

# NORTHERN TERRITORY OF AUSTRALIA

## LEGAL PROFESSION REGULATIONS

As in force at 18 April 2007

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**Schedule 1 Entitlement to take or use names, titles and descriptions**

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 18 April 2007

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## LEGAL PROFESSION REGULATIONS

### Regulations under the *Legal Profession Act*

#### Part 1.1 Preliminary matters

##### 1 Citation

These Regulations may be cited as the *Legal Profession Regulations*.

*Note*

*The Part numbering of these Regulations follows the Part numbering of the Legal Profession Act. Accordingly, regulations in each Part of these Regulations relate to the corresponding Part in the Act. As not every Part of the Act has corresponding regulations, the Part numbering of these Regulations is not sequential.*

#### Part 1.2 Interpretation

##### 2 Definitions

In these Regulations:

**court box**, for a law practice or other entity, means:

- (a) a box located at the Supreme Court and labelled with the name of the law practice or other entity and to which documents can be delivered; or
- (b) any other receptacle, approved by the Chief Justice, to which a person can deliver documents to the law practice or other entity.

**employee**, of an entity, means a person who is employed or engaged under a contract of service or contract for services in or by the entity whether or not:

- (a) the person works full-time, part-time, or on a temporary or casual basis; or

- (b) the person is a law clerk, articled clerk or graduate clerk.

**entity** means a person or body.

**named month** means one of the 12 named months of the year starting with January.

### **3      Default determination of associate's home jurisdiction**

- (1) This regulation applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, if:
- (a) section 8(4)(b) of the Act is applicable to the associate; and
  - (b) the home jurisdiction for the associate can be determined under neither subparagraph (i) nor subparagraph (ii) of that paragraph.
- (2) For section 8(4)(b)(iii) of the Act, the home jurisdiction for the associate must be determined in accordance with the following criteria:
- (a) the jurisdiction of the associate's place of residence in Australia;
  - (b) if the associate does not have a place of residence in Australia – the jurisdiction of the associate's last place of residence in Australia.

## **Part 2.1      Reservation of legal work and legal titles**

### **4      Presumptions about taking or using name, title or description**

- (1) For section 20(2) of the Act, the kinds of persons specified in column 3 of Schedule 1 to these regulations are persons who are entitled, in the circumstances specified opposite in column 4, to take a name, title or description specified opposite in column 2.
- (2) In this regulation:

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

**government agency** means:

- (a) a government department of the Commonwealth or of a State or Territory; or



- (b) a body that is established by or under Australian law for a public purpose or to exercise governmental functions;

and includes an entity (or a class of entities) prescribed by regulation 17(2) as being within the definition **government agency** in section 90 of the Act.

## **Part 2.2 Admission of local lawyers**

### **5 Information on roll of persons admitted**

- (1) For section 27(7)(a) of the Act, the following information must be included in the local roll for each person who is admitted to the legal profession under the Act:
  - (a) the lawyer's date of birth;
  - (b) the lawyer's date of admission;
  - (c) a unique identifying number for the lawyer;
  - (d) other information prescribed by the admission rules.
- (2) In addition, the roll may include information considered appropriate by the Supreme Court to include for the lawyer.

## **Part 2.3 Legal practice by Australian legal practitioners**

### **6 Compliance certificate**

The prescribed period for section 36(2) and (4) of the Act is 2 days.

### **7 Categories of local practising certificate**

- (1) For section 46(2) of the Act, the following are the prescribed categories of local practising certificates:
  - (a) unrestricted;
  - (b) restricted (barrister and solicitor);
  - (c) restricted (corporate lawyer);
  - (d) barrister.
- (2) A local practising certificate in the category of unrestricted entitles the holder to practise as a legal practitioner without restriction.

- (3) A local practising certificate in the category of restricted (barrister and solicitor) entitles the holder to practise as a legal practitioner only when engaged in supervised legal practise.
- (4) A local practising certificate in the category of restricted (corporate lawyer) entitles the holder to practise as a legal practitioner while employed by an entity but only to the extent of providing legal services to the entity or an associated entity.
- (5) A local practising certificate in the category of barrister entitles the holder to practise as a legal practitioner on his or her own account as a barrister only.

*Note for subregulations (2) to (5)*

*A local practising certificate may be restricted, or further restricted, by conditions imposed by the Law Society under section 70 of the Act.*

- (6) In this regulation:

**associated entity**, see section 50AAA of the Corporations Act 2001.

**entity** means a body other than a government agency or law practice.

**government agency**, see regulation 4.

## **8 Exemption from requirement to apply for grant or renewal of practising certificate**

The exemption from the requirement to apply for the grant or renewal of a local practising certificate provided by section 50(7) of the Act ceases to operate at the end of the financial year for which the application would otherwise be required.

## **9 Application for local practising certificate**

- (1) For section 51(1) of the Act, an application for the grant or renewal of a local practising certificate must be accompanied by the following information:
  - (a) the applicant's name, residential address and personal telephone number;
  - (b) if the applicant is an associate of a law practice – the name of the law practice;

- (c) if the applicant is an officer or employee of an incorporated legal practice – the particulars of the incorporated legal practice including:
  - (i) its Australian Company Number (ACN); and
  - (ii) the names of its directors;
- (d) the address of the office or offices at which the applicant practises or provides legal services and, if more than one office, an indication as to which of the addresses is that of the principal office;
- (e) if the applicant is a member of, or employed by, a partnership or is an officer or employee of an incorporated legal practice:
  - (i) the address of the office or offices at which the partnership or incorporated legal practice practises or provides legal services; and
  - (ii) if more than one office – an indication as to which of the addresses is that of the principal office;
- (f) if the applicant is employed otherwise than by a partnership or incorporated legal practice – the name of the employer and the address of the principal office of the employer;
- (g) the telephone number, facsimile number and email address of the applicant at the office or offices at which the applicant practises or provides legal services;
- (h) if the applicant has been convicted of an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under the Act – the nature of the offence;
- (i) if a show cause event has occurred in relation to the applicant – details of the event including, for section 61(2) of the Act, a written statement:
  - (i) about the event; and
  - (ii) explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a local practising certificate;
- (j) if a pre-admission event has occurred in relation to the applicant – details of the event;

- (k) a copy of the financial report and director's report most recently lodged with the Australian Securities and Investments Commission if:
  - (i) the applicant is a legal practitioner director of an incorporated legal practice; and
  - (ii) the reports are required to be prepared in respect of the incorporated legal practice under section 292 of the Corporations Act 2001;
- (l) the date the applicant was admitted as an Australian lawyer and the jurisdiction in which the applicant was admitted.
- (2) Neither subregulation (1)(h), (i) nor (j) requires the disclosure of information previously disclosed to the Law Society.
- (3) In this regulation:

***incorporated legal practice*** includes a practising company as defined in section 720 of the Act.

#### **10 Timing of application for renewal of local practising certificate**

For section 52(1) of the Act, the prescribed periods for the renewal of a local practising certificate which commences on 1 July of a particular year are as follows:

- (a) the standard renewal period is the period from 1 April to 31 May of that year;
- (b) the late fee period is the period from 1 June to 30 June of that year.

#### **11 Continuing legal education**

The continuing professional development scheme in Schedule 2 is prescribed for section 70(3)(a)(i) of the Act.

#### **12 Completion of periods of supervised legal practice**

- (1) For sections 73 and 82 of the Act, completion by a person of a period or periods of supervised legal practice equivalent to the required period of 18 months or 2 years must be worked out by satisfying the requirements of this regulation.

- (2) The person satisfies the requirements of this regulation if the person completes:
- (a) one period of supervised legal practice, worked on a full-time basis, equal to the required period worked out on a full-time basis; or
  - (b) one period of supervised legal practice, worked on a part-time basis, equivalent to the required period worked out on a full-time basis; or
  - (c) 2 or more periods of supervised legal practice, worked on either or both of these bases, that together are equal to or equivalent to the required period.

*Examples for subregulation (2)*

1. A person undertakes supervised legal practice for 40 weeks at 28 hours a week. For the purpose of working out the required period, the 40 weeks must be multiplied by 28 and divided by 35, making this equivalent to 32 weeks supervised legal practice.
2. A person undertakes supervised legal practice for 28 weeks at 40 hours a week. For the purpose of working out the required period, this is equivalent to 28 weeks supervised legal practice.

