

Legal Profession Uniform Law Application Bill 2013

Introduction Print

EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to repeal the **Legal Profession Act 2004** and replace it with new template legislation, the Legal Profession Uniform Law, for application in multiple States and Territories.

The Bill applies the Legal Profession Uniform Law as a law of Victoria, and includes Victorian-specific provisions dealing with the Victorian entities that will perform functions locally under the Uniform Law, and related funding and administrative matters.

The Bill makes a series of consequential and other amendments to ensure that the Legal Profession Uniform Law is tailored to suit Victoria's legislative environment.

Clause Notes

PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Bill. These are—
- to apply the Legal Profession Uniform Law as a law of Victoria; and
 - to provide for certain local matters to complement that Law; and
 - to repeal the **Legal Profession Act 2004**; and
 - to make transitional arrangements and consequential amendments to other Acts.

Clause 2 provides for the commencement of the Bill on a day or days to be proclaimed. It does not identify a default commencement date as the commencement of the Legal Profession Uniform Law is to be co-ordinated nationally. As an inter-jurisdictional scheme, the Legal Profession Uniform Law relies on each participating jurisdiction passing its application laws before the agreed commencement date. To allow for any contingencies that may occur in other jurisdictions passing their application laws, no default commencement date is set.

It is planned to commence the Legal Profession Uniform Law in Victoria on a common agreed date.

Clause 3 defines certain terms for the purposes of the Bill.

Subclause (1) sets out definitions for terms including *advocate member*, *approved clerk*, *Legal Profession Uniform Framework*, *local professional association* and *non-advocate member*.

A definition is also provided for the term *Legal Profession Uniform Law (Victoria)* thereby clarifying that this is distinct from the term Legal Profession Uniform Law.

Subclause (2) provides that the meaning of terms used in the Bill and the Legal Profession Uniform Law (Victoria) are to have the same meanings in the Bill they have in that Law.

PART 2—APPLICATION OF UNIFORM LAW

Division 1—General application provisions

Clause 4 applies the Legal Profession Uniform Law.

It provides that the Legal Profession Uniform Law set out in Schedule 1—

- applies as a law of Victoria; and
- may be referred to as the Legal Profession Uniform Law (Victoria); and
- so applies as if it were an Act of Victoria.

Note that Uniform Regulations and Uniform Rules made under Chapter 9 of the Legal Profession Uniform Law apply as a law of Victoria.

Clause 5 provides for certain Victorian Acts to not apply to the Legal Profession Uniform Law (Victoria). To ensure that the Legal Profession Uniform Law scheme can operate in a consistent way in all jurisdictions, administrative and machinery legislation usually applying in Victoria is excluded.

The **Audit Act 1994**, the **Financial Management Act 1994**, the **Freedom of Information Act 1982**, the **Ombudsman Act 1973**, the **Public Administration Act 2004**, and the **Public Records Act 1973**, do not apply to the Legal Profession Uniform Law (Victoria) except when a Victorian public sector body or employee (as defined in the **Public Administration Act 2004**) exercises a function under the Legal Profession Uniform Law (Victoria).

The **Subordinate Legislation Act 1994** also does not apply except as provided under clause 7 of this Bill.

In place of these Acts, the Legal Profession Uniform Law (Victoria) makes provision for covering the relevant areas, either through applying relevant New South Wales legislation or through establishing alternative arrangements.

For example, section 416 of the Legal Profession Uniform Law (Victoria) applies the Privacy and Personal Information Protection Act 1998 and Ombudsman Act 1974 of New South Wales to the scheme. Uniform Regulations will be used to modify the New South Wales Acts to ensure they can operate effectively for this scheme in all participating jurisdictions.

Clause 6 overrides the application of the **Charter of Human Rights and Responsibilities Act 2006** to the Legal Profession Uniform Law (Victoria), and Schedule 1 to this Bill.

Schedule 1 to the Bill is the template Legal Profession Uniform Law, while the Legal Profession Uniform Law (Victoria), per the definition in clause 3, is the Legal Profession Uniform Law applying in Victoria as a result of clause 4. Both are specified in the override clause, as it is necessary to override the **Charter of Human Rights and Responsibilities Act 2006** both in respect of the Legal Profession Uniform Law as it applies in Victoria, and as it applies in any other participating jurisdiction, which will apply Schedule 1 to the Bill as a law of that jurisdiction.

The Legal Profession Uniform Law is template legislation intended to be implemented in multiple states and territories in the same form. Victoria will act as "host jurisdiction" by being the first state or territory to pass the Uniform Law. Other participating states and territories will then "apply" the law of the "host jurisdiction" as a law of their own jurisdiction.

Normally, the **Charter of Human Rights and Responsibilities Act 2006** would apply to the Legal Profession Uniform Law as an Act of Victoria. However, because of the nature of the national scheme in which this Bill operates and the need for inter-jurisdictional consistency, and in order to prevent the extra-jurisdictional application of the **Charter of Human Rights and Responsibilities Act 2006**, it is necessary to specifically provide for its exclusion from the Uniform Law.

The purpose of the override clause is also to avoid the inconsistency that may arise if inter-jurisdictional bodies established under the Uniform Law, as well as regulatory bodies in other participating states or territories performing Uniform Law functions, are required to act compatibly with the Charter Act despite having no experience with its requirements. If the Charter Act were only partly excluded, so that it continued to apply in the Victorian context, there is a further risk that inconsistencies could arise in the interpretation and implementation of the Uniform Law between Victoria and other participating states and territories.

Clause 7 While clause 5 disapplies the **Subordinate Legislation Act 1994**, this clause provides that sections 15(1) and Part 5 (except for sections 21(1)(ha) and (j)) apply to the Uniform Regulations as if those regulations were statutory rules within the meaning of that Act.

Section 15(1) of the **Subordinate Legislation Act 1994** requires that a statutory rule be laid before each House of Parliament. Part 5 of that Act provides for the suspension or disallowance of statutory rules in certain circumstances. Therefore the Uniform Regulations are subject to the tabling requirements in Victoria, and the suspension and disallowance process.

Subclause (2) provides that if, as a result of this process, a Uniform Regulation is disallowed (in whole or in part) the disallowed regulation or part does not cease to have effect in

Victoria unless it is disallowed in a *majority* of the participating jurisdictions. This majority disallowance provision reflects a national agreement to ensure national consistency and uniformity, that Uniform Regulations will only be disallowed if agreed by a majority of the jurisdictions.

Subclause (3) provides that, should this happen, the actual date of the disallowance is the date that the last of the participating jurisdictions that form the majority disallow the regulation.

- Clause 8 provides that if a person has been punished for an offence against the law of another participating jurisdiction and the act or omission constituting the offence is also an offence against the Legal Profession Uniform Law (Victoria), the person is not liable to be punished for the offence against the Legal Profession Uniform Law (Victoria).

Division 2—Further application provisions

- Clause 9 provides that in Legal Profession Uniform Law (Victoria), the expression, *this jurisdiction*, means Victoria and the expression, *Commissioner of Police*, includes the Chief Commissioner of Police.

- Clause 10 The Legal Profession Uniform Law (Victoria) uses the expressions, *designated local regulatory authority* and *designated tribunal*.

Subclause (1) includes Table 1 which sets out the persons and bodies that are the designated local regulatory authorities for the purposes of certain provisions of the Legal Profession Uniform Law (Victoria). For example, in Chapter 5 of the Legal Profession Uniform Law (Victoria), which deals with dispute resolution and professional discipline, the designated local regulatory authority is the Victorian Commissioner.

Subclause (2) provides that the Prothonotary is the designated local roll authority for the purposes of certain provisions of the Legal Profession Uniform Law (Victoria).

Subclause (3) includes Table 2 which sets out the bodies that are the designated tribunals for the purposes of certain provisions of the Legal Profession Uniform Law (Victoria). For example, in Division 3 of Part 5.4 of the Legal Profession Uniform Law (Victoria), which deals with disciplinary matters, the designated tribunal is VCAT whereas under Part 6.5 of the

Legal Profession Uniform Law (Victoria), which deals with the appointment of receivers, the designated tribunal is the Supreme Court.

- Clause 11 provides that for the purposes of section 149(6) of the Legal Profession Uniform Law (Victoria), the nominated fund is the Public Purpose Fund and the nominated trust authority is the Victorian Legal Services Board.
- Clause 12 provides that for the purposes of section 167 of the Legal Profession Uniform Law (Victoria), unclaimed money held in a trust account is to be dealt with in accordance with the **Unclaimed Money Act 2008**.
- Clause 13 Subclause (1) provides that in Victoria, a professional indemnity insurance policy is an ***approved insurance policy*** for the purposes of Part 4.4 of the Legal Profession Uniform Law (Victoria) if the policy is issued or provided by the Legal Practitioners' Liability Committee.

Subclause (2) provides that in Victoria a policy of professional indemnity insurance the terms and conditions of which are approved by the Victorian Legal Services Board is an ***approved insurance policy*** for the purposes of Part 4.4 of the Legal Profession Uniform Law (Victoria) in relation to—

- a community legal service; or
- an Australian legal practitioner who is engaged in practice for or on behalf of a community legal service; or
- a corporate legal practitioner or government legal practitioner who provides legal services on a pro bono basis (other than as a volunteer at a community legal service); or
- an Australian-registered foreign lawyer.

Subclause (3) provides that this clause applies despite anything to the contrary in section 210(1) of the Legal Profession Uniform Law (Victoria), which sets out the definition of an ***approved insurance policy*** for the purposes of Part 4.4 of that Law.

- Clause 14 Subclause (1) provides that the fund established under Division 1 of Part 8 of this Bill is nominated as Victoria's fidelity fund for the purposes of Part 4.5 of the Legal Profession Uniform Law (Victoria), which deals with fidelity cover.
- Subclause (2) identifies the Victorian Legal Services Board as the fidelity authority under section 6 of the Legal Profession Uniform Law (Victoria).
- Clause 15 disapplies section 263(2) of the Legal Profession Uniform Law (Victoria) so that the dispute resolution and professional discipline provisions of that Uniform Law apply to judicial officers in Victoria in relation to conduct that allegedly occurred before the officer's appointment to the office concerned.
- Clause 16 relates to section 284 of the Legal Profession Uniform Law (Victoria). That section provides that for the purpose of investigating a complaint containing a disciplinary matter, the Victorian Commissioner may arrange for an assessment of costs charged or claimed by the respondent. This clause provides that an assessment of costs under that provision must be conducted by the Costs Court established under Division 2B of Part 2 of the **Supreme Court Act 1986**.
- Clause 17 makes provision in relation to search warrants.
- Subclause (1) identifies the Magistrates' Court as the issuing authority for the purposes of section 377 of the Legal Profession Uniform Law (Victoria), which deals with the issue of search warrants.
- Subclause (2) clarifies that except as provided by the Legal Profession Uniform Law (Victoria) or this Bill, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under section 377 of the Legal Profession Uniform Law (Victoria).
- Clause 18 provides that for the purposes of section 456 of the Legal Profession Uniform Law (Victoria), which deals with the recovery of pecuniary penalties, a penalty referred to in that section is to be paid into the Public Purpose Fund and credited to the General Account in that fund.

PART 3—LOCAL REGULATORY AUTHORITIES

Division 1—Victorian Legal Admissions Board

- Clause 19 establishes the Victorian Legal Admissions Board.
- Clause 20 provides that the functions and powers of the Victorian Legal Admissions Board are those conferred on it by the Legal Profession Uniform Law (Victoria), the Bill or any other Act, including by or under the Uniform Rules and all the powers necessary to perform its functions.
- Clause 21 sets out who may be a member of the Victorian Legal Admissions Board, how a member is to be appointed, the term of office of a member, a member's entitlement to fees, and the nomination of a chairperson. It also provides that the **Public Administration Act 2004** does not apply to a member of the Victorian Legal Admissions Board.
- Clause 22 provides that if a Supreme Court judge or County Court judge is appointed as a member of the Victorian Legal Admissions Board, the appointment does not affect the judge's tenure or role, rights and privileges as a judge. Similarly, if a former judge is appointed as a member, the appointment does not affect his or her rights and privileges as a former judge, including his or her pension.
- This clause also provides that for the purposes of section 83(4) of the **Constitution Act 1975** and section 14(3A) of the **County Court Act 1958**, the office of member of the Victorian Legal Admissions Board is not to be taken to be a judicial office or an office or place of profit under the Crown.
- Clause 23 provides for the resignation and removal of members of the Victorian Legal Admissions Board.
- Clause 24 sets out the meeting procedure for the Victorian Legal Admissions Board. The chairperson is to preside at meetings. The quorum of the Board is 3 members.
- Clause 25 provides that an act or decision of the Victorian Legal Admissions Board is not invalid only because of a defect in the appointment of a member.

- Clause 26 allows staff of the Victorian Legal Admissions Board to be employed under the **Public Administration Act 2004**, and allows for the engagement of suitably qualified and experienced consultants on any terms and conditions that the Board considers appropriate.
- Clause 27 allows the Victorian Legal Admissions Board to delegate functions to the members of a committee who are not required to be members of the Board but who, in the Board's opinion, have experience relevant to the functions of the committee to which they are appointed. The procedures of any such committee will be determined by the Victorian Legal Admissions Board.

Division 2—Victorian Legal Services Board

- Clause 28 provides for the Legal Services Board to continue as the Victorian Legal Services Board.
- Subclause (1) provides that the Legal Services Board, which was established by section 6.2.1 of the **Legal Profession Act 2004**, continues to exist and is to be known as the Victorian Legal Services Board.
- The remainder of the clause sets out the rights and obligations of the Victorian Legal Services Board as a body corporate including a requirement to have a common seal which must be kept as directed by the Board and may be used only as authorised by the Board, and of which all courts must take judicial notice.
- Clause 29 provides that the Victorian Legal Services Board is a public entity but does not represent the Crown.
- Clause 30 sets out the objectives of the Victorian Legal Services Board.
- Clause 31 sets out the functions and powers of the Victorian Legal Services Board. The Board has the functions conferred on it by or under the Legal Profession Uniform Law (Victoria), the Bill or any other Act as well as all the powers necessary to perform its functions and achieve its objectives.

- Clause 32 provides for the membership of the Victorian Legal Services Board. The Board consists of—
- a chairperson appointed by the Governor in Council on the recommendation of the Attorney-General; and
 - 3 members appointed by the Governor in Council on the recommendation of the Attorney-General; and
 - 3 members elected in accordance with the requirements and procedures set out in Division 5 of this Part, one of whom is to be an Australian legal practitioner whose home jurisdiction is Victoria of not less than 5 years' standing who is a barrister and two of whom are to be Australian legal practitioners whose home jurisdiction is Victoria of not less than 5 years' standing who are not barristers.

This clause also provides that the **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Victorian Legal Services Board.

- Clause 33 provides for the appointment of the chairperson and deputy chairperson of the Victorian Legal Services Board. The chairperson is appointed by the Governor in Council on the recommendation of the Attorney-General. The chairperson holds office for a term of 4 years and is eligible for reappointment. The deputy chairperson is one of the other members of the Victorian Legal Services Board appointed by the Governor in Council, on the recommendation of the Attorney-General.
- Clause 34 ensures that if a judge or former judge is appointed as chairperson of the Victorian Legal Services Board, the appointment does not affect the tenure of office of the judge nor any other matter connected with the office of the judge. This clause also ensures that the office of chairperson is not to be taken to be a judicial office or an office or place of profit under the Crown.
- Clause 35 provides for the appointment of the appointed members of the Victorian Legal Services Board. 3 members are appointed by the Governor in Council on the recommendation of the Attorney-General. To be eligible for an appointment a person must not be, or have been, an Australian lawyer. Similarly, the

person must not be eligible to be admitted as an Australian lawyer. This clause also provides that one of the appointed members must have experience in financial or prudential management and one must represent the interests of consumers of legal services. An appointed member holds office for 4 years and is eligible for reappointment.

- Clause 36 provides for the payment of members of the Victorian Legal Services Board. All members (except the chairperson if he or she is a judge other than a reserve judge) are entitled to receive remuneration and allowances that are fixed by the Governor in Council from time to time.
- Clause 37 provides for acting appointments. The Governor in Council may appoint a person to act as a member of the Victorian Legal Services Board where a member vacates his or her office or if a member is absent, or is otherwise unable to perform the duties of office. An acting appointment to replace an elected member can only be made following consultation with each local professional association. An acting appointment is for the term specified in the instrument of appointment. However, where an acting appointment is necessary to replace an elected member, the term of the appointment can not exceed 4 months. An acting member has all the powers and duties of the member he or she replaces. An acting member is entitled to be paid the same remuneration and allowances as the member he or she replaces. An acting member is eligible for reappointment. The Governor in Council may at any time terminate an acting appointment.
- Clause 38 sets out the circumstances under which the office of a member will become vacant.
- Clause 39 provides for the conduct of meetings of the Victorian Legal Services Board.
- Clause 40 provides the process for dealing with conflicts of interest of members of the Victorian Legal Services Board. If a member has a personal interest in a matter being considered by the Board and the interest appears to raise a conflict of interest the member must declare the nature of interest at a meeting of the Board. Failure to declare the nature of interest is subject to a penalty of up to 5 penalty units. When a declaration is made, the person presiding at the meeting must ensure that a record is

made of the declaration in the minutes of the meeting. Where a member is aware of the conflict of interest in a matter, the member must not be present during any deliberations on the matter unless the Victorian Legal Services Board directs otherwise. The member is not entitled to vote on the matter and if the member does vote the vote must be disallowed. This clause also sets out circumstances when a member is not regarded as having a conflict of interest.

- Clause 41 provides for resolutions of the Victorian Legal Services Board without meetings.
- Clause 42 provides that an act or decision of the Victorian Legal Services Board is not invalid only because of a defect or irregularity in the appointment of a member or an acting member or the election of a member or because of a vacancy in the office of a member or on the ground that the occasion for an acting member to act had not arisen or had ceased.
- Clause 43 provides that a member or acting member of the Victorian Legal Services Board is not personally liable in the performance of a function under the Bill if the member acts in good faith in the performance of that function or in the reasonable belief that the act or omission was in performance of a function under the Bill. Any liability resulting from the act or omission attaches to the Victorian Legal Services Board itself. Delegates of the Board are also protected from personal liability.
- Clause 44 sets out the persons to whom a function of the Victorian Legal Services Board may be delegated. A function may be delegated to a member of the Board, an employee of the Board, the Victorian Commissioner, a local professional association, or a person who is, or who is a member of a class that is, prescribed by the regulations. This clause sets out the functions of the Board that cannot be delegated. This clause requires the Board to keep a register of delegations and perform an audit of its delegations every 12 months to determine whether each delegation is still appropriate.
- Clause 45 provides that that the Victorian Legal Services Board may set performance targets to be met by persons to whom functions are delegated and requires the Board to monitor the delegates' performance.

- Clause 46 sets out the information that must be included in the Victorian Legal Services Board's annual report.
- Clause 47 provides that the Attorney-General may request the Victorian Legal Services Board to report, within a reasonable time specified, to the Attorney-General on any matter relevant to the performance of the Board's functions. Any report requested by the Attorney-General must be laid before each House of Parliament within 7 sitting days after receiving the report. The Board may make any other report to the Attorney-General as it thinks desirable on any matter that is relevant to the Board's functions.

Division 3—Victorian Legal Services Commissioner

- Clause 48 provides that there is to be a Victorian Legal Services Commissioner.
- Clause 49 sets out the functions and powers of the Victorian Commissioner. The Victorian Commissioner has the functions conferred upon him or her under the Legal Profession Uniform Law (Victoria), the Bill or any other Act and all the powers necessary to perform his or her functions. The Victorian Commissioner also has the function of public service body Head of the Office of the Victorian Legal Services Commissioner under section 16 of the **Public Administration Act 2004**.
- Clause 50 sets out the Victorian Commissioner's relationship to the Victorian Legal Services Board. The Victorian Commissioner is the Chief Executive Officer of the Victorian Legal Services Board. The Victorian Commissioner must administer the affairs of the Victorian Legal Services Board in accordance with the Board's policies and directions.
- Clause 51 provides for the appointment of the Victorian Commissioner. The Victorian Commissioner is appointed by the Governor in Council on the recommendation of the Attorney-General. The Attorney-General must only recommend a person for the appointment if the person has been approved by the Victorian Legal Services Board and the Attorney-General considers that the person has sufficient knowledge of legal practice and the legal system to be able to perform the relevant functions. The clause also provides that the Victorian Commissioner holds

office for a term of 5 years and is eligible for reappointment. However, a person may not be appointed to the position of Victorian Commissioner for terms, whether consecutive or non-consecutive, that exceed 10 years in total. This clause also provides for the payment of the Victorian Commissioner. The **Public Administration Act 2004** does not apply to the Victorian Commissioner except as provided by section 16 of that Act.

- Clause 52 provides for an acting Victorian Commissioner. The Victorian Legal Services Board may appoint an Acting Victorian Commissioner when there is a vacancy in the office or when the Victorian Commissioner is absent from duty or unable to perform his or her duties. The Victorian Legal Services Board can only appoint a person as Acting Victorian Commissioner if the Board considers that the person has sufficient knowledge of legal practice and the legal system to be able to perform the functions of Commissioner. An acting appointment is for the term set out in the instrument of appointment but cannot exceed 6 months. A person appointed to act is eligible for reappointment. The Victorian Legal Services Board may remove an Acting Victorian Commissioner at any time.
- Clause 53 sets out the circumstances when the office of Victorian Commissioner will become vacant.
- Clause 54 provides that an act or decision of the Victorian Commissioner or Acting Victorian Commissioner is not invalid only because of a defect or irregularity in their appointment or, in the case of the Acting Victorian Commissioner, on the ground that the occasion for him or her to act had not arisen or had ceased.
- Clause 55 provides for a limited immunity for the Victorian Commissioner. This clause also provides that where the Victorian Commissioner or delegate is carrying out functions of the Victorian Legal Services Board, any liability that would normally attach to the Victorian Commissioner or delegate but for this provision will attach to the Board instead. Delegates of the Victorian Commissioner are also protected from personal liability.
- Clause 56 provides that other than the power to delegate, the Victorian Commissioner may delegate any function of his or her role to certain persons including the Victorian Commissioner's

employees, consultants that he or she has engaged, employees of the Victorian Legal Services Board, and local professional associations. This clause requires the Commissioner to keep a register of delegations and audit the register every 12 months.

- Clause 57 sets out the information that must be included in the Victorian Commissioner's annual report.
- Clause 58 provides that the Victorian Commissioner may make reports to the Attorney-General, in addition to the Victorian Commissioner's annual report, on any matter relevant to the performance of his or her functions that he or she thinks necessary or desirable. However, this does not apply to any function carried out by the Victorian Commissioner as the chief executive officer of the Victorian Legal Services Board or any function of that Board delegated to the Victorian Commissioner.

Division 4—General provisions for the Victorian Legal Services Board and Victorian Commissioner

- Clause 59 provides that any employees that are necessary for the purposes of the Victorian Legal Services Board or the Victorian Commissioner may be employed by the Victorian Commissioner under Part 3 of the **Public Administration Act 2004**. This clause also provides that the Victorian Commissioner may engage persons with suitable qualifications and experience as consultants on any terms and conditions the Victorian Commissioner considers appropriate.
- Clause 60 provides for the appointment of a panel of mediators by the Victorian Commissioner.
- Clause 61 sets out the circumstances under which a mediator will not be personally liable for an act or omission.

Division 5—Victorian Legal Services Board elections

- Clause 62 provides that 3 people are to be elected to the Victorian Legal Services Board, one of whom is to be an Australian legal practitioner whose home jurisdiction is Victoria of not less than 5 years' standing who is a barrister (the *advocate member*) and 2 of whom are to be Australian legal practitioners whose home jurisdiction is Victoria of not less than 5 years' standing who are not barristers (the *non-advocate members*). Those three

members hold office from and including 1 July immediately following their election for a period of 4 years and are eligible for re-election.

- Clause 63 requires the Victorian Legal Services Board to keep two rolls of electors: a roll of advocates and a roll of non-advocates. The rolls are to be kept in the manner and form determined by the Board, and may be kept as part of the Victorian legal profession register.
- Clause 64 provides for the circumstances under which an Australian legal practitioner is taken to be enrolled on the roll of advocates or the roll of non-advocates.
- Clause 65 sets out the eligibility criteria of Australian legal practitioners to stand for election under clause 62 and to vote in an election for members of the Victorian Legal Services Board.
- Clause 66 requires the first election of the Victorian Legal Services Board to be held on or before 31 May 2018 and subsequent elections to be held in March, April or May in every 4th calendar year thereafter.
- Clause 67 provides for preferential voting for the advocate member of the Victorian Legal Services Board and the procedure by which the election of that member is to be determined.
- Clause 68 provides for exhaustive preferential voting for the non-advocate members of the Victorian Legal Services Board and the procedure by which the election of those members is to be determined.
- Clause 69 provides for the election of a member of the Victorian Legal Services Board if a position on that Board becomes vacant (other than within 4 months before the expiry of the term of the vacating member).
- Clause 70 provides that the Victorian Legal Services Board may enter into an arrangement with the Victorian Electoral Commission in relation to the conduct of elections under this Division.
- Clause 71 provides that regulations may be made with respect to the conduct of elections for the Victorian Legal Services Board held under this Division.

PART 4—ADMISSION, PRACTISING CERTIFICATES AND REGISTRATION CERTIFICATES

Division 1—Admission

- Clause 72 provides for prescribed fees payable for admission to the Australian legal profession in Victoria—
- a fee in respect of the functions of the Victorian Legal Admissions Board, to be applied to meet the expenses of the Victorian Legal Admissions Board; and
 - a library fee, to be applied for the purposes of the Supreme Court library.

Under clause 167, until the regulations provide otherwise, the prescribed fee for a compliance certificate is \$100 and the prescribed library fee for admission is \$560.

The Supreme Court may also impose a separate fee or fees for admission.

Division 2—Australian practising certificates

- Clause 73 provides that an application for the grant or renewal of an Australian practising certificate, in which the applicant states that Victoria is the jurisdiction that he or she reasonably intends will be his or her principal place of practice in Australia, must be accompanied by the prescribed fee for the certificate and the required contribution to the fidelity fund (if any).

This clause also provides that a person applying for the grant of a practising certificate during the first 3 months of a financial year and who was an Australian legal practitioner immediately before the end of the previous financial year and whose home jurisdiction immediately before the end of the previous financial year was Victoria must pay a surcharge of 200% of the prescribed fee for an Australian practising certificate. However, the surcharge may not apply where the applicant has not engaged in legal practice since the end of the previous financial year and where, as at the end of the previous financial year, the applicant did not intend to engage in legal practice for at least the first 3 months of the current financial year. If this is the case, the applicant must provide a statutory declaration setting out the circumstances described above. The Victorian Legal

Services Board also may refund all or part of the surcharge in special circumstances.

A person who applies for an Australian practising certificate that authorises the holder to engage in legal practice only as a volunteer at a community legal service or otherwise on a pro bono basis does not need to pay a fee or surcharge.

- Clause 74 provides that an application for the renewal of an Australian practising certificate must be made on or before 30 April or, where the person is not an Australian legal practitioner on that day, on or before 30 June.
- Clause 75 provides that there is a surcharge for applications for renewals of Australian practising certificates which are made after 30 April (except where the person was not an Australian legal practitioner whose home jurisdiction is Victoria on that date). The Victorian Legal Services Board may refund all or part of the surcharge if it considers there are special circumstances.

Division 3—Australian registration certificates

- Clause 76 provides that an application to the Victorian Legal Services Board for the grant or renewal of an Australian registration certificate must be accompanied by the fee set by the Board. The Board may also require the applicant to pay any reasonable costs and expenses incurred by the Board in considering the application.

Division 4—General

- Clause 77 relates to sections 100 and 101 of the Legal Profession Uniform Law (Victoria). Under those sections, an applicant for or the holder of an Australian practising certificate or of an Australian registration certificate may apply to VCAT for review of a decision of the Victorian Legal Services Board in relation to the grant or renewal of that practising certificate or registration certificate. This clause provides that the application for review by VCAT must be made within 28 days of the day on which the decision of the Victorian Legal Services Board was notified to the applicant.

PART 5—TRUST ACCOUNTS

Division 1—Statutory deposits into Public Purpose Fund

- Clause 78 sets out definitions of the terms *quarter* and *required deposit amount* for the purposes of this Division.
- Clause 79 sets out the formula for calculating the required deposit amount for a law practice or approved clerk in respect of a quarter.
- Clause 80 provides that the Victorian Legal Services Board must determine the required deposit amount for a law practice or an approved clerk in respect of a quarter as soon as practicable after the end of the previous quarter, and must notify the law practice or approved clerk of the required deposit amount as soon as practicable after determining it, unless the required deposit amount is zero.
- Clause 81 requires a law practice that, or an approved clerk who, is required to maintain a trust account to deposit the required deposit amount with the Victorian Legal Services Board in respect of each quarter out of the trust money received by the practice or clerk and must do so on or before the 21st day of the first month of the quarter.
- Clause 82 provides that the Victorian Legal Services Board must pay amounts deposited with it under clause 81 to the Public Purpose Fund.
- Clause 83 provides for the repayment of amounts deposited with the Victorian Legal Services Board into the recipient's trust account.
- Clause 84 provides that this Division does not apply to certain types of controlled money accounts.
- Clause 85 provides that the Victorian Legal Services Board may exempt a law practice or an approved clerk from any of the provisions of this Division for the period and subject to the conditions determined by the Board.
- Clause 86 provides that, where a law practice or approved clerk has more than one trust account, this Division applies separately in respect of each trust account.

Division 2—Authorised deposit-taking institutions

- Clause 87 provides that the Board may make arrangements with an authorised deposit-taking institution (*ADI*) for the keeping of trust accounts.

Division 3—Approved clerks

- Clause 88 sets out the process for the Victorian Bar to approve a natural person to receive money on account of the legal costs of one or more barristers.

- Clause 89 applies, with adaptations, parts of the Legal Profession Uniform Law (Victoria) to approved clerks in Victoria.

Subclause (1) applies an adaptation of Part 4.2 of the Legal Profession Uniform Law (Victoria), which deals with trust money and trust accounts, to approved clerks in Victoria. Some of the more important adaptations specified in subclause (1) are those that—

- provide definitions of *general trust account*, *trust account* and *trust money* which specifically apply to approved clerks in Victoria and explains when an approved clerk is taken to have received money; and
- set out what an approved clerk must do upon receipt of trust money other than cash and provides a civil penalty for non-compliance; and
- set out what an approved clerk may do with trust money held in a general trust account; and
- provide for the reporting of trust account irregularities and suspected irregularities and sets out a civil penalties for non-compliance with the notification requirements.

Subclause (2) applies an adaptation of Part 4.5 of the Legal Profession Uniform Law (Victoria), which deals with fidelity cover, to approved clerks in Victoria. Some of the more important adaptations specified in subclause (2) are those that—

- provide a definition of *default* which specifically applies to approved clerks in Victoria; and

- provide that a person who suffers pecuniary loss as a result of an approved clerk's default is entitled to make a claim against the fidelity fund; and
- apply section 249 of the Legal Profession Uniform Law (Victoria), which deals with court proceedings, to approved clerks.

Subclause (3) applies an adaptation of Chapter 7 of the Legal Profession Uniform Law (Victoria) to approved clerks in Victoria. That Chapter sets out the powers that are exercisable in connection with trust records investigations, compliance audits and complaints investigations.

Subclause (4) applies section 466 of the Legal Profession Uniform Law (Victoria) to approved clerks in Victoria. Section 466 sets out the further rights and obligations associated with, and the consequences and effects of, the requirements imposed by the Uniform Law on persons, law practices and, by reason of this subclause, approved clerks.

Clause 90 provides that the Victorian Bar may make rules for the receipt and handling of trust money and the keeping of trust records by approved clerks and that those rules may modify the application of the Uniform Rules only to the extent necessary for those rules to apply to approved clerks. The clause also provides a penalty for an approved clerk's non-compliance with the Bar's rules made under this clause.

Division 4—External examinations and investigations

Clause 91 sets out the matters that must be included in a written notice given by the Victorian Legal Services Board to a law practice or approved clerk before the Board can seek to recover the costs of an external examination or external investigation.

PART 6—LEGAL COSTS

Division 1—Legal Costs Committee

Clause 92 continues the existence of the Legal Costs Committee which was originally established under section 3.4.25 of the **Legal Profession Act 2004**. This clause sets out the composition of the Committee, the quorum requirements and voting procedures.

Clause 93 sets out the functions of the Legal Costs Committee including advising on the desirable adjustments in scales of costs in relation to litigious matters. The Committee may inquire into and report on alternative structures to the existing scales of costs, inconsistencies in scales of costs as between jurisdictions, and any other matter the Committee believes could make the conduct of litigation less expensive.

Division 2—Practitioner remuneration orders

Clause 94 provide that the Legal Costs Committee, after consultation with the Victorian Legal Services Board, may make practitioner remuneration orders. These orders set out the costs that may be charged by law practices for providing legal services other than in relation to litigious matters. This clause also sets out what may be included in a practitioner remuneration order.

Clause 95 provides for the publication and availability of a practitioner remuneration order.

Clause 96 provides for the tabling and disallowance of a practitioner remuneration order. The clause also applies provisions of the **Subordinate Legislation Act 1994**, including provisions relating to the provision of practitioner remuneration orders to the Scrutiny of Acts and Regulations Committee of the Parliament.

Division 3—Costs assessment

Clause 97 provides that a person may appeal from a costs assessment by the Costs Court in accordance with the **Supreme Court Act 1986** and the Rules of the Supreme Court.

Division 4—Costs disputes

Clause 98 provides definitions for this Division of *indexed* and *lawyer*.

Clause 99 provides that a party to a complaint that involves a costs dispute can apply to have VCAT determine the dispute if—

- the costs in dispute do not exceed \$25 000 (indexed); and

- the Victorian Commissioner has, under section 291(2) or 293(1) of the Legal Profession Uniform Law (Victoria), informed the parties of their right to apply to VCAT under this clause.

This application may be made as an alternative to a costs assessment, as contemplated by section 293(1) of the Legal Profession Uniform Law (Victoria).

This clause sets out the orders that VCAT may make in determining the dispute including an order specifying the amount payable as legal costs based on an assessment of what is fair and reasonable in all the circumstances having regard to the factors set out section 200 of the Legal Profession Uniform Law (Victoria). This clause also provides that a failure to comply with an order made by VCAT under this clause is capable of constituting unsatisfactory conduct or professional misconduct. The clause also applies Part 5.5 of the Legal Profession Uniform Law (Victoria), which deals with compensation orders, with any necessary modifications.

The clause also provides that, despite anything to the contrary in Part 4.3 of the Legal Profession Uniform Law (Victoria), which deals with legal costs, including costs assessment, legal costs that are or have been the subject of a costs dispute that has been determined by VCAT under the clause may not be the subjects of a costs assessment under Division 7 of Part 4.3. This does not apply to the extent that the designated local regulatory authority arranges for a costs assessment in respect of a disciplinary matter.

PART 7—PROFESSIONAL INDEMNITY INSURANCE

Division 1—Legal Practitioners' Liability Committee

- Clause 100 provides for the continuation of the Legal Practitioners' Liability Committee as a body corporate with perpetual succession.
- Clause 101 states that the Liability Committee does not represent the Crown but is a public entity.

