

NORTHERN TERRITORY OF AUSTRALIA

LEGAL PRACTITIONERS ACT

As in force at 13 July 2005

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First Schedule

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 13 July 2005

LEGAL PRACTITIONERS ACT

An Act relating to legal practitioners

Part I Preliminary

1 Short title

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

2 Commencement

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

6 Definitions

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

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

approved policy of fidelity insurance means a policy of fidelity insurance approved under section 84H.

Chairperson means the person appointed under section 48A as the Chairperson of the Legal Practitioners Complaints Committee and includes the Deputy Chairperson when acting as Chairperson.

community legal centre has the meaning in section 135XB.

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

corresponding law means a law of a State or another Territory of the Commonwealth declared under section 134C to be a corresponding law.

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

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

Deputy Chairperson means the person appointed under section 48AB(1) as the Deputy Chairperson of the Legal Practitioners Complaints Committee.

establish a practice in the Territory, in relation to an interstate legal practitioner, has the meaning in section 134E.

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

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

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

home state means the participating State in which an interstate legal practitioner has been admitted to practise the profession of the law and has his or her sole or principal place of practice.

incorporated legal practice means a corporation that provides legal services and otherwise complies with section 35AD, but does not include a community legal centre.

interstate legal practitioner means a natural person who:

- (a) has been admitted to practise the profession of the law in a participating State;
- (b) holds an interstate practising certificate issued by an interstate regulatory authority in the participating State; and
- (c) is not a local legal practitioner.

interstate practising certificate means a certificate or other form of authorisation issued by an interstate regulatory authority that entitles the holder to practise the profession of the law in the participating State in which it was issued, whether generally or subject to conditions, restrictions or limitations.

interstate regulatory authority means a person or body in a participating State that may exercise a power or perform a function that corresponds to a power or function that may be exercised or performed by a local regulatory authority under this Act.

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

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

legal practitioner means:

- (a) a person whose name is on the Roll of Legal Practitioners; or
- (b) a person whose name is not on the Roll of Legal Practitioners but who has, in the Territory, deemed registration within the meaning of the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

local Counsel means a Counsel whose sole or principal place of practice is the Territory.

local legal practitioner, means a legal practitioner who holds, or under section 30 is deemed to hold, a current practising certificate and whose principal place of practice is the Territory.

local regulatory authority means the Law Society, Complaints Committee, Fidelity Fund Committee, Master or Court.

locally registered foreign lawyer has the meaning in section 135A.

Master means the Master of the Court.

multi-disciplinary partnership means a partnership between one or more lawyers and one or more other persons who are not lawyers whose partnership business includes the provision of legal services as well as other services.

participating State means a State or another Territory of the Commonwealth in which a corresponding law is in force.

professional conduct rules means rules made by the Law Society under section 45A.

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

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

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

restricted practising certificate class 2 means a practising certificate certifying to the entitlement of the holder to practise as a legal practitioner on his or her own account subject to the conditions that the holder is entitled to practise:

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

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

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

Rules means the Rules made under this Act.

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

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

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

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

- (2) If, under a corresponding law, an interstate legal practitioner's entitlement to practise the profession of the law does not derive from the holding of an interstate practising certificate or other authorisation issued by an interstate regulatory authority:
- (a) a reference in this Act to an interstate practising certificate is a reference to the interstate legal practitioner's entitlement to practise the profession of the law under the corresponding law; and
 - (b) a reference in this Act to conditions, restrictions or limitations in respect of an interstate practising certificate is a reference to conditions, restrictions or limitations in respect of that entitlement.
- (3) Unless the contrary intention appears, a reference in this Act to a person whose name is on the Roll of Legal Practitioners includes a reference to a person who has, in the Territory, deemed registration within the meaning of the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

6A Act binds Crown

This Act (other than Parts VII, VIII, VIIIA, IX, X, XIA and XII) binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

6B Excluded matters for Corporations Act 2001

- (1) This section applies in relation to the following bodies:
- (a) the Law Society;
 - (b) the Trust Committee;
 - (c) the Fidelity Fund Committee.
- (2) The bodies, their employees, the members of the Trust Committee and the members of the Fidelity Fund Committee are declared to be excluded matters for section 5F of the Corporations Act 2001 in relation to:
- (a) Chapter 7 of that Act; and
 - (b) provisions of the Corporations legislation that are specified in the Regulations.

- (3) Subsection (2) has effect for the Law Society and its employees only in relation to:
 - (a) their activities for each of the following:
 - (i) the Trust Committee;
 - (ii) the Fidelity Fund Committee;
 - (iii) Part IVA or the Regulations made for that Part;
 - (iv) the *Law Society Public Purposes Trust Act*; and
 - (b) their other activities specified in the Regulations.
- (4) Subsection (2) has effect for the employees and members of the Trust Committee only in relation to their activities for that Committee.
- (5) Subsection (2) has effect for the employees and members of the Fidelity Fund Committee only in relation to their activities for that Committee.

Part II The Law Society

7 Incorporation of Law Society

- (1) The Law Society of the Northern Territory is hereby constituted a body corporate by the name "Law Society Northern Territory".
- (2) The Law Society:
 - (a) has perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Law Society affixed to a document and shall presume that it was duly affixed.
- (4) The first members of the Law Society shall be the persons who, immediately before the commencement of this Part, were members of The Law Society of the Northern Territory.

- (5) The Constitution of the Law Society is, subject to this Act, the Constitution of The Law Society of the Northern Territory as in force immediately before the commencement of this Act.
- (6) An amendment of the Constitution of the Law Society shall not take effect unless it is approved by the Attorney-General.
- (7) An amendment of the Constitution of the Law Society that is approved by the Attorney-General takes effect:
 - (a) where the amendment specifies a day on which it is to take effect, being a day not earlier than the day on which the Attorney-General approves the amendment – on the day so specified; and
 - (b) in any other case – on the day on which the Attorney-General approves the amendment.
- (8) Any property held, immediately before the commencement of this Part, by a person, in trust or otherwise, for or on behalf of The Law Society of the Northern Territory is, subject to any charge or liability affecting the property, vested in the Law Society.
- (9) A person is not entitled to be a member of the Law Society unless his or her name is on the Roll of Legal Practitioners or he or she is an interstate legal practitioner.
- (10) A person who holds a practising certificate or interstate practising certificate is entitled, on application to the Law Society, to be admitted to membership of the Society on payment of such fee for admission as is fixed by the Law Society.
- (11) A member of the Law Society is, while he or she holds a practising certificate or an interstate practising certificate, liable to pay to the Society any annual subscription to the Society's funds

Part III Legal practitioners of the Supreme Court

Division 1 The Admission Board

8 Legal Practitioners Admission Board

- (1) There shall be a Legal Practitioners Admission Board of the Northern Territory consisting of the Master and not more than 6 other members, being legal practitioners appointed by the Chief Justice, at least 2 of whom shall be legal practitioners practising in the Territory on their own account or in partnership and one of whom shall be appointed on the nomination of the Attorney-

General.

- (2) Subject to section 9, a member of the Admission Board other than the Master holds office for the period that:
 - (a) commences on the date of the instrument of his or her appointment or, where the appointment is expressed to commence on some later date, on that later date; and
 - (b) ends on the next succeeding 30 September.
- (3) A member of the Admission Board other than the Master is eligible for reappointment.
- (4) In the event of there being a vacancy in the office of a member of the Admission Board, the Chief Justice may appoint a legal practitioner to hold the vacant office, and a person so appointed holds office from the date of his appointment to the next succeeding 30 September.
- (5) The Chief Justice may appoint a person to be the Secretary to the Admission Board.

9 Vacation of office of members of Admission Board

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

10 Meetings of Admission Board

- (1) At a meeting of the Admission Board, 3 members constitute a quorum.
- (2) The Master shall preside at all meetings of the Admission Board at which he or she is present.

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

Division 2 Admission of legal practitioners

11 Rules of admission

- (1) The Judges appointed under section 32(1) of the *Supreme Court Act* who are not additional Judges, or a majority of them, may make rules, not inconsistent with this Act, for and in relation to:
 - (a) the qualifications, requirements and procedure to be followed for admission to practise;
 - (b) all matters and things incidental or relating to such admissions;
 - (c) the establishing and maintaining of the Roll of Legal Practitioners; and
 - (d) articles of clerkship.
- (1A) The Judges referred to in subsection (1) may make rules, not inconsistent with this Act or the *Mutual Recognition Act 1992* of the Commonwealth, in relation to:
 - (a) the procedure to be followed in respect of applications for registration under the *Mutual Recognition Act 1992* of the Commonwealth in so far as the applications relate to the admission of persons to practise the profession of the law in the Territory; and
 - (b) all matters and things incidental or relating to such applications or such registration.
- (1B) The Judges referred to in subsection (1) may make rules, not inconsistent with this Act or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth, in relation to:
 - (a) the procedure to be followed in respect of applications for registration under the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth in so far as the applications relate to the admission of persons to practise the profession of the law in the Territory; and

- (b) all matters and things incidental or relating to such applications or such registration
- (2) The Rules may confer on the Admission Board or the Registrar powers and functions in relation to the matters specified in this section and the Admission Board or the Registrar may exercise those powers or perform those functions accordingly.

12 Mutual recognition local registration authority

For the purposes of:

- (a) the *Mutual Recognition Act 1992* of the Commonwealth; or
- (b) the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth,

the Admission Board is the local registration authority in respect of an application for registration under that Act in so far as the application relates to the admission of a person to practise the profession of the law in the Territory.

13 Functions and powers of Admission Board

The Admission Board shall, in respect of an application for admission to practise, not being an application under the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth, make a report in writing to the Court stating whether, in the opinion of the Board:

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

14A Admission fees

- (1) The Regulations may prescribe:
 - (a) classes of applicants for admission; and
 - (b) an admission fee in respect of a class of applicants for admission.

- (2) An applicant for admission under the Rules shall pay to the Law Society the prescribed admission fee under subsection (1) in respect of the class of applicants to which he or she belongs.

15 Law Society may object to admission

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

16 Counsel to practise independently

A Counsel must not, in the Territory:

- (a) practise other than as a barrister and independently of another practitioner;
- (b) practise as a barrister in partnership with any person or as the employee of any person; or
- (c) hold office as a lawyer director (within the meaning of Part IVAA) of an incorporated legal practice.

Penalty: 50 penalty units.

18 Status after admission

A person whose name is on the Roll of Legal Practitioners is an officer of the Court and is subject to the inherent jurisdiction of the Court as such.

19 Right to practise

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

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

Division 3 Queen's Counsel

20 Her Majesty's Counsel

- (1) The Administrator may, by commission, appoint a person who is a legal practitioner to be one of Her Majesty's Counsel for the Territory.
- (2) A person so appointed has, in and in relation to the Territory, the same status, rights, privileges and responsibilities as the person would have had if he or she had been appointed by Her Majesty as one of Her Majesty's Counsel for the Territory.
- (3) A person appointed as one of Her Majesty's Counsel must pay to the Territory the prescribed fee (if any) in respect of the appointment.
- (4) In this section, ***legal practitioner*** includes an interstate legal practitioner.

Division 4 Precedence of legal practitioners

21 Precedence of legal practitioners

- (1) Subject to the rights of precedence of the Attorney-General, the Solicitor-General and the Director of Public Prosecutions, Her Majesty's Counsel for the Commonwealth, the Territory or New Zealand, have, in and in relation to the Territory:
 - (a) precedence over other legal practitioners; and
 - (b) precedence amongst themselves according to the respective dates of their appointment as Her Majesty's Counsel for the Commonwealth, the Territory or New Zealand.
- (2) If, on the date of a person's appointment as one of Her Majesty's Counsel for the Territory, he or she is one of Her Majesty's Counsel for a State, another Territory or New Zealand, the date on which the person was first appointed as one of Her Majesty's Counsel for that State, other Territory or New Zealand is, for the purposes of this section, to be deemed to be the date on which the person was appointed as one of her Majesty's Counsel for the Territory.
- (3) Subsection (2) applies whether the date on which a person was first appointed as one of Her Majesty's Counsel for a State, another Territory or New Zealand is a date before, on or after the date of commencement of this Part.

- (4) Where the date on which one person is, or is to be deemed to have been, appointed as one of Her Majesty's Counsel for the Territory is the same date as the date on which another person is, or is to be deemed to have been, appointed as one of Her Majesty's Counsel for the Territory, those persons have, in and in relation to the Territory, precedence amongst themselves according to the respective dates of their first admission to practise in Australia or New Zealand (as the case may be), either as a barrister or solicitor, or both.
- (5) Subject to this section legal practitioners have, in and in relation to the Territory, precedence amongst themselves according to the respective dates of their first admission to practise in Australia or New Zealand (as the case may be), whether as a barrister or solicitor, or both.
- (6) In this section, **legal practitioners** includes interstate legal practitioners.

Part IV Practising certificates

22 Certain practitioners to hold practising certificates

- (1) A legal practitioner shall not practise in the Territory as a legal practitioner on his or her own account or in partnership with another legal practitioner unless he or she holds, or is, in pursuance of section 30, to be deemed to hold, a current unrestricted practising certificate or restricted practising certificate class 2.
- (2) For the purpose of subsection (1), a person shall not be taken to practise as a legal practitioner in the Territory by reason only that he or she is a member of a partnership whose practice in the Territory is conducted by another member or other members of the partnership.
- (3) A legal practitioner who is employed in the Territory:
 - (a) by another legal practitioner or by a firm of legal practitioners;
 - (b) by an interstate legal practitioner who has established a practice in the Territory; or
 - (c) by a community legal centre,must not practise in the Territory as a legal practitioner unless he or she holds, or is in pursuance of section 30 deemed to hold, a current unrestricted practising certificate or restricted practising certificate class 1.

- (3A) Subject to the *Judiciary Act 1903* of the Commonwealth, a legal practitioner who is an officer or employee of a department, body or organisation for the time being prescribed for the purposes of section 25(1)(c) shall not practise in the Territory as a legal practitioner unless he or she holds, or is in pursuance of section 30 to be deemed to hold, a current unrestricted practising certificate or restricted certificate class 1.
- (3B) A legal practitioner who is employed by another person otherwise than as mentioned in subsection (3) or (3A) shall not practise in the Territory as a practitioner unless:
- (a) he or she holds, or is in pursuance of section 30 to be deemed to hold, a current restricted practising certificate class 3; and
 - (b) the functions he or she performs in that respect are of a description or descriptions which he or she is authorized to perform by regulations under this Act,
- and regulations prescribing functions for the purposes of this subsection may make different provision with respect to different classes or descriptions of employment.
- (4) A legal practitioner is not entitled to recover any costs or disbursements in respect of any work of a professional nature done by him or her as a legal practitioner if, at the time at which the work was done, he or she was not the holder of a current unrestricted practising certificate or restricted practising certificate class 2.
- (5) Notwithstanding subsection (4) and subject to subsection (6), an organisation whose main purpose is to provide legal aid services (including a community legal centre) is entitled to recover costs and disbursements in respect of work of a professional nature done by a legal practitioner who is the holder of a current unrestricted practising certificate or a restricted practising certificate class 1, employed by the organisation.
- (6) For the purposes of subsection (5), the making or enforcement of an order for costs, or the determination of an entitlement to costs, in a proceeding before a court or tribunal to which a person to whom legal assistance provided is a party, the person shall be deemed to be liable to pay the ordinary professional costs of the legal services provided to that person or in connection with the proceeding and any disbursements and out-of-pocket expenses incurred in or in connection with the provision of those services.

23 Application for practising certificate

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

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

24 Issue of practising certificates

- (1) Subject to sections 25, 26, 27 and 27A the Law Society shall, upon:
 - (a) payment to it of the fee referred to in section 32(1); and
 - (b) being satisfied that the contribution and levy (if any) payable under Part VIII and levy (if any) referred to in section 101 have been paid,issue to the applicant the practising certificate sought by the applicant.
- (2) Where, in pursuance of section 25, 26, 27 or 27A, the Law Society refuses to issue a practising certificate of the kind sought by the applicant, it shall forthwith give to the applicant notice of the refusal and of the ground on which it has refused to issue the practising certificate.

25 Limitations on issue of unrestricted practising certificates

- (1) An unrestricted practising certificate shall not be issued to a legal practitioner unless, during the period of 5 years immediately

preceding the date of his or her application for the practising certificate he or she has, for a period of not less than 2 years or for periods which, in the aggregate, are not less than 2 years:

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

- (3) Notwithstanding subsections (1) and (2), the Law Society may issue an unrestricted practising certificate to a legal practitioner if that person has at any time held an unrestricted practising certificate or its equivalent in a State or Territory, or in New Zealand, and the Law Society is satisfied that that person has gained such experience that an unrestricted practising certificate should be issued to him or her.
- (4) Notwithstanding subsections (1) and (2), the Law Society may issue an unrestricted practising certificate to a legal practitioner if it is satisfied:
 - (a) that during the period of 5 years immediately preceding the date of the application for the practising certificate the legal practitioner has, for a period of not less than 2 years or for periods which in the aggregate are not less than 2 years, gained experience in a State or Territory or in New Zealand in the performance of work of a legal nature; and
 - (b) that the experience gained by the legal practitioner is of a kind that would ordinarily have been gained if he or she had served as an employee of a legal practitioner in the Territory.

26 Knowledge of accounts and legal ethics required before certificate issued

The Law Society must not issue a practising certificate to a legal practitioner, other than a person referred to in section 25(3), unless the legal practitioner has satisfied the Law Society (by passing examinations or otherwise) that he or she has an adequate knowledge of accounts and legal ethics.

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

- (1) The Law Society may refuse to issue a practising certificate, or may cancel a practising certificate or suspend it for a specified period, if the applicant for or holder of the certificate:
 - (a) is undergoing imprisonment;
 - (b) has been found guilty:
 - (i) in the Territory – of a crime, or of a simple offence involving dishonesty on his or her part; or
 - (ii) elsewhere – of an offence which would fall within subparagraph (i) if committed in the Territory;

- (c) is or has become bankrupt, has compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (d) has contravened or failed to comply with a provision with respect to trust moneys or trust accounts contained in this or any other Act, in any regulations, or in the professional conduct rules;
- (e) being an employee of another legal practitioner, or of a firm of legal practitioners, has in the opinion of the Law Society:
 - (i) acted dishonestly in relation to the trust accounts of that practitioner or firm; or
 - (ii) by any act or omission caused (whether directly or indirectly) that practitioner or any member of that firm to contravene or fail to comply with any such provision as is mentioned in paragraph (d);
- (f) has contravened or failed to comply with, or is in any respect in default under, a provision relating to his or her practise as a legal practitioner contained in this or any other Act, in any regulations, or in the professional conduct rules;
- (g) has failed:
 - (i) to produce any book, account, document or writing when required to do so for the purposes of section 47(3) or 51(9); or
 - (ii) to comply with a summons issued by the Complaints Committee under section 51(1);
- (h) has failed to comply with an order of the Court, the Complaints Committee or the Law Society;
- (j) has failed to pay, within the time specified for payment or, if no time was specified, within a reasonable time, a fine imposed on him or her, or any costs, fees or expenses ordered to be paid by him, under this Act; or
- (k) has in the opinion of the Law Society shown by his or her conduct in relation to his practise of the law (whether conduct in respect of a particular matter or a pattern of conduct) that he or she is not a fit and proper person to practise as a legal practitioner on his own account or in partnership.

- (2) The Law Society may also exercise its powers under subsection (1) where a report of an audit under Division 5 of Part VII or an examination under Division 6 of that Part discloses a deficiency in the trust moneys held by a legal practitioner, except where the deficiency was in the opinion of the Master excusable, and was made good before the date of the report.
- (3) Where the Law Society cancels or suspends a person's practising certificate, it shall give him or her notice in writing of the cancellation or suspension and the reasons therefor.

27A Restriction on issue of practising certificate

- (1) Where legal practitioners are required, by the Regulations, to be insured against liabilities that may arise in the course of, or in relation to, legal practice, the Law Society shall not issue or renew a practising certificate unless the applicant for the issue or renewal of a practising certificate produces evidence, to the satisfaction of the Law Society, that throughout the term for which the certificate is to be issued or renewed the legal practitioner is or will be insured to the prescribed extent against such liabilities.
- (2) Where section 84H(3) applies to a legal practitioner, the Law Society must not issue or renew the legal practitioner's practising certificate unless he or she produces evidence, to the satisfaction of the Law Society, that throughout the term for which the certificate is to be issued or renewed the legal practitioner will be insured under an approved policy of fidelity insurance.

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

- (1) Where the Law Society has refused to issue a practising certificate of the kind sought by a person, that person may, within 14 days after he or she is given notice of the refusal, apply to the Court for an order under subsection (4).
- (2) A person whose practising certificate has been cancelled or suspended by the Law Society may apply to the Court for an order under subsection (5).
- (3) The Law Society shall be the respondent to an application under this section.
- (4) On an application under subsection (1) the Court may direct the Law Society to issue to the applicant a practising certificate of the kind sought by him or her or, if the applicant sought the issue of an unrestricted practising certificate, the issue to the applicant of a restricted practising certificate.

- (5) Where, on an application under subsection (2) the Court is satisfied that the circumstances are such that the cancellation or suspension of the applicant's practising certificate ought to be revoked, the Court may, subject to such terms and conditions (if any) as it thinks fit, by order revoke the cancellation or suspension of the applicant's practising certificate.
- (6) Where the Court makes an order under subsection (5), the revocation of the cancellation or suspension of the applicant's practising certificate shall take effect on and from the date of the order or such other date as is specified in the order.

30 Persons to be deemed to hold practising certificates

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

31 Expiry, &c., of certificate

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

32 Fees for practising certificates

- (1) The fee payable on an application for the issue of an unrestricted practising certificate or a restricted practising certificate is such amount as is from time to time prescribed as the fee payable for that type of certificate.

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

33A Notice of change of name or address

- (1) The holder of an unrestricted practising certificate who:
 - (a) commences to practise at an address, or under a name, other than that stated in the application for the practising certificate;
 - (b) commences to practise, as a member of a partnership, under a name different from the name stated in the application for the practising certificate; or
 - (c) ceases to practise at an address at which he or she was previously practising,shall, within 14 days of commencing or ceasing so to practise, notify the Law Society and Master of the fact and of the new name or address, as the case may be.
- (2) The holder of a restricted practising certificate class 1 or a restricted practising certificate class 3 who:
 - (a) commences employment with an employer other than the employer stated in the application for the practising certificate; or
 - (b) ceases employment with the employer so stated or with any subsequent employer,

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

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

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

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

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

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

35 Cancelled certificate to be delivered to Master

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

- (2) Where:

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

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

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

35AA Mutual recognition local registration authority

For the purposes of:

- (a) the *Mutual Recognition Act 1992* of the Commonwealth; or
- (b) the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth,

the Law Society is the local registration authority in respect of an application for registration under that Act in so far as the application relates to an application for the issue of a practising certificate in the Territory.

Part IVAA Incorporated legal practices and multi-disciplinary partnerships

Division 1 Preliminary

35AB Objects of Part

The objects of this Part are:

- (a) to regulate the provision of legal services by corporations in the Territory; and
- (b) to regulate the provision of legal services in the Territory in conjunction with the provision of other services (whether by a corporation or persons acting in partnership with each other).

35AC Definitions

In this Part:

corporation means:

- (a) a company within the meaning of the Corporations Act 2001; or
- (b) a prescribed body corporate or a body corporate that is a member of a prescribed class of bodies corporate.

corresponding law means:

- (a) a corresponding law as defined in section 6(1); or
- (b) the provisions of a law of a participating State that have the same or substantially the same effect as this Part.

director means:

- (a) in relation to a company within the meaning of the Corporations Act 2001 – a director as defined in section 9 of that Act, but does not include a person who is not validly appointed as a director; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the Regulations – a person specified or described in the Regulations.

disqualified person means a person:

- (a) whose name has (whether or not at his or her own request) been removed from the Roll of Legal Practitioners or a roll of lawyers kept under a corresponding law and who has not subsequently been enrolled or re-enrolled as a lawyer in the Territory or a participating State;
- (b) whose practising certificate has been suspended under this Act or whose interstate practising certificate has been suspended under a corresponding law;
- (c) the renewal of whose practising certificate has been refused under this Act or a corresponding law, and to whom a practising certificate has not afterwards been granted under this Act or a corresponding law;
- (d) who is the subject of an order under this Act or a corresponding law prohibiting a lawyer from employing or paying the person in connection with the lawyer's practice;
- (e) who is the subject of an order under this Act or a corresponding Act prohibiting a lawyer from being a partner of the person in a business that includes the provision of legal services; or
- (f) who is the subject of an order under section 35AZE or 35AZZE or under provisions of a corresponding law that correspond to section 35AZE or 35AZZE.

interstate regulatory authority means a person or body in a participating State who or which may exercise a power or perform a function that may be exercised or performed by the Law Society under this Part.

lawyer means a natural person who is a legal practitioner or an interstate legal practitioner.

lawyer director means a director of an incorporated legal practice who is a lawyer who holds an unrestricted practising certificate or an interstate practising certificate that is equivalent to an unrestricted practising certificate.

lawyer partner means a partner of a multi-disciplinary partnership who is a lawyer who:

- (a) holds an unrestricted practising certificate or an interstate practising certificate that is equivalent to an unrestricted practising certificate; and
- (b) provides legal services as part of the partnership business.

legal services means work done, or business transacted, that is generally done or transacted, or is required to be done or transacted, by a lawyer who is entitled to practise as a solicitor.

officer means:

- (a) in relation to a company within the meaning of the Corporations Act 2001 – an officer as defined in section 9 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the Regulations – a person specified or described in the Regulations.

participating State means:

- (a) a participating State as defined in section 6(1); or
- (b) a State or another Territory of the Commonwealth in which a law containing provisions that have the same or substantially the same effect as this Part is in force.

professional misconduct has the same meaning as in section 45.

professional obligations, in relation to a lawyer, includes:

- (a) duties to the court;
- (b) obligations relating to conflicts of interest;
- (c) duties to clients (including disclosure); and
- (d) ethical rules required to be observed by a lawyer.

related body corporate means:

- (a) in relation to a company within the meaning of the Corporations Act 2001 – a related body corporate within the meaning of section 50 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the Regulations – a person specified or described in the Regulations.

Division 2 Incorporated legal practices

35AD Nature of incorporated legal practices

- (1) An incorporated legal practice is a corporation that provides legal services in the Territory (whether or not it provides other services).
- (2) A corporation is not an incorporated legal practice if:
 - (a) the corporation does not receive any form of, or has no expectation of receiving any form of, a fee, gain or reward for the legal services it provides;
 - (b) the only legal services that the corporation provides are in-house legal services, namely legal services provided to the corporation concerning a proceeding or transaction to which the corporation or a related body corporate of the corporation is a party;
 - (c) the only legal services that the corporation provides are services that are not legally required to be provided by a lawyer and that are provided by an officer or an employee who is not a lawyer; or
 - (d) this Part or the Regulations exempt the corporation from this Part.
- (3) The Regulations may provide for or with respect to the application (with or without specified modifications) of provisions of this Act to corporations that are not incorporated legal practices because of subsection (2).
- (4) This Part does not affect or apply to the provision of legal services by an incorporated legal practice in a participating State.

35AE Non-legal services and businesses of incorporated legal practices

- (1) An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct except as provided by this section.
- (2) An incorporated legal practice must not conduct a managed investment scheme within the meaning of Chapter 5C of the Corporations Act 2001.
- (3) The Regulations may prohibit an incorporated legal practice (or a related body corporate of the incorporated legal practice) from providing a service or conducting a business of a kind specified in the Regulations.

35AF Corporations eligible to be incorporated legal practices

- (1) Any corporation is eligible to be an incorporated legal practice.
- (2) Subsection (1) does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by an Act or other law of the Commonwealth or a State or Territory of the Commonwealth under which it is incorporated or its affairs are regulated.
- (3) An incorporated legal practice is not required to hold a practising certificate.

35AG Notice of intention to commence providing legal services

- (1) A corporation must, before commencing to provide legal services in this jurisdiction, give the Law Society written notice of its intention to do so and containing the particulars prescribed by the Regulations.

Penalty: 500 penalty units.

- (2) A corporation must not provide legal services in this jurisdiction during any period it is in default of notification requirements under this section.

Penalty: 500 penalty units.