- (3) For subregulation (2):
- (a) public holidays during a relevant period must be included as days of supervised legal practice, whether or not the person engages in legal practice on those days; and
  - (b) normal periods of leave taken during a relevant period by the person are to be included as periods of supervised legal practice.

### **13 Statutory condition regarding practice as a barrister**

- (1) A barrister must not do a thing mentioned in section 74(a) and (b) of the Act.

Maximum penalty: 100 penalty units.

- (2) However, subregulation (1) does not prevent a barrister from engaging in legal practice through a practising company as defined in section 720 of the Act:
- (a) of which the barrister is the only director; and
  - (b) on behalf of which the barrister is the only person who:
    - (i) provides legal services; and

(ii) receives payment for the provision of those services.

(3) In this regulation:

**barrister** means the holder of a local practising certificate as a barrister (but not a barrister and solicitor).

#### **14 Address for notice of offence**

For section 76(3) of the Act, the person to whom a notice under section 76(1) must be sent or delivered is the chief executive officer of the Law Society.

#### **15 Requirements for professional indemnity insurance for interstate legal practitioners**

(1) For section 79(1)(b) of the Act, professional indemnity insurance for an interstate legal practitioner complies with the requirements of these regulations if the insurance:

- (a) provides cover equivalent to that which would be provided by approved professional indemnity insurance; and
- (b) complies with the requirements of the home jurisdiction of the practitioner.

(2) For section 79(4) of the Act, an interstate legal practitioner must disclose the level of coverage of the practitioner's insurance to clients and prospective clients.

#### **16 Register of local practising certificates**

(1) For section 87(2)(b) of the Act, the particulars mentioned in subregulation (2) are prescribed as particulars to be included in the register kept under section 87 of the Act in relation to a local legal practitioner, except if the Law Society is required by subregulation (5) not to include them in the register.

(2) The particulars to be included in the register are as follows:

- (a) the name of the local legal practitioner;
- (b) the type of local practising certificate held by the practitioner;
- (c) the name of the law practice of which the practitioner is an associate or, if the practitioner is not an associate of a law practice, the name of the entity of which the practitioner is a director, officer or employee or with which the practitioner is otherwise engaged in legal practice;

- (d) the contact details of the office of the law practice or other entity in this jurisdiction;
  - (e) by way of separate additional entry, the name of the law practice or other entity and the contact details of the office of the law practice or other entity:
    - (i) in this jurisdiction; and
    - (ii) in any other jurisdictions in which it has an office, except where the Society considers those particulars need not be included in respect of an entity that is not a law practice;
  - (f) any other particulars about the practitioner, law practice or other entity that the Society considers should be included.
- (3) Contact details of an office are the following:
- (a) its street address (the address where the office is physically located);
  - (b) its postal address (a post office box number and the location and postcode of the post office), if any;
  - (c) whether or not it has a court box.
- (4) A local legal practitioner may, by written notice to the Society, request the Society not to include any or any specified particulars about the practitioner, law practice or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).
- (5) If the Society is satisfied those special circumstances exist, the Society must not include the particulars concerned in the register, unless the Society considers the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

## **17 Government lawyers – general exemption from certain conditions**

- (1) For section 90(2) of the Act, each of the following offices is prescribed:
- (a) the Solicitor-General;
  - (b) the Director of Public Prosecutions;

- (c) the Chief Executive Officer of the department primarily responsible to the Minister administering the Act;
  - (d) the Director, Legal Aid Commission.
- (2) For the definition **government agency** in section 90(5) of the Act:
- (a) the following entities are prescribed:
    - (i) the Attorney-General's Department of the Commonwealth;
    - (ii) the Australian Government Solicitor;
    - (iii) the department primarily responsible to the Minister administering the Act;
    - (iv) the Northern Territory Legal Aid Commission;
    - (v) the Office of the Director of Public Prosecutions;
    - (vi) the Office of the Parliamentary Counsel;
    - (vii) the Law Society; and
  - (b) government agencies in other jurisdictions performing the same functions as those performed by the entities specified in paragraph (a) are prescribed.

## **Part 2.6                    Incorporated legal practices and multi-disciplinary partnerships**

### **18                    Prohibited non-legal services and businesses of incorporated legal practice**

- (1) An incorporated legal practice must not act as the conveyancing lawyer for the purchaser of a property if the legal practice or a related body corporate of the legal practice acts:
- (a) as the real estate agent for the vendor in the sale of the property; or
  - (b) as the finance broker for the purchaser.

Maximum penalty:        500 penalty units.



- (2) A related body corporate of an incorporated legal practice must not act as the conveyancing lawyer for the purchaser of a property if the body corporate, another related body corporate of the legal practice or the legal practice acts:
- (a) as the real estate agent for the vendor in the sale of the property; or
  - (b) as the finance broker for the purchaser.

Maximum penalty: 500 penalty units.

## **19 Notice of ceasing provision of legal services**

For section 124(1)(b) of the Act, the prescribed period within which a corporation must give a notice under the section is 14 days after it ceases to engage in legal practice in this jurisdiction.

## **20 Disqualifications and prohibitions**

- (1) This regulation applies to:
- (a) an order made under section 139 of the Act disqualifying a corporation from providing legal services in this jurisdiction; or
  - (b) an order made under section 140 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice; or
  - (c) an order made under section 165 of the Act prohibiting an Australian legal practitioner from being a partner of a specified person;
- being an order made on the application of the Law Society.
- (2) The Society may publicise an order in any manner the Society thinks fit.
- (3) The Society:
- (a) must, as soon as practicable after the order is made, give written notice of the order to the corresponding authority of every other jurisdiction; and
  - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.

- (4) The notice under subregulation (3) for an order made under section 139 of the Act:
- (a) must specify:
    - (i) the corporation's name; and
    - (ii) the Australian Company Number (ACN) of the corporation; and
    - (iii) the office or business address of the corporation, as last known to the applicant for the order; and
    - (iv) the date of the order; and
  - (b) may contain other relevant information; and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The notice under subregulation (3) for an order made under section 140 or 165 of the Act:
- (a) must specify:
    - (i) the person's name; and
    - (ii) the person's address, as last known to the applicant for the order; and
    - (iii) the date of the order; and
  - (b) may contain other relevant information; and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (6) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of this regulation.
- (7) In this regulation:
- protected person*** means:
- (a) the Territory; or
  - (b) the Law Society; or

- (c) a person responsible for keeping the whole or any part of a register or any similar record in or by which an order is publicised; or
- (d) an Internet service provider or Internet content host; or
- (e) a person acting at the direction of the Territory or of any entity mentioned in this definition.

**21 Prohibition on conduct of managed investment scheme by incorporated legal practice**

- (1) Section 120(2) of the Act is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act 2001 in relation to Corporations legislation.
- (2) In this regulation:

***Corporations legislation*** means the Corporations legislation to which Part 1.1A of the Corporations Act 2001 applies.

**22 Multi-disciplinary partnership**

- (1) An Australian legal practitioner who acts as the conveyancing lawyer for the purchaser of a property must not be in partnership with a person who acts:
  - (a) as the real estate agent for the vendor in the sale of the property; or
  - (b) as the finance broker for the purchaser.

Maximum penalty: 100 penalty units.

- (2) For section 153(1)(c) of the Act, written notice to the Law Society of a person's intention to start providing legal services in this jurisdiction as a member of a multi-disciplinary partnership must include the following information:
  - (a) the name and residential address of each partner;
  - (b) the kinds of services (other than legal services) and businesses the partnership proposes to provide or conduct in the Territory.

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## Part 2.7 Legal practice by foreign lawyers

### 23 Scope of practice

- (1) For section 174(1)(b) of the Act, arbitration proceedings in which:
- (a) the arbitrator is not required to apply the rules of evidence; and
  - (b) knowledge of Australian law is not essential;

are prescribed as a kind of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services (including appearances).

- (2) For section 174(1)(d) of the Act, all forms of dispute resolution are prescribed as kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent to which:
- (a) the provisions of other legislation applying to dispute resolution; or
  - (b) the requirements of a body responsible for dispute resolution; or
  - (c) the provisions of a contract that provides for dispute resolution;

restrict participation in dispute resolution to persons of a specified class that does not include Australian-registered foreign lawyers.