- Clause 102 lists the functions of the Liability Committee as carrying on the business of providing professional indemnity insurance to law practices, undertaking liability under contracts of professional indemnity insurance and any other functions conferred by the Legal Profession Uniform Law (Victorian) or the Bill. The Liability Committee is given all the powers necessary or convenient to perform its functions.
- Clause 103 provides that the Liability Committee consists of a chairperson and 6 other members appointed by the Victorian Legal Services Board. Members of the Committee hold office for up to 5 years and may be removed at any time by the Board. The **Public Administration Act 2004** (other than Part 5) does not apply to a member of the Liability Committee in respect of the office of member.
- Clause 104 provides for the qualifications of the 6 members of the Liability Committee, other than the chairperson. At least 2 of the members are to be Australian legal practitioners, at least 1 is to be appointed as a representative of the interests of consumers, and at least 2 are to be persons who have knowledge of or experience in the insurance industry or have accounting or financial expertise.
- Clause 105 provides for fees and allowances fixed by the Victorian Legal Services Board to be paid to Liability Committee members. Members who are also members of the Victorian Legal Services Board or who are public servants are not entitled to receive fees.
- Clause 106 allows the Victorian Legal Services Board to appoint acting members where a member is absent or otherwise unable to perform the duties of office.
- Clause 107 requires the chairperson to preside over meetings of the Liability Committee and sets out the quorum, voting, minutes and procedure requirements.
- Clause 108 provides that resolutions of the Liability Committee may be passed without a formal meeting by a majority of members signing a document containing the text of the resolution.
- Clause 109 provides that an act or decision of the Liability Committee is valid even if there is a vacancy in its membership or there is a defect or irregularity in the appointment of a member.

- Clause 110 requires members who have a personal interest in a matter being considered by the Liability Committee to declare that interest and refrain from deliberating or voting on the matter. Certain matters are deemed not to give rise to a conflict of interest.
- Clause 111 allows the Liability Committee to employ staff and engage consultants.
- Clause 112 imposes confidentiality obligations on past and present Liability Committee members, acting members, employees and consultants.
- Clause 113 provides that the Attorney-General may require the Liability Committee to include any information that the Attorney-General thinks appropriate in its annual report under Part 7 of the **Financial Management Act 1994**.

Division 2—Legal Practitioners' Liability Fund

- Clause 114 requires the Liability Committee to maintain a Legal Practitioners' Liability Fund, which may be kept in one or more accounts.
- Clause 115 requires insurance premiums, income from investments and any other money received by the Liability Committee to be paid into the Liability Fund.
- Clause 116 provides for payment out of the Liability Fund of insurance and reinsurance premiums, brokerage and commissions, administration costs, amounts payable under contracts of insurance between the Liability Committee and law practices, and other costs and expenses.
- Clause 117 allows the Liability Committee to invest any money in the Liability Fund which is not immediately required for the Fund's purposes in accordance with the **Trustee Act 1958**.
- Clause 118 allows the Liability Committee to require payment of a levy when it considers that the amount standing to the credit of the Liability Fund is insufficient to meet the Fund's liabilities. The Liability Committee determines the amount of the levy with the approval of the Victorian Legal Services Board.

Division 3—Professional indemnity insurance

- Clause 119 provides that a contract of professional indemnity insurance between the Liability Committee and a law practice is authorised by the Bill for the purposes of the Competition and Consumer Act 2010 of the Commonwealth and the Competition Code.
- Clause 120 allows the Liability Committee, with the approval of the Victorian Legal Services Board, to determine the arrangements for professional indemnity insurance for law practices that insure with it. The Liability Committee, however, is not required to obtain the approval of the Board to determine any premiums or excesses in relation to contracts of professional indemnity insurance. The Liability Committee, in determining premiums and excesses, must have regard to certain factors relating to differentiation of risk and must also obtain and take into account actuarial advice.

PART 8—FIDELITY COVER

Division 1—Fidelity fund

- Clause 121 requires the Victorian Legal Services Board to maintain a fund called the fidelity fund, which must be kept separate from any other money held by the Board and be held on trust.
- Clause 122 provides that the purpose of the fidelity fund is to compensate claimants for claims allowed under Part 4.5 of the Legal Profession Uniform Law (Victoria) regarding defaults to which that Part applies.
- Clause 123 provides for certain payments that must be made into the fidelity fund.
- Clause 124 provides for certain payments that must be made out of the fidelity fund.
- Clause 125 provides that the Governor in Council may, on the recommendation of the Attorney-General, fix a solvency level for the fidelity fund from time to time. The clause requires that the order be published in the Government Gazette.

- Clause 126 provides for payments in circumstances involving defaults, insolvency and externally administered bodies corporate. The clause provides for the Victorian Legal Services Board to make payments to the trustee in bankruptcy, trustee or liquidator, any amounts which it considers necessary for enabling proceedings to be commenced or defended by the trustee in bankruptcy, trustee or liquidator.
- Clause 127 specifies the circumstances in which the Victorian Legal Services Board may pay money out of the fidelity fund and into the Public Purpose Fund.

Division 2—Contributions by and levies on approved clerks and community legal services

- Clause 128 provides that approved clerks and community legal services are liable for contributions to the fidelity fund as determined by the Victorian Legal Services Board.
- Clause 129 provides that the Victorian Legal Services Board may impose a levy on all approved clerks and community legal services that are liable to pay an annual contribution fee or a class of approved clerks or community legal services that are so liable.
- Clause 130 provides that a contribution or levy that has not been paid by an approved clerk or a community legal service is a debt recoverable by the Victorian Legal Services Board in the Magistrates' Court. The clause only permits the Victorian Legal Services Board to do this if the Victorian Legal Services Board imposes a levy under section 226 or 231(1)(b) of the Legal Profession Uniform Law (Victoria).

Division 3—Supplementary provisions for contributions and levies

- Clause 131 allows for regulations to be made which prescribe the maximum fidelity fund contribution payable under section 225 of the Legal Profession Uniform Law (Victoria) or clause 128 of the Bill. This clause also allows for regulations to be made which prescribe the maximum fidelity fund levy which may be imposed under section 226 or 231(1)(b) of the Legal Profession Uniform Law (Victoria) or clause 129 of the Bill.

Clause 132 provides that the employer of a person who is required to make a contribution or levy under Part 4.5 of the Legal Profession Uniform Law (Victoria) may pay that contribution or levy on behalf of that person. If the employer does not do so, the employer must reimburse the employee at the employee's request. There is a maximum penalty of 120 penalty units for non-compliance. If a person is required to pay a contribution or levy under Part 4.5 in respect of a specified period and has more than one employer during that period, the employer as at the end of that period is their employer for the purposes of this clause.

PART 9—PUBLIC PURPOSE FUND

- Clause 133 requires the Victorian Legal Services Board to maintain a fund called the Public Purpose Fund. The amount standing to the credit of the Public Purpose Fund must be kept separate from any other money held by the Board and held in trust. The Board may invest money so held in accordance with the **Trustee Act 1958**.
- Clause 134 provides that the powers of the Victorian Legal Services Board to invest funds standing to the credit of the Public Purpose Fund include the power to enter into financial arrangements to facilitate such investment, including by way of an overdraft facility. The Board must obtain the Treasurer's approval for any such financial arrangements or financial accommodation.
- Clause 135 sets out the accounts to be kept, separately from each other, in the Public Purpose Fund, namely the General Account, the Statutory Deposit Account and the Distribution Account.
- Clause 136 sets out the money which is to be credited and debited to the General Account of the Public Purpose Fund. The paragraphs of subclause (3) speak of priority, while the subparagraphs of subclause (3)(a) do not.
- Clause 137 requires trust money deposited by a law practice or an approved clerk with the Victorian Legal Services Board under clause 81 to be credited to the Statutory Deposit Account of the Public Purpose Fund. Repayments that the Board is required to repay to law practices or approved clerks under clause 83 are to be debited to the Statutory Deposit Account.

- Clause 138 requires an amount equal to 50% of the amount standing to the credit of the General Account of the Public Purpose Fund as at 30 June in the previous financial year to be credited to the Distribution Account of the Public Purpose Fund. The amount so credited is to be paid from the Distribution Account to the Legal Aid Fund and for the purposes of law reform, legal education, judicial education, legal research and any other purpose relating to the legal profession or the law that the Victorian Legal Services Board considers appropriate.
- Clause 139 requires the Victorian Legal Services Board to pay out of the Public Purpose Fund each financial year an amount determined by the Attorney-General as Victoria's contribution to the funding of the Legal Profession Uniform Framework.
- Clause 140 requires an amount determined by the Victorian Legal Services Board, and approved by the Attorney-General, to be paid out of the General Account of the Public Purpose Fund each financial year to meet the expenses of, and discharge the liabilities incurred by, the Board in carrying out its functions under the Legal Profession Uniform Law (Victoria) and this Bill during that year, other than expenses related to fidelity fund claims (which are paid out of the fidelity fund under clause 124).
- Clause 141 requires an amount determined by the Victorian Legal Services Board to be paid out of the General Account of the Public Purpose Fund each financial year to meet the expenses of, and discharge the liabilities incurred by, the Commissioner in carrying out his or her functions under the Legal Profession Uniform Law (Victoria) and this Bill during that year. The amount must not be less than the amount, if any, specified by the Attorney-General in relation to that financial year.
- Clause 142 requires an amount determined by the Victorian Legal Services Board to be paid out of the General Account of the Public Purpose Fund each financial year to meet the expenses of VCAT in carrying out its functions under the Legal Profession Uniform Law (Victoria) and this Bill. The amount must not be less than the amount, if any, specified by the Attorney-General in relation to that financial year.

- Clause 143 requires an amount determined by the Victorian Legal Services Board (but not exceeding 35% of the amount standing to the credit of the General Account of the Public Purpose Fund at the end of the previous financial year) to be paid out of the Public Purpose Fund and into the Legal Aid Fund each financial year. Clause 138 provides that the amount must be paid out of the Distribution Account. The amount must also not be less than the amount, if any, specified by the Attorney-General in relation to that financial year. Provision is also made for advances to the Legal Aid Fund at the direction of the Attorney-General.
- Clause 144 allows the Victorian Legal Services Board, with the approval of the Attorney-General, to make payments out of the Public Purpose Fund for the purposes of law reform, legal education, judicial education, legal research and any other purpose relating to the legal profession or the law that the Board considers appropriate. If the Attorney-General refuses to give approval for such a payment, he or she must provide written reasons.
- The clause also allows the Attorney-General to direct the Board to pay an amount out of the Public Purpose Fund to the Victorian Law Reform Commission and the Board must comply with such a direction.
- Clause 145 allows the Victorian Legal Services Board to take into account previous funding when determining amounts to be paid out of the Public Purpose Fund under clause 144. Under clause 179(7), the Board may take into account an amount previously paid under the **Legal Profession Act 2004**.
- Clause 146 allows for the possibility of further funding to legal aid from the Distribution Account if, in a financial year, money remains in the Distribution Account after the primary allocation of funding to legal aid under clause 138(2)(a) and (b). The clause allows the Victorian Legal Services Board to pay out of the Public Purpose Fund and into the Legal Aid Fund an amount that the Board determines and that the Attorney-General approves, and that does not exceed the amount standing to the credit of the Distribution Account.
- Clause 147 allows the Victorian Legal Services Board to pay out of the Public Purpose Fund and into the fidelity fund such amounts as it thinks fit if the Board is of the opinion that the income of the fund from contributions and levies is unlikely to be sufficient to

satisfy claims against the fund, or that the fund is or is likely to become insolvent, or that it is appropriate to do so in order to establish the solvency level for the fund as then fixed by the Governor in Council under clause 125.

- Clause 148 allows the Victorian Legal Services Board to make a payment out of the Public Purpose Fund to a local professional association as a contribution to the cost of providing continuing legal education or other programs aimed at improving the quality of legal services. The Board determines the amount of the payment and may decide to make the payment subject to conditions of which the local professional association is notified.
- Clause 149 allows the Board to determine the timing of payments under this Division and to pay any amount in a single sum or by instalments.

PART 10—GENERAL

- Clause 150 requires the Victorian Legal Services Board to keep a register of Australian legal practitioners whose home jurisdiction is Victoria. The register must include the information required under the Uniform Regulations (if any), but otherwise may be kept in the way decided by the Victorian Legal Services Board. The register must be available for public inspection without charge and the information on the register may be provided to the public in any other manner approved by the Board.
- Clause 151 permits the Victorian Commissioner and the Victorian Legal Services Board to share information for the purposes of performing their functions under this Bill and the Legal Profession Uniform Law (Victoria).
- Clause 152 provides that section 35 of the Legal Profession Uniform Law (Victoria), which provides for the liability of principals in relation to contraventions of that Law by law practices in certain circumstances, applies in relation to contraventions of the Bill.
- Clause 153 provides that, if the Victorian Legal Services Board reasonably suspects that an offence has been committed (except offences relating to trust money and trust accounts) or that a civil penalty provision has been contravened under the Bill or the Legal

Profession Uniform Law (Victoria), the Board may appoint a person who is an employee of the Board or a person who, in the opinion of the Board, is an appropriate person to conduct the investigation. The clause is contemplated by section 469 of the Legal Profession Uniform Law (Victoria), which allows jurisdictional legislation to provide for the investigation of suspected offences or suspected contraventions of civil penalty provisions under the Uniform Law.

The provisions of Chapter 7 of the Legal Profession Uniform Law (Victoria) that relate to a trust records investigation apply to an investigation under this clause. Chapter 7 of the Uniform Law also applies to an investigation under this clause as though a reference to an investigator in that Part were a reference to an investigator appointed under this clause.

Subclause (3) applies Part 9.9 of the Legal Profession Uniform Law (Victoria) to an investigation under this clause. Part 9.9 deals with general matters including the prohibition on disclosure of information, abrogation of privilege in respect of certain requirements under the Uniform Law, protection from liability for "relevant persons", and the duty to report suspected offences.

- Clause 154 sets out who may bring a charge against a person for an offence under the Bill or the Legal Profession Uniform Law (Victoria).
- Clause 155 provides that nothing in the Legal Profession Uniform Law (Victoria) excludes or restricts judicial review by the Supreme Court of a decision of another court, tribunal, body or person.
- Clause 156 sets out the matters in respect which the Governor in Council may make regulations. The matters that the regulations may deal with include the matters set out in this clause, which includes matters that are required or necessary to be prescribed to give effect to this Bill or the Legal Profession Uniform Law (Victoria).

Regulations prescribing fees for Australian practising certificates must be made on the recommendation of the Victorian Legal Services Board, and in making a recommendation the Board must take into account the costs of regulating different classes of legal practitioners and any representations made by a local professional association regarding appropriate levels for fees for its members.

PART 11—REPEALS AND AMENDMENTS

Division 1—Repeal

Clause 157 repeals the **Legal Profession Act 2004**.

Division 2—Amendments

Clause 158 inserts definitions of *Australian lawyer* and *Australian legal practitioner* in section 38 of the **Interpretation of Legislation Act 1984**.

Clause 159 inserts a new section 38J in the **Interpretation of Legislation Act 1984** which provides that the expression *Legal Profession Uniform Law (Victoria)* means the provisions applying because of clause 4 of this Bill.

Clause 160 provides for consequential amendments, the detail of which is set out in Schedule 2 of the Bill, to a number of other Acts which refer to and operate in relation to the **Legal Profession Act 2004**. These Acts require updating to ensure they can operate in relation to the Bill. References to the **Legal Profession Act 2004** are deleted, to reflect that the **Legal Profession Act 2004** is to be repealed.

Clause 161 repeals this Division and Schedule 2 on the first anniversary of the first day on which all of the provisions in this Act are in operation. However, the repeal of this Division and Schedule 2 does not affect the continuing operation of the amendments made by them.

PART 12—TRANSITIONAL PROVISIONS

Division 1—Preliminary

Clause 162 provides definitions of *commencement day* and *old Act* (the **Legal Profession Act 2004**) for the purposes of this Part.

Clause 163 confirms that, except where the contrary intention appears, this Part does not affect the operation of the **Interpretation of Legislation Act 1984**. The **Interpretation of Legislation Act 1984** includes provisions regarding the effect of repealed provisions. In particular, section 14(2) of the **Interpretation of**

Legislation Act 1984 operates to preserve any rights, liabilities and obligations created by a provision before its repeal.

- Clause 164 provides that the Governor in Council may make regulations containing provisions of a transitional nature arising as a result of the enactment of the Bill, including repeals and amendments made by the Bill. Regulations under this clause have effect despite anything to the contrary in any Act other than the Bill or the **Charter of Human Rights and Responsibilities Act 2006** or in any subordinate instrument. This clause is repealed on the second anniversary of its commencement.

Division 2—Local regulatory authorities

- Clause 165 provides that those who were the chairperson, deputy chairperson, elected members and appointed members of the Legal Services Board under the old Act immediately before the commencement day continue on in their roles on the Victorian Legal Services Board under the Bill.
- Clause 166 provides that the person who was the Legal Services Commissioner under the old Act immediately before the commencement day continues on as the Victorian Commissioner under the Bill.

Division 3—Admission, certificates and business practice

- Clause 167 provides the prescribed fee in respect of the functions of the Victorian Legal Admissions Board and the prescribed library fee for the purposes of clause 72 until the regulations otherwise provide.
- Clause 168 concerns clause 12 of Schedule 4 to the Legal Profession Uniform Law (Victoria). That clause provides that the practising certificate granted under the old Act to a barrister is taken to be an Australian practising certificate granted under that law. Clause 168 provides that the practising certificate is to be subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.

This provision is intended to provide that those who are defined as barristers under the old Act continue to be defined as barristers under the Legal Profession Uniform Law (Victoria).

Clause 169 provides that if a government lawyer engaged in legal practice under section 2.2.2(2)(g) of the old Act at any time prior to the commencement day of the Legal Profession Uniform Law (Victoria), the period of that practice is to be deducted from the relevant period of supervised legal practice imposed under section 49(1) of the Legal Profession Uniform Law (Victoria).

This clause also provides that any person who is not an Australian lawyer and who engaged in legal practice under section 2.2.2(2)(g) of the old Act at any time in the 12 months prior to the commencement day of the Legal Profession Uniform Law (Victoria) is exempt from section 10(1) of that Act which prohibits unqualified entities from engaging in legal practice.

Clause 170 disapplies section 258 of the Legal Profession Uniform Law (Victoria) (to the extent that that section prohibits a law practice or related entity from promoting or operating a managed investment scheme and from, as the legal representative of a lender or contributor, negotiating the making of or acting in respect of a mortgage), and continues the prohibition against incorporated legal practices or related entities from conducting managed investment schemes.

Section 5G of the Corporations Act provides that if a State law declares a provision of State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency. Accordingly, this clause is declared to be such a provision.

Division 4—Trust accounts

Clause 171 provides that a person who was an approved clerk under the old Act immediately before the commencement day is taken, on and after that day, to be an approved clerk under the Bill and the Legal Profession Uniform Law (Victoria) as if he or she had been approved under the Bill.

Division 5—Legal costs

Clause 172 provides that a practitioner remuneration order made under the old Act immediately before the commencement day continues in force on and after that day as if it were a practitioner remuneration order made under the Bill. The clause also provides that a person who was a member of the Legal Costs Committee under the old Act immediately before the commencement day continues to be a member of the Legal Costs Committee under the Bill on and after that day.

Division 6—Fidelity cover

Clause 173 provides that all money forming part of the Legal Practitioner Fidelity Fund under the old Act immediately before the commencement day forms part of the fidelity fund under the Bill on and after that day.

Clause 174 provides that a determination of the Legal Services Board made under the old Act before the commencement day in relation to a contribution payable to the fidelity fund by a lawyer that relates to any period on or after the commencement day is taken to be the setting by the fidelity authority of a contribution payable to the fidelity fund by the lawyer under section 225 of the Legal Profession Uniform Law (Victoria).

Subclause (2) provides that a determination made the Legal Services Board under the old Act before the commencement day in relation to a contribution payable to the fidelity fund by an approved clerk or community legal centre that relates to any period on or after the commencement day is taken, on and after that day, to be the setting by the Victorian Legal Services Board of a contribution payable to the fidelity fund by the approved clerk or community legal service under clause 128 of the Bill.

Subclause (3) provides that, in clause 174, *lawyer* has the same meaning as in the Legal Profession Uniform Law (Victoria).

Division 7—Professional indemnity insurance

Clause 175 provides that the chairperson of the Legal Practitioners' Liability Committee under the old Act continues to be the chairperson of the Liability Committee under the Bill on the same terms and conditions of appointment, for the balance of his or her term. This clause also provides that all other

members of the Liability Committee under the old Act continue in their roles but will cease to be members 6 months after the commencement day unless they are reappointed.

- Clause 176 provides that an approval of terms and conditions of professional indemnity insurance given by the Legal Services Board under the old Act that was in force immediately before the commencement day is taken, on and after that day, to be an approval of the terms and conditions by the Victorian Legal Services Board under the Bill.
- Clause 177 provides that where the Legal Services Board has given an exemption under the old Act to a law practice or community legal centre, or class of law practice or community legal centre, from the requirement to obtain or maintain professional indemnity insurance, that exemption continues in force according to its tenor as if it had been given by the Victorian Legal Services Board under the Legal Profession Uniform Law (Victoria).
- Clause 178 provides that all money forming part of the Legal Practitioners' Liability Fund under the old Act immediately before the commencement day forms part of the Liability Fund under the Bill.

Division 8—Public Purpose Fund

- Clause 179 provides that all money forming part of the Public Purpose Fund established under the old Act is to form part of the Public Purpose Fund established under the Bill.

Subclause (2) also provides that all money standing to the credit of the old General Account, Statutory Deposit Account and Distribution Account under the old Act is to be credited to their equivalents under the Bill.

Subclause (3) provides that any advance paid out of the Public Purpose Fund under section 6.7.9(3) of the old Act that has not been repaid before the commencement day is repayable to the Victorian Legal Services Board in accordance with the original terms of the advance and must be paid into the Public Purpose Fund.

Subclause (4) provides that if the Attorney-General has given a direction under section 6.7.9(3) or 6.7.10(1A) of the old Act and that direction has not been complied with before the commencement day, the direction is to continue in force and the Victorian Legal Services Board must pay that money as directed out of the Public Purpose Fund and debit the Distribution Account.

Subclause (5) requires the Victorian Legal Services Board to pay out of the Public Purpose Fund (and debit to the General Account) any refund under section 2.4.9(4) or 2.4.11(2) of the old Act in respect of applications referred to in those sections made before the commencement day.

Subclause (6) provides that in transferring funding from the fidelity fund into the Public Purpose Fund, the Victorian Legal Services Board can take into account amounts paid out of the fidelity fund into the Public Purpose Fund under the old Act.

Subclause (7) provides that for the purposes of clause 145, under which the Victorian Legal Services Board may take into account previous funding when determining an amount to grant a person for a law-related service or activity, the Board may take into account an amount previously paid to the person under the old Act.

Subclause (8) provides that, in addition to any other amounts payable from the Public Purpose Fund, there is to be paid out of that fund any amount determined by the Attorney-General for the costs incurred in establishing the Legal Profession Uniform Framework, including costs incurred before the commencement day.

Clause 180 provides that a reference to the **Legal Profession Act 2004** in any Act other than the Bill or the Legal Profession Uniform Law (Victoria) or in any subordinate instrument, agreement, deed or other document must be treated as a reference to the Legal Profession Uniform Law (Victoria) so far as the reference—

- relates to any period of time on or after the commencement date; and
- is not inconsistent with the subject matter; and

- relates to a matter that is dealt with by the Legal Profession Uniform Law (Victoria).

This clause also provides that a reference to the **Legal Profession Act 2004** in any Act other than the Bill or the Legal Profession Uniform Law (Victoria) or in any subordinate instrument, agreement, deed or other document must be treated as a reference to the Bill so far as the reference—

- relates to any period of time on or after the commencement date; and
- is not inconsistent with the subject matter; and
- relates to a matter that is dealt with by the Bill but not by the Legal Profession Uniform Law (Victoria).

Clause 181 provides that an organisation that was a community legal centre (within the meaning of the old Act) immediately before the commencement day is taken, on and after that day, to be a community legal service for the purposes of the Legal Profession Uniform Law (Victoria) and the Bill.

Clause 182 provides that if a time limit is imposed under the old Act, that time limit continues to apply on or after the commencement day in relation to any act that was required or permitted to be done, and could have been done, before the commencement day. Further, unless the contrary intention appears, nothing in the Bill, the Legal Profession Uniform Law (Victoria) or the **Victorian Civil and Administrative Tribunal Act 1998** has the effect of extending or abridging time for doing that act. However, the time for doing an act may be extended or abridged on or after the commencement day in accordance with the old Act as if it were still in operation.

SCHEDULES

SCHEDULE 1

Schedule 1 contains the Legal Profession Uniform Law.

Legal Profession Uniform Law

Overview of the Legal Profession Uniform Law

The purpose of the Legal Profession Uniform Law (*the Uniform Law*) is to establish consistent regulation applying to the Australian legal profession in participating jurisdictions. It provides a means of licensing persons in one participating jurisdiction (a State or a Territory that has applied the Uniform Law) as Australian legal practitioners or Australian-registered foreign lawyers so as—

- to enable them to engage in legal practice in another participating jurisdiction without having to be licensed in the other jurisdiction; and
- to ensure that licensing enabling them to engage in legal practice and effected in one practising jurisdiction is equivalent in all respects to licensing in another jurisdiction.

The relevant processes contemplated by the Legal Profession Uniform Law are of a kind contemplated by the Mutual Recognition Act 1992 of the Commonwealth but so far as they concern participating jurisdictions, do not purport to affect the operation of that Act. The Mutual Recognition Act may apply in some circumstances in relation to any jurisdiction that is not a participating jurisdiction.

The Legal Profession Uniform Law Application Act is to be enacted by the legislature of one jurisdiction (*the host jurisdiction*) as a law of the host jurisdiction and is to be applied by the legislature of each other participating jurisdiction as a law of that jurisdiction.

Each participating jurisdiction (including the host jurisdiction) will also enact local provisions making necessary modifications to the application of the Legal Profession Uniform Law in its jurisdiction. The modifications will include provisions to the effect that references in the Legal Profession Uniform Law, as applying in that jurisdiction, to "this Law" mean the Legal Profession Uniform Law as applying in that jurisdiction and references to "this jurisdiction" mean that jurisdiction. The modifications will also define certain terms used in the Legal Profession Uniform Law as terms relating to that jurisdiction (for instance, *designated tribunal* will be defined to mean the relevant court jurisdiction of that jurisdiction).

The interpretation of the Legal Profession Uniform Law and the Uniform Rules is to be in accordance with the **Interpretation of Legislation Act 1984** of Victoria. Accordingly, each jurisdiction (other than the host jurisdiction) will provide that its interpretation legislation does not apply to the interpretation of the Legal Profession Uniform Law or the Uniform Rules as applying in that jurisdiction.

There are to be three national regulatory bodies—

- a committee consisting of the Attorneys-General of the States and Territories (*the Standing Committee*);
- the Legal Services Council (*the Council*);
- the Commissioner for Uniform Legal Services Regulation (*the Commissioner*).

The Uniform Rules are to be made by the Council, with the approval of the Standing Committee. The Uniform Rules may include Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules.

The Council and the office of Commissioner are to be established by legislation.

Outline of provisions

Overview of Chapter 1

Chapter 1 sets out the preliminary provisions of the Legal Profession Uniform Law, including provisions for the citation of the Law, the commencement date (as provided by the Act of that jurisdiction that applies the Law as a law of that jurisdiction), its extraterritorial operation and the interpretation provisions, including definitions of terms used in the Law.

Chapter 1 provides that the interpretation of the Law, the Uniform Regulations and the Uniform Rules is to be governed by the **Interpretation of Legislation Act 1984**.

Chapter 1 includes a provision defining, for the purposes of the Law, the meaning of providing legal services on a *pro bono basis*.

Note: The text of the Legal Profession Uniform Law refers to the Law as *this Law* (the Law as applied by the legislation of the relevant jurisdiction— see section 6(2)). This Explanatory Note refers to the Legal Profession Uniform Law as *the Law* as that expression more clearly emphasises the consistent purpose of the Law. However, the references in the Law to *this jurisdiction* are retained in this Explanatory Note (*jurisdiction* is defined in section 6(1) of the Law as a State, the ACT or the NT and *this jurisdiction*

will be defined in the Legal Profession Uniform Law Act of each jurisdiction as that jurisdiction).

CHAPTER 1—PRELIMINARY

PART 1.1—INTRODUCTION

- Section 1 provides for the citation of the Legal Profession Uniform Law.
- Section 2 provides for the commencement of the Legal Profession Uniform Law. The Law will commence in a jurisdiction in accordance with the Legal Profession Uniform Law Act of that jurisdiction.
- Section 3 sets out the objectives of the Law, which are to promote the administration of justice and an efficient and effective Australian legal profession by—
- providing and promoting interjurisdictional consistency in the law applying to the Australian legal profession; and
 - ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and
 - enhancing the protection of clients of law practices and the protection of the public generally; and
 - empowering clients of law practices to make informed choices about the services they access and the costs involved; and
 - promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
 - providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.

- Section 4 provides that the operation of the Law is, as far as possible, to include operation, according to its terms, in relation to—
- things situated within or outside the territorial limits of this jurisdiction; and
 - acts, transactions and matters done, entered into or occurring within or outside the territorial limits of this jurisdiction; and
 - things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from the Law, be governed or otherwise affected by the law of another jurisdiction.
- Section 5 sets out matters pertaining to the inter-jurisdictional administration of the Law.
- Subsections (2) and (3) provide that the host jurisdiction for the Law is Victoria, and the host Attorney-General for the Law is the Attorney-General of Victoria.
- Subsections (4) and (5) provide that the host jurisdiction for the Council and the Commissioner is New South Wales, and the host Attorney-General for the Council and the Commissioner is the Attorney-General of New South Wales.
- Subsection (6) provides that the primary offices of the Council and the Commissioner are to be located in NSW.

PART 1.2—INTERPRETATION

- Section 6 sets out the definitions of certain words and expressions used in the Law. These include definitions of *Australian lawyer*, *Australian legal practitioner*, *Australian practising certificate*, *Australian registration certificate*, *Australian-registered foreign lawyer*, *commercial or government client*, *community legal service*, *designated local regulatory authority*, *disqualified person*, *engage in legal practice*, *government lawyer*, *home jurisdiction*, *law practice*, *lay associate*, *legal practitioner associate*, *participating jurisdiction*, *principal* (in relation to a law practice) and *supervised legal practice*.

- Section 7 provides that the **Interpretation of Legislation Act 1984** applies to the interpretation of the Law, the Uniform Regulations and the Uniform Rules. Definitions, words and other expressions have the same meaning in the Uniform Regulations and Uniform Rules as they do in the Law (or relevant part of the Law), unless otherwise provided.
- Section 8 defines, for the purpose of the Law, the circumstances in which an Australian legal practitioner provides services on a *pro bono basis*.

CHAPTER 2—THRESHOLD REQUIREMENTS FOR LEGAL PRACTICE

Overview of Chapter 2

Chapter 2 contains provisions that make it an offence for unqualified persons and entities to engage in legal practice or advertise or represent themselves as entitled to engage in legal practice or to use titles that imply that they are entitled to engage in legal practice.

Chapter 2 provides for the admission to the Australian legal profession of eligible persons, as evidenced by an appropriate compliance certificate issued by the designated local regulatory authority, by the Supreme Court. There are particular provisions enabling the Supreme Court to admit foreign lawyers subject to certain conditions.

The Supreme Court is to keep a roll of Australian lawyers admitted by it. The Supreme Court may order the removal of a name from the roll on its own motion or on the recommendation of the designated local regulatory authority or the designated tribunal of a jurisdiction.

Chapter 2 includes a provision enabling a person to appeal to the Supreme Court against the decision of the designated local regulatory authority to refuse to issue, to revoke, or to recommend conditional admission in, a compliance certificate.

Chapter 2 provides that the Uniform Rules may make provision with respect to any aspect of admission.

PART 2.1—UNQUALIFIED LEGAL PRACTICE

- Section 9 sets out the objectives of Part 2.1, which are—
- to ensure, in the interests of the administration of justice, that legal work is carried out only by those who are properly qualified to do so; and
 - to protect clients of law practices by ensuring that persons carrying out legal work are entitled to do so.
- Section 10 prohibits an entity from engaging in legal practice in this jurisdiction unless it is a qualified entity (for example, an Australian legal practitioner, law practice, or Australian-registered foreign lawyer). A criminal penalty applies. **Entity** is defined in section 6(1) as including, but not being limited to, individuals, incorporated bodies, unincorporated bodies and other organisations, and partnerships (including assignees and receivers of partnerships).
- Subsection (2) provides that an entity is not entitled to recover any amount, and must repay any amount received, in respect of anything it did in contravention of the prohibition.
- Subsection (3) provides that the prohibition does not apply to an entity or class of entities which are declared to be exempt in the Uniform Rules.
- Section 11 makes it an offence for an unqualified entity (or a director, partner, officer, employee or agent of an unqualified entity) to advertise or represent, or do anything to state or imply, that it is entitled to engage in legal practice. Criminal penalties apply.
- Section 12 authorises a person to take or use certain titles (including lawyer, legal practitioner, barrister and solicitor, among others) in accordance with the Uniform Rules. Subsection (3) provides that the taking or use of these titles gives rise to a rebuttable presumption that the person represented that he or she, or an entity that the person represents, is entitled to engage in legal practice.
- Section 13 provides that a lay associate of a law practice does not contravene a provision of the Law or the Uniform Rules merely because they receive a fee, gain or reward for business of the law practice that is the business of an Australian legal practitioner. Nor do they contravene the provision merely

because they hold out, advertise or represent themselves as an associate of the law practice where its business includes the provision of legal services, or because they share with any other person the receipts, revenue or other income of the law practice where its business is the business of an Australian legal practitioner. However, the section will not apply in relation to a provision that expressly applies to lay associates of law practices.

Section 14 provides that the designated local regulatory authority may investigate any question as to the conduct of any entity (whether or not an Australian lawyer) that is, or may be, a contravention of Part 2.1. The authority may also initiate prosecutions and other proceedings for the contravention of any provision of Part 2.1 by any entity (whether or not an Australian lawyer).

PART 2.2—ADMISSION TO THE AUSTRALIAN LEGAL PROFESSION

Division 1—Introduction

Section 15 sets out the objective of Part 2.2, which is to protect the administration of justice and the clients of law practices by providing a system under which persons are eligible for admission to the Australian legal profession only if—

- they have appropriate academic qualifications and practical legal training, whether obtained in Australia or elsewhere; and
- they are fit and proper persons to be admitted.

The section includes a note which explains that admission is a prerequisite for being able to apply for an Australian practising certificate, which entitles the holder to engage in legal practice.

The section also notes the mutual recognition scheme in operation between Australia and New Zealand under the *Trans-Tasman Mutual Recognition Act 1997* (Cth). It is not intended that the Law will affect the operation of that Act with respect to the recognition of New Zealand lawyers seeking to obtain an Australian practising certificate.

Division 2—Admission

- Section 16 provides for the admission by the Supreme Court of this jurisdiction of persons aged 18 years or over to the Australian legal profession as an Australian lawyer, subject to a compliance certificate issued by the designated local regulatory authority and certain other conditions. A person may seek to be admitted in any participating jurisdiction. Any person may object to the Supreme Court to the admission of a person, in accordance with the rules of the relevant Supreme Court, which retains its inherent jurisdiction to refuse admission.
- Section 17 sets out the prerequisites for the issue of a compliance certificate, which are—
- the attainment of the academic qualifications specified in the Admission Rules; and
 - the satisfactory completion of the practical legal training requirements specified in the Admission Rules; and
 - the applicant is a fit and proper person to be admitted to the Australian legal profession (having regard to the suitability matters specified in the Admission Rules and any other matter relevant to the person's eligibility or suitability for admission that comes to the attention of the designated local regulatory authority).
- Section 18 allows the designated local regulatory authority to make exemptions from the academic qualifications or practical legal training prerequisites for a compliance certificate where the authority is satisfied that the applicant has sufficient legal skills or relevant experience obtained either in Australia or overseas or both, so as to render the applicant eligible for admission. It does not matter whether the skills and experience were obtained in legal practice, in service to a government authority or another way considered appropriate by the authority.
- The intention of this section is to allow the designated local regulatory authority to ameliorate the requirements imposed on experienced foreign lawyers when seeking admission to the Australian legal profession.