- (3) A corporation that commences to provide legal services in this jurisdiction without giving notice as required by subsection (1) is taken to be in default of notification requirements under this section until it gives the Law Society written notice of its failure and containing the particulars prescribed by the Regulations.

- (4) The giving of a notice under subsection (3) does not affect a corporation's liability under subsection (1).

35AH Notice of termination of provision of legal services

- (1) A corporation must, within the prescribed period after it ceases to provide legal services in this jurisdiction, give the Law Society written notice of that fact and containing the particulars prescribed by the Regulations.

Penalty: 500 penalty units.

- (2) The Regulations may provide for or with respect to determining whether and when a corporation ceases to provide legal services in this jurisdiction.

35AI Incorporated legal practice must have lawyer director

- (1) Subject to subsection (2), an incorporated legal practice must have at least one lawyer director.
- (2) Each lawyer director of an incorporated legal practice is, for the purposes of this Act only, responsible for managing the legal services provided in the Territory by the incorporated legal practice.
- (3) Each lawyer director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice:
- (a) in accordance with the professional obligations of lawyers and other obligations imposed by or under this Act, the Regulations, the general principles of professional conduct or the professional conduct rules; and
 - (b) so that those obligations of lawyers who are officers or employees of the incorporated legal practice are not affected by other officers or employees of the practice.
- (4) A contravention of subsection (3) by a lawyer director is capable of constituting professional misconduct.
- (5) If it is apparent that the provision of legal services by an incorporated legal practice will result in breaches of the professional obligations of lawyers or other obligations imposed by or under this Act, the Regulations, the general principles of professional conduct or the professional conduct rules, a lawyer director of the practice must take all reasonable action available to the lawyer director to ensure that:

- (a) the breaches do not occur; and
 - (b) appropriate remedial action is taken in respect of breaches that do occur.
- (6) It is professional misconduct if a lawyer director contravenes or fails to comply with subsection (5).
- (7) This Part does not derogate from the obligations or liability of a director of an incorporated legal practice under any other law.
- (8) If there is an inconsistency between a provision of this section and a provision of Part VIIIA or IX or of Chapter 5 of the Corporations Act 2001, this section does not apply to or in relation to a lawyer director of an incorporated legal practice that is an externally-administered body corporate within the meaning of the Corporations Act 2001 to the extent of that inconsistency.

35AJ Obligations of lawyer director relating to misconduct

- (1) Each of the following is capable of constituting professional misconduct by a lawyer director:
- (a) professional misconduct of a lawyer employed by the incorporated legal practice;
 - (b) conduct of any other director (not being a lawyer) of the incorporated legal practice that adversely affects the provision of legal services by the practice;
 - (c) the unsuitability of any other director (not being a lawyer) of the incorporated legal practice to be a director of a corporation that provides legal services.
- (2) A lawyer director of an incorporated legal practice must ensure that all reasonable action available to the lawyer director is taken to deal with any professional misconduct of a lawyer employed by the practice.
- (3) It is professional misconduct if a lawyer director contravenes or fails to comply with subsection (2).

35AK Incorporated legal practice without lawyer director

- (1) An incorporated legal practice contravenes or fails to comply with this section if it does not have any lawyer directors for a period exceeding 7 days.

Penalty: 500 penalty units.

- (2) If an incorporated legal practice ceases to have any lawyer directors, the incorporated legal practice must notify the Law Society as soon as possible.

Penalty: 20 penalty units.

- (3) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of director requirements under this section.

Penalty: 50 penalty units.

- (4) An incorporated legal practice that contravenes subsection (1) is taken to be in default of director requirements under this section for the period from the end of the period of 7 days until:

- (a) it has at least one lawyer director; or
- (b) a person is appointed under this section in relation to the practice.

- (5) The Law Society may, if it thinks it appropriate, appoint a lawyer who is an employee of the incorporated legal practice or another person nominated by the Law Society to, in the absence of a lawyer director, exercise or perform the functions or duties conferred or imposed on a lawyer director under this Part.

- (6) A lawyer is not eligible to be appointed under subsection (5) unless he or she is entitled to hold an unrestricted practising certificate or an interstate practising certificate equivalent to an unrestricted practising certificate.

- (7) A person appointed under subsection (5) must not exercise or perform functions or duties of a director of the incorporated legal practice, other than those referred to in that subsection, unless he or she has been appointed a director of the corporation in accordance with the law under which it is incorporated or its affairs are regulated.

Penalty: 100 penalty units.

35AL Application of general principles of professional conduct and professional conduct rules to incorporated legal practices

- (1) Subject to subsection (2), the general principles of professional conduct specified in section 44(1) and the professional conduct rules apply to lawyers who are officers or employees of an incorporated legal practice.

- (2) The general principles of professional conduct under section 44(1) and professional conduct rules are not to apply to or regulate or prohibit any of the following matters:
- (a) the eligibility of a corporation to be an incorporated legal practice;
 - (b) the services or business that an incorporated legal practice may provide or conduct (other than the provision of legal services or other services in circumstances where a conflict of interest relating to the provision of legal services may arise);
 - (c) the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services or other services in circumstances where a conflict of interest relating to the provision of legal services may arise).

35AM Professional obligations and privileges of lawyers who are officers and employees of incorporated legal practices

- (1) A lawyer who provides legal services on behalf of an incorporated legal practice in the capacity of an officer or employee of an incorporated legal practice is not excused from compliance with the professional obligations of a lawyer, or any obligations as a lawyer under any law, and does not lose the professional privileges of a lawyer.
- (2) For the purpose only of the application of the professional obligations and privileges referred to in subsection (1), a person who is provided with legal services by an incorporated legal practice is taken to be the client of the lawyer who provides those services.
- (3) To avoid doubt, the law relating to client legal privilege or other legal professional privilege is not excluded or otherwise affected because a lawyer is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors only because legal services are provided pro bono by the lawyers engaged by the incorporated legal practice.

35AN Conflicts of interest

- (1) For the purposes of the application of a law, the general principles of professional conduct under section 44(1) or the professional conduct rules relating to conflicts of interest to the conduct of a lawyer director, or a lawyer who is an officer or employee of an incorporated legal practice, the interests of:

- (a) the incorporated legal practice or a related body corporate of the incorporated legal practice; or
- (b) any other officer of the incorporated legal practice (whether or not a lawyer),

are also taken to be those of the lawyer concerned (in addition to any interests that the lawyer has apart from this subsection).

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

35AO Disclosure of obligations

- (1) If a person engages an incorporated legal practice to provide legal services, each lawyer director of the practice, and any lawyer employee who provides the legal services on behalf of the practice, must ensure that a disclosure, complying with the requirements of this section and the Regulations made for this section, is made to the person in connection with the provision of the legal services.

Penalty: 100 penalty units.

- (2) The disclosure must be made by giving the person a notice in writing:
 - (a) setting out:
 - (i) the legal services to be provided; and
 - (ii) the non-legal services (if any) to be provided in connection with the provision of legal services;
 - (b) stating whether or not all the legal services will be provided by a lawyer;
 - (c) if some or all of the legal services will not be provided by a lawyer – identifying the services and indicating the status or qualifications of the person or persons who will provide the services; and
 - (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.
- (3) The Regulations may provide for or with respect to the following:
 - (a) the manner in which disclosure is to be made;

- (b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by an incorporated legal practice.
- (4) Without limiting subsection (3), the additional matters may include the kind of services provided by the incorporated legal practice and whether those services are or are not covered by the insurance or other provisions of this Act.
- (5) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion.

35AP Effect of non-disclosure of provision of certain services

- (1) If:
 - (a) a legal service provided by an incorporated legal practice is of a kind that may legally be provided by a person other than a lawyer; and
 - (b) no disclosure is made under section 35AO that the officer or employee providing the service is not a lawyer,the standard of care owed by the incorporated legal practice in respect of the service is the standard of care that would be applicable if the service had been provided by a lawyer.
- (2) The reference in subsection (1) to a legal service includes a legal service that the person who engaged the incorporated legal practice to provide the service might reasonably assume to be a legal service.

35AQ Advertising with respect to legal services

- (1) Any restrictions imposed by or under this Act in respect of advertising by legal practitioners (if any) applies to advertising by incorporated legal practices that relates to the provision of its legal services in the Territory.
- (2) For the purposes of disciplinary proceedings under this Act, any advertising by an incorporated legal practice relating to the provision of legal services is taken to be authorised by each lawyer director of the incorporated legal practice.

35AR Compliance with provisions relating to indemnity and other insurance

- (1) Subject to this section, an incorporated legal practice must, to the extent necessary, comply with Part IVA, and any other provisions of or under this Act dealing with insurance, as if it were a legal practitioner referred to in that Part or those provisions.
- (2) For the purposes of subsection (1), a reference in Part IVA and the other provisions to a legal practitioner includes a reference to an incorporated legal practice.
- (3) If an incorporated legal practice fails to comply with subsection (1), the Law Society may suspend the practising certificate of each lawyer director of the incorporated legal practice.
- (4) The Law Society may, if it considers it is appropriate, exempt an incorporated legal practice from compliance with subsection (1).
- (5) Insurance premiums and any other amounts relating to insurance that are payable under this Act may be determined on the basis of the number of lawyers that are officers and employees of the incorporated legal practice who perform the legal services offered by it.
- (6) The Regulations may further modify the application of Part IVA and the provisions of or under this Act dealing with insurance to incorporated legal practices.
- (7) If the application of Part IVA and the other provisions referred to in subsection (6) is modified under that subsection, each incorporated legal practice must comply with Part IVA and those provisions as modified.
- (8) This section does not affect any obligation of a lawyer who is an officer or employee of an incorporated legal practice to obtain insurance relating to the provision of legal services (whether or not on behalf of the incorporated legal practice) by the lawyer.

35AS Requirements relating to trust money: compliance with Part VII

- (1) This section applies subject to sections 35AX, 35AY, 35AZ, 35AZA, 35AZB and 35AZC.
- (2) Subject to this section, Part VII applies to an incorporated legal practice as if it were a legal practitioner.

- (3) For the purposes of subsection (1):
- (a) Part VII applies to an incorporated legal practice only to the extent that it applies in relation to the legal services provided by the incorporated legal practice; and
 - (b) money received by a legal practitioner on behalf of another person in the course of his or her legal practice includes money received by an officer or employee of an incorporated legal practice on behalf of another person in the course of providing legal services on behalf of the incorporated legal practice.
- (4) The Regulations may further modify the application of Part VII to incorporated legal practices.
- (5) If the application of Part VII is modified under subsection (4), each incorporated legal practice must comply with Part VII as modified.
- (6) The Law Society may lay a charge of professional misconduct against a lawyer director of an incorporated legal practice before the Complaints Committee for failing to comply with Part VII as applied or modified by or under this section and Part VI, Division 6 applies to and in relation to the charge as if references in that Division to a legal practitioner include references to an incorporated legal practice.

35AT Requirements relating to fidelity fund: compliance with Part VIII

- (1) Subject to this section, Part VIII applies to an incorporated legal practice as if it were a legal practitioner.
- (2) Part VIII applies to an incorporated legal practice only to the extent that it applies in relation to the legal services provided by the incorporated legal practice, and accordingly:
- (a) a failure to account by a legal practitioner includes a failure to account by an incorporated legal practice in connection with the provision of legal services;
 - (b) a dishonest default by a legal practitioner includes a dishonest default by an incorporated legal practice that occurs in connection with the provision of legal services; and
 - (c) a reference to a firm of legal practitioners includes a reference to an incorporated legal practice.

- (3) The amounts payable to the Fidelity Fund by an incorporated legal practice are to be determined on the basis of the number of lawyers that are officers and employees of the incorporated legal practice who perform the legal services offered by it.
- (4) The Regulations may further modify the application of Part VIII to incorporated legal practices.
- (5) If the application of Part VIII is modified under subsection (4), each incorporated legal practice must comply with Part VIII as modified.
- (6) This section does not affect any obligation of a lawyer who is an officer or employee of an incorporated legal practice to comply with the provisions of this Act or any professional conduct rule relating to the fidelity fund.

35AU Requirements relating to legal costs

- (1) The provisions of any law or professional conduct rule relating to legal fees and costs apply (subject to this section) to legal services provided by an incorporated legal practice, and to an external administrator of an incorporated legal practice, in the same way that they apply to legal services provided by a legal practitioner.
- (2) The Regulations may provide for the application (with or without modification) of the provisions of this Act relating to legal fees and costs for the purposes of the section.

35AV Extension of vicarious liability relating to failures to account and dishonesty to incorporated legal practices

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice):
 - (a) civil proceedings relating to a failure to account for, pay or deliver money or other valuable property received by, or entrusted to, the incorporated legal practice (whether received by or entrusted to an officer or employee of the incorporated legal practice who is a lawyer or another officer or employee of the incorporated legal practice) in the course of providing legal services by the incorporated legal practice, being money or other valuable property under the direct or indirect control of the practice;
 - (b) civil proceedings for any debt owed, or damages payable, to a client as a result of a dishonest act or omission by a lawyer who is an officer or employee of the incorporated legal practice in connection with providing legal services to the client.

- (2) If an incorporated legal practice would not (but for this section) be vicariously liable for an act or omission of its officers and employees, but would be liable for the act or omission if the incorporated legal practice and those officers and employees were carrying on business in partnership, the incorporated legal practice is taken to be vicariously liable for the act or omission.

35AW Disqualified lawyers

- (1) An incorporated legal practice is guilty of an offence if a person who is a disqualified person:
- (a) is an officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is an officer or employee of a related body corporate of the incorporated legal practice;
 - (b) is a partner of the incorporated legal practice in a business that includes the provision of legal services;
 - (c) shares the receipts of the provision of legal services by the incorporated legal practice; or
 - (d) is engaged or paid in connection with providing legal services by the incorporated legal practice.

Penalty: 500 penalty units.

- (2) It is professional misconduct if a lawyer director of an incorporated legal practice fails to ensure that the incorporated legal practice complies with subsection (1).

35AX Audit of incorporated legal practice

- (1) The Law Society may conduct an audit of:
- (a) the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of:
 - (i) this Part; or
 - (ii) the Regulations, general principles of professional conduct under section 44(1) or the professional conduct rules, so far as they relate specifically to incorporated legal practices; and
 - (b) the management of the provision of legal services by the incorporated legal practice (including the supervision of officers and employees providing legal services).

- (2) An audit referred to in subsection (1) may be conducted whether or not a complaint has been made with respect to the provision of legal services by the incorporated practice.
- (3) A report of the audit:
 - (a) is to be provided to the incorporated legal practice concerned;
 - (b) may be provided to the Attorney-General; and
 - (c) may be taken into account in connection with any disciplinary proceedings taken against a lawyer director or other lawyer or in connection with the issue, suspension or cancellation of practising certificates or interstate practising certificates of lawyers.

35AY Investigative powers relating to audits and other matters

The Law Society may exercise the powers set out in sections 35AZ, 35AZA and 35AZB for any of the following purposes:

- (a) an audit conducted under this Division;
- (b) an investigation under this Act relating to the trust accounts of an incorporated legal practice;
- (c) an investigation relating to a complaint made under Part VI in relation to an incorporated legal practice.

35AZ Examination of persons

- (1) The Law Society may exercise the powers conferred on ASIC by Part 3, Division 2 of the ASIC Act.
- (2) Part 3, Division 2 of the ASIC Act applies to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC (however expressed) is a reference to the Law Society;
 - (b) a reference to a matter that is being or is to be investigated under Part 3, Division 1 of that Act is a reference to a matter that is being or is to be investigated by the Law Society;
 - (c) a reference in section 19 of that Act to a person is a reference to a lawyer or an incorporated legal practice;
 - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society.

- (3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the ASIC Act do not apply in respect of the exercise of the powers conferred on the Law Society by this section.

35AZA Inspection of books

- (1) The Law Society may exercise the powers conferred on ASIC by sections 30(1), 34, 37, 38 and 39 of the ASIC Act.
- (2) Those provisions of the ASIC Act apply to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
- (a) a reference to ASIC (however expressed) is a reference to the Law Society;
 - (b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is a reference to an incorporated legal practice;
 - (c) a reference to an eligible person in relation to an incorporated legal practice is a reference to an officer or employee of the incorporated legal practice;
 - (d) a reference to a member or staff member is a reference to the Law Society or a person authorised by the Law Society who is an officer or employee of the Law Society;
 - (e) a reference in section 37 of the ASIC Act to a proceeding is a reference to an investigation.

35AZB Power to hold hearings

- (1) The Law Society may hold hearings for the purposes of an investigation.
- (2) Sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (except for section 60(b)) of the ASIC Act apply to and in respect of a hearing held under subsection (1), with the following modifications (and any other necessary modifications):
- (a) a reference to ASIC (however expressed) is a reference to the Law Society;
 - (b) a reference to a member or staff member is a reference to the Law Society or a person authorised by the Law Society who is an officer or employee of the Law Society;
 - (c) a reference to a prescribed form is a reference to a form approved by the Law Society.

35AZC Failure to comply with investigation

The following acts or omissions are capable of being professional misconduct:

- (a) a failure by a lawyer to comply with a requirement made by the Law Society, or a person authorised by the Law Society, in the exercise of powers conferred by section 35AZ, 35AZA or 35AZB;
- (b) a contravention by a lawyer of a condition imposed by the Law Society in the exercise of powers conferred by those sections;
- (c) a failure by a lawyer director of an incorporated legal practice to ensure that the incorporated legal practice, or an officer or employee of the incorporated legal practice, complies with any of the following:
 - (i) a requirement made by the Law Society, or a person authorised by the Law Society, in the exercise of powers conferred by section 35AZ, 35AZA or 35AZB;
 - (ii) a condition imposed by the Law Society in the exercise of powers conferred by those sections.

35AZD Banning of incorporated legal practices

- (1) The Court may, on its own motion or on the application of the Attorney-General or Law Society, make an order disqualifying a corporation from providing legal services in the Territory for the period the Court considers appropriate.
- (2) If the Court is satisfied that:
 - (a) a ground for disqualifying the corporation under this section has been established; and
 - (b) the disqualification is justified,the Court must make an order under subsection (1).
- (3) An order under subsection (1) may, if the Court thinks it appropriate, be made:
 - (a) subject to conditions as to the conduct of the incorporated legal practice;
 - (b) subject to conditions as to when or in what circumstances the order is to take effect; or

- (c) together with orders to safeguard the interests of clients or employees of the incorporated legal practice.
- (4) Action may be taken against an incorporated legal practice on any of the following grounds:
 - (a) that a lawyer director or a lawyer who is an officer or employee of the corporation is found guilty of professional misconduct under a law of the Territory, the Commonwealth or a State or another Territory of the Commonwealth;
 - (b) that the Law Society is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;
 - (c) that the incorporated legal practice (or a related body corporate of the incorporated legal service) has contravened or failed to comply with section 35AE or a regulation made under that section;
 - (d) that the incorporated legal practice has contravened or failed to comply with section 35AW;
 - (e) that a person who is an officer of the incorporated legal practice and who is the subject of an order under:
 - (i) section 35AZE or under provisions of a corresponding law that correspond to that section; or
 - (ii) section 35AZZE or under provisions of a corresponding law that correspond to that section,and is acting in the management of the incorporated legal practice.
- (5) If a corporation is disqualified under this section, the Law Society must promptly notify each interstate regulatory authority.
- (6) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the Law Society may determine that the corporation is disqualified from providing legal services in the Territory for the same period, but nothing in this subsection prevents the Law Society from instead applying for an order under this section.
- (7) A corporation that provides legal services in contravention of a disqualification under this section commits an offence.

Penalty: 500 penalty units.

- (8) A corporation that is disqualified under this section ceases to be an incorporated legal practice.
- (9) The Regulations may provide for the publication and notification of orders made under this section, including notifying each interstate regulatory authority.

35AZE Disqualification from managing incorporated legal practice

- (1) The Court may, on its own motion or on the application of the Attorney-General or Law Society, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the Court considers appropriate.
- (2) If the Court is satisfied that:
 - (a) the person is a person who could be disqualified under section 206C, 206D, 206E or 206F of the Corporations Act 2001 from managing corporations; and
 - (b) the disqualification is justified,the Court must make an order under subsection (1).
- (3) The Court may, on the application of a person subject to a disqualification order under subsection (1), revoke the order.
- (4) A disqualification order under subsection (1) has effect for the purposes only of this Act and does not affect the Corporations Act 2001.
- (5) The Regulations may provide for the publication and notification of orders made under this section.
- (6) A person who is disqualified from managing a corporation under the provisions of a corresponding law that correspond to this section is taken to be disqualified from managing a corporation under this section.

35AZF Review of incorporated legal practices

- (1) The Law Society may conduct a review of the compliance of an incorporated legal practice and its officers and employees with this Act and the Regulations in providing legal services.
- (2) The Law Society may conduct a review under subsection (1) whether or not a complaint has been made in respect of legal services provided by the incorporated legal practice.

- (3) In conducting the review, the Law Society may exercise the powers conferred on it in sections 35AZ and 35AZA and section 35AZB applies in relation to the exercise of those powers for the purposes of this section.
- (4) On completing a review of the compliance of an incorporated legal practice, the Law Society must provide a report of the review to:
 - (a) the incorporated legal practice; and
 - (b) the Attorney-General.
- (5) A report of a review under this section may be taken into account in connection with the issue of a practising certificate under Part IV or in any disciplinary proceedings under Part VI.

35AZG Disclosure of information to ASIC

- (1) The Law Society may disclose to ASIC information concerning an incorporated legal practice or a former incorporated legal practice that it has acquired in the course of the operation of this Act or the Regulations.
- (2) Subsection (1) has effect despite sections 74 and 78 and any other law relating to secrecy or confidentiality.

35AZH External administration proceedings under Corporations Act 2001

- (1) In this section:

proceedings means proceedings in any court under Chapter 5 of the Corporations Act 2001 that relate to:

 - (a) a corporation that is or was an externally-administered body corporate under that Act; or
 - (b) a corporation becoming an externally-administered body corporate under that Act.
- (2) The Law Society is entitled to be a party to proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice concerned.
- (3) In any proceedings, a court may have regard to the interests of the clients of the incorporated legal practice concerned who have been, are being or are to be provided with legal services by the incorporated legal service (even if those interests conflict with the interests of creditors or shareholders).

- (4) Subsection (3) does not authorise a court to make a decision that is contrary to a specific provision of the Corporations Act 2001.
- (5) Subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act 2001 in relation to the provisions of Chapter 5 of that Act.

35AZI External administration proceedings under other legislation

- (1) This section applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which section 35AZH applies.
- (2) The Law Society is entitled to be a party to the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice, as well as to the creditors and shareholders of the practice.
- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of any legislation applicable to the incorporated legal practice.

35AZJ Incorporated legal practice that is subject to receivership under this Act and Corporations Act 2001

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a Part IX receiver; and
 - (b) the appointment of a Corporations Act administrator.
- (2) The Part IX receiver is under a duty to notify the Corporations Act administrator of the appointment of the Part IX receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
- (3) Either or both of the receivers may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers, except if proceedings referred to in section 35AZH have been commenced.

- (4) The Supreme Court may make any orders it considers appropriate, and the receivers are discharged from any liability if they act in accordance with the orders.
- (5) The Law Society is entitled to be a party to the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act 2001 in relation to the provisions of Chapter 5 of that Act.
- (7) In this section:

Corporations Act administrator means a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act 2001.

Part IX receiver means a receiver appointed under Part IX.

35AZK Incorporated legal practice that is subject to receivership under this Act and external administration under other local legislation

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a Part IX receiver; and
 - (b) the appointment of an external administrator.
- (2) The Part IX receiver is under a duty to notify the external administrator of the appointment of the Part IX receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.
- (3) The Part IX receiver or the external administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers.
- (4) The Supreme Court may make any orders it considers appropriate, and the Part IX receiver and the external administrator are discharged from any liability if they act in accordance with the orders.

- (5) The appropriate authority and the Regulator are entitled to be a party to the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

- (6) In this section:

external administrator means a person who is appointed to exercise power under other legislation of this jurisdiction and who is prescribed, or of a class prescribed, by the Regulations for this definition.

Part IX receiver means a receiver appointed under Part IX.

35AZL Relationship of Part to Corporations legislation and certain other instruments

- (1) In this section:

matter includes an act, omission, body, person and thing.

- (2) The provisions of this Part or the Regulations that apply to or in respect of an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the incorporated legal practice.
- (3) The Regulations may declare a provision of this Part or the Regulations to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act 2001.
- (4) The Regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Act or the Regulations to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to:
- (a) the whole of the Corporations legislation;
 - (b) a specified provision of the Corporations legislation;
 - (c) the Corporations legislation other than a specified provision; or
 - (d) the Corporations legislation other than to a specified extent.

35AZM Undue influence

A person (whether or not an officer or employee of an incorporated legal practice) must not cause or induce a lawyer director, or any other lawyer who provides legal services on behalf of an incorporated legal practice, to contravene or fail to comply with this

Act, the Regulations, the general principles of professional conduct under section 44(1), the professional conduct rules or his or her professional obligations as a lawyer.

Penalty: 400 penalty units or imprisonment for 2 years.

Division 3 Multi-disciplinary partnerships

35AZN Application of Division

This Division does not affect or apply to the provision by a multi-disciplinary partnership of legal services in a participating State under the corresponding law of the participating State.

35AZO Conduct of multi-disciplinary partnerships

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

35AZP Notice of intention to commence practice in multi-disciplinary partnership

- (1) A lawyer partner must, before commencing to provide legal services in the Territory as a member of a multi-disciplinary partnership, notify the Law Society in writing of his or her intention to do so.
- (2) The notice is to contain the prescribed particulars.

35AZQ General obligations of lawyer partners

- (1) Each lawyer partner of a multi-disciplinary partnership is, for the purposes only of this Act, responsible for the management of the legal services provided in the Territory by the partnership.
- (2) Each lawyer partner must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the multi-disciplinary partnership:
 - (a) in accordance with the professional obligations of lawyers and the other obligations imposed by this Act, the Regulations and the professional conduct rules; and

- (b) so that the professional obligations of lawyer partners and employees of the multi-disciplinary partnership who are lawyers are not affected by other partners and employees of the multi-disciplinary partnership.
- (3) A contravention of subsection (2) by a lawyer partner is capable of constituting professional misconduct.

35AZR Obligations of lawyer partner related to misconduct

- (1) Each of the following is capable of constituting professional misconduct by a lawyer partner of a multi-disciplinary partnership:
 - (a) professional misconduct of a lawyer employed by the multi-disciplinary partnership;
 - (b) conduct of any other partner of the multi-disciplinary partnership (not being a lawyer) that adversely affects the provision of legal services by the partnership;
 - (c) the unsuitability of any other partner of the multi-disciplinary partnership (not being a lawyer) to be a member of a partnership that provides legal services.
- (2) A lawyer partner of a multi-disciplinary partnership must ensure that all reasonable action available to the lawyer partner is taken to deal with any professional misconduct of a lawyer employed by the partnership.
- (3) It is professional misconduct if a lawyer partner contravenes or fails to comply with subsection (2).

35AZS Actions that may be taken by non-legal partner

A partner of a multi-disciplinary partnership who is not a lawyer does not contravene or fail to comply with this Act, the Regulations or the professional conduct rules only because of any of the following:

- (a) the partner is a member of a partnership whose business includes the provision of legal services;
- (b) the partner receives a fee, gain or reward for business of the partnership that is the business of a lawyer;
- (c) the partner holds out, advertises or represents himself or herself as a member of a partnership whose business includes providing legal services;

- (d) the partner shares with another partner the receipts of business of the partnership that is the business of a lawyer.

35AZT Application of general principles of professional conduct and professional conduct rules to multi-disciplinary partnerships

- (1) Subject to subsection (2), the general principles of professional conduct specified in section 44(1) and the professional conduct rules apply to lawyers who are lawyer partners or employees of a multi-disciplinary partnership.
- (2) The general principles of professional conduct under section 44(1) and the professional conduct rules are not to apply to or regulate or prohibit any of the following matters:
 - (a) services that members of a multi-disciplinary partnership may provide or conduct (other than the provision of legal services or other services in circumstances where a conflict of interest relating to providing legal services may arise);
 - (b) the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with providing legal services or other services in circumstances where a conflict of interest relating to providing legal services may arise).

