to be had to whether the conduct of the lawyer was consistent with the standards of professional conduct of the legal profession in the place outside Australia in which the lawyer is registered by the home registration authority.
- (4) The Regulations may exempt a foreign lawyer or class of foreign lawyers from the application of a provision of Part VI.

**135S Letterhead and other identifying documents**

- (1) A locally registered foreign lawyer may describe himself or herself and a law firm with which the foreign lawyer is associated in any of the ways designated in section 135T.
- (2) A locally registered foreign lawyer must indicate on the lawyer's letterhead and any other document used when practising foreign law in the Territory to identify the lawyer as a lawyer the fact that the lawyer is a locally registered foreign lawyer.
- (3) A locally registered foreign lawyer may (but need not) indicate all States or Territories in which the lawyer (and any of the lawyer's partners) are registered as foreign lawyers on a document referred to in this section.

- (4) A locally registered foreign lawyer may (but need not) indicate all places outside Australia in which the lawyer is registered to practise law on a document referred to in this section.

**135T Designation**

- (1) A locally registered foreign lawyer may use any of the following designations:
- (a) the lawyer's own name;
  - (b) the title the lawyer is authorised by law to use in the place outside Australia in which the lawyer is registered by the home registration authority;
  - (c) subject to subsection (2), the name of any law firm outside Australia with which the lawyer is affiliated (whether as a partner or otherwise);
  - (d) if the foreign lawyer is a member of a law firm in Australia that includes both locally registered foreign lawyers and domestic lawyers – a description of the firm that includes reference to both domestic lawyers and registered foreign lawyers.
- (2) A locally registered foreign lawyer who is a partner of a law firm outside Australia may use the name of the firm in practising, or in connection with the practice of, foreign law in the Territory only if:
- (a) the lawyer indicates on the lawyer's letterhead and any other document used in the Territory to identify the lawyer as a lawyer that the law firm practises only foreign law in the Territory;
  - (b) the lawyer has provided the Law Society with a copy of the partnership agreement or other acceptable evidence that the lawyer is a partner of the law firm; and
  - (c) use of the name complies with all requirements of the law of the Territory concerning use of business names and will not lead to confusion with the name of an existing domestic or foreign law firm in the Territory.
- (3) A locally registered foreign lawyer who is a partner of a law firm may use the name of a firm in accordance with this section whether or not other partners in the firm are locally registered foreign lawyers.

### **135U Advertising**

- (1) A locally registered foreign lawyer must comply with all advertising restrictions imposed:
  - (a) by the Law Society on the practice of law by a domestic lawyer; and
  - (b) by law on the practice of law by a domestic lawyer that are relevant to the practice of foreign law in the Territory.
- (2) Without limiting subsection (1), a locally registered foreign lawyer must not advertise, or use a description on the lawyer's letterhead or another document used in the Territory to identify the lawyer as a lawyer, in a way:
  - (a) that might reasonably be regarded as:
    - (i) false, misleading or deceptive; or
    - (ii) suggesting that the locally registered foreign lawyer is a domestic lawyer; or
  - (b) that contravenes a requirement of the Regulations.

### **135V Employment of domestic lawyers by foreign lawyers**

- (1) A locally registered foreign lawyer may employ one or more domestic lawyers.
- (2) Employment of a domestic lawyer does not entitle a locally registered foreign lawyer to practise Australian law in the Territory.
- (3) A domestic lawyer employed by a locally registered foreign lawyer may practise foreign law but must not provide advice on Australian law to, or for use by, the foreign lawyer or otherwise practise Australian law in the Territory in the course of that employment.
- (4) Subsection (3) does not apply to a domestic lawyer employed by a law firm if:
  - (a) a partner of the firm is a locally registered foreign lawyer; and
  - (b) one or more partners of the firm is a domestic lawyer.
- (5) A period of employment by a locally registered foreign lawyer may not be used by a domestic lawyer to satisfy a requirement under this Act for the completion of a period of supervised practice by him or her before being admitted as a legal practitioner or granted a practising certificate.