Section 19 provides for the issue of compliance certificates by the designated local regulatory authority, on application. The authority may issue and provide to the Supreme Court a compliance certificate stating that the applicant has met the prerequisites set out in section 17.

Subsection (4) provides that the authority may revoke a compliance certificate if satisfied that it was issued on the basis of information provided by the person that was false, misleading or incomplete in a material particular or that the certificate was issued in error.

Subsection (5), however, provides that the revocation of a compliance certificate does not of itself affect the person's admission if they are already admitted. The designated local regulatory is required, under subsection (6), to ensure that notice of an application for admission is given on an appropriate website.

Under subsection (7), any person may object to the authority against the issue of a compliance certificate to a particular person, and the authority must give the applicant an opportunity to respond to any relevant objection. If the designated local regulatory authority fails to give notice in accordance with this section or the Uniform Rules, subsection (9) provides that this will not affect the validity of the applicant's admission.

Section 20 enables the designated local regulatory authority to recommend in a compliance certificate for a foreign lawyer that the lawyer be admitted subject to one or more of the conditions specified in the section. This section is intended to facilitate the entry of foreign lawyers to practise in Australia for a limited period of time or subject to appropriate supervision, training or other limitation.

Subsection (3) provides that, following the admission of a foreign lawyer, the Supreme Court of this jurisdiction may vary or revoke a condition to which the foreign lawyer's admission is subject. The designated local regulatory authority may make recommendations about the variation or revocation, which the Court must consider.

Subsection (4) provides that, if a person contravenes a condition, the Supreme Court may order the removal of the person's name from the Supreme Court roll for this jurisdiction.

Under subsection (5), such a contravention may constitute unsatisfactory professional conduct or professional misconduct.

The section is not intended to interfere with the Supreme Court's inherent jurisdiction to refuse admission.

Section 21 enables a person to apply to the designated local regulatory authority for a declaration of early assessment of suitability for a compliance certificate. This declaration would provide that matters disclosed by the person will not, without more, adversely affect an assessment of the person's fitness to be admitted.

Subsection (2) provides that the designated local regulatory authority may make the declaration in relation to any or all of the matters disclosed, or may refuse to do so.

Subsection (3) provides that a declaration is binding on the designated local regulatory authority unless the applicant failed to make a full and fair disclosure of all relevant matters.

This section would allow, for example, an individual with a criminal history to disclose the nature of his or her convictions to determine whether he or she can be considered fit and proper to be admitted to the Australian legal profession, prior to embarking on academic study.

Section 22 requires the Supreme Court to maintain a roll of Australian lawyers admitted by the Court. Under subsection (2), a person's admission is effective from the time the person signs the Supreme Court roll.

Section 23 enables the Supreme Court to remove the name and other particulars of a person from the roll on its own motion or on the recommendation of the designated local regulatory authority or of the designated tribunal.

Subsection (2) requires the designated local roll authority to remove a person's name from the Supreme Court roll if the designated local roll authority is satisfied that his or her name has been removed from the Supreme Court roll of another jurisdiction, unless the Supreme Court has made an order which provides otherwise.

The Supreme Court can only make such an order if satisfied that the removal from the roll of another jurisdiction is likely and will not be based on disciplinary action. If a person is removed

from the Supreme Court roll, they cease to be an Australian lawyer from the time the order for removal is made, at which point they become a disqualified person for the purposes of the Law.

Under subsection (7), the person's name is to be restored to the relevant roll if it is restored to the other roll, and may be so restored on the person's application to the designated local roll authority, or on the designated local roll authority's own initiative.

- Section 24 requires a person to notify, as soon as practicable and in writing, the designated local roll authority if the person's name has been removed from the Supreme Court roll of another jurisdiction or an authority or tribunal has recommended that the person's name be removed from the Supreme Court roll for this jurisdiction. Civil penalties apply.
- Section 25 provides that an Australian lawyer is an officer of the Supreme Court of this jurisdiction so long as the lawyer's name remains on the Supreme Court roll of any jurisdiction.

Division 3—Appeals

- Section 26 provides for appeals in relation to the designated local regulatory authority's decisions regarding compliance certificates.
- Subsection (1) allows a person (including a foreign lawyer) to appeal to the Supreme Court against a decision of the designated local regulatory authority to refuse to issue, or to revoke, a compliance certificate.
- Subsection (3) allows a foreign lawyer for whom a compliance certificate has been issued recommending conditional admission to appeal to the Supreme Court against the recommendation.
- Subsection (4) provides that, on these appeals, the Supreme Court is empowered to make any order it considers appropriate.
- Section 27 allows an applicant for a declaration of early assessment of eligibility for a compliance certificate to appeal to the Supreme Court against a refusal of the designated local regulatory authority to make the declaration.

Subsection (2) empowers the Supreme Court to make any order it considers appropriate and, under subsection (3), any such order is binding on the designated local regulatory authority unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

Section 28 provides that appeals under Division 3 are to be by way of re-hearing and that new, additional or substituted evidence can be given on the appeal.

Subsection (2) provides that the Supreme Court may make any costs order it thinks fit, other than ordering costs against the designated local regulatory authority where the appeal is not successful.

Section 29 enables the designated local regulatory authority to accredit or re-accredit law courses or providers of practical legal training, in accordance with the Admission Rules.

CHAPTER 3—LEGAL PRACTICE

Overview of Chapter 3

Chapter 3 sets out the way in which legal services may be provided, the responsibilities and liabilities of principals, and the role and privileges of legal practitioner associates. It contains details of entitlement to, and grant or renewal of, Australian practising certificates and the requirements about notifying the principal place of business and any changes. It also includes details of conditions applying to practising certificates.

Chapter 3 sets out the regulatory provisions applying to foreign lawyers and the grant and renewal of Australian registration certificates and the permitted scope of practice of foreign lawyers.

Chapter 3 contains details about variation, suspension and cancellation of Australian practising certificates and Australian registration certificates. It also contains details about the rights of appeal and review.

Chapter 3 includes provisions applying to incorporated and unincorporated legal practices and community legal services. There are also provisions about the disqualification of individuals and entities.

PART 3.1—INTRODUCTION

Section 30 sets out the objectives of Chapter 3, which are—

- to enable the provision of legal services through a range of business structures; and
- to ensure that any particular type of business structure does not hinder a law practice and the legal practitioners within it from complying with the Law, the Uniform Rules and the other professional obligations of Australian legal practitioners; and
- to ensure that clients of law practices are adequately protected regardless of the business structure through which a law practice provides legal services; and
- to regulate the provision of legal services through community legal services.

Section 31 provides that an Australian practising certificate or Australian registration certificate granted in this jurisdiction can only be varied, suspended or cancelled in accordance with the Law as applied in this jurisdiction. This clarifies that another jurisdiction cannot amend a certificate granted in this jurisdiction.

PART 3.2—LAW PRACTICES—GENERAL PROVISIONS

Overview of Part 3.2

Part 3.2 allows law practices to adopt any business structure that suits their purposes, provided the business structure is one of the structures recognised in the definition of *law practice* or is approved by the Council. All business structures are required to adhere to the obligations of law practices in the Law and Uniform Rules.

Business structures include law practices that provide legal services as well as other services (i.e. multi-disciplinary practices). Incorporated multi-disciplinary practices are covered by the definition of *incorporated legal practice*. Unincorporated multi-disciplinary partnerships are covered by the definition of *unincorporated legal practice*.

Part 3.2 provides a statement of principals' responsibilities and liabilities. It draws out the fundamental responsibilities of principals and applies a single standard to principals of all law practices, regardless of business structure.

- Section 32 enables legal services to be provided under any business structure, subject to the Law and the Uniform Rules.
- Section 33 provides that Australian legal practitioners and law practices must comply with the Law, the Uniform Rules and other professional obligations, regardless of the business structure in which legal services are provided.
- Section 34 makes each principal of a law practice responsible for ensuring that reasonable steps are taken to ensure that all legal practitioner associates of the law practice, and the legal services provided by the practice, comply with the Law, the Uniform Rules and other professional obligations.
- Subsection (2) provides that a failure to uphold that responsibility may constitute unsatisfactory professional conduct or professional misconduct.
- Principals of law practices engaging the services of barristers are not responsible for ensuring that barristers comply with their obligations, as barristers are not captured by the definition of *legal practitioner associate*.
- Section 35 provides that, where a law practice, either by act or omission, contravenes any provision of the Law or the Uniform Rules that imposes an obligation on the law practice, a principal of the practice is taken to have contravened that provision in two circumstances. The first of these is if the principal knowingly authorised or permitted the contravention. The second of these is if the principal was in, or ought reasonably to have been in, a position to influence the conduct of the law practice in relation to its contravention and failed to take reasonable steps to prevent the contravention.
- Subsection (2) provides that a contravention by the principal may constitute unsatisfactory professional conduct or professional misconduct by the principal.
- Subsection (3) provides that this section does not affect the liability of the law practice or any other person for the contravention.
- Section 36 provides that a legal practitioner associate of a law practice may, on behalf of the practice, discharge obligations of the practice under the Law or the Uniform Rules, unless otherwise prevented by the Rules.

Subsection (3) provides that this section does not affect any liability of a principal of the practice.

- Section 37 provides that, subject to the Law and the conditions of his or her practising certificate, an Australian legal practitioner is not prevented from being a partner, director, officer or employee of a law practice merely because the business of the practice includes services other than legal services or persons other than Australian legal practitioners have an interest in the practice. The section does not permit the practitioner to share receipts, revenue or other income with a disqualified person (see section 121(1)).
- Section 38 provides that an Australian legal practitioner does not lose the professional privileges of an Australian legal practitioner, and the law relating to legal professional privilege is not affected, merely because the practitioner provides legal services or acts in the capacity of a director, officer, partner or employee of a law practice, or as a corporate or government legal practitioner.
- Section 39 makes it a criminal offence to cause or induce or attempt to induce a law practice or legal practitioner associate of a law practice to contravene the Law, the Uniform Rules or other professional obligations.
- Section 40 enables the Council to approve a relationship, or a kind of relationship, for the purposes of the definition of *principal*.
- Section 41 provides that the Uniform Rules may make provision with respect to any matter referred to in Part 3.2.

PART 3.3—AUSTRALIAN LEGAL PRACTITIONERS

Overview of Part 3.3

Part 3.3 provides for the issue of Australian practising certificates, while Part 3.5 provides for their variation, suspension, cancellation and refusal to renew. People who have been admitted to the Australian legal profession in any Australian jurisdiction may be granted, or have renewed, an Australian practising certificate if they meet the prerequisites contained in Part 3.3. Holders of Australian practising certificates may engage in legal practice in any participating jurisdiction.

All lawyers who engage in legal practice, including those in government, must hold practising certificates. The term *engage in legal practice* is defined in section 6(1) so that it includes practising law or providing legal

services, but does not include engaging in policy work. Therefore, government lawyers undertaking policy work only will not be engaging in legal practice. The Council may issue guidelines to further assist practitioners determine whether they require a practising certificate, particularly government and in-house practitioners.

Government and corporate legal practitioners would not be required to make fidelity cover contributions (recognising that they do not handle trust money) and under Uniform Rules will be exempted from the requirement to take out professional indemnity insurance (unless it is needed to cover volunteer work at a community legal service or other pro bono work).

The practising certificate provisions recognise that in many circumstances health issues, if regulatory intervention is required, may best be dealt with through the practising certificate regime. If a practitioner is not able to fulfil the 'inherent requirements' of an Australian legal practitioner, the designated local regulatory authority may choose to not issue a practising certificate, or to vary, suspend, cancel or not renew an existing certificate. Regulators should, however, continue to use the range of practising certificate conditions (including discretionary conditions relating to medical treatment and supervision) to allow practitioners to practise to the full extent they are capable without compromising consumer protection, in accordance with human rights and anti-discrimination obligations.

Division 1—Introduction

Section 42 sets out the objectives of Part 3.3, which are—

- to provide a system for the grant and renewal of Australian practising certificates in this jurisdiction to eligible and suitable persons who are already admitted to the Australian legal profession in any jurisdiction; and
- to facilitate the national practice of law by ensuring that the holders of Australian practising certificates can engage in legal practice in this jurisdiction regardless of their home jurisdiction.

The section notes the mutual recognition scheme in operation between Australia and New Zealand under the Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth.

The intention is not to affect the operation of that Act with respect to the recognition of New Zealand lawyers seeking to obtain an Australian practising certificate.

Division 2—Australian practising certificates

Section 43 provides that an Australian legal practitioner (an Australian lawyer who holds a current Australian practising certificate) is entitled to engage in legal practice in this jurisdiction, subject to the Law, the Uniform Rules and any conditions of his or her practising certificate.

Section 44 enables the designated local regulatory authority, on application, to grant or renew Australian practising certificates, subject to any conditions imposed by or under the Law or the Uniform Rules.

Subsection (3) provides that a certificate ceases to be in force if the holder ceases to be an Australian lawyer.

Subsection (4) provides that an application for an Australian practising certificate must be made in the jurisdiction the applicant reasonably intends to be his or her principal place of practice during the currency of the certificate or renewal.

Subsection (5) provides that the Uniform Rules may specify the jurisdiction in which applications must be made if the applicant does not reasonably expect to practise in any Australian jurisdiction during the currency of the certificate or renewal. This will permit the designated local regulatory authority to make arrangements for Australian legal practitioners who live overseas but wish to maintain an Australian practising certificate.

Section 45 provides that the designated local regulatory authority may grant or renew an Australian practising certificate only if satisfied that the applicant is an Australian lawyer, has indicated that he or she does not hold another Australian practising certificate, and, if so required by the Law, has, or will have before the grant or renewal, professional indemnity insurance in accordance with the Law and Uniform Rules.

Under subsection (2), the designated local regulatory authority is prohibited from granting or renewing an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate, which may be determined by reference to the suitability matters specified in the Uniform Rules. However, under subsection (4), the designated local regulatory authority may consider a person to be fit and proper

even though they do not satisfy the suitability matters if the authority is satisfied that this action is warranted in the circumstances.

Subsection (4) includes a note which states that a person who has been refused the grant or renewal of a certificate becomes a disqualified person. This is provided for by the definition of *disqualified person* in section 6.

Section 46 provides that an Australian lawyer must notify the designated local regulatory authority if they reasonably intend that this jurisdiction will be his or her principal place of practice when applying for the grant or renewal of a certificate. The section also requires that notification within 14 days after his or her principal place of legal practice changes, if that change coincides with moving, to this jurisdiction from another jurisdiction, the permanent office in or through which the lawyer engages in legal practice.

Subsection (2) provides that the designated local regulatory authority may reject that notification if it considers that it is reasonably likely that another jurisdiction will be the lawyer's principal place of practice.

Division 3—Conditions of Australian practising certificates

Section 47 provides that an Australian practising certificate is subject to the condition, as determined by the designated local regulatory authority, that the holder is authorised to engage in legal practice in one or more of the following categories—

- as a principal or employee of a law practice or as a corporate legal practitioner or government legal practitioner; or
- as, or in the manner of, a barrister only; or
- as a volunteer at a community legal service and otherwise on a pro bono basis only.

Subsection (2) provides that an Australian practising certificate is subject to a condition, as determined by the designated local regulatory authority, that the holder is either authorised or not authorised to receive trust money.

Subsections (3) to (5) permit the holder of an Australian practising certificate to engage in legal services, in certain circumstances, in more than one capacity.

Subsection (6) permits the holder of an Australian practising certificate to supervise legal practice by others, subject to any statutory or discretionary condition which provides otherwise.

Section 47 facilitates mobility for practitioners through practising certificate categories. Practising certificates granted for principals and employees of law practices and corporate and government legal practitioners will also authorise practice with fewer or the same regulatory requirements, until they are renewed. For example, if an employee of a law practice moves to government practice in the middle of the year, the legal practitioner will have the option of not updating his or her certificate until it is next required to be renewed. A practitioner moving to more regulated types of practice will be able to apply to the designated local regulatory authority for a variation of their certificate (i.e. a variation of the categories of practice authorised) to ensure they comply with additional regulatory requirements. For example, a practitioner who moves from corporate in-house practice to private practice may be required to pay a fidelity contribution and obtain professional indemnity insurance before their practising certificate is varied.

Practice authorised will be as follows—

<i>Primary type of practice authorised</i>	<i>Other types of practice automatically authorised</i>
Principal of a law practice—s. 47(1)(a)(i)	Employee of a law practice—s. 47(3) Corporate legal practitioner—s. 47(3) Government legal practitioner—s. 47(3) Volunteer at a community legal service and other pro bono basis—s. 47(5)

<i>Primary type of practice authorised</i>	<i>Other types of practice automatically authorised</i>
Employee of a law practice—s. 47(1)(a)(ii)	Corporate legal practitioner— s. 47(4)(a) (subject to any relevant conditions and until practising certificate is renewed) Government legal practitioner— s. 47(4)(a) (subject to any relevant conditions and until practising certificate is renewed) Volunteer at a community legal service and other pro bono basis—s. 47(5)
Corporate legal practitioner— s. 47(1)(a)(iii)	Government legal practitioner— s. 47(4)(b) (subject to any relevant conditions and until practising certificate is renewed) Volunteer at a community legal service and other pro bono basis—s. 47(5)
Government legal practitioner— s. 47(1)(a)(iv)	Corporate legal practitioner— s. 47(4)(c) (subject to any relevant conditions and until practising certificate is renewed) Volunteer at a community legal service and other pro bono basis—s. 47(5)
Barrister—s. 47(1)(b)	Volunteer at a community legal service and other pro bono basis—s. 47(5)
Volunteer at a community legal service and other pro bono—s. 47(1)(c)	None

Legal practitioners wishing to practise in more than one category over the longer term will have the option of applying for a practising certificate authorising practice in more than one of the categories of principal of a law practice, employee of a

law practice, corporate legal practitioner and government legal practitioner. For example, if a legal practitioner wishes to work part time as an employee of a law practice and part time as a corporate legal practitioner or plans to change roles during the year, he or she could apply for a certificate authorising to engage in practice as an employee of a law practice and as a corporate legal practitioner.

This section also facilitates volunteer work for all practitioners (including corporate and government legal practitioners) by ensuring all practising certificates authorise the provision of voluntary legal services at community legal services or otherwise on a pro bono basis. It also allows for a practising certificate to be available to practitioners wishing to exclusively provide legal services at a community legal service or otherwise on a pro bono basis. This will allow lawyers who do not otherwise engage in legal practice to undertake legal work on a pro bono basis. All volunteer work at community legal services and other pro bono work must be covered by professional indemnity insurance.

Section 48 provides two statutory conditions to which an Australian practising certificate is subject.

Subsection (1) provides the first of these, which is that the holder must not contravene a condition imposed on the admission of the holder to the Australian legal profession (including a condition that has been varied after admission) and still in force.

Subsection (2) provides the second, which is that the holder must not apply for or hold another Australian practising certificate that would be in force concurrently with the first certificate.

Section 49 provides another statutory condition to which an Australian practising certificate is subject. This is that the holder must engage in supervised legal practice only until the holder has completed—

- if the holder completed practical legal training principally under the supervision of an Australian lawyer to qualify for admission—a period or periods equivalent to 18 months of supervised legal practice; or

- if the holder completed other practical legal training to qualify for admission—a period or periods equivalent to 2 years of supervised legal practice.

The Uniform Rules may specify how the equivalent periods are to be determined.

Subsection (3) provides that this condition does not apply to a barrister authorised to engage in legal practise as or in the manner of a barrister only.

Subsection (4) provides that the designated local regulatory authority may, for a person or class of persons, reduce the period referred to in the condition or grant exemptions from the statutory condition or reduce the period referred to in the condition.

Subsection (5) provides that those exemptions may be unconditional or subject to conditions.

Section 50 provides a statutory condition applying to Australian practising certificates that authorise the holder to engage in legal practice as or in the manner of a barrister only. The first part of the condition is that the holder must undertake and complete to the satisfaction of the designated local regulatory authority a reading program specified in the Uniform Rules or otherwise approved by the authority. The second part of the condition is that the holder must read for a period approved by the authority with a supervising barrister of a class or description specified in the Rules or otherwise approved by the authority and chosen by the holder. The third part of the condition is that the holder must comply with any other requirements specified by the designated local regulatory authority.

Subsection (2) provides that the designated local regulatory authority may impose a discretionary condition limiting the practising rights of a barrister until the statutory condition is complied with.

Subsections (4) and (5) provide that the authority may exempt a person or class of persons, either unconditionally or subject to conditions, from the statutory condition.

- Section 51 provides that it is a statutory condition of an Australian practising certificate that the holder must notify the designated local regulatory authority within 7 days of certain events. The first of these events is if the holder has been charged with or convicted of a serious offence, a tax offence or an offence specified in the Uniform Rules. The second of these events is the occurrence of a bankruptcy-related event in relation to the holder. The third of these events is the holder becoming the subject of disciplinary proceedings as a lawyer in a foreign country.
- Section 52 provides that it is a statutory condition of an Australian practising certificate that the holder must comply with the applicable requirements of the Continuing Professional Development Rules.
- Section 53 enables the designated local regulatory authority to impose discretionary conditions on an Australian practising certificate in accordance with the Uniform Rules, being conditions of a kind permitted by the Law or specified or described in the Uniform Rules.
- Subsection (2) provides that discretionary conditions must be reasonable and relevant and may be imposed on the grant or renewal of the certificate or during its currency.
- Section 54 provides that the holder of an Australian practising certificate must comply with the conditions to which the certificate is subject. A civil penalty applies.

Division 4—Miscellaneous

- Section 55 permits (but does not require) the designated local regulatory authority to alter a certificate, or issue a substitute certificate, to reflect a variation. The variation will not be affected if the authority does not alter or issue a substitute certificate.
- Section 56 expresses an intention that jurisdictional legislation may exempt government lawyers or classes of government lawyers from the requirement to hold Australian practising certificates in respect of their official functions as government lawyers, and an exemption may be general or for specified periods. It is also intended that jurisdictional legislation may exclude or modify the operation of specified provisions of the Law to government lawyers.

Section 57 provides that the Uniform Rules may make provision for any aspect of Australian practising certificates, including their grant or renewal.

PART 3.4—FOREIGN LAWYERS

Overview of Part 3.4

Part 3.4 regulates the practice of foreign law in Australia by foreign lawyers.

Division 1—Introduction

Section 58 sets out the objective of Part 3.4, which is to encourage and facilitate the internationalisation of legal services by providing a framework for the regulation of the practice of foreign law in this jurisdiction by foreign lawyers as a recognised aspect of legal practice in this jurisdiction.

Section 59 provides that Part 3.4 does not apply to Australian legal practitioners, except as expressly provided.

Division 2—Limited practice without registration

Section 60 provides for foreign lawyers to practise foreign law without having to hold a current Australian registration certificate either for up to 90 days in any 12 month period or during any period during which a restriction under the Migration Act 1958 of the Commonwealth has the effect of limiting the period during which the foreign lawyer may do work or transact business in Australia.

However, subsection (2) provides that this permission does not apply to a foreign lawyer in certain circumstances. The first of these is if the foreign lawyer maintains an office in this jurisdiction for the purpose of practising foreign law in Australia. The second of these is if the foreign lawyer is a partner, director or other principal of a law practice in this jurisdiction. The third and fourth circumstances concern foreign lawyers whose Australian registration certificates have been cancelled or suspended.

Subsection (3) makes it a criminal offence for a foreign lawyer who does not hold a current Australian registration certificate to maintain an office in this jurisdiction for the purpose of practising foreign law in this jurisdiction or to practice foreign

law in this jurisdiction as a partner, director or other principal of a law practice.

Division 3—Registration

- Section 61 provides that an Australian-registered foreign lawyer is entitled to practise foreign law in this jurisdiction, subject to the Law, the Uniform Rules and any conditions to which the lawyer's Australian registration certificate is subject.
- Section 62 enables the designated local regulatory authority to grant or renew an Australian registration certificate in respect of a financial year.
- Subsection (2) provides that the certificate is subject to conditions imposed under the Law or the Uniform Rules.
- Subsection (3) sets out the pre-conditions for the grant of a certificate, but, under subsection (5), these do not include residence or domicile in Australia.
- Subsection (4) empowers the designated local regulatory authority to refuse to grant or renew an Australian registration certificate on any ground specified in the Uniform Rules.
- Subsection (6) sets out the designated local regulatory authority's powers in respect of applications.
- Subsection (7) provides that a foreign lawyer becomes an Australian-registered foreign lawyer when granted an Australian registration certificate.
- Section 63 requires the applicant for, or holder of, an Australian registration certificate to notify the designated local regulatory authority if they reasonably intend that their principal place of practice is, or is to be, this jurisdiction when applying for the grant or renewal of an Australian registration certificate. The section also requires applicants and holders to notify the authority within 14 days after their principal place of legal practice changes, if it involves moving their permanent office to this jurisdiction from another jurisdiction.
- Subsection (2) provides that the designated local regulatory authority may reject the notification if it considers another jurisdiction is reasonably likely to be the person's principal place of practice.

Division 4—Conditions of Australian registration certificates

- Section 64 provides that an Australian registration certificate is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised, or is not authorised, to receive trust money.
- Section 65 provides that it is a statutory condition of an Australian registration certificate that the holder must not apply for, or hold, more than one such certificate if the certificates would be in force concurrently.
- Section 66 provides that it is a statutory condition of an Australian registration certificate that the holder must notify the designated local regulatory authority within 7 days after certain events occurring. The first such event is the holder being charged with, or convicted of, certain offences. The second such event is the occurrence of a bankruptcy-related event in relation to the holder. The third such event is the holder becoming subject to disciplinary proceedings or other disciplinary action as a lawyer in a foreign country.
- Subsection (2) provides that the Uniform Rules may provide that notification is not required in specified circumstances.
- Section 67 enables the designated local regulatory authority to impose discretionary conditions on an Australian registration certificate in accordance with the Uniform Rules.
- Subsection (2) provides that the discretionary conditions must be reasonable and relevant and may be imposed at the grant or renewal, or during the currency, of a certificate.
- Subsection (3) requires that the designated local regulatory authority must include details of the conditions in the Australian Legal Profession Register.
- Section 68 requires the holder of an Australian registration certificate to comply with the conditions of the certificate. A civil penalty applies.

Division 5—Scope and form of practice

- Section 69 limits the scope of legal services that may be provided by a person who is a foreign lawyer who is practising foreign law under Division 2, or an Australian-registered foreign lawyer.

Subsection (2) specifies what services the foreign lawyer may provide. However, subsection (3) provides that subsection (2) does not authorise the foreign lawyer to practise Australian law in Australia or to appear in any court except on the lawyer's own behalf or as permitted by the Uniform Rules.

Further, subsection (4) provides that the foreign lawyer may advise on the effect of an Australian law where necessarily incidental to the practice of foreign law and expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

Section 70 provides that an Australian-registered foreign lawyer may, subject to any conditions to which their Australian registration certificate is subject, practise foreign law: on their own account; as a partner in a law firm; as a volunteer at a community legal service or otherwise on a pro bono basis; as a partner, director, officer or employee of an incorporated legal practice or unincorporated legal practice; or as an employee of a either law practice or an Australian-registered foreign lawyer. However, the section does not entitle the lawyer to practise Australian law in this jurisdiction.

Division 6—Miscellaneous

Section 71 provides that the Uniform Rules may make provision for any aspect of Australian registration certificates and the conduct of the practice of foreign law in Australia by foreign lawyers.

PART 3.5—VARIATION, SUSPENSION AND CANCELLATION OF, AND REFUSAL TO RENEW, CERTIFICATES

Overview of Part 3.5

Part 3.5 provides for the variation, suspension and cancellation of, and refusal to renew, Australian practising certificates and Australian registration certificates by the designated local regulatory authority.

Holders will be made aware of the designated local regulatory authority's proposed action (and grounds) and will be invited to respond before action is taken. The authority must consider any response before taking action and will only take action if it considers a certificate should be varied, suspended, cancelled or not renewed.

The Uniform Rules may make provision with respect to the variation, suspension or cancellation of certificates, and the Council may develop guidelines on this issue.

Holders will have an opportunity to appeal against, or seek a review of, decisions when they are made.

Division 1—Introduction

Section 72 sets out the objectives of Part 3.5, which are—

- to provide procedures for the variation, suspension or cancellation of Australian practising certificates and Australian registration certificates; and
- to provide show cause procedures for certain events or matters relating to the grant, renewal or continued holding of Australian practising certificates and Australian registration certificates.

Section 73 defines *certificate* for the purposes of Part 3.5 as an Australian practising certificate or an Australian registration certificate.

Division 2—Variation, suspension or cancellation of certificates

Section 74 provides that the designated local regulatory authority may vary a certificate for a formal or clerical reason or in another way that does not adversely affect the holder's interest.

Subsection (2) enables the designated local regulatory authority to vary, suspend or cancel a certificate at the request of or with the concurrence of the holder.

Section 75 requires the designated local regulatory authority to vary, suspend or cancel a certificate at the direction of a designated tribunal under section 302.

Section 76 enables the designated local regulatory authority to vary, suspend or cancel a certificate in accordance with Division 3 on a ground referred to in that Division or in accordance with Division 4 in relation to an automatic or designated show cause event.

Section 77 provides for the designated local regulatory authority to immediately vary or suspend a certificate. This power is available if the authority is considering whether to start, continue or complete action under Part 3.5, and the authority considers it necessary in the public interest.

Under subsection (2), the authority may immediately vary or suspend a certificate by written notice to the holder for up to 56 days after the notice is given.

Subsection (3) enables the holder to make written representations to the designated local regulatory authority, which the authority must consider.

Subsection (4) empowers the authority to revoke at any time a condition imposed by the variation under this section.

Section 78 enables the designated local regulatory authority to lift a suspension of a certificate imposed under Part 3.5 at any time, but not inconsistently with an order of a designated tribunal.

Subsection (2) enables the designated local regulatory authority to renew a certificate while it is suspended, but the renewed certificate remains suspended until cancelled or the suspension is lifted.

Section 79 empowers the Supreme Court to stay a decision to vary, suspend or cancel a certificate if the holder has been convicted of an offence. The decision may be stayed until the end of the appeal period and until any appeal brought is finally decided, lapses or otherwise ends.

Subsection (3) concerns circumstances in which a certificate is varied, suspended or cancelled because the holder has been convicted of an offence. If the conviction is quashed, the variation, suspension or cancellation ceases to have effect.

Section 80 requires the holder of a certificate to notify the designated local regulatory authority in writing if the holder has been removed from the Supreme Court roll of another jurisdiction. A civil penalty applies.

Subsection (2) requires the holder to notify the designated local regulatory authority of any recommendation of an authority or tribunal that the holder's name be removed from the Supreme Court roll for this jurisdiction, that their certificate be suspended or cancelled, that a certificate not be granted to them, or that

conditions be imposed on their certificate. A criminal penalty applies.

Section 81 requires the designated local regulatory authority to notify the holder or former holder of a certificate in writing of any variation, suspension or cancellation of the certificate.

Division 3—Variation, suspension or cancellation on specific grounds

Section 82 enables the designated local regulatory authority to vary, suspend or cancel a certificate on the certain specified grounds. The first specified ground is that the holder has contravened a condition of the certificate. The second specified ground is that the holder has failed without reasonable excuse to comply with Chapter 7. The third specified ground is that a local regulatory authority recommends variation, suspension or cancellation under section 278 or 466(7). The fourth specified ground, which applies only in relation to a practising certificate, is that the designated local regulatory authority reasonably believes the holder is unable to fulfil the inherent requirements of an Australian legal practitioner. The section includes a note stating that section 227 allows the designated local regulatory authority to suspend a practising certificate or registration certificate if the holder has not paid a fidelity contribution or levy.

Subsection (2) empowers the designated local regulatory authority to vary or suspend a certificate if the holder has been charged with certain offences and specifies the duration of the variation or suspension.

Subsection (4) provides that the designated local regulatory authority may recommend to another designated local regulatory authority that it consider whether the holder of a practising certificate is, or may be, unable to fulfil the inherent requirements of an Australian legal practitioner.

Section 83 requires the designated local regulatory authority to give written notice to a certificate holder of the action the authority proposes to take under section 82. The notice must also state grounds for the proposed action, and invite a response within 7 to 28 days as to why the proposed action should not be taken.

Section 84 enables the designated local regulatory authority, after the time specified for the response from the holder has expired and after considering any response received from the holder, to take the proposed action or less onerous action by written notice to the holder.

Division 4—Show cause procedure for variation, suspension or cancellation of, or refusal to renew certificates

Subdivision 1—Preliminary

Section 85 provides that a show cause event is either an automatic show cause event or a designated show cause event.

Subdivision 2—Automatic show cause events

Section 86 defines an *automatic show cause event* as a bankruptcy-related event, a conviction for a serious offence or a tax offence, or an event specified in the Uniform Rules that occurred in relation to an applicant for, or holder of, an Australian practising certificate or Australian registration certificate.

Section 87 provides that, where an automatic show cause event has occurred in relation to an applicant for the grant or renewal of a certificate, the applicant must provide the designated local regulatory authority with a statement about the event. The statement must explain why, despite the event, the applicant considers himself or herself a fit and proper person to hold a certificate.

Subsection (3) provides that the applicant does not need to provide the statement if they have previously provided to the authority details of the event or a statement to the same effect.

Section 88 provides that, where an automatic show cause event has occurred in relation to a holder of a certificate, the holder must give the designated local regulatory authority a written notice and a written statement. The notice must state that the event occurred. The statement must explain why, despite the event, the holder considers himself or herself to be a fit and proper person to hold a certificate.

Subsection (3) provides that the notice must be given within 7 days, and the statement within 28 days or a longer period allowed by the designated local regulatory authority, after the event.

Subsection (4) enables the authority to accept a statement received out of time.

Section 89 requires the designated local regulatory authority to determine whether a person who gives a statement under Subdivision 2 is a fit and proper person to hold a certificate.

Subsection (2) empowers the authority to vary, suspend, cancel, or refuse to renew a certificate in three circumstances. The first circumstance is if the holder or applicant fails to provide the required statement. The second circumstance is if the holder or applicant has provided a statement, but the designated local regulatory authority does not consider the person has shown they are a fit and proper person to hold a certificate. The third circumstance is if the holder or applicant has failed without reasonable excuse to comply with a requirement of Chapter 7 in connection with an investigation of the event or has committed an offence in connection with such an investigation.

Subsection (3) provides that if the designated local regulatory authority determines that the holder is a fit and proper person to hold a certificate, it must not take any further action in relation to the event but may impose a discretionary condition.

Subsection (4) provides for how the authority may determine a matter under this section.

Subdivision 3—Designated show cause events

Section 90 defines a *designated show cause event* as service of a notice on the holder of a certificate alleging—

- if the person holds an Australian practising certificate, that they have engaged in legal practice outside the terms of a restriction on the certificate; or
- if the person holds an Australian registration certificate, that they have provided legal services not permitted by or under the Law; or

- if the person holds an Australian practising certificate and is required to have professional indemnity insurance, that they do not have, or no longer have, such insurance that complies with the Law; or
- a matter of a kind specified in the Uniform Rules.