35AZU Professional obligations and privileges of lawyers who are partners or employees of multi-disciplinary partnerships

- (1) A lawyer who provides legal services in the capacity of a partner or an employee of a multi-disciplinary partnership is not excused from compliance with the professional obligations of a lawyer, or any other obligations of a lawyer under any law, and does not lose the professional privileges of a lawyer.
- (2) To avoid doubt, the law relating to client legal privilege or other legal professional privilege is not excluded or otherwise affected because a lawyer who provides legal services is acting in the capacity of a partner or employee of a multi-disciplinary partnership.

35AZV Conflicts of interest

- (1) For the purposes of the application of a law (including the general principles of professional conduct specified in section 44(1) and the professional conduct rules) relating to conflicts of interest to the conduct of a lawyer partner, or a lawyer who is an employee of a multi-disciplinary partnership, the interests of:
 - (a) a partner of the multi-disciplinary partnership; or
 - (b) an employee of the partnership (whether or not a lawyer),

are also taken to be those of the lawyer concerned (in addition to any interests that the lawyer has apart from this subsection).

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

35AZW Disclosure obligations

- (1) If a person engages a multi-disciplinary partnership to provide legal services, each lawyer partner of the partnership, and any lawyer employee of the partnership who provides the legal services on behalf of the partnership, must ensure that a disclosure, complying with the requirements of this section, is made to the person in connection with the provision of the legal services.

Penalty: 100 penalty units.

- (2) The disclosure must be made by giving the person a notice in writing:
 - (a) setting out:
 - (i) the legal services to be provided; and
 - (ii) the non-legal services (if any) to be provided in connection with the provision of legal services;
 - (b) stating whether or not all the legal services will be provided by an Australian lawyer;
 - (c) if some or all of the legal services will not be provided by an Australian lawyer – identifying those services and indicating the status or qualifications of the person or persons who will provide the services; and
 - (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.
- (3) The Regulations may provide for or with respect to the following:
 - (a) the manner in which disclosure is to be made;
 - (b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by a multi-disciplinary partnership.

- (4) Without limiting subsection (3), the additional matters may include the kind of services provided by the multi-disciplinary partnership and whether those services are or are not covered by the insurance or other provisions of this Act.
- (5) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion.

35AZX Effect of non-disclosure of provision of certain services

- (1) If:
 - (a) a legal service provided by a multi-disciplinary partnership is of a kind that may legally be provided by a person other than a lawyer; and
 - (b) no disclosure is made under section 35AZW that the partner or employee providing the service is not a lawyer,

the standard of care owed by the partnership and each partner in respect of the service is the standard that would be applicable if the service had been provided by a lawyer.

- (2) The reference in subsection (1) to a legal service includes a legal service that the person who engaged the multi-disciplinary partnership to provide the service might reasonably assume to be a legal service.

35AZY Advertising with respect to legal services

- (1) Any restrictions imposed by or under this Act in respect of advertising by legal practitioners applies to advertising by a multi-disciplinary partnership that relates to the provision of its legal services in the Territory.
- (2) For the purposes of disciplinary proceedings under this Act, any advertising by a multi-disciplinary partnership is taken to have been authorised by each lawyer partner of the partnership.

35AZZ Compliance with provisions relating to indemnity and other insurance

- (1) Part IVA and any other provisions of or under this Act dealing with insurance apply to each lawyer partner and lawyer who is an employee of a multi-disciplinary partnership providing legal services in the Territory as if he or she were a legal practitioner referred to in that Part or those provisions.

- (2) For the purposes of subsection (1), a reference in Part IVA to a legal practitioner includes a reference to a lawyer partner or a lawyer who is an employee of a multi-disciplinary partnership.

35AZZA Requirements relating to trust money: compliance with Part VII

- (1) Subject to this section, Part VII applies to lawyers who are lawyer partners or employees of a multi-disciplinary partnership providing legal services in the Territory as if they were legal practitioners.
- (2) For the purposes of subsection (1):
- (a) Part VII applies to a lawyer who is a lawyer partner or employee of a multi-disciplinary partnership only in connection with the provision of legal services by the multi-disciplinary partnership; and
 - (b) money received by a legal practitioner on behalf of another person in the course of his or her legal practice includes money received by a lawyer who is a lawyer partner or employee of a multi-disciplinary partnership on behalf of another person in the course of providing legal services.
- (3) The Regulations may further modify the application of Part VII to lawyers who are lawyer partners or employees of multi-disciplinary partnerships.
- (4) If the application of Part VII is modified under subsection (3), each lawyer who is a lawyer partner or employee of a multi-disciplinary partnership must comply with Part VII as modified.
- (5) The Attorney-General or Law Society may lay a charge of professional misconduct against a lawyer who is a lawyer partner or employee of a multi-disciplinary partnership for failing to comply with Part VII as applied or modified by or under this section and Part VI, Division 6 applies to and in relation to the charge as if a reference in that Division to a legal practitioner includes a reference to a lawyer who is a lawyer partner or employee of a multi-disciplinary partnership.

35AZZB Requirements relating to fidelity fund: compliance with Part VIII

- (1) Subject to this section, Part VIII applies to and in relation to the provision of legal services in the Territory by a multi-disciplinary partnership.

- (2) For the purposes of subsection (1):
- (a) a failure to account by a legal practitioner includes a failure to account by a partner or an employee of a multi-disciplinary partnership, whether or not he or she is a lawyer, but only to the extent that the failure to account occurs in connection with the provision of legal services;
 - (b) a dishonest default by a lawyer includes a dishonest default by a partner or an employee of a multi-disciplinary partnership, whether or not he or she is a lawyer, but only if the dishonest default occurs in connection with the provision of legal services; and
 - (c) a reference to a firm of legal practitioners includes a reference to a multi-disciplinary partnership.
- (3) The amounts payable to the fidelity fund by the lawyer partners of a multi-disciplinary partnership may be determined on the basis of the number of lawyers who are lawyer partners or employees of the multi-disciplinary partnership and other relevant matters.
- (4) The Regulations may further modify the application of Part VIII to and in relation to the provision of legal services by multi-disciplinary partnerships.
- (5) If the application of Part VIII is modified under subsection (4), each lawyer who is a lawyer partner or an employee of a multi-disciplinary partnership must comply with Part VIII as modified.
- (6) This section does not affect any obligation of a lawyer who is a partner or employee of a multi-disciplinary partnership to comply with the provisions of this Act or any professional conduct rule relating to the fidelity fund.

35AZZC Requirements relating to legal costs

- (1) The provisions of any law or professional conduct rule relating to legal fees and costs apply (subject to this section) to legal services provided by lawyer partners or lawyers who are employees of a multi-disciplinary partnership in the same way that they apply to legal services provided by a legal practitioner.
- (2) The Regulations may provide for the application (with or without modification) of the provisions of this Act relating to legal fees and costs for the purposes of this section.

35AZZD Disqualified lawyers

It is professional misconduct if a lawyer who is a partner of a multi-disciplinary partnership:

- (a) is a partner of a disqualified person in the multi-disciplinary partnership;
- (b) shares with a disqualified person the receipts of the provision of legal services by the multi-disciplinary partnership; or
- (c) employs or pays a disqualified person in connection with the provision of legal services by the multi-disciplinary partnership.

35AZZE Prohibition on partnerships with certain non-legal partners

- (1) In this section:

specified person means a person who:

- (a) is not a lawyer; and
 - (b) is or was a partner of a lawyer.
- (2) The Court may, on its own motion or on application by the Attorney-General or Law Society, make an order prohibiting a lawyer from being a partner of a specified person in a business that includes a legal practice if:
- (a) the Court is satisfied that the specified person is not a fit and proper person to be a partner in the business;
 - (b) the Court is satisfied that the specified person has acted in a manner that, if the specified person were a lawyer, would have constituted professional misconduct; or
 - (c) the specified person is a corporation and the Court is satisfied that:
 - (i) the corporation has been disqualified from providing legal services in the Territory; or
 - (ii) there are grounds for disqualifying the corporation from providing legal services in the Territory.
- (3) An order made under subsection (2) may be revoked by the Court on application by the Attorney-General, Law Society or the specified person against whom the order was made.

- (4) The death of a lawyer does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the deceased lawyer.
- (5) The Regulations may provide for the publication and notification of orders made under this section.

35AZZF Undue influence

A partner or employee of a multi-disciplinary partnership must not cause or induce a lawyer partner, or an employee of a multi-disciplinary partnership who provides legal services, to contravene or fail to comply with this Act, the Regulations, the general principles of professional conduct under section 44(1), the professional conduct rules or his or her professional obligations as a lawyer.

Penalty: 400 penalty units or imprisonment for 2 years.

Division 4 Miscellaneous

35AZZG Obligations of individual lawyers not affected

Except as provided by this Part, nothing in this Part affects any obligation imposed on a lawyer under this or another Act, the Regulations or the professional conduct rules in the lawyer's capacity as a lawyer.

35AZZH Regulations relating to incorporated legal practices and multi-disciplinary partnerships

- (1) The Regulations may provide for or with respect to any of the following:
 - (a) the provision of legal services by incorporated legal practices or lawyer partners or employees of multi-disciplinary partnerships;
 - (b) other services provided by incorporated legal practices or lawyer partners or employees of multi-disciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.
- (2) A regulation referred to in subsection (1) may:
 - (a) confer a discretion on a named person, the person who holds or occupies a specified office or position or a person from time to time holding or acting in a specified office or position; or

- (b) regulate or prohibit, or impose conditions on, a matter, whether absolutely or in relation to classes of matters and whether subject to the approval or to the satisfaction of a person (who may be a named person, the person who holds or occupies a specified office or position or a person from time to time holding or acting in a specified office or position).
- (3) A regulation may provide that a breach of a regulation constitutes professional misconduct by each or both of:
 - (a) a lawyer director of an incorporated practice or the lawyer responsible for the breach; or
 - (b) a lawyer partner of a multi-disciplinary partnership or the lawyer responsible for the breach.
- (4) In the event of an inconsistency between a regulation made under this section and the professional misconduct rules, the regulation prevails to the extent of the inconsistency.

Part IVA Professional indemnity insurance

35A Interpretation

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

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

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

- (a) his or her practice;
 - (b) the practice of a firm of legal practitioners of which he or she is or formerly was a member;
 - (c) a practising company of which he or she is or formerly was a director; or
 - (d) a trust of which he or she is or formerly was a trustee,
- or by an employee or former employee of that legal practitioner, firm, company or trust.

(1A) In this Part, unless the contrary intention appears, ***legal practitioner*** includes an interstate legal practitioner.

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

35B Professional indemnity insurance

(1) The Law Society and an authorized insurer may enter into an arrangement for or with respect to the provision by the authorized insurer to legal practitioners or former legal practitioners who are members of a class prescribed for the purposes of this Part, of professional indemnity insurance.

(2) Where an arrangement is made under subsection (1), the Law Society and the authorized insurer may:

- (a) do anything necessary or convenient for carrying out or giving effect to the arrangement; and
- (b) by subsequent arrangement, rescind or vary the arrangement.

(3) An arrangement under subsection (1) or (2) may include provisions with respect to:

- (a) the terms and conditions to which the provision of professional indemnity insurance is to be subject;
- (b) the amount of insurance cover to be provided;
- (c) the amount payable by way of premiums;
- (d) the circumstances in which insurance cover is to be limited or denied;
- (e) the period during which the professional indemnity insurance is to be provided;
- (f) the issue of certificates to persons covered by professional indemnity insurance and the form of those certificates;
- (g) the payment by or on behalf of the authorized insurer to the Law Society for its own benefit of an amount by way of brokerage or profit commission;
- (h) the payment by or on behalf of the authorized insurer to the Law Society of an amount by way of reimbursement for expenses incurred by the Law Society in connection with the arrangement; and

- (j) other matters in connection with professional indemnity insurance agreed between the Law Society and the authorized insurer.
- (4) Without limiting the generality of section 141, the Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular prescribing matters for or in relation to:
- (a) requiring legal practitioners and former legal practitioners, or persons who are members of a specified class of legal practitioners or former legal practitioners, to take out and maintain with an authorized insurer professional indemnity insurance on the terms and conditions specified in and in accordance with an arrangement under subsection (1) or (2);
 - (b) the issue of certificates in relation to professional indemnity insurance and the form of those certificates;
 - (c) empowering the Law Society:
 - (i) to exempt from compliance with the Regulations legal practitioners or former legal practitioners or persons who are members of a specified class of legal practitioners or former legal practitioners;
 - (ii) to grant an exemption referred to in subparagraph (i) indefinitely or for a specified period or subject to any other conditions determined by the Law Society; and
 - (iii) to revoke an exemption granted by the Law Society or vary conditions referred to in subparagraph (ii);
 - (d) making provisions that, in consequence of a substantial change in the nature of the practice of a legal practitioner, are necessary;
 - (e) providing for the making of such declarations by legal practitioners or former legal practitioners as may be necessary to determine premiums in relation to professional indemnity insurance and for the interrogation of a legal practitioner or former legal practitioner where the Law Society believes that a declaration is or may be false or inaccurate;
 - (f) exempting arbitration agreements that are related to the arbitration of disputes between legal practitioners and insurers in relation to professional indemnity insurance from a statutory provision that would, apart from the exemption, have the effect

of invalidating such an agreement or a provision of such an agreement; and

- (g) prescribing penalties, not exceeding 50 penalty units, for breach of, or noncompliance with, a regulation made in pursuance of this Part.

36 Notification and review of exemptions

- (1) If the Law Society grants an exemption or varies conditions of an exemption in pursuance of regulations made for the purposes of section 35B(4)(c), the Law Society must, as soon as practicable:
 - (a) publish details of the exemption or variation in the *Gazette*; and
 - (b) notify the Attorney-General of those details.
- (2) An exemption or a variation of conditions of an exemption referred to in subsection (1) remains in force until revoked or varied under this Act.
- (3) Within 60 days of receiving notification under subsection (1), the Attorney-General:
 - (a) must review the decision of the Law Society to grant or vary conditions of the exemption; and
 - (b) if the Attorney-General considers it to be in the public interest, he or she may revoke or vary that decision by notice in the *Gazette* specifying the date on which the revocation or variation is to take effect.
- (4) The Attorney-General must provide the Law Society with copies of all reviews under subsection (3).
- (5) A decision by the Attorney-General to revoke or vary a decision of the Law Society under this section takes effect according to its terms.

Part VI Discipline

Division 1 Preliminary

43 Definitions

In this Part, unless the contrary intention appears:

legal practitioner includes an interstate legal practitioner and a locally registered foreign lawyer.

current practising certificate includes a current interstate practising certificate.

44 General principles of professional conduct

- (1) The following general principles apply to the professional conduct of a legal practitioner in the course of practising the profession of the law:

- (a) in acting for a client, a legal practitioner:
 - (i) must act honestly and fairly in the best interests of the client;
 - (ii) must not engage in or assist conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law;
 - (iii) must act with skill and diligence and as promptly as is practicable in the circumstances;
 - (iv) must report regularly to the client on the progress of the matter in respect of which the legal practitioner is acting; and
 - (v) must maintain the client's confidences;
- (b) a legal practitioner must avoid conflicts of interest:
 - (i) between the legal practitioner, or the employer of the legal practitioner, and a client; or
 - (ii) between 2 or more clients;
- (c) a legal practitioner must:
 - (i) observe all undertakings given in the course of his or her practise;

- (ii) act with honesty and candour in all dealings with courts and tribunals and otherwise discharge all duties owed to courts and tribunals;
 - (iii) act with honesty, fairness and courtesy in all dealings with other legal practitioners in a manner conducive to advancing the public interest; and
 - (iv) conduct dealings with members of the community and the affairs of clients that affect the interests of others with honesty, fairness and courtesy and in a manner conducive to advancing the public interest;
- (d) a legal practitioner must not charge excessive legal costs.
- (2) A legal practitioner who contravenes or fails to comply with a general principle of professional conduct in subsection (1) is not to be taken to have committed an offence against that subsection.

45 Meaning of *professional misconduct*

- (1) In this Part, ***professional misconduct*** means misconduct in a professional capacity.
- (2) Without prejudice to the generality of subsection (1), ***professional misconduct*** includes in particular:
 - (a) a legal practitioner's contravention of, or failure to comply with:
 - (i) this Act or any regulations under this Act; or
 - (ii) the general principles of professional conduct specified in section 44(1) or the professional conduct rules,if the contravention or failure was wilful or reckless;
 - (aa) a legal practitioner's contravention of, or failure to comply with, section 118B, 129A(3), 129B(2)(a), 129C, 129D, 129E, 130AC, 130AE(1) or 130AF, whether or not the contravention or failure was wilful or reckless;
 - (b) an act or neglect by a legal practitioner in connection with his or her practise as such which constitutes a gross breach of duty to a client or the Court;
 - (c) a failure by a legal practitioner to comply with an undertaking given by him or her for the purposes of this Act, or in connection with any inquiry, investigation or other proceeding under this Act, or in the course of his or her practise as a legal practitioner;

- (d) the making by a legal practitioner of a statement which purports to be one of fact and is to his or her knowledge false in a material particular, where the statement is made:
 - (i) to a client of the legal practitioner, in connection with a matter with respect to which the practitioner is acting for the client professionally;
 - (ii) to another legal practitioner, in the course of the first-mentioned practitioner's practise and with respect to a matter in respect of which he or she acts, or holds himself or herself out as acting, for a client; or
 - (iii) in the course of an inquiry or investigation under this Act concerning the professional conduct of the legal practitioner, and with respect to conduct relevant to that inquiry or investigation; and
- (e) the charging by a legal practitioner in respect of professional services rendered to a client of fees or costs which are in the circumstances grossly excessive.

45A Professional conduct rules

- (1) The Law Society may make rules relating to the professional conduct of legal practitioners:
 - (a) that are consistent with the general principles specified in section 44(1); and
 - (b) that include any other matter, not inconsistent with this or any other Act or any regulations, that the Law Society thinks fit.
- (1A) The Law Society may make rules relating to the professional conduct of legal practitioners for the purpose of section 130AC(1).
- (1B) The Law Society may make rules relating to the professional conduct of legal practitioners that regulate or prohibit advertising by legal practitioners and, in particular, that regulate or prohibit advertising that it considers:
 - (a) is false, misleading or deceptive;
 - (b) may bring the administration of justice into disrepute; or
 - (c) may encourage persons to engage in legal proceedings that lack merit.

- (2) Before making professional conduct rules, the Law Society must:
 - (a) arrange for consultation with, and invite submissions from:
 - (i) the Chief Justice and the President of the Northern Territory Bar Association;
 - (ii) persons who, in the opinion of the Law Society, would have an interest in the rules; and
 - (iii) persons prescribed by regulations made for the purposes of this section; and
 - (b) give notice in a newspaper circulating in the Territory that professional conduct rules are to be made and members of the public are invited to make written submissions to the Law Society with respect to the rules.
- (3) The professional conduct rules may incorporate or adopt by reference (with any necessary changes) rules, provisions, a code or other document relating to the professional conduct of legal practitioners.
- (4) Section 63 of the *Interpretation Act* applies in relation to professional conduct rules made under this section.
- (5) Despite section 63(11) of the *Interpretation Act*, but without derogating from the power of the Legislative Assembly under section 63(9) of that Act, the Attorney-General may, by notice in the *Gazette*, disallow a professional conduct rule within 12 months after the rule is made.
- (6) If a professional conduct rule disallowed by the Attorney-General amended or repealed a professional conduct rule in force immediately before the disallowed rule came into effect, the disallowance revives the amended or repealed rule from the date of the disallowance as if the disallowed rule had not been made.
- (7) This section applies in relation to an amendment of the professional conduct rules as if a reference in this section to the professional conduct rules were a reference to an amendment of those rules.
- (8) To avoid doubt, nothing in this section affects the power that the Law Society or other professional body may otherwise have to make rules or issue directions or guidelines relating to the professional conduct of legal practitioners.

Division 2 Proceedings before Law Society

46 Complaint to Law Society

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

46A Direction by Attorney-General

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

46B Investigations

The Law Society:

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

investigate the professional conduct of a legal practitioner.

Division 3 Functions and powers of Law Society

47 Functions and powers of Law Society

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

- (c) where it finds a complaint proved, but is of the opinion that the complaint may be adequately dealt with by either admonishing or fining the legal practitioner against whom the complaint was made – admonish the legal practitioner or fine him or her up to an amount of 50 penalty units;
 - (d) subject to section 50(1A) lay charges of professional misconduct before the Complaints Committee; and
 - (e) engage such persons as it thinks fit, including the Ombudsman, to assist it in carrying out its functions.
- (2) The Ombudsman may accede to a request of the Law Society, made under subsection (1)(e), to assist it.
- (3) Without limiting the generality of the powers of the Law Society under subsection (1), it may, for the purposes of an investigation under section 46B, at any time during ordinary business hours:
- (a) inspect books, accounts, documents or writings in the custody or control of the legal practitioner or of a person employed by the legal practitioner; and
 - (b) make notes or copies of, or take extracts from, such books, accounts, documents or writings.

47A Power of delegation

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

47B Offence to delay

A person who:

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

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

Penalty: 100 penalty units or imprisonment for 12 months.

47C Confidentiality

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

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

Penalty: 100 penalty units.

Division 4 Legal Practitioners Complaints Committee

48 Definition

In this Division:

panel means the panel of persons appointed under section 48A from whom the members of the Complaints Committee are selected under section 48AH.

48A Constitution and appointment of panel

- (1) There is a panel of persons from whom the Complaints Committee is to be constituted.
- (2) The panel is to consist of the following members:
 - (a) the Chairperson of the Complaints Committee;
 - (b) the Ombudsman;
 - (c) 3 persons who are not legal practitioners;
 - (d) 5 legal practitioners nominated by the Law Society (of whom at least 2 must, at the time of their nomination, be local Counsel); and
 - (e) 3 legal practitioners who are not nominated by the Law Society.

- (3) The Attorney-General must, in writing, appoint the members of the panel.

48AA Chairperson of Complaints Committee

The Chairperson must be a person who has practised as a legal practitioner in Australia or New Zealand for at least 7 years and who is entitled to be issued a current practising certificate.

48AB Deputy Chairperson of Complaints Committee

- (1) The Attorney-General must appoint, in writing, one of the members of the panel referred to in section 48A(2)(d) and (e) to be the Deputy Chairperson of the Complaints Committee.
- (2) The Deputy Chairperson must exercise the powers and perform the functions of the Chairperson if the Chairperson is absent or unable for any other reason to exercise his or her powers or perform his or her functions.

48AC Alternate member to Ombudsman

- (1) The Attorney-General must appoint, in writing, a person to be the alternate member of the Ombudsman.
- (2) The alternate member of the Ombudsman must act in the place of the Ombudsman whenever the Ombudsman is selected to be a member of the Complaints Committee and is, for any reason, unable to be present at a proceeding of the Complaints Committee.
- (3) For the purpose of enabling the alternate member of the Ombudsman to act in the place of the Ombudsman, a reference in this Division to the Ombudsman includes a reference to the alternate member of the Ombudsman.

48AD Term of appointment to panel

- (1) In this section:
- member** does not include the Ombudsman.
- (2) A member of the panel holds office:
- (a) for the period, not exceeding 3 years, specified in the instrument appointing the member; or
- (b) if no term is specified in the instrument of appointment – for 3 years.

- (3) A member of the panel is eligible for re-appointment (and may be re-appointed before the expiry of his or her current period of appointment).

48AE Resignation of member of panel

- (1) In this section:

member does not include the Ombudsman.

- (2) A member of the panel may resign his or her office by instrument signed by the member and delivered to the Attorney-General.

48AF Termination of appointment of member of panel

- (1) In this section:

member does not include the Ombudsman.

- (2) The Attorney-General may terminate the appointment of a member of the panel on the grounds of inability, inefficiency, misbehaviour or physical or mental incapacity.

- (3) If a member of the panel:

- (a) becomes bankrupt; or
(b) ceases to be eligible to hold the office of member he or she was appointed to hold,

the Attorney-General must terminate the appointment of the member.

48AG Establishment of Complaints Committee

- (1) There is a Legal Practitioners Complaints Committee.
(2) The Complaints Committee must convene as often as is necessary to exercise its powers and perform its functions under this Part.
(3) The Chairperson must make the arrangements that enable the Complaints Committee to convene.

48AH Constitution of Complaints Committee

- (1) If a notice of appeal is lodged with the Secretary of the Complaints Committee under section 49 or a charge is laid before the Complaints Committee under section 50, the Chairperson must, subject to this section, constitute the Complaints Committee to hear the appeal or inquire into the charge.

- (2) As soon as possible after a notice of appeal is lodged with the Secretary or a charge is laid before the Complaints Committee, the Chairperson must select not less than 3 members of the panel to be the members of the Complaints Committee to hear the appeal or inquire into the charge.
- (3) The Chairperson may constitute the Complaints Committee so that it may hear more than one appeal or inquire into more than one charge at the same time.
- (4) The members selected to constitute the Complaints Committee:
 - (a) may include the Chairperson;
 - (b) must include the Ombudsman or a member referred to in section 48A(2)(c); and
 - (c) must include a member referred to in section 48A(2)(d).
- (5) If the Chairperson is selected to be a member of the Complaints Committee, the Chairperson is the presiding member at the proceedings of the Complaints Committee so constituted.
- (6) If the Chairperson is not selected to be a member of the Complaints Committee, the Chairperson must appoint one of the members selected who is a legal practitioner to preside at the proceedings of the Complaints Committee so constituted.

48AI Sittings of Complaints Committee

- (1) The Complaints Committee constituted by 3 or more members may convene to hear an appeal or inquire into a charge at the same time as the Complaints Committee constituted by 3 or more other members is convening to hear another appeal or inquire into another charge.
- (2) The Complaints Committee may sit at the times and places in the Territory as expediency and efficiency requires.

48AJ Directions for expeditious and efficient proceedings

- (1) In this section:

party means:

- (a) where an appeal is made under section 49 – the legal practitioner who makes the appeal; or

- (b) where a charge is laid under section 50 – the person who laid the charge or the legal practitioner or former legal practitioner to whom the charge relates.
- (2) The Chairperson or Deputy Chairman may, whether before or after the Complaints Committee is constituted to hear an appeal or inquire into a charge, give directions for the expeditious and efficient hearing of the appeal or inquiry into the charge.
- (3) If the Complaints Committee has been constituted, a member of the Complaints Committee nominated by the Chairperson may give directions for the expeditious and efficient hearing of the appeal or inquiry into the charge.
- (4) A party to an appeal or charge may, by lodging a notice with the Secretary of the Complaints Committee, apply for directions for the hearing of the appeal or inquiry into the charge.
- (5) If a party applies for directions under subsection (4) before the Complaints Committee is constituted, the Chairperson or Deputy Chairperson must give directions for the expeditious and efficient hearing of the appeal or inquiry into the charge.
- (6) If a party applies for directions under subsection (4) after the Complaints Committee is constituted, the member of the Complaints Committee nominated by the Chairperson must give directions for the expeditious and efficient hearing of the appeal or inquiry into the charge.
- (7) The party to an appeal or the parties to a charge must attend, and may make submissions, before the Chairperson, Deputy Chairperson or nominated member, as the case requires, when he or she gives directions.
- (8) The Complaints Committee may, at any time during the hearing of an appeal or inquiry of a charge and whether or not on application, give directions for the expeditious and efficient hearing of the appeal or inquiry.

48B Procedure of Complaints Committee

- (1) In proceedings before the Complaints Committee:
 - (a) 3 members constitute a quorum;
 - (aa) one of the members present must be the Ombudsman or a member referred to in section 48A(2)(c);
 - (ab) one of the members present must be a member referred to in section 48A(2)(d);

- (b) decisions shall be by vote of the majority of members present and voting and, in the event of an equality of votes, the person presiding at the proceedings shall have a casting vote; and
 - (c) the procedure to be followed shall be determined, subject to section 51D of this Act, by the Complaints Committee.
- (2) The Chairperson or member appointed under section 48AH(6) to be the presiding member must preside at proceedings of the Complaints Committee at which he or she is present and, if the Chairperson or member is not present at any proceedings, the members present must elect one of their number who is a legal practitioner to preside at the proceedings.

48C Validity of Acts and protection of members

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

48D Secretary of Complaints Committee

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

48E Confidentiality

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

Penalty: 100 penalty units.

