

Legal Practice Act 1996

Act No. 35/1996

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Victoria

No. 35 of 1996

Legal Practice Act 1996[†]

[Assented to 6 November 1996]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The main purposes of this Act are—

- (a) to improve the regulation of legal practice in Victoria;
- (b) to repeal the **Legal Profession Practice Act 1958**;
- (c) to amend the **Partnership Act 1958**.

2. *Commencement*

Legal Practice Act 1996

Act No. 35/1996

- (1) This Part, section 448, Part 21 (except sections 452 and 453) and Schedule 2 come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 447 is deemed to have come into operation on 8 March 1988.
- (3) The remaining provisions of this Act (except section 67) come into operation on 1 January 1997.
- (4) Section 67 comes into operation on 1 July 1997.

3. Definitions

- (1) In this Act—

"admission rules" means rules for the admission to legal practice made under section 337;

"approved auditor" means a person, other than a person to whom a direction under section 186(3) applies, who—

- (a) is a member of the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia; and

- (b) either—

(i) meets the requirements of one of those bodies to practise as a public accountant; or

(ii) is employed by an RPA and meets the requirements of the rules (if any) made by the Board under section 199 for qualification as an inspector—

or both; and

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- (c) has obtained a degree in commerce, accounting, business studies or a similar discipline from an Australian university or from a foreign university approved by the Board; and
 - (d) has successfully completed any courses of education required by the Board under section 187(1)(a); and
 - (e) has completed a trust account audit, as an employee or a principal, on at least 2 occasions (or such higher number as is prescribed) in the previous calendar year¹;

"approved clerk" means a person approved under section 177;

"audit year" means the year ending on 31 March;

"authorised society" means a society that has an arrangement with the Board under section 176;

"bank" means—

- (a) a bank as defined in section 5 of the Banking Act 1959 of the Commonwealth; or
- (b) a bank constituted under a law of a State—

that carries on business in Victoria;

"Board" means Legal Practice Board established by section 347;

"Board of Examiners" means Board of Examiners established by section 338;

"client" means—

- (a) in Part 5, a person who has a dispute with a legal practitioner or firm;
- (b) in Part 13, a person who retains a conveyancer to perform conveyancing work for fee or reward;
- (c) elsewhere, a person who retains a legal practitioner or firm to provide legal services for fee or reward;

"community legal centre" means a body formed for the purpose of providing legal advice, aid or assistance, the profit or other income of which is not divided among or received by its members except by way of genuine remuneration;

"compensation order" has the meaning given in section 133(1)(a);

"complaint" means a complaint about the conduct of a legal practitioner or firm made under section 138;

"conditional costs agreement" has the meaning given in section 97;

"constitution" of a body corporate has the meaning given in section 9 of the Corporations Law;

"corporate practitioner" means a legal practitioner who engages in legal practice as an employee of a person or body other than a firm or another legal practitioner;

"costs agreement" means an agreement about the payment of legal costs;

"Costs Committee" means Legal Costs Committee established under section 114;

"costs dispute" has the meaning given in section 122(1)(a);

"Council" means Council of Legal Education established by section 331;

"current practitioner" means a legal practitioner who holds a practising certificate and, in Division 2 of Part 7, includes a registered interstate practitioner;

"defalcation" means—

- (a) an offence under Division 2 of Part I of the **Crimes Act 1958** in relation to any money or other property; or
- (b) an offence in relation to any money or other property punishable by imprisonment, including embezzlement, failure to account and fraudulent misappropriation;

"dispute" has the meaning given in section 122;

"family member" of a person means a parent, spouse, de facto spouse, child, grandchild, sibling, or child of a sibling of the person;

"Fidelity Fund" means Legal Practitioners' Fidelity Fund established under Division 2 of Part 16;

"financial institution" means—

- (a) a bank; or
- (b) a financial body within the meaning of the AFIC (Victoria) Code; or
- (c) a person (other than a legal practitioner) whose sole or principal business activities are the borrowing of money or the provision of finance or both; or
- (d) a person (other than a legal practitioner)—

- (i) whose business activities include the borrowing of money or the provision of finance or both; and
- (ii) who is, or is a member of a class of persons that is, prescribed as a financial institution for the purposes of this Act;

"firm" means a firm (within the meaning of the **Partnership Act 1958**) of legal practitioners;

"Full Tribunal" means the Tribunal constituted in accordance with section 400(2);

"home jurisdiction" of an interstate practitioner means the State or Territory in which they have their principal place of legal practice;

"incorporated practitioner" means a company that is registered under section 291 as an incorporated practitioner and in section 12, Division 5 of Part 2, Parts 3, 4, 5 and 6, Division 2 of Part 7 and Parts 9 and 19, includes a registered interstate practitioner that is a body corporate;