For the service of the notice to constitute a *designated show cause event*, the notice must also require the holder to provide a statement showing cause why the designated local regulatory authority should not take the action specified in the notice to vary, suspend or cancel the certificate.

Section 91 requires a holder in relation to whom a designated show cause event has occurred to give a written statement to the designated local regulatory authority within 28 days of service of the notice (or a longer period allowed by the authority). The statement must explain why, despite the event, the holder considers himself or herself to be a fit and proper person to hold a certificate.

Subsection (3) enables the designated local regulatory authority to accept a statement received out of time.

Section 92 provides that the designated local regulatory authority must determine whether a person who has provided a statement under Subdivision 3 is a fit and proper person to hold a certificate.

Subsection (2) provides that the authority may vary, suspend, cancel, or refuse to renew a certificate in three circumstances. The first circumstance is if the holder fails to provide the required statement. The second circumstance is if the holder has provided a statement, but the designated local regulatory authority does not consider the holder has shown they are a fit and proper person to hold a certificate. The third circumstance is that the holder has failed without reasonable excuse to comply with a requirement of Chapter 7 in connection with an investigation of the event or has committed an offence in connection with such an investigation.

Subsection (3) provides that if the designated local regulatory authority determines that the person is a fit and proper person, it must take no further action in relation to the show cause event but may impose a discretionary condition that it considers appropriate.

Subsection (4) provides that if the authority determines that the person is not a fit and proper person, it may take the action specified in the notice referred to in section 90 or less onerous action that the authority considers appropriate.

Subsection (5) provides that in determining a matter under this section, the designated local regulatory authority may have regard to the facts and circumstances surrounding or relating to the show cause event.

Subsection (6) provides that the authority must not deal with a matter under this section if the matter has previously been the subject of investigation or determination under the Law, unless the authority is satisfied that there are exceptional circumstances for doing so.

Division 5—Miscellaneous

- Section 93 provides that events or matters occurring before first admission as an Australian legal practitioner or first registration as a foreign lawyer do not require the designated local regulatory authority to take action under Part 3.5 provided that the event or matter was disclosed in certain applications. The relevant applications are applications for a compliance certificate, a declaration of early assessment of suitability for a compliance certificate or Australian registration certificate. The section also provides that the designated local regulatory authority may decide to take no action under Part 3.5 if the authority is satisfied that it is appropriate to take no action in the circumstances.
- Section 94 provides that if the designated local regulatory authority refuses to grant or renew, or cancels, a certificate under Part 3.5, it may also decide that the person is not entitled to apply for a certificate for a specified period of time (not exceeding 5 years). Subsection (3) provides that the authority must give the person written notice of its decision.
- Section 95 provides that the designated local regulatory authority, in considering whether or not to grant, renew, vary, suspend or cancel a certificate, may by notice require the applicant or holder to do any of the following things—

- give the authority specified documents or information;
- be medically examined by a medical practitioner nominated by the authority;
- provide a police report as to whether or not he or she has been convicted or found guilty of an offence in Australia;
- cooperate with any inquiries the authority considers appropriate.

Under subsection (2), failure to comply with such a requirement is a ground for making an adverse decision in relation to the action being considered by the designated local regulatory authority.

Section 96 enables the designated local regulatory authority to defer taking action or to renew the certificate for a period of time so that the holder has an opportunity to properly arrange their affairs.

Section 97 provides that nothing in Part 3.5 prevents a matter to which the Part relates from being dealt with under Chapter 5 (Dispute Resolution and Professional Discipline).

Subsection (2) provides that a matter to which Part 3.5 relates may be the subject of a complaint and be dealt with under Chapter 5 despite adverse action having been taken under Part 3.5.

Section 98 provides that the Uniform Rules may make provision for the variation, suspension or cancellation of certificates, the show cause procedure and any other matter relating to Part 3.5.

PART 3.6—APPEAL OR REVIEW ABOUT CERTIFICATES

Overview of Part 3.6

Part 3.6 provides a right of appeal or review of decisions to refuse to grant or renew an Australian practising certificate or registration certificate and decisions to vary, suspend or cancel a practising certificate or registration certificate. The appeal or review is to be heard by the *designated tribunal* of the State or Territory.

An appeal or review under section 100 is a merits review of the decision of the designated local regulatory authority (rather than an appeal on a point of law). New information may be presented to the designated tribunal to assist it in making its decision at the time the appeal or review is being determined.

The jurisdiction where the original decision is made is also the jurisdiction to hear any appeal or review. This ensures that legal practitioners seeking review or appeal are not able to "forum shop" as their appeals must be—

- heard in the jurisdiction in which they are applying to practise, and
- heard in the same jurisdiction in which the decision being appealed or reviewed was made.

Section 99 sets out the objective of Part 3.6, which is to provide a right of appeal against, or to seek a review of, certain decisions of the designated local regulatory authority in relation to Australian practising certificates and Australian registration certificates granted or to be granted in this jurisdiction.

Section 100 provides that an applicant for, or the holder of, an Australian practising certificate may, in accordance with applicable jurisdictional legislation, appeal to, or seek a review by, the designated tribunal of this jurisdiction of certain decisions made by the designated local regulatory authority. These appeals and reviews relate to decisions to refuse to grant or renew the practising certificate, decisions to vary, suspend or cancel, or impose a condition on, the practising certificate, and decisions that a person is not entitled to apply for a practising certificate for a specified period.

Subsection (2) provides that an appeal or review under this section may be made to review the merits of the relevant decision.

Subsection (3) provides that the designated tribunal may make any order it considers appropriate. Subsection (3) also specifies four orders that the tribunal may make. The first order is an order to direct the designated local regulatory authority to grant, or to refuse to grant, an application for a practising certificate. The second order is an order to direct the designated local regulatory authority to suspend, cancel, or re-instate a practising certificate. The third order is an order that the applicant or holder is not entitled to apply for a certificate for up to 5 years. The fourth order is an order directing the designated local regulatory authority to vary a certificate.

Subsection (4) provides that an application to a tribunal does not stay the refusal, variation, suspension or cancellation unless the designated tribunal otherwise determines.

Subsection (5) provides that the designated tribunal may not order the imposition of conditions on a practising certificate unless it has taken submissions from the designated local regulatory authority.

Subsection (6) provides that, in proceedings under the section, fresh or additional evidence may be given.

Subsection (7) provides that the onus of establishing that a person is a fit and proper person to hold a certificate is on the person asserting that fact and, in the absence of evidence to the contrary, it is to be presumed that any statement of facts in the designated local regulatory authority's reasons for the decision is correct. Subsection (7) also provides that a document that appears to be a document issued for or in connection with any application, proceedings or other matter arising under the Bankruptcy Act 1966 of the Commonwealth is admissible in proceedings and is evidence of the matters in it.

Subsection (8) provides that the designated local regulatory authority is required to give effect to any order of a designated tribunal under this section. Subsection (8) includes a note stating that jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

Section 101 makes provisions corresponding to those in section 100 enabling an applicant for or holder of an Australian registration certificate to appeal to, or seek a review by, the designated tribunal of this jurisdiction of certain specified decisions made by the designated local regulatory authority under Chapter 3. These appeals and reviews relate to decisions to refuse to grant or renew an Australian registration certificate, decisions to vary or suspend or cancel an Australian registration certificate, and decisions that certain persons are not entitled to apply for a registration certificate for a specified period.

PART 3.7—INCORPORATED AND UNINCORPORATED LEGAL PRACTICES

Overview of Part 3.7

Part 3.7 provides that *incorporated legal practices* and *unincorporated legal practices* (both terms are defined in section 6) are entitled to engage not only in legal practice but also in the provision of other services (section 103).

However, they must first give written notice to the designated local regulatory authority of their intention to provide legal services (section 104).

Part 3.7 does not regulate the provision of services other than legal services but regulates incorporated and unincorporated legal practices that provide other services. Such legal practices are required to have at least one principal who holds an Australian practising certificate authorising the holder to engage in legal practice as a principal. The principal must also be authorised to supervise others, and be a validly appointed director of the company, a partner in the partnership or have a relationship with the practice that is approved by the Council or specified under the Uniform Rules (section 105 and definitions of *principal* and *authorised principal*).

It is recognised that such legal practices may have non-lawyer office-holders in their management or governance structure. For example, a business that provides both legal services and accounting services could have directors or partners responsible for its accounting services who are not lawyers. As non-lawyers, such office-holders would not be subject to the legal professional obligations of the Law or the Uniform Rules or of the common law.

Part 3.7 includes provisions addressing issues that may arise if an incorporated legal practice becomes subject to external administration under both the Law and the Corporations Act 2001 of the Commonwealth (*Corporations Act*). It also includes provisions about the relationship of the Law to the constitution of, or legislation establishing, an incorporated legal practice and the Corporations legislation, as well as a provision that enables the Uniform Rules to make provision with respect to any aspect of incorporated and unincorporated legal practices.

Division 1—General

Section 102 provides that Division 1 applies to an incorporated legal practice or an unincorporated legal practice.

Section 103 provides that incorporated and unincorporated legal practices (being law practices to which Division 1 applies) are entitled to engage in legal practice in this jurisdiction, and may also provide other services.

Section 104 requires a law practice to which Division 1 applies that intends to engage in legal practice in this jurisdiction, or ceases to engage in such practice, to give notice to the designated local regulatory authority in accordance with the Uniform Rules. Civil penalties apply.

Section 105 requires a law practice to which the Division applies to have at least one authorised principal. This provision is consistent with the requirement that other law practices (such as law firms and partnerships) are required to have Australian legal practitioners as principals.

Section 106 provides for various civil penalty provisions and criminal offences relating to law practices to which Division 1 applies.

Subsection (1) provides that a law practice must not be without an authorised principal for more than 7 days. A civil penalty applies.

Subsection (2) provides that a law practice must notify the designated local regulatory authority within 7 days of ceasing to have any authorised principals. A civil penalty applies.

Subsection (3) makes it a criminal offence for a law practice to provide legal services in this jurisdiction when it has no authorised principal or is otherwise in breach of section 106.

Where a law practice is without an authorised principal, subsection (5) empowers the designated local regulatory authority to appoint an Australian legal practitioner who is an employee of the law practice or another nominated person to exercise the responsibilities of a principal under the Law.

Subsection (6) provides that, to be eligible for appointment, the practitioner must be an authorised principal.

Subsection (7) provides that a law practice will not contravene the section when a person holds such an appointment.

Section 107 applies where a person engages a law practice to which Division 1 applies to provide services that the person might reasonably assume to be legal services and the practice provides both legal and other services.

Subsection (2) requires the law practice to disclose, in accordance with the Uniform Rules, whether the services provided are legal services and any other specified matters.

Subsection (3) provides that if the law practice fails to make proper disclosure, the law practice owes the same standard of care that would apply if the service were a legal service provided by an Australian legal practitioner.

Division 2—Provisions applying to incorporated legal practices only

Section 108 makes provision for external administration proceedings.

Subsection (1) provides that section 108 applies to—

- proceedings in any court under Chapter 5 of the Corporations Act relating to a corporation that is, or was, an incorporated legal practice and that is, or was, in the process of becoming an externally-administered corporation under that Act; and
- proceedings in any court under any other legislation for the external administration of an incorporated legal practice.

Subsection (2) entitles the designated local regulatory authority to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect legal services provided by the practice.

Subsection (3) provides that when exercising its jurisdiction, the court may have regard to the interests of clients of the practice.

Subsection (5) provides that certain of its subsections are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act, which means that they override any inconsistent provisions in the Corporations Act.

Section 109 makes provision for circumstances in which an incorporated legal practice is subject to receivership under the Uniform Law and external administration under the Corporations Act.

Subsections (2) and (3) require the receiver to notify the administrator of the receiver's appointment and enable the receiver or the administrator (or both jointly) to apply to the Supreme Court for the resolution of issues arising from the dual appointments.

Subsection (4) provides that the Supreme Court may make any orders it considers appropriate and no liability attaches to the receiver or administrator for any act or omission done in good faith for the purpose of carrying out or acting in accordance with the orders.

Subsection (5) enables the designated local regulatory authority to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the practice.

Subsection (6) provides that certain other subsections are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act.

Section 110 makes provision for circumstances in which an incorporated legal practice is the subject of both the appointment of a Uniform Law receiver and an external administrator.

Subsections (2) and (3) require the receiver to notify the external administrator of the receiver's appointment and enable either of them (or both jointly) to apply to the Supreme Court for the resolution of issues arising from the dual appointments.

Subsection (4) provides that the Supreme Court may make any orders it considers appropriate and no liability attaches to the receiver or administrator for any act or omission done in good faith for the purpose of carrying out or acting in accordance with the orders.

Subsection (5) enables a local regulatory authority to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the practice.

Section 111 makes an incorporated legal practice vicariously liable for certain acts and omissions of its officers and employees in civil proceedings where it would be liable if the practice and those officers and employees were carrying on business in partnership.

Section 112 provides that the provisions of the Law and Uniform Rules that apply to an incorporated legal practice prevail over any inconsistencies in the constitution of the practice or legislative provisions by or under which the corporation is established or regulated that are specified or described in the Uniform Rules.

Section 113 enables the Uniform Rules to declare certain matters.

Subsection (1) enables the Rules to declare any provision of the Law or the Uniform Rules relating to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

Subsection (2) enables the Rules to declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under the Law or the Uniform Rules to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to all or any part of that Act.

The section will therefore allow the Uniform Rules to declare that provisions relating to corporations in the Law or Uniform Rules will override Corporations Act provisions.

Division 3—Miscellaneous

Section 114 provides that the Council may approve a corporation or an unincorporated body or group, or a kind of corporation or unincorporated body or group, for the purposes of the definitions of *incorporated legal practice* and *unincorporated legal practice*.

Section 115 enables the Uniform Rules to make provision with respect to any aspect of incorporated and unincorporated legal practices in so far as it concerns the provision of legal services or matters that affect, or may affect, the provision of legal services.

PART 3.8—COMMUNITY LEGAL SERVICES

Overview of Part 3.8

Part 3.8 specifically regulates community legal services. The definition of *law practice* in the Uniform Law includes *community legal service*, meaning that, in general, community legal services will be subject to the same regulatory requirements as other types of law practice. The definition of *community legal service* includes community legal centres and Aboriginal and Torres Strait Islander Legal Services.

Section 116 provides that the status of a community legal service as a body established on a not-for-profit basis is not affected by any profit made by it so long as it is not distributed to members or employees otherwise than by way of reasonable remuneration for contracted services.

Subsection (2) specifies that community legal services may recover legal costs incurred in respect of legal services it provides, subject to the legal costs provisions in Part 4.3. Part 4.3 permits a greater recovery of costs in the event of successful litigation in certain circumstances.

The section includes a note which states that legal practice at a community legal service, whether provided by a member, employee or volunteer, needs to be covered by professional indemnity insurance.

Section 117 requires a community legal service or its governing body to have at least one supervising legal practitioner who is employed or engaged by the service or is a member of its governing body, and is designated by the governing body as a supervising legal practitioner.

Under subsection (2), a criminal penalty applies where the service or its governing body does not have any supervising legal practitioners for more than 7 days.

Section 118 enables the Uniform Rules to make provision with respect to any aspect of community legal services so far as concerns the provision of legal services or matters that affect, or may affect, the provision of legal services.

PART 3.9—DISQUALIFICATIONS

Overview of Part 3.9

Part 3.9 provides for the disqualification of individuals or entities by a *designated tribunal* (the court or tribunal designated by the relevant jurisdiction) on certain grounds. It also prohibits a law practice from having a disqualified or convicted person as a lay associate, unless that person has been approved by the designated local regulatory authority (section 121).

A *disqualified person* (section 6) includes a person disqualified by a designated tribunal under section 119, a person who is subject to an order under section 94 preventing them from reapplying for a certificate for a specified period, a person whose name has been removed from a Supreme Court roll (and not subsequently re-admitted) and a person who has been refused an Australian practising certificate or whose practising certificate has been suspended or cancelled.

Division 1—Making of disqualification orders

Section 119 enables the designated tribunal, on the application of the designated local regulatory authority, to make an order to disqualify an individual (other than an Australian legal practitioner) for the purposes of the Law for a specified period of time, or indefinitely.

Subsection (2) specifies a number of grounds for disqualification.

Subsection (3) provides for the designated tribunal to vary or revoke an order if it considers it appropriate.

Subsection (4) provides that orders made by corresponding authorities of other jurisdictions apply to this jurisdiction in the same way as if made by the designated tribunal.

Section 120 enables the designated tribunal, on the application of the designated local regulatory authority, to make an order to disqualify an entity that is or was a law practice from providing all or specified legal services in this jurisdiction for a specified period of time, or indefinitely.

Subsection (2) specifies a number of grounds for disqualification.

Under subsection (3), a disqualification order may be made subject to conditions or made together with orders to safeguard the interests of clients or employees of the practice.

Subsection (4) provides for the designated tribunal to vary or revoke an order if it considers it appropriate.

Subsection (5) provides that orders made by corresponding authorities of other jurisdictions apply to this jurisdiction in the same way as if made by the designated tribunal.

Subsection (6) provides that courts and tribunals of this jurisdiction may arrange to communicate and cooperate with other courts or tribunals for the purpose of this section.

Division 2—Prohibitions and other provisions regarding disqualified persons and disqualified entities

Section 121 prohibits a law practice from having a lay associate whom any principal or other legal practitioner associate of the practice knows is a disqualified person or a person who has been convicted of a serious offence, unless the lay associate is approved by the designated local regulatory authority. A criminal penalty applies.

Subsection (2) enables a person to seek the approval of the designated local regulatory authority to be a lay associate for the purposes of the section either generally, for a particular position or category of positions with a particular law practice, or for a particular category of positions with any law practice. A general approval enables a lay associate not to seek repeated approvals from the authority when changing positions or applying for a position or positions, allowing more timely recruitment decisions to be made. This will be especially helpful for applicants making multiple applications for employment (for example, for clerkship or practical legal training placements). If the designated local regulatory authority does not consider general approval to be appropriate, it may grant approval in relation to a particular arrangement.

Subsection (3) provides factors that the designated local regulatory authority must take into account when considering an application for approval, including the degree of connection between the applicant's prior conviction for a serious offence or disqualification order and the requirements and responsibilities of the arrangement or type of arrangement under which the applicant wishes to be involved.

Subsection (4) provides that the designated local regulatory authority may approve a person as a lay associate with or without conditions but does not specify any particular conditions. The section does not provide any limitations on the conditions that may be imposed. Conditions may limit a person to acting as a lay associate in a particular role at a particular law practice, or exclude a lay associate from performing a particular type of work (for example, handling trust money).

Section 122 provides that a disqualified person or person convicted of a serious offence must not seek to become a lay associate of a law practice without informing the practice of the disqualification or conviction, unless the Uniform Rules provide otherwise. A civil penalty applies.

Subsection (2) provides that proceedings under this section may only be brought within 6 months after the discovery of the contravention by the practice.

Section 123 provides that conduct by an Australian legal practitioner who provides legal services on behalf of a disqualified entity in the capacity of an associate of the entity may be unsatisfactory professional conduct or professional misconduct where the practitioner ought reasonably to have known that the entity is a disqualified entity.

Section 124 provides that if a disqualified entity is an incorporated or unincorporated legal practice immediately before an order is made under section 120, it ceases to be an incorporated legal practice or unincorporated legal practice.

Section 125 states that Part 3.9 has effect subject to any applicable jurisdictional legislation relating to spent convictions.

CHAPTER 4—BUSINESS PRACTICE AND PROFESSIONAL CONDUCT

Overview of Chapter 4

Chapter 4 is concerned with preserving the integrity of legal services and contains provisions regulating trust money and trust accounts and the annual external examination of trust records. It includes provisions for external investigations to ascertain whether a law practice is complying with relevant regulatory obligations. The Chapter contains provisions regulating legal costs and their disclosure, billing and costs agreements and costs assessments.

The professional indemnity insurance requirements and rules are set out in Chapter 4, as are provisions relating to fidelity cover.

The Chapter also includes general provisions about compliance auditing and management system directions, and prohibited activities (for instance, promoting managed investment schemes).

PART 4.1—INTRODUCTION

Section 126 sets out the objectives of Chapter 4, which are—

- to ensure appropriate safeguards are in place for maintaining the integrity of legal services; and
- to apply those safeguards regardless of the type of business structure used for the delivery of legal services.

PART 4.2—TRUST MONEY AND TRUST ACCOUNTS

Division 1—Preliminary

Section 127 sets out the objective of Part 4.2, which is to ensure that trust money is held by law practices in a manner that protects the interests of the persons for whom or on whose behalf it is held.

Section 128 sets out definitions of a number of terms used in Part 4.2, including *authorised ADI*, *controlled money account*, *transit money*, *trust account*, *trust property* and *trust records*.

Section 129 defines *trust money*, being money entrusted to a law practice in the course of, or in connection with, the provision of legal services by the law practice.

Subsection (1) specifies certain moneys that are included in this definition. The definition includes money received on account of legal costs in advance of providing legal services, controlled money, transit money and money received by the practice that is subject to a power exercisable by the practice or an associate of the practice to deal with the money for or on behalf of another person.

Subsection (2) sets out certain exclusions from the definition of *trust money*, including (among others) money received by a law practice for legal services that have been provided and in respect of which the client has been given a bill, and money for a managed investment scheme or mortgage financing. The subsection also provides, in paragraph (f), that the Uniform Rules may add to the list of exclusions.

Section 130 provides that Part 4.2 applies to a law practice in respect of certain trust money (connected with services provided by the practice) received by it. Four kinds of trust money are specified for this purpose. The first is trust money received in this jurisdiction if the practice has an office here, or has offices in no jurisdiction at all. The second is trust money received in another jurisdiction if the practice has an office in this jurisdiction but not in any other jurisdiction. The third is trust money received in another jurisdiction if the practice has an office in this jurisdiction and in one or more other jurisdictions (but not in the jurisdiction where the money was received) and the law practice elects to have Part 4.2 apply to the money.

Subsection (3) provides that the Uniform Rules may provide that specified provisions of Part 4.2 do not apply, or apply with modifications, in specified circumstances.

Subsection (4) provides that the designated local regulatory authority may exempt a particular law practice from complying with any of the provisions of Part 4.2, subject to conditions.

Section 131 provides that Part 4.2 and the Uniform Rules apply to Australian-registered foreign lawyers, subject to any modifications specified in the Uniform Rules.

Section 132 provides that Part 4.2 applies to former law practices and former principals and associates in relation to conduct occurring while they were active, subject to any necessary modifications.

Section 133 provides that jurisdictional legislation may prohibit, regulate or otherwise provide for the receipt or holding of money by barristers on account of legal costs for services, in advance of the barrister providing the services.

Section 134 requires a law practice that receives or holds money that is non-trust money (other than money for legal costs due to the practice) to give written notice to the person who provided the money stating that the money will not be treated as trust money, is not subject to the trust money provisions and that no claim may be made against the fidelity fund in respect of it. A civil penalty applies.

Subsection (2) defines *non-trust money*, being money that is not trust money for the purposes of the Law because it is deemed not to be trust money under one of the exclusions from the definition of *trust money* under section 129(c), (d), (e) or (f), or because the designated local regulatory authority has made a determination that money held by a law practice is not trust money under section 152.

Division 2—Trust money and trust accounts

Section 135 requires a law practice to deal with trust money in accordance with the Law and the Uniform Rules. A civil penalty applies.

Subsection (2) requires trust money held by a law practice to be dealt with only by the practice or an authorised associate of it.

Section 136 requires a law practice that receives trust money to which Part 4.2 applies (other than controlled money or transit money received in a form other than cash) to maintain a general trust account in this jurisdiction. A civil penalty applies.

Subsection (2) allows a law practice to maintain more than one general trust account in this jurisdiction.

Section 137 requires a law practice to deposit trust money (other than cash) in the general trust account as soon as practicable after it is received, except in three circumstances. The first is where it is directed by a person legally entitled to provide the direction to do otherwise. The second is where the money is controlled or transit money. The third is where the money is subject to a power given to the practice or its associate to deal with the money on behalf of another person. A civil penalty applies.

Section 138 sets out the obligations of a law practice with a general trust account in relation to the holding, disbursing and accounting for trust money. The practice must hold the trust money in the general account exclusively for the person on whose behalf it is received. The practice must also disburse the money only in accordance with a direction from the person, and account for the money in accordance with the Uniform Rules. Civil penalties apply.

The section includes a note stating that jurisdictional legislation may provide for disbursement for the purpose of statutory deposit accounts.

Section 139 sets out the obligations of a law practice for depositing, holding, disbursing and accounting for controlled money. Civil penalties apply to each of these obligations.

Subsection (1) provides that the practice must deposit the money in the account specified in the written direction relating to the money as soon as practicable after it is received.

Subsection (2) provides that the practice must hold the money exclusively for the person on whose behalf it is received.

Subsection (3) provides that the practice may only disburse the money in accordance with the written direction (or a subsequent written direction given by or on behalf of the person on whose behalf the money was received).

Subsection (4) provides that the practice must maintain and account for the money in accordance with the Uniform Rules.

Subsection (5) provides that the practice must keep a record of any written direction for at least 7 years.

Subsection (6) provides that the practice must ensure the controlled money account is only used for the deposit of controlled money received on behalf of the person referred to in subsection (2) or in accordance with the Uniform Rules.

Subsection (7) provides that the Uniform Rules may make provision with respect to certain matters in relation to controlled money.

Section 140 sets out the obligations of a law practice for dealing with transit money. Civil penalties apply to each of these obligations.

Subsection (1) provides that the practice must pay or deliver transit money received by the practice as required by the instructions within the period specified in those instructions or as soon as practicable after it is received.

Subsection (2) provides that the practice must, in respect of transit money received by the practice, keep particulars sufficient to identify the relevant transaction and purpose for which the money was received.

Subsection (3) provides that the law practice must keep a record of the transaction for at least 7 years.

Section 141 sets out the obligations of a law practice for dealing with trust money that is subject to specific powers. Civil penalties apply to each of these obligations.

Subsection (1) provides that trust money (other than cash) that is the subject of a power must be dealt with only in accordance with that power.

Subsection (2) provides that the money must be accounted for in the way provided in the Uniform Rules.

Section 142 sets out the obligations of a law practice for dealing with trust money that is subject to a written direction. Civil penalties apply to each of these obligations.

Subsection (1) provides that trust money (other than cash) subject to a written direction must be dealt with in accordance with the direction within the period specified in the direction or as soon as practicable after receipt.

Subsection (2) provides that the written direction must be kept for 7 years after the matter has been finalised.

Section 143 sets out the obligations of a law practice for dealing with trust money that is received in the form of cash. Civil penalties apply to each of these obligations.

Subsection (1) provides that trust money received in cash (other than controlled money) must be deposited in the law practice's general trust account even if there is a written direction to deal with it in a different way.

Subsection (2) provides that controlled money received in cash must be deposited in a controlled money account and dealt with in accordance with the Uniform Rules.

Section 144 prohibits a law practice from withdrawing trust money from a general trust account otherwise than by cheque or electronic funds transfer. A civil penalty applies.

Subsection (2) provides that a law practice may deal with trust money in the general trust account or controlled money account in certain ways. The provision permits the practice to exercise a lien, to withdraw money for legal costs owing (subject to the Uniform Rules), and to deal with the balance as unclaimed money after deducting legal costs owing to the practice and exhausting other means of distributing it in accordance with the client's instructions.

Section 145 provides that money in a trust account is not available for the payment of the debts of the law practice or its associates, nor may it be attached or taken in execution for satisfying a judgment against the law practice or its associates.

Subsection (3) provides that these restrictions do not apply to money to which a law practice or associate is entitled.

Section 146 prohibits a law practice from mixing trust money with other money, except in accordance with an authority of the designated local regulatory authority. A civil penalty applies.

Section 147 makes provision in relation the requirement that law practices keep trust records. Civil penalties apply to each of the obligations set out in this section.

Subsection (1) requires a law practice to keep trust records in relation to trust money received by the practice in a permanent form.

Subsection (2) sets out the requirements of how the trust records must be kept. These include a requirement that the records be kept in accordance with the Uniform Rules.

Subsection (3) provides that a law practice must not knowingly receive money or record the receipt of money in the practice's trust records under a false name.

Subsection (4) requires a law practice to ensure that its trust records record all names by which a person is known if a person on whose behalf trust money is received is commonly known by more than one name.

Section 148 makes it a criminal offence for a law practice, Australian legal practitioner or any other person to cause a deficiency in a trust account or ledger, or fail to pay or deliver trust money, without reasonable excuse.

Section 149 makes provision in relation to authorised deposit-taking institutions.

Subsection (1) provides that an authorised deposit-taking institution (**ADI**) may hold trust money if it is regulated by the Australian Prudential Regulation Authority and has entered into an arrangement with a nominated trust authority that provides for one or more specified matters.

Subsection (2) provides that an ADI at which a trust account is maintained is not obliged to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account. An ADI also does not have, in relation to any liability of the law practice to the ADI, any recourse or right against money in the account. However, this does not relieve an ADI from any liability to which it is subject apart from the Law.

Subsection (3) requires an ADI to report to the designated local regulatory authority on trust accounts as required under the Uniform Rules. A civil penalty applies.

Subsection (4) requires an ADI at which a trust account is maintained to provide, free of charge, an investigator or external examiner access to, or copies of, any records relating to the trust account or trust money and relevant transactions, irrespective of legislation or duties of confidence to the contrary. A civil penalty applies.

Subsection (5) provides that an ADI or its officer or employee is not liable to any action for loss or damage suffered by another person as a result of action taken under this section.

Section 150 provides that a law practice must not receive trust money unless a principal of the law practice holds an Australian practising certificate authorising the receipt of trust money or the law practice is otherwise authorised under the Uniform Rules to receive trust money. A civil penalty applies.

Section 151 requires a law practice to give to the designated local regulatory authority details, as required by the Uniform Rules, of each account maintained by the practice or its legal practitioner associate at an ADI in which the practice or associate holds entrusted money, whether or not it is trust money. A civil penalty applies.

Section 152 provides that, where there is a doubt or a dispute about the status of money held by a law practice, the designated local regulatory authority may determine that it is or is not trust money.

Subsection (3) provides that this section is subject to a decision of a court or administrative review body.

Section 153 specifies the circumstances in which money is taken to be received by a law practice for the purposes of the Uniform Law.

Section 154 imposes requirements in relation to the reporting of irregularities and suspected irregularities. Civil penalties apply in relation to these requirements.

Subsection (1) requires a legal practitioner associate, an ADI or entity specified in the Uniform Rules to provide written notice of irregularities in a law practice's trust accounts or trust ledger accounts to the designated local regulatory authority as soon as practicable after becoming aware of the irregularity.

Subsection (2) requires an Australian legal practitioner who believes on reasonable grounds that there is an irregularity in a receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate to, as soon as practicable, give written notice to the designated local regulatory authority.

Division 3—External examinations of trust records

Section 155 requires a law practice to have its trust records examined once a year by a suitably qualified person appointed as an external examiner in accordance with the Uniform Rules. A civil penalty applies.

Subsection (2) provides that the designated local regulatory authority may examine, or appoint an external examiner to examine, a law practice's trust records in specified circumstances.

Subsection (4) provides that this requirement does not apply where a law practice only receives transit money during the financial year.

Subsection (5) provides that the designated local regulatory authority may exercise the functions of an external examiner.

Section 156 specifies who may be appointed as an external examiner.

Subsection (1) provides that only persons designated or within a class designated under the Uniform Rules may be appointed as external examiners.

Subsection (2) provides that an associate of a law practice cannot be appointed as an external examiner for that practice.

Section 157 enables external examiners to examine the affairs of the law practice for the purpose of, and in connection with, the examination of the trust records.

Section 158 provides that, subject to Chapter 7, an external examination of trust records is to be carried out in accordance with the Uniform Rules.

Section 159 requires an external examiner to give the designated local regulatory authority a written report of the examination as soon as practicable after completing it or as specified in the Uniform Rules.

Subsections (2) and (3) provide that an examiner must not disclose information in the report or acquired in the examination, except as permitted by section 462 or so far as is necessary to conduct properly the examination and make the report. An examiner may also disclose such information to an investigator, supervisor, manager or receiver appointed under

the Law, or to the law practice or an associate of the law practice. A criminal penalty applies.

Section 160 provides that the costs of an examination are to be borne by the law practice whose accounts have been examined.

Subsection (2) enables the designated local regulatory authority to recover the reasonable costs of an examination as a debt due from the law practice where the designated local regulatory authority carried out or appointed the external examiner to carry out the examination.

Subsection (3) states that jurisdictional legislation may provide for an appeal or review mechanism in relation to the amount of costs.

Division 4—External investigations

Section 161 sets out the principal purposes of an external investigation, which are to ascertain compliance by the law practice with the requirements of Part 4.2 and to detect and prevent fraud or defalcation.

Section 162 enables the designated local regulatory authority to investigate, or appoint a suitably qualified person to investigate, the affairs of a law practice.

Subsection (3) enables the designated local regulatory authority to exercise the functions of an external investigator.

Section 163 provides that the designated local regulatory authority or an authorised external investigator may undertake external investigations in relation to particular allegations or suspicions relating to trust money, trust property, trust accounts or any other aspect of the affairs of the law practice. The authority or investigator may also undertake those investigations where the designated local regulatory authority otherwise considers it appropriate to do so.

Section 164 provides that, subject to Chapter 7, external investigations are to be carried out in accordance with the Uniform Rules.

Section 165 requires an external investigator to give a written report to the designated local regulatory authority as soon as practicable after completing an investigation.

Subsection (2) provides that the investigator must not disclose information in the report or acquired in the investigation other than as permitted by the subsection or section 462.

The subsection permits disclosure to the law practice or person who is the subject of the report. It also permits disclosure that is necessary for properly conducting the investigation and making the report. A criminal penalty applies.

Section 166 enables the designated local regulatory authority to recover the reasonable costs of an external investigation from a law practice as a debt payable to it if the investigator reports that there is evidence of a contravention of the Law or a default (as defined in Part 4.5), and the designated local regulatory authority believes that the contravention or default is wilful or substantial.

Subsection (3) provides that the amount of costs must be reasonable and is subject to appeal or review under applicable jurisdictional legislation.

Division 5—Miscellaneous

Section 167 provides that unclaimed money in a trust account must be dealt with in accordance with jurisdictional legislation or, where the jurisdictional legislation so provides, the Uniform Rules.

Section 168 enables the Uniform Rules to provide for any aspect of trust money received by a law practice and trust accounts, including (among others and without limitation) the receipt, handling and disbursement of trust money, keeping accounts and records, reporting relating to trust money and trust accounts, external examination of trust records, and external investigation of the affairs of a law practice.

PART 4.3—LEGAL COSTS

Overview of Part 4.3

Part 4.3 seeks to reduce complaints about legal costs, by emphasising the importance of informed consent by consumers and introducing a duty on law practices to charge no more than fair and reasonable legal costs for legal services. Part 4.3 also seeks to ensure that consumer protections are targeted at those consumers who need them (by excluding commercial or government clients from the majority of the provisions, unless they contract into them) and to provide an accessible and efficient system of costs dispute resolution through costs assessment. The designated local regulatory authority is empowered to resolve certain complaints about legal costs under the costs dispute provisions in Chapter 5.

Division 1—Introduction

Section 169 sets out the objectives of Part 4.3, which are—

- to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options; and
- to provide that law practices must not charge more than fair and reasonable amounts for legal costs; and
- to provide a framework for assessment of legal costs.