48F Remuneration of members of Complaints Committee

- (1) Subject to this section, the Administrator must, in writing, determine the remuneration, or rate of remuneration, and the allowances and expenses payable to a member or class of members of the Complaints Committee.

- (2) The Administrator must not make a determination under subsection (1) unless he or she has received a report with recommendations on the remuneration and allowances to be paid to the member or class of members from the Remuneration Tribunal established under section 6(1) of the *Remuneration Tribunal Act*.
- (3) In determining the remuneration, rates of remuneration, allowances and expenses of a member or class of members, the Administrator:
 - (a) must take into account the report and recommendations of the Remuneration Tribunal;
 - (b) must take into account the fees or other remuneration that the member is or members are usually paid in carrying out his, her or their professional activities; and
 - (c) may determine different remunerations, rates of remuneration, allowances and expenses for different members or classes of members.

Division 5 Appeals from the Law Society

49 Appeal against finding, admonishment or fine

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

49A Conduct of hearing

- (1) Where a legal practitioner appeals under section 49, the Complaints Committee shall hear the appeal by way of rehearing the complaint.

- (2) On the rehearing of a complaint, the Complaints Committee may:
- (a) confirm or quash a finding, admonishment or fine recorded or imposed by the Law Society; or
 - (b) exercise any of its powers under section 50,
- and the exercise by the Complaints Committee of a power under section 50(4) shall have effect in substitution for anything done by the Law Society in its disposal of the complaint.
- (3) Costs of an appeal under section 49 are in the discretion of the Complaints Committee.
- (4) A legal practitioner who makes an appeal under section 49 may:
- (a) withdraw his or her appeal at any time before the Complaints Committee commences hearing the appeal; or
 - (b) discontinue his or her appeal at any time during the hearing of the appeal.

Division 6 Proceedings before Complaints Committee

50 Charges before Complaints Committee

- (1) The Attorney-General or, subject to subsection (1A), the Law Society or a person who lodged a complaint under section 46 and who is not satisfied with the Law Society's disposal of the matter may lay a charge of professional misconduct against a legal practitioner or a person who, at the time of the alleged professional misconduct, was a legal practitioner.
- (1A) A charge of professional misconduct in which the misconduct alleged consists solely of a contravention of, or failure to comply with, a general principle of professional conduct specified in section 44(1) or a provision of the professional conduct rules may be laid only by the Attorney-General or by the Law Society with the consent of the Attorney-General.
- (2) A charge under subsection (1) shall be:
- (a) laid before the Complaints Committee; and
 - (b) in the prescribed form.

- (3) Where a charge has been laid under subsection (2), the Complaints Committee shall:
 - (a) summarily dismiss a charge which, in its opinion, is frivolous or vexatious;
 - (b) summarily dismiss a charge that, in its opinion, does not describe conduct that would, if established, give rise to a finding of professional misconduct by the legal practitioner or former legal practitioner; or
 - (c) inquire into the conduct described in the charge.
- (4) If the Complaints Committee has inquired into the conduct of a legal practitioner or former legal practitioner under subsection (3) and is satisfied that the legal practitioner or former legal practitioner is not guilty of professional misconduct, the Complaints Committee must dismiss the charge.
- (4AA) If the Complaints Committee has inquired into the conduct of a legal practitioner under subsection (3) and it is satisfied that the legal practitioner is guilty of professional misconduct, the Complaints Committee may:
 - (a) where, having regard to the circumstances of the case and the record of the legal practitioner, in its opinion it is justified in doing so – record a finding that the legal practitioner has been guilty of professional misconduct but take no further action in the matter; or
 - (b) take any one or more of the following actions:
 - (i) admonish or reprimand the legal practitioner;
 - (ii) order the legal practitioner to pay a fine not exceeding 100 penalty units;
 - (iii) suspend the right of the legal practitioner to practise the profession of the law for a period not exceeding 12 months;
 - (iv) order that the legal practitioner must not, during the period specified in the order, practise the profession of the law other than in accordance with conditions specified in the order;
 - (v) recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court;

- (vi) refer its findings in respect of the professional misconduct of the legal practitioner to the Supreme Court to be dealt with under section 52.
- (4AB) If the Complaints Committee has inquired into the conduct of a former legal practitioner under subsection (3) and it is satisfied that the former legal practitioner was, while he or she remained a legal practitioner, guilty of professional misconduct, the Complaints Committee may take any one or both of the following actions:
 - (a) order the former legal practitioner to pay a fine not exceeding 100 penalty units; or
 - (b) recommend that proceedings be commenced against the former legal practitioner in the Supreme Court.
- (4A) Where the conduct to which a charge under subsection (1) relates has been the subject of a complaint against the legal practitioner under section 46:
 - (a) the powers of the Complaints Committee include power to confirm or quash a finding, admonishment or fine recorded or imposed by the Law Society under section 47(1)(ba) or (c); and
 - (b) the exercise by the Complaints Committee of a power under subsection (4) has effect in substitution for anything done by the Law Society in its disposal of the complaint.
- (5) The Complaints Committee shall transmit the evidence taken by it upon the inquiry, together with a memorandum of its findings, to the Attorney-General and the Law Society as soon as is practicable.

50A Conduct of inquiry

- (1) The Complaints Committee shall give to a legal practitioner or former legal practitioner whose conduct is subject to inquiry under this Part, and to a person upon whose application an inquiry is to be held, not less than 7 days' written notice of the time and place at which it intends to conduct the inquiry, and shall afford such a person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses and to make submissions to the Complaints Committee.
- (2) Where a person to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Complaints Committee may proceed with the inquiry in his or her absence.

- (3) A person whose conduct is subject to an inquiry under this Part, or upon whose application an inquiry is to be held, shall be entitled to be represented by counsel at the inquiry.
- (4) A person who lays a charge of professional misconduct against a legal practitioner or former legal practitioner under section 50(1) may withdraw his or her charge at any time before the Complaints Committee completes its inquiry into the charge.

50AB Complaints Committee to refer certain matters to Law Society for investigation

- (1) In this section:

original charge means a charge referred to in subsection (2).

subsequent charge means a charge arising out of a matter referred to the Law Society under subsection (2).

- (2) If, in conducting an inquiry into a charge, the Complaints Committee becomes aware of evidence of conduct other than the conduct described by the charge (including conduct by another legal practitioner or former legal practitioner) that might be professional misconduct, the Complaints Committee must refer the matter of the conduct to the Law Society.
- (3) As soon as possible after a matter is referred to it under subsection (2), the Law Society must determine whether to investigate the conduct of the legal practitioner or former legal practitioner to which the matter relates and, if it does:
 - (a) the matter is to be taken to be a complaint referred to in section 47; and
 - (b) the Law Society has in respect of the matter the powers and functions under that section as if it were a complaint.
- (4) The Complaints Committee must not delay its inquiry into an original charge because it refers a matter arising from the inquiry to the Law Society under subsection (2).
- (5) Despite subsection (4), if the Law Society lays a subsequent charge of professional misconduct before the Complaints Committee, the Complaints Committee constituted to inquire into the original charge may inquire into both the original charge and the subsequent charge (and, in doing so, may conduct the inquiries contemporaneously).

51 Powers of Complaints Committee

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

- (d) refuses to be sworn, to affirm or to answer a relevant question when required to do so by the Complaints Committee,

he or she is guilty of an offence.

Penalty: 50 penalty units.

- (4) Where a person summoned under subsection (1):

- (a) refuses or fails to attend before the Complaints Committee as required by the summons; or
- (b) having attended, refuses to be sworn, to affirm or to answer a relevant question when required to do so by the Complaints Committee,

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

- (5) Where a certificate has been filed under subsection (4), a party requiring the attendance of the person may apply (either ex parte or on notice) to the Supreme Court for an order directing that person to attend, to be sworn, to affirm or to answer questions and on that application the Court may make such orders as it thinks fit including an order for costs.
- (6) A person may be required by the Complaints Committee to answer a question notwithstanding that the answer to that question might tend to incriminate him or her, or to produce books, papers or documents notwithstanding that their contents might tend to incriminate him or her, but if that person objects to answering a question a note of that objection shall be taken down in the minutes of the proceedings, and the answer shall not be admissible against him or her in a criminal proceeding, except in proceedings for perjury.
- (7) In the course of an appeal or inquiry, the Complaints Committee may:
 - (a) receive in evidence a transcript of evidence taken in proceedings before a court of the Commonwealth, a State or a Territory of the Commonwealth, and draw such conclusions of fact from the evidence as it thinks fit; and
 - (b) adopt, as in its discretion it thinks fit, a finding, decision, judgment or reason for judgment, of such a court which may be relevant to the inquiry.

- (8) The Complaints Committee may engage a legal practitioner and such other persons as it thinks fit for the purpose of assisting it in the exercise or performance of its powers or functions under this Act, and may in particular:
- (a) direct a legal practitioner or other person so engaged to investigate a matter that is the subject of, or incidental to, an appeal under section 49(1) or a charge under section 50(1); or
 - (b) subject to subsection (8A) – direct a legal practitioner so engaged to act for or in the place of a person who made a complaint under section 46.
- (8A) The Complaints Committee may not direct a legal practitioner under subsection (8)(b) to act for or in the place of a person who made a complaint unless the person is entitled to be assisted in that manner under the legal assistance rules prescribed by the Regulations.
- (9) A legal practitioner or other person who is investigating a matter under subsection (8)(a) and is authorized in writing by the Complaints Committee to exercise the powers conferred by this subsection may at any reasonable time:
- (a) inspect books, accounts, documents or writings in the custody or control of:
 - (i) the legal practitioner or former legal practitioner by or against whom the appeal or charge in question has been lodged or laid; or
 - (ii) a person employed by that legal practitioner or former legal practitioner; and
 - (b) make notes or copies of, or take extracts from, such books, accounts, documents or writings.
- (10) A legal practitioner or former legal practitioner, or person employed by a legal practitioner or former legal practitioner, who refuses without reasonable excuse to produce any book, account, document or writing when required to do so in the exercise of a power conferred by subsection (9) is guilty of an offence.

Penalty: 50 penalty units.

51A Costs

- (1) The Complaints Committee may make such orders as to costs as it thinks fit against:
 - (a) a person upon whose application an inquiry has been held; or
 - (b) a legal practitioner or former legal practitioner whose conduct has been subject to inquiry.
- (1A) Without limiting the orders the Complaints Committee may make under subsection (1), the Complaints Committee may make an order that a person referred to in subsection (1)(a) for whom the Law Society engaged a legal practitioner to represent him or her under section 51(8) pay into the Fidelity Fund an amount that is not more than the amount paid or payable to the legal practitioner for his or her professional services for and in connection with representing the person.
- (2) Costs of proceedings before the Complaints Committee may be taxed in the Supreme Court.
- (3) Where the Complaints Committee has ordered payment of a fine or costs, a certificate of the fine or costs shall be filed in the Supreme Court.
- (4) Where a certificate has been filed under subsection (3), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.
- (5) The costs of discharging the functions and exercising the powers of the Complaints Committee under this Part and the costs of enforcing the rights conferred upon the Complaints Committee by this Part shall be payable out of the Fidelity Fund.

51B Appeal to Supreme Court

- (1) Subject to subsection (2), a right of appeal to the Supreme Court shall lie against a finding, admonishment or fine confirmed by the Complaints Committee under section 49A(2)(a) or 50(4A)(a), or a finding recorded, admonishment or reprimand administered or order made by the Complaints Committee in the exercise or purported exercise of its powers or the performance or purported performance of its functions under this Act.
- (1A) There is no right of appeal to the Supreme Court against a decision of the Complaints Committee under section 50(3)(a) or (b).
- (2) An appeal under subsection (1) shall be instituted within one month from the date on which the Complaints Committee confirmed the

finding, admonishment or fine appealed against or, as the case may be, recorded, administered or made the finding, admonishment, reprimand or order appealed against, but the Supreme Court may, where it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

- (2A) Where an appeal under subsection (1) puts in issue conduct of a legal practitioner which has been the subject of a complaint under section 46 or a charge under section 50(1), the appeal may only be made on a mistake of law or fact.
- (3) The Supreme Court may, on the hearing of an appeal under subsection (1):
- (a) confirm, vary or quash the finding, penalty or order appealed against;
 - (aa) substitute or make any finding, penalty or order that could have been made by the Complaints Committee;
 - (ab) take any one or more of the actions specified in section 52(2);
 - (b) remit the subject matter of the appeal to the Complaints Committee for further hearing or consideration or for re-hearing; or
 - (c) make any further or other order as to costs or other matter that the case requires.

51C Operation of order may be suspended

- (1) Where an order under section 50(4AA) or (4AB) or section 135XG(2) has been made by the Complaints Committee, and the Complaints Committee or the Supreme Court is satisfied that an appeal against the order has been, or is intended to be, instituted, it may suspend the operation of the order until the determination of the appeal.
- (2) Where the Complaints Committee has suspended under subsection (1) the operation of an order, the Complaints Committee may terminate the suspension and, where the Supreme Court has suspended under subsection (1) the operation of an order, the Supreme Court may terminate the suspension.

51D Rules of Complaints Committee

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

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

Division 7 Proceedings before the Supreme Court

52 Proceedings before Supreme Court

- (1) The Attorney-General or the Law Society may, whether or not acting on a recommendation of the Complaints Committee under section 50(4AA)(b)(v), institute disciplinary proceedings in the Supreme Court against a legal practitioner.
- (1A) If the Complaints Committee refers its findings of professional misconduct of a legal practitioner to the Supreme Court under section 50(4AA)(b)(vi), the Supreme Court must exercise its powers and functions under this section in relation to the legal practitioner as if disciplinary proceedings had been instituted under subsection (1) by the Law Society against the legal practitioner in respect of the findings of professional misconduct.
- (2) In any proceedings against a legal practitioner, however instituted, the Supreme Court may:
 - (a) reprimand the legal practitioner;
 - (b) suspend the right of the legal practitioner to practise the profession of the law for a specified period, or until further order of the Supreme Court;
 - (c) order that the legal practitioner shall not practise the profession of the law otherwise than in accordance with conditions specified in the order;
 - (d) order that the name of the legal practitioner be struck off the Roll of Legal Practitioners; and

- (e) make other orders (including an order as to the costs of proceedings before the Court and the Complaints Committee) that it thinks fit.
- (3) Nothing in this Part shall derogate from the inherent jurisdiction of the Supreme Court to discipline legal practitioners.
- (4) In disciplinary proceedings the Supreme Court may refer a matter to a Judge or to the Complaints Committee for investigation and report.
- (5) In disciplinary proceedings:
 - (aa) the Supreme Court may, without further inquiry, accept and act on a finding of the Complaints Committee referred to the Supreme Court by the Complaints Committee under section 50(4AA)(b)(vi);
 - (a) the Supreme Court may, without further inquiry, accept and act upon a finding of the Complaints Committee or of a Judge to whom a matter has been referred for investigation and report under subsection (4); and
 - (b) the Supreme Court may:
 - (i) receive in evidence a transcript of evidence taken in any proceedings before a court of the Commonwealth, a State or a Territory of the Commonwealth, or New Zealand, and draw such conclusions of fact from the evidence as it thinks fit; and
 - (ii) adopt, as it thinks fit, a finding, decision, judgment or reason for judgment of such a court that may be relevant to the proceedings.
- (6) Where the Supreme Court is satisfied, upon the application of the Attorney-General or the Law Society, that a legal practitioner is disqualified or suspended from practice under the law of the Commonwealth, a State or other Territory of the Commonwealth, or New Zealand, it may, without further inquiry, impose under section 52(2) such disqualification or suspension as it thinks fit.
- (7) Where the Supreme Court is satisfied that a legal practitioner has been found guilty of an offence of sufficient gravity to justify invoking the provisions of this subsection, the Supreme Court may, of its own motion or on the application of the Attorney-General or the Law Society, suspend the legal practitioner from practice pending the investigation and determination of disciplinary proceedings or until a further order.

52A Person not to practise while disqualified

A person must not:

- (a) practise the profession of the law while the person's right to do so is suspended under section 50(4AA)(b)(iii) or 52(2)(b) or (7);
- (b) contravene or fail to comply with an order made in respect of the person under section 50(4AA)(b)(iv) or 52(2)(c); or
- (c) practise the profession of the law while an order that the person's name be struck off the Roll of Legal Practitioners, made under section 52(2)(d), is in force.

Penalty: 500 penalty units or imprisonment for 12 months.

Part VII Trust moneys and trust accounts

Division 1 Preliminary

53 Definitions

In this Part, unless the contrary intention appears:

bank includes other ADIs and the Territory Insurance Office.

legal practitioner means:

- (a) a local legal practitioner who holds an unrestricted practising certificate, other than:
 - (i) a Counsel;
 - (ii) the Solicitor-General of the Northern Territory;
 - (iii) the Director of Public Prosecutions;
 - (iv) the Director of Legal Aid; or
 - (v) a person acting in the name of the Solicitor for the Northern Territory;
- (b) an interstate legal practitioner who has established a practice in the Territory and who holds a current interstate practising certificate that corresponds to an unrestricted practising certificate, other than an interstate legal practitioner who is entitled to practise only as a barrister and independently of another legal practitioner; or

- (c) a locally registered foreign lawyer who receives money on behalf of another person in the course of practising as a foreign lawyer in the Territory.

trust bank account means a general trust bank account and includes a special trust bank account.

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

54 Joint and several responsibility of partners

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

Division 2 Trust moneys

55 Moneys received by legal practitioner to be held in trust

- (1) All moneys received by a legal practitioner, in connection with his or her practice in the Territory, from, or on behalf of, a client of the legal practitioner shall, for all purposes, be deemed to be held in trust for that client to be disbursed, or otherwise dealt with, by the legal practitioner in accordance with the instructions of the client.
- (2) Where a legal practitioner receives, in the course of his or her practice in the Territory, moneys from a person who is not a client of the legal practitioner on the condition that the moneys are to be held by the legal practitioner and are subsequently to be disbursed or otherwise dealt with by the legal practitioner in accordance with the directions of that person or another person, those moneys shall, for the purposes of this Act, be deemed to be held by the legal practitioner in trust for that person as if that person were a client of the legal practitioner and this Part applies to and in relation to those moneys as if that person were a client of the legal practitioner.
- (3) Subsection (1) does not apply to moneys received by a legal practitioner for or on account of his or her legal costs, whether already due or to become due.
- (4) Subsection (1) does not apply to or in relation to a cheque, bank cheque, bank draft or money order made payable to or to the order of a specified person, or to a specified person or bearer, (not being a cheque, bank cheque, bank draft or money order in which the payee is the legal practitioner, a partner of the legal practitioner or

his or her firm) received from or on behalf of a client with instructions, express or implied, that the cheque is to be delivered to the person to whom it is payable.

- (5) Nothing in this Part affects a lien that a legal practitioner would, apart from the provisions of this Part, have over moneys held by him or her.

Division 3 Trust bank accounts

56 General trust accounts

- (1) A legal practitioner must, for the purposes of dealing with moneys referred to in section 55(1), open and maintain a trust bank account at a bank in the Territory under a title which includes the name or style under which the legal practitioner practises and words that indicate that it is the general trust account of the legal practitioner.
- (2) Where 2 or more legal practitioners practise in partnership in the Territory, it is sufficient compliance with subsection (1) where a trust bank account is opened and maintained on behalf of the partnership under a title that includes:
- (a) the name or style of the partnership;
 - (b) the full name of each partner in the partnership; and
 - (c) words that indicate that it is the general trust bank account of the partnership.

57 Payment into trust bank account

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

58 Special trust accounts

- (1) If a client of a legal practitioner has given instructions to the legal practitioner that all trust moneys or specified trust moneys received or to be received by the legal practitioner in connection with his or her practice in the Territory from, or on behalf of, the client are to be paid into a special trust bank account maintained or to be maintained by the legal practitioner for the client, the legal

practitioner:

- (a) if such an account is already maintained by him or her for the client, shall pay trust moneys to which the instructions relate into that account; or
- (b) if such an account is not already maintained by him or her for the client, shall open such an account and shall pay trust moneys to which the instructions relate into the account so opened,

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

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

59 Payments out of trust bank accounts

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

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

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

- (3) When a change is made in the title under which a trust bank account is kept, the legal practitioner by whom it is maintained shall, within 7 days after the change, give notice in writing to the Master informing him of the title as so changed.

61 Protection of trust moneys

Moneys standing to the credit of a trust bank account maintained by a legal practitioner are not available for the payment of debts of the legal practitioner by whom it is maintained (other than debts payable out of those moneys) and those moneys are not liable to be attached or taken in execution for the purpose of satisfying a judgment against the legal practitioner other than a judgment for a debt so payable.

62 Provision applicable to banks

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

Division 4 Legal practitioners' records

63 Accounting records

- (1) A legal practitioner shall keep such accounting and other records as disclose particulars of all trust moneys received or paid by him or her.
- (2) A legal practitioner shall:
 - (a) keep those records:
 - (i) at the place at which he or she carries on business in the Territory;
 - (ii) if he or she carries on business at more than one place of business in the Territory, at his or her principal place of business; or

- (iii) with the approval of the Master, at another place in the Territory;
- (b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
- (c) preserve those records for a period of 7 years.
- (3) It is sufficient compliance with subsection (1) if a legal practitioner, within 7 days after the day on which any trust moneys are received or paid by him or her, enters in the records referred to in that subsection the particulars of those moneys.
- (4) Where 2 or more legal practitioners practise in partnership in the Territory, it is sufficient compliance with this section where the accounting or other records are kept on behalf of the partnership.

64 Receipts for trust moneys

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

65 Half-yearly statements of trust moneys

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

- (2) For the purpose of subsection (1), in ascertaining the amount standing to the credit of a trust bank account, cheques drawn on the account but not presented for payment shall be regarded as having been paid.

Division 5 Audit

66 Interpretation

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

67 Audit of trust accounts

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

68 Qualifications of auditors

- (1) A person shall not be engaged to conduct an audit under this Division if:
- (a) he or she is not a registered company auditor within the meaning of the Corporations Act 2001;
 - (b) he or she is an employee of the legal practitioner by whom the records are kept;
 - (c) he or she is a spouse of de facto partner of the legal practitioner by whom the records are kept; or
 - (d) he or she is an employee of another legal practitioner.
- (2) A firm of auditors shall not be engaged to conduct an audit under this Division if:
- (a) any of its partners is not a registered company auditor within the meaning of the Corporations Act 2001;
 - (b) any of its partners is an employee of a legal practitioner; or

- (c) any of its partners is a spouse of de facto partner of a legal practitioner by whom the records are kept or of any of the legal practitioners in a firm of legal practitioners by whom the records are kept.

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

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

70 Auditor to report

- (1) For the purposes of this Division, an auditor engaged by a legal practitioner is only required to examine the accounting and other records of the legal practitioner relating to trust moneys that he or she considers necessary for the purpose of ascertaining whether the preceding Divisions of this Part have been complied with.
- (2) An auditor shall prepare a report of an audit in the prescribed form.

- (3) The auditor shall prepare the report before 1 September, unless he or she has a reasonable excuse for not doing so, in which case he or she shall prepare the report as soon as practicable after that day.
- (4) The auditor shall, as soon as practicable after the preparation of the report, deliver the report in duplicate to the legal practitioner to whose records the report relates.
- (5) A legal practitioner shall, within 7 days after a report is delivered to him or her in accordance with subsection (4), send the duplicate of the report to the Master.

71 Interim report by auditor

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

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

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

Penalty: 20 penalty units.

72 Provisions applicable in case of default of auditor

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

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

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

73 Statutory declaration that no trust moneys held

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

74 Secrecy

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

Penalty: 50 penalty units.

Division 6 Examination of legal practitioners' records

75 Appointment of examiner

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

- (2) A person shall not be appointed under subsection (1) unless he or she is a registered company auditor within the meaning of the Corporations Act 2001.
- (3) A person who makes an examination under this section shall furnish to the Master a report of the examination and, in particular, shall state in the report:
 - (a) whether or not, in his or her opinion, the records of the legal practitioner have been kept in such a manner as to enable him or her to examine them conveniently and properly;
 - (b) whether or not, in his or her opinion, there is any loss or deficiency of trust moneys;
 - (c) whether or not, in his or her opinion, there has been any failure to pay or account for trust moneys; and
 - (d) whether or not, in his or her opinion, there has been any failure to comply with any provision of this Part.
- (4) The costs of an examination under this section shall be paid by the Master out of the Fidelity Fund.
- (5) Where, as a result of an examination of records under this section, a legal practitioner is:
 - (a) found guilty of an offence against this Act or any other law in force in the Territory; or
 - (b) an order is made against a legal practitioner under Part VI,the Master may recover the costs of the examination from that legal practitioner as a debt due to the Territory and any amount so recovered shall be paid into the Fidelity Fund.

76 Production of books, &c.

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

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

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

Penalty: 50 penalty units.

77 Order to stop payments from trust bank accounts

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

Penalty: 50 penalty units.

78 Secrecy

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

Penalty: 50 penalty units.

Division 7 Deposits with the Trust Committee

79 Interpretation

- (2) In this Division, a reference to the notional amount standing to the credit of the general trust bank account of a legal practitioner on the last day of a year shall be read as a reference to the lowest amount that stood to the credit of that account at any time during that year.

- (4) In the application of this Division to 2 or more legal practitioners carrying on, or deemed to be carrying on, practice in partnership with one another, a reference to a legal practitioner shall be read as a reference to those legal practitioners.
- (5) Where a legal practitioner maintains more than one general trust bank account in accordance with this Part, a reference in this Division to a general trust bank account maintained by the legal practitioner shall be read as a reference to the general trust bank accounts maintained by the legal practitioner.
- (6) Where a legal practitioner has in any year maintained 2 or more general trust bank accounts, the legal practitioner shall, for the purposes of this Division, be deemed to have maintained, during the period for which he or she maintained those general trust bank accounts, only one general trust bank account and the amount that stood, on any day during that period, to the credit, of the general trust bank account that the legal practitioner is to be so deemed to have maintained shall be deemed, for the purposes of this Division, to be the total of the amounts that stood to the credit of the bank accounts that were in fact maintained by him on that day.
- (7) For the purposes of this Division, in ascertaining the amount standing to the credit of a general trust bank account on any day, cheques drawn on the account and not presented to the bank for payment shall be regarded as having been paid.
- (8) For the purposes of this Division, the amount of any trust moneys paid into the general trust bank account maintained by a legal practitioner and subsequently paid by the legal practitioner into a special trust bank account in accordance with the instructions of the client from, or on whose behalf, those moneys were received shall not be taken into account in ascertaining the lowest amount that stood to the credit of that general trust bank account at any time.

79A Incorporation of Trust Committee

- (1) There is hereby constituted a body corporate by the name of the Legal Practitioners' Trust Committee.
- (2) The Trust Committee:
 - (a) has perpetual succession;
 - (b) shall have a common seal; and
 - (c) may sue and be sued in its corporate name.

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

79B Removal of member from office

- (1) The Court may, on the application of the Master, remove a member of the Trust Committee from office for misbehaviour or incapacity.

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

79C Quorum of Trust Committee and voting

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

79D Investments by Trust Committee

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

80 Legal practitioner to deposit portion of trust moneys with Committee

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

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

- (3) Subject to this Division, where, on the last day of a year:
- (a) trust moneys of a legal practitioner are on deposit with the Trust Committee; and

- (b) the amount of those moneys is less than one-half of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that legal practitioner,

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

81 Repayment of deposit

- (1) Subject to subsection (2), moneys on deposit with the Trust Committee in accordance with this Division are repayable on demand to the legal practitioner by whom they were deposited.
- (2) A legal practitioner shall not make a demand for the repayment of moneys under subsection (1) unless:
 - (a) the repayment of the moneys is required to enable necessary payments to be made out of his or her general trust bank account; and
 - (b) the legal practitioner has reasonable grounds for believing that the payment is to be made within 7 days after the day on which the demand is made.
- (3) Where, on the last day of a year:
 - (a) trust moneys of a legal practitioner are on deposit with the Trust Committee; and
 - (b) the amount of those moneys exceeds one-half of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that legal practitioner,

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

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

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

82 Obligation to deposit subject to availability of trust funds

(1) Where:

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

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

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

83 Variation of notional amount by Trust Committee

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

- (b) if, on the date on which the determination is made, the legal practitioner has on deposit with the Trust Committee moneys exceeding the amount that he or she would have been required to have on deposit with the Trust Committee if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the legal practitioner on the last day of the preceding year, the legal practitioner is entitled to be re-paid an amount equal to the amount of the excess.