"insolvent under administration" means—

- (a) a person who is an undischarged bankrupt; or
 - (b) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or
 - (c) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the
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Commonwealth (or the corresponding provisions of the law of another jurisdiction) if a final payment has not been made under that composition;

"inspector" means a person appointed under section 192 or 193 to conduct an investigation under Division 5 of Part 6;

"interstate practitioner" means a person—

- (a) entitled to practise as a solicitor, barrister or solicitor and barrister, or otherwise to engage in legal practice, in another State or in a Territory; and
- (b) whose principal place of legal practice is in that other State or in that Territory—

other than a person who is licensed in another State or in a Territory to perform legal work in relation to conveyancing but is not entitled to engage generally in legal practice in that State or Territory;

"itemised bill" means a bill of costs that specifies in detail how the legal costs are made up in a way that would allow the bill to be assessed under Division 5 of Part 4;

"legal costs" means all amounts that a person has been or may be charged by, or is or may become liable to pay, a legal practitioner or firm for the provision of legal services including disbursements but not including interest;

"Legal Ombudsman" means Legal Ombudsman appointed under Part 18;

"Legal Practice Fund" means Legal Practice Fund established under Division 3 of Part 16;

"legal practitioner" means a person admitted to legal practice in Victoria or an incorporated practitioner and in Division 5 of Part 2, Parts 3, 4, 5 and 6, Division 2 of Part 7 and Parts 9, 12 and 19, includes a registered interstate practitioner;

"Liability Committee" means Legal Practitioners' Liability Committee established by section 234;

"Liability Fund" means Legal Practitioners' Liability Fund established by the Liability Committee under section 230;

"lump sum bill" means a bill of costs that describes the legal services to which the bill relates and specifies the total amount of the legal costs;

"member"—

- (a) of the Board includes the chairperson and deputy chairperson of the Board;
- (b) of the Tribunal includes the chairperson, deputy chairperson, registrar and deputy registrar of the Tribunal;

"misconduct" has the meaning given in section 137;

"money" includes any instrument for the payment of money that may be paid into a bank and in Part 7 also includes any security for money the title to which is transferable by delivery;

"mortgage" includes a charge, security, bill of sale, loan contract, lien and any other document purporting to secure or regulate the repayment of money or money's worth

but does not include a terms contract of sale of land;

"nominee mortgage" means a mortgage—

- (a) under which the mortgagee is—
 - (i) a legal practitioner or registered interstate practitioner; or
 - (ii) a corporation, not being a bank, a society or a prescribed person, of or in which a legal practitioner or registered interstate practitioner or a family member of a legal practitioner or registered interstate practitioner—
 - (A) holds the position of director or is otherwise concerned in the management of the corporation; or
 - (B) holds, whether legally or beneficially, a financial interest that carries with it power to control the making of any management decision; and
- (b) that secures the repayment of a loan of money given to the legal practitioner or registered interstate practitioner by one or more clients for the purpose of investment;

"non-litigious legal services" means legal services that do not involve the commencement or conduct of proceedings in any court or tribunal;

"official publication" of an RPA means a newsletter, journal or other publication of the

RPA that is circulated to all its regulated practitioners;

"party", in relation to a charge brought in the Tribunal as a result of a complaint, includes the complainant;

"practice rules"—

- (a) in relation to a legal practitioner or firm, means rules made under Division 2 of Part 3 by the RPA of which the practitioner or firm is a regulated practitioner or by the Board, if the practitioner or firm is a regulated practitioner of the Board;
- (b) in relation to an approved clerk, means rules made under Division 2 of Part 3 by the RPA that approved the clerk;

"practising certificate" means certificate to engage in legal practice in Victoria issued under Division 4 of Part 2;

"practitioner remuneration order" means an order made under section 111;

"professional indemnity insurance" means insurance against civil liability arising in connection with legal practice or the administration of trusts;

"Public Purpose Fund" means Public Purpose Fund established under Division 1 of Part 16;

"Register" means Register of Legal Practitioners kept by the Board under section 9;

"registered", in relation to an interstate practitioner in their home jurisdiction, includes licensed, approved, admitted or otherwise authorised to engage in legal

practice and, if a person is subject to more than one system of registration under which they are required to be registered in their home jurisdiction, means registered under all those systems;

"registered interstate practitioner" means an interstate practitioner who is registered under Division 6 of Part 2;

"registrar" means registrar of the Tribunal;

"regulated practitioner"—

- (a) of an RPA, means a legal practitioner, registered interstate practitioner or firm that has been allocated to the RPA by the Board;
- (b) of the Board, means a legal practitioner, registered interstate practitioner or firm that has been allocated to the Board or that is a regulated practitioner of the Board by virtue of section 306(1);