**135W Indemnity insurance**

- (1) A locally registered foreign lawyer who practises foreign law in the Territory must have professional indemnity insurance that is equivalent to the coverage required by or under this Act to be maintained by domestic lawyers.
- (2) The penalty payable for an offence against subsection (1) is the penalty prescribed for breach of a requirement of the Regulations that a domestic lawyer take out and maintain professional indemnity insurance.

**135X Trust accounts and Fidelity Fund contributions**

- (1) Part VII applies to and in relation to a locally registered foreign lawyer who receives money on behalf of another person in the course of practising as a foreign lawyer in the Territory as if he or she were a domestic lawyer practising law in the Territory.
- (2) In Part VII as applied by subsection (1), a reference to money is not limited to a reference to money in the Territory.
- (3) Parts VIII and IX apply to and in relation to a locally registered foreign lawyer as if he or she were a domestic lawyer practising law in the Territory.
- (4) Section 138 applies to and in relation to a locally registered foreign lawyer who maintains or has maintained a trust account as if he or she were a domestic lawyer practising law in the Territory.

**Part XIII Miscellaneous****136 Legal practitioner not to share receipts with persons not practising as legal practitioners**

- (1) Subject to this section a legal practitioner shall not share the receipts from his practice with a person other than a legal practitioner.
- (2) Subsection (1) does not apply to a legal practitioner to the extent that he shares the receipts from his practice with:
  - (a) a person with whom he formerly carried on practice in partnership;
  - (b) a dependant or legal personal representative of a person referred to in paragraph (a);



- (c) a person who carries on practice in a State or another Territory and, in the course of his practice, performs work of a professional nature as the agent of the legal practitioner; or
- (d) a person who carries on practice in a State or another Territory and for whom the legal practitioner, in the course of his practice, performs work of a professional nature as the agent of that person.

**137 Employment of persons who have ceased to be legal practitioners**

Except with the permission of the Master, a legal practitioner shall not employ a person in connection with his practice as a legal practitioner if he knows that the name of that person has been removed, otherwise than at his own request, from:

- (a) the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act 1903* of the Commonwealth; or
- (b) the roll of barristers and solicitors, of barristers, of solicitors or of legal practitioners of the Supreme Court of a State, the Territory or another Territory.

**138 Unclaimed trust moneys**

- (1) Where any trust moneys held by a legal practitioner who practices as a legal practitioner have become unclaimed moneys, the legal practitioner shall, within one month after those moneys become unclaimed moneys, pay those moneys to the Fidelity Fund.
- (2) Trust moneys held by a legal practitioner are unclaimed moneys for the purposes of this section if:
  - (a) the trust moneys have been held by the legal practitioner for a period of not less than 6 years, and during that period, the legal practitioner has had no knowledge of the existence or the address of the person on whose behalf those trust moneys are held; or
  - (b) the person has refused to accept payment of those moneys when tender of payment has been made.
- (3) A person who claims to be entitled to any moneys that have been paid into the Fidelity Fund in pursuance of subsection (1) may apply to the Court for an order under this subsection declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.

- (4) Upon receipt by the Fidelity Fund Committee of an office copy of an order under subsection (3), the Committee shall pay to the person in whose favour the order was made out of the Fidelity Fund an amount equal to the amount specified in the order.

**138A General offence**

Subject to section 135R(1), a person who contravenes or fails to comply with a provision of this Act in respect of which no penalty is provided otherwise than by this section is guilty of an offence.

Penalty: 50 penalty units.

**139 Fines to be paid into fidelity fund**

- (1) A fine imposed upon a person by the Court, Law Society or Complaints Committee under Part VI shall be paid to the Fidelity Fund Committee.
- (2) A fine paid to the Fidelity Fund Committee in accordance with subsection (1) shall be paid by it into the Fidelity Fund.

**140 Service of documents**

For the purposes of this Act, a document may be given or delivered to a person by:

- (a) delivering the document to the person personally; or
- (b) sending the document to the person by post.