84 Keeping of records and audit, &c.

- (1) The Trust Committee shall cause records to be kept showing particulars of all moneys deposited with it in accordance with this Division, of all interest and other income received by it from the investment of those moneys and of all payments made by it out of those moneys, and shall cause those records to be audited annually by an auditor who is a registered company auditor within the meaning of the Corporations Act 2001.
- (2) The Trust Committee shall forward a copy of each report of an auditor under this section to the Solicitor for the Northern Territory.

84A Payment of investment income by Trust Committee

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

- (5) The costs of discharging the functions, and exercising the powers, of the Trust Committee under this Division and the costs of enforcing the rights conferred upon that Committee by this Division shall be paid out of the investment income in priority to any other use of those moneys authorized by this section.

Part VIIA Mortgage practices and managed investment schemes

Division 1 Preliminary

84B Interpretation

- (1) In this Part:

ASIC exemption means an exemption from the Corporations Act 2001 given by ASIC under that Act.

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

client, in relation to a legal practitioner, means a person who:

- (a) receives advice from the legal practitioner about investment in a regulated mortgage or managed investment scheme; or
- (b) gives the legal practitioner instructions to use money for a regulated mortgage or managed investment scheme.

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

contributory mortgage means a mortgage to secure money lent by 2 or more contributors as tenants-in-common or joint tenants, whether or not the mortgagee is a person who holds the mortgage in trust for or on behalf of those contributors.

financial institution means:

- (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth;
- (b) a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act*; or
- (c) a corporation or other body, or a corporation or body of a class, prescribed by the Regulations for the purposes of this definition.

legal practitioner includes an interstate legal practitioner.

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

managed investment scheme has the same meaning as in the Corporations Act 2001.

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

- (a) a proposed mortgage; and
- (b) an instrument prescribed by the Regulations to be a mortgage.

regulated mortgage means a mortgage (including a contributory mortgage) other than the following:

- (a) a mortgage under which the lender is a financial institution;
- (b) a mortgage under which the lender or contributor nominates the borrower, but only if the borrower is not a person introduced to the lender or contributor by any of the following persons:
 - (i) the legal practitioner who acts for the lender or contributor;
 - (ii) an associate of the legal practitioner;
 - (iii) a person engaged by the legal practitioner for the purpose of introducing the borrower to the lender or contributor;
- (c) a mortgage of a kind prescribed by the Regulations.

responsible entity has the same meaning as in the Corporations Act 2001.

run-out mortgage means a regulated mortgage created before the commencement of this Part that is not:

- (a) a Territory regulated mortgage; or
- (b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the Corporations Act 2001 (as modified by any ASIC exemption or the regulations under that Act).

Territory regulated mortgage has the meaning in section 84C.

- (2) In this Part, a reference to an associate of a legal practitioner is a reference to any of the following:
- (a) a partner of the legal practitioner, whether or not the partner is a legal practitioner;
 - (b) an employee or agent of the legal practitioner;
 - (c) a co-trustee of the legal practitioner;
 - (d) a person who bears a prescribed relationship to the legal practitioner or to a person referred to in paragraph (a) or (c);
 - (e) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the legal practitioner or a person referred to in paragraph (a), (b) or (d) has a beneficial interest;
 - (f) if the legal practitioner or person referred to in paragraph (a) or (d) is a corporation – a subsidiary of that corporation within the meaning of the Corporations Act 2001;
 - (g) a person prescribed by the Regulations to be an associate of the legal practitioner.
- (3) For the purposes of subsection (2)(d), a person bears a prescribed relationship to a legal practitioner, or to a partner or co-trustee of a legal practitioner, if the relationship is that of:
- (a) a spouse;
 - (b) a de facto partner;
 - (c) a child, grandchild, sibling, parent or grandparent; or
 - (d) a kind prescribed by the Regulations.
- (4) In this Part, a reference to a legal practitioner acting for a lender or contributor is a reference to the legal practitioner acting in the capacity of that person's legal practitioner.

84C Territory regulated mortgage

For the purposes of this Part, in relation to a legal practitioner, a regulated mortgage is a Territory regulated mortgage if:

- (a) a nomination of the legal practitioner's practice as a Territory regulated mortgage practice is in force under section 84F; and

- (b) the regulated mortgage:
 - (i) does not form part of a managed investment scheme; or
 - (ii) forms part of a managed investment scheme that is not required to be operated by a responsible entity under the Corporations Act 2001 (as modified by any ASIC exemption or the regulations under that Act).

84D Application of Part

Subject to Division 5, this Part applies in relation to mortgages created before or after the commencement of this Part.

Division 2 Mortgage practices

84E Conduct of mortgage practice

- (1) A legal practitioner must not, in acting for a lender or contributor, negotiate the creation of or act in respect of a regulated mortgage unless that mortgage:
 - (a) is a Territory regulated mortgage;
 - (b) is a run-out mortgage; or
 - (c) forms part of a managed investment scheme that is operated by a responsible entity.
- (2) A legal practitioner must not, in acting for a lender or contributor, negotiate the creation of or act in respect of a regulated mortgage except in accordance with:
 - (a) the Corporations Act 2001 (as modified by any ASIC exemption or the regulations under that Act); and
 - (b) this Act, the Regulations and the professional conduct rules.
- (3) A legal practitioner must not, in acting for a lender or contributor, negotiate the creation of or act in respect of a regulated mortgage that forms part of a managed investment scheme unless the legal practitioner complies with the ASIC exemptions (if any) that apply to managed investment schemes:
 - (a) that have more than 20 members; and
 - (b) that are operated under the supervision of the Law Society in accordance with that exemption.

- (4) Subsection (3) applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.
- (5) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.
- (6) A legal practitioner who knows that a prescribed person has contravened a requirement of this section must notify the Law Society in writing of the contravention within 21 days after becoming aware of it.
- (7) In subsection (6):

prescribed person, in relation to a legal practitioner, means any of the following persons:

- (a) if the legal practitioner is a member of a firm of legal practitioners – a person who is a member of that firm;
- (b) an employee or agent of the legal practitioner.

84F Nomination of practice as Territory mortgage practice

- (1) A legal practitioner who, in acting for a lender or contributor, negotiates the creation of or acts in respect of a regulated mortgage or proposes to do so must by written notice lodged with the Law Society nominate his or her practice as a Territory regulated mortgage practice.
- (2) With the approval of the Law Society, a nomination may be made for a legal practitioner by another legal practitioner (for example by a legal practitioner on behalf of members of a firm of legal practitioners).
- (3) The nomination of a legal practitioner's practice as a Territory regulated mortgage practice comes into force on the date the notice is lodged under subsection (1).
- (4) The Law Society may, by written notice served on a legal practitioner, reject the nomination made in respect of his or her practice.
- (5) The nomination of a legal practitioner's practice as a Territory regulated mortgage practice ceases to be in force if:
 - (a) the Law Society rejects the nomination;
 - (b) the legal practitioner revokes the nomination by written notice lodged with the Law Society; or

- (c) the legal practitioner ceases to hold a practising certificate or interstate practising certificate, as applicable.
- (6) A notice lodged under this section is to include the information (if any) prescribed by the Regulations.

84G Law Society to be notified of Territory regulated mortgage

- (1) A legal practitioner who, in acting for a lender or contributor, negotiates the creation of or acts in respect of a Territory regulated mortgage must, within 7 days, give the Law Society written notice of that fact.

Penalty: 20 penalty units.

- (2) The notice is to contain the information (if any) prescribed by the Regulations.
- (3) An offence against subsection (1) is a regulatory offence.

84H Approved policy of fidelity insurance

- (1) The Attorney-General may approve a policy of fidelity insurance for the purpose of compensating persons who suffer pecuniary loss because of a dishonest failure by a legal practitioner to pay money payable under a regulated mortgage.
- (2) The approval of a policy of fidelity insurance is to be in writing, approving the insurer and the terms of the policy, and may impose conditions to which the provision of fidelity insurance is to be subject.
- (3) A legal practitioner who, in acting for a lender or contributor, negotiates the creation of or acts in respect of a regulated mortgage must take out and maintain a policy of fidelity insurance as approved under this section.

Penalty: 200 penalty units.

- (4) This section does not apply in respect of a regulated mortgage that forms part of a managed investment scheme that is operated by a responsible entity.

84I Limited claim against Fidelity Fund in respect of regulated mortgage

- (1) A lender or contributor under a regulated mortgage to which section 84H applies is not entitled to apply for compensation from the Fidelity Fund for pecuniary loss he or she suffers because of a dishonest failure by the legal practitioner acting for the lender or

contributor to pay money payable under that mortgage.

- (2) Subsection (1) does not apply if the legal practitioner acting for the lender or contributor fails to take out and maintain an approved policy of fidelity insurance in pursuance of section 84H(3).
- (3) A claim against the Fidelity Fund by virtue of subsection (2):
 - (a) is to be dealt with by the Fidelity Fund Committee as if the legal practitioner had taken out and maintained an approved policy of fidelity insurance; and
 - (b) is subject to the same restrictions, including the amount of compensation payable, as would have applied under that approved policy of insurance.

84J Notification of insurance held in respect of regulated mortgage

- (1) If a client entrusts money to a legal practitioner and it is proposed to advance the money to a borrower for a regulated mortgage, the legal practitioner must, within 7 days after the receipt of the money, give the client written notice:
 - (a) of the effect of section 84I; and
 - (b) of the approved policy of fidelity insurance maintained by the legal practitioner.
- (2) The legal practitioner must not advance any money referred to in subsection (1) to a borrower for a regulated mortgage unless:
 - (a) the legal practitioner has given the client notice under that subsection; and
 - (b) the client has subsequently given the legal practitioner written authority to advance the money for that regulated mortgage.
- (3) A contravention of this section does not affect the operation of section 84I.
- (4) This section does not apply in respect of a regulated mortgage that forms part of a managed investment scheme that is operated by a responsible entity.

Division 3 Managed investment schemes

84K Notification of involvement in managed investment scheme

(1) If:

- (a) a client entrusts, or proposes to entrust, money to a legal practitioner to be invested in a managed investment scheme that is operated by a responsible entity; and
- (b) the legal practitioner has a prescribed interest in the managed investment scheme,

the legal practitioner must give the client a written notice containing the following information:

- (c) that the legal practitioner has a prescribed interest in the managed investment scheme and particulars of that prescribed interest;
- (d) that the operation of the managed investment scheme does not form part of the legal practitioner's practice;
- (e) the effect of section 84L(1);
- (f) other information (if any) prescribed by the Regulations.

(2) The legal practitioner must not advance any money entrusted to him or her to be invested in a managed investment scheme that is operated by a responsible entity:

- (a) to the responsible entity for the managed investment scheme;
or
- (b) to any other person,

unless the legal practitioner has given the client the notice referred to in subsection (1).

(3) A legal practitioner who knows that a prescribed person has contravened subsection (1) must notify the Law Society in writing of the contravention within 21 days after becoming aware of it.

(4) For the purposes of this section, a legal practitioner has a prescribed interest in a managed investment scheme if any of the following circumstances apply:

- (a) the legal practitioner, or an associate of the legal practitioner, is a director of or is concerned in the management of the responsible entity for the managed investment scheme;

- (b) the legal practitioner, or an associate of the legal practitioner, is a shareholder in the responsible entity for the managed investment scheme;
 - (c) the legal practitioner, or an associate of the legal practitioner, is taken to be an agent of the responsible entity under Chapter 5C of the Corporations Act 2001;
 - (d) the legal practitioner, or an associate of the legal practitioner, receives any pecuniary benefit from the managed investment scheme or the responsible entity for the managed investment scheme if a client of the legal practitioner invests in the managed investment scheme;
 - (e) the legal practitioner, or an associate of the legal practitioner, has an interest in the managed investment scheme or the responsible entity for the managed investment scheme that is an interest of a kind prescribed by the Regulations.
- (5) In subsection (3):

prescribed person, in relation to a legal practitioner, means any of the following persons:

- (a) if the legal practitioner is a member of a firm of legal practitioners – a person who is a member of that firm;
- (b) an employee or agent of the legal practitioner.

84L Limited claims against Fidelity Fund relating to investments

- (1) A client referred to in section 84K who suffers pecuniary loss arising from an investment in a managed investment scheme referred to in that section is not entitled to apply for compensation from the Fidelity Fund in respect of that loss.
- (2) Subsection (1) does not apply if the legal practitioner who acted for the client failed to comply with section 84K(1) or (2).

84M Transfer of regulated mortgage to responsible entity

- (1) A legal practitioner who, in acting for a lender or contributor, is responsible for the administration of a regulated mortgage must not transfer that mortgage to a responsible entity for a managed investment scheme unless the lender or contributor has given the legal practitioner written authority to do so.

- (2) For the purposes of this section, a legal practitioner transfers a regulated mortgage to a responsible entity when the legal practitioner does anything that results in:
- (a) a responsible entity for a managed investment scheme becoming the holder or custodian of the regulated mortgage; or
 - (b) any advances of money made in respect of the mortgage, or the property that is charged or encumbered by the mortgage, becoming scheme property (within the meaning of the Corporation Act 2001) of a managed investment scheme.

Division 4 Miscellaneous

84N Law Society to disseminate information

The Law Society has the function of disseminating information for the purpose of increasing public awareness about the obligations of legal practitioners under this Part.

84O Law Society may require information about mortgage practice

- (1) The Law Society may by written notice require a legal practitioner to provide information to the Law Society about any of the following:
- (a) whether the legal practitioner, or an associate of the legal practitioner, is negotiating the creation of or acting in respect of regulated mortgages or has done so in the past;
 - (b) details of any regulated mortgages in force in respect of which the legal practitioner has acted;
 - (c) whether the legal practitioner proposes:
 - (i) to nominate his or her practice as a Territory regulated mortgage practice in pursuance of section 84F;
 - (ii) to transfer responsibility for any regulated mortgage; or
 - (iii) to take no further action in respect of any regulated mortgage;
 - (d) any other matters relating to regulated mortgages as prescribed by the Regulations.

84P Indemnity insurance

This Part does not affect the terms of a policy of professional indemnity insurance to which Part IVA applies.

84Q Secrecy provisions

This Act or any other law of the Territory does not prohibit the disclosure of information to ASIC or to a regulatory authority of a State or Territory of the Commonwealth concerning the conduct of legal practitioners in respect of regulated mortgages.

84R Regulations relating to this Part

- (1) The Regulations may prescribe provisions for the purpose of ensuring:
 - (a) that the operation of a managed investment scheme by a responsible entity is kept separate from a legal practitioner's practice; and
 - (b) that clients of a legal practitioner are made aware that the operation of a managed investment scheme by a responsible entity does not form part of the legal practitioner's practice.
- (2) The Regulations may provide for any other matters referred to in this Part, including the following:
 - (a) the manner in which the Law Society is to be given a notice or information;
 - (b) the form of notices and authorities.

Division 5 Transitional provisions relating to mortgages

84S Definition

In this Division:

commencement date means the date on which this Part comes into operation.

84T Fidelity insurance in relation to pre-existing regulated mortgage

- (1) Section 84H(3) does not apply in relation to a regulated mortgage that was created before the commencement date.
- (2) Despite subsection (1), section 84H(3) applies in relation to a regulated mortgage created before the commencement date if:
 - (a) whether before or after the commencement date, a client entrusts money to the legal practitioner to be advanced to a borrower for the regulated mortgage; and

- (b) that money is advanced or proposed to be advanced to the borrower on or after the commencement date.
- (3) If subsection (2) applies:
 - (a) the legal practitioner must take out and maintain an approved policy of fidelity insurance in respect of the advance of that money and comply with section 84J in respect of that advance; and
 - (b) section 84I(1) applies to any claim for compensation for pecuniary loss suffered in respect of that advance.
- (4) If the money referred to in subsection (2) is received by the legal practitioner before the commencement date, the 7 days referred to in section 84J(1) is taken to be 7 days after the commencement date.

84U Prohibited conduct in respect of run-out mortgage

A legal practitioner must not, in acting for a lender or contributor:

- (a) advance to a borrower for a run-out mortgage any money entrusted to the legal practitioner;
- (b) do any work for the purpose of extending the term of a run-out mortgage;
- (c) accept any money from a client for the purpose of advancing the money to a borrower for a run-out mortgage; or
- (d) do anything in contravention of any provision of the Regulations or the professional conduct rules relating to run-out mortgages.

84V Substitution of lender or contributor under run-out mortgage

- (1) Despite section 84U, a legal practitioner may receive money from a client and do any work that is necessary solely for the purpose of substituting a lender or contributor under a run-out mortgage.
- (2) Section 84H does not apply in respect of anything done in accordance with subsection (1) and the legal practitioner is not required to obtain fidelity insurance for the purpose of compensating the substitute lender or contributor for any pecuniary loss in respect of the substitution.

- (3) If a client entrusts, or proposes to entrust, money to a legal practitioner for the purpose of substituting a lender or contributor under a run-out mortgage, the legal practitioner must give the client written notice:
 - (a) of the effect of section 84W; and
 - (b) that the legal practitioner is not required to have fidelity insurance in respect of the substitution under the run-out mortgage.
- (4) The legal practitioner must not advance money received for the purposes of subsection (1) to a borrower for a run-out mortgage unless the legal practitioner has given the client notice under subsection (3).

84W Limited claims against Fidelity Fund by substitute lender

- (1) A person who becomes a lender or contributor under a run-out mortgage after the commencement date is not entitled to apply for compensation from the Fidelity Fund for pecuniary loss suffered in respect of that mortgage.
- (2) Subsection (1) does not apply if the legal practitioner who acts for the person fails to give the client notice under section 84V.

Part VIII The Fidelity Fund

Division 1 General

85 Interpretation

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

legal practitioner means:

- (a) a local legal practitioner who holds an unrestricted practising certificate, other than:
 - (i) a Counsel;
 - (ii) the Solicitor-General of the Northern Territory;
 - (iii) the Director of Public Prosecutions;
 - (iv) the Director of Legal Aid; or
 - (v) a person acting in the name of the Solicitor for the Northern Territory;

- (b) an interstate legal practitioner who has established a practice in the Territory and who holds a current interstate practising certificate that corresponds to an unrestricted practising certificate, other than an interstate legal practitioner who is entitled to practise only as a barrister and independently of another legal practitioner; or
- (c) a locally registered foreign lawyer.

practising certificate includes an interstate practising certificate.

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

86 Incorporation of Fidelity Fund Committee

- (1) There is hereby constituted a body corporate by the name of the Legal Practitioners' Fidelity Fund Committee.
- (1A) The Fidelity Fund Committee:
 - (a) has perpetual succession;
 - (b) shall have a common seal; and
 - (c) may sue and be sued in its corporate name.
- (1B) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Fidelity Fund Committee affixed to a document and shall presume that it was duly affixed.
- (1C) The Fidelity Fund Committee shall consist of the Master and 2 legal practitioners appointed by the Law Society.
- (2) A member of the Fidelity Fund Committee appointed by the Law Society shall, subject to section 87 hold office during the pleasure of the Law Society.
- (3) A person is not eligible for appointment as a member of the Fidelity Fund Committee unless not less than 5 years have elapsed since he or she was first admitted to practise as a legal practitioner (however described) in a State or Territory and he or she holds a current unrestricted practising certificate.
- (4) The Master is Chairperson of the Fidelity Fund Committee.

- (5) The Fidelity Fund Committee shall have the following powers:
- (a) to open and operate accounts with an ADI or ADIs or the Territory Insurance Office; and
 - (b) to do all things that are, in the opinion of that Committee, necessary or convenient for the proper administration of moneys paid into the Fund.
- (6) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Fidelity Fund Committee shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any member of the Fidelity Fund Committee or in such other manner as the Fidelity Fund Committee from time to time determines.
- (7) The Fidelity Fund Committee may appoint a person to be the Secretary to the Fidelity Fund Committee.

87 Removal of member from office

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

88 Quorum of Committee and voting

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

89 Fidelity Fund

- (1) A fund is hereby established to be known as the Legal Practitioners' Fidelity Fund of the Northern Territory.
- (2) The Fidelity Fund Committee shall cause records to be kept showing particulars of all moneys held to the credit of the Fidelity Fund, of all interest received by it from the investment of those moneys and of all payments made by it out of those moneys, and shall cause those records to be audited annually by an auditor who is a registered company auditor within the meaning of the Corporations Act 2001.
- (2A) The Fidelity Fund Committee shall forward a copy of each report of an auditor under this section to the Solicitor for the Northern Territory.
- (3) The Fund shall consist of:
 - (a) contributions and levies paid under this Part;
 - (b) interest received from the investment of moneys standing to the credit of the Fidelity Fund;
 - (c) moneys paid into the Fidelity Fund under section 84A;
 - (d) moneys recovered by the Committee under this Act; and
 - (e) such other moneys as may lawfully be paid into the Fidelity Fund.
- (4) The Fidelity Fund Committee may invest any part of the Fidelity Fund in any manner in which trust funds may for the time being be invested under any law in force in the Territory.
- (5) The costs of discharging the functions and exercising the powers of the Committee under this Part and the costs of enforcing the rights conferred upon the Committee by this Part shall be payable out of the Fidelity Fund.

90 Committee may determine classes of practitioners

For the purposes of this Part, the Fidelity Fund Committee may from time to time determine different classes of legal practitioners according to one or more of the following factors:

- (a) the type of practising certificate held by a member of the class;
- (b) the date on which a member of the class applied for a practising certificate, notified the Law Society of the

establishment of, or the intention to establish, a practice in the Territory or lodged a notice seeking registration as a locally registered foreign lawyer (as applicable);

- (c) the number and type of practising certificates previously held by a member of the class;
- (d) whether a member of the class was, at any time in a specified period:
 - (i) a member of a firm of legal practitioners or a director of a practising company that maintained a trust account; or
 - (ii) an employee of a legal practitioner, a firm of legal practitioners or a practising company that maintained a trust account;
- (e) the amount of trust money received in a specified period by:
 - (i) a member of the class; or
 - (ii) a legal practitioner, a firm of legal practitioners or a practising company of which a member of the class was an employee, a partner or a director, as the case may be;
- (f) whether the principal place of practice of a member of the class is in or outside the Territory;
- (g) the conditions, limitations or restrictions to which a member of the class is subject in respect of the member's legal practice.

90A Determination of annual contributions

- (1) On or before 30 August in each year the Fidelity Fund Committee must determine the amount (if any) of contribution that a legal practitioner, or a member of a class of legal practitioners determined under section 90, is required to pay to the Fidelity Fund in respect of the period of 12 months commencing on the next succeeding 1 October.
- (2) The amount of contribution determined under subsection (1) is not to exceed \$1,500.
- (3) In making a determination under subsection (1), the Fidelity Fund Committee must have regard to the advice of an actuary engaged by the Committee to advise it on the appropriate provision to be made for all ascertained or contingent liabilities of the Fidelity Fund, including any contingent liability in respect of defalcations that have occurred but are not yet the subject of an application under

Division 2.

- (4) As soon as practicable after making a determination under subsection (1), the Committee must:
 - (a) cause a notice of the determination to be published in the *Gazette*; and
 - (b) give written notice of the determination to the Law Society.

90B Payment of contributions

- (1) A legal practitioner, or a member of a class of legal practitioners determined under section 90, must pay the required amount of contribution to the Fidelity Fund as determined under section 90A(1).
- (2) Subject to this section, a legal practitioner must pay the required amount of contribution to the Fidelity Fund on 30 September in each year.
- (3) A legal practitioner who applies under section 23 for the issue of a practising certificate after 1 October in any year and before the next succeeding 30 September must, in respect of that period, pay an amount of contribution to the Fidelity Fund as determined by the Committee.
- (4) An interstate legal practitioner who, after 1 October in any year and before the next succeeding 30 September, gives notice of establishing or intending to establish a practice in the Territory must, in respect of the time during that period when the practice was established, pay an amount of contribution to the Fidelity Fund as determined by the Committee.
- (5) A locally registered foreign lawyer who is registered as such after 1 October in any year and before the next succeeding 30 September must, in respect of that period, pay an amount of contribution to the Fidelity Fund as determined by the Committee.
- (6) If:
 - (a) classes of legal practitioners have been determined under section 90 and a legal practitioner is eligible to be a member of more than one class depending on the amount of trust money received by the legal practitioner or the firm or practising company of which the legal practitioner was an employee, a partner or director, as the case may be;
 - (b) the amount of contribution to be paid by the members of each of those classes is different; and

- (c) the legal practitioner wishes to claim membership of one of those classes other than the class in which the members must pay the highest contribution,

the legal practitioner must give the Committee a statutory declaration stating the class of which the legal practitioner claims membership.

- (7) If a legal practitioner who is entitled to give the Committee a statutory declaration under subsection (6) does not do so at the time of paying a contribution:
 - (a) the practitioner is to be taken to be a member of the class of which he or she is eligible to be a member and in which the members must pay the highest contribution; and
 - (b) he or she must pay that contribution.
- (8) If a legal practitioner fails to pay the contribution payable by the legal practitioner by the date specified in subsection (2), the Committee must notify the Law Society of the legal practitioner's failure to do so as soon as practicable after that date.

Division 2 Claims against the Fidelity Fund

91 Persons who may apply for compensation

- (1) Subject to this Part, a person who suffers pecuniary loss arising out of a defalcation of trust moneys committed by a legal practitioner after the date fixed for the purposes of this section by the Attorney-General by notice published in the *Gazette* may apply to the Committee for compensation under this Part in respect of that loss.
- (2) For the purposes of this Part, the pecuniary loss in respect of which compensation may be paid to an applicant under this Part is the amount of the pecuniary loss suffered by the applicant less any amount that the applicant has recovered in respect of the loss.
- (3) In this section, **pecuniary loss** includes any of the following:
 - (a) pecuniary loss that occurs wholly in the Territory arising out of a defalcation committed by a local legal practitioner or an interstate legal practitioner in the course of practising in the Territory or in a State or another Territory of the Commonwealth;

- (b) pecuniary loss that occurs in the Territory and in a participating State arising out of a defalcation committed by a local legal practitioner in the course of practising in the Territory or in a State or another Territory of the Commonwealth;
 - (c) pecuniary loss that occurs in the Territory and in a participating State arising out of a defalcation committed by an interstate legal practitioner in the course of practising in the Territory;
 - (d) pecuniary loss that occurs in the Territory or in a participating State (or in both) when it cannot be determined precisely where the loss occurred, arising out of a defalcation committed by a local legal practitioner in the course of practising in the Territory or in a State or another Territory of the Commonwealth;
 - (e) pecuniary loss that occurs in the Territory or in a participating State (or in both) when it cannot be determined precisely where the loss occurred, arising out of a defalcation by an interstate legal practitioner in the course of practising in the Territory;
 - (f) pecuniary loss arising out of a defalcation to which an agreement or an arrangement under section 134X relates;
 - (g) pecuniary loss that occurs wholly in the Territory arising out of a defalcation committed by a locally registered foreign lawyer (whether or not in the Territory) in the course of practising in the Territory.
- (4) In subsection (3):

interstate legal practitioner has the same meaning as in paragraph (b) of the definition of ***legal practitioner*** in section 85(1).

local legal practitioner has the same meaning as in paragraph (a) of the definition of ***legal practitioner*** in section 85(1).

92 Committee may call for claims

- (1) The Committee may cause to be published in a daily newspaper published in the Territory a notice requiring persons entitled to apply for compensation under this Part in respect of losses arising out of a defalcation committed by a legal practitioner named in the notice to make their application within the period specified in the notice.

- (2) The period to be specified in a notice published under this section shall be not less than 3 months commencing on the date of publication of the notice.
- (3) No action for damages lies against the Committee, or any of its members, in respect of the publication in good faith of a notice under this section.

93 Time for making applications

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

94 Manner of making claims

- (1) An application for compensation under this Part shall be made by the delivery to the Committee of full particulars of the claim supported by a statutory declaration.
- (2) The Committee may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant:
 - (a) to give to the Committee information in the possession of the applicant with regard to any matter relating to the application; and
 - (b) to deliver to the Committee any documents in the possession of the applicant which tend to establish the fact of the defalcation and the amount of the loss to which the application relates.
- (3) The Committee may retain a document delivered to it in accordance with a requirement under subsection (2) for as long as is necessary for the purposes of this Part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy certified by the Master to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.