"RPA" means recognised professional association accredited under section 299;

"society" has the same meaning as in the AFIC (Victoria) Code;

"sole practitioner" means a legal practitioner (being a natural person) who engages in legal practice solely on his or her own account;

"Taxing Master" means Taxing Master of the Supreme Court;

"Tribunal" means Legal Profession Tribunal established by Part 17;

"trust" includes a trust under which the trustee has a beneficial interest in the trust property;

"trustee" includes personal representative;

"trust account" means the trust account required to be established by a legal practitioner, a firm or an approved clerk under Part 6;

"trust money" means—

- (a) money given or paid to a firm, a legal practitioner or a registered interstate practitioner in the course of legal practice in Victoria for, or on behalf of, a person or body other than the firm or practitioner; or
- (b) money given or paid to a firm, a legal practitioner, a registered interstate practitioner or an approved clerk on account of legal costs in advance of legal services to be provided in the course of legal practice in Victoria;

"unsatisfactory conduct" has the meaning given in section 137.

- (2) If this Act requires a notice or other document to be in a particular form, it is sufficient in law if the document is in a form to the like effect of that form.

4. *When is money received?*

- (1) A reference in this Act to money given or paid to, or received by, a legal practitioner, registered interstate practitioner or firm for or on behalf of a person includes a reference to money given or paid to, or received by, the practitioner or firm as a stakeholder under the **Retirement Villages Act 1986** or the **Sale of Land Act 1962**.
 - (2) A reference in this Act to money given or paid to, or received by, a legal practitioner or registered interstate practitioner includes a reference to
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money received in the course of or in connection with legal practice in Victoria—

- (a) by any employee of the practitioner and, in the case of an incorporated practitioner, any director of the practitioner; or
 - (b) by any legal practitioner or interstate practitioner with whom the practitioner shares income from any business.
- (3) A reference in this Act to money given or paid to, or received by, a firm includes a reference to money received in the course of or in connection with legal practice in Victoria—
- (a) by any partner or employee of the firm; or
 - (b) by any legal practitioner or interstate practitioner with whom the firm shares income from any business.

5. Legal practitioner acting as agent for another

For the purposes of this Act a legal practitioner, registered interstate practitioner or firm that receives any income in respect of business transacted by the practitioner or firm as agent for another practitioner or firm must not be taken to be a practitioner or firm that shares income with that other practitioner.

**PART 2—FORMAL REQUIREMENTS FOR LEGAL
PRACTICE**

Division 1—Admission to legal practice

6. Admission to legal practice

- (1) The Supreme Court may admit a person to legal practice in Victoria if he or she—
 - (a) meets the requirements of the admission rules; and
 - (b) pays the admission fee; and
 - (c) takes the oath, or makes the affirmation, required by the Court.
- (2) A person admitted by the Supreme Court must sign the roll of practitioners kept by the Court.
- (3) The admission of a person to legal practice is effective from the time the person signs the roll of practitioners.
- (4) The Prothonotary must forward to the Board the name, date of birth and date of admission of each person admitted to legal practice as soon as practicable after the person has signed the roll of practitioners.

7. Admission fee

- (1) The admission fee consists of a prescribed general fee and a prescribed library fee².
 - (2) The general fee is payable to the Supreme Court to be applied to meet the expenses of the Council of Legal Education and the Board of Examiners (other than expenses that are met from the Public Purpose Fund).
 - (3) The library fee is payable to the Supreme Court Library Fund.
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8. *Effect of admission*

- (1) A person admitted to legal practice—
 - (a) is a barrister and solicitor of the Supreme Court; and
 - (b) is an officer of the Supreme Court.
- (2) Sub-section (1)(b) does not confer on a person any right to bring proceedings in the Supreme Court, or any immunity from proceedings in any court, that the person would not have if he or she were not an officer of the Supreme Court.

Division 2—The Register

9. *Register of legal practitioners and firms*

- (1) The Board must keep a register of all legal practitioners, firms and registered interstate practitioners.
- (2) The Register is to be called the Register of Legal Practitioners.
- (3) The following information must be included on the Register in respect of each legal practitioner (not being an incorporated practitioner)—
 - (a) the name, date of birth and date of admission of the practitioner; and
 - (b) whether or not the practitioner is a current practitioner; and
 - (c) if the practitioner is a current practitioner—
 - (i) the name of any firm of which they are a partner or an employee, any incorporated practitioner of which they are a director or an employee or any other person or body of which they are an employee; and