- (3) In this regulation:

**dispute resolution** means conciliation, mediation and other forms of consensual dispute resolution.

### 24 Trust money and trust accounts

For section 181 of the Act:

- (a) the provisions of Part 3.1 of the Act and any other provisions of the Act (other than Part 3.5 of the Act) relating to trust money and trust accounts; and
- (b) the provisions of Part 3 of these Regulations and any other provisions of these Regulations relating to trust money and trust accounts; and

- (c) any provisions of any legal profession rules relating to trust money and trust accounts;

apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer.

## **25 Professional indemnity insurance**

For section 182(4) of the Act, a disclosure by an Australian-registered foreign lawyer must:

- (a) be given prior to the provision of the legal services to the client by the foreign lawyer; and
- (b) set out what, if any, professional indemnity insurance is held by the foreign lawyer in respect of those services.

## **26 Fidelity cover**

- (1) This regulation applies to a foreign lawyer who:
  - (a) is practising, or intends to practise, foreign law in the Territory as an associate to a law practice; and
  - (b) has applied for the grant or renewal of registration as a foreign lawyer under the Act.
- (2) When the foreign lawyer's registration is granted or renewed by the Law Society, the foreign lawyer must pay to the Society, on account of the Fidelity Fund, the appropriate contribution to the Fidelity Fund for the year ending on 30 June for which the registration is granted or renewed.
- (3) For subregulation (2), the appropriate contribution for a year is the amount notified by the Funds Management Committee under section 392(4) of the Act for the year.
- (4) However, if the foreign lawyer is registered after 31 December in a year ending 30 June, the appropriate contribution is one half the amount that would otherwise be payable under subregulation (3).
- (5) The Society may permit the contribution to be paid by instalments under an arrangement approved by the Society.
- (6) If a foreign lawyer:
  - (a) has paid a contribution under this regulation for a year ending 30 June; and

- (b) ceases to practise as a locally-registered foreign lawyer at any time before 30 June in that year;

the Society may refund a part of the contribution at a rate determined by the Society.

## **27 Application of Part 35 of Act**

The following provisions of Part 3.5 of the Act, with the specified modifications, apply to a locally-registered foreign lawyer practising in the Territory as an associate of a law practice, as if the foreign lawyer were a local legal practitioner to whom section 392 of the Act applies:

- (a) section 394;
- (b) section 395(5), as if a reference to a contribution required under section 392 were a reference to a contribution required under regulation 26.

## **28 Locally-registered foreign lawyer not covered by Fidelity Fund**

- (1) This regulation applies to a locally-registered foreign lawyer practising foreign law in the Territory otherwise than as an associate of a law practice.
- (2) A foreign lawyer to whom this regulation applies must not practise foreign law in the Territory on behalf of a client unless the foreign lawyer has provided the client with a disclosure statement in respect of the foreign lawyer's lack of cover by the Fidelity Fund.
- (3) A disclosure statement under subregulation (2) is not valid unless:
  - (a) it is in writing; and
  - (b) it is written:
    - (i) in English; or
    - (ii) if the client does have a reasonable understanding of English – in another language of which the client has a reasonable understanding; and
  - (c) it states the foreign lawyer is not covered by the Fidelity Fund with respect to the practice of foreign law in the Territory; and
  - (d) it states that Australian legal practitioners generally are covered by the Fidelity Fund.

**29 Application for local registration – show cause event**

- (1) A written statement given to the Law Society by a person under section 199(2) of the Act must, if it relies on documentary evidence of the matters contained in the statement, be accompanied by the original documents.
- (2) However, subregulation (1) does not apply if copies of the documents have been given to the Society and the Society is otherwise satisfied as to the authenticity of the copies.

**30 Register of locally-registered foreign lawyers**

- (1) For section 218(2)(b) of the Act and subject to subregulation (5), the particulars mentioned in subregulation (2) must be included in the register kept under section 218 of the Act in relation to a locally-registered foreign lawyer.
- (2) The particulars to be included in the register are as follows:
  - (a) the name of the foreign lawyer;
  - (b) the name of the partnership of which the lawyer is a member or employee or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a director, officer or employee or with which the lawyer is otherwise engaged in legal practice;
  - (c) the contact details of the office of the partnership or other entity in this jurisdiction;
  - (d) by way of separate additional entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity:
    - (i) in this jurisdiction; and
    - (ii) in any other jurisdictions in which it has an office, except where the domestic registration authority considers those particulars need not be included in respect of an entity that is not a law practice;
  - (e) details of the foreign registration authority, or authorities, by which the lawyer is registered to engage in legal practice in a foreign country or foreign countries;
  - (f) any other particulars about the lawyer, partnership or other entity that the authority considers should be included.

- (3) Contact details of an office are the following:
  - (a) its street address (the address where the office is physically located);
  - (b) its postal address (a post office box number and the location and postcode of the post office), if any;
  - (c) whether or not it has a court box.
- (4) A locally-registered foreign lawyer may, by written notice to the Society, request the Society not to include any or any specified particulars about the lawyer, partnership or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).
- (5) If the Society is satisfied those special circumstances exist, the Society is required not to include the particulars concerned in the register unless the Society considers the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

### **31 Refund of fees**

- (1) The Law Society may refund a part of a fee paid in relation to registration as a foreign lawyer if the registration is suspended or cancelled during its currency in circumstances not involving disciplinary action in this jurisdiction or elsewhere.
- (2) The part of the fee must be:
  - (a) refunded as soon as possible after the period of registration for which the full fee relates; and
  - (b) proportionate to the period during which the registration is suspended or cancelled.

## **Part 2.8 Complying community legal centres**

### **32 Complying community legal centre**

For section 227(e) of the Act:

- (a) the information is the following:
  - (i) the financial basis of the operations of the body corporate, including its funding and expected funding;



- (ii) the nature of the legal services provided by the body corporate;
  - (iii) any advertisements or publications describing the nature of the legal services provided by the body corporate;
  - (iv) the name of the supervising legal practitioner; and
- (b) the fee is the amount specified in Schedule 3 as the amount payable for the grant or renewal of an unrestricted local practising certificate.

## **Part 3.1 Trust money and trust accounts**

### **Division 1 Preliminary matters**

#### **33 Operation of this Part**

This Part has effect for Part 3.1 of the Act, and accordingly applies to a law practice in respect of:

- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction; and
- (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
- (c) trust money received by the practice in another jurisdiction, if the practice has an office in:
  - (i) this jurisdiction; and
  - (ii) one or more other jurisdictions but not in the jurisdiction in which the money was received;

unless the money is dealt with in accordance with the corresponding law of a jurisdiction in which the practice has an office.

#### **34 Definitions**

In this Part:

**BSB number** (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI.

***matter description*** means a brief phrase or expression assigned by a law practice to describe a matter.

***matter reference*** means a number or other reference assigned by a law practice to identify a matter.

***trust money*** means trust money in respect of which this Part for the time being applies, as mentioned in regulation 33.

### **35 Barrister receiving money on behalf of other persons**

For section 244(2) of the Act, a barrister is authorised to receive money on behalf of another person if:

- (a) the money is payment, in advance, of a fee for the barrister's professional services; and
- (b) the money is paid as trust money.

## **Division 2 Computerised accounting systems**

### **36 Application of Division**

This Division applies if a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

### **37 Copies of trust records to be printed**

- (1) The law practice must print a paper copy of trust records as follows:
  - (a) trust account cash books must be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;
  - (b) reconciliation statements prepared under regulation 53 must be printed as at the end of each named month;
  - (c) lists of trust account ledgers and their balances must be printed monthly as at the end of each named month;
  - (d) lists of controlled money accounts and their balances must be printed monthly as at the end of each named month;
  - (e) trust ledger accounts, the register of controlled money and the trust account transfer journal must be printed before they are archived or deleted from the system;

- (f) trust ledger account and controlled money account details must be printed on request by and provided to an investigator as defined in section 618 of the Act.
- (2) The trust records printed monthly as at the end of a named month under subregulation (1)(a) to (d) must be printed within 15 working days after the named month.
- (3) The paper copies printed under subregulation (1) must be kept by the law practice, except if they are printed on request under that subregulation.
- (4) The electronic copy of the trust account cash books under subregulation (1)(a) must be kept by the law practice.

### **38 Chronological record of information to be made**

- (1) The law practice must maintain a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following:
  - (a) client name;
  - (b) client address;
  - (c) matter reference;
  - (d) matter description;
  - (e) ledger account number or other descriptor.
- (2) The record must be kept by the law practice.