**141 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular:

- (c) prescribing penalties, not exceeding 100 penalty units in the case of an individual and not exceeding 500 penalty units in the case of a body corporate; and
- (d) prescribing matters for or in relation to:
- (i) the manner in which legal practitioners shall deal with trust moneys; and

- (ii) the manner in which an audit of trust moneys shall be carried out.

**First Schedule**

section 4

*Legal Practitioners Ordinance 1965*

*Legal Practitioners Ordinance 1970*

*Legal Practitioners (Trust Accounts) Ordinance 1930*

---

**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Legal Practitioners Ordinance 1974 (Act No. 18, 1974)***

Assent date	28 June 1974
Commenced	1 July 1974 ( <i>Gaz</i> No. 26B, 29 June 1974, p 307)

***Legal Practitioners Ordinance 1977 (Act No. 19, 1977)***

Assent date	31 May 1977
Commenced	17 June 1977 ( <i>Gaz</i> No. 24, 17 June 1977, p 908)

***Legal Practitioners Ordinance 1978 (Act No. 12, 1978)***

Assent date	13 April 1978
Commenced	13 April 1978

***Law Officers Ordinance 1978 (Act No. 61, 1978)***

Assent date	1 July 1978
Commenced	1 July 1978

***Statute Law Revision Act 1978 (Act No. 95, 1978)***

Assent date	5 September 1978
Commenced	5 September 1978

***Transfer of Powers(Law) Act 1978 (Act No. 1, 1980)***

Assent date	7 January 1980
Commenced	7 January 1980

**Amending Legislation*****Transfer of Powers (Law) Act 1979 (Act No. 2, 1980)***

Assent date	7 January 1980
Commenced	7 January 1980

***Legal Practitioners Amendment Act 1981 (Act No. 56, 1981)***

Assent date	14 July 1981
Commenced	28 January 1983 ( <i>Gaz</i> S5, 28 January 1983, p 1)

***Legal Practitioners Amendment Act 1982 (Act No. 52, 1982)***

Assent date 22 September 1982  
 Commenced s 15: 23 December 1982 (*Gaz G51*, 23 December 1982, p 2);  
 rem: 22 September 1982

***Legal Practitioners Amendment Act (No. 2) 1982 (Act No. 91, 1982)***

Assent date 14 December 1982  
 Commenced 23 December 1982 (*Gaz G51*, 23 December 1982, p 7)

***Legal Practitioners Amendment Act 1983 (Act No. 32, 1983)***

Assent date 16 September 1983  
 Commenced 16 September 1983

***Statute Law Revision Act 1983 (Act No. 58, 1983)***

Assent date 28 November 1983  
 Commenced 28 November 1983

***Statute Law Revision Act 1985 (Act No. 49, 1985)***

Assent date 1 October 1985  
 Commenced 1 October 1985

***Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)***

Assent date 30 June 1986  
 Commenced 1 July 1986 (s 2)

***Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)***

Assent date 10 December 1986  
 Commenced 19 December 1986 (*Gaz S87*, 17 December 1986)

***Legal Practitioners Amendment Act 1987 (Act No. 36, 1987)***

Assent date 30 September 1987  
 Commenced 1 October 1987 (s 2)

***Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)***

Assent date 11 June 1990  
 Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and *Gaz G2*, 16 January 1991, p 9)

***Legal Aid Act 1990 (Act No. 30, 1990)***

Assent date 11 June 1990  
 Commenced 1 July 1990 (*Gaz S40*, 29 June 1990)

***Legal Practitioners Amendment Act 1990 (Act No. 38, 1990)***

Assent date 22 June 1990  
 Commenced 22 June 1990

***Legal Practitioners Amendment Act (No. 2) 1990 (Act No. 43, 1990)***

Assent date 23 August 1990  
 Commenced 1 September 1990 (s 2)

***Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)***

Assent date 14 December 1990  
 Commenced 1 January 1991 (s 2, s 2 *Corporations (Northern Territory) Act 1990* (Act No. 56, 1990) and *Gaz S76*, 21 December 1990)