- (ii) if the practitioner is a sole practitioner, any business names under which they engage in legal practice;
 - (iii) the RPA to which they have been allocated or, if they have been allocated to the Board, that fact; and
 - (iv) the conditions of the practising certificate held by the practitioner; and
 - (v) any other condition, limitation or restriction to which the practitioner is subject in respect of their legal practice; and
 - (vi) the practitioner's address for service of notices and other documents; and
- (d) any suspension or cancellation of a practising certificate held by the practitioner (whether or not the suspension or cancellation is current); and
- (e) the prescribed information (if any).
- (4) The following information must be included on the Register in respect of each incorporated practitioner—
- (a) the information specified in section 291(2); and
 - (b) any other condition, limitation or restriction to which the incorporated practitioner is subject in respect of its legal practice; and
 - (c) the prescribed information (if any).
- (5) The following information must be included on the Register in respect of each firm—
- (a) the name of each partner of the firm; and
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- (b) the RPA to which the firm has been allocated or, if the firm has been allocated to the Board, that fact; and
 - (c) any condition, limitation or restriction to which the firm is subject in respect of its legal practice; and
 - (d) the firm's address for service of notices and other documents; and
 - (e) the prescribed information (if any).
- (6) The following information must be included on the Register in respect of each registered interstate practitioner—
- (a) in the case of a natural person—
 - (i) the name, date of birth and date of registration of the practitioner in their home jurisdiction; and
 - (ii) the name of any firm of which the practitioner is a partner or an employee, any incorporated practitioner of which they are a director or an employee or any other person or body of which they are an employee; and
 - (iii) if the practitioner practises on their own account, any business names under which they engage in legal practice; and
 - (iv) the RPA to which the practitioner has been allocated or, if they have been allocated to the Board, that fact; and
 - (v) any condition, limitation or restriction to which the practitioner is subject in respect of their legal practice in their home jurisdiction or elsewhere; and
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- (vi) the practitioner's address for service of notices and other documents; and
- (vii) the prescribed information (if any);
- (b) in the case of a body corporate—
 - (i) the name, A.C.N. and date of registration of the practitioner in its home jurisdiction; and
 - (ii) the name and date of birth of each director of the practitioner; and
 - (iii) the RPA to which the practitioner has been allocated or, if it has been allocated to the Board, that fact; and
 - (iv) any condition, limitation or restriction to which the practitioner is subject in respect of its legal practice in its home jurisdiction or elsewhere; and
 - (v) the practitioner's address for service of notices and other documents; and
 - (vi) the prescribed information (if any).

10. *Inspection of the Register*

- (1) A person may—
 - (a) inspect the Register at the office of the Board during ordinary office hours without charge;
 - (b) obtain an extract from the Register on payment of the fee determined by the Board.
- (2) If the Register includes a person's residential address, that address is not available to the public, unless—
 - (a) the person authorises it to be available; or
 - (b) the residential address is the person's address for service of documents.

11. *Notification of changes by firms*

- (1) A firm must notify the Board of any change to any of the particulars on the Register in respect of the firm (other than a re-allocation of the firm) within 14 days after becoming aware of the change.
- (2) A firm must give written notice to the Board of each legal practitioner—
 - (a) who becomes a partner or an employee of the firm; or
 - (b) who ceases to be a partner or an employee of the firm—within 14 days after the practitioner becomes or ceases to be a partner or an employee.
- (3) If the Board approves a form of notice for the purposes of this section, a notice under subsection (1) or (2) must be in that form.

12. *Notification of changes by incorporated practitioners*

- (1) An incorporated practitioner must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 14 days after becoming aware of the change.
 - (2) An incorporated practitioner—
 - (a) must give written notice to the Board of each legal practitioner—
 - (i) who becomes a director or an employee of the incorporated practitioner; or
 - (ii) who ceases to be a director or an employee of the incorporated practitioner—within 14 days after the practitioner becomes or ceases to be a director or an employee; and
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(b) must, within 14 days after lodgement, give the Board a copy of each document relating to the practitioner lodged by or on behalf of the practitioner with the Australian Securities Commission under the Corporations Law.

(3) If the Board approves a form of notice for the purposes of this section, a notice under subsection (1) or (2)(a) must be in that form.

13. Notification of changes by individual practitioners

(1) A current practitioner or registered interstate practitioner who is a natural person must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 14 days after becoming aware of the change.

(2) Sub-section (1) does not apply to a practitioner who is—

- (a) a partner or an employee of a firm; or
- (b) a director or an employee of an incorporated practitioner; or
- (c) an employee of a sole practitioner—

if the firm, incorporated practitioner or sole practitioner has notified the Board of the change.

(3) A sole practitioner must give written notice to the Board of any legal practitioner—

- (a) who becomes an employee of the practitioner; or
- (b) who ceases to be an employee of the practitioner—

within 14 days after the person becomes or ceases to be an employee.