### **39 Requirements regarding computer accounting systems**

- (1) The law practice must ensure its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debit balance to the account.
- (2) The law practice must ensure that the system is not capable of deleting a trust ledger account unless:
  - (a) the balance of the account is zero and all outstanding cheques have been presented; and
  - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure any entry in a record produced in a permanent form appears in chronological sequence.

- (4) The law practice must ensure each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted.
- (5) The law practice must ensure its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice must ensure its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

#### **40 Back-ups**

The law practice must ensure:

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month; and
- (b) each back-up copy is kept by the law practice; and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

### **Division 3 General trust accounts**

#### **41 Establishment of general trust account**

- (1) A law practice may at any time establish a general trust account that satisfies the requirements of this regulation, but must, as soon as practicable after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have such a general trust account.
- (2) A general trust account satisfies the requirements of this regulation if:
  - (a) the account is established in this jurisdiction, before or after the commencement of this regulation, with an approved ADI; and
  - (b) the account is and is to be maintained in this jurisdiction; and

- (c) the name of the account includes:
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
    - (ii) the expression "law practice trust account" or "law practice trust a/c"; and
  - (d) the account is of a kind that is for the time being approved by the Law Society.
- (3) Subregulation (2)(c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (4) Subregulation (2)(c)(ii) does not require the repetition of the words "law practice" if those words form part of the name or business name of the law practice.

#### **42      Receipting of trust money**

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made out as soon as practicable:
  - (a) after the trust money is received, except as provided by paragraph (b); or
  - (b) in the case of trust money received by direct deposit – after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.
- (5) For subregulation (4), the required particulars are as follows:
  - (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the amount of money received;
  - (c) the form in which the money was received;

- (d) the name of the person from whom the money was received;
  - (e) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (f) particulars sufficient to identify the purpose for which the money was received;
  - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "trust account" or "trust a/c";
  - (h) the name of the person who made out the receipt;
  - (i) the number of the receipt.
- (6) The original receipt must be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

#### **43 Deposit records for trust money**

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the approved ADI when the deposit is made.
- (3) The following particulars must be recorded on the deposit record:
- (a) the date of the deposit;
  - (b) the amount of the deposit;
  - (c) whether the deposit consists of cheques, notes or coins (and the amount of each);
  - (d) for each cheque:
    - (i) the name of the drawer of the cheque; and
    - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn; and

(iii) the amount of the cheque.

- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

**44 Direction for non-deposit of trust money in general trust account**

For section 246(4) of the Act, the period for which a written direction mentioned in section 246(2)(a) of the Act must be kept is 7 years after finalisation of the matter to which the direction relates.

**45 Manner of withdrawal of trust money**

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subregulation (1), the following are specifically prohibited:
  - (a) cash withdrawals;
  - (b) ATM withdrawals or transfers;
  - (c) telephone banking withdrawals or transfers.
- (3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subregulation (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 100 penalty units.

- (4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subregulation (1), each principal of the practice is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) An offence against subregulation (3) or (4) is an offence of strict liability.
- (6) This regulation has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with controlled money.

#### **46 Payment by cheque**

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (2) A cheque must:
  - (a) be made payable to or to the order of a specified person or persons and not to bearer or cash; and
  - (b) be crossed "not negotiable"; and
  - (c) include:
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
    - (ii) the expression "law practice trust account" or "law practice trust a/c".
- (3) A cheque must be signed:
  - (a) by an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) by an authorised legal practitioner associate; or
    - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
    - (iii) by 2 or more authorised associates jointly.
- (4) A written record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.
- (5) If at the time the cheque is issued the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For subregulations (4) and (5), the required particulars are as follows:
  - (a) the date and number of the cheque;



- (b) the amount ordered to be paid by the cheque;
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
  - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (e) details clearly identifying the ledger account to be debited;
  - (f) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.
- (8) Subregulation (2)(c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (9) Subregulation (2)(c)(ii) does not require the repetition of the words "law practice" if those words form part of the name or business name of the law practice.
- (10) In this regulation:

**associate** means an associate of the law practice.

**authorised** means authorised by the law practice to sign cheques drawn on the general trust account.

#### **47 Payment by electronic funds transfer**

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.
- (2) An electronic funds transfer must be effected by, under the direction of or with the authority of:
  - (a) an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) an authorised legal practitioner associate; or
    - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or

- (iii) two or more authorised associates jointly.
- (3) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (4) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (5) For subregulations (3) and (4), the required particulars are as follows:
- (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and relevant BSB number;
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (f) details clearly identifying the ledger account to be debited;
  - (g) particulars sufficient to identify the purpose for which the payment was made.
- (6) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be kept in the order in which the transfers were effected.
- (7) In this regulation:

**associate** means an associate of the law practice.

**authorised** means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.

**48 Recording transactions in trust account cash books**

A law practice that maintains a general trust account must keep the following trust account cash books:

- (a) a trust account receipts cash book in accordance with regulation 49;
- (b) a trust account payments cash book in accordance with regulation 50.

**49 Trust account receipts cash book**

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in respect of each receipt of trust money:
  - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
  - (b) the receipt number;
  - (c) the amount of money received;
  - (d) the form in which the money was received;
  - (e) the name of the person from whom the money was received;
  - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (g) particulars sufficient to identify the purpose for which the money was received;
  - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out.
- (4) The particulars in respect of a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

**50 Trust account payments cash book**

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in respect of each payment of trust money by cheque:
  - (a) the date and number of the cheque;
  - (b) the amount ordered to be paid by the cheque;
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (e) details clearly identifying the ledger account to be debited;
  - (f) particulars sufficient to identify the purpose for which the payment was made.
  
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer:
  - (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (f) details clearly identifying the ledger account to be debited;
  - (g) particulars sufficient to identify the purpose for which the payment was made.
  
- (3) The particulars in respect of payments must be recorded in the order in which the payments are made.

- (4) The particulars in respect of a payment must be recorded within 5 working days counting from and including the day the payment was made.

## **51 Recording transactions in trust ledger accounts**

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded in the title of a trust ledger account:
- (a) the name of the person for or on behalf of whom the trust money was paid;
  - (b) the person's address;
  - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money for the matter:
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
  - (b) the receipt number;
  - (c) the amount of money received;
  - (d) the name of the person from whom the money was received;
  - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by cheque:
- (a) the date and number of the cheque;
  - (b) the amount ordered to be paid by the cheque;
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

- (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer:
- (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) particulars sufficient to identify the purpose for which the payment was made.
- (7) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry:
- (a) the date of the transfer;
  - (b) the amount transferred;
  - (c) the journal reference number;
  - (d) the name of the other trust ledger account from which or to which the money was transferred;
  - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 working days counting from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (10) The trust ledger account balance must be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

## **52 Journal transfers**

- (1) Trust money may be transferred by journal entry from one trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if:
  - (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
  - (b) the transfer has been authorised in writing by:
    - (i) if the law practice is constituted by a sole practitioner – the sole practitioner; or
    - (ii) a manager or receiver for the law practice; or
    - (iii) a person who is duly authorised by the law practice or by a manager or receiver for the law practice to sign cheques drawn on the general trust account without a co-signatory; or
    - (iv) two or more persons who are duly authorised by the law practice or by a manager or receiver for the law practice to sign cheques drawn on the general trust account jointly.
- (2) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (3) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry:
  - (a) the date of the transfer;
  - (b) the trust ledger account from which the money is transferred (including its identifying reference);
  - (c) the trust ledger account to which the money is transferred (including its identifying reference);
  - (d) the amount transferred;
  - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (4) Journal pages or entries must be consecutively numbered.

(5) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

(6) In this regulation:

**responsible person**, in relation to a law practice, means a person who has authority to deal with trust money of the law practice.

### **53 Reconciliation of trust records**

(1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to each account.

(2) The trust records relating to a general trust account must be reconciled as at the end of each named month by preparing:

(a) a statement:

(i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and

(ii) showing the date the statement was prepared; and

(b) a statement:

(i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and

(ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and

(iii) showing the date the statement was prepared.

(3) The statements must be prepared within 15 working days after the end of the month concerned.

(4) The statements must be kept by the law practice.

### **54 Trust ledger account in name of law practice or legal practitioner associate**

(1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this regulation.