Section 170 provides that the majority of the consumer protection provisions contained in Part 4.3 do not apply to commercial or government clients (as defined in the section) or a third party payer who would be a commercial or government client if the third party payer were a client of the law practice concerned. The entities falling within the definition of commercial or government client are generally large commercial operators or government entities and are likely to be repeat purchasers of legal services.

Subsection (2)(h) provides that the Uniform Rules may specify additional persons or classes or persons as commercial or government clients.

Section 171 defines a *third party payer*, an *associated third party payer* and a *non-associated third party payer* for the purposes of the Law. Certain rights to cost disclosure and to apply for costs assessment are given to third party payers under Part 4.3.

Division 2—Legal costs generally

Section 172 imposes limits on legal costs that a law practice may charge.

Subsection (1) requires a law practice, when charging legal costs, to charge costs that are no more than fair and reasonable in all the circumstances and that are proportionately and reasonably incurred, and proportionate and reasonable in amount.

Subsection (2) lists certain factors to which regard must be had in considering whether subsection (1) is satisfied. These factors include considerations unique to the law practice involved (such as the level of skill, experience, specialisation and seniority of the lawyers concerned), the instructions given by the client in the matter, the urgency of the matter and the place where the business was transacted.

Subsection (3) provides that regard must also be had to any applicable requirements of Part 4.3, the Uniform Rules and any fixed costs legislative provisions.

Subsection (4) provides that a costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if the provisions of Division 3 relating to costs disclosure have been complied with and the costs agreement does not contravene (or was not entered into in contravention of) any provision in Division 4. Section 185 provides that a costs agreement that contravenes Division 4, or entered into in contravention of that Division, is void.

Section 173 provides that a law practice must not act in a way that unnecessarily results in increased legal costs and places a positive obligation on law practices to act reasonably to avoid unnecessary delay resulting in increased legal costs.

Division 3—Costs disclosure

Section 174 imposes disclosure obligations on law practices.

Subsection (1) requires a law practice to provide clients with written information disclosing the basis on which legal costs will be calculated and an estimate of the total legal costs, when or as soon as practicable after receiving initial instructions. The law practice must also disclose any significant change to

anything previously disclosed under the subsection when or as soon as practicable after the change occurs.

Subsection (2) lists additional information that must be disclosed when a disclosure is made under subsection (1).

Subsection (3) provides that disclosure is not required to be made in matters where the total legal costs in the matter (excluding GST and disbursements) are not likely to exceed the amount specified in the Uniform Rules, referred to as the ***lower threshold***.

Under subsection (4) a law practice may provide a uniform standard disclosure as an alternative to making a full disclosure under subsection (1) if total legal costs in the matter (excluding GST and disbursements) are not likely to exceed a ***higher threshold*** specified in the Uniform Rules.

Subsection (5) requires the law practice is to take all reasonable steps to satisfy itself that the client understands and has given consent to the proposed conduct of the matter and the costs.

Subsection (7) provides that, as soon as practicable after the law practice becomes aware (or ought reasonably to have become aware) that the legal costs in the matter are likely to exceed the ***lower threshold***, it must inform the client and either make a full disclosure under subsection (1) or an alternative disclosure under subsection (4) if the costs are not likely to exceed the ***higher threshold*** (see below). This obligation only applies if the law practice has not already made a disclosure under subsection (1) or given a uniform standard disclosure under subsection (4).

Subsection (8) provides that as soon as practicable after the law practice becomes aware (or ought reasonably become aware) that the legal costs in the matter are likely to exceed the higher threshold, it must inform the client and make a full disclosure under subsection (1). This obligation only applies if the law practice has not made a disclosure under subsection (1) but has given a uniform standard disclosure under subsection (4).

Section 175 makes provision for the disclosure of information where a law practice retains another practice.

Subsection (1) provides that where a law practice retains or intends to retain another law practice on behalf of a client, the law practice must disclose to the client the information in section 174(1) in relation to the second law practice.

Subsection (2) provides that the second law practice is not required to make disclosure directly to the client, but is required to provide the first law practice with the information necessary for it to make appropriate disclosures to its client.

Section 176 imposes an additional disclosure requirement on a law practice that is required to make a disclosure to a client under section 174 or 175.

Subsection (2) requires the law practice to make the same disclosure to an associated third party payer for the client, so far as relevant to the associated third party payer.

Subsection (3) specifies how that disclosure is to be made.

The law practice must make that disclosure in writing.

The disclosure must be made at the same time that disclosure to the client is required or as soon as practicable after becoming aware of the legal obligation of the associated third party payer.

Section 177 requires a law practice, prior to executing the settlement of a litigious matter on behalf of a client, to disclose to the client a reasonable estimate of the amount of legal costs payable in the event of settlement (including any other party's costs which the client is to pay) and a reasonable estimate of any contributions towards those costs that are likely to be received from another party.

Subsection (2) provides that a law practice retained by another law practice is not required to make this disclosure if the other practice has made the disclosure prior to executing the settlement.

Section 178 prevents a law practice recovering legal costs where it has not complied with the disclosure obligations under Part 4.3, until the legal costs have been assessed or any costs dispute has been determined by the designated local regulatory authority under Chapter 5.

Subsection (1)(a) provides that a costs agreement made in such circumstances is void. Subsection (1)(d) also provides that a contravention of the disclosure obligations is capable of constituting unsatisfactory professional conduct or professional misconduct.

Subsection (2) provides that where a matter involves both a client and associated third party payer and disclosure has been made to one of them only, the section does not affect the liability of the one to whom disclosure was made to pay the legal costs nor prevent proceedings being maintained against them for recovery of the costs.

Subsection (3) provides that the Uniform Rules may modify or exclude the application of the section in specified circumstances or kinds of circumstances.

Division 4—Costs agreements

Section 179 provides that a client of a law practice has a right to require and to have a negotiated costs agreement with the law practice.

Section 180 provides for the making of costs agreements between clients and law practices, law practices and other law practices, or law practices and associated third party payers.

Subsection (2) provides that a costs agreement must be in writing or evidenced in writing and may be accepted in writing or (except in the case of a conditional costs agreement) by other conduct.

Subsection (3) provides that a costs agreement cannot exclude legal costs from a costs assessment.

Section 181 provides for costs agreements that are conditional on the successful outcome of a matter other than in criminal proceedings, family law proceedings or proceedings specified in the Uniform Rules. The section specifies a number of requirements, including, in subsection (4), a requirement that the conditional costs agreement must contain a cooling-off period of at least five clear business days. During that period, the client may terminate the agreement by written notice.

Subsection (5) provides that if a client terminates the agreement within the cooling-off period, the law practice may only recover costs for legal services performed before the termination on the client's instructions and with the client's knowledge, and may not recover any uplift fee.

Subsection (8) provides that a contravention of the conditional costs agreements provisions is capable of constituting unsatisfactory professional conduct or professional misconduct.

Section 182 concerns uplift fees in conditional costs agreements.

Subsection (1) enables a conditional costs agreement to provide for an uplift fee.

Subsection (2) limits an uplift fee in litigious matters to 25% of the legal costs (excluding disbursements) otherwise payable. The subsection also restricts the inclusion of an uplift fee to circumstances where the law practice has a reasonable belief that a successful outcome is reasonably likely.

Subsection (3) specifies the matters that must be included in the agreement.

Subsection (4) prevents a law practice from entering into a costs agreement in contravention of the clause or the Uniform Rules. A civil penalty applies.

Section 183 prohibits contingency fees (a fee calculated by reference to the amount of an award or settlement or the value of any property that may be recovered in proceedings to which the agreement relates), except to the extent that the costs agreement adopts an applicable fixed costs legislative provision. A civil penalty applies.

Subsection (3) provides that a contravention of this prohibition is capable of constituting unsatisfactory professional conduct or professional misconduct.

Section 184 enables a costs agreement to be enforced in the same way as any other contract.

Section 185 provides, in subsection (1), that costs agreements that contravene, or are entered into in contravention of Division 4 are void.

Subsection (2) provides that a law practice is not entitled to recover any amount in excess of the amount that the practice would have been able to recover had it not been void. The subsection also provides that a law practice must repay any excess amount received.

Subsection (3) provides that a law practice that has entered into a costs agreement in contravention of section 182 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee.

Subsection (4) provides that a law practice that has entered into a costs agreement in contravention of section 183 is not entitled to recover any amount in respect of legal services provided to which the agreement related and must repay any amount received.

Subsection (5) provides that if an amount is not repaid as required by the section, the person entitled to be repaid may recover the amount as a debt.

Division 5—Billing

Section 186 provides that a bill may be in the form of a lump sum bill or an itemised bill.

Section 187 enables a person who receives a lump sum bill (being a person entitled to apply for an assessment of legal costs to which the bill relates) to request an itemised bill within 30 days after the date on which the costs become payable.

Subsection (3) provides that a law practice must comply with a request made under this clause within 21 days after the request is made.

Subsection (4) provides that a person may request an itemised bill only for the costs for which they are liable to pay.

Section 188 concerns the requirement that there be a responsible principal for each bill given by a law practice.

Subsection (1) requires a bill or a letter accompanying a bill to be signed by the responsible principal of the law practice or to nominate a responsible principal for the bill.

Subsection (2) provides that if these requirements are not complied with, each principal of the law practice is taken to be a responsible principal for the bill. This section operates in conjunction with section 207 (Unreasonable legal costs—disciplinary action).

Section 189 requires a bill to be given to a client in accordance with the Uniform Rules.

Section 190 requires a law practice, on a reasonable request by the client, to give a written report of costs incurred to date, or since the last bill. The law practice must not charge for the report and it must be provided within a reasonable period of time.

Subsection (2) provides that if a law practice is retained on behalf of a client by another law practice, it need only disclose to the other law practice any information necessary for the other law practice to comply with this section.

Subsection (3) provides that the requirement to make that disclosure to the other law practice does not apply if that law practice ceases to act for the client in the relevant matter.

Section 191 prohibits a law practice from charging for preparing or giving a bill.

Section 192 requires a law practice to ensure that a bill includes or is accompanied by a written statement of the ways in which, and time within which, the client may take action to dispute a bill.

Section 193 provides, in subsection (1), for a law practice to give an interim bill covering part only of the legal services the law practice was retained to provide.

Subsection (2) provides that legal costs that are the subject of an interim bill, whether or not they have previously been assessed or paid, may be the subject of a costs assessment, either at the time of the interim bill or at the time of the final bill.

Division 6—Unpaid legal costs

Section 194 prohibits, in subsection (1), a law practice from commencing legal proceedings against a person to recover legal costs if it has not given the person a bill in accordance with the Law and the Uniform Rules.

Subsection (2) provides that a law practice must not commence proceedings to recover legal costs from a person who has been given a bill until at least 30 days after giving the person the bill or an itemised bill (whichever is the later). The subsection also provides that if the legal costs are the subject of a costs dispute before the designated local regulatory authority, proceedings to recover those costs must not be brought until the authority has closed or resolved the dispute.

Section 195 permits a law practice to charge interest on unpaid legal costs in certain circumstances.

Subsections (3) and (4) provide that a law practice cannot charge interest unless the bill for the costs contains a statement that interest is payable and the applicable rate, which cannot be higher than the rate specified in the Uniform Rules.

Subsection (5) provides that a law practice also cannot charge interest on a bill given more than 6 months after the completion of the matter, unless one of the exemptions listed in subsection (6) applies.

Division 7—Costs assessment

Section 196 provides that Division 7 applies to legal costs payable on a solicitor-client basis.

Section 197 provides that a costs assessment under Division 7 is not available in relation to legal costs that have been the subject of a costs dispute under Chapter 5, unless the designated local regulatory authority is unable to resolve the costs dispute and has notified the parties of their entitlement to seek a costs assessment, or the designated local regulatory authority arranges for a costs assessment under section 284.

Section 198 provides for applications for assessment of legal costs.

Subsection (1) provides that these applications may be made by clients, third party payers and certain law practices.

Subsection (3) provides that applications must be made within 12 months after the bill was given, the request for payment was made, or the costs were paid without a bill or request.

Subsection (4) provides for costs assessors to deal with applications made out of time if the designated tribunal determines that it is just and fair for the application to be dealt with outside the 12-month period.

The section also sets out processes to be followed when an application is made, including notification requirements.

Section 199 provides, in subsection (1), that a costs assessment is to be conducted by a costs assessor in accordance with Part 4.3, the Uniform Rules and any applicable jurisdictional legislation.

Subsection (2) requires the assessor to determine whether a valid costs agreement exists and whether legal costs are fair and reasonable. To the extent that legal costs are not fair and reasonable, the assessor must also determine the amount of costs (if any) that are payable.

Section 200 sets out the matters to which regard must (and may) be had in determining whether legal costs are fair and reasonable.

Section 201 requires costs assessors to provide reasons for their costs assessments, in a form to be determined by the costs assessor.

Section 202 provides that a costs assessor may refer a matter to the designated local regulatory authority if the assessor considers that the costs charged are not fair and reasonable. The section requires that referral to be made if the assessor considers the costs charged, or any other matter raised in the assessment, may amount to unsatisfactory professional conduct or professional misconduct.

Section 203 provides that determinations of costs assessors are admissible in disciplinary proceedings as evidence as to the fairness and reasonableness of legal costs.

Section 204 provides that, without affecting the powers of a court or tribunal to award costs, a costs assessor must determine the costs of a costs assessment and by whom they are payable.

Subsection (2) sets out the circumstances where the costs of the costs assessment are payable by the law practice, including where the practice's costs have been reduced by 15% or more on assessment.

Section 205 concerns appeals and reviews regarding costs assessments.

Subsection (1) enables an applicant for a costs assessment or the relevant law practice to appeal or seek a review of a decision of a costs assessor, in the jurisdiction for which the assessor exercised his or her functions, and in accordance with applicable jurisdictional law.

Subsection (2) provides that the court or tribunal may make any order it considers appropriate.

Subsection (3) provides that the section does not apply where the designated local regulatory authority determines a costs dispute under Chapter 5.

Division 8—Miscellaneous

Section 206 enables a law practice to take reasonable security from clients for legal costs and to refuse or cease to act for a client who does not provide reasonable security.

Section 207 makes provision in relation to the charging of unreasonable legal costs constituting unsatisfactory professional conduct or professional misconduct.

Subsection (1) provides that a contravention of a requirement of Part 4.3 that a law practice must not charge more than fair and reasonable costs may constitute unsatisfactory professional conduct or professional misconduct on the part of each responsible principal for a bill and each legal practitioner associate or foreign lawyer involved in giving or authorising the bill.

Subsection (2) provides (subject to certain exceptions specified in subsection (3)) that a responsible principal may be liable whether or not having actual knowledge of the bill or its contents or that the legal costs were unfair or unreasonable. This provision is inserted in response to the majority decision in *Leon Nikolaidis v Legal Services Commissioner* [2007] NSWCA 130. In that case, the Court held that in order for a legal practitioner to be guilty of professional misconduct for deliberately charging excessive amounts of costs it is necessary to prove the practitioner was personally implicated in either knowingly overcharging or was reckless as to whether or not excessive costs had been charged. The effect of section 207 is that a responsible principal cannot rely merely on the fact that

another person prepared a bill or that another person involved in the law practice asserted that the amount of the bill was fair and reasonable as a defence to a prosecution for a contravention of the obligation under Part 4.3.

Section 208 provides for the making of Uniform Rules with respect to any aspect of legal costs, including costs disclosure, costs agreements, costs billing, the payment of interest on unpaid costs and costs assessments.

The Council also has the ability under section 407 to issue guidelines on the requirements of Part 4.3.

PART 4.4—PROFESSIONAL INDEMNITY INSURANCE

Overview of Part 4.4

Part 4.4 seeks to ensure that clients of law practices have adequate protection against the consequences of professional negligence regardless of the type of law practice they choose. It preserves existing jurisdictional arrangements for the provision of professional indemnity insurance, while at the same time making allowances for situations where a jurisdiction has no approved provider or discontinues its local professional indemnity insurance scheme. Part 4.4 also seeks to facilitate multi-jurisdictional legal practice. It requires that professional indemnity insurance policies afford insurance coverage to legal practitioners for legal services provided anywhere within Australia. A number of exemptions may apply to legal practitioners and incorporated legal practices to eliminate the need for them to take out separate insurance policies in each jurisdiction in which they practise.

Section 209 sets out the objectives of Part 4.4, which are—

- to ensure that each Australian legal practitioner who engages in legal practice in this jurisdiction has or is covered by approved professional indemnity insurance; and
- to ensure that clients of law practices have adequate protection against the consequences of professional negligence.

Section 210 defines *approved insurance policy* for the purposes of Part 4.4.

Subsection (1) and (2) provide that an approved insurance policy must be issued or provided by an insurer or other provider approved under or selected in accordance with

applicable legislation of the participating jurisdiction. Where there is either no insurer or other provider approved or selected, or there is no legislative arrangement, then it must be an insurer authorised by the Australian Prudential Regulation Authority or an insurer or provider approved by the Council. An approved insurance policy must also comply with the minimum standards specified in the Uniform Rules or be approved by the Council. The Council must approve a policy of professional indemnity insurance to be an approved insurance policy for a jurisdiction that is not a participating jurisdiction.

Subsection (4) provides that an Australian legal practitioner or law practice has professional indemnity insurance for this jurisdiction if the practitioner or practice holds or is covered by an approved insurance policy for this jurisdiction.

Section 211 prohibits an Australian legal practitioner from engaging in legal practice in this jurisdiction unless the practitioner holds, or is covered by, an approved insurance policy for this jurisdiction and the policy covers that legal practice. A civil penalty applies.

Section 211 works in conjunction with section 45, which provides that, unless the applicant is not required to have professional indemnity insurance, the designated local regulatory authority must not grant or renew an Australian practising certificate unless satisfied that the applicant has, or will have on or before the grant or renewal, professional indemnity insurance in accordance with the Law and the Uniform Rules.

All legal practice performed on a volunteer or pro bono basis must be covered by an approved insurance policy for this jurisdiction.

Section 212 prohibits an incorporated legal practice from engaging in legal practice in this jurisdiction unless it holds an approved insurance policy for this jurisdiction and the policy covers the legal practice in which it is engaged. A civil penalty applies.

The purpose of section 212 is to ensure that consumers have the same level of protection where legal services are provided by an incorporated legal practice as they would have if those legal services were provided by a law practice that is not incorporated.

Section 213 imposes similar restrictions in relation to community legal services.

Subsection (1) prohibits a community legal service that is a corporation from engaging in legal practice in this jurisdiction unless it holds an approved insurance policy for this jurisdiction which covers the service, each Australian legal practitioner who engages in legal practice for or on behalf of the service in this jurisdiction, and the legal practice in which the community legal service engages. A civil penalty applies.

Subsection (2) provides that where a community legal service is not a corporation, each Australian legal practitioner who engages in legal practice for or on its behalf must hold or be covered by an approved insurance policy for this jurisdiction and that that policy must cover that legal practice. A civil penalty applies.

Section 214 requires Australian-registered foreign lawyers who do not hold or are not covered by an approved insurance policy for this jurisdiction to provide a written disclosure statement to each client before, or as soon as practicable after, being retained for legal services stating whether or not the lawyer is covered by other professional indemnity insurance and, if covered, the nature and extent of that insurance. A civil penalty applies.

This recognises that some Australian-registered foreign lawyers may have or be covered by a professional indemnity policy taken out in a foreign jurisdiction that extends coverage to the practise of that foreign law in Australia, although the level and extent of that cover might not be same as the Australian requirements.

Section 215 provides for exemptions applying to Australian legal practitioners and law practices that are corporations in relation to the requirement to obtain approved insurance policies in this jurisdiction.

Subsection (1) provides that an Australian legal practitioner is not required to hold an approved insurance policy in this jurisdiction if it is not his or her home jurisdiction, provided that the practitioner holds or is covered by an approved insurance policy for his or her home jurisdiction and that policy covers legal practice in this jurisdiction.

Subsection (2) provides for the designated local regulatory authority to exempt an Australian legal practitioner from the requirement to obtain an approved insurance policy for this jurisdiction in certain circumstances. Those circumstances are that this jurisdiction is his or her home jurisdiction, and that he or she is a legal practitioner associate of a particular kind of law practice, and that the practitioner is covered by an approved insurance policy for that other jurisdiction which covers legal practice in this jurisdiction.

Subsection (3) provides that an Australian legal practitioner is not required to hold an approved insurance policy for this jurisdiction where it is his or her home jurisdiction, provided that the practitioner is a legal practitioner associate of a particular kind of law practice and the practitioner is covered by an approved insurance policy for another jurisdiction which covers legal practice in this jurisdiction.

Subsection (4) provides for the designated local regulatory authority to exempt an incorporated legal practice from the requirement to obtain an approved insurance policy for this jurisdiction in certain circumstances. The circumstances are that the practice maintains a permanent office in this jurisdiction and only one other, and it is covered by an approved insurance policy for the other jurisdiction which covers legal practice in this jurisdiction.

Subsection (5) provides that an incorporated legal practice is not required to obtain an approved insurance policy for this jurisdiction if it maintains a permanent office in this jurisdiction and at least two other jurisdictions and it is covered by an approved insurance policy for one of the other jurisdictions which covers legal practice in this jurisdiction.

Subsection (6) provides that the designated local regulatory authority may exempt a specified Australian legal practitioner from the requirement to hold or be covered by an approved insurance policy on such grounds as it considers sufficient and may impose a discretionary condition on a practising certificate as a condition of exemption.

Subsection (8) provides that the Uniform Rules may provide for other exemptions from the requirement to hold or be covered by an approved insurance policy and may impose a discretionary condition on a practising certificate as a condition of exemption.

Section 216 requires a law practice, in certain circumstances, to notify its insurer or other provider of insurance if it intends to obtain an approved insurance policy from an insurer or provider in another jurisdiction, either by a date specified in legislation of this jurisdiction or as soon as practicable.

This section is intended to help insurers and providers in each jurisdiction to plan for the movement of law practices in and out of their schemes.

Section 217 provides for Uniform Rules with respect to any aspect of professional indemnity insurance.

PART 4.5—FIDELITY COVER

Overview of Part 4.5

Part 4.5 establishes a fidelity cover scheme, which is a system that provides a source of compensation for clients who have lost trust money or trust property as a result of a default of a law practice. It requires each jurisdiction to nominate a fidelity fund, which is the source of compensation in the scheme, and a fidelity authority, which is the authority responsible for administering the fidelity cover scheme in that jurisdiction.

Part 4.5 sets out requirements relating to the administration of the jurisdiction's fidelity fund and the process for making, investigating and determining claims against the fidelity fund. For example, it requires the fidelity authority to ensure that claims against the fidelity fund are determined independently, at arms' length from the profession (section 240).

Sections 244, 247(3) and 248(2) limit a person's entitlement to recover losses from fidelity funds when other avenues are available for recovering their losses. This is the case both at the first instance, when the fidelity authority first determines a claim, and at the appeal stage, when a claimant appeals the decision of the fidelity authority.

In both instances, the fidelity authority has discretion to allow recovery despite the existence of an alternative avenue for recovering costs. Also in both instances, if an amount is later recovered that sees the claimant receive an amount greater than his or her loss, the excess must be repaid to the fidelity fund (section 245).

Division 1—Introduction

- Section 218 sets out the objective of Part 4.5, which is to establish a fidelity cover scheme to ensure that persons who suffer pecuniary loss as a result of defaults by law practices have a source of compensation for defaults arising from or constituted by acts or omissions of associates of law practices.
- Section 219 defines certain terms used in Part 4.5, including *claim*, *concerted interjurisdictional default*, *default* and *pecuniary loss*. The definitions of *default* and *pecuniary loss*, together with section 221, stipulate the type of loss that may be compensated under the fidelity cover scheme. Specifically, the loss must be of trust money or trust property, and must have been lost as a result of either a failure of a law practice to pay or deliver the money or property, or a fraudulent dealing with the trust property, where the failure or fraudulent dealing arises from an act or omission of an associate involving fraud or other dishonesty. (See section 6 for the definition of *associate*.)
- Section 220 sets out which jurisdiction is the *relevant jurisdiction* for an associate of a law practice for the purposes of Part 4.5. The relevant jurisdiction is used to determine the jurisdiction whose fidelity fund is liable for a default of a law practice. The relevant jurisdiction may be the associate's home jurisdiction or another jurisdiction, depending on the circumstances.
- Section 221 provides that Part 4.5 applies to defaults of law practices (it is immaterial where a default occurs) only to the extent that they occur in connection with the provision of legal services. Part 4.5 would not, for example, apply to money lost in connection with accounting services provided by a business that provides both legal services and accounting services. Part 4.5 does not apply to defaults to the extent to which they occur in relation to money or property entrusted to or held by the practice in connection with managed investment schemes or mortgage financing. Part 4.5 does not apply to defaults or classes of defaults specified in the Uniform Rules.

Division 2—Fidelity funds and fidelity authorities

- Section 222 provides that *fidelity fund* for the purposes of Part 4.5 is the fund nominated in the Legal Profession Uniform Law Act of this jurisdiction as the fidelity fund.
- Section 223 provides that Part 4.5 applies to this jurisdiction so that the term "fidelity fund" refers to the fidelity fund of this jurisdiction and the term "fidelity authority" refers to the fidelity authority for this jurisdiction.

Division 3—Fidelity fund

- Section 224 provides that the fidelity fund consists of money paid on account of the fund, interest and other income from investment of the money in the fund and other money paid to the fund in accordance with jurisdictional legislation.
- Section 225 provides for annual contributions to the fidelity fund from applicants for, and holders of, Australian practising certificates and Australian registration certificates (but not from barristers, government lawyers, corporate lawyers or practitioners who are exempt under the Uniform Rules). The amount of contribution required in a jurisdiction is set by the fidelity authority in that jurisdiction.
- Section 226 enables the fidelity authority to impose a levy on contributors where it believes the fidelity fund is insufficient to satisfy its liabilities.
- Section 227 enables the designated local regulatory authority to suspend a lawyer's practising or registration certificate if the lawyer fails to pay an annual contribution or a levy.
- Section 228 enables the fidelity authority to arrange insurance of the fidelity fund and requires any proceeds from insurance to be paid into the fidelity fund.
- Section 229 provides that the fidelity authority cannot borrow money for the fidelity fund.

Section 230 provides, in subsection (1), that local regulations may fix the maximum amounts and maximum aggregate amounts, or method of calculating the maximum amounts and maximum aggregate amounts, that may be paid from the fidelity fund in relation to individual or classes of claims.

Subsection (4) allows the fidelity authority to make a payment that exceeds the fixed amount or amount calculated by the fixed method if satisfied that it would be reasonable to do so after considering the state of the fidelity fund and the circumstances of the case.

Section 231 provides, in subsection (1), that if the fidelity authority is of the opinion that the fidelity fund is likely to be insufficient to meet its liabilities, it may postpone in whole or in part payments of claims or impose a levy.

Subsection (2) requires the fidelity authority to take into account any hardship when making such a decision, and allows the authority to make special adjustments in cases of hardship.

Subsection (4) provides that a decision of the fidelity fund under this clause is final and not subject to appeal or review.

Section 232 requires the fidelity authority to arrange an annual audit of the fidelity fund and to give a copy of the audit report to the designated local regulatory authority.

Division 4—Claims about defaults

Section 233 provides that a person who suffers pecuniary loss due to a default by a law practice may make claims against the fidelity fund if this jurisdiction is the relevant jurisdiction of an associate of the law practice whose act or omission (whether alone or with others) gives rise to or constitutes the default. *Pecuniary loss* is the amount or value of trust money or trust property that is not paid or delivered; or the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing (section 219).

Section 234 requires a claim to be made in writing in accordance with the Uniform Rules and requires claims to be dealt with in accordance with Part 4.5 and the Uniform Rules.

Section 235 provides for advertisements seeking information and claims about defaults.

Subsection (1) provides that, if the fidelity authority considers that there has or may have been a default by a law practice, it may publish a notice in accordance with the Uniform Rules seeking information about the default and inviting claims.

Subsection (2) provides that if a notice invites claims, it must fix a date for making claims that is between 3 and 12 months from the date of first publication. Section 248 provides a right of appeal against a failure to determine a claim after 12 months after the claim was made. Section 236(4) also requires the authority to notify potential claimants.

Section 236 provides that a claim does not lie against the fidelity fund unless the prospective claimant notifies the fidelity authority within 6 months of becoming aware of the default, by the date fixed under a notice, or within a further period allowed by the authority or the Supreme Court of the same jurisdiction as the authority.

Subsection (4) provides that the fidelity authority is required to take reasonable steps to individually notify potential claimants of whom it is aware of their entitlement to claim and give them at least 21 days to make a claim.

Section 237 provides that the fidelity authority may process and investigate a claim in any manner it considers appropriate, subject to Part 4.5 and the Uniform Rules.

Section 238 allows the fidelity authority to make discretionary payments from the fidelity fund in advance of the determination of the claim if satisfied the claim is likely to be allowed and payment is warranted to alleviate hardship.

Subsections (3) and (4) provide that if the claim is disallowed or the amount payable to the claimant is less than the amount paid in advance, the claimant must repay the amount or excess amount to the fidelity fund.

Section 239 provides that certain defaults that are avoided, remedied or reduced by a financial contribution of the law practice or other associates are notional defaults.

Subsection (3) provides that notional defaults are to be dealt with in the same way as other defaults, but only the law practice or the associates concerned are eligible to make claims about them.

Division 5—Determination of claims

Section 240 provides, in subsection (1), that the fidelity authority is required to ensure claims against the fidelity fund are determined independently, at arms' length from the legal profession.

Subsection (2) requires the fidelity authority to give written notice to claimants of its decision on a claim as soon as practicable after making that decision.

Subsections (3), (4) and (5) provide that a claim may be allowed, be wholly or partly disallowed, or be otherwise settled, or the amount of a claim may be reduced in certain circumstances.

The way in which this provision is to be effected is a decision for each jurisdiction. The fidelity authority must publish a statement, at least annually, about how it is giving effect to the requirement.

Section 241 provides that (except in the case of costs under section 242 or interest under section 243) the amount payable in respect of a default must not exceed the pecuniary loss.

Section 242 concerns the legal costs involved in making a claim.

Subsection (1) provides that where a claim is wholly or partly allowed, the fidelity authority is required to order payment from the fidelity fund of a claimant's reasonable legal costs involved in making and proving a claim, unless it considers that special circumstances apply warranting a reduced amount or no payment of costs.

Subsection (2) provides that where a claim is wholly disallowed, the fidelity authority may order payment of the whole or part of a claimant's reasonable legal costs where it considers it appropriate.

Section 243 provides, in subsection (1), for the payment of interest on amounts payable, unless the fidelity authority considers special circumstances apply.

Subsection (2) provides that is to be calculated from the date the claim was made to the date of notification that the claim has been allowed at a rate of 5%, unless the Uniform Rules provide for a different rate.

Section 244 provides, in subsection (1), that a person is not entitled to payment from the fidelity fund of any amounts paid, payable, likely to be paid or that might but for neglect or failure on the person's part have been paid or payable from other sources (including fidelity funds in other jurisdictions) in connection with the default.

Subsection (2) provides that where the money is likely to be paid, the fidelity authority has a discretion to pay all or part of the amount if satisfied that payment is warranted to alleviate hardship.

Section 245 provides, in subsection (1), that if a claimant receives a payment from both the fidelity fund and another source or sources, and the total amount received exceeds the amount of the pecuniary loss, the amount of the surplus is a debt payable by the claimant to the fidelity fund.

Subsection (2) provides that the amount payable cannot exceed the amount that the claimant received from the fidelity fund in respect of the claim.

Section 246 provides that, on the payment of a claim from the fidelity fund, the fidelity authority becomes subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates, subject to certain conditions, and may exercise those rights and remedies in its own name or in the name of the claimant (even if any limitation periods under Part 4.5 have expired).

Subsection (8) provides that if the authority recovers (through subrogation) a greater amount than that paid to the claimant, the authority must pay the difference to the claimant, minus any costs incurred by the authority in recovering the amount.

Section 247 provides, in subsection (1), that a claimant has a right of appeal to the designated tribunal against a decision to disallow, in whole or in part, a claim or to reduce the amount allowed in respect of the claim, but not against a decision to limit the amount payable or refuse to pay an amount under sections 230 or 231 respectively.

Subsection (2) provides that the claimant must lodge the appeal within 30 days of receiving written notice of the decision.

Subsection (3) provides that the applicant must demonstrate to the tribunal that the amount sought from the fidelity fund is not reasonably available from other sources, unless the fidelity authority waives that requirement. The subsection also provides that, on application by the fidelity authority, the designated tribunal may stay the appeal until further action is taken to seek recovery of the amount from other sources.

Subsections (4), (5) and (6) provide that, on appeal, the designated tribunal may review the merits of the fidelity authority's decision and may affirm, vary, set aside and make a new decision, set aside and remit the matter for reconsideration by the fidelity authority, or make other orders as it thinks fit.

Subsection (7) provides that no order for costs is to be made on an appeal unless the designated tribunal considers it should be made in the interests of justice.

Section 248 provides, in subsection (1), a right to a claimant to appeal to the designated tribunal against a failure of the fidelity authority to determine a claim within 12 months.

Subsection (2) provides, similarly to the provisions in section 247, that the person appealing must demonstrate to the tribunal that the amount sought from the fidelity fund is not reasonably available from other sources, unless the fidelity authority waives that requirement. On application by the fidelity authority, the designated tribunal may stay the appeal until further action is taken to seek recovery of the amount from other sources.

Subsection (3) provides that no order for costs is to be made on an appeal unless the designated tribunal considers it should be made in the interests of justice.

Section 249 provides that, in court proceedings, evidence, including admissions and confessions, that would be admissible against a lawyer or other person with respect to an act or omission giving rise to a claim is admissible even if the lawyer or other person is not a defendant in, or party to, the proceedings. The section also provides that any defence that would have been available to the lawyer or other person is available to the fidelity authority.

Division 6—Defaults involving interjurisdictional elements

Section 250 provides, in subsection (1), for the fidelity authority to treat a concerted interjurisdictional default or a claim about such a default as if the default or claim consisted of two or more separate defaults or claims by reference to the relevant jurisdictions of the associates involved. A *concerted interjurisdictional default* is a default that involves more than one jurisdiction because it is caused by two or more associates from the defaulting law practice who have different home jurisdictions (section 219).

Subsection (3) provides that a claim about a concerted interjurisdictional default is to be assessed on the basis that the relevant fidelity funds pay in equal shares in respect of the default or as otherwise agreed by the fidelity authorities involved.

Section 251 enables the fidelity authority to treat a default of a law practice or a claim about the default as if the default or claim consisted of two or more separate defaults or claims where the default was caused by only one associate of the practice but the default involved more than one relevant jurisdiction (section 220).

Subsection (4) provides that a claim is to be assessed on the basis that the relevant fidelity funds contribute in equal shares in respect of the default or as otherwise agreed by the fidelity authorities involved.

Section 252 provides that the fidelity authority may request another fidelity authority to act as its agent in relation to a default if it appears to have occurred partly or solely in the other authority's jurisdiction or in circumstances where it is not clear where the default occurred.

Division 7—Miscellaneous

Section 253 provides, in subsection (1), for the fidelity authority to deal with a claim in cooperation with, or with the assistance of, other fidelity authorities or the designated local regulatory authority.

Subsection (2) enables fidelity authorities and the designated local regulatory authority to exchange information about a claim.

Section 254 provides that no liability (including liability in defamation) is incurred with respect to anything done or failed to be done in good faith for the purpose of arranging insurance of a fidelity fund, or for the purpose of publishing a notice or providing information under section 235 (which relates to advertisements).