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- (4) If the Board approves a form of notice for the purposes of this section, a notice under subsection (1) or (3) must be in that form.

14. Notification of deaths and liquidations

- (1) The personal representative of a deceased legal practitioner who was not, at the time of death, a partner or an employee of a firm, a director or an employee of an incorporated practitioner, or an employee of a sole practitioner must notify the Board of the death within 14 days after becoming the personal representative.

Penalty: 2 penalty units.

- (2) The receiver, receiver and manager, administrator or liquidator of an incorporated practitioner must notify the Board of his or her appointment within 14 days after the appointment (except in the case of an appointment made by or on behalf of the Board).

Penalty: 10 penalty units.

- (3) A legal practitioner who becomes an insolvent under administration must notify the Board of that fact within 14 days.
- (4) A guardian or administrator appointed in respect of a legal practitioner or a legal practitioner's estate under the **Guardianship and Administration Board Act 1986** must notify the Board of the appointment within 14 days after the appointment.
- (5) On receiving a notice under this section, the Board must make the appropriate entry on the Register.

Division 3—Registration and RPA allocation

15. *Application for registration by firms*

- (1) A firm that intends to engage in legal practice in Victoria must make a written application to the Board for registration.
- (2) An application must contain—
 - (a) the name of and address for service of documents on the firm; and
 - (b) the name, date of birth and date of admission of each legal practitioner who is a partner or an employee of the firm; and
 - (c) a nomination—
 - (i) of an RPA of which the firm is eligible to be a regulated practitioner; or
 - (ii) if there is no such RPA, of the Board—
to regulate the firm and the legal practitioners who are partners or employees of the firm.
- (3) A firm is eligible to be a regulated practitioner of any RPA of which each legal practitioner who is a partner or an employee of the firm is a member or is eligible to be a member.
- (4) If the Board approves a form of application for the purposes of this section, an application under subsection (1) must be in that form.

16. *Registration and RPA allocation*

- (1) As soon as practicable after receiving an application under section 15, the Board must register the firm by making the appropriate entries in the Register and—
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- (a) must allocate the firm to the RPA nominated by the firm if satisfied that it is eligible to be a regulated practitioner of that RPA; or
 - (b) if not satisfied that the firm is eligible to be a regulated practitioner of the nominated RPA, after consultation with the firm, must allocate it to an RPA of which it is eligible to be a regulated practitioner; or
 - (c) if satisfied that the firm is not eligible to be a regulated practitioner of any RPA, must allocate it to the Board.
- (2) On the Board registering the firm, the firm and each legal practitioner who is a partner or an employee of the firm become regulated practitioners of the RPA to which the firm is allocated or, if sub-section (1)(c) applies, of the Board.
 - (3) The Board must give written notice to the firm and the RPA (if any) as soon as practicable after registering the firm under this section.
 - (4) A firm must not commence to engage in legal practice before it has been registered and allocated to an RPA or the Board under this section.

Penalty: 20 penalty units.

17. *Allocation of practitioners who join firms or incorporated practitioners*

- (1) The Board must allocate a legal practitioner who becomes a partner or an employee of a firm to the RPA of which the firm is a regulated practitioner (or to the Board, if it is a regulated practitioner of the Board) as soon as practicable after receiving a notice under section 11(2), unless the practitioner is already a regulated practitioner of that body.
 - (2) The Board must allocate a legal practitioner who becomes a director or an employee of an
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incorporated practitioner to the RPA of which the incorporated practitioner is a regulated practitioner (or to the Board, if it is a regulated practitioner of the Board) as soon as practicable after receiving a notice under section 12(2), unless the practitioner is already a regulated practitioner of that body.

- (3) An allocation takes effect when the relevant entry is made in the Register.
 - (4) The Board must give written notice to the legal practitioner and the RPA (if any) as soon as practicable after making an allocation under this section.
 - (5) A legal practitioner who ceases to be a partner or an employee of a firm or a director or an employee of an incorporated practitioner continues to be a regulated practitioner of the body of which he or she was a regulated practitioner immediately before so ceasing until the practitioner is re-allocated by the Board.
 - (6) Despite anything to the contrary in this section, if a legal practitioner who is a partner or an employee of a firm, a director or an employee of an incorporated practitioner or an employee of a sole practitioner concurrently becomes a partner or an employee of another firm, a director or an employee of another incorporated practitioner or an employee of another sole practitioner that is a regulated practitioner of a different RPA, the legal practitioner must elect in writing to the Board to be re-allocated to that RPA or to remain a regulated practitioner of the RPA that regulates the first firm, incorporated practitioner or sole practitioner.
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- (7) If a legal practitioner elects under sub-section (6) to be re-allocated, the Board must re-allocate the practitioner as soon as practicable.