- (2) A law practice may maintain in its trust ledger:
  - (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and
  - (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subregulation (2)(a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.
- (4) In a case to which subregulation (2)(b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

## **55 Notification requirements regarding general trust accounts**

- (1) Within 14 days after establishing a general trust account, a law practice must give the Law Society written notice of that fact.
- (2) A law practice:
  - (a) either before, or within 14 days after, authorising or terminating the authority of an associate of the practice or an Australian legal practitioner:
    - (i) to sign cheques drawn on a general trust account of the practice; or
    - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice;

must give the Society written notice of that fact (including the name and address of the associate or practitioner and indicating, in the case of an associate, whether the associate is an employee of the practice); and

- (b) during July of each year, must give the Society written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July of that year:
  - (i) to sign cheques drawn on a general trust account of the practice; or
  - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (3) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the Society written notice of that fact.
- (4) A notice under this regulation given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this regulation:

**law practice** includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

## **Division 4      Controlled money**

### **56      Maintenance of controlled money accounts**

- (1) For section 248(4) of the Act, a controlled money account must be maintained under an account name that includes the following particulars:
  - (a) the name of the law practice concerned;
  - (b) the expression "controlled money account" or the abbreviation "CMA" or "CMA/c";
  - (c) such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.
- (2) This regulation does not apply to an account established in this jurisdiction before the commencement of this regulation.

### **57      Receipt of controlled money**

- (1) This regulation applies if a law practice receives controlled money.

- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable:
  - (a) after the controlled money is received, except as provided by paragraph (b); or
  - (b) in the case of controlled money received by direct deposit – after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For subregulation (5), the required particulars are as follows:
  - (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the amount of money received;
  - (c) the form in which the money was received;
  - (d) the name of the person from whom the money was received;
  - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
  - (f) particulars sufficient to identify the purpose for which the money was received;
  - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
  - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "controlled money receipt";
  - (i) the name of the person who made out the receipt;

- (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt must be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

#### **58 Deposit of controlled money**

For section 248(5) of the Act, the prescribed period for which a written direction referred to in section 248(1) of the Act must be kept is 7 years after finalisation of the matter to which the direction relates.

#### **59 Manner of withdrawal of controlled money**

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subregulation (1), the following are specifically prohibited:
  - (a) cash withdrawals;
  - (b) ATM withdrawals or transfers;
  - (c) telephone banking withdrawals or transfers.
- (3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subregulation (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 100 penalty units.

- (4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subregulation (1), each principal of the practice is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) An offence against subregulation (3) or (4) is an offence of strict liability.
- (6) This regulation has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with controlled money.

## **60 Withdrawal of controlled money must be authorised**

- (1) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of:
- (a) an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) an authorised legal practitioner associate; or
    - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
    - (iii) two or more authorised associates jointly.
- (2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (4) For subregulations (2) and (3), the required particulars are as follows:
- (a) the date and number of the transaction;
  - (b) the amount withdrawn;

- (c) in the case of a transfer made by electronic funds transfer – the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (f) particulars sufficient to identify the purpose for which the payment was made;
  - (g) the person or persons effecting, directing or authorising the withdrawal.
- (5) The particulars must be recorded in the order in which the payments are recorded and must be recorded separately for each controlled money account.
- (6) In this regulation:

**associate** means an associate of the law practice.

**authorised** means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

## **61 Register of controlled money**

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information:
- (a) the name of the person on whose behalf the controlled money is held;
  - (b) the person's address;
  - (c) particulars sufficient to identify the matter;

- (d) any changes to the information referred to in paragraphs (a) to (c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account:
- (a) the date the controlled money was received;
  - (b) the number of the receipt;
  - (c) the date the money was deposited in the controlled money account;
  - (d) the name of and other details clearly identifying the controlled money account;
  - (e) the amount of controlled money deposited;
  - (f) details of the deposit sufficient to identify the deposit;
  - (g) interest received;
  - (h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 60(4).
- (5) With the exception of interest and other income received in respect of controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must retain as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 working days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month:
- (a) containing a list of the practice's controlled money accounts showing:
    - (i) the name, number and balance of each account in the register; and

- (ii) the name of the person on whose behalf the controlled money in each account was held; and
  - (iii) a short description of the matter to which each account relates; and
- (b) showing the date the statement was prepared.

## **Division 5 Transit money**

### **62 Information to be recorded about transit money**

- (1) This regulation has effect for section 249 of the Act.
- (2) A law practice must, in respect of transit money received by the practice, record and retain brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

## **Division 6 Trust money generally**

### **63 Trust account statements**

- (1) A law practice must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice or an associate of the practice.
- (2) In the case of trust money in respect of which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.
- (3) In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.
- (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must furnish a separate statement for each record.
- (5) A trust account statement is to contain particulars of:
  - (a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and
  - (b) the remaining balance (if any) of the money.



- (6) A trust account statement must be furnished:
  - (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or
  - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
  - (c) except as provided by subregulation (7), as soon as practicable after 30 June in each year.
- (7) The law practice is not required to furnish a trust account statement under subregulation (6)(c) in respect of a ledger account or record if at 30 June:
  - (a) the ledger account or record has been open for less than 6 months; or
  - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
  - (c) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must retain a copy of a trust account statement furnished under this regulation.

#### **64 Trust account statements for sophisticated clients**

- (1) Regulation 63 does not apply to a sophisticated client to the extent to which the client directs the law practice not to provide trust account statements under that regulation.
- (2) If the sophisticated client directs the law practice to provide trust account statements on a basis different from that prescribed by regulation 63, the law practice must supply those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (3) The law practice must retain a copy of a trust account statement furnished under this regulation.
- (4) In this regulation:

***sophisticated client***, see section 295(1) of the Act.

## **65 Register of Investments**

- (1) This regulation applies if trust money mentioned in section 236(3) of the Act is invested by a law practice for or on behalf of a client, but this regulation does not itself confer power to make investments.
- (2) The law practice must maintain a register of investments of trust money.
- (3) The register must record the following information in relation to each investment:
  - (a) the name in which the investment is held;
  - (b) the name of the person on whose behalf the investment is made;
  - (c) the person's address;
  - (d) particulars sufficient to identify the investment;
  - (e) the amount invested;
  - (f) the date the investment was made;
  - (g) particulars sufficient to identify the source of the investment, including, for example:
    - (i) a reference to the relevant trust ledger; and
    - (ii) a reference to the written authority to make the investment; and
    - (iii) the number of the cheque for the amount to be invested;
  - (h) details of any documents evidencing the investment;
  - (i) details of any interest received from the investment or credited directly to the investment;
  - (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (4) This regulation does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another regulation.

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

- (1) This regulation has effect for section 250 of the Act.

- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep:
  - (a) a record of all dealings with the money to which the practice or associate is a party; and
  - (b) all supporting information in relation to the dealings;in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

#### **67 Register of powers and estates in relation to trust money**

- (1) A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice, in relation to trust money.
- (2) Subregulation (1) does not apply where the law practice or associate is also required to act jointly with one or more persons who are not associates of the practice.
- (3) The register of powers and estates must record:
  - (a) the name and address of the donor and date of each power; and
  - (b) the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

#### **68 Withdrawing trust money for legal costs**

- (1) This regulation prescribes, for section 254(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).

- (3) The law practice may withdraw the trust money:
- (a) if:
    - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
    - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
    - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person; and
  - (b) if, before effecting the withdrawal, the practice gives or sends to the person:
    - (i) a request for payment, referring to the proposed withdrawal, or
    - (ii) a written notice of withdrawal.
- (4) The law practice may withdraw the trust money:
- (a) if the practice has given the person a bill relating to the money; and
  - (b) if:
    - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
    - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or
    - (iii) the money otherwise becomes legally payable.
- (5) Instructions mentioned in subregulation (3)(a)(ii):
- (a) if given in writing, must be kept as a permanent record; or
  - (b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.

- (6) For subregulation (3)(a)(iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

## **69 Keeping of trust records**

- (1) This regulation has effect for section 257 of the Act for the keeping in a permanent form of a law practice's trust records in relation to trust money received by the practice.
- (2) The trust records must be kept for a period of 7 years after:
- (a) in the case of a trust record mentioned in paragraphs (a) to (m) of the definition "trust records" in section 235(1) of the Act – the only or the last transaction entry in the trust record; or
  - (b) in the case of any other trust record – finalisation of the matter to which the trust record relates.
- (3) This regulation does not apply to a written direction mentioned in section 246(2)(a) or 248(1) of the Act.