- (4) Where the Committee makes a requirement under subsection (2), it is not required to take any further steps in relation to the application until the requirement is satisfied.

95 Committee to consider applications

- (1) Subject to section 94(4), the Committee shall consider each application made in accordance with this Part and shall determine:
 - (a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
 - (b) that there is no pecuniary loss in respect of which compensation may be so paid.
- (2) Subsection (1) does not require the Committee to be satisfied:
 - (a) that any person has been found guilty of an offence arising out of the defalcation; or
 - (b) that there is evidence upon which a person might be found guilty of such an offence.
- (3) Before making a determination under subsection (1), the Committee may, if it is of the opinion that the circumstances so warrant, require the applicant to institute against the legal practitioner to whose defalcation the claim relates or any other person considered to be liable in respect of the loss arising out of the defalcation, or both, proceedings for the recovery of the money the subject of the defalcation, including proceedings to follow assets and any property into which the money may have been converted.
- (4) Where the Committee requires a person to institute proceedings under subsection (3), the Committee is liable to pay out of the Fidelity Fund all costs and expenses necessarily incurred by the person by reason of the institution of the proceedings.
- (5) An amount recovered by a person as costs in proceedings instituted by the person at the request of the Committee under this section shall be paid into the Fidelity Fund.
- (6) The Committee shall, as the case requires, give to an applicant for compensation under this Part notice in writing stating:
 - (a) the amount that the Committee has determined is the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or

- (b) that the Committee has determined that there is no pecuniary loss in respect of which compensation may be so paid.
- (7) In a notice given under this section, the Committee shall state the grounds on which it has made the determination referred to in the notice.

96 Review of Committee's determination

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

97 Payment of compensation

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

98 Subrogation

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

99 Legal practitioners may claim in certain cases

(1) Where:

(a) the Committee has paid all the amounts of compensation that it is required to pay in respect of defalcations committed by a legal practitioner; and

(b) the sum of those amounts is less than \$50,000,

a legal practitioner who was, at the time at which any of those defalcations was committed, a partner of the first-mentioned legal practitioner and has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of those defalcations may apply to the Committee for compensation under this Part in respect of that payment.

(2) Section 93 does not apply in relation to an application made under this section.

(3) Where:

(a) an application is made under this section; and

(b) the Committee is satisfied that:

(i) the legal practitioner by whom the application is made is entitled to make an application under this section; and

(ii) in relation to the defalcation to which the claim relates, the legal practitioner acted in good faith,

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

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

100 Interim payments of compensation

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

Division 3 Levies

101 Imposition of levy to supplement Fidelity Fund

- (1) Subject to subsection (4), if at any time the Committee considers that the amount in the Fidelity Fund is likely to be insufficient to meet the Committee's liabilities in relation to the Fund, it may:
 - (a) impose a levy (not exceeding \$500) on each legal practitioner who is required by this Act to maintain a trust account in the Territory; and
 - (b) determine the date on which the legal practitioner must pay the levy to the Fidelity Fund.
- (2) If classes of legal practitioners have been determined under section 90, the Committee may impose different levies (not exceeding \$500) on those classes.
- (3) As soon as practicable after imposing a levy, the Committee must give notice in the *Gazette* and give written notice to the Law Society of the amount of levy imposed and the date on which it is to be paid.
- (4) The Committee must not impose a levy if the Fidelity Fund is insufficient to satisfy the liabilities of the Committee due to money having been allocated under section 89A.

101A Payment of levy

- (1) A legal practitioner who is required by this Act to maintain a trust account in the Territory on the date determined under section 101(1)(b) must, on that date, pay the levy imposed on the practitioner under section 101.

- (2) A legal practitioner who has paid levies in the aggregate of \$1,500 during the whole period of his or her practice in the Territory is not required to pay a further levy.
- (3) If:
 - (a) classes of legal practitioners have been determined under section 90 and a legal practitioner is eligible to be a member of more than one class depending on the amount of trust money received by the practitioner;
 - (b) the amount of the levy to be paid by members of each of those classes is different; and
 - (c) the legal practitioner wishes to claim membership of one of those classes other than the one in which the members must pay the highest levy,the legal practitioner must give the Committee a statutory declaration stating the class of which the legal practitioner claims membership.
- (4) If a legal practitioner who is entitled to give the Committee a statutory declaration under subsection (3) does not do so at the time of paying a levy:
 - (a) the legal practitioner is to be taken to be a member of the class of which he or she is eligible to be a member and in which the members must pay the highest levy; and
 - (b) he or she must pay that levy.
- (5) The Committee may, in a special case, allow a legal practitioner further time in which to pay a levy or part of a levy.
- (6) The amount of a levy that is not paid by a legal practitioner in accordance with this section is a debt due to the Committee by the legal practitioner.
- (7) If a legal practitioner fails to pay the amount of levy payable by the legal practitioner by the date determined under section 101(1)(b) or, if the Committee allows the legal practitioner further time to pay under subsection (5), within the further time allowed, the Committee must notify the Law Society of the legal practitioner's failure to do so as soon as practicable after that date or the further time expires.

Part VIIIA Managers

101B Definition

In this Part:

legal practitioner includes an incorporated legal practice under Part IVAA.

manager means a person appointed under section 101C to manage the practice of a legal practitioner.

101C Appointment of manager

(1) If, in the opinion of the Law Society:

- (a) a legal practitioner has or may have failed to account for trust property;
- (b) a person is unable to obtain payment or delivery of property from a legal practitioner because the legal practitioner:
 - (i) is mentally or physically infirm;
 - (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit;
 - (iii) is in prison;
 - (iv) has died;
 - (v) has abandoned his or her practice as a legal practitioner;
 - (vi) has had his or her name removed from the Roll of Legal Practitioners otherwise than at his or her own request; or
 - (vii) ceases to hold a practising certificate or has had his or her current practising certificate suspended by the Complaints Committee or the Supreme Court,

the Law Society may, in writing, appoint a person to manage the practice of the legal practitioner.

- (2) The Law Society must not appoint a person to be a manager under subsection (1) unless:
- (a) the person holds a current unrestricted practising certificate or a current interstate practising certificate that corresponds to an unrestricted practising certificate; and
 - (b) the terms and conditions of the appointment of the person, including the remuneration of the person as manager, have been agreed to between the Law Society and the person.

101D Manager employer of all persons who work in legal practitioner's practice

On the appointment of a manager of the practice of a legal practitioner:

- (a) the manager is to be taken to be the employer of each person employed by the legal practitioner in respect of the practice; and
- (b) a person (including a legal practitioner) who is employed by the legal practitioner in respect of the practice may not act in respect of the practice otherwise than as an employee of the manager.

101E Powers of manager

- (1) Subject to this section, a manager of the practice of a legal practitioner may:
- (a) act as a legal practitioner on behalf of the existing clients of the practice;
 - (b) accept instructions from, and act as a legal practitioner on behalf of, new clients;
 - (c) dispose of and otherwise deal with any property in relation to the legal practitioner;
 - (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the practice;
 - (e) incur expenses that are reasonably related to the conduct of the practice; and
 - (f) do all things necessary and convenient to be done for or in connection with exercising a power specified in paragraph (a) to (e) inclusive.

- (2) A manager must exercise his or her powers in a manner that is in accordance with the terms and conditions of his or her appointment.
- (3) A manager must not exercise his or her powers in relation to the affairs of a client of the practice unless the client consents to the manager doing so.

101F Acts of manager to be taken to be acts of legal practitioner

- (1) An act of a manager of the practice of a legal practitioner is, for the purposes of any proceeding or transaction that relies on the act, to be taken to have been done by the legal practitioner.
- (2) Subsection (1) does not impose any personal liability in relation to an act done by the manager of a legal practitioner's practice on the legal practitioner.

101G Management continues under receivership

- (1) If a manager is appointed to manage the practice of a legal practitioner and, after the appointment of the manager, a receiver is appointed under Part IX in respect of a legal practitioner's property, the manager may continue to exercise his or her powers under this Part in respect of the practice.
- (2) The manager must comply with the lawful directions given by the receiver in connection with the conduct of the practice.

101H Manager to report to Law Society

- (1) A manager must report to the Law Society on the management of the practice he or she is managing:
 - (a) at the times fixed by the manager's instrument of appointment; and
 - (b) as otherwise requested by the Law Society.
- (2) A report under subsection (1) is to include the information that the Law Society specifies is to be included in the report.
- (3) When, on the termination of the management of the practice of a legal practice by a manager, the manager gives his or her final report to the Law Society, the manager must at the same time give to the Law Society a copy of all of the records of the manager relating to the management of the practice.

101J Accounts of practice under management

- (1) A manager must maintain the accounts and records of the practice that he or she manages:
 - (a) separately from the management of the practice before the appointment of the manager;
 - (b) separately from any other practice that the manager is managing; and
 - (c) in the manner prescribed by the Regulations.
- (2) In prescribing the manner in which the manager must maintain the accounts and other records of the practice, the Regulations may prescribe the manner in which the accounts and records are to be kept in relation to the income accrued and expenses incurred by the manager.
- (3) The Regulations may also prescribe the purposes for which the manager may expend the income of the practice.

101K Payment of money held by manager on termination of management of practice

On the practice of a legal practitioner ceasing to be under management, money held by the manager of the practice in connection with the practice, but after payment by or to the manager of all lawful expenses and costs of the practice and the management of the practice, is the property of the legal practitioner.

101L Manager may be reimbursed for damages

If a person recovers damages or costs against a manager, or an employee or agent of a manager, for an act or omission done in good faith for the purpose of managing the practice of a legal practitioner in accordance with this Part and the manager's instrument of appointment, the Law Society must reimburse the manager for the amount of those damages or costs.

101M Payment of expenses of manager

- (1) If a manager incurs expenses in managing the practice of a legal practitioner that are not able to be paid to the manager out of the receipts of the practice, the Law Society must pay to the manager an amount equal to the amount of those expenses.

- (2) If the Law Society pays an amount to a manager under subsection (1), the Law Society may recover the amount from the legal practitioner as a debt due and owing to the Law Society by the legal practitioner.
- (3) An amount recovered by the Law Society under subsection (2) is to be paid into the Fidelity Fund.

101N Protection of Law Society and manager from liability

Neither a person who is or was the manager of the practice of a legal practitioner nor the Law Society is liable for any loss incurred by the legal practitioner as a result of an act done or omitted to be done by the manager or Law Society in good faith when exercising or purporting to exercise a power, or performing or purporting to perform a function, under this Act or the instrument of appointment of the manager for the purpose of conducting the practice.

Part IX Appointment of receivers

102 Interpretation

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

bank and **bank account** have the same meaning as in Part VII.

legal practitioner means:

- (a) a local legal practitioner who holds an unrestricted practising certificate, other than:
 - (i) a Counsel;
 - (ii) the Solicitor-General of the Northern Territory;
 - (iii) the Director of Public Prosecutions;
 - (iv) the Director of Legal Aid; or
 - (v) a person acting in the name of the Solicitor for the Northern Territory;
- (b) an interstate legal practitioner who has established a practice in the Territory and who holds a current interstate practising certificate that corresponds to an unrestricted practising certificate, other than an interstate legal practitioner who is entitled to practise only as a barrister and independently of another legal practitioner;

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

103 Appointment of receiver

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

- (iii) the cancellation or suspension of an unrestricted practising certificate issued to a legal practitioner; or
- (iv) a legal practitioner ceasing, for any other reason, to practise as a legal practitioner,

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

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

- (2) Where the Court makes an order under section 52 that the name of a legal practitioner be struck off the Roll of Legal Practitioners or the Court or the Complaints Committee makes an order under Part VI that the right of a legal practitioner to practise be suspended, the Court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the legal practitioner or, if the legal practitioner carried on practice in partnership with other legal practitioners, of the partnership.
- (3) An application for an order under either subsection (1) or (2) shall not be made except by the Master.
- (4) The Court may give directions as it thinks fit with respect to the person or persons on whom, and the manner in which, an application for an order under subsection (1) and a copy of an order made under subsection (1) or (2) are to be served.

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

- (1) A receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership may:
 - (a) take possession of all books, accounts and other documents relating to trust moneys of the legal practitioner or partnership together with all cash representing trust money held by the legal practitioner or partnership;
 - (b) take possession of all trust property of the legal practitioner or partnership;

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

Penalty: 50 penalty units.

105 Notice to bank

- (1) A receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership may, by instrument in writing:
 - (a) give to the manager, or other person in charge, of the bank at which the legal practitioner or partnership maintains a trust bank account in accordance with Division 3 of Part VII notice of his or her appointment; and
 - (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the trust bank account.
- (2) Where a receiver of the trust property of a legal practitioner or of a partnership has reasonable grounds for believing that there is, in a bank account maintained by the legal practitioner or a member of the partnership, whether in his or her own name or any other name, a credit arising from the payment into that account of moneys received for or on behalf of any person by a legal practitioner or arising from the payment into the bank account of moneys paid out, otherwise than in accordance with the directions of the person or persons on whose behalf the moneys were held, from a trust bank account maintained by the legal practitioner in accordance with Division 3 of Part VII, the receiver may, by instrument in writing:

- (a) give to the manager, or other person in charge, of the bank at which the account is maintained notice of his or her appointment; and
 - (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the bank account.
- (3) A copy of an instrument given by a receiver under this section shall, except where the receiver has been appointed after the death of a legal practitioner, be delivered to the legal practitioner.
- (4) The receiver may withdraw all the moneys in an account referred to in this section, or from time to time withdraw any of such moneys, and pay them into a trust bank account opened for the purpose and may operate on and otherwise deal with the account in accordance with directions given under section 112.

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

- (1) The Court may, on application by a receiver of the trust property of a legal practitioner, by order direct that the legal practitioner, or a person to whom a requirement under section 104(1)(c) has been delivered, appear before the Court for examination in relation to the trust moneys and trust property of the legal practitioner.
- (2) On an examination under this section, the receiver and the legal practitioner or other person are each entitled to be represented by a legal practitioner.
- (3) The examination of a legal practitioner or other person under this section shall be conducted on oath or affirmation.
- (4) On an examination under this section, the legal practitioner or other person shall answer all questions that the Court allows to be put to him or her.
- (5) On an examination under this section, a legal practitioner or other person is not excused from answering a question on the ground that the answer might tend to incriminate the legal practitioner, but the answer is not admissible against him or her in any criminal proceedings other than:
 - (a) proceedings for an offence arising out of the falsity of the answer; or
 - (b) proceedings under this Act.

107 Power of Court to order delivery of trust property to receiver

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

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

- (1) Where:
 - (a) a receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership has been appointed under this Part; and
 - (b) the receiver has reason to believe that another person is under an obligation or will, at some future date, be under an obligation to deliver to the legal practitioner or to the partnership personal property to be received by the legal practitioner or the partnership on behalf of some other person,the receiver may, by notice in writing given to the first-mentioned person, require that person to deliver the personal property to the receiver.
- (2) Where:
 - (a) a person has knowledge of the appointment of a receiver of the trust property of a legal practitioner or of legal practitioners practising in partnership; and
 - (b) that person is under an obligation to deliver personal property to the legal practitioner or to the partnership to be received by the legal practitioner or the partnership on behalf of some other person,that first-mentioned person may deliver the personal property to the receiver.
- (3) A document signed by the receiver of the trust property of a legal practitioner or legal practitioners practising in partnership acknowledging the receipt of personal property delivered to him or

her in accordance with either subsection (1) or (2) is as valid and effectual as if it had been given by the legal practitioner or the legal practitioners practising in partnership.

- (4) Personal property delivered to a receiver in accordance with this section shall be dealt with and disposed of by the receiver as if it were trust property of which he or she has taken possession under this Part.

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

- (1) Where:

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

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

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

110 Liens for costs on property held by receiver

- (1) Where:

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

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

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

111 Receiver to report to Court

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

112 Power of Court to give directions

Subject to section 113, where:

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

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

113 Unclaimed money

- (1) Where it appears to the Court that:

- (a) a person is entitled to moneys or trust property held by a receiver; and
- (b) that person cannot be found,

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

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

114 Termination of receivership

- (1) Where, for any reason, a receiver appointed under this Part is unable to continue to perform his or her functions as receiver, the Court may by order terminate his or her appointment and appoint another person to be receiver in his place.

- (2) The Court may, before making an order under subsection (1), require the receiver to submit a full report of his or her conduct of the receivership.
- (3) Where a receiver appointed under this Part has:
 - (a) complied with the directions of the Court;
 - (b) filed with the Master accounts of all moneys received or paid by him in his or her capacity as receiver; and
 - (c) filed with the Master a report showing the manner in which trust property (other than money) received by him or her has been disposed of,the Court, may, by order, terminate the appointment of the receiver.
- (4) The Master shall cause a copy of an order made under subsection (3) together with copies of the accounts and reports filed by a receiver to be delivered to the legal practitioner or the legal practitioners practising in partnership in respect of whose trust property the receiver was appointed.
- (5) Where the Court makes an order under subsection (3) the Court may give directions with respect to the disposal by the receiver of any books, accounts or other documents that have come into his or her possession in the course of the receivership.

115 Remuneration of receiver

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

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

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

117 Destroying or concealing records

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

Penalty: 100 penalty units.

118 Reimbursement of receiver

The Master may direct that a receiver appointed under this Part be paid out of the Fidelity Fund an amount equal to the amount of any liability incurred by the receiver for costs, charges, expenses or damages for any act or omission done or made in good faith by the receiver, his or her servants or agents and in the execution or purported execution of powers conferred, or duties imposed, on the receiver by or under this Part.

Part X Costs

Division 1 Definitions

118A Definitions

In this Part, unless the contrary intention appears:

conditional costs agreement means an agreement made under section 129A.

costs agreement means an agreement made under section 129.

legal practitioner means:

- (a) a local legal practitioner who holds an unrestricted practising certificate;
- (b) a local legal practitioner who holds a restricted practising certificate;

- (c) an interstate legal practitioner, who has established a practice in the Territory and who holds a current interstate practising certificate that corresponds to an unrestricted practising certificate, other than an interstate legal practitioner who is entitled to practise only as a barrister and independently of another legal practitioner;
- (d) a locally registered foreign lawyer; or
- (e) an organisation referred to in section 22(5).

premium means a premium on costs within the meaning of section 129B.

Division 2 Disclosure of costs

118B Costs to be disclosed

- (1) As soon as practicable after a legal practitioner accepts instructions to undertake work of a professional nature for a person, the legal practitioner must provide the person with a written statement of the costs of the work to be undertaken.
- (2) The written statement must contain the following:
 - (a) the basis on which the costs, including disbursements, will be calculated and whether the costs will be calculated in accordance with a fee scale prescribed under a law in force in the Territory;
 - (b) details of proposed billing intervals;
 - (c) a statement informing the person of his or her rights under section 120 and of any other rights to dispute a statement of costs and disbursement (including those rights agreed between the legal practitioner and the person) and any other processes that are available to the person to have a statement of costs and disbursements reviewed;
 - (d) if the work to be undertaken could involve litigation – details of the variables in and costs of the litigation (based on a successful and unsuccessful outcome) and details of party-party costs that may be payable in addition to the costs otherwise payable by the person.
- (3) A legal practitioner must, while he or she is undertaking work of a professional nature for a person, ensure that the person is regularly informed of the costs and disbursements payable by the person for the work.

- (4) A legal practitioner who undertakes work of a professional nature for a person must, if money or a benefit may be paid to the person as a result of an offer of settlement, inform the person of the minimum amount or benefit that the person will receive if the matter is settled in accordance with the offer.
- (5) This section does not apply if:
 - (a) the costs are less than the prescribed amount;
 - (b) the person for whom the work is undertaken is:
 - (i) the Territory or the Commonwealth of Australia or an authority of the Territory or the Commonwealth; or
 - (ii) a prescribed person;
 - (c) the person for whom the work is undertaken is a client of the legal practitioner or the legal practitioner's firm and the person has received a written statement of costs under this section within the previous 12 months;
 - (d) it is not practical, in the circumstances of the matter, for the legal practitioner to comply with this section;
 - (e) the legal practitioner can not reasonably comply with this section due to the urgency of the matter; or
 - (f) the legal practitioner is a Counsel exempted (including by an exemption subject to conditions, limitations or qualifications) from compliance with this section by the Regulations.

Division 3 Recovery of costs

119 Costs and disbursements not recoverable until statement delivered

- (1) Except in a case to which section 129 applies, this section has effect with respect to proceedings by a legal practitioner to recover costs or disbursements for or in respect of work of a professional nature.
- (2) A legal practitioner may not commence proceedings unless he or she has delivered to the party to be charged:
 - (a) an itemized statement of the costs or disbursements; or
 - (b) a statement of the amount claimed in respect thereof as a lump sum,

being (in either case) a statement signed in accordance with subsection (7).

- (3) A statement referred to in subsection (2) may be an interim statement covering part only of the work which the legal practitioner has been retained or employed to do.
- (4) Where a legal practitioner has delivered an itemised statement of costs or disbursements in the first instance, he or she may commence proceedings for their recovery at any time after the expiry of one month after the statement was delivered.
- (5) Where a legal practitioner has in the first instance delivered a statement in lump sum form:
 - (a) he or she may not commence proceedings until the expiry of one month after its delivery, and the person to be charged may at any time during that month request the legal practitioner for an itemized statement;
 - (b) if during the month after delivery of the lump sum statement an itemized statement is requested, he or she may not commence proceedings until the expiry of one month after he or she has delivered that statement, but is not then bound in any proceedings by any amount or matter in the lump sum statement; and
 - (c) if during the month after delivery of the lump sum statement an itemized statement is not requested, he or she may commence proceedings at any time thereafter, but the court may on the application of the party to be charged stay those proceedings until the expiry of one month after the practitioner has delivered an itemized statement.
- (6) Notwithstanding anything in subsection (4) or (5), where the Court is satisfied on the application of a legal practitioner that there are reasonable grounds for believing that a person to whom a statement has been delivered for the purposes of this section is about to leave the Territory, the Court may make an order authorizing the practitioner to commence proceedings at any time after delivery of the statement.
- (7) A statement delivered for the purposes of this section must be signed by the legal practitioner or, if the costs or disbursements are due to a firm, by a partner of the firm in either his or her own name or that of the firm.
- (8) Where it is proved that a statement referred to in subsection (2) was signed in accordance with subsection (7) and delivered in accordance with section 140, it is not necessary for the legal

practitioner to prove the contents of the statement, and it shall be presumed unless the contrary is shown that the statement complies with this section.

120 Taxation of costs and disbursements on application to Master

- (1) A person to whom an itemized statement of costs or disbursements is delivered for the purposes of section 119 may:

- (a) within one month after the delivery of the statement; or
- (b) within such further time as the Master allows,

give notice to the Master and to the legal practitioner by whom the statement was delivered that the person wishes to have the amount payable by him or her determined by taxation.

- (2) Notwithstanding subsection (1) a person is not entitled to give notice under that subsection after judgment has been entered in proceedings for the recovery of the costs or disbursements, or any part of the costs or disbursements, specified in the statement.

- (2A) A person is not entitled to give notice under subsection (1) to have the amount of costs payable by him or her under a conditional costs agreement determined by taxation unless the conditional costs agreement provides for the payment of a premium on the costs payable under the agreement.

- (3) Subsection (1) applies whether or not the costs or disbursements to which a statement relates have been paid.

- (3A) A statement covering part only of the work which a legal practitioner has been retained or employed to perform may, notwithstanding that it has been already taxed pursuant to a notice under subsection (1), be taxed as part of the taxation pursuant to such a notice of a statement covering the whole of the work.

- (4) The Master shall not allow further time for the giving of notice under subsection (1) unless he or she is satisfied that it was not practicable for notice to be given within one month after the delivery of the statement.

121 Form of notice, &c.

- (1) A notice under section 120(1) shall be in writing and shall be accompanied by the statement to be taxed and a copy of the statement.

- (2) Where notice is given to the Master under section 120(1), he or she shall fix a time and place for the taxation and shall give notice of the time and place so fixed to the person requesting the taxation and to the legal practitioner concerned.

122 Taxation in absence of party

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

123 Matters to be considered on taxation

- (1) The Master shall, in assessing the proper sum to be charged for doing any act in respect of which no charge is provided for in a scale of costs prescribed by or under a law in force in the Territory, allow such sum as is fair and reasonable having regard to all the circumstances of the case.
- (2) In determining what sum is fair and reasonable for the purposes of subsection (1), the Master shall take into account the amount, if any, from time to time recommended by the Law Society as the appropriate charge for the doing of that act.
- (3) The Master shall not reduce the amount specified in a statement in respect of a disbursement unless he or she is satisfied that the amount of the disbursement is unreasonable.
- (4) Where a legal practitioner has, before delivering an itemized statement for the purposes of section 119, delivered a statement of the amount claimed in respect of the costs or disbursements in question as a lump sum, the practitioner is not on taxation bound by any amount or matter in the lump sum statement.

124 Costs of taxation

- (1) Where the amount claimed in a statement is reduced on taxation by a sixth part or more, the legal practitioner who delivered the statement is liable to pay to the person to whom the statement was delivered his or her costs of the taxation.

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

125 Certificate of taxation

- (1) On the taxation of a statement under this Part, the Master shall certify in writing the amount (if any) that, having regard to the result of the taxation and the amount payable under section 124 is, in his or her opinion, due to the legal practitioner who delivered the statement or, if the legal practitioner has received payment of the amount specified in the statement, the amount due by the legal practitioner.
- (2) The Master shall deliver a copy of his or her certificate under subsection (1) to each of the persons who appeared, or was represented, on the taxation.
- (3) In an action by a legal practitioner for the recovery of any amount as costs, a certificate by the Master given under subsection (1) is conclusive with respect to the amount due to the legal practitioner.
- (4) A reference in either subsections (2) or (3) to a certificate given under subsection (1) includes a reference to such a certificate as amended under section 126(3).

126 Review of taxation

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

127 Stay of proceedings

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

128 Amount due by legal practitioner recoverable as a debt

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

Division 4 Agreement as to costs

129 Costs agreements

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

ascertainable in accordance with, the agreement.

129A Conditional costs agreements

- (1) A legal practitioner may make an agreement with a person that the amount of costs (excluding disbursements) payable, or to be payable, by the person to the legal practitioner for work of a professional nature already undertaken, or to be undertaken, for the person by the legal practitioner:
 - (a) is to be the amount specified in, or ascertainable in accordance with, the agreement; and
 - (b) is contingent on the successful outcome of the matter to which the work relates.
- (2) Subject to subsection (3), a conditional costs agreement may relate to any proceedings in a court or tribunal.
- (3) A conditional costs agreement cannot relate to:
 - (a) criminal proceedings;
 - (b) proceedings under the *Family Law Act 1975* of the Commonwealth; or
 - (c) prescribed proceedings.

129B Payment of premium under conditional costs agreement

- (1) A conditional costs agreement may provide for the payment of a premium on the costs payable under the agreement in addition to the amount payable as costs.
- (2) The premium:
 - (a) is to be a specified percentage of the costs, not exceeding the prescribed percentage of the costs (if any); and
 - (b) is to be identified in the agreement separately from the amount of costs payable.
- (3) If a conditional costs agreement provides for the payment of a premium referred to in subsection (1) and the costs payable under the agreement are taxed under Division 2, the premium is the relevant percentage of the amount of costs determined by taxation.
- (4) For the purposes of subsection (2), the Regulations may prescribe different percentages for different circumstances.

129C Costs not to be calculated on amount recovered in proceedings

- (1) A legal practitioner must not enter into a conditional costs agreement that provides for the amount of costs payable under the agreement to be determined as a proportion of, or to vary according to, the amount recovered in the proceedings to which the agreement relates.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply to a conditional costs agreement that provides for the amount of costs payable under the agreement to be determined or ascertained in accordance with a scale of costs specified in the agreement.

129D Legal practitioner must provide estimate of costs before agreement made

Before a legal practitioner and a person enter into a conditional costs agreement, the legal practitioner must give to the person a written estimate of the amount of costs that will be payable by the person to the legal practitioner on the successful outcome of the matter to which the agreement relates.