18. *Intending practitioners must notify Board*

- (1) A legal practitioner (being a natural person) who intends to engage in legal practice in Victoria must give the Board a written notice—
- (a) stating their name, date of birth and date of admission; and
 - (b) if they intend to engage in legal practice—
 - (i) as a partner or an employee of a firm, stating the name and address of that firm; or
 - (ii) as a director or an employee of an incorporated practitioner, stating the name and address of the incorporated practitioner; or
 - (iii) as an employee of a sole practitioner, stating that practitioner's name and address; or
 - (iv) as a corporate practitioner, stating the name and address of the intended employer; or
 - (v) stating that they intend to practise as a sole practitioner; and
 - (c) stating their address for service of notices and other documents.
- (2) A practitioner intending to engage in legal practice as a corporate practitioner or sole practitioner may include in the notice under sub-section (1) a nomination of an RPA of which they are eligible to be a regulated practitioner.
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- (3) A corporate practitioner or a sole practitioner is eligible to be a regulated practitioner of any RPA of which they are a member or are eligible to be a member.
- (4) If the Board approves a form of notice for the purposes of this section, a notice under subsection (1) must be in that form.

19. RPA allocation of intending practitioners

- (1) As soon as practicable after receiving a notice under section 18(1), the Board—
 - (a) in the case of a legal practitioner referred to in section 18(1)(b)(i), (ii) or (iii), must allocate them to the RPA of which the firm, incorporated practitioner or sole practitioner is a regulated practitioner (or to the Board if the firm, incorporated practitioner or sole practitioner is a regulated practitioner of the Board);
 - (b) in the case of a legal practitioner referred to in section 18(1)(b)(iv) or (v)—
 - (i) must allocate the practitioner to the RPA (if any) nominated by the practitioner if satisfied that they are eligible to be a regulated practitioner of that RPA; or
 - (ii) if no RPA is nominated, or if the Board is not satisfied that the practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the practitioner, must allocate them to an RPA of which they are eligible to be a regulated practitioner; or
 - (iii) if satisfied that the practitioner is not eligible to be a regulated practitioner of
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any RPA, must allocate them to the Board.

- (2) An allocation under this section takes effect when the relevant entry is made in the Register.
- (3) The Board must give written notice to the legal practitioner and the RPA (if any) as soon as practicable after making an allocation under this section.
- (4) A legal practitioner must not commence to engage in legal practice before they have been allocated to an RPA or the Board under this section.

Penalty: 10 penalty units.

Division 4—Practising certificates

20. *Practising certificates—form and conditions*

- (1) A practising certificate is to be in a form approved by the Board.
- (2) A practising certificate is subject to the following conditions, as determined by the RPA or the Board that issues it—
 - (a) a condition that the holder is authorised or not authorised to receive trust money; and
 - (b) a condition that the holder is authorised to engage in legal practice—
 - (i) as a principal (that is, a sole practitioner, a partner in a firm or a director of an incorporated practitioner); or
 - (ii) as an incorporated practitioner; or
 - (iii) as an employee of another legal practitioner or firm or as a corporate practitioner.

- (3) A practising certificate is also subject to any condition imposed by the Tribunal under this Act or by the Supreme Court.
- (4) The conditions referred to in sub-section (2) to which a practising certificate is subject must appear on the face of the certificate.

21. *Duration of practising certificates*

- (1) A practising certificate issued to an applicant under section 22 (new or former practitioner)—
 - (a) takes effect at the time of issue; and
 - (b) subject to sub-section (3), is valid until the end of the calendar year in which it was issued unless suspended or cancelled sooner.
- (2) A practising certificate issued to an applicant under section 23 (renewing practitioner) takes effect at the end of the calendar year in which the application was made and, subject to sub-section (3), is valid for 1 year unless suspended or cancelled sooner.
- (3) If an application by a current practitioner for a practising certificate has not been determined before the end of the calendar year in which it was made, the practising certificate already held by the practitioner remains in force until a new certificate is issued or the application is refused.

22. *Application for practising certificate (new or former practitioners)*

- (1) A legal practitioner who is not a current practitioner may apply to the RPA of which the practitioner is, or is to be, a regulated practitioner (or to the Board, if the practitioner is, or is to be a regulated practitioner of the Board) for a practising certificate.
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- (2) An application under this section—
- (a) must be in a form approved by the Board;
and
 - (b) must be accompanied by—
 - (i) the prescribed fee³ for the certificate;
and
 - (ii) the required contribution to the Fidelity Fund under section 202(1) (if any); and
 - (iii) a statutory declaration in the form approved by the Board; and
 - (iv) satisfactory evidence, in a form approved by the Board, that the applicant has, or will have at the time of commencing to engage in legal practice, professional indemnity insurance as required by this Act; and
 - (c) if the application is for a certificate that authorises the receipt of trust money, must also be accompanied by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.