## **70 Retaining other records and information**

- (1) A record maintained under regulation 38 is, so far as it relates to particular information, to be kept by the law practice for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this Part to be kept by a law practice must be kept for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This regulation does not apply to records to which regulation 44, 58 or 69 applies.

## **71 Statements regarding receipt or holding of trust money**

- (1) The Law Society may, by notice given under this regulation, require a law practice to give the Society a statement:
- (a) specifying whether or not the practice has during a period specified by the Society received or held trust money; and
  - (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs:
    - (i) general trust money (being trust money other than that referred to in subparagraphs (ii) to (iv));

- (ii) controlled money;
  - (iii) transit money;
  - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise), and may be withdrawn or varied by a further notice.
- (3) A notice may specify the time by which or the period during which the requirement must be complied with.
- (4) A notice is given to:
- (a) a particular law practice by sending the notice by post to the practice; or
  - (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.
- (5) A law practice:
- (a) must comply with a requirement imposed on it under this regulation and must do so by the time or during the period specified in the notice for compliance; and
  - (b) must not include in the statement any information that is false or misleading in a material particular.

## **Division 7 External examinations**

### **72 Requirement for external examinations**

- (1) For section 270(1) of the Act, a law practice must appoint a designated person as an external examiner to examine the practice's trust records.

*Note*

*A designated person is a person appointed as such under section 268 of the Act.*

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

**73 Law practice closing down, closing office or ceasing to receive or hold trust money**

- (1) A law practice that holds trust money must give the Law Society at least 14 days' written notice of its intention:
  - (a) to cease to exist as a law practice; or
  - (b) to cease to engage in legal practice in this jurisdiction; or
  - (c) to cease to practise in such a way as to receive trust money.
- (2) Within 14 days of ceasing to hold trust money, a law practice that holds trust money must give the Society:
  - (a) written notice of that fact; and
  - (b) if the practice has not given a notice under subregulation (1) within the previous 28 days, a notice that complies with that subregulation.
- (3) A notice under this regulation must include particulars sufficient to identify:
  - (a) a law practice's general trust accounts and controlled money accounts; and
  - (b) trust money controlled by the practice (or by an associate) pursuant to a power; and
  - (c) trust money invested by the practice.
- (4) In this regulation:

**law practice** includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

**74 Carrying out examination**

For section 273(3)(b) of the Act, the form and content of an external examiner's report (but not the substance of the report) must be approved by the Law Society.

## **Division 8 Provisions relating to ADIs**

### **75 Conditions on approval of ADIs**

For section 278(3) of the Act, the kinds of conditions that may be imposed on an approval of an ADI under section 278 of the Act are conditions that provide for, or conditions that require arrangements to be negotiated and entered into between the ADI and the Law Society that provide for, any one or more of the following:

- (a) the payment of interest to the Funds Management Committee on the whole or any part of deposits in trust accounts;
- (b) the manner in which the Society is informed of amounts held in trust accounts;
- (c) the auditing of balances in trust accounts;
- (d) the keeping of any trust accounts or only trust accounts of a particular class (for example, controlled money accounts);
- (e) any matters relevant to paragraphs (a) to (d).

### **76 Report by ADI to Law Society**

For section 280(3) of the Act, a report about a trust account given to the Law Society by an ADI must contain the following:

- (a) identifying details of the account;
- (b) the daily balances of trust money held in the account.

## **Division 9 Miscellaneous matters**

### **77 Disclosure of accounts used to hold money entrusted to legal practitioners**

- (1) For section 286(1) of the Act, the details of which a law practice is required to give notice to the Law Society in relation to each account maintained at an ADI in which the practice or any legal practitioner associate holds money entrusted to the practice or associate, are as follows:

- (a) the name of the ADI, together with its BSB number;
- (b) the name of the account, together with its account number;
- (c) the name of each person authorised to operate on the account;



- (d) for each amount of money so entrusted:
  - (i) the name of the person for whom the money is entrusted; and
  - (ii) the purpose for which the money is entrusted; and
  - (iii) the date on which the money is deposited in the account, together with the manner in which it is deposited; and
  - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn.
- (2) The details mentioned in subregulation (1) must be notified to the Society at the times and in the manner required by the Society.

## **78 Exemptions**

The Law Society:

- (a) may exempt a law practice from complying with any of the provisions of this Part or Part 3.1 of the Act, subject to any conditions that may be imposed by the Society; and
- (b) may, at any time, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

## **Part 3.2 Advertising legal services for personal injury claims**

### **79 Exemptions from the application of Part 32 of the Act**

For section 288(1)(g) of the Act, the following advertisements or publications are prescribed:

- (a) an advertisement or publication made by the Law Society, the Northern Territory Legal Aid Commission or a community legal centre informing persons about where they may obtain legal advice about the law relating to personal injuries, including the names and addresses of firms of legal practitioners that provide legal services in connection with making a claim for compensation or damages for a personal injury;

- (b) an advertisement or publication circulated within a firm of legal practitioners relating to legal services provided in connection with making a claim for compensation or damages for a personal injury by the firm or a particular legal practitioner in the firm.

**80 Prescribed persons for section 288(2)(b) of the Act**

For section 288(2)(b) of the Act, the following persons are prescribed:

- (a) the Law Society;
- (b) the Northern Territory Legal Aid Commission or a person acting for the Commission;
- (c) a community legal centre or a supervising legal practitioner employed or engaged by the centre acting for the centre;
- (d) the Commissioner of Consumer Affairs or a person acting for the Commissioner;
- (e) an ambassador, consul or diplomat of a foreign country carrying out consular or diplomatic duties in the Territory.

**Part 3.4 Professional indemnity insurance**

**81 Exemptions**

- (1) An Australian legal practitioner who is a government lawyer within the meaning of section 90(5) or 91(5) of the Act is exempt from the requirement to be insured under the Act.
- (2) However, the exemption only applies in relation to work done by the government lawyer as an employee of the government.

**82 Prescribed requirements for professional indemnity insurance**

- (1) For section 377 of the Act, the requirements for professional indemnity insurance for a law practice or community legal centre are:
  - (a) the insurance provides the minimum coverage for each legal practitioner who is a member or an employee of the law practice or community legal centre; and
  - (b) the insurance is provided under an agreement or arrangement entered into by the Law Society under section 378 of the Act.

- (2) Whether insurance complies with the requirement of subregulation (1)(a) must be determined by the Society.

## **Part 3.5 Fidelity cover**

### **83 Determination for funding from Fidelity Fund**

A determination of a payment of an amount to a regulatory authority from the Fidelity Fund under section 388(1) of the Act must not be made unless the regulatory authority enters into an agreement with the Funds Management Committee regarding accounting of expenditure from the amount to be paid.

### **84 Annual contributions**

- (1) For section 392(1) of the Act, the class of legal practitioners who are not government lawyers is prescribed.
- (2) For section 392(2) of the Act, the amount of contribution payable by a legal practitioner who is a member of the class prescribed under subregulation (1) must not exceed \$1 500.
- (3) For section 393(1) of the Act, the contribution for the period of 12 months beginning on 1 July in a year, is the amount notified by the Funds Management Committee under section 392(4) for the year.

*Note*

*Section 392 of the Act requires the Committee to decide an amount each year having regard to advice of an actuary and this amount is notified in the Gazette.*

### **85 Levies**

- (1) For section 394(3) of the Act, the class of legal practitioners who are not government lawyers is prescribed.
- (2) For section 394(2) of the Act, the amount of a levy imposed by the Funds Management Committee on each legal practitioner must not exceed \$500.
- (3) If classes of legal practitioners have been determined for section 392(1) of the Act, the Committee may impose different levies (not exceeding \$500) on those classes.
- (4) A legal practitioner who has paid levies in the aggregate of \$1 500 during the whole period of the practitioner's practice in the Territory is not required to pay a further levy.

**86 Caps on payment**

- (1) The amounts paid under section 417 of the Act for compensating claimants in relation to claims against the same legal practice, allowed under Part 3.5 of the Act for defaults to which that Part applies, must not exceed, in the aggregate, \$200 000.
- (2) Subregulation (3) applies if:
  - (a) there is more than one claimant against a legal practice; and
  - (b) the aggregate of the amounts that the Committee would otherwise be required by section 417 of the Act to pay to the claimants exceeds the amount mentioned in subregulation (1).
- (3) The Funds Management Committee must divide the amount available under subregulation (1) among the claimants in proportion to the amounts determined under section 405 of the Act for each claimant.
- (4) If, at any time, the amount of the Fidelity Fund is insufficient for the payment of all amounts that the Committee would otherwise be required to pay under Part 3.5 of the Act, the Committee must divide the amount in the Fidelity Fund among the persons to whom it would be required to pay those amounts in proportion to those amounts.