129E Form of conditional costs agreement

A conditional costs agreement must:

- (a) be in writing;
- (b) specify the circumstances constituting the successful outcome of the matter;
- (c) disclose the legal practitioner's usual fees for the work to which the agreement relates;
- (d) if the agreement provides for the payment of a premium in accordance with section 129B – specify the percentage and the reasons why the premium is warranted;
- (e) if the work to which the agreement relates involves legal proceedings:
 - (i) inform the person of his or her exposure to party-party costs if the proceedings are unsuccessful; and
 - (ii) include an explanation of the risks involved in the proceedings;

- (f) inform the person that he or she may obtain independent legal advice before entering into the agreement;
- (g) inform the person of his or her rights under the Act to have the agreement reviewed and set aside if it is not fair or reasonable; and
- (h) be signed by the person.

129F General provisions apply to conditional costs agreements

- (1) A conditional costs agreement is not enforceable unless it complies with section 129E.
- (2) A conditional costs agreement that complies with section 129E is evidence of the terms of the agreement.
- (3) A legal practitioner who is a party to a conditional costs agreement is not entitled in respect of work to which the agreement relates to receive an amount for his or her costs (including disbursements) greater than the amount specified in, or ascertainable in accordance with, the agreement.

129G Provision of agreement that is inconsistent with Division is void

If a provision of a costs agreement or conditional costs agreement is inconsistent with a provision of this Division, the provision of the agreement is void to the extent of the inconsistency.

129H Review of agreements

- (1) A party to a costs agreement or conditional costs agreement may apply to:
 - (a) the Law Society; or
 - (b) the Court,for it to review the agreement under this section.
- (2) An application under subsection (1)(a) must be in the prescribed form and must comply with any requirements specified in the Regulations.
- (3) An application under subsection (1)(b) must be in accordance with the rules of court.

- (4) If the Law Society or the Court is satisfied that the agreement is not fair and reasonable, it may:
 - (a) order that the amount payable under the agreement be reduced to an amount specified in the order; or
 - (b) declare that the agreement is not binding on the parties to the agreement.
- (5) If the Law Society or the Court orders that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order were specified in the agreement as the amount payable under the agreement.
- (6) If the Law Society or the Court declares that an agreement is not binding on the parties to the agreement:
 - (a) it may make any other orders as it thinks necessary to restore the parties to the position in which they would have been if the agreement had not been made; and
 - (b) the provisions of this Part (other than sections 129 and 129A) apply as if the agreement had not been made.
- (7) Except by leave, a person is not entitled to make an application under this section in respect of an agreement after the institution of proceedings for the recovery from that person of the amount payable under the agreement.

129I Appeal

- (1) If a person who is a party to a costs agreement or conditional costs agreement is aggrieved by a decision of the Law Society under section 129H in respect of the agreement, he or she may appeal to the Court under this section.
- (2) A person must, as soon as practicable after lodging an appeal under this section, give notice of the appeal to the other party to the agreement and to the Law Society.
- (3) The Law Society must, as soon as practicable after being given notice under subsection (2), lodge with the Court all documents it has in respect of the review conducted by it under section 129H.
- (4) The Law Society is not a party to an appeal under this section but it may apply to the Court to be joined as a party to the proceedings.
- (5) An appeal under this section is to be by way of a re-hearing.

- (6) If the Court is satisfied that the agreement is not fair and reasonable, it may:
 - (a) order that the amount payable under the agreement be reduced to an amount specified in the order; or
 - (b) declare that the agreement is not binding on the parties to the agreement.
- (7) If the Court orders that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order were specified in the agreement as the amount payable under the agreement.
- (8) If the Court declares that an agreement is not binding on the parties to the agreement:
 - (a) it may make any other orders as it thinks necessary to restore the parties to the position in which they would have been if the agreement had not been made; and
 - (b) the provisions of this Part (other than sections 129 and 129A) apply as if the agreement had not been made.
- (9) Except by leave, a person is not entitled to make an application under this section in respect of an agreement after the institution of proceedings for the recovery from that person of the amount payable under the agreement.

130 Failure to comply with certain provisions not an offence

Despite section 69A of the *Summary Offences Act*, a legal practitioner who contravenes or fails to comply with section 118B, 129A(3), 129B(2)(a), 129D or 129E is not guilty of an offence.

Part XA Advertising services for personal injury claims

130AA Application

- (1) This Part does not apply in relation to the following advertisements and publications:
 - (a) an advertisement or publication by a legal practitioner relating to:
 - (i) making a claim for compensation or damages under an Act or other law for a personal injury; or

- (ii) using the services of a legal practitioner in connection with making such a claim,

that was published before the commencement of section 11 of the *Legal Practitioners Amendment (Costs and Advertising) Act 2003*;

- (b) an advertisement or publication made for the purpose of educating persons about the content of the law or their rights, liabilities and duties under the law;
 - (c) an advertisement or publication made for the purpose of identifying persons who are entitled to become parties to a class action specified in the advertisement or publication;
 - (d) an advertisement or publication made under a statutory duty, function or power;
 - (e) an advertisement or publication made by the Northern Territory Legal Aid Commission in relation to the Legal Aid Contingency Fund established by section 44 of the *Legal Aid Act*;
 - (f) an advertisement or publication made for the purpose of confirming the existence of a contractual relationship between a legal practitioner and another person or an organisation whereby the legal practitioner is to provide legal services for personal injury claims;
 - (g) an advertisement or publication exempted from the application of this Part by the Regulations.
- (2) This Part does not apply in relation to statements about making a claim for compensation or damages under an Act or other law for a personal injury, or using the services of a legal practitioner in connection with making such a claim, that are made by:
- (a) a person holding an office (including a person holding an office for a place outside the Territory) in the course of carrying out the duties or functions of the office; or
 - (b) a prescribed person.

130AB Definitions

In this Part, unless the contrary intention appears:

employment includes self-employment.

hospital includes a nursing home, community health facility, medical centre, physiotherapist's rooms, dentist's surgery, hostel and any other premises occupied or used for or in connection with:

- (a) receiving, examining, caring for or treating a person who is injured, sick or mentally ill; or
- (b) providing a service for maintaining, improving or restoring a person's health and wellbeing.

incident includes an accident, circumstance, act or omission.

legal practitioner means:

- (a) a local legal practitioner who holds an unrestricted practising certificate;
- (b) a local legal practitioner who holds a restricted practising certificate;
- (c) an interstate legal practitioner, who has established a practice in the Territory and who holds a current interstate practising certificate that corresponds to an unrestricted practising certificate, other than an interstate legal practitioner who is entitled to practise only as a barrister and independently of another legal practitioner;
- (d) a locally registered foreign lawyer; or
- (e) an organisation referred to in section 22(5).

personal injury has the same meaning as in the *Personal Injuries (Liabilities and Damages) Act*.

potential claimant means:

- (a) a person who suffers or may suffer a personal injury arising out of an incident; or
- (b) another person who has or may have a claim in relation to a person referred to in paragraph (a).

publish means:

- (a) to publish in an edition of a newspaper, magazine, journal, periodical or directory;
- (b) to disseminate by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast

or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance;

- (c) to broadcast by radio or for television;
- (d) to display on an internet website or otherwise publicly disseminate by means of the internet;
- (e) to publicly exhibit in, on, over or under a building, vehicle or place or in the air in view of a person in or on any street or public place;
- (f) to display on a document gratuitously sent or delivered to a person or thrown or left on a vehicle or on premises occupied by a person; or
- (g) to display on a document provided to a person as a receipt or record for a transaction.

reward includes:

- (a) a bonus, commission, cash payment, deduction, discount, rebate, remission or other valuable consideration; and
- (b) employment, or an agreement to employ, in any capacity.

statement includes a statement that includes matters specified in section 130AC(1)(a) and (b) as well as other matters.

130AC Restriction on advertising of legal services in connection with personal injury claims

- (1) A legal practitioner must not (whether himself or herself or by a person acting for him or her) publish a statement that may reasonably be thought to be intended or likely to encourage or induce a person:
 - (a) to make a claim for compensation or damages under an Act or other law for a personal injury; and
 - (b) to use the services of a legal practitioner or a legal practice named in the statement in connection with making such a claim.

Penalty: 50 penalty units.

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- (2) Subsection (1) does not apply if a legal practitioner or person acting for a legal practitioner advertises legal services relating to making claims for personal injuries by a statement published in accordance with section 130AD that states only:
- (a) the name and contact details of the legal practitioner, of the legal practitioner's practice or of another legal practitioner or another legal practitioner's practice by whom the legal practitioner or person is employed or engaged; and
 - (b) details as to any area of speciality of a legal practitioner or legal practice referred to in paragraph (a).
- (3) Subsection (1) does not apply if the statement is published in accordance with the professional conduct rules.

130AD Permitted methods of advertising

- (1) A statement referred to in section 130AC(2) may be published in any of the following ways:
- (a) publication in an edition of a newspaper, magazine, journal, periodical or directory;
 - (b) publication on an internet website by publication of an electronic version of an edition of a newspaper, magazine, journal, periodical or directory in which the statement is published on the website, but only if the statement is reproduced as published in the edition of the newspaper, magazine, journal, periodical or directory and the newspaper, magazine, journal, periodical or directory is published independently of the legal practitioner;
 - (c) publication on an internet website as part of the contents of a directory or database that is published or maintained independently of the legal practitioner;
 - (d) public exhibition of the statement in, on, over or under a building, vehicle or place or in the air in view of a person on a street or other public place, other than exhibition of the statement in or on a hospital;
 - (e) display of the statement on a printed document gratuitously sent or delivered to any person or thrown or left on a vehicle or on premises occupied by a person, other than display on a printed document gratuitously sent or delivered to a hospital, left in a hospital or left on a vehicle in the vicinity of a hospital;
 - (f) display of the statement on a printed document provided to a person as a receipt or record in relation to a transaction.

- (2) An edition of a newspaper, magazine, journal, periodical or directory, or a directory or database published on an internet website, is published or maintained independently of a legal practitioner only if:
- (a) it is not published or maintained by the legal practitioner, another legal practitioner in the same practice as the legal practitioner or an employee employed or engaged by the legal practitioner or that legal practice; and
 - (b) it is published or maintained by a person in the ordinary course of conducting the person's business or affairs.

130AE Prohibition against touting for potential claimants

- (1) A person who is at the scene of an incident, or at a hospital after an incident, at which another person allegedly suffers or suffered a personal injury must not solicit or induce a potential claimant involved in the incident to make a claim.

Penalty: 50 penalty units.

- (2) The following are examples of persons referred to in subsection (1) who might solicit or induce a potential claimant to make a claim:
- (a) a person who, for the purposes of the person's employment or business, attends or attended the scene of an incident, or at a hospital after an incident, at or from which a person allegedly suffered a personal injury, including:
 - (i) a member of the Police Force;
 - (ii) a medical practitioner;
 - (iii) a nurse;
 - (iv) a hospital worker;
 - (v) an ambulance officer;
 - (vi) a member of the Northern Territory Fire and Rescue Service; and
 - (vii) a tow truck operator;
 - (b) any other person at or near the scene of an incident at or from which a person allegedly suffers a personal injury.

- (3) A person who, for the purposes of the person's employment:
- (a) obtains information about an incident at or from which a person allegedly suffered a personal injury; or
 - (b) has contact with a potential claimant that substantially arises because of an incident at or from which a person allegedly suffered a personal injury,

must not solicit or induce a potential claimant involved in the incident to make a claim.

Penalty: 50 penalty units.

- (5) A person does not solicit or induce a potential claimant involved in an incident at which a person allegedly suffered a personal injury to make a claim if:
- (a) the person discloses the name or address of a person involved in an incident where:
 - (i) the person is a client of a legal practitioner for the purpose of making a claim or exercising a legal right arising out of the incident;
 - (ii) it is reasonable for the person to think that he or she may have a claim or legal right referred to in subparagraph (i); and
 - (iii) the disclosure is for the purpose of making the claim or exercising the legal right; and
 - (b) the disclosure is not likely to result in a potential claimant involved in the incident being solicited or induced to make a claim.

130AF Prohibition against paying for touting for potential claimants

- (1) A person must not:
- (a) reward another person for soliciting or inducing a potential claimant to make a claim; or
 - (b) seek a reward for soliciting or inducing a potential claimant to make a claim.

Penalty: 50 penalty units.

-
- (2) A person does not commit an offence against subsection (1) only because the person:
- (a) if the person is not a legal practitioner or a person acting for a legal practitioner – advertises or advertised, in the ordinary course of conducting the person's business as an advertiser or publisher, legal services about claims; or
 - (b) if the person is a legal practitioner or a person acting for a legal practitioner – charges or charged a potential claimant a fee for legal services provided to the potential claimant as part of making a claim.

Part XI Offences by unqualified persons

130A Definition

In this Part, ***legal practitioner*** means a local legal practitioner or an interstate legal practitioner.

131 Unqualified persons not to hold themselves out to be qualified etc.

- (1) Except in accordance with Part XII, a natural person other than a legal practitioner must not:
- (a) hold himself or herself out to be a legal practitioner;
 - (b) hold himself or herself out to be qualified to perform any of the functions of a legal practitioner unless the person is permitted by or under a law of the Territory to perform the function for reward;
 - (c) permit his or her name to be used so as to suggest that he or she is a legal practitioner; or
 - (d) permit his or her name to be used so as to suggest that he or she is qualified to perform any of the functions of a legal practitioner unless the person is permitted by or under a law of the Territory to perform the function for reward.

Penalty: 500 penalty units.

- (2) A body corporate, other than an incorporated legal practice, must not do a thing, or act in a manner, that is calculated to imply that the body corporate is qualified to act as a legal practitioner.

Penalty: 500 penalty units.

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- (3) A director, officer or employee of a body corporate, other than an incorporated legal practice, must not:

(a) do a thing or act in a manner; or

(b) cause the body corporate to do a thing or act in a manner,

that is calculated to imply that the body corporate is qualified to act as a legal practitioner.

Penalty: 20 penalty units.

- (4) If a person contravenes or fails to comply with this section:

(a) no action lies for the recovery of costs in respect of anything done in the course of the contravention or failure to comply; and

(b) where costs have been paid to the person in respect of anything done in the course of the contravention or failure to comply – the amount paid may be recovered as a debt owed by the person to the person who paid them.

132 Preparation of certain documents by unqualified persons

- (1) Subject to subsection (2), a person other than a legal practitioner (including a legal practitioner who is an officer or employee of an incorporated legal practice) shall not, for reward:

(a) draw or cause to be drawn by an employee a will or other testamentary instrument; or

(b) draw or cause to be drawn by an employee an instrument creating or regulating rights between persons or relating to real or personal property or to a legal proceeding.

Penalty: 500 penalty units.

- (2) It is not an offence against subsection (1):

(a) for a public officer to draw an instrument in the course of his or her employment;

(aa) if the person is permitted under Part XII to draw, or cause to be drawn, the instrument;

(b) for a person to engross an instrument in the course of his or her employment;

(c) for a person who is employed to draw an instrument of a kind referred to in subsection (1) as part of his or her ordinary

duties to draw such an instrument if the employer of the person is a legal practitioner and the person drawing the instrument does not receive, in respect of the drawing of the instrument, any fee or reward other than his or her salary; or

- (d) if the drawing of the instrument is involved in the performance of prescribed work, or of work included in a prescribed class of work.

- (3) In this section:

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

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

public officer means:

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

133 Preparation of papers relating to application for probate

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

Penalty: 500 penalty units.

- (2) Subsection (1) does not apply to:
 - (aa) a person who is permitted under Part XII to take the instructions or prepare the papers;
 - (c) the Public Trustee within the meaning of the *Public Trustee Act*;
 - (d) a person employed in the office of the Public Trustee;
 - (e) a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act*; or

- (f) a person employed in the office of a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act*.

134 Offence against section 132 or 133 by body corporate

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

Part XIA Interstate legal practitioners and local legal practitioners

Division 1 Preliminary

134A Objects

The objects of this Part are:

- (a) to enable an interstate legal practitioner who holds a current interstate practising certificate to practise the profession of the law in the Territory without being admitted under Division 2 of Part III or holding a practising certificate under Part IV;
- (b) to recognise disciplinary action taken against a local legal practitioner by an interstate regulatory authority; and
- (c) to provide for agreements and arrangements to be made between local regulatory authorities and interstate regulatory authorities.

134B Definition

In this Part, ***condition*** includes restriction, limitation and prohibition.

134C Declaration of corresponding law

The Attorney-General may, by notice in the *Gazette*, declare a law of a State or another Territory to be a corresponding law for the purposes of this Part.

134D Operation of Part

Nothing in this Part affects the operation of the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

Division 2 Interstate legal practitioners

134E When practice established in Territory

- (1) For the purposes of this Act, an interstate legal practitioner establishes a practice in the Territory when the practitioner first offers and provides legal services to the public in the Territory.
- (2) An interstate legal practitioner is not to be taken to establish a practice in the Territory if the practitioner provides legal services in the Territory:
 - (a) to only one client; or
 - (b) that are in connection with only one transaction or a series of associated transactions.

134F Interstate practising certificates

- (1) Section 22 applies, with the necessary changes, to an interstate legal practitioner:
 - (a) as if a reference in that section to a legal practitioner were a reference to an interstate legal practitioner; and
 - (b) as if a reference in that section to a practising certificate of a specified type or class were a reference to an interstate practising certificate of a corresponding type or class.
- (2) Sections 27, 29, 30 and 35 apply, with the necessary changes, in relation to the cancellation or suspension of an interstate practising certificate as if a reference in those sections to a practising certificate were a reference to an interstate practising certificate.

134G Entitlement to practise in Territory

- (1) Subject to this Act, an interstate legal practitioner is entitled to practise the profession of the law in the Territory in accordance with the terms of the practitioner's entitlement to practise the profession of the law in his or her home state.
- (2) An interstate legal practitioner who is entitled to practise in his or her home state only as a barrister and independently of another legal practitioner may practise in the Territory only in accordance with that entitlement.

Penalty: 50 penalty units.

- (3) Subject to this section, an interstate legal practitioner:
 - (a) is entitled to practise in the Territory:
 - (i) as a barrister and solicitor;
 - (ii) as a barrister; or
 - (iii) as a solicitor; and
 - (b) has the right of audience in any court in the Territory.

134H Status, obligations and conditions

- (1) An interstate legal practitioner who practises in the Territory is an officer of the Court and is subject to the inherent jurisdiction of the Court as if he or she were a local legal practitioner.
- (2) An interstate legal practitioner, when practising in the Territory:
 - (a) must comply with this Act, any regulations made under this Act, and any other law in force in the Territory relating to legal practice;
 - (b) must comply with the professional conduct rules; and
 - (c) is subject to the conditions in respect of his or her practice imposed on him or her by a local regulatory authority or an interstate regulatory authority as a result of disciplinary action against him or her.
- (3) A local regulatory authority must not impose a condition on an interstate legal practitioner in respect of his or her practice in the Territory that is more onerous than would be imposed on a local legal practitioner in the same or similar circumstances.

134J Notification of commencing to practise in Territory

- (1) An interstate legal practitioner who commences to practise the profession of the law in the Territory must lodge a written notice with the Law Society within the time prescribed by regulations under this Act.

Penalty: 50 penalty units.

- (2) A notice lodged under this section must contain the following particulars:
- (a) the name and date of birth of the interstate legal practitioner;
 - (b) the date of admission of the interstate legal practitioner in his or her home state;
 - (c) the particulars of the interstate legal practitioner's current interstate practising certificate, the date on which the interstate practising certificate is due to expire and the date on which the interstate legal practitioner is required to renew the interstate practising certificate;
 - (d) the name and address of the firm, practising company or body of which the interstate legal practitioner is a member, director or employee, as the case may be;
 - (e) if the interstate legal practitioner practises on his or her own account, the business names under which he or she practises;
 - (f) any condition to which the interstate legal practitioner is subject in respect of his or her legal practice in his or her home state or elsewhere;
 - (g) an address in the Territory for service of documents on the interstate legal practitioner;
 - (h) whether the interstate legal practitioner has established, or intends to establish, a practice in the Territory;
 - (j) the address of the office at which the interstate legal practitioner's practice has been, or is to be, established (if applicable);
 - (k) the prescribed particulars (if any).

- (3) A notice lodged under this section is to be accompanied by:
- (a) a copy of the contract of professional indemnity insurance referred to in section 134L(4) or other evidence, satisfactory to the Law Society, that the interstate legal practitioner has professional indemnity insurance as required by or under this Act; and
 - (b) if the interstate legal practitioner has established, or intends to establish, a practice in the Territory – the required contribution to be paid to the Fidelity Fund under section 90B (if any).
- (4) For the purposes of this section, an interstate legal practitioner commences to practise the profession of the law in the Territory when the practitioner:
- (a) establishes a practice within the meaning of section 134E(1); or
 - (b) first provides legal services of a kind referred to in section 134E(2).

134K Notification of change in particulars

- (1) If an interstate legal practitioner states on the notice lodged under section 134J that he or she does not intend to establish a practice in the Territory and subsequently does so, the interstate legal practitioner must lodge a notice with the Law Society within 14 days of establishing a practice:
- (a) stating the address of the office at which the practice has been established; and
 - (b) accompanied by the required contribution to the Fidelity Fund to be paid under section 90B.
- (2) An interstate legal practitioner who practises the profession of the law in the Territory must notify the Law Society of a change in a particular notified under section 134J(2) or under subsection (1)(a), and of any subsequent change, within 14 days of the change.

134L Professional indemnity insurance

- (1) Subject to this section, an interstate legal practitioner must maintain professional indemnity insurance with respect to his or her legal practice in the Territory:
- (a) that contains at least the minimum terms and conditions contained in; and

- (b) that provides the same or a higher level of insurance cover provided by,

an arrangement entered into by the Law Society and an authorized insurer under section 35B.
- (2) The Law Society may, with the prior approval of the Attorney-General, exempt an interstate legal practitioner from compliance with subsection (1):
 - (a) indefinitely or for a specified period; or
 - (b) subject to conditions determined by the Law Society.
- (3) An interstate legal practitioner may take out and maintain professional indemnity insurance under Part IVA and, if he or she does so, is subject to that Part.
- (4) An interstate legal practitioner must give to the Law Society a copy of a contract of professional indemnity insurance entered into by the interstate legal practitioner as soon as practicable after the contract is entered into.
- (5) The penalty payable for an offence against subsection (1) is the penalty prescribed for a breach of a requirement of the Regulations that a legal practitioner take out and maintain professional indemnity insurance.

134M Trust money and Fidelity Fund

An interstate legal practitioner:

- (a) who has established a practice in the Territory; and
- (b) who is the holder of an interstate practising certificate that corresponds to an unrestricted practising certificate, other than a practitioner who is entitled to practise only as a barrister and independently of another legal practitioner,

is subject to Parts VII and VIII in respect of the practitioner's legal practice in the Territory.

Division 3 Local legal practitioners

134N Professional indemnity insurance

Unless exempted by the Law Society under the Regulations referred to in section 35B(4)(c), a local legal practitioner must take out and maintain professional indemnity insurance in the Territory that covers the provision of legal services in a participating State to

a client resident in the Territory on instructions given to the local legal practitioner in the Territory.

134P Trust money received in course of practice outside Territory

- (1) Subject to subsection (2), a local legal practitioner must deal with trust money received in the course of the practitioner's legal practice outside the Territory in accordance with Part VII as if the trust money had been received in the course of the practitioner's practice in the Territory.
- (2) Subsection (1) does not apply to trust money received by a local legal practitioner in a participating State that the practitioner is required to deal with in accordance with a corresponding law of that State.

Division 4 Discipline

134Q Complaint and investigation regarding interstate legal practitioner

- (1) A person may complain to the Law Society under Part VI about the professional conduct of an interstate legal practitioner in respect of his or her practise of the profession of the law in the Territory.
- (2) The Law Society may investigate under Part VI the professional conduct of an interstate legal practitioner in respect of his or her practise of the profession of the law in the Territory.

134R Complaint and investigation regarding local legal practitioner

- (1) A person may complain to the Law Society under Part VI about the professional conduct of a local legal practitioner in respect of his or her practise of the profession of the law in a participating State.
- (2) The Law Society may investigate under Part VI the professional conduct of a local legal practitioner in respect of his or her practise of the profession of the law in a participating State.
- (3) If a complaint or investigation referred to in this section has been dealt with and finally determined in a participating State, no further action may be taken under Part VI in relation to that complaint or investigation.

134S Referral to interstate regulatory authority

- (1) If it considers it appropriate to do so, the Law Society may refer a complaint made to it about the professional conduct of an interstate legal practitioner or a local legal practitioner to an interstate regulatory authority, to be dealt with according to the relevant corresponding law.
- (2) If it considers it appropriate to do so, the Law Society may request an interstate regulatory authority to investigate the professional conduct of an interstate legal practitioner or a local legal practitioner in accordance with the relevant corresponding law.
- (3) After a complaint has been referred or a request for an investigation has been made under this section, no further action may be taken under Part VI in relation to the subject matter of that referral or request unless the interstate regulatory authority declines to deal with the matter.
- (4) Subsection (3) does not affect the obligation to furnish information under section 134U.

134T Complaints referred by interstate regulatory authority

- (1) The Law Society may receive and consider a complaint about the professional conduct of a local legal practitioner or an interstate legal practitioner referred to it by an interstate regulatory authority whether the conduct complained of allegedly occurred in or outside the Territory.
- (2) The Law Society may investigate the professional conduct of a local legal practitioner or an interstate legal practitioner if requested to do so by an interstate regulatory authority.
- (3) The consideration of a complaint or investigation of professional conduct referred in this section is to be under and in accordance with Part VI.

134U Furnishing information in respect of disciplinary action

- (1) A local regulatory authority must, without delay, furnish information about a local legal practitioner or an interstate legal practitioner that is reasonably required by an interstate regulatory authority in connection with actual or possible disciplinary action against the practitioner.

- (2) A local regulatory authority must notify an interstate regulatory authority of a condition imposed in the Territory on an interstate legal practitioner or a local legal practitioner in respect of the practitioner's legal practice as a result of disciplinary action against the practitioner.
- (3) Subsections (1) and (2) apply despite any law relating to confidentiality or secrecy.
- (4) Nothing in this section affects an obligation or power to provide information apart from this section.

134V Local legal practitioner subject to interstate regulatory authority

- (1) A local legal practitioner, when practising the profession of the law in the Territory, must comply with conditions in respect of his or her legal practice imposed by an interstate regulatory authority as a result of disciplinary action against the local legal practitioner.
- (2) An interstate regulatory authority, to which a local legal practitioner is subject, that has the power to:
 - (a) suspend or cancel, or order the suspension or cancellation of, an interstate practising certificate; or
 - (b) suspend the right of an interstate legal practitioner to practise the profession of the law,may:
 - (c) suspend or cancel, or order the suspension or cancellation of, the practising certificate held by the local legal practitioner; or
 - (d) suspend the right of the local legal practitioner to practise the profession of the law in the Territory.
- (3) The Law Society must comply with an order of an interstate regulatory authority made under subsection (2)(c).
- (4) If the right of a local legal practitioner to practise the profession of the law in the Territory is suspended under subsection (2)(d):
 - (a) a practising certificate held by the local legal practitioner is, by force of this section, cancelled; and
 - (b) the Court may appoint a receiver under 103(2) as if the order for the suspension had been made under Part VI.

(5) An interstate regulatory authority:

- (a) to which a local legal practitioner is subject; and
- (b) that has the power under a corresponding law to order that the name of an interstate legal practitioner be struck off the roll that corresponds to the Roll of Legal Practitioners,

may order that the name of the local legal practitioner be struck off the Roll of Legal Practitioners.

(6) If an order is made under subsection (5):

- (a) the name of the local legal practitioner is to be struck off the Roll of Legal Practitioners; and

- (b) the Court may appoint a receiver under 103(2),

as if the order had been made under section 52.

Division 5 Miscellaneous

134W Local regulatory authority may exercise powers conferred by corresponding law

A local regulatory authority may exercise, in respect of a local legal practitioner or an interstate legal practitioner, a function or power conferred on it by or under a corresponding law.

134X Agreements etc. with interstate regulatory authorities

A local regulatory authority may make agreements or arrangements with an interstate regulatory authority in relation to the following matters:

- (a) the investigation of complaints;
- (b) professional indemnity insurance;
- (c) fidelity fund contributions and payments and matters relating to claims for compensation by persons who suffer pecuniary loss arising out of the defalcation of trust moneys;
- (d) trust account inspections;
- (e) the appointment of managers and receivers;
- (f) the exchange of information under section 134U.