23. *Application for practising certificate (renewing practitioners)*

- (1) A current practitioner may apply to the RPA of which the practitioner is a regulated practitioner (or to the Board, if the practitioner is a regulated practitioner of the Board) for a new practising certificate.
- (2) An application under this section—
 - (a) subject to sub-section (3), must be made on or before 30 September; and

- (b) must be in a form approved by the Board;
and
 - (c) must be accompanied by—
 - (i) the prescribed fee⁴ for the new certificate; and
 - (ii) the required contribution to the Fidelity Fund under section 202(1) (if any); and
 - (iii) satisfactory evidence, in a form approved by the Board, that the applicant has professional indemnity insurance as required by this Act; and
 - (d) if the application is for a certificate that authorises the receipt of trust money, must also be accompanied, if applicable, by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.
- (3) If it thinks fit, an RPA or the Board may extend the date by which an application under this section must be made, or accept an application made out of time.
- (4) If the practitioner is to be re-allocated under Division 5, an application under this section must be made to the RPA to which the practitioner is to be re-allocated or to the Board, if the practitioner is to be re-allocated to the Board.

24. *Application for variation of conditions*

- (1) At any time a current practitioner may apply to the RPA of which the practitioner is a regulated practitioner (or to the Board, if the practitioner is a regulated practitioner of the Board) for a variation of the conditions of their practising certificate.
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- (2) An application under this section—
- (a) must be in a form approved by the Board; and
 - (b) if the prescribed fee⁵ for the certificate as varied is greater than the fee paid by the practitioner for the certificate, must be accompanied by the difference between those fees; and
 - (c) must be accompanied by the required contribution to the Fidelity Fund under section 202(1) (if any); and
 - (d) if the application is for a variation so that the certificate authorises the receipt of trust money, must also be accompanied, if applicable, by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.
- (3) If the practitioner is to be re-allocated under Division 5, an application under this section must be made to the RPA to which the practitioner is to be re-allocated or to the Board, if the practitioner is to be re-allocated to the Board.

25. Further information

For the purpose of considering an application for a practising certificate or for variation of a condition of a practising certificate, an RPA or the Board may require the applicant to provide any further information or documents, and to verify the information or documents by statutory declaration or another manner, specified by the RPA or the Board.

26. *Mandatory refusal of practising certificates*

- (1) An RPA or the Board must refuse to issue a practising certificate to an applicant—
 - (a) who has had a previous application refused, if the application is made during a period specified by the Tribunal under section 30 or 160 or by the Supreme Court; or
 - (b) whose practising certificate has been suspended or cancelled if the application is made during a period specified by the Tribunal under section 160 or by the Supreme Court; or
 - (c) who has not paid an amount (whether by way of premium, excess or otherwise) payable by the applicant for, under or in relation to a contract of professional indemnity insurance; or
 - (d) who, in its opinion, is unfit to engage in legal practice.
 - (2) An RPA or the Board must refuse an application to vary a condition of a practising certificate if the applicant—
 - (a) has had a previous application refused, if the application is made during a period specified by the Tribunal under section 30 or by the Supreme Court; or
 - (b) has not paid an amount (whether by way of premium, excess or otherwise) payable by the applicant for, under or in relation to a contract of professional indemnity insurance.
 - (3) In addition to any of the grounds in sub-section (1) or (2), an RPA or the Board must refuse to issue a practising certificate authorising the receipt of trust money or to vary a condition so
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that a practising certificate authorises the receipt of trust money—

- (a) if the applicant is a natural person who is an insolvent under administration;
- (b) if the applicant is an incorporated practitioner—
 - (i) that is an externally-administered body corporate within the meaning of the Corporations Law; or
 - (ii) if the RPA or the Board is satisfied that, on an application under section 459P of the Corporations Law, the Court would be required under section 459C(2) of that Law to presume that the applicant is insolvent.

27. Refusal of practising certificates for trust account irregularities

- (1) Subject to sub-section (2), an RPA or the Board must refuse to issue a practising certificate authorising the receipt of trust money—
 - (a) to a sole practitioner, a corporate practitioner or an incorporated practitioner—
 - (i) if the practitioner has failed to lodge an audit of their trust account or a statutory declaration as required by Division 3 of Part 6 and has not remedied the failure; or
 - (ii) if the audit reveals a deficiency in the trust account that has not been restored;
 - (b) to a partner of a firm or a director of an incorporated practitioner—
 - (i) if the firm or incorporated practitioner has failed to lodge an audit of their trust account or a statutory declaration as

required by Division 3 of Part 6 and has not remedied the failure; or

(ii) if the audit reveals a deficiency in the trust account that has not been restored.