**87 Fidelity protocols**

- (1) The Law Society may enter into fidelity protocols with corresponding authorities for or with respect to any of the following matters:
  - (a) the forwarding of claims, or copies of claims, under section 426 of the Act and corresponding laws;
  - (b) the making and acceptance of requests to act as agent under Part 3.5 of the Act and corresponding laws;
  - (c) the processing or investigation of claims or aspects of claims as agent under Part 3.5 of the Act and corresponding laws.
- (2) A protocol may be amended, revoked or replaced by agreement of the parties to it.

**88 Interstate legal practitioner becoming authorised to withdraw from local trust account: notification**

- (1) This regulation has effect for section 434 of the Act and applies to an interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account of a law practice.
- (2) The practitioner must notify the Law Society of the authorisation.
- (3) The notification must include the following particulars:
  - (a) the practitioner's name;
  - (b) the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted;
  - (c) the practitioner's principal business address;
  - (d) details of the local trust account, including the following:
    - (i) the name of the law practice operating the account;
    - (ii) the practice's principal business address;
    - (iii) the name of the ADI with which the account is held;
    - (iv) the names of any other signatories to the account;
  - (e) the date on which the practitioner became authorised to withdraw money from the trust account.
- (4) The practitioner must notify the Society of any change to the particulars mentioned in subregulation (3).
- (5) A notification under this regulation must be in writing and must be sent or delivered to the business address of the Society before the end of the period of 7 days starting on the day the practitioner becomes authorised to withdraw money from the local trust account or the change occurs.

**Part 4 Complaints and discipline****89 Register of Disciplinary Action**

For section 541(2)(e) of the Act, particulars of the date and jurisdiction of the person's first and each later admission to the legal profession are prescribed.

## **Part 7.1 Regulatory bodies**

### **90 Application of *Associations Act***

The provisions of the *Associations Act* applied under section 645(1)(a) to (d) of the *Legal Profession Act* are subject to the following modifications:

- (a) a reference to the committee of an association is a reference to the Council;
- (b) section 94 does not apply to the extent that it requires the Law Society or its officers to give information relating to the performance of its statutory functions;
- (c) section 109(2)(a) and (d) do not apply.

## **Part 9 Miscellaneous matters**

### **91 Fees, contributions and levies**

The fee, contribution or levy payable under the Act for or in respect of a matter specified in column 1 of Schedule 3 is the amount specified opposite in column 2.

## **Part 10.2 Transitional matters**

### **92 Definition**

In this Part:

**former Act** means the *Legal Practitioners Act* as in force immediately before the commencement of section 707 of the *Legal Profession Act 2006*.

### **93 Supervised legal practice**

- (1) Service as an employee or officer in the performance of work of a legal nature in a department, body or organisation prescribed for section 25(1)(c) of the former Act is supervised legal practice for the definition of that term in section 4 of the Act.
- (2) Subregulation (1) ceases to have effect 12 months after the commencement of these Regulations.

**94 Local practising certificates**

Section 46(3) of the Act does not apply to a person who holds an interstate practising certificate issued prior to 1 July 2008.

**95 Notification requirements regarding general trust accounts**

Before 1 July 2007, the Master must give the Law Society all notices given to the Master for the purposes of section 60 of the former Act.

**96 Members constituting Law Society**

- (1) This regulation applies despite section 637 of the Act.
- (2) In addition to the persons mentioned in section 637 of the Act, the Law Society consists of persons who, immediately before the commencement of these Regulations, were members of the Society.

**97 Corrective regulation**

A provision mentioned in column 1 of Schedule 4 has the minor error specified opposite in column 2 and can be amended as specified opposite in column 3.

## Schedule 1 Entitlement to take or use names, titles and descriptions

regulation 4

| Column 1 | Column 2   | Column 3  | Column 4  |
|----------|--|---|---|
| Item No. | Name, title or description   | Kinds of persons who are entitled to take or use name, title or description | Circumstances in which the persons are entitled to take or use name, title or description   |
| 1        | lawyer   | Australian lawyer   | all circumstances (no restriction)  |
| 2        | lawyer   | Australian-registered foreign lawyer  | all circumstances (no restriction)  |
| 3        | legal practitioner   | Australian legal practitioner   | all circumstances (no restriction)  |
| 4        | legal practitioner   | Australian lawyer   | when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate |
| 5        | barrister and solicitor, or solicitor and barrister, or solicitor, or attorney | Australian legal practitioner   | when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a solicitor  |



|   |  |                               |  |
|---|--|-------------------------------|--|
| 6 | barrister and solicitor, or solicitor and barrister, or solicitor, or attorney | Australian lawyer             | when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a solicitor as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate |
| 7 | barrister  | Australian legal practitioner | when the Australian legal practitioner holds a local practising certificate and engages in legal practice in the manner of a barrister   |
| 8 | barrister  | Australian lawyer             | when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a barrister as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate |
| 9 | counsel  | Australian legal practitioner | all circumstances (no restriction)   |

|    |  |                   |  |
|----|--|-------------------|--|
| 10 | counsel  | Australian lawyer | when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate or when the Australian lawyer, not holding an Australian practising certificate, provides legal services to his or her employer, or to a related entity, in the ordinary course of his or her employment and for no fee, gain or reward other than his or her ordinary remuneration as an employee |
| 11 | Senior Counsel or SC   | Australian lawyer | when the Australian lawyer currently holds the status of Senior Counsel, as recognised by the High Court or a Supreme Court of any jurisdiction  |
| 12 | Queen's Counsel or QC, or King's Counsel or KC, or Her Majesty's Counsel, or His Majesty's Counsel | Australian lawyer | when the Australian lawyer currently holds the appropriate status, as conferred by the Crown in any capacity or as recognised by the High Court or a Supreme Court of any jurisdiction   |

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|    |           |  |  |
|----|-----------|--|--|
| 13 | attorney  | Australian-registered foreign lawyer   | when entitled to use the name, title or description under section 177 of the Act |
| 14 | attorney  | patent attorney  | when using the expression "patent attorney"                                      |
| 15 | attorney  | donee of a power of attorney   | when indicating that the donee holds or is acting under a power of attorney      |
| 16 | Attorney  | Attorney-General of any jurisdiction, the Commonwealth or a foreign country  | all circumstances (no restriction)   |
| 17 | Solicitor | Solicitor-General of any jurisdiction, the Commonwealth or a foreign country | all circumstances (no restriction)   |

## Schedule 2 Continuing professional development scheme

regulation 11

### Part 1 Interpretation

#### 1 Definitions

In this Schedule:

**attend**, a seminar, includes chair the seminar but does not include giving a presentation at the seminar.

**claim**, for a CPD point, means count the point towards satisfying a legal practitioner's CPD obligation.

**CPD** means continuing professional development.

**CPD activity**, see clause 2.

**CPD obligation**, means a legal practitioner's obligation under clause 4 to accrue CPD points for a CPD year.

**CPD points**, see clause 3.

**CPD year** means the period starting on 1 April in a year and ending on 31 March in the next year.

**legal practice competency** means competency relating to engaging in legal practice, including, for example:

- (a) risk management; and
- (b) time management; and
- (c) business skills; and
- (d) practical skills, including advocacy, mediation, negotiation, drafting and dealing with cross-cultural issues; and
- (e) professional ethics and responsibility.

**seminar** includes a workshop, conference and discussion group.

**substantive law competency** means competency in substantive law, including, for example:

- (a) an area of law prescribed by the admission rules for courses leading to a law degree; and

- (b) statute law and common law.