---

**Statute Law Revision Act 1991 (Act No. 31, 1991)**

Assent date 25 June 1991  
Commenced 25 June 1991

**Land and Business Agents Amendment Act 1991 (Act No. 79, 1991)**

Assent date 16 December 1991  
Commenced 10 August 1992 (*Gaz* S43, 5 August 1992)

**Legal Practitioners Amendment Act 1993 (Act No. 42, 1993)**

Assent date 22 September 1993  
Commenced 1 October 1993 (*Gaz* S79, 1 October 1993)

**Legal Practitioners Amendment Act 1995 (Act No. 10, 1995)**

Assent date 10 April 1995  
Commenced 12 July 1995 (*Gaz* G28, 12 July 1995, p 2)

**Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)**

Assent date 19 April 1996  
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

**Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)**

Assent date 2 June 1997  
Commenced 2 June 1997

**Territory Insurance Office (Miscellaneous Amendments) Act 1998 (Act No. 37, 1998)**

Assent date 27 May 1998  
Commenced 27 May 1998

**Legal Practitioners Amendment Act 1999 (Act No. 30, 1999)**

Assent date 18 June 1999  
Commenced 21 July 1999 (*Gaz* G28, 21 July 1999, p 3)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

section 10 of the *Legal Practitioners Ordinance 1978* (Act No. 12, 1978)  
section 28 of the *Legal Practitioners Amendment Act 1982* (Act No. 52, 1982)

### 4 Gazette notice

The date fixed is 1 July 1977, see *Gazette* No. 26 of 1 July 1977, page 1016

### 5 LIST OF AMENDMENTS

s 1 amd No. 58, 1978, s 4  
ss 3 – 4 rep No. 52, 1982, s 27  
s 5 rep No. 19, 1977, s 4  
s 6 amd No. 19, 1977, s 5; No. 12, 1978, s 3; No. 52, 1982, s 4; No. 91, 1982, s 3; No. 32, 1983, s 3; No. 36, 1987, s 4; No. 29, 1990, s 7; No. 30, 1990, s 65; No. 42, 1993, s 4; No. 10, 1995, s 4  
s 8 amd No. 12, 1978, s 4 No. 52, 1982, s 27  
s 11 amd No. 12, 1978, s 5; No. 43, 1990, s 4  
sub No. 42, 1993, s 5