Part XII Practice of foreign law

Division 1 Preliminary

135 Object

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

135A Definitions

In this Part, unless the contrary intention appears:

Australia includes the external Territories.

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

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

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

foreign law means the law of a place outside Australia.

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

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

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

law firm means:

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

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

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

registered:

- (a) when used in connection with a place outside Australia – means having all necessary licences, approvals, admissions, certifications or other forms of authorisation (including practising certificates) required by or under legislation for the carrying on of the practice of law in that place; or
- (b) when used in connection with the practice of law in the Territory (other than by or under this Act), means:
 - (i) admitted to practise law in the Territory under the Legal Practitioners Rules or by virtue of the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth; and
 - (ii) holding a current practising certificate under this Act.

135B Operation of Part

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

Division 2 Local registration of foreign lawyers

135C Registration requirement

- (1) A person must not practise foreign law in the Territory unless the person:
 - (a) is a locally registered foreign lawyer and practises foreign law in the Territory in accordance with this Part;

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

Penalty: 500 penalty units.

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

135D Registration notice

- (1) A foreign lawyer may lodge a written notice with the Law Society seeking registration as a foreign lawyer under this Part.
- (2) A notice under subsection (1) is to:
 - (a) state the lawyer's educational and professional qualifications;
 - (b) specify the place outside Australia in which the lawyer is registered to practise law by a specified foreign registration authority and in relation to which the lawyer wishes to practise foreign law;
 - (c) state that the lawyer is not the subject of any disciplinary proceedings in the place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration;
 - (d) state that the lawyer is not a party in any pending criminal or civil proceedings that is likely to result in disciplinary action being taken against the lawyer in the place;
 - (e) state that the lawyer's registration in the place is not cancelled or currently suspended as a result of any disciplinary action;

- (f) state that the lawyer:
 - (i) is not otherwise personally prohibited from carrying on the practice of law in the place or bound by any undertaking not to carry out the practice of law in the place; and
 - (ii) is not subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in the place;
 - (g) specify any special conditions imposed as a restriction on the practice of law by the lawyer in the place or any undertaking given by the lawyer restricting the lawyer's practice of law in the place;
 - (h) give consent to the making of inquiries of, and the exchange of information with, the home registration authority regarding the lawyer's activities in practising law in the place or otherwise regarding matters relevant to the notice;
 - (j) contain evidence that demonstrates the lawyer's intention to practise foreign law in the Territory and to establish an office or commercial legal presence in the Territory within a reasonable period after registration for that purpose; and
 - (k) state the designation to be used by the lawyer under section 135T and the address (if known) of the office to be established by the lawyer or the name and address of the firm at which the lawyer is to establish a commercial legal presence.
- (3) A notice under subsection (1) is to be accompanied by an original instrument, or a copy of an original instrument, from the home registration authority in the place specified under subsection (2)(b):
- (a) verifying the lawyer's educational and professional qualifications;
 - (b) verifying the lawyer's registration by the authority to practise law in the place and the date of registration; and
 - (c) describing anything done by the lawyer in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the lawyer's professional standing within the legal profession of that place.

- (4) The lawyer must certify in the notice under subsection (1) that the instrument accompanying the notice under subsection (3) is the original or a complete and accurate copy of the original, as the case may be.
- (5) If the foreign lawyer is, or has been in the 10 years immediately before the notice is lodged under subsection (1), registered to practise law, or has practised law, in a place outside Australia (other than the place specified under subsection (2)(b)), his or her notice under subsection (1) is to be accompanied by an affidavit specifying:
 - (a) the place;
 - (b) whether or not the lawyer is or has been the subject of any disciplinary proceedings in the place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to his or her registration or practise as a lawyer;
 - (c) whether or not the lawyer is or has been a party in any pending criminal or civil proceedings that is likely to result in disciplinary action being taken against the lawyer in the place;
 - (d) whether or not the lawyer's registration in the place has been cancelled or suspended as a result of any disciplinary action;
 - (e) whether or not the lawyer:
 - (i) is or has been personally prohibited from carrying on the practice of law in the place or bound by any undertaking not to carry out the practice of law in the place; and
 - (ii) is or has been subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in the place;
 - (f) whether or not there are or have been in the place any special conditions imposed as a restriction on the practice of law by the lawyer in the place or any undertaking given by the lawyer restricting the lawyer's practice of law in the place; and
 - (g) that the lawyer consents to the making of inquiries of, and the exchange of information with, the foreign registration authority of the place regarding the lawyer's activities in practising law in the place or otherwise regarding matters relevant to the affidavit or the notice under subsection (1).

- (6) The Law Society may require the lawyer to verify the statements in a notice under subsection (1) or an affidavit under subsection (5) by a statutory declaration or other proof acceptable to the Law Society.
- (7) If an instrument under subsection (3) or (5) is not in English, it is to be accompanied by a certified translation in English.
- (8) A notice under subsection (1) is to be accompanied by proof that, for at least the 12 month period following the lodgement of the notice, the applicant will hold the professional indemnity insurance he or she is required to hold under section 135W.
- (9) The Law Society may conduct an investigation as it thinks fit in relation to an applicant for registration under this Part.

135E Fee for registration

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

135F Entitlement to registration

- (1) A person is entitled to be registered under this Act as a foreign lawyer if:
 - (a) the person lodges the notice and other documents required to be lodged in accordance with section 135D;
 - (b) the Law Society is satisfied that the person is registered to practise law in a place outside Australia specified under section 135D(2)(b) in the notice;
 - (c) the Law Society considers that an effective system exists in the place specified under section 135D(2)(b) for the regulation of the practice of law in the place;
 - (d) the Law Society considers that the person is not, as a result of criminal, civil or disciplinary proceedings, subject to any special conditions in carrying on the practice of law in a place specified in a notice under section 135D(2)(b) or any undertakings concerning the person's practice of law in that place that would make it inappropriate to register the person;

- (e) the Law Society considers that the person is not a person whose practise of law in a place specified in an affidavit under section 135D(5) would make it inappropriate to register the person; and
 - (f) the person demonstrates an intention to practise foreign law in the Territory and to establish an office or commercial legal presence in the Territory within a reasonable period after registration for that purpose.
- (2) Residence or domicile in the Territory is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign lawyer under this Part.

135G Conditions

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

135H Notification of decision

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

135J Duration of registration and annual fee

- (1) Registration under this Part is to be taken to have come into effect on and from the day on which the notice under section 135D was lodged.
- (2) Registration remains in force, unless sooner cancelled, for one year on and from the day on which it takes effect.
- (3) Registration may be renewed by payment of an annual fee determined by the Law Society.
- (4) A person's registration may only be renewed if he or she provides to the Law Society proof that, in respect of the period to which the renewal relates, he or she will hold the professional indemnity insurance required to be held by him or her under section 135W.
- (5) Payment of the annual fee is to be made on or before a date notified in writing to the locally registered foreign lawyer by the Law Society.
- (6) The annual fee is not to be greater than the fee payable by domestic lawyers under section 32 for the issue of an unrestricted practising certificate.

135K Notification of change in particulars

- (1) A locally registered foreign lawyer who has not notified the Law Society under section 135D(2)(k) of the address of the office to be established by the lawyer, or the name and address of the firm at which the lawyer is to establish a commercial legal presence, must lodge a written notice stating those particulars within 14 days of establishing an office or a commercial legal presence.
- (2) A locally registered foreign lawyer must notify the Law Society within 14 days of a change in any of the following particulars:
 - (a) the designation used by the lawyer;
 - (b) the address of the office established by the lawyer;
 - (c) the name or address of the firm at which the lawyer maintains a commercial legal presence;
 - (d) any other prescribed particular.

135L Cancellation of registration

- (1) The Law Society may, by notice in writing to a locally registered foreign lawyer, cancel the lawyer's registration under this Part if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for cancellation, registration may be cancelled if:
 - (a) the foreign lawyer's home registration authority cancels registration of the foreign lawyer as a result of criminal, civil or disciplinary proceedings;
 - (b) the foreign lawyer fails to comply with a requirement of this Act;
 - (c) the registration of the foreign lawyer by the lawyer's home registration authority has lapsed;
 - (d) the foreign lawyer has not established an office to practise foreign law or a commercial legal presence in the Territory within a reasonable period after registration;
 - (e) the foreign lawyer fails to comply with a condition imposed on the lawyer's registration under this Part; or
 - (f) the foreign lawyer's practice of law in a place specified in a notice under section 135D(5) would make it inappropriate to permit the lawyer to remain registered as a foreign lawyer.
- (3) Registration is not to be cancelled under subsection (1) unless the foreign lawyer has been given reasonable opportunity to make written submissions to the Law Society.
- (4) Registration is not to be cancelled on the ground specified in subsection (2)(c) if the lawyer demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer but from circumstances beyond the lawyer's control.
- (5) Registration as a foreign lawyer under this Part is automatically cancelled if the lawyer:
 - (a) is registered as a domestic lawyer; or
 - (b) requests cancellation.
- (6) Cancellation of registration at the request of a foreign lawyer does not affect the exercise by the Law Society or the Complaints Committee of a power relating to disciplinary proceedings brought against the lawyer before the cancellation.

135M Appeals

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

Division 3 Legal practice

135N Scope of practice

- (1) A locally registered foreign lawyer may provide only the following legal services:
 - (a) doing any work, or transacting any business, in the Territory concerning the law of the place in which the lawyer is registered by the lawyer's home registration authority;
 - (b) legal services (including appearances) in relation to arbitration proceedings in the Territory of a kind prescribed by the Regulations;
 - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;

- (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the Territory of a kind prescribed by the Regulations.
- (2) Nothing in this Part authorises a locally registered foreign lawyer to practise Australian law or to appear in a court (except on the lawyer's own behalf).
- (3) Despite subsection (2), a locally registered foreign lawyer may advise on the effect of an Australian law if the giving of advice on Australian law is necessarily incidental to the practice of foreign law and the advice is expressly based on the advice given on the Australian law by a domestic lawyer who is not an employee of the foreign lawyer.

135P Form of practice

- (1) A locally registered foreign lawyer may practise:
 - (a) as a foreign lawyer on the lawyer's own account;
 - (b) in partnership with other locally registered foreign lawyers or with domestic lawyers or both; or
 - (c) as a member of an incorporated legal practice that is permitted by a law of the Territory.
- (2) An affiliation referred to in subsection (1) does not entitle the locally registered foreign lawyer to practise domestic law in the Territory.

135Q Application of professional ethical and practice standards

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

135R Offences and disciplinary action

- (1) A locally registered foreign lawyer who contravenes or fails to comply with a provision of this Part, other than section 135C or 135W, is not to be taken to have committed an offence against the provision.
- (2) Subject to subsection (3), Part VI applies to and in relation to a locally registered foreign lawyer who is alleged to have contravened section 135Q as if the registered foreign lawyer were a domestic lawyer who has engaged in or is alleged to have engaged in professional misconduct within the meaning of section 45.

- (3) In determining the action, if any, to be taken under Part VI in relation to a foreign lawyer who has contravened section 135Q, regard is to be had to whether the conduct of the lawyer was consistent with the standards of professional conduct of the legal profession in the place outside Australia in which the lawyer is registered by the home registration authority.
- (4) The Regulations may exempt a foreign lawyer or class of foreign lawyers from the application of a provision of Part VI.

135S Letterhead and other identifying documents

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

135T Designation

- (1) A locally registered foreign lawyer may use any of the following designations:
 - (a) the lawyer's own name;
 - (b) the title the lawyer is authorised by law to use in the place outside Australia in which the lawyer is registered by the home registration authority;
 - (c) subject to subsection (2), the name of any law firm outside Australia with which the lawyer is affiliated (whether as a partner or otherwise);
 - (d) if the foreign lawyer is a member of a law firm in Australia that includes both locally registered foreign lawyers and domestic lawyers – a description of the firm that includes reference to both domestic lawyers and registered foreign lawyers.

- (2) A locally registered foreign lawyer who is a partner of a law firm outside Australia may use the name of the firm in practising, or in connection with the practice of, foreign law in the Territory only if:
 - (a) the lawyer indicates on the lawyer's letterhead and any other document used in the Territory to identify the lawyer as a lawyer that the law firm practises only foreign law in the Territory;
 - (b) the lawyer has provided the Law Society with a copy of the partnership agreement or other acceptable evidence that the lawyer is a partner of the law firm; and
 - (c) use of the name complies with all requirements of the law of the Territory concerning use of business names and will not lead to confusion with the name of an existing domestic or foreign law firm in the Territory.
- (3) A locally registered foreign lawyer who is a partner of a law firm may use the name of a firm in accordance with this section whether or not other partners in the firm are locally registered foreign lawyers.

135U Advertising

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

135V Employment of domestic lawyers by foreign lawyers

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

135W Indemnity insurance

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

135X Trust accounts and Fidelity Fund contributions

- (1) Part VII applies to and in relation to a locally registered foreign lawyer who receives money on behalf of another person in the course of practising as a foreign lawyer in the Territory as if he or she were a domestic lawyer practising law in the Territory.
- (2) In Part VII as applied by subsection (1), a reference to money is not limited to a reference to money in the Territory.

- (3) Parts VIII and IX apply to and in relation to a locally registered foreign lawyer as if he or she were a domestic lawyer practising law in the Territory.
- (4) Section 138 applies to and in relation to a locally registered foreign lawyer who maintains or has maintained a trust account as if he or she were a domestic lawyer practising law in the Territory.

Part XIIA Community legal centres

135XA Interpretation

In this Part, unless the contrary intention appears:

employ means to employ under a contract of employment or service or under an employment agreement.

engage means to use the services of, whether or not for reward or remuneration.

supervising legal practitioner means a supervising legal practitioner referred to in section 135XC.

135XB Community legal centres

- (1) An organisation is a community legal centre if:
 - (a) it is a body corporate that is funded or expected to be funded to a significant level by donations or by grants from government, charitable or other organisations;
 - (b) it holds itself out as being an organisation that provides legal services as referred to in paragraph (c), whether or not those are the only services it provides;
 - (c) it provides legal services, not for the purpose of deriving a profit:
 - (i) to persons or organisations lacking the financial means to obtain privately funded legal services;
 - (ii) to persons or organisations in respect of a legal matter that is expected to raise issues of public interest or to be of general concern to disadvantaged groups in the community;
 - (iii) to persons or organisations having a special need due to their location or the nature of the legal matter; or

- (iv) to persons having a significant physical or social disability;
 - (d) it:
 - (i) employs a supervising legal practitioner and notifies the Law Society of that fact and of the name of the supervising legal practitioner; or
 - (ii) temporarily engages a supervising legal practitioner in accordance with section 135XD;
 - (e) it holds professional indemnity insurance under Part IVA; and
 - (f) it has given the Law Society the prescribed information (if any) and the prescribed fee (if any).
- (2) A department, body or organisation prescribed for the purposes of section 25(1)(c) is not a community legal centre.

135XC Supervising legal practitioners

- (1) A community legal centre must, subject to subsection (2), employ a supervising legal practitioner to be responsible for the provision of legal services at the community legal centre.
- (2) A community legal centre may, if given approval under section 135XD, temporarily engage a supervising legal practitioner to be responsible for the provision of legal services at the community legal centre during that temporary engagement.
- (3) A supervising legal practitioner employed or temporarily engaged by a community legal centre must hold an unrestricted practising certificate or an interstate practising certificate of a type or class that corresponds to an unrestricted practising certificate.
- (4) A community legal centre is not precluded from employing or temporarily engaging as the supervising legal practitioner a person:
 - (a) on the board of management (however described) of the community legal centre; or
 - (b) involved in the management of the community legal centre,if the person holds a practising certificate referred to in subsection (3).
- (5) This Act applies in relation to a supervising legal practitioner temporarily engaged by a community legal centre as if he or she were employed by the community legal centre.

135XD Temporary engagement of supervising legal practitioner

- (1) A community legal centre may apply in writing to the Law Society for approval to temporarily engage a legal practitioner or an interstate legal practitioner named in the application to be the centre's supervising legal practitioner.
- (2) The Law Society may in writing approve an application by a community legal centre under this section only if the Law Society is satisfied:
 - (a) that it is not practicable for the community legal centre to employ a supervising legal practitioner;
 - (b) that the legal practitioner or interstate legal practitioner named in the application will be able to properly supervise the provision of legal services at the community legal centre; and
 - (c) that the benefits of the temporary engagement to the clients (or potential clients) of the community legal centre will outweigh the disadvantage that would be caused to those clients if the community legal centre were unable to provide legal services.
- (3) An approval under this section is for the period, not exceeding 12 weeks, specified in the approval.
- (4) A community legal centre given approval under this section may apply to the Law Society for further approvals, which may be given only in accordance with subsection (2) and for the period referred to in subsection (3).
- (5) If the Law Society refuses to approve an application under this section it must, as soon as practicable:
 - (a) publish particulars of the refusal in the *Gazette*; and
 - (b) notify the Attorney-General of those particulars.
- (6) Within 30 days of receiving notification under subsection (5), the Attorney-General:
 - (a) must review the decision of the Law Society; and
 - (b) may, by notice in the *Gazette*, revoke that decision and approve the application if he or she considers it is in the public interest to do so.
- (7) The Attorney-General must provide the Law Society with a copy of the reasons for a revocation and approval under subsection (6).

135XE Entitlement to recover costs

Despite section 135XB(1)(c), a community legal centre is entitled, subject to section 22(5) and the Regulations, to recover costs and disbursements in respect of legal services it provides.

135XF Trust accounts

- (1) Part VII applies, with the necessary modifications and subject to subsection (2) and the Regulations, in relation to a community legal centre:
 - (a) as if a reference in that Part to a legal practitioner were a reference to the supervising legal practitioner at the community legal centre; and
 - (b) as if a reference in that Part to the practice of a legal practitioner were a reference to the provision of legal services by the community legal centre.
- (2) A community legal centre must not operate a trust bank account under Part VII unless the centre's supervising legal practitioner is a signatory to that account.

135XG Discipline

- (1) Part VI applies, with the necessary modifications and subject to the Regulations, in relation to a community legal centre:
 - (a) as if a reference in that Part to a legal practitioner were a reference to a community legal centre; and
 - (b) as if a reference in that Part to practising the profession of the law were a reference to providing legal services.
- (2) The Complaints Committee may, having regard to the circumstances of the case and if in its opinion it is justified in doing so, order that a person:
 - (a) on the board of management (however described) of a community legal centre; or
 - (b) involved in the management of a community legal centre,must not operate or be involved in the management of a community legal centre for the period specified in the order.
- (3) A person in respect of whom an order is made under subsection (2) may appeal to the Supreme Court against the order not later than one month after it is made.

- (4) In proceedings instituted under subsection (3), the Supreme Court may make the orders it thinks fit.
- (5) Subject to section 51C, a person in respect of whom an order is in force under subsection (2) must not operate or be involved in the management of a community legal centre.

Penalty: 500 penalty units or imprisonment for 12 months.

- (6) This section does not affect the operation of Part VI in relation to the supervising legal practitioner of a community legal centre or any other legal practitioner employed or engaged by the community legal centre.

135XH Provisions applicable to community legal centres

Parts IVA, VIII, VIIIA, XI and XIII apply, with necessary modifications and subject to the Regulations, in relation to a community legal centre as if a reference in those Parts to a legal practitioner were a reference to a community legal centre.

135XI Regulations relating to this Part

The Regulations may provide for the following matters:

- (a) the employment or temporary engagement of supervising legal practitioners and the employment or engagement of other legal practitioners by community legal centres;
- (b) the duties, obligations and liabilities of supervising legal practitioners and other legal practitioners employed or engaged by community legal centres;
- (c) the information to be contained in applications, approvals and notices;
- (d) the manner in which the Law Society is to exercise its powers and perform its functions under this Part;
- (e) professional indemnity insurance to be held by community legal centres;
- (f) the recovery of costs and disbursements by community legal centres;
- (g) the operation of trust bank accounts by community legal centres;
- (h) disciplinary matters in relation to community legal centres;

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- (i) the manner in which specified provisions of this Act are to apply in relation to community legal centres, supervising legal practitioners and legal practitioners employed or engaged by community legal centres.

Part XIII Miscellaneous

135Y Definition

In this Part, unless the contrary intention appears, ***legal practitioner*** means a local legal practitioner, an interstate legal practitioner or a locally registered foreign lawyer.

136 Legal practitioner not to share receipts with person not practising as legal practitioner

- (1) Subject to this section a legal practitioner shall not share the receipts from his or her practice with a person other than a legal practitioner.
- (2) Subsection (1) does not apply to a legal practitioner to the extent that he or she shares the receipts from his or her practice with:
 - (a) if the legal practitioner is a director or shareholder of an incorporated legal practice – a person who is or was a director or shareholder of the incorporated legal practice (but not if the person is a disqualified person referred to in section 35AW);
 - (aa) if the legal practitioner is a lawyer partner (within the meaning of Part IVAA) of a multi-disciplinary partnership – a person who is or was a partner or employee of the partnership (but not if the person is a disqualified person referred to in section 35AZD);
 - (ab) a person with whom he or she formerly carried on practice in partnership as a firm of legal practitioners;
 - (b) a dependant or legal personal representative of a person referred to in paragraph (a);
 - (c) a person who carries on practice in a State or another Territory and, in the course of his or her practice, performs work of a professional nature as the agent of the legal practitioner;
 - (d) a person who carries on practice in a State or another Territory and for whom the legal practitioner, in the course of his or her practice, performs work of a professional nature as the agent of that person; or

- (e) any other prescribed person.

137 No employment of person if name removed from roll

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

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

137A Evidence of right to appear

- (1) A person appearing in a court or tribunal must, if requested to do so by the court or tribunal, provide evidence of the person's right to appear.
- (2) Without limiting subsection (1), evidence of a person's right to appear in court or tribunal includes the following:
 - (a) a practising certificate or interstate practising certificate;
 - (b) a document issued by the Law Society stating that the person holds a practising certificate or is an interstate legal practitioner.

138 Unclaimed trust moneys

- (1) Where any trust moneys held by a legal practitioner who practices as a legal practitioner have become unclaimed moneys, the legal practitioner shall, within one month after those moneys become unclaimed moneys, pay those moneys to the Fidelity Fund.
- (2) Trust moneys held by a legal practitioner are unclaimed moneys for the purposes of this section if:
 - (a) the trust moneys have been held by the legal practitioner for a period of not less than 6 years, and during that period, the legal practitioner has had no knowledge of the existence or the address of the person on whose behalf those trust moneys are held; or

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- (b) the person has refused to accept payment of those moneys when tender of payment has been made.
- (3) A person who claims to be entitled to any moneys that have been paid into the Fidelity Fund in pursuance of subsection (1) may apply to the Court for an order under this subsection declaring him or her to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.
- (4) Upon receipt by the Fidelity Fund Committee of an office copy of an order under subsection (3), the Committee shall pay to the person in whose favour the order was made out of the Fidelity Fund an amount equal to the amount specified in the order.

138A General offence

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

Penalty: 50 penalty units.

139 Fines to be paid into Fidelity Fund

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

140 Service of documents

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

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

140A Law Society to keep register

- (1) The Law Society must keep at the office of the Law Society a register of all local legal practitioners, interstate legal practitioners and locally registered foreign lawyers.
- (2) The Law Society may include in the register any of the particulars stated in an application made under section 23 or notified under section 33A, 134J, 134K, 135D or 135K.

- (3) The Regulations may prescribe other particulars to be provided to the Law Society to be included in the register and the method of notification of those particulars.
- (4) A person may:
 - (a) inspect the register during the office hours of the Law Society; and
 - (b) obtain an extract from the register on payment of the fee (if any) determined by the Law Society.
- (5) If the register includes a person's residential address, the address is not to be made available to the public unless:
 - (a) the person authorises it to be made available; or
 - (b) the residential address is the person's address for service of documents.

141 Regulations

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

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

and in particular:

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

First Schedule

section 4

Legal Practitioners Ordinance 1965

Legal Practitioners Ordinance 1970

Legal Practitioners (Trust Accounts) Ordinance 1930

ENDNOTES

1 KEY

Key to abbreviations

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

2 LIST OF LEGISLATION

Legal Practitioners Ordinance 1974 (Act No. 18, 1974)

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

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

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

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

Assent date	13 April 1978
Commenced	13 April 1978

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

Assent date	1 July 1978
Commenced	1 July 1978

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

Assent date	5 September 1978
Commenced	5 September 1978

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

Assent date	7 January 1980
Commenced	7 January 1980

Amending Legislation

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

Assent date	7 January 1980
Commenced	7 January 1980

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

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

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

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

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

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

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

Assent date 16 September 1983
Commenced 16 September 1983

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

Assent date 28 November 1983
Commenced 28 November 1983

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

Assent date 1 October 1985
Commenced 1 October 1985

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

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

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

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

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

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

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

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

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

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

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

Assent date 22 June 1990
Commenced 22 June 1990

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

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

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

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

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

Assent date 25 June 1991
Commenced 25 June 1991

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

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

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

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

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

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

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

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

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

Assent date 2 June 1997
Commenced 2 June 1997

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

Assent date 27 May 1998
Commenced 27 May 1998

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

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

Legal Practitioners Amendment Act 2000 (Act No. 29, 2000)

Assent date 27 June 2000
Commenced 1 October 2000 (*Gaz* G29, 26 July 2000, p 4)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date 29 June 2001
Commenced 15 July 2001 (s 2, s 2 *Corporations Act* 2001 (Cth Act No. 50, 2001) and Cth *Gaz* S285, 13 July 2001)

Legal Practitioners Amendment Act 2001 (Act No. 61, 2001)

Assent date 11 December 2001
Commenced 1 February 2002 (*Gaz* G4, 30 January 2002, p 4)

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date 13 September 2002
Commenced 30 October 2002 (*Gaz* G43, 30 October 2002, p 3)

Legal Practitioners Amendment (Mortgage Practices) Act 2002 (Act No. 44, 2002)

Assent date 13 September 2002
Commenced 1 December 2002 (*Gaz* G47, 27 November 2002, p 2)

Legal Practitioners Amendment (Community Legal Centres) Act 2002 (Act No. 45, 2002)

Assent date 13 September 2002
Commenced 1 December 2002 (*Gaz* G47, 27 November 2002, p 2)

Legal Practitioners Amendment (Costs and Advertising) Act 2003 (Act No. 18, 2003)

Assent date 29 May 2003
 Commenced ss 1 – 6: 1 July 2003 (Gaz G25, 25 June 2003, p 3);
 ss 7 – 11: 1 June 2004 (Gaz G19, 12 May 2004, p 3)

Legal Practitioners Amendment (Incorporated Legal Practices and Multi-Disciplinary Partnerships) Act 2003 (Act No. 51, 2003)

Assent date 18 September 2003
 Commenced 1 May 2004 (Gaz G17, 28 April 2004, p 2)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (Gaz G11, 17 March 2004, p 8)

Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)

Assent date 15 September 2004
 Commenced 27 October 2004 (Gaz G43, 27 October 2004, p 3)

Legal Practitioners Amendment Act 2005 (Act No. 16, 2005)

Assent date 5 May 2005
 Commenced 5 May 2005

Justice Portfolio (Miscellaneous Amendments) Act 2005 (Act No. 20, 2005)

Assent date 6 May 2005
 Commenced pt 2 (other than s 5): 1 July 2002 (s 2(1)); s 5 and pts 3, 6, 7
 and 13: 6 May 2005 (s 2(2)); rem: 13 July 2005 (Gaz G28,
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3**SAVINGS AND TRANSITIONAL PROVISIONS**

section 10 of the *Legal Practitioners Ordinance 1978* (Act No. 12, 1978)
 section 28 of the *Legal Practitioners Amendment Act 1982* (Act No. 52, 1982)
 sch 2 of the *Legal Practitioners Amendment Act 2000* (Act No. 29, 2000)
 sections 19 and 20 of the *Legal Practitioners Amendment Act 2001* (Act
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 section 12 of the *Legal Practitioners Amendment (Community Legal Centres)
 Act 2002* (Act No. 45, 2002)
 section 17 of the *Legal Practitioners Amendment (Incorporated Legal
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4**Gazette notice**

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