## **Part 2 CPD scheme**

### **Division 1 Basic concepts about CPD activities and CPD points**

#### **2 CPD activity**

- (1) A CPD activity is:
  - (a) preparing a presentation for giving (including by video-conference) at a seminar; or
  - (b) giving (including by video-conference) a presentation at a seminar; or
  - (c) attending (including by video-conference) a seminar or multimedia or website based program; or
  - (d) private study involving the use of audio or video material specifically aimed at increasing or updating the substantive law or legal practice competencies of legal practitioners; or
  - (e) lecturing on a subject for:
    - (i) a Graduate Diploma in Legal Practice, Master of Laws or Bachelor of Laws; or
    - (ii) another university course that is covered in a subject mentioned in subparagraph (i); or
  - (f) writing an article that is published in a legal publication, or a legal article that is published in a non-legal publication, or refereeing or structural editing of such a published article.
- (2) A CPD activity must:
  - (a) be of significant intellectual or practical content; and
  - (b) primarily cover matters of substantive law or legal practice competencies; and
  - (c) be aimed at increasing or updating the substantive law or legal practice competencies of legal practitioners; and
  - (d) for a presentation at a seminar – be given by a person who is qualified by practical or academic experience in the subject covered.

- (3) Private study is not a CPD activity unless it is covered by subclause (1)(d).
- (4) Engaging in legal practice is not a CPD activity.

### **3 CPD points**

A legal practitioner accrues points (**CPD points**) for participating in CPD activities relevant to the practitioner's current and future needs to engage in legal practice.

## **Division 2 Basic concepts about CPD obligation**

### **4 CPD obligation**

- (1) For each CPD year a legal practitioner engages in legal practice, the practitioner must accrue 12 CPD points.

*Note*

*Under clause 6, CPD points accrued within 3 months before and after a CPD year may be claimed for that year.*

- (2) If a legal practitioner engages in legal practice for part only of a CPD year, the practitioner must accrue CPD points on a pro rata basis for that part of the CPD year.
- (3) However, if a legal practitioner engages in legal practice for less than 28 days in a CPD year, the practitioner need not comply with the practitioner's CPD obligation for that part of the CPD year.

## **Division 3 Basic concepts about accruing and claiming CPD points**

### **5 Competencies for accruing CPD points**

- (1) CPD points must be accrued in substantive law and legal practice competencies.
- (2) However, at least 4 CPD points must be accrued in legal practice competencies for a CPD year.

### **6 Claiming CPD points for CPD year**

- (1) A legal practitioner who accrues CPD points for participating in a CPD activity within 3 months before the start of a CPD year and within 3 months after the end of that CPD year may claim the points for that CPD year.
- (2) However, the practitioner may claim CPD points accrued for the activity for only one CPD year.

## **Division 4      Accruing and claiming CPD points for CPD activities**

### **7            Preparing and giving presentation at seminar**

- (1) For preparing or giving a presentation at a seminar, one CPD point accrues for each hour of preparing or giving the presentation.
- (2) However, no more than 4 CPD points may be claimed for preparing and giving the presentation.
- (3) In addition, if the presentation is repeated in the same CPD year, CPD points may be claimed only once.
- (4) Also, a legal practitioner cannot claim CPD points for giving a presentation for a matter that is substantially the same matter covered by a published article for which the practitioner has claimed CPD points (whether in the same or an earlier CPD year).
- (5) No more than 6 CPD points may be claimed for preparing and giving presentations at seminars in a CPD year.

### **8            Attending seminar or multimedia or website based program**

- (1) For attending a seminar or multimedia or website based program, one CPD point accrues for each hour of attendance.
- (2) However, no more than 6 CPD points may be claimed for attending a seminar that is wholly provided by the same provider on one day or on consecutive days.

### **9            Private study – audio and video material**

- (1) For private study involving the use of audio or video material, one CPD point accrues for each hour of study.
- (2) However, no more than 6 CPD points may be claimed for private study in a CPD year.

### **10          Lecturing**

- (1) One CPD point accrues for each hour of lecturing.
- (2) However, no more than 6 CPD points may be claimed for lecturing in a CPD year.

### **11          Published article**

- (1) For writing a published article, one CPD point accrues for each thousand words of the article.

- (2) However, no more than 6 CPD points may be claimed for writing the published article.
- (3) Also, a legal practitioner cannot claim CPD points for writing a published article that covers substantially the same matter as a presentation given at a seminar for which the practitioner has claimed CPD points (whether in the same or an earlier CPD year).
- (4) For refereeing or structural editing of a published article, one CPD point accrues for each thousand words of the article.
- (5) However, no more than 6 CPD points may be claimed for the refereeing or structural editing.

## **12 Completing specialist accreditation examination**

A legal practitioner accrues 12 CPD points for a CPD year in which the practitioner successfully completes a specialist accreditation examination approved by the Law Society.

## **Part 3 Miscellaneous matters**

### **13 Certificate about compliance with CPD obligation**

A legal practitioner must, before the end of each CPD year, give the Law Society a certificate in the approved form about the practitioner's compliance with the practitioner's CPD obligation for the CPD year.

### **14 Exemption**

- (1) A legal practitioner may, at any time, apply to the Law Society for exemption (in whole or part) from the requirement to comply with the practitioner's CPD obligation for a CPD year.
- (2) The application must be made in the approved form.
- (3) The Society may give the exemption if:
  - (a) it is satisfied, because of the practitioner's geographical location, physical disability or any particular constraints of the practitioner's practice, the practitioner has experienced hardship or difficulty in complying with the obligation; or
  - (b) it is satisfied the practitioner has been substantially absent from practice because of leave or illness; or
  - (c) it considers other special circumstances exist.



**15 Law Society may require information about CPD obligation**

- (1) The Law Society may, by written notice, require a legal practitioner to give it information about the practitioner's compliance with the practitioner's CPD obligation.
- (2) The practitioner must comply with the notice within 14 days after it is given.

**Part 4 Transitional matters**

**16 CPD points for existing legal practitioners for first CPD year**

- (1) This clause applies to a legal practitioner whose practising certificate is covered by section 715 of the Act.
- (2) To avoid doubt, the legal practitioner must accrue 12 CPD points for the CPD year ending on 31 March 2008.

**17 Expiry of Part**

This Part expires on 1 July 2008.

**Schedule 3 Fees, contributions and levies**

regulation 91

| Description of fee  | Amount   |
|---|--|
| Fee payable by local legal practitioner under section 21(3) of the Act for appointment as a Queen's Counsel or Senior Counsel   | 500 revenue units                              |
| Fee payable by complying community legal centre under section 227(e) of the Act for grant or renewal of unrestricted local practising certificate   | 100 revenue units                              |
| Fee payable under section 51(1)(c) or 188(1)(b) of the Act for the grant or renewal of a:<br><br>restricted local practising certificate<br><br>unrestricted local practising certificate | 1 260 revenue units<br><br>1 400 revenue units |
| Late fee payable under section 53(2) of the Act for an application for renewal of a local practising certificate during the late fee period   | 100 revenue units                              |

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**Schedule 4**

regulation 97

**CORRIGENDA**

| <b>Provision</b>   | <b>Minor error</b>  | <b>Amendment</b>   |
|--|---|--|
| Section 4,<br><br>definition<br>"graduate clerk",<br>paragraph (b) | the word "lawyer" should<br>be "legal practitioner"   | <i>omit</i><br>lawyer<br><i>substitute</i><br>legal practitioner   |
| definition<br>"personal injury"                                    | the definition of "personal<br>injury" duplicates the<br>definition of the term in<br>section 289 | <i>omit</i><br>whole definition<br><i>substitute</i><br>"personal injury", for<br>Part 3.2, see section 289; |
| Sections 74 and 75(3)  | the words "solicitor and<br>barrister" should be<br>"barrister and solicitor"                     | <i>omit</i><br>solicitor and barrister<br><i>substitute</i><br>barrister and solicitor                       |
| Section 90(1)  | the reference to section<br>74 should be a reference<br>to section 75(1)                          | <i>omit</i><br>74<br><i>substitute</i><br>75(1)  |
| Section 645, heading   | the word " <b>Association</b> "<br>should be<br>" <b>Associations</b> "                           | <i>omit</i><br><b>Association</b><br><i>substitute</i><br><b>Associations</b>                                |

## ENDNOTES

### 1

### KEY

Key to abbreviations

amd = amended

app = appendix

bl = by-law

ch = Chapter

cl = clause

div = Division

exp = expires/expired

f = forms

*Gaz* = *Gazette*

hdg = heading

ins = inserted

lt = long title

nc = not commenced

od = order

om = omitted

pt = Part

r = regulation/rule

rem = remainder

renum = renumbered

rep = repealed

s = section

sch = Schedule

sdiv = Subdivision

SL = Subordinate Legislation

sub = substituted

### 2

### LIST OF LEGISLATION

#### *Legal Profession Regulations (SL No. 9, 2007)*

Notified 18 April 2007

Commenced 18 April 2007