Section 255 enables Uniform Rules to be made with respect to any aspect of the fidelity cover scheme under Part 4.5, including the minimum terms and conditions of cover, requirements and processes for making fidelity fund claims, the procedure for processing a claim and the procedure for identifying and dealing with concerted interjurisdictional defaults.

PART 4.6—BUSINESS MANAGEMENT AND CONTROL

Section 256 provides, in subsection (1), for the designated local regulatory authority (personally or by appointing a suitably qualified person) to conduct an audit of the compliance of a law practice with the Law, the Uniform Rules and other applicable professional obligations, if the designated local regulatory authority considers there are reasonable grounds to do so, based upon the conduct of, or a complaint against, the law practice or one or more of its associates.

Subsection (3) provides that a report of a compliance audit is to be provided to the law practice concerned and may be provided to the designated local regulatory authority.

Section 257 provides, in subsection (1), for the designated local regulatory authority to give a management system direction to a law practice if the authority considers it reasonable to do so after the conduct of any examination, investigation or audit referred to in Chapter 7.

Subsection (2) provides that a management system direction involves ensuring that appropriate management systems are implemented and maintained, and reporting periodically to the designated local regulatory authority about them.

Subsection (3) requires a law practice to comply with a direction given to it.

Section 258 prohibits, in subsection (1), a law practice (or a related entity) from promoting or operating management investment schemes or providing a service or conducting a business of a kind specified in the Uniform Rules. A civil penalty applies.

A law practice will not breach the prohibition on promoting or operating a managed investment scheme if, in the event of an insolvency or administration of the scheme, an associate of the law practice is appointed to certain offices in respect of the insolvency or administration, as provided for in subsection (2).

Subsection (3) provides that law practice is also prohibited from providing legal services in relation to a managed investment scheme if any associate of the law practice has an interest in the scheme or the responsible entity for the scheme. A civil penalty applies. The Uniform Rules may make exceptions to this prohibition in relation to certain types of arrangements and the designated local regulatory authority may grant exemptions on a case by case basis.

Subsection (4) provides that, in addition, a law practice or related entity must not, in its capacity as the legal representative of a lender or contributor, negotiate the making of, or act in respect of, a mortgage except in the circumstances authorised by the subsection. A civil penalty applies.

Subsection (6) provides that, to the extent that the section applies to an incorporated legal practice, the section is a Corporations legislation displacement provision for the purpose of section 5G of the Corporations Act (so that it applies despite inconsistency with the Corporations Act).

Section 259 enables Uniform Rules to be made with respect to the provision of legal services by law practices and to the provision of other services by law practices where a conflict of interest relating to the provision of legal services may arise.

CHAPTER 5—DISPUTE RESOLUTION AND PROFESSIONAL DISCIPLINE

Overview of Chapter 5

Chapter 5 deals with dispute resolution and professional discipline (without affecting the inherent jurisdiction and powers of the Supreme Court with respect to the control and discipline of Australian lawyers). The Chapter has a wide application to the conduct (wherever occurring) of current and former Australian lawyers and Australian legal practitioners, including Australian-registered foreign lawyers. However, the Chapter does not apply to judicial officers of the Commonwealth, States or Territories. The Uniform Rules can make other exceptions.

The Chapter sets out how complaints about conduct may be made (whether they give rise to consumer matters or disciplinary matters or both), preliminary assessment and investigation of complaints, binding determinations by the designated local regulatory authority, proceedings before a designated tribunal and findings of unsatisfactory professional conduct or professional misconduct. There are provisions for compensation orders and appeal or review of determinations of the designated local regulatory authority.

PART 5.1—INTRODUCTION

Section 260 sets out the objectives of Chapter 5, which are—

- to provide a framework for the timely and effective resolution of disputes or issues between clients and lawyers or law practices; and
- to provide a scheme for the discipline of the Australian legal profession, in the interests of the administration of justice and for the protection of clients of law practices and the public generally; and
- to monitor, promote and enforce the professional standards, competence and honesty of the Australian legal profession.

Section 261 defines *lawyer* so that, when used alone in Chapter 5, it refers to any of an Australian legal practitioner, an Australian-registered foreign lawyer, and an Australian lawyer who is not an Australian legal practitioner. It is defined also to refer to a former Australian legal practitioner, Australian-registered foreign lawyer or Australian lawyer. As provided for by

Schedule 3, unless contrary provision is made, a reference to an Australian legal practitioner or an Australian-registered foreign lawyer includes a reference to a non-participant legal practitioner or a non-participant registered foreign lawyer respectively.

Section 262 provides that Chapter 5 applies to conduct (whether acts or omissions or a combination of both) of a lawyer (including as a public notary) or a former lawyer, whether occurring wholly or partly within Australia or wholly outside Australia.

Importantly, subsection (2) provides that the Chapter also applies to conduct of a law practice, whether occurring wholly or partly within Australia. Note, however, that disciplinary findings (unsatisfactory professional conduct or professional misconduct) may only be made against individuals.

Subsection (5) provides that Chapter 5 does not apply to conduct of a lawyer or law practice to the extent that the conduct is excluded by Part 4 of Schedule 3.

Section 263 provides, in subsection (1), that the application of Chapter 5 is not affected by any protection a person may have under the Law or any other law from any action, liability, claim or demand.

Subsection (2) provides that Chapter 5 does not apply to judicial officers or holders of offices specified in the Uniform Rules, except to the extent provided by jurisdictional legislation.

Subsection (3) provides that Chapter 5 applies to conduct of a lawyer in the exercise of certain official functions as an arbitrator or costs assessor except to the extent the conduct was concerned with justiciable aspects of decision making.

Subsection (4) provides that Chapter 5 does not apply to conduct engaged in by certain persons in the course of certain executive or administrative functions.

Section 264 provides that nothing in Chapter 5 affects the inherent jurisdiction and powers of the Supreme Court of this jurisdiction (or the Supreme Court of another jurisdiction) with respect to the control and discipline of Australian lawyers or Australian legal practitioners.

PART 5.2—COMPLAINTS

Division 1—Making complaints and other matters about complaints

Section 265 provides that a *complaint* may relate to any dispute or issue about any conduct to which Chapter 5 applies. It notes that a complaint can be made about the conduct of either or both of a lawyer or a law practice.

Section 266 provides that any person or body may make a complaint.

However, subsection (2) provides that the designated local regulatory authority may initiate a complaint containing a disciplinary matter only. The capacity of the designated local regulatory authority to make such a complaint facilitates a process by which the authority may initiate the investigation of a disciplinary matter of its own accord (i.e. in the absence of a complaint made by another person).

Section 267 provides, in subsection (1), that a complaint is to be made to or by the designated local regulatory authority.

Subsection (2) provides that a complaint must be made or recorded (for example, by staff of the designated local regulatory authority) in writing, must contain information that identifies the complainant and the lawyer or law practice about whom the complaint is made, and must describe the alleged conduct that is the subject of the complaint.

Section 268 provides, in subsection (1), that a complaint may be about a consumer matter or a disciplinary matter or both.

Subsection (2) also provides that a dispute or issue about conduct that is the subject of a complaint can be both a consumer matter and disciplinary matter. It provides the example of a dispute or issue relating to costs, which could be both a consumer matter (i.e. a costs dispute) and a disciplinary matter. Therefore, while a dispute or issue between a complainant and a lawyer may be adequately resolved through the use of remedies for consumer matters, the conduct that gives rise to the dispute or issue may also warrant the instigation of disciplinary proceedings.

Subsection (3) provides that a complainant that is a commercial or government client cannot obtain relief under the consumer matter provisions of Chapter 5. This accords with the approach taken with respect to commercial and government clients under the legal costs provisions of Chapter 4. However, if the dispute or issue that is the subject of the complaint gives rise to a disciplinary matter, it may be dealt with as such.

Section 269 provides, in subsection (1), that *consumer matter* is defined as so much of a complaint about a lawyer or law practice relating to the provision of legal services to the complainant by the lawyer or law practice and as the designated local regulatory authority determines should be resolved by the exercise of functions relating to consumer matters.

Subsection (2) defines a *costs dispute* as a consumer matter involving a dispute about legal costs payable on a solicitor-client basis, where the dispute is between a lawyer or law practice and a person who is charged with those legal costs or is liable to pay them (whether as a client of the lawyer or law practice or as a third party payer). It notes that the designated local regulatory authority may deal with costs disputes within certain monetary limits under section 291.

Section 270 defines a *disciplinary matter* as so much of a complaint about a lawyer or law practice as would, if the conduct concerned were established, amount to unsatisfactory professional conduct or professional misconduct.

Section 271 provides that, if a complaint involves or may involve both a consumer matter and a disciplinary matter, the designated local regulatory authority may give priority to the consumer matter and, if necessary and appropriate, separately from the disciplinary matter. This gives the designated local regulatory authority discretion to prioritise the expeditious resolution of consumer matters, with the aim of avoiding delays to consumer dispute resolution due to concurrent disciplinary proceedings.

Section 272 relates to the time limits on making complaints.

Subsection (1) provides that a complaint must relate to conduct alleged to have occurred in the preceding 3 years but the designated local regulatory authority may waive that requirement where it is just and fair to do so having regard to the delay and the reasons for the delay or the complaint involves

an allegation of professional misconduct and it is in the public interest to deal with it.

Subsection (2) provides that the designated local regulatory authority has discretion to waive these limits if the complaint is made within 4 months of the applicable limit, if it is just and fair to deal with the complaint having regard to the delay, and the reasons for the delay, and if the lawyer or law practice has not commenced legal proceedings in respect of the legal costs.

Subsection (2) further provides a shorter time limit for making a complaint involving a costs dispute. That time limit is 60 days after the legal costs become payable or if an itemised bill was requested, 30 days after the request was complied with.

Section 272(4) provides that a decision of the designated local regulatory authority to waive or refuse to waive a time requirement under this section is final.

Section 273 provides, in subsection (1), that a complaint may be withdrawn, in whole or in part, by the complainant at any time.

Subsection (2) provides that if a complaint is withdrawn, no further action is to be taken under Chapter 5 with respect to a consumer matter contained in the complaint. However, the designated local regulatory authority may initiate or continue to investigate disciplinary matters, or proceed with a disciplinary matter, despite the withdrawal in whole or in part of a complaint. A withdrawal does not prevent further complaints relating to the same subject matter or action being taken in relation to another complaint with respect to the same subject matter, nor, under subsection (3), does it affect of itself any proceedings in the designated tribunal.

Section 274 provides that a complaint is to be dealt with in the participating jurisdiction with which the complaint has the closest connection. The section includes a note stating that Part 4 of Schedule 3 deals with conduct partly or wholly occurring in one or more non-participating jurisdictions, and that section 407 empowers the Commissioner to issue guidelines and directions to assist in determining which jurisdiction should deal with a particular matter. This is an independent function of the Commissioner.

Section 275 provides that Division 1 does not affect any other right of a person to complain about the conduct of a lawyer or law practice under any other legislation or to seek a remedy at common law or in equity in relation to the conduct.

Division 2—Preliminary assessment of complaints

Section 276 provides, in subsection (1), that the designated local regulatory authority must conduct a preliminary assessment of a complaint.

Subsection (2) provides that during the assessment, the authority may request further information from the complainant, the respondent or another person who may have relevant information. Subsection (2) also provides that the authority is not bound by the rules of evidence but may inform itself in any manner it thinks fit.

Subsection (3) provides that any evidence or information obtained by the authority in the assessment may be used by the authority or an investigator in any later investigation or consideration of the complaint.

Subsection (4) provides that the authority may complete a preliminary assessment in the absence of the requested information.

Section 277 provides, in subsection (1), that the designated local regulatory authority may close a complaint, or part of a complaint, after preliminary assessment for one of a number of specified reasons. The reasons include that the complaint is vexatious, misconceived, frivolous or lacking substance, made out of time or the complainant has not adequately responded to a request for further information. Further, the designated local regulatory authority may close a complaint if the subject matter has been or is being otherwise investigated or would be better investigated by police or any another body or the authority is satisfied that it is in the public interest to close the complaint.

Section 318 requires the designated local regulatory authority to give written notice of the closure and the reasons for closure to the complainant and respondent. However, subsections (3) and (4) provide that the designated local regulatory authority is not bound to investigate the complaint or give anyone an opportunity to be heard before doing so. The intention is to avoid protracted exchanges of submissions or evidence before a

complaint proceeds beyond the preliminary assessment stage, noting that Chapter 5 elsewhere provides for such procedural requirements where the designated local regulatory authority proposes to make a determination or to commence an investigation.

Section 278 provides, in subsection (1), that the designated local regulatory authority may recommend the immediate suspension of a respondent's practising certificate or registration certificate if the authority considers it necessary to do so in the public interest because of the seriousness of the alleged conduct that is subject of the complaint.

Subsections (2) and (3) provide that this recommendation can be made at any stage and does not preclude the authority from continuing to deal with the complaint. Subsection (3) includes a note stating that the designated local regulatory authority may suspend the certificate under section 82.

Division 3—Notification of and submissions by respondents

Section 279 provides, in subsection (1), that, after receiving a complaint, the designated local regulatory authority may notify the respondent or give the respondent a summary or details of the complaint. It also provides that, unless an exception in section 281 applies, the designated local regulatory authority must, as soon as practicable after deciding to investigate a complaint, give the respondent a summary or details of the complaint together with a notice of the respondent's right to make written submissions. If the authority has not already done so, before making a determination, the authority must give the respondent a summary or details of the complaint and a notice of the respondent's right to make submissions.

Subsection (2) provides that the notice must specify a period of 21 days for the receipt of submissions or a shorter or longer period if the designated local regulatory authority reasonably believes it is warranted.

Section 280 makes further provision for submissions by the respondent.

Subsection (2) provides that the designated local regulatory authority may grant an extension of time to make submissions.

Subsection (3) imposes a requirement for the designated local regulatory authority to consider any submissions received within the specified period.

Subsection (4) provides that the rules of procedural fairness are not breached merely because no submissions are received within the specified period and the authority makes a determination, even if submissions are later received.

Section 281 provides, in subsection (1), that section 279 does not require the designated local regulatory authority to, as soon as practicable after deciding to investigate a complaint, provide a summary or details of a complaint or notice about making submissions in certain circumstances. These circumstances are if the authority reasonably believes that to do so will, or is likely to, prejudice the investigation, an investigation by police or another investigatory or law enforcement body of any matter with which the complaint is concerned or any pending court proceedings, or place the complainant or any other person at risk of intimidation or harassment.

Subsection (2) provides that the designated local regulatory authority may postpone giving the respondent the notice and statement until appropriate to do so or may give the notice and a statement of the general nature of the complaint.

Division 4—Investigation of complaints

Section 282 provides that the designated local regulatory authority may investigate a complaint (in whole or in part) and may appoint a suitably qualified person to conduct an investigation, either generally or in relation to a particular matter. This section includes a note stating that Chapter 7 applies to investigations under Division 4.

Section 283 enables the designated local regulatory authority to extend the scope of an investigation so as to include conduct of the respondent revealed during the investigation (which may be made the subject of a new complaint but does not necessarily require separate or further investigation).

Section 284 provides, in subsection (1), that the designated local regulatory authority may arrange an assessment of costs charged or claimed by the respondent to a complaint containing a disciplinary matter.

Subsection (2) provides that the designated local regulatory authority is not required to apply for a costs assessment within any applicable time limits.

PART 5.3—CONSUMER MATTERS

Division 1—Preliminary

Section 285 provides that Part 5.3 applies to consumer matters and that Division 2 applies to all consumer matters but is subject to Division 3 in relation to costs disputes.

Division 2—Provisions applicable to all consumer matters

Section 286 provides that the designated local regulatory authority must not take action towards resolving a consumer matter unless it is of the opinion that at least one of the parties has made a reasonable, but unsuccessful, attempt to resolve the matter or that it would be unreasonable to expect the complainant to be involved in such an attempt. This restriction establishes that the jurisdiction of the designated local regulatory authority is not to be treated as the first resort for the resolution of consumer matters against lawyers and law practices. The parties must first take reasonable steps towards resolving the dispute or issue amongst themselves.

Section 287 requires the designated local regulatory authority to attempt to resolve a consumer matter by informal means as soon as practicable. This acknowledges that many consumer matters do not require significant intervention for resolution (for example, a complaint may be resolved by the designated local regulatory authority simply making a telephone call to the respondent). Further, the interests of the parties are often best served by a rapid resolution using informal means.

Section 288 provides, in subsections (1) and (2), that to the extent that a complaint contains a consumer matter, the designated local regulatory authority may order the parties to attend mediation in good faith.

Subsections (3) and (4) provide that if the mediation succeeds, the authority may close the complaint to the extent it has been resolved and, if the mediation fails, the authority may investigate the complaint further and proceed to a determination of the consumer matter.

Subsection (5) provides that where a complainant does not engage in the mediation in good faith, the designated local regulatory authority is empowered to close the complaint, so far as it contains a consumer matter.

Subsection (6) provides that the authority is prohibited from using anything said or admitted in a mediation (or attempted mediation) in making a determination, and such material is not admissible in court proceedings or before a person or body authorised to hear and receive evidence.

Section 289 provides, in subsection (1), that a written record of an agreement settling a consumer matter may be prepared by the designated local regulatory authority and must be signed by or on behalf of each party.

Subsection (2) provides that an agreement may be enforced by filing a copy of the record in a court.

Section 290 provides for the determination of consumer matters.

Subsection (1) enables the designated local regulatory authority to resolve a consumer matter by making a determination that, in the authority's view, is fair and reasonable in all the circumstances.

Subsection (2) provides for the orders that the authority may make in making a determination. The available orders include a caution, a requirement that an apology be made, a requirement that the work that is the subject of the complaint to be redone at no cost or at a reduced fee, and a requirement that the respondent undertake training, education or counselling or be supervised. The authority may also make a compensation order in accordance with Part 5.5.

Subsection (3) provides that a failure to comply with an order is capable of constituting unsatisfactory professional conduct or professional misconduct.

Division 3—Further provisions applicable to costs disputes

Section 291 provides, in subsection (1), that the designated local regulatory authority has power to deal with a costs dispute in the same manner as other consumer matters if the total bill for legal costs is less than \$100 000 (indexed) or the total bill for legal costs equals or exceeds \$100 000 (indexed) but the total amount in dispute is less than \$10 000 (indexed). The monetary limits are indexed in accordance with section 471.

Subsection (2) provides that if a costs dispute falls outside the monetary jurisdiction of the designated local regulatory authority, the authority must not deal with the dispute and must inform the parties of the right to apply for a costs assessment or to make an application under jurisdictional legislation for the matter to be determined.

Section 292 applies where an attempted resolution by the designated local regulatory authority of a costs dispute referred to in section 291 is wholly or partly unsuccessful and the amount still in dispute is less than \$10 000 (indexed). The designated local regulatory authority may make a binding determination in relation to the amount of costs payable (which can include a nil amount), based on the authority's assessment of what is fair and reasonable in the circumstances and consideration of the cost assessment factors outlined in section 200.

Section 293 applies where an attempted resolution by the designated local regulatory authority of a costs dispute referred to in section 291 is wholly or partly unsuccessful and either the amount in dispute is or exceeds \$10 000 (indexed) or the total amount of costs in dispute is less than \$10 000 (indexed) and the designated local regulatory authority notifies the parties in writing that he or she is unable to resolve the dispute. The section requires the designated local regulatory authority to cease dealing with the dispute and to inform the parties of the right to apply for a costs assessment.

The section includes a note stating that, under section 197, legal costs that are or have been the subject of a costs dispute cannot be subject to a costs assessment where they have been resolved (either by agreement or through a binding determination by the designated local regulatory authority).

Section 294 provides that GST payments in respect of legal costs are to be disregarded when determining the total bill for legal costs (section 291) or amount under section 292 or 293.

PART 5.4—DISCIPLINARY MATTERS

Division 1—Preliminary

Section 295 provides that Part 5.4 applies to disciplinary matters.

Section 296 provides that *unsatisfactory professional conduct* for the purposes of the Law includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that the public is entitled to expect of a reasonably competent lawyer.

Section 297 provides, in subsection (1), that *professional misconduct* for the purposes of the Law includes unsatisfactory professional conduct (as defined in section 296) if the conduct involves substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and conduct (occurring in connection with the practice of law or otherwise) that, if established, would justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

Subsection (2) provides that in deciding whether a lawyer is a fit and proper person, regard may be had to the matters that would be considered if the lawyer were applying for admission or the grant or renewal of a practising certificate (i.e. the suitability matters specified in the Uniform Rules) and any other relevant matters.

Section 298 provides examples of conduct capable of constituting unsatisfactory professional conduct or professional misconduct (including contraventions of the Law or the Uniform Rules, charging more than fair and reasonable costs, convictions for certain offences, insolvency, disqualification under the Corporations Act, and failure to comply with certain orders).

Division 2—Determination by local regulatory authority

Section 299 provides, in subsection (1), that the designated local regulatory authority may, in relation to a disciplinary matter, find that unsatisfactory professional conduct has occurred and may determine the matter by making certain orders (caution; reprimand; require an apology; require work to be re-done at no or reduced cost; require training, education, counselling or supervision; impose a fine not exceeding \$25 000; or recommend the imposition of a condition on a practising or registration certificate).

Subsection (2) sets out the process for the designated local regulatory authority to follow before making an order. It puts in place procedural fairness safeguards to give the respondent lawyer or legal practitioner associate the opportunity to make written submissions on the proposed determination prior to its finalisation.

Subsection (3) provides that if the designated local regulatory authority makes an order, no further action can be taken under Chapter 5 with respect to the complaint.

Subsection (4) provides that if the complaint involves both a consumer matter and disciplinary matter and the designated local regulatory authority has already determined the consumer matter under section 290, the authority may take into account the determination already made for the purposes of making a determination about the disciplinary matter, but not so as to make further orders in relation to the consumer matter.

Division 3—Role of designated tribunal

Section 300 provides, in subsection (1), that the designated local regulatory authority may initiate and prosecute proceedings against a respondent lawyer in the designated tribunal where the alleged conduct may amount to unsatisfactory professional conduct but would be more appropriately dealt with by the designated tribunal, or where the alleged conduct may amount to professional misconduct.

Subsection (2) provides that if the designated local regulatory authority decides to initiate proceedings, the authority must give the complainant and respondent written notice of the decision as soon as practicable.

Section 301 provides, in subsection (1), that proceedings initiated under Chapter 5 are to be dealt with in accordance with the procedures of the designated tribunal.

Subsection (2) provides that while the tribunal is not required to conduct a formal hearing, it is bound by the rules of procedural fairness.

Subsection (3) provides that jurisdictional legislation may determine whether the designated tribunal is bound by the rules of evidence in conducting a hearing.

Section 302 provides, in subsection (1), that where a designated tribunal finds a lawyer guilty of unsatisfactory professional conduct or professional misconduct, it may make such orders as it thinks fit. The subsection provides that the orders that may be made include the orders that a local regulatory authority can make under section 299 and other specified orders.

Subsection (2) provides that the tribunal may also make ancillary orders.

Subsection (3) provides that a person may be found guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.

Section 303 provides, in subsection (1), that the designated tribunal must order the payment of costs (including costs of the designated local regulatory authority and complainant) against a lawyer who is guilty of unsatisfactory professional conduct or professional misconduct, unless the designated tribunal is satisfied that exceptional circumstances exist.

Subsection (2) provides that even where a lawyer has not been found guilty of unsatisfactory professional conduct or professional misconduct, the designated tribunal may order the lawyer to pay costs if the sole or principal reason for the proceedings was the lawyer's failure to co-operate with the designated local regulatory authority or there is another reason warranting the order.

Subsection (3) provides that the designated tribunal may order a local regulatory authority or other nominated person, body or fund to pay costs only if satisfied that the lawyer concerned is not guilty of unsatisfactory professional conduct or professional misconduct and special circumstances warrant the order.

Subsections (4), (5) and (6) provide that orders for costs may be made on an interlocutory or interim basis, for a specified amount or for an amount determined on a specified basis, and may specify the terms on which costs must be paid.

- Section 304 provides that relevant persons and bodies (other than the Supreme Court) must give effect to orders of the designated tribunal under the Law, which includes the designated local regulatory authority.
- Section 305 enables the designated tribunal to order that procedural lapses by the designated local regulatory authority, either before or after proceedings were instituted, be disregarded if satisfied that the parties have not been prejudiced.

PART 5.5—COMPENSATION ORDERS

- Section 306 concerns the making of compensation orders.
- Subsection (1) enables the designated local regulatory authority to make a compensation order against a respondent lawyer or law practice for the purpose of determining a consumer matter under section 290.
- Subsection (2) enables the designated tribunal to make a compensation order against a respondent lawyer for the purpose of determining a disciplinary matter under clause 302.
- Section 307 provides that a complainant may request the designated local regulatory authority or the designated tribunal to make a compensation order in respect of loss suffered by the complainant or a client of the respondent or both arising from the conduct that is the subject of the complaint.
- Subsections (4) and (5) provide that a request to the designated local regulatory authority must be made before the complaint is disposed of but, if proceedings have been initiated in the designated tribunal, only with leave of the tribunal.
- Section 308 provides, at subsection (1), that a compensation order is an order to compensate the aggrieved person (the complainant or another person who is a client of the respondent) for loss suffered because of conduct that is the subject of a complaint.

Subsection (2) provides that a compensation order may provide for monetary compensation (either to the aggrieved or another person) up to \$25,000 where the order is made by the designated local regulatory authority or, if the tribunal makes the order, \$25,000 or a greater amount agreed to by the complainant and the respondent lawyer or law practice.

Subsection (3) provides that a compensation order may include an order providing that the respondent lawyer or law practice cannot recover, or must pay to the aggrieved person, the whole or a part of the amount charged for specified legal services.

Subsection (4) provides that a compensation order may include an order discharging a lien held by the law practice or lawyer in respect of a specified document or class of documents.

Section 309 provides, in subsection (1), that a compensation order must not be made unless the designated local regulatory authority or designated tribunal is satisfied that loss has been suffered because of the conduct concerned and it is in the interests of justice that the order be made. However, this limitation can be dispensed with if the complainant and the respondent lawyer agree.

Subsections (2) and (3) provide that a compensation order must not be made if the aggrieved person has received, or is entitled to receive, compensation under a court order or from a fidelity fund of any jurisdiction (unless the fidelity authority is seeking a compensation order under its subrogation to the rights and remedies of the complainant under section 246).

Section 310 provides for the enforcement of a compensation order made by the designated local regulatory authority by filing in a court of competent jurisdiction.

Section 311 provides that the recovery of compensation awarded under Part 5.5 does not affect any other remedy available to an aggrieved person but any compensation awarded must be taken into account in any other proceedings in respect of the same loss.

PART 5.6—APPEAL OR REVIEW

- Section 312 provides that the determination of a complaint or matter by the designated local regulatory authority is final, except as provided by Part 5.6.
- Section 313 enables the designated local regulatory authority, at its absolute discretion, to conduct an internal review of a decision to consider whether the decision was dealt with appropriately and was based on reasonable grounds. The discretionary nature of this power establishes that the provision is not intended to provide a general avenue of merits review of decisions of the designated local regulatory authority, but will allow the authority to correct defects in its decisions if required.
- Section 314 provides that, in accordance with jurisdictional legislation, a respondent lawyer or legal practitioner associate of a respondent law practice may appeal to the designated tribunal against, or seek review of, a determination of the designated local regulatory authority in relation to unsatisfactory professional conduct under section 299 or a compensation order of the designated local regulatory authority under section 290 for more than \$10 000.

Part 5.6 does not provide an avenue for appeal or review of most of the designated local regulatory authority's orders in consumer matters due to the importance of finality in dispute resolution. It does provide an avenue for appeal or review of compensation orders of more than \$10 000 due to the potentially significant financial impost on a respondent.

Part 5.6 provides an avenue for appeal or review of the designated local regulatory authority's determinations in disciplinary matters acknowledging that these determinations may have a significant bearing on a person's professional reputation or practising entitlements.

PART 5.7—GENERAL DUTIES OF LOCAL REGULATORY AUTHORITY

- Section 315 requires the designated local regulatory authority to deal with all complaints properly made and to do so in accordance with the Law and the Uniform Rules.

Section 316 requires the designated local regulatory authority, in exercising or considering whether to exercise its discretion when dealing with a complaint, to act in a fair manner.

Section 317 requires the designated local regulatory authority to deal with complaints as efficiently and expeditiously as practicable.

Section 318 requires the designated local regulatory authority to, as soon as practicable, give to the complainant and respondent written notice of, and reasons for, decisions to close a complaint, determinations relating to the complaint, and decisions made as a result of internal review.

Subsection (3) provides that the designated local regulatory authority need not give a party notice of a decision or determination to close a complaint if the authority considers it appropriate.

Section 319 provides, in subsection (1), that the rules of procedural fairness, to the extent they are not inconsistent with the Law and the Uniform Rules, apply in relation to investigations, determinations, other decisions and procedures of the designated local regulatory authority in respect of complaints.

Subsection (2) excludes subsection (1)'s application of those rules in relation to a decision of the designated local regulatory authority under clause 269 to resolve whole or part of a complaint by the exercise of functions relating to consumer matters. The intention is to allow the designated local regulatory authority discretion to decide that whole or part of a complaint is a consumer matter without having that decision subject to procedural fairness requirements.

PART 5.8—MISCELLANEOUS

Section 320 provides that, so far as a matter concerns another jurisdiction, a power to make an order directing action in relation to a matter under Chapter 5 includes a power to make an order recommending the taking (or refraining from the taking) of action in relation to the matter.

Section 321 provides that, to enable a law practice or lawyer to disclose information required for investigating a complaint about the practice or lawyer made by a client of the practice or lawyer, the

client is taken to have waived legal professional privilege or the benefit of any duty of confidentiality.

Section 322 provides that the Uniform Rules may deal with any matter in Chapter 5.

CHAPTER 6—EXTERNAL INTERVENTION

Overview of Chapter 6

Chapter 6 makes provision for external intervention in the business and professional affairs of law practices in certain circumstances—such as the death, insolvency (or winding up, deregistration or dissolution of a firm) or imprisonment of a practitioner; the failure to hold a current practising or registration certificate; where the designated local regulatory authority believes on reasonable grounds that the affairs of the law practice have not been attended to properly; or there have been irregularities in relation to trust money, trust property or trust accounts or any other proper cause.

Chapter 6 provides for the appointment of external interveners—supervisors of trust money, managers for a law practice and receivers for a law practice. It also sets out the details of their appointments and duties.

PART 6.1—INTRODUCTION

Section 323 sets out the objectives of Chapter 6, which are—

- to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices for the purpose of protecting the interests of—
 - the general public; and
 - clients; and
 - law practices and others, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients; and
- to ensure that there is an accountable and transparent process for the appointment of interveners and the conduct of interventions.

Section 324 provides that Chapter 6 applies to all law practices and, subject to any necessary adaptations, to—

- former law practices and former Australian legal practitioners; and
- executors and administrators of deceased practitioners or their estate; and
- administrators, receivers and managers of the property of an incorporated legal practice; and
- liquidators of incorporated legal practices; and
- Australian-registered foreign lawyers and former Australian-registered foreign lawyers.

Section 325 provides, in subsection (1), that the appointment of an external intervener in another participating jurisdiction is effective to operate in this jurisdiction.

Subsections (2) and (3) provide that an order or direction of a court or tribunal of another participating jurisdiction under Chapter 6 in relation to a law practice (other than an order appointing a receiver) has effect as if made by the designated tribunal of this jurisdiction.

PART 6.2—INITIATION OF EXTERNAL INTERVENTION

Section 326 sets out the circumstances in which an external intervention may take place in relation to a law practice (including where a legal practitioner associate dies or ceases to hold a current certificate, a firm or group has been wound up or dissolved, or where there has been a failure to comply with the Law).

Section 327 sets out the circumstances in which the designated local regulatory authority may determine to initiate an appointment under Chapter 6 of a supervisor of trust money, or a manager or receiver for a law practice.

Section 328 provides that the appointment of an external intervener for a law practice may be general or limited to particular matters.

PART 6.3—SUPERVISORS OF TRUST MONEY

Section 329 enables the designated local regulatory authority to appoint a person as a supervisor of trust money, and sets out the required qualifications of such a person.

Section 330 sets out matters flowing from the service of a notice of appointment of a supervisor.

Subsection (1) specifies what an ADI must do on receiving the notice. A civil penalty applies for a failure to comply with these obligations.

Subsection (2) sets out obligations on any other person on whom notice has been served. A criminal penalty applies for contravention of these obligations.

Subsection (4) provides that money withdrawn or transferred in contravention of the obligations set out in subsection (1) may be recovered by the supervisor as a debt from the ADI.

Section 331 provides that a supervisor of trust money has the same powers and functions as the law practice would have had in relation to trust money, subject to requirements relating to the exercise of certain powers and functions. It also sets out powers in relation to access to premises and responsibilities in relation to taking possession of anything from the premises.

Section 332 requires, in subsection (1), that a supervisor must maintain records of his or her dealings with trust money separately from records of dealings before the supervisor's appointment and separately from the affairs of any other law practice of which the supervisor is an external intervener, and in accordance with the Uniform Rules.

Subsection (2) requires that a supervisor must otherwise deal with trust money in the same way as a law practice.

Section 333 sets out the circumstances in which the appointment of a supervisor terminates, including determination by the designated local regulatory authority.

PART 6.4—MANAGERS

- Section 334 enables the designated local regulatory authority to appoint a person to be a manager for a law practice, and sets out the required qualifications of such a person.
- Section 335 provides the effect of service of notice of the appointment of a manager for a law practice.
- Subsection (1) provides that legal practitioner associates named in the notice must not participate in the affairs of the practice except under the supervision of the manager. A criminal penalty applies.
- Subsection (2) provides that an ADI on which notice has been served must comply with certain restrictions in relation to the handling of trust accounts and trust money. A civil penalty applies.
- Subsection (3) provides that a person on which notice has been served must comply with certain restrictions in relation to the handling of trust accounts and trust money. A criminal penalty applies.
- Subsection (5) provides that money withdrawn or transferred in contravention of the restrictions set out in subsection (2) may be recovered from the ADI.
- Section 336 provides that a manager of a law practice has the same powers and functions that the law practice or a legal practitioner associate of the law practice would have had, subject to requirements relating to the exercise of certain powers and functions. It also sets out powers in relation to access to premises and responsibilities in relation to taking possession of anything from the premises.
- Section 337 requires, in subsection (1), that a manager must maintain records and accounts of the law practice separately from both the management affairs of the law practice before the manager's appointment and the affairs of any other law practice of which the manager is an external intervener, and in accordance with the Uniform Rules.
- Subsection (2) requires that a manager must otherwise deal with trust money of the law practice in the same way as a law practice must deal with trust money.

Section 338 requires the manager of a law practice to co-operate with the legal personal representative of a deceased legal practitioner associate for the winding up of the estate.

Subsection (3) provides that, subject to the other provisions in the section, and subject to the terms of appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment is not affected by the death.

Section 339 provides that, where a manager has been appointed for a law practice and the law practice or a legal practitioner associate claims a lien for legal costs on regulated property, the manager may require details of the property and the costs and, if the requirement is not complied with, the manager may disregard the claim for a lien.

Section 340 sets out the circumstances in which the manager's appointment terminates, including determination by the designated local regulatory authority.

Subsections (3) and (4) set out the manager's responsibilities in relation to transferring regulated property and client files.

PART 6.5—RECEIVERS

Section 341 provides for the appointment by the designated tribunal, on the application of the designated local regulatory authority, of a qualified person as receiver for a law practice.

Subsection (5) sets out the required qualifications of such a person and the requirements for the tribunal hearing.