## ENDNOTES

---

- s 12           amd No. 52, 1982, s 27  
                  sub No. 42, 1993, s 5
- s 13           sub No. 42, 1993, s 5
- s 14           rep No. 42, 1993, s 5
- s 14A          ins No. 52, 1982, s 5  
                  amd No. 42, 1993, s 6
- s 15           amd No. 42, 1993, s 7
- s 16           amd No. 52, 1982, s 6; No. 32, 1983, s 4  
                  sub No. 42, 1993, s 8  
                  amd No. 30, 1999, s 10
- s 17           amd No. 52, 1982, s 7  
                  rep No. 42, 1993, s 8
- s 18           rep No. 42, 1993, s 8
- s 20           amd No. 1, 1980, s 6; No. 52, 1982, s 27
- s 21           amd No. 29, 1990, s 7
- s 22           amd No. 52, 1982, s 27; No. 91, 1982, s 4; No. 32, 1983, s 5 No. 48, 1986,  
                  s 9; No. 36, 1987, s 5; No. 10, 1995, s 5
- s 23           amd No. 52, 1982, s 8; No. 32, 1983, s 6; No. 36, 1987, s 24; No. 42, 1993,  
                  s 9
- s 24           amd No. 52, 1982, s 9; No. 36, 1987, s 24
- s 25           amd No. 1, 1980, s 8; No. 52, 1982, s 10; No. 36, 1987, s 6
- s 26           amd No. 52, 1982, s 27; No. 43, 1990, s 5
- s 27           amd No. 52, 1982, s 11  
                  sub No. 36, 1987, s 7  
                  amd No. 17, 1996, s 6
- s 27A          ins No. 52, 1982, s 12
- s 28           amd No. 52, 1982, s 27  
                  rep No. 36, 1987, s 8
- ss 29 – 30     amd No. 52, 1982, s 27; No. 36, 1987, s 24
- s 32           amd No. 12, 1978, s 6; No. 52, 1982, s 27; No. 36, 1987, s 24
- s 33           amd No. 52, 1982, s 27
- s 33A          ins No. 52, 1982, s 13  
                  amd No. 36, 1987, s 9
- s 34           amd No. 19, 1977, s 6; No. 52, 1982, s 27
- s 35           amd No. 52, 1982, s 27; No. 36, 1987, s 24
- s 35AA         ins No. 42, 1993, s 10
- s 35A          ins No. 52, 1982, s 14
- s 35B          ins No. 52, 1982, s 14  
                  amd No. 30, 1999, s 10
- s 36           amd No. 12, 1978, s 7; No. 61, 1978, s 4; No. 49, 1985, s 4; No. 48, 1986,  
                  s 9; No. 29, 1990, s 7; No. 38, 1990, s 2; No. 31, 1991, s 14  
                  rep No. 42, 1993, s 11
- ss 37 – 38     rep No. 42, 1993, s 11
- s 39           sub No. 12, 1978, s 8  
                  rep No. 42, 1993, s 11
- ss 40 – 42     rep No. 42, 1993, s 11
- s 43           amd No. 12, 1978, s 9; No. 61, 1978, s 4; No. 49, 1985, s 4; No. 48, 1986,  
                  s 9; No. 29, 1990, s 7  
                  rep No. 42, 1993, s 11
- s 44           rep No. 42, 1993, s 11
- s 45           sub No. 52, 1982, s 15; No. 36, 1987, s 10  
                  amd No. 43, 1990, s 6
- s 46           sub No. 52, 1982, s 15
- ss 46A – 46B   ins No. 52, 1982, s 15
- s 47           sub No. 52, 1982, s 15  
                  amd No. 36, 1987, s 11; No. 30, 1999, s 10



## ENDNOTES

---

- s 47A ins No. 52, 1982, s 15  
ss 47B – 47C ins No. 52, 1982, s 15  
amd No. 30, 1999, s 10  
s 48 sub No. 52, 1982, s 15  
ss 48A – 48D ins No. 52, 1982, s 15  
s 48E ins No. 52, 1982, s 15  
amd No. 30, 1999, s 10  
s 49 amd No. 36, 1987, s 12  
sub No. 52, 1982, s 15  
s 49A ins No. 52, 1982, s 15  
amd No. 36, 1987, s 13  
s 50 sub No. 52, 1982, s 15  
amd No. 36, 1987, s 14; No. 30, 1999, s 10  
s 50A ins No. 52, 1982, s 15  
s 51 sub No. 52, 1982, s 15  
amd No. 58, 1983, s 4; No. 36, 1987, s 15; No. 30, 1999, s 10  
s 51A ins No. 52, 1982, s 15  
s 51B ins No. 52, 1982, s 15  
amd No. 36, 1987, s 16  
ss 51C – 51D ins No. 52, 1982, s 15  
s 52 sub No. 52, 1982, s 15  
amd No. 58, 1983, s 4; No. 36, 1987, s 17; No. 17, 1996, s 6  
s 52A ins No. 52, 1982, s 15  
amd No. 36, 1987, s 18; No. 30, 1999, s 10  
s 53 amd No. 23, 1997, s 4  
s 56 amd No. 52, 1982, s 16  
s 58 amd No. 52, 1982, s 27  
s 60 sub No. 52, 1982, s 17  
s 63 amd No. 52, 1982, s 18  
s 64 amd No. 52, 1982, s 27  
s 67 amd No. 52, 1982, s 19  
s 68 amd No. 52, 1982, s 27; No. 18, 1986, s 3; No. 59, 1990, s 4  
s 69 amd No. 52, 1982, s 27  
s 70 amd No. 52, 1982, ss 20 and 27  
s 71 amd No. 30, 1999, s 10  
s 72 amd No. 52, 1982, s 21  
s 74 amd No. 30, 1999, s 10  
s 75 amd No. 1, 1980, s 7; No. 52, 1982, s 27; No. 18, 1986, s 3; No. 59, 1990,  
s 4; No. 17, 1996, s 6  
ss 76 – 78 amd No. 30, 1999, s 10  
ss 79A – 79D ins No. 19, 1977, s 8  
s 80 amd No. 19, 1977, s 9  
s 81 amd No. 19, 1977, s 10  
s 83 amd No. 19, 1977, s 11  
s 84 sub No. 19, 1977, s 12  
s 84 amd No. 61, 1978, s 4; No. 52, 1982, s 27; No. 18, 1986, s 3; No. 59, 1990,  
s 4  
s 84A ins No. 19, 1977, s 12  
amd No. 52, 1982, s 22  
s 85 amd No. 52, 1982, s 27  
s 86 amd No. 19, 1977, s 13; No. 23, 1997, s 4  
s 89 amd No. 19, 1977, s 15; No. 52, 1982, s 27; No. 18, 1986, s 3; No. 48, 1986,  
s 9; No. 59, 1990, s 4  
s 89A ins No. 10, 1995, s 6  
s 90 sub No. 52, 1982, s 23  
s 95 amd No. 17, 1996, s 6