Section 342 provides the effect of service of notice of the appointment of a receiver for a law practice.

Subsection (1) provides that a legal practitioner associate of the law practice who is specified or referred to in the notice must not participate in the affairs of the practice. A criminal penalty applies.

Subsection (2) provides that an ADI on whom notice of the appointment is served must not deal with funds in a trust account of the law practice except in certain circumstances. A civil penalty applies.

Subsection (3) provides that a other person on whom notice is served (other than a manager of the law practice) must not deal with trust money of the practice. A criminal penalty applies.

Subsection (5) provides that money withdrawn or transferred in contravention of the restrictions set out in subsection (2) may be recovered from the ADI.

Section 343 provides, in subsection (1), that the role of a receiver is to be the receiver of regulated property of the law practice and to wind up and terminate its affairs.

Subsection (2) confers powers on the designated tribunal to make orders, in the interests of the clients of the law practice, relating to the carrying on of the legal practice of the law practice.

Subsection (3) provides that, subject to any directions of the designated tribunal, a receiver that is authorised to carry on the legal practice engaged in by the law practice has all the powers and other functions of a manager.

Subsections (5), (6) and (7) set out the general powers of a receiver in relation to the receiver's duties and its powers and obligations for entering premises and taking items from them.

Section 344 provides, in subsection (1), that a receiver must maintain records and accounts of the law practice separately from both the records of affairs of the law practice before his or her appointment and the records of any other practice of which the receiver is an external intervener, and in accordance with the Uniform Rules.

Subsection (2) provides that a receiver must otherwise deal with trust money of the law practice in the same way as a law practice must deal with trust money.

Section 345 provides, in subsection (1), that a receiver may take possession of regulated property (which is defined in clause 6 and includes trust money, documents, and equipment) of the law practice.

Subsection (2) requires a person in possession or control of such property to permit the receiver to take possession of it.

Subsections (3), (4) and (5) provide for the designated tribunal to make orders relating to the delivery of property to the receiver.

- Section 346 enables a receiver to require a person obliged to deliver regulated property to a law practice to instead deliver the property to the receiver. A civil penalty applies.
- Section 347 enables a receiver to deal with regulated property in any manner in which the law practice would have been able to lawfully deal with it.
- Section 348 enables a receiver to require specified persons to give the receiver access to documents, and information about, the affairs of the law practice. A person subject to such a requirement must comply with it. A civil penalty applies. Section 466 provides information about compliance with this requirement.
- Section 349 enables the designated tribunal, on the application of a receiver, to order an associate or former associate of the law practice or any other person to appear before the tribunal for examination in relation to regulated property of the law practice.
- Section 350 provides that, where a receiver has been appointed for a law practice and the law practice or a legal practitioner associate claims a lien for legal costs on regulated property, the receiver may require details of the property and the costs.
- Subsection (4) provides that if the requirement is not complied with, the receiver may disregard the claim for a lien.
- Section 351 provides that regulated property of a law practice is not liable to be taken, levied on or attached under any judgment, order or process of a court or any other process.
- Section 352 sets out provisions governing the recovery of regulated property where there has been a breach of trust, including the receiver's rights of recovery and rights against third parties.
- Section 353 makes it a criminal offence for a person, with the intent to defeat the operation of Part 6.5 or the Uniform Rules relating to receivers, to destroy, conceal, remove from one place to another, or deliver into the possession or place under the control of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Section 354 requires a receiver to co-operate with the legal personal representative of a deceased legal practitioner associate of the law practice for the orderly winding up of the estate.

Subsection (3) provides that, subject to the other provisions in the section and subject to the terms of appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment is not affected by the death.

Section 355 provides for the termination of the appointment of a receiver, including by order of the designated tribunal, and the receiver's responsibilities in relation to transferring regulated property.

PART 6.6—GENERAL

Section 356 sets out the conditions to which the appointment of an external intervener is subject, being conditions imposed by the designated local regulatory authority (in the case of a supervisor or manager) or the designated tribunal (in the case of a receiver) and conditions imposed by or under the Uniform Rules.

Section 357 provides, in subsection (1), that an act done or omitted to be done by an external intervener for a law practice is, for the purposes of proceedings or transactions that rely on that act or omission, taken to have been done by the law practice.

Subsection (2) provides that subsection (1) does not subject an associate of the law practice to any personal liability.

Section 358 enables the law practice, an associate of the law practice, a person authorised to operate a trust account of the law practice, or a client or other person whose interests are adversely affected by the appointment of an external intervener to appeal against or seek review of the appointment to the designated tribunal.

Subsection (4) sets out the orders that the tribunal may make.

Section 359 enables the designated tribunal, after appointing an external intervener, to give directions in relation to any matter affecting the intervention or the intervener's powers or other functions under the Law. Those directions may be given on application by the external intervener, a principal of the law practice, or any other person affected by the external intervention.

- Section 360 provides that a decision of a receiver for a law practice prevails over any inconsistent decision of a manager of the law practice.
- Section 361 requires an ADI, at the request of an external intervener, to disclose to the intervener or produce to the intervener for inspection, without charge, information about accounts of the law practice maintained by the ADI, including, if the intervener believes on reasonable grounds that trust money has been deposited into an account of a third person who is not an associate of the law practice, information about any such account. Civil penalties apply.
- Section 362 provides, in subsection (1), that an external intervener must not disclose information obtained as a result of being an intervener, except as specifically permitted by subsection (2). A civil penalty applies.
- Subsection (2) permits disclosure so far as is necessary for exercising the intervener's powers or other functions, and to courts and tribunals, other persons acting judicially, a local regulatory authority and certain other persons.
- Section 363 provides that an external intervener may inspect, make copies of and retain documents provided to the intervener pursuant to a requirement in Chapter 6 or the Uniform Rules to give an external intervener access to documents or information.
- Section 364 makes it an offence to obstruct an external intervener exercising a power or other function under the Law, without reasonable excuse. A civil penalty applies.
- Section 365 provides, in subsection (1), that fees, costs and expenses of an external intervener are payable in accordance with the Uniform Rules and are payable by and recoverable from the law practice concerned.
- Subsection (2) provides that the designated local regulatory authority may recover those fees, costs and expenses.
- Subsection (3) provides for an external intervener to be paid from a fund specified or described in the Legal Profession Uniform Law Act of this jurisdiction if fees, costs or expenses are not paid by the law practice.

Subsection (4) provides that, if later paid by or recovered from the law practice, the fees, costs and expenses are to be paid into that fund or refunded in accordance with legislation of this jurisdiction.

Section 366 provides, in subsection (1), that no liability attaches to the designated local regulatory authority, an external intervener or person acting at the direction of the designated local regulatory authority or an external intervener in respect of anything done in good faith in the exercise or purported exercise of functions under Chapter 6.

Section 367 provides for the making of Uniform Rules with respect to any aspect of external intervention.

CHAPTER 7—INVESTIGATORY POWERS

Overview of Chapter 7

Chapter 7 contains provisions outlining investigatory powers exercisable in relation to the examination of trust records, investigation of trust records, compliance audits and complaint investigations. It sets out the powers and obligations of investigators, and the obligations of law practices and others to give access to documents and provide information where lawfully required. The relevant powers to enter and search premises both through the consent of the occupier or through the execution of a search warrant are explained.

PART 7.1—INTRODUCTION

Section 368 sets out the objective of Chapter 7, which is to set out powers exercisable in connection with—

- trust records examinations; and
- trust records investigations; and
- compliance audits; and
- complaint investigations.

Subsection (2) provides that a person (including the designated local regulatory authority) who is empowered to exercise the powers in the Chapter is referred to as an *investigator*.

Section 369 defines *lawyer* as having the same wide meaning as in section 261. This is necessary to capture persons that may be the subject of a complaint investigation in Chapter 5.

**PART 7.2—REQUIREMENTS RELATING TO DOCUMENTS,
INFORMATION AND OTHER ASSISTANCE**

Section 370 provides, in subsection (1), that an investigator carrying out a trust records examination, trust records investigation or compliance audit may require a law practice, or a person who has or had control of documents relating to its affairs, to give access to relevant documents and/or information to the investigator.

Subsection (2) provides that a requirement made under subsection (1) must be complied with. A civil penalty applies.

Section 371 provides, in subsection (1), that an investigator carrying out a complaint investigation may, by notice in writing, require a lawyer or legal practitioner associate of the law practice to provide, within a specified reasonable time, any specified document or written information and to otherwise assist in and cooperate with the investigation of the complaint.

Subsection (2) provides that an investigator may, by notice in writing, require a person who has had or is in control of relevant documents to give access to documents and/or information reasonably required by the investigator.

Subsection (3) makes it a criminal offence to fail to comply with a requirement made under subsection (1) or (2).

Section 372 provides that an investigator may inspect and make copies of documents provided pursuant to a requirement in Part 7.2.

Section 373 provides, in subsection (1), that an investigator may retain documents for so long as reasonably necessary for the purposes specified in that subsection.

Subsection (2) provides that the investigator must take reasonable steps to return them when the reason for retention no longer exists.

Subsection (3) provides that section 373 does not prevent an investigator from retaining a copy of a document or other thing seized or making a copy and retaining it.

PART 7.3—ENTRY AND SEARCH OF PREMISES

Section 374 provides, in subsection (1), for an investigator to enter and remain on premises to exercise the powers in section 375 for the purpose of carrying out a trust records investigation, compliance audit or complaint investigation.

Subsection (2) provides that the investigator may enter the premises with the consent of the occupier, under the authority of a search warrant under Part 7.3 or, in the case of non-residential premises, without the consent or a warrant. Entry of those premises without consent or a warrant may only occur if the investigator believes, on reasonable grounds, that it is urgently necessary to do so to prevent destruction or interference with relevant material and the designated local regulatory authority authorises the investigator to do so.

Section 375 sets out the powers the investigator may exercise after entry, including—

- searching for information, documents or material; and
- operating equipment; and
- taking possession of relevant material and making copies; and
- taking away material; and
- requesting assistance from persons on the premises.

Subsection (3) also provides that an investigator may be accompanied by assistants.

Section 376 sets out certain conditions applying to entry of premises with consent.

Subsection (1) requires the investigator to provide evidence of the appointment as investigator and to inform the occupier of the purpose of entry and search.

Subsection (2) provides for a signed acknowledgment by the occupier containing certain information and stating that legislative requirements have been met and that the occupier has consented to entry.

Subsection (3) provides for the occupier to sign an acknowledgment of consent if the investigator wishes to seize or take anything away. This must be done before the thing is seized or taken.

Subsection (5) provides that a failure to produce such an acknowledgement in any court or tribunal proceedings creates a presumption that the occupier did not consent to the entry and search or to the seizure or taking of a thing.

Subsection (6) provides that the occupier may withdraw his or her consent but this does not affect the validity of actions undertaken prior to the withdrawal.

Section 377 provides that an investigator may apply for a search warrant if a search is proposed to be undertaken for the purposes of a trust records investigation or a complaint investigation and the investigator believes there are reasonable grounds for the issue of a search warrant. The relevant jurisdictional legislation governing the issuing of search warrants would regulate such applications.

Section 378 requires, in subsection (1), an investigator executing a search warrant to announce his or her authority to enter under the warrant and, if unable to obtain unforced entry, to give a person at the premises an opportunity to allow entry.

Subsection (2) provides that the investigator is not required to comply with subsection (1) if the investigator believes, on reasonable grounds, that immediate entry is required to ensure the effective execution of the warrant.

Sections 379 requires, in subsections (1) and (2), the investigator who is executing a warrant at premises to identify himself or herself to the occupier, or, if the occupier is not present, another person, and to give the occupier or other person a copy of the warrant.

Subsection (3) requires that the investigator must also provide a copy of the warrant to persons on premises, upon reasonable request.

Section 380 provides, in subsection (1), for an investigator to retain a document or other thing seized during a search for so long as is reasonably necessary for the purposes of the trust records investigation or complaint investigation and to enable evidence to be obtained for the purposes of any disciplinary or other

proceeding in relation to the investigation under the Law or the Uniform Rules.

Subsection (2) requires the investigator to take reasonable steps to return the document or other thing when the reason for its retention no longer exists.

Subsection (3) provides that section 380 does not prevent an investigator from retaining a copy of a document or other thing seized or making a copy and retaining it.

Section 381 provides, in subsections (1) and (2) that if an investigator enters premises (with or without consent) and seizes a thing that can be readily copied or a data storage device containing information that can be readily copied, a person in charge of the premises or their representative may ask the investigator for a copy of the thing or information.

Subsections (3) and (4) provide that in those circumstances, the investigator must give the person the copy as soon as practicable after seizure, unless either the thing seized is a copy produced by equipment on the premises or possession of the thing or information by the person would be an offence.

PART 7.4—ADDITIONAL POWERS IN RELATION TO INCORPORATED LEGAL PRACTICES

Section 382 provides, in subsection (1), that Part 7.4 applies to trust records investigations, compliance audits and complaint investigations conducted in relation to incorporated legal practices.

Subsection (2) enables an investigator to exercise the powers set out in Part 7.4.

Section 383 confers on an investigator the same powers as those conferred on the Australian Securities and Investments Commission (*ASIC*) by Division 2 of Part 3 of the ASIC Act, subject to the modifications set out in the section that adapt those sections to the provisions of Part 7.4.

Section 384 confers on an investigator the same powers relating to inspection of books conferred on ASIC by sections 30(1), 34 and 37 to 39 of the ASIC Act, subject to the modifications set out in the section that adapt those sections to the provisions of Part 7.4.

Section 385 provides, in subsection (1), that the investigator may hold hearings for the purposes of an investigation, examination or audit to which Part 7.4 applies.

Subsection (2) applies certain provisions of the ASIC Act to a hearing, subject to the modifications set out in the section that adapt those provisions to those of Part 7.4.

PART 7.5—MISCELLANEOUS

Section 386 requires an investigator to advise the designated local regulatory authority if he or she becomes aware, in the course of a trust records examination, trust records investigation, compliance audit or complaint investigation, of any matter that might amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.

Section 387 provides, in subsections (1) and (2), that it is a criminal offence to obstruct an investigator exercising functions under the Law or to fail to comply with a requirement under section 375 without reasonable excuse.

Subsection (3) provides that the offences do not apply in circumstances where entry is effected by consent of the occupier.

Section 388 provides that it is a criminal offence for a lawyer to mislead an investigator (including the designated local regulatory authority) in the exercise of a power or other function under Chapter 7.

Section 389 protects the designated local regulatory authority, an investigator or a person acting at the direction of the local regulatory authority or investigator, from liability in respect of any act or omission by an investigator in good faith in the exercise or purported exercise of the investigator's functions under Chapter 7 or for the purpose of disclosing information as permitted by the Law or the Uniform Rules.

Section 390 provides for the making of Uniform Rules with respect to any aspect of trust records examinations, trust records investigations, compliance audits and complaint investigations.

CHAPTER 8—REGULATORY AUTHORITIES

Overview of Chapter 8

Chapter 8 sets out the details of the three regulatory authorities for the Law. They are the Standing Committee, the Legal Services Council (*Council*) and the Commissioner for Uniform Legal Services Regulation (*Commissioner*).

The Standing Committee has a general supervisory role in relation to the Council and the Commissioner but the Council and Commissioner are independent bodies.

The Council is responsible for monitoring the implementation of the Law and ensuring its consistent application by participating jurisdictions. The Council is also responsible for making Uniform Rules (section 419).

The Council is required to establish an Admissions Committee to develop Admission Rules and give advice to the Council about guidelines and directions of the Council and any other matters relating to admission and other matters referred to the Committee by the Council (section 402) and is supported by other specialist advisory committees (clause 22 of Schedule 1).

The Commissioner is the Chief Executive Officer of the Council. The principal roles of the Commissioner are to drive consistency in the handling of complaints and the exercise of other regulatory functions and to promote compliance with the Law and the Uniform Rules.

The office of the Commissioner is independent of the Council (see section 401). The Commissioner has the function of administering the affairs of the Council in accordance with the Council's policies and directions (clause 17 of Schedule 1).

PART 8.1—STANDING COMMITTEE

Section 391 provides that the Standing Committee has a general supervisory role in relation to the Council, the Commissioner and local regulatory authorities to ensure they are fulfilling their duties under the Law consistently with the objectives of the Law.

Section 392 provides, in subsection (1), that for the purposes of this Law, a decision of the Standing Committee is a decision supported by a majority of the votes of its members.

Subsection (3) provides that a certificate signed by the Secretary of the Standing Council on Law and Justice is conclusive evidence of a decision of the Committee.

Section 393 provides for reports to the Standing Committee by the Council, the Commissioner and local regulatory authorities.

PART 8.2—LEGAL SERVICES COUNCIL

Section 394 establishes and provides for the objectives of the Council, which are—

- to monitor the implementation of the Legal Profession Uniform Law and ensure its consistent application across participating jurisdictions; and
- to ensure that the Legal Profession Uniform Framework remains efficient, targeted and effective, and promotes the maintenance of professional standards; and
- to ensure that the Legal Profession Uniform Framework appropriately accounts for the interests and protection of clients of law practices.

Section 395 provides, in subsection (1), that the Council's functions are as conferred or imposed on it by or under the Law as applied by the Legal Profession Uniform Law Acts of this jurisdiction and other participating jurisdictions.

Subsection (2) provides that the Council is a corporation, and that it has all the powers of an individual.

Subsection (4) provides that the Council is appointed for a cycle of terms, each of 3 years.

Subsection (5) provides that the Council may exercise its functions in relation to one, two or more or all participating jurisdictions. Details of the Council's constitution and procedures are set out in Schedule 1.

Section 396 sets out the functions of the Council in relation to the Commissioner. These are monitoring and reviewing the exercise of the Commissioner's functions, examining annual and other reports, recommending changes to the role or functions of the Commissioner, and inquiring into questions referred by the Standing Committee.

Section 397 enables the Council to delegate any of its functions (other than the power to delegate) to an entity specified, or of a kind specified, in the Uniform Rules.

PART 8.3—COMMISSIONER FOR UNIFORM LEGAL SERVICES REGULATION

Section 398 establishes and sets out the objectives of the office of Commissioner, which are—

- to promote compliance with the requirements of the Law and the Uniform Rules; and
- to ensure the consistent and effective implementation of the provisions of Chapter 5 and supporting Uniform Rules, through the development and making of appropriate guidelines; and
- to raise awareness of the Legal Profession Uniform Framework and its objectives.

Section 399 provides, in subsection (1), that the Commissioner has the functions conferred or imposed on him or her by or under the Law as applied by the Legal Profession Uniform Law Acts of this jurisdiction and other participating jurisdictions.

Subsection (2) provides that the Commissioner may exercise its functions in relation to one, two or more or all participating jurisdictions collectively. Details relating to the Commissioner are set out in Schedule 2.

Section 400 enables the Commissioner to delegate any of his or her functions (other than the power to delegate) to a staff member of the Commissioner or to an entity specified, or of a kind specified, in the Uniform Rules.

Section 401 provides that the Commissioner and the Commissioner's delegates are to be independent of the Council in exercising any functions under the Law, except as provided by Part 8.3.

PART 8.4—ADMISSIONS COMMITTEE

Section 402 provides, in subsection (1), that the Council is required to establish an Admissions Committee.

Subsection (2) provides that the functions of the Committee are to develop Admission Rules and give advice to the Council about guidelines and directions of the Council and any other matters relating to admission and other matters referred to the

Committee by the Council, in addition to the functions provided in section 403.

Section 403 provides, in subsection (1), that the Admissions Committee has the functions conferred or imposed on it by or under the Law as applied in this jurisdiction and other participating jurisdictions.

Subsection (2) provides that the Committee may exercise its functions in relation to one, two or more or all participating jurisdictions collectively.

Subsection (3) provides that the Council may provide staff and assistance to the Committee. Details relating to the Admissions Committee are set out in Part 6 of Schedule 1.

PART 8.5—LOCAL REGULATORY AUTHORITIES

Section 404 provides that the local regulatory authorities and their delegates are to be independent of the Council and the Commissioner in exercising any functions under the Law, except as provided by Chapter 8.

Section 405 requires a local regulatory authority exercising functions under Chapter 5 to be an independent entity. However, subsection (2) provides that this provision does not prevent a local regulatory authority from delegating its functions under Chapter 5 to a professional association.

Section 406 enables a local regulatory authority to delegate any of its functions under the Law (other than the power to delegate and the power to take over responsibility of a matter under section 411) to an entity, or an entity of a class, prescribed by jurisdictional legislation.

Section 407 provides, in subsection (1), that the Council may issue guidelines or directions about the exercise of functions under the Law or the Uniform Rules (except for functions under Chapter 5) by local regulatory authorities.

Subsection (2) provides that guidelines or directions about the exercise of Chapter 5 functions may be issued by the Commissioner.

Subsection (3) provides that guidelines or directions may (without limitation) provide for the determination of which local regulatory authority should deal with a matter in

circumstances where more than one jurisdiction is or may be involved.

Subsection (4) provides that a direction may be issued if the Council or Commissioner (as required) considers that it is necessary or appropriate to ensure the designated local regulatory authority acts in a way that promotes interjurisdictional consistency in the application of the Law and the Uniform Rules.

Subsection (5) provides that a direction cannot be issued in relation to a particular matter.

Subsection (6) provides that a local regulatory authority is required to comply with any relevant direction.

Section 408 provides, in subsection (1), that a local regulatory authority may issue guidelines or directions to its delegates as well as any directions issued by the Council or Commissioner under section 407.

Subsection (2) provides that a local regulatory authority cannot issue guidelines or directions which are inconsistent with relevant guidelines or directions issued by the Council and/or Commissioner.

Section 409 sets out, in subsection (1), the functions of the Council in relation to local regulatory authorities. The Council's functions include promoting consistency in the exercise of functions of local regulatory authorities, monitoring and reviewing the exercise of functions of local regulatory authorities, reporting to the Standing Committee and recommending changes to the role or functions of local regulatory authorities, and inquiring into questions referred by the Standing Committee.

Subsection (2) provides that no liability attaches to the Council or a member of the Council for any act or omission done or omitted by a local regulatory authority or its delegate in the exercise or purported exercise of functions under the Law or the Uniform Rules.

Section 410 sets out, in subsection (1), the functions of the Commissioner in relation to Chapter 5 functions of local regulatory authorities. The Commissioner's functions include promoting consistency in the exercise of Chapter 5 functions, monitoring and reviewing the exercise of Chapter 5 functions, reporting to the Council on

specified matters and recommending changes to Chapter 5 functions.

Subsection (2) provides that no liability attaches to the Commissioner for any act or omission done or omitted by a local regulatory authority or its delegate in the exercise or purported exercise of functions under the Law or the Uniform Rules.

Section 411 provides, in subsection (1), the local regulatory authority with power to take over responsibility for a matter from the authority's delegate if the authority considers it appropriate to do so, at which point the delegate ceases to have responsibility for the matter unless the authority refers the matter back to the delegate.

Subsection (2) provides that the authority may then deal with and determine a matter that it takes over afresh, but may adopt or consider anything done or received by the delegate before the matter was taken over. The delegate must provide any required assistance to the authority to deal with the matter, for example by providing copies of relevant documents.

Subsection (4) provides that section 411 does not limit any power (howsoever arising) of a local regulatory authority to take over or otherwise deal with a matter.

PART 8.6—GENERAL

Section 412 provides, in subsection (1), that the Council, the Commissioner, their respective delegates and the Admissions Committee, as well as a local regulatory authority and its delegates, are to exercise their functions under the Law in accordance with the Law, the Uniform Regulations and the Uniform Rules.

Subsection (2) provides that a local regulatory authority and its delegates must also exercise their functions in accordance with applicable guidelines and directions issued under Part 8.6.

Section 413 provides, in subsection (1), that the Council, the Commissioner and a local regulatory authority are required to each maintain a register of delegations.

Subsection (3) provides that these entities must arrange for their registers to be reviewed at least annually and to submit a report of the review to the Council.

Subsection (4) provides that the Council is required to ensure that a current version of each register is publicly available at all reasonable times on its website or another publicly available website.

Section 414 provides, in subsection (1), a requirement that the Council or Commissioner must forward a document to a local regulatory authority for this jurisdiction where the document was lodged with the Council or Commissioner but should have been lodged with the authority. For example, if a complaint is lodged with the Commissioner, the Commissioner would be required to forward the complaint to the local regulatory authority.

Subsection (2) provides that the document is taken to be lodged with the local regulatory authority when it was lodged with the Council or Commissioner.

Section 415 provides that nothing in Chapter 8 authorises the Standing Committee, the Council or the Commissioner to investigate a matter relating to any particular conduct, to reconsider any decision to (or not to) investigate or to discontinue investigation of any particular matter, or to reconsider the findings, recommendations or other decisions of a local regulatory authority or its delegate.

Section 416 provides that, unless modified by the Uniform Regulations, specified Acts of New South Wales apply to a participating jurisdiction for the purposes of the Law.

Subsection (3) provides that the Acts do not apply to the extent that functions (other than functions relating to the Australian Legal Profession Register) are being exercised under the Law by a local regulatory authority.

CHAPTER 9—MISCELLANEOUS

Overview of Chapter 9

This Chapter contains provisions about the making and content of Uniform Rules, including Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules.

The Chapter includes provisions about the Australian Legal Profession Register and co-operative arrangements between authorities performing functions under the Law and between those and other authorities.

The Chapter also contains provisions about notices and evidentiary matters, and injunctions, and particulars about criminal and civil penalties.

There are also a number of general provisions including provisions relating to disclosure generally, appeals and reviews, requirements to report, protection from liability and indexation.

PART 9.1—LEGAL PROFESSION UNIFORM REGULATIONS

Section 417 provides, in subsection (1), that the Standing Committee may make Legal Profession Uniform Regulations where required or permitted and in relation to any ancillary matter.

Subsection (2) provides that the Uniform Regulations prevail, to the extent of any inconsistency, over the Uniform Rules.

Section 418 provides, in subsection (1), that the Uniform Regulations are to be published on the New South Wales legislation website.

Subsection (2) provides that a Regulation commences on the day or days specified in the Regulation, but cannot commence before it is published.

PART 9.2—LEGAL PROFESSION UNIFORM RULES

Section 419 authorises, in subsection (1), the Council to make, amend or repeal Uniform Rules where required or permitted or where necessary or convenient to be specified for carrying out or giving effect to the Law. The subsection includes a note stating that Rules cannot be inconsistent with the Law.

Subsection (2) sets out a number of areas where Rules may apply (without limitation).

Subsection (3) provides that the Rules may apply and modify the Law in relation to specified law practices and persons.

Subsections (5) and (6) provide that the Rules may contain civil penalty provisions not exceeding 50 penalty units.

Section 420 provides for the designation of Admission Rules, Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules as Uniform Rules.

Section 421 enables Admission Rules to provide for any aspect of admission.

- Section 422 enables Legal Practice Rules to provide for any aspect of legal practice by Australian legal practitioners, Australian-registered foreign lawyers and law practices.
- Section 423 provides, in subsection (1), that the Legal Profession Conduct Rules may provide for any aspect of the professional conduct of Australian legal practitioners, Australian-registered foreign lawyers and law practices, or the conduct of Australian legal practitioners and Australian-registered foreign lawyers as it affects or may affect their suitability in those positions.
- Subsection (2) outlines examples of areas that may be appropriately regulated through Legal Profession Conduct Rules, including advocacy, and the maintenance of professional independence and the integrity of the legal profession.
- Section 424 enables Continuing Professional Development Rules to provide for any aspect of continuing professional development by Australian legal practitioners.
- Section 425 provides, in subsections (1) and (2), that the Council may develop general Uniform Rules, other than those to which sections 426 or 427 apply.
- Subsection (3) obliges the Council to consult with the Commissioner and relevant advisory committees of the Council and local regulatory authorities for at least 30 days. The subsection also requires the Council to publicly release draft Rules and invite written submissions at least 30 days before finalising the draft, and to consider all reasonable submissions.
- Subsection (4) provides that Council may submit the proposed Uniform Rules to the Standing Committee.
- The Council may, under clause 22 of Schedule 1, establish advisory committees to advise it on the development and making of particular Uniform Rules.
- Section 426 provides, in subsection (2), that the Admissions Committee may develop Admission Rules.
- Subsection (3) provides that the Committee may develop those Rules in consultation with the Chief Justices of the participating jurisdictions, the Council, the Commissioner and relevant advisory committees and local regulatory authorities.

The subsection also provides that the Admissions Committee must, with the approval of the Council, release drafts for public consultation, invite submissions, consider all reasonable submissions and submit a final draft and report demonstrating compliance with this section to the Council.

Subsection (4) provides that the Council must submit the proposed Admission Rules to the Standing Committee in the form in which they are submitted to the Council.

Section 427 provides, in subsections (2), (3) and (4), that the Law Council of Australia and the Australian Bar Association may develop certain Uniform Rules applying or relating to solicitors, barristers and Australian-registered foreign lawyers. The relevant rules that may be made are those designated as Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules.

Subsection (5) provides that these rules are to be developed in consultation with the Council, the Commissioner and relevant advisory committees of the Council and local regulatory authorities. The subsection also provides that the Law Council of Australia and the Australian Bar Association must, with the approval of the Council, release drafts for public consultation, invite submissions, consider all reasonable submissions and submit a final draft and report demonstrating compliance with this section to the Council.

Subsection (6) provides that if the Council approves the final draft, it may submit the proposed Uniform Rules to the Standing Committee.

Section 428 provides, in subsection (1), for the making by the Council of a Uniform Rule submitted under section 425, 426 or 427 if either the Standing Committee approves the proposed Rule within 30 days, or the 30 day period passes without the proposed rule being vetoed by the Standing Committee.

Subsection (2) provides that in circumstances where a proposed Rule is vetoed, the Council may resubmit the proposed Rule to the Standing Committee with amendments.

Subsection (3) provides that the Standing Committee's power to veto proposed Uniform Rules is confined in respect of Rules developed under section 426 or 427. The restriction is that the Committee may only veto these when the proposed rule would

impose restrictive or anti-competitive practices that are not in the public interest, would otherwise not be in the public interest because it conflicts with one or more of the objectives of the Law, or where it would impact on the public funding of the scheme.

Subsection (4) provides that the Standing Committee exercises its power of veto, it must publish reasons for doing so. The Standing Committee may require a draft proposed Rule to be released for further consideration and/or public consultation.

Section 429 provides that certain proposed Uniform Rules are not required to be released for public consultation in compliance with sections 425, 426 and 427 if the Council considers they make minor or non-material changes or relate to a matter of a kind that the Standing Committee approves as not requiring public consultation.

Section 430 provides, in subsection (1), for the Council to make a Uniform Rule without compliance with clauses 425, 426 and 427 if the Council considers it needs to be made urgently.

Subsection (2) provides that in the case of an amendment or repeal of the Admission Rules, the Council must first consult with the Admissions Committee.

Subsection (3) provides that in the case of Legal Profession Conduct Rules, Legal Practice Rules and Continuing Professional Development Rules, the Council must first consult with the Law Council of Australia and the Australian Bar Association.

Subsection (4) provides that if such action is undertaken by the Council, it must provide the Standing Committee with a report of its actions and the reasons for taking such action as soon as practicable.

Section 431 provides, in subsection (1), that Uniform Rules are to be published on the New South Wales legislation website.

Subsection (2) provides that a Rule commences on the day or days specified in the Rule, but cannot commence before it is published.

PART 9.3—LEGAL PROFESSION REGISTERS

Section 432 provides, in subsection (1), for the Council to maintain an Australian Legal Profession Register.

Subsection (2) provides that the Uniform Rules may provide for information to be given to the Council that may or must be included in the Register.

Section 433 provides, in subsections (1) and (2), that if the Council elects to maintain an Australian Legal Profession Register, it must ensure that a current version of the register is publicly available for inspection at the Council's office and on the Council's website or another publicly accessible website, without charge.

Subsection (3) enables the Uniform Rules to provide for certain information to be excluded from the publicly available version of the register, for privacy and other reasons specified in this section.

Section 434 contemplates that jurisdictional legislation may provide for the maintenance of a local legal profession register.

Section 435 enables Uniform Regulations to be made specifying the details that may or must be included in a register referred to in Part 9.3. Subject to the Regulations, a register may be kept in a form determined by the Council or the local regulatory authority.

PART 9.4—CO-OPERATIVE AND OTHER ARRANGEMENTS

Section 436 provides, in subsection (1), power for the Council, the Commissioner, the Admissions Committee or the designated local regulatory authority to negotiate and enter into arrangements with Australian and foreign authorities or courts for exchanging, obtaining or disclosing information relevant to their respective functions under the Law or Uniform Rules.

Subsection (2) provides the Council, the Admissions Committee and the designated local regulatory authority with power to negotiate and enter into arrangements for mutual recognition of academic courses and practical legal training programs.

Section 437 provides, in subsection (1), that the designated local regulatory authority may communicate with, and obtain relevant information from, Australian or foreign authorities or courts in connection with applications for compliance certificates.

In subsection (2) enables the Council, the Commissioner, the Admissions Committee or the designated local regulatory authority to disclose information to a foreign authority or court in response to a request, but only if satisfied that it is not likely that the information will be inappropriately disclosed.

Section 438 provides, in subsection (1), that the Commissioner or a local regulatory authority may disclose to ASIC information relating to an incorporated legal practice or former such practice that the Commissioner or authority acquired in the course of exercising functions under the Law. The information must be relevant to ASIC's functions.

Subsection (2) provides that the information may be provided despite any other law relating to secrecy or confidentiality.

Section 439 provides, in subsection (1), for the disclosure of information obtained in the administration of the Law and the Uniform Rules between relevant persons.

Subsection (2) specifies who the relevant persons are. The list of person includes entities performing regulatory functions under the Law, such as the Council or a local regulatory authority (or a committee, member, delegate or staff member of the Council or authority).

Section 440 provides, in subsection (1), a requirement for the Council, the Commissioner and the local regulatory authorities to ensure, as far as practicable, that relevant information is expeditiously shared between them in accordance with agreed arrangements and that they exercise their respective functions in a cooperative manner.

Subsection (2) obliges local regulatory authorities to provide information or assistance to the Council and the Commissioner to enable those bodies to exercise their responsibilities and functions under Chapter 9.

Subsection (3) applies the same obligations to delegates of the Council, Commissioner and local regulatory authorities, and to the Admissions Committee.

Section 441 enables the Council, the Commissioner and local regulatory authorities (including their delegates and the Admissions Committee) to exercise any of their functions in cooperation with, or with the assistance of, the Commonwealth, a State or a

Territory, including government agencies, professional associations and bodies established under Commonwealth, State or Territory laws.

PART 9.5—NOTICES AND EVIDENTIARY MATTERS

- Section 442 sets out the requirements for service of notices and other documents on Australian legal practitioners, Australian-registered foreign lawyers and law practices.
- Section 443 sets out the requirements for service of notices and other documents on the Council, the Commissioner, the Admissions Committee, a local regulatory authority and their delegates.
- Section 444 sets out the requirements for service of notices and other documents on other persons, including individuals and companies.
- Section 445 provides the time at which service of a notice or other document is taken to have occurred.
- Section 446 provides, in subsection (1), that certain certificates are proof, in the absence of evidence to the contrary, of whether or not a person held an Australian practising certificate or Australian registration certificate and of any conditions or restrictions to which it is subject.

Subsections (2) and (3) provide that certain other certificates stating that a matter specified is (or was at any specified time) on the Australian Legal Profession Register or a local legal profession register, are proof of that fact, subject to any proof to the contrary.

PART 9.6—INJUNCTIONS

- Section 447 provides, in subsections (1) and (2), for the designated local regulatory authority to apply to the Supreme Court for an injunction (or interim injunction) where a person has contravened, is contravening, or is likely to contravene, the Law or the Uniform Rules.
- Subsection (5) sets out when the Supreme Court may grant an injunction or interim injunction.

Section 448 enables the Supreme Court to amend or discharge an injunction (including an interim injunction) on the application of the designated local regulatory authority or another interested person.

Section 449 provides, in subsection (1), that where the designated local regulatory authority applies for an injunction, the Supreme Court must not require the applicant to give an undertaking about costs or damages as a condition of granting such an injunction.

Subsection (2) provides that the Supreme Court must accept an undertaking about costs or damages from the designated local regulatory authority in certain circumstances.

Section 450 provides, in subsection (1), that the powers conferred on the Supreme Court under Part 9.6 are in addition to its other powers.

Subsection (2) specifically provides that an application for an injunction under Part 9.6 may be made without notice to the person against whom the injunction is sought.

PART 9.7—CRIMINAL AND CIVIL PENALTIES

Division 1—Criminal penalties

Division 1 includes a note stating that jurisdictional legislation deals with proceedings for offences and may empower local regulatory authorities to commence and maintain proceedings.

Section 451 provides that the word "penalty" not preceded by the word "civil" and followed by a number of penalty units at the foot of a specified provision of the Law creates a criminal offence punishable by not more than that number of penalty units.

Division 2—Civil penalties

Section 452 provides that the words "civil penalty" followed by a number of penalty units at the foot of a specified provision of the Law or the Uniform Rules creates a civil penalty of not more than that number of penalty units.

- Section 453 provides, in subsection (1), for the designated local regulatory authority to apply within 6 years of a person contravening a civil penalty provision to the designated tribunal for an order that the person pay a pecuniary penalty.
- Subsection (2) sets out the circumstances in which the tribunal may make such an order.
- Subsection (3) sets out the matters the tribunal must take into account in order to determine such a penalty.
- Subsection (5) states that such proceedings are civil proceedings and the relevant rules of procedure apply accordingly.
- Section 454 makes it clear that a contravention of a civil penalty provision is not a criminal offence.
- Section 455 provides, in subsection (1), that a person must not aid, abet, counsel, procure or induce a contravention of a civil penalty provision or in any way be concerned in or party to such a contravention or conspire to contravene a civil penalty provision.
- Subsection (2) provides that if a person contravenes this section, Division 2 applies to the person as if the person had contravened the civil penalty provision.
- Section 456 provides for the payment of pecuniary penalties and enforcement of orders by the designated tribunal to pay pecuniary penalties.
- Section 457 prohibits the designated tribunal from making a pecuniary penalty order for a contravention of a civil penalty provision if the person has been convicted of an offence relating to substantially the same conduct as the conduct constituting the contravention.
- Section 458 provides, in subsection (1), that proceedings for a pecuniary penalty order are stayed if criminal proceedings are or have been started in relation to an offence constituted by substantially the same conduct.
- Subsection (2) provides that proceedings for the order may be resumed where there is no conviction for the offence. Otherwise, the proceedings for the order are dismissed.

Section 459 provides that criminal proceedings may be started against a person regardless of whether a pecuniary penalty order has been made in relation to substantially the same conduct.

Section 460 provides, in subsection (1), that evidence given in proceedings for a pecuniary penalty order is not admissible in criminal proceedings in relation to substantially the same conduct.

Subsection (2) provides that this restriction does not apply in criminal proceedings in respect of the falsity of the evidence given in the proceedings for the penalty order.

PART 9.8—INTERJURISDICTIONAL PROVISIONS RELATING TO CERTAIN MATTERS

Section 461 provides, in subsection (1), a requirement that persons and bodies (except for the Supreme Court) that have relevant powers or other functions under the Law as applied in this jurisdiction must, as far as practicable, give effect to or enforce a recommendation or order of a corresponding disciplinary body or corresponding authority in specified circumstances.

Subsection (2) provides that where a corresponding disciplinary body recommends that a person's name be removed from the Supreme Court roll, the Supreme Court may order the removal without holding a further hearing.

PART 9.9—GENERAL

Section 462 prohibits, in subsection (1), the Council, the Commissioner or a local regulatory authority (or a committee, member, delegate or staff member of the Council, Commissioner or authority), an external examiner or intervener or investigator, and certain other persons from disclosing information obtained in the execution or administration of the Law or the Uniform Rules, except in the circumstances set out in subsection (2). A civil penalty applies.

Section 463 provides that where a decision (which under the Law can be the subject of an appeal or review) is varied or substituted by a superior court or tribunal, the superior court or tribunal's decision is taken to be the decision of the original decision-maker and, unless the superior court or tribunal orders otherwise, is taken to have had effect as such from the date of the original decision-maker's decision.

Section 464 provides, in subsection (1), that persons must be given notice of decisions under this Law affecting them that could be the subject of an appeal or review (unless exempted by the Uniform Rules), including information about the rights of appeal or review that are available.

Subsection (2) provides that a failure to give such notice does not affect the validity of the decision concerned.

Subsection (3) provides that, for the purposes of provisions of the Law relating to a right to appeal or review, a failure to make a decision on a person's application within a period specified in the Uniform Rules is taken to be a refusal of the application.

Subsection (4) provides that the decision-maker may make a valid decision after the specified period if satisfied of circumstances outlined in the section.

Section 465 provides, in subsections (1) and (2), that the Council, the Commissioner, the Admissions Committee, a local regulatory authority, delegates, staff members and certain other persons must report suspected serious offences to the police or other appropriate prosecuting authorities and make available to the police or relevant authority any relevant information or documents in the possession (or under the control) of the person reporting the suspected offence. This obligation does not apply in relation to an offence against this Law for which the person who would otherwise be required to make the report is the prosecuting authority.

Section 466 provides, in subsections (1) and (2), that specified provisions of the Law, largely relating to requirements to produce documents or provide information, must be complied with, notwithstanding legal professional privilege or other duties of confidence, the existence of a lien or the privilege against self-incrimination.

Subsection (4) provides the circumstances in which information, documents or other things obtained as a result of that compliance may be admissible against the person.

Subsection (5) provides that a person who complies with the requirements is not subject to any liability, claim or demand merely because of compliance, or any loss or damage suffered by another person due to that compliance.

Subsections (6) and (7) provide that an Australian lawyer or Australian-registered foreign lawyer fails to comply with a requirement, this failure may constitute unsatisfactory professional conduct or professional misconduct and may be used by the Commissioner to recommend the suspension of an Australian practising certificate or Australian registration certificate.

- Section 467 protects the Council, the Commissioner and a local regulatory authority (and a committee, member, delegate, staff member and certain other persons) against liability for acts done or omitted in good faith in the exercise or purposed exercise of their functions under the Law, the Uniform Regulations and the Uniform Rules.
- Section 468 provides, in subsection (1), that the persons referred to in section 467 are not compellable to give evidence or produce documents in any legal proceedings, including proceedings under Chapter 5, in relation to matters in which the person was involved in the course of administering the Law.
- Subsection (2) accommodates exceptions to this requirement that may be made by jurisdictional legislation, for example in relation to royal commissions.
- Section 469 provides the basis for jurisdictional legislation to provide for the appointment of persons to investigate suspected offences against the Law or suspected contraventions of civil penalty provisions.
- Section 470 provides that offences and contraventions of civil penalty provisions expressed as imposing an obligation on a partnership or other unincorporated body are to be read as applying to each principal of that partnership or body, subject to limitations similarly provided in section 35(1).
- Section 471 provides for the basis of indexed amounts referred to in the Law or the Uniform Rules.
- Section 472 enables the Supreme Court to make orders for the delivery of a bill of costs or other documents to a client of a law practice in certain circumstances.
- Section 473 enables the Council and local regulatory authority to approve forms for use under the Law or the Uniform Rules.

Section 474 provides, in subsection (1), that the Uniform Rules may fix fees for payment in relation to any function of the Council or Commissioner.

Subsection (2) expresses an intention that jurisdictional legislation may fix fees for payment in relation to any function of the Supreme Court, the designated tribunal or a local regulatory authority, to the extent fees are not otherwise specified or provided for in the Law or the Uniform Rules.

Section 475 gives effect to Schedule 3 (which contains provisions applying to non-participating jurisdictions).

Section 476 gives effect to Schedule 4 (which contains transitional provisions).

Schedule 1—Provisions relating to Council

PART 1—INTRODUCTION

Clause 1 defines the terms *Chair* and *member* for the purposes of Schedule 1 to mean the Chair and a member of the Council respectively. The clause also defines the term *host Attorney-General* to mean the Attorney-General of Victoria.

PART 2—CONSTITUTION OF COUNCIL

Clause 2 provides that the Council consists of 5 appointed members and sets out the process for their appointment.

Subclause (2) sets out the process for appointing the Chair, including a requirement that the Standing Committee consult and seek the concurrence of the Presidents of the Law Council of Australia and the Australian Bar Association. All parties involved in the process of recommending a person for appointment as the Chair are to be given an opportunity to nominate candidates.

Subclause (3) provides that the Standing Committee must ensure members are appointed so that, as far as practicable, they reflect a balance of participating jurisdictions and expertise.

Subclause (4) provides that members do not have representational roles.

- Clause 3 provides, in subclause (1), that members hold office for an operational term of the Council (3 years) or a shorter period and may be reappointed.
- Subclause (5) provides that a member may not hold office for more than 6 years.
- Clause 4 provides that the Standing Committee must, in consultation with representatives of the Law Council of Australia and the Australian Bar Association, ensure that, over the first operational term of the Council and over a cycle of two subsequent operational terms of the Council, at least one member is drawn from each participating jurisdiction.
- Clause 5 provides, in subclause (1), that an office of a member becomes vacant on completion of a term without reappointment, resignation, termination of the appointment by the host Attorney-General on grounds specified in subclause (2), or death.
- Subclause (3) provides that the host Attorney-General must exercise his or her functions under this clause after consulting the Standing Committee.
- Clause 6 provides, in subclause (1), for a member's term of appointment to be extended where the office of a member becomes vacant because the member has completed his or her term of office and the member has not yet served a total of 6 years.
- Subclause (3) provides that the member may continue to be a member for the lesser of 6 months or the unexpired portion of the maximum 6-year term.
- Subclause (4) provides that the host Attorney-General must exercise his or her functions under this clause after consulting the Standing Committee.
- Clause 7 provides for remuneration of members as determined by the Standing Committee.
- Clause 8 requires members to disclose any conflict of interest arising from a matter being considered or about to be considered at a meeting of the Council in accordance with the clause and not to be present or take part in deliberations or decisions about the matter. Subclause (5) provides that a contravention of this clause does not invalidate a decision of the Council.

PART 3—PROCEDURE OF COUNCIL

- Clause 9 provides that the Council is to determine the procedure for calling meetings and conducting business at those meetings.
- Clause 10 provides that the quorum for a meeting of the Council is a majority of its members.
- Clause 11 enables the Chief Executive Officer to attend meetings and participate in discussions of the Council, but not to vote at a meeting.
- Clause 12 provides in subclause (1) that the Chair or, if absent, a member elected by members present, is to preside at a meeting of the Council.
- Subclause (2) provides that the presiding member may vote, and in the event of an equality of votes, has a casting vote.
- Clause 13 provides that a decision is a decision of the Council if supported by a majority of votes cast at a meeting at which a quorum is present.
- Clause 14 provides, in subclause (1), for the Council to transact any of its business by the circulation of papers among its members. In those circumstances, a resolution in writing approved in writing by the majority of those members is a decision of the Council.
- Subclause (2) provides that the Council may also transact any of its business at a meeting at which members participate by telephone, closed-circuit television or other means, provided members who speak on matters before the meeting can be heard by other members.
- Clause 15 provides that a decision of the Council is not invalidated by any defect or irregularity in the appointment of a member.
- Clause 16 provides that the Chair may call the first meeting of the Council in any manner he or she thinks fit.

PART 4—CHIEF EXECUTIVE OFFICER OF COUNCIL

- Clause 17 provides for a Chief Executive Officer of the Council to administer the affairs of the Council in accordance with the policies and directions of the Council.

Subclause (3) provides that the Commissioner is to exercise the functions of Chief Executive Officer.

PART 5—STAFF, CONSULTANTS AND CONTRACTORS OF COUNCIL

- Clause 18 provides that staff of the Council are to be employed under the Government Sector Employment Act 2013 of New South Wales.
- Clause 19 enables the Chief Executive Officer to arrange for the services of staff of a government authority, of a local regulatory authority or of the Commissioner to be made available to the Council in connection with the exercise of its functions.
- Clause 20 enables the Chief Executive Officer to engage consultants and contractors for the purpose of providing services to the Council, on terms and conditions decided by the Council.

PART 6—COMMITTEES ESTABLISHED BY COUNCIL

- Clause 21 provides, in subclause (1), that the Admissions Committee is to consist of—
- 2 current or former Supreme Court Judges; and
 - 1 person nominated by the Law Council of Australia who has expertise or experience in legal practice; and
 - 1 person nominated by the Australian Bar Association who has expertise or experience in legal practice; and
 - 2 persons each of whom is nominated by the Dean of a Law School or of a Faculty of Law or the head of an institution that provides practical legal training or equivalent; and
 - 1 person nominated by the Standing Committee who is either—
 - a person who has expertise or experience in regulating the legal profession or in monitoring or developing policy relating to the legal profession who is also an officer or employee of a government department; or

- a person who has expertise or experience in developing policy standards for admission or in accrediting educational courses or institutions.

Subclause (2) requires that there must be at least one member of the Admissions Committee from each participating jurisdiction.

Subclause (4) provides that a member does not have a representational role in relation to any particular group or body to which the member belongs or in relation to any particular jurisdiction.

Subclauses (5) and (6) provide that Council determines the terms on which members are appointed and hold their positions, while the Committee determines its own procedures.

Clause 22 provides that the Council may establish one or more advisory committees to provide advice, recommendations or assistance to the Council and sets out the requirements for membership, terms of appointment of members and procedures of advisory committees.

Clause 23 provides, in subclause (1), for the Council to establish other committees.

Subclauses (2) and (3) provide that the Council will determine the appointment and tenure of members and its charter, while committees will determine their own procedures.

Clause 24 provides, in subclause (1), that the Council is to determine the remuneration of members of a committee, other than the Admissions Committee.

Subclause (2) provides that the Standing Committee determines the remuneration of a member of the Admissions Committee.

Clause 25 provides that committees established by the Council are committees of the Council.

PART 7—ANNUAL REPORTS OF COUNCIL

Clause 26 provides, in subclause (1), that the Council is required to submit an annual report to the Standing Committee within 4 months after the end of each financial year, unless the Standing Committee grants an extension under subclause (6). The clause sets out content requirements in subclauses (2), (3) and (4), and tabling requirements in subclause (5).

Schedule 2—Provisions relating to Commissioner

PART 1—INTRODUCTION

- Clause 1 defines the term *host Attorney-General* for the purposes of Schedule 2 to mean the Attorney-General of Victoria.

PART 2—APPOINTMENT AND TENURE OF OFFICE

- Clause 2 requires the host Attorney-General to appoint a Commissioner for Uniform Legal Services Regulation on the recommendation of the Standing Committee and with the concurrence of the Council.
- Clause 3 provides, in subclause (1), for the Commissioner's instrument of appointment to specify the term of office of the Commissioner, which must not exceed 5 years. The Commissioner may be reappointed
- Subclause (2) provides that the Commissioner cannot be appointed for terms, whether or not consecutive, that total more than 10 years.
- Clause 4 provides that the Standing Committee is to determine the remuneration of the Commissioner.
- Clause 5 sets out, in subclause (1), the circumstances in which a vacancy in the office of Commissioner occurs.
- Subclause (2) enables the host Attorney-General to terminate an appointment in certain circumstances.
- Clause 6 provides, in subclause (1), that the Council may appoint an Acting Commissioner in certain circumstances.
- Subclause (2) provides that the appointee must have sufficient knowledge of legal practice and the legal system to be able to exercise the functions of the Commissioner.
- Subclause (3) provides that the acting appointment may not exceed 6 months, but the person may be reappointed.
- Subclause (4) provides that the Acting Commissioner has all the functions of the Commissioner and is entitled to be paid the same remuneration and allowances that the Commissioner would have been entitled to for exercising those functions.

Subclause (5) provides that the Council may remove the Acting Commissioner from office at any time.

PART 3—STAFF, CONSULTANTS AND CONTRACTORS OF COMMISSIONER

- Clause 7 provides that staff of the Commissioner are to be employed under the Government Sector Employment Act 2013 of New South Wales.
- Clause 8 enables the Commissioner to arrange for the services of a member of staff of a government agency of the Commonwealth, a State or Territory, of a local regulatory authority or of the Council to be made available to the Commissioner in connection with the exercise of his or her functions.
- Clause 9 enables the Commissioner to engage consultants and contractors to provide services to the Commissioner on the terms and conditions decided by the Commissioner.

PART 4—ANNUAL REPORTS OF COMMISSIONER

- Clause 10 provides, in subclause (1), that the Commissioner is required to submit annual reports to the Council within 4 months after the end of each financial year, unless the Council extends the period under subclause (5). The clause sets out content requirements in subclauses (2), (3) and (4), and tabling requirements in subclause (7).

Schedule 3—Provisions applying in relation to non-participating jurisdictions

Schedule 3 sets out provisions that apply to non-participating jurisdictions, that is, jurisdictions in which the Law does not apply as a law of the jurisdiction and in respect of which the Standing Committee has not determined that a law of the jurisdiction substantially corresponds to the provisions of the Law.

Schedule 3 includes a note stating that that the terms *Australian practising certificate*, *Australian registration certificate*, *Australian legal practitioner* and *Australian-registered foreign lawyer* are defined (in section 6) to include certificates granted in non-participating jurisdictions and legal practitioners and foreign lawyers holding certificates in non-participating jurisdictions.

It also includes another note stating that provisions outside of Schedule 3 may also apply to non-participating jurisdictions. It is also noted that an Australian lawyer who has been admitted by the Supreme Court of a non-participating jurisdiction is eligible, if otherwise qualified, to be granted an Australian practising certificate under Part 3.3.

PART 1—PRELIMINARY

Clause 1 defines the terms *lawyer*, *non-participant legal practitioner*, *non-participant practising certificate* and *non-participant registered foreign lawyer* for the purposes of Schedule 3.

PART 2—APPLICATION OF THIS LAW IN RELATION TO NON-PARTICIPANT LEGAL PRACTITIONERS

Clause 2 provides, in subclause (1), that the Law applies to a non-participant practising certificate and a non-participant legal practitioner, subject to the exceptions and modifications set out in the subclause.

Subclause (2) provides that the Uniform Rules may provide that specified provisions of the Rules do not apply to a non-participant practising certificate or legal practitioner.

Clause 3 sets out the extent to which a non-participant legal practitioner is authorised to engage in legal practice in this jurisdiction.

Subclause (4) provides that an Australian lawyer who was admitted by the Supreme Court of a non-participating jurisdiction must not engage in legal practice in this jurisdiction in a manner not authorised by the Law or in contravention of this clause.

Clause 4 provides, in subclause (1), that the designated local regulatory authority may impose certain conditions on a non-participant legal practitioner who is engaged in practice in this jurisdiction by providing the practitioner with a written notice.

Subclause (2) provides that the Uniform Rules may also impose conditions on a non-participant legal practitioner's right to engage in legal practice in this jurisdiction.

Subclause (4) provides that a non-participant legal practitioner must not contravene such a condition.

Clause 5 provides, in subclause (1), that a non-participant legal practitioner who engages in legal practice solely or principally in this jurisdiction during a financial year and who reasonably expects to do so in the following financial year must apply for the grant of an Australian practising certificate under Part 3.3 of the Law (as applied in this jurisdiction) in respect of the following financial year.

Subclause (2) provides that the requirement to make that application does not apply if the practitioner is engaging in legal practice solely in this jurisdiction under an arrangement that is of a temporary nature.

Clause 6 provides that a non-participant legal practitioner's home jurisdiction is the non-participating jurisdiction in which the practitioner's practising certificate was granted.

PART 3—APPLICATION OF THIS LAW IN RELATION TO NON-PARTICIPANT REGISTERED FOREIGN LAWYERS

Clause 7 provides, in subclause (1), that the Law applies to registration as a foreign lawyer granted in a non-participating jurisdiction and to a non-participant registered foreign lawyer, subject to the exceptions and modifications set out in the subclause.

Subclause (2) enables the Uniform Rules to provide that specified provisions of the Rules do not apply to registration as a foreign lawyer in a non-participating jurisdiction or to a non-participant registered foreign lawyer.

Clause 8 describes the extent to which a non-participant registered foreign lawyer is authorised to practise foreign law in this jurisdiction.

Subclause (4) provides that a non-participant registered foreign lawyer must not practise foreign law in this jurisdiction in a manner not authorised by the Law or in contravention of this clause.

Clause 9 provides, in subclause (1), that the designated local regulatory authority may impose certain conditions on a non-participant registered foreign lawyer practising foreign law in this jurisdiction by providing the practitioner with a written notice.

Subclause (2) provides that the Uniform Rules may also impose condition on a non-participant registered foreign lawyer's right to engage in legal practice in this jurisdiction.

Subclause (4) provides that a non-participant registered foreign lawyer must not contravene such a condition.

Clause 10 provides, in subclause (1), that a non-participant registered foreign lawyer who practises foreign law solely or principally in this jurisdiction during a financial year and who reasonably expects to do so in the following financial year must apply for the grant of an Australian registration certificate under Part 3.4 of the Law (as applied in this jurisdiction) in respect of the following financial year.

Subclause (2) provides that the requirement to make that application does not apply if the lawyer is engaging in legal practice solely in this jurisdiction under an arrangement that is of a temporary nature.

Clause 11 provides that a non-participant registered foreign lawyer's home jurisdiction is the non-participating jurisdiction in which the lawyer's registration was granted.

PART 4—DISPUTE RESOLUTION AND PROFESSIONAL DISCIPLINE

Clause 12 sets out the circumstances in which Chapter 5 (dispute resolution and professional discipline), as applied in this jurisdiction, does not apply to the conduct of a lawyer, non-participant legal practitioner, non-participant registered foreign lawyer that occurs within a non-participating jurisdiction or outside Australia.

The clause provides that Chapter 5 will apply in certain circumstances where consent is given or where conduct is part of a course of conduct that has occurred within a participating jurisdiction. Chapter 5 will also apply where conduct is part of a course of conduct that has occurred within a non-participating jurisdiction where consent is provided.

Clause 13 sets out the circumstances in which Chapter 5 (dispute resolution and professional discipline), as applied in this jurisdiction, does not apply to the conduct of a law practice that occurs within a non-participating jurisdiction or outside Australia.

The clause provides that Chapter 5 will apply in certain circumstances where consent is given or where conduct is part of a course of conduct that has occurred within a participating jurisdiction. Chapter 5 will also apply where conduct is part of a course of conduct that has occurred within a non-participating jurisdiction where consent is provided.

Clause 14 provides, in subclause (1), that Chapter 5 will not apply to conduct that has occurred within this jurisdiction if the conduct is a part of a course of conduct that occurred partly in a non-participating jurisdiction and either the designated local regulatory authority or the complainant and the lawyer consent to the conduct being dealt with under a corresponding law.

Subclause (2) provides that this application of Chapter 5 will not occur if the conduct is not capable of being dealt with under the corresponding law.

Subclause (3) provides that the designated local regulatory authority's consent may be given conditionally or unconditionally.

PART 5—MISCELLANEOUS

Clause 15 sets out the meaning of the fidelity fund and fidelity authority of a non-participating jurisdiction.

Clause 16 provides for the making of Uniform Rules in relation to any aspect of the application of the Law to non-participating jurisdictions, including non-participant legal practitioners and non-participant registered foreign lawyers.

Schedule 4—Savings and transitional provisions

PART 1—INTRODUCTION AND GENERAL PROVISIONS

- Clause 1 defines *commencement day*, *old Chapter 4*, *old Chapter 5*, *old fidelity fund* and *old legislation* for the purposes of Schedule 4.
- Clause 2 provides, in subclause (1), that Schedule 4 does not affect or take away from the application of the **Interpretation of Legislation Act 1984**, unless a contrary intention appears.
- Subclause (2) provides that where anything which is required or permitted to be done under the Law (as applied in this jurisdiction) was previously done under the old legislation and had effect immediately before the commencement day, the thing continues in effect as if the Law had been in force when it was done and it had been done under the Law as applied in this jurisdiction.
- Subclause (5) provides that in these circumstances, other provisions of the old legislation which are necessary to give effect to the continued provision (and any relevant regulations) also continue to apply.
- Clause 3 provides that a reference to the old legislation in any Act (except for the Legal Profession Uniform Law Act of this jurisdiction or the Law as applied in this jurisdiction), subordinate instrument, agreement, deed or other document is to be construed as a reference to this Act (unless the reference relates to a period before the commencement day or is inconsistent with the subject matter).
- Clause 4 provides, in subclause (1), that any time limits specified in the old legislation continue to apply after the commencement day in relation to any act that was required or permitted to be done before that day. Nothing in the Law extends or abridges the time limit, except where a contrary intention appears.
- Subclause (2) provides that subject to Schedule 4, the time limit may be extended or abridged in accordance with provisions of the old legislation as if that provision had not been repealed.

Clause 5 enables the Uniform Rules and local regulations to contain savings and transitional provisions consequent on the repeal of the old legislation, with provisions in the regulations prevailing over any inconsistent provisions in the Rules.

Subclause (5) provides that a savings or transitional provision which takes effect prior to its gazettal or publication does not operate so as to affect the rights of a person in a prejudicial manner or impose liabilities on a person, unless the person is this jurisdiction or an authority of this jurisdiction.

PART 2—REGULATORY AUTHORITIES

Clause 6 provides that, during specified periods, the Standing Committee is taken to include Attorneys-General of any non-participating jurisdictions on behalf of which the Inter-Governmental Agreement was signed.

Clause 7 provides that the first operational term of the Council is the period of three years commencing on the date specified in the Legal Profession Uniform Law Act of Victoria.

Clause 8 provides for the initial appointment of the Commissioner and sets out the terms of the initial appointment.

Clause 9 provides, in subclause (1), for the Attorney-General of this jurisdiction to declare that clause 405 (which requires a local regulatory authority exercising functions under Chapter 5 to be an independent entity) does not apply to a local regulatory authority of this jurisdiction.

Subclause (2) provides that the declaration lasts for no more than 3 years from the time that the Law first applies to this jurisdiction as a participating jurisdiction. The intention is to allow newly participating jurisdictions to establish a regulatory structure for complaints which meets the independent entity requirement.

PART 3—PARTICULAR PROVISIONS

Division 1—Application of this Part

- Clause 10 provides, in subclause (1), that Part 3 (other than Division 1) applies to this jurisdiction only if, and to the extent to which, legislation of this jurisdiction so provides.
- Subclause (2) provides that the provisions of other legislation of this jurisdiction prevail over any inconsistent provisions of Part 3.

Division 2—Admission and legal practice

- Clause 11 provides, in subclause (1), that a person who was a local lawyer (as defined in the old legislation) immediately before the commencement day is, from that day, taken to be an Australian lawyer as if he or she had been admitted under the Law as applied in this jurisdiction.
- Subclause (2) provides that the day of admission of such a person is the day that he or she was previously admitted by the Supreme Court of this jurisdiction.
- Clause 12 provides, in subclause (1), that a practising certificate granted under the old legislation before the commencement day is, from that day, taken to be an Australian practising certificate granted in this jurisdiction under the Law as applied in this jurisdiction. The certificate may therefore be renewed, suspended or cancelled in accordance with the Law as applied in this jurisdiction.
- Subclause (2) enables applications for a practising certificate under the old legislation which have not been determined before the commencement day to be determined as if it were an application under the Law as applied in this jurisdiction for an Australian practising certificate. Any practising certificate held by the applicant remains in force as if it were an Australian practising certificate until a new certificate is granted (or the application is refused).
- Subclause (4) provides that any conditions attaching to the certificate continue to apply.

- Clause 13 provides, under subclause (1), that a registration certificate granted under the old legislation before the commencement day is, from that day, taken to be an Australian registration certificate granted in this jurisdiction under the Law as applied in this jurisdiction. The certificate may be renewed, suspended or cancelled accordingly.
- Subclause (2) enables applications for registration as a foreign lawyer under the old legislation which have not been determined before the commencement day to be determined as if it were an application under the Law as applied in this jurisdiction for an Australian registration certificate. Any registration certificate held by the applicant remains in force as if it were an Australian registration certificate until a new certificate is granted (or the application is refused).
- Subclause (4) provides that any conditions attaching to the certificate continue to apply.
- Clause 14 provides, in subclauses (1) and (2), that an entity that was an incorporated legal practice or multi-disciplinary partnership (as defined in the old legislation) immediately before the commencement day is taken to be an incorporated legal practice or multidisciplinary partnership within the meaning of the Law as applied in this jurisdiction.
- Subclause (3) provides that these entities are taken to have complied with the requirement in section 104 to give notice of an intention to engage in legal practice in Australia.
- Clause 15 provides that an order that a person (other than a legal practitioner) is a disqualified person for the purposes of the old legislation that was in force immediately before the commencement day continues after that day as if it were an order under section 119.
- Clause 16 provides that an approval of a lay associate for the purposes of a provision of the old legislation (where the provision prohibits a legal practitioner or law practice from having a lay associate who the practitioner or practice knows to be a disqualified person or a person who has been found guilty of a relevant offence) that was in force immediately before the commencement day is, from that day, taken to be an approval of the person under section 121.

Clause 17 provides, in subclause (1), that an entity that was disqualified from providing legal services under the old legislation immediately before the commencement day continues to be disqualified under the Law.

Subclause (2) provides that any disqualification order made under the old legislation before the commencement day continues, from that day, as if it were an order under Part 3.9 of the Law as applied in this jurisdiction.

Division 3—Client information

Clause 18 provides, in subclauses (1) and (2), that the provisions of the old legislation relating to legal costs (other than prescribed provisions) continue to apply to a matter if a client first instructed a law practice in a matter before the commencement day, or a law practice is retained by another law practice on behalf of a client after the commencement day in circumstances where the other law practice was retained by its client in relation to the matter before the commencement day. Part 4.3 of the Law otherwise applies to first instructions given by a client after the commencement day.

Subclause (3) relates to section 174(4). Under that provision, if the total legal costs in a matter are not likely to exceed an amount referred to as the lower threshold, a law practice need not make a costs disclosure. Section 174(4) provides for the lower threshold to be prescribed. Subclause (3) provides that until the amount is prescribed in that way, an amount of \$750 is to be used.

Subclause (4) relates to section 174(5). Under that provision, if the total legal costs in a matter are not likely to exceed an amount referred to as the higher threshold, a law practice may disclose legal costs by providing the client with the uniform standard disclosure form prescribed by the Uniform Rules. Section 174(5) provides for the higher threshold to be prescribed. Subclause (4) provides that until the amount is prescribed in that way, an amount of \$3000 is to be used.

Division 4—Trust money and trust accounts

- Clause 19 provides that certain arrangements with an ADI that were entered into under the old legislation and were in force immediately before the commencement day continue in force, from the commencement day, as if they were arrangements under clause 149.
- Clause 20 provides that a person who was an approved external examiner under the old legislation immediately before the commencement day is, from that day, taken to be appointed as an external examiner for the purposes of the Law until 30 June of the second year after the year in which the commencement day occurs, regardless of whether or not the person satisfies the requirements in clause 156.
- Clause 21 provides, in subclause (1), that clause 148 (deficiency in trust account) applies to deficiencies in a trust account and failures to pay or deliver trust money, regardless of whether the deficiency or failure relates to money received before or after the commencement day.
- Subclauses (2) and (3) provide that clause 154 (reporting irregularities and suspected irregularities) applies to an irregularity regardless of when it occurs or when an Australian legal practitioner becomes aware of the irregularity.
- Subclause (4) provides that the requirement to notify the designated local regulatory authority about an irregularity does not apply to an ADI or specified entities if they became aware of the irregularity before the commencement day.

Division 5—Fidelity cover

- Clause 22 provides that where a claim made under the old legislation had not been disposed of before the commencement day, the provisions of the old legislation which relate to claims against the old fidelity fund will continue to apply.
- Clause 23 concerns a default that happened or is alleged to have happened before the commencement day and could have been, but was not, the subject of a claim under the old legislation.
- Subclause (2) provides that a claim may be made in relation to that default under this Law.

Division 6—Investigations of certain matters

Clause 24 provides, in subclauses (1) and (2), that specified investigations under Chapter 3 of the old legislation which subsisted immediately before the commencement day are, from that day, to continue to be dealt with in accordance with provisions of the old legislation (except for provisions prescribed by local regulations).

Subclause (3) provides that an investigation in relation to trust accounts or trust money received by a law practice may be undertaken under Division 4 of Part 4.2 regardless of when the account was established or the money received.

Clause 25 provides, in subclause (1), that investigations in relation to specified matters may be commenced under the Law after the commencement day in relation to matters (including acts and omissions) which occurred before that day, provided that the matter had not previously been investigated (or started to be investigated) before that day under Chapter 3 of the old legislation.

Subclause (2) provides that if the matter could not have been investigated under the old legislation, an investigation cannot be commenced after the commencement day.

Division 7—Dispute resolution and professional discipline

Clause 26 applies to complaints under Chapter 4 of the old legislation which had not been disposed of before the commencement day and investigations under that Chapter which had started, but not been completed, before the commencement day.

Subclause (2) provides that the complaint or investigation is, from the commencement day, to continue to be dealt with in accordance with the provisions of, and by the entity responsible under, the old legislation.

Subclause (3) provides that the entity responsible under the old legislation is not to deal with a complaint or investigation if local regulations or other legislation provides for another entity to deal with it instead.

Clause 27 provides that a complaint or investigation under Chapter 5 (Dispute resolution and professional discipline) may be made or commenced after the commencement day in relation to conduct that occurred, or is alleged to have occurred, before that day, provided that the same conduct had not previously been the subject of a complaint or investigation under Chapter 4 of the old legislation. However, if the complaint could not have been made, or the investigation could not have been commenced, under the old legislation, the complaint or investigation cannot be made or commenced on or after the commencement day.

Division 8—External intervention

Clause 28 applies to appointments made under Chapter 5 of the old legislation, and any other act, matter or thing done under that Chapter, which subsisted or had effect immediately before the commencement day.

Subclause (2) provides that the appointment, act, matter or thing operates or has effect, from the commencement day, as if it had been made or done under Chapter 6 of the Law. The subclause also provides that any function under the Law may be exercised by the responsible entity under the old legislation.

Subclause (3) provides that the entity responsible under the old legislation is not to exercise a function under the Law if local regulations or other legislation provides for another entity to exercise the function instead.

Division 9—Other provisions

Clause 29 provides that an injunction that was made or granted under the old legislation, and which was in force immediately before the commencement day, continues in force, from that day, as if it were an injunction under Part 9.6 of the Law as applied in this jurisdiction.

Clause 30 provides that Schedule 4 does not operate so as to retrospectively create an offence, increase a penalty for an offence, create a liability for contravention of a civil penalty provision or increase the penalty for such a contravention.

SCHEDULE 2

Schedule 2 provides for consequential amendments to a number of other Acts which refer to and operate in relation to the **Legal Profession Act 2004**. The updates ensure that those Acts can operate as intended in relation to the Bill. References to the **Legal Profession Act 2004** are deleted, to reflect that the **Legal Profession Act 2004** is to be repealed and to reflect that definitions of *Australian lawyer* and *Australian legal practitioner* are being inserted in the **Interpretation of Legislation Act 1984** (see clause 158).