## ENDNOTES

---

s 101	amd No. 52, 1982, s 27; No. 10, 1995, s 7
s 102	amd No. 52, 1982, s 27; No. 23, 1997, s 4
s 103	amd No. 52, 1982, s 27; No. 36, 1987, s 24
s 104	amd No. 30, 1999, s 10
s 108	amd No. 52, 1982, s 27
s 111	amd No. 52, 1982, s 24
s 113	amd No. 19, 1977, s 16
s 115	amd No. 19, 1977, s 17
s 117	amd No. 30, 1999, s 10
s 118	amd No. 19, 1977, s 18
s 118A	ins No. 10, 1995, s 8
s 119	amd No. 52, 1982, s 27 sub No. 36, 1987, s 19
s 120	amd No. 36, 1987, s 20
s 123	amd No. 36, 1987, s 21
ss 124 – 126	amd No. 36, 1987, s 24
s 127	amd No. 36, 1987, s 22
s 129	amd No. 36, 1987, s 24
s 131	amd No. 52, 1982, s 27; No. 79, 1991, s 20; No. 30, 1999, s 4
s 132	amd No. 52, 1982, s 27; No. 79, 1991, s 20; No. 30, 1999, s 5
s 133	amd No. 56, 1981, s 4; No. 52, 1982, s 27; No. 30, 1999, s 6
s 134	amd No. 52, 1982, s 27; No. 17, 1996, s 6; No. 30, 1999, s 10
pt XII hdg	ins No. 30, 1999, s 7
pt XII	
div 1 hdg	ins No. 30, 1999, s 7
s 135	amd No. 61, 1978, s 4 rep No. 52, 1982, s 25 ins No. 30, 1999, s 7
ss 135A – 135B	ins No. 30, 1999, s 7
pt XII	
div 2 hdg	ins No. 30, 1999, s 7
ss 135C – 135M	ins No. 30, 1999, s 7
pt XII	
div 3 hdg	ins No. 30, 1999, s 7
ss 135N – 135X	ins No. 30, 1999, s 7
s 137	amd No. 52, 1982, s 27
s 138	amd No. 1, 1980, s 9; No. 52, 1982, s 27
s 138A	ins No. 36, 1987, s 23 amd No. 30, 1999, s 8
s 139	amd No. 52, 1982, s 26
s 141	sub No. 19, 1977, s 19 amd No. 95, 1978, s 14 sub No. 43, 1990, s 7 amd No. 42, 1993, s 12; No. 30, 1999, s 9
second sch	rep No. 42, 1993, s 13