(2) An RPA or the Board may issue a practising certificate authorising the receipt of trust money if satisfied that the failure to lodge the audit or statutory declaration, or the deficiency in the trust account, was inadvertent or due to other circumstances in which the practising certificate ought not be refused.

(3) The issue of a practising certificate in the circumstances described in sub-section (2) does not prevent an RPA or the Board from undertaking an investigation into the conduct of the practitioner or firm or bringing a charge in the Tribunal against the practitioner or firm in relation to the failure to lodge or the deficiency.

28. *Discretionary refusal of practising certificates*

An RPA or the Board may refuse to issue a practising certificate to a legal practitioner if the practitioner, in its opinion—

- (a) is guilty of misconduct; or
- (b) is an incorporated practitioner that is being conducted in contravention of its constitution.

29. *Issue or refusal of practising certificates or variation of conditions*

(1) Within 30 days after receiving an application under section 22 (new or former practitioner), an RPA or the Board must issue a practising certificate, or give a written notice refusing to issue a practising certificate, to the applicant.

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- (2) Within 60 days after receiving an application for a practising certificate under section 23 (renewing practitioner), an RPA or the Board may give the applicant a written notice refusing to issue the practising certificate.
 - (3) If an RPA or the Board does not give a notice under sub-section (2) within the period specified in that sub-section, it must issue a practising certificate to the applicant.
 - (4) Within 30 days after receiving an application under section 24 (variation of conditions), an RPA or the Board must give the applicant written notice varying the conditions as requested in the application or refusing to vary the conditions.
 - (5) A notice of refusal under this section must include the reasons for the refusal.
 - (6) If—
 - (a) an RPA or the Board varies the conditions of a practising certificate in response to an application under section 24; and
 - (b) the prescribed fee for the certificate as varied (for a whole year) is less than the fee paid by the practitioner for the certificate—

the RPA or the Board must pay to the practitioner an amount determined in accordance with the following formula, rounded to the nearest dollar—

$$A = (B - C) \times \frac{D}{365.25}$$

where—

A is the amount to be paid to the practitioner;

B is the fee paid by the practitioner for the certificate;

C is the prescribed fee for the certificate as varied (for a whole year);

D is the number of days remaining in the calendar year from, and including, the day on which the variation takes effect.

- (7) Within 14 days after an RPA issues a practising certificate or varies the conditions of a practising certificate under this section, the RPA must give a notice to the Board setting out—
- (a) the name and address of the current practitioner; and
 - (b) the conditions attaching to the practising certificate; and
 - (c) the amount of Fidelity Fund contribution (if any) that accompanied the application for the certificate or variation of conditions.

30. *Applicant may apply to Full Tribunal*

- (1) Within 14 days after receiving a notice of refusal under section 29, a person may apply to the Full Tribunal for the issue of a practising certificate or a variation of a condition of a practising certificate.
- (2) Sub-section (1) does not apply if the application was refused under section 26 (except under sub-section (1)(d) (unfitness to engage in legal practice)).
- (3) After hearing the matter, the Full Tribunal—
 - (a) if satisfied that the applicant is unfit to engage in legal practice, must make an order—
 - (i) in the case of an application for a practising certificate, confirming the refusal to issue a practising certificate;

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- (ii) in the case of an application to vary a condition of a practising certificate, cancelling the practising certificate;
 - (b) if satisfied that the applicant is guilty of misconduct, may make—
 - (i) an order confirming the refusal to issue a practising certificate or vary the condition; or
 - (ii) any order it could make against the applicant under section 160(1), in which case sections 160(2), (3) and (4), 163, 164 and 166 apply accordingly;
 - (c) if satisfied that the applicant, being an incorporated practitioner, is being conducted in contravention of its constitution, may make an order confirming the refusal to issue a practising certificate or vary the condition;
 - (d) if not satisfied as required by paragraph (a), (b) or (c)—
 - (i) must make an order setting aside the notice and directing the RPA or the Board to issue a practising certificate or to vary the condition; and
 - (ii) if satisfied that the applicant is guilty of unsatisfactory conduct, may make any order the Tribunal could make against the applicant under section 159, in which case sections 163, 164 and 166 apply accordingly;
 - (e) may order the payment of the costs of and incidental to the hearing and, for that purpose, sections 162 and 164 apply accordingly.
- (4) An order under sub-section (3)(a), (3)(b)(i) or (3)(c) may specify a period during which the legal
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practitioner may not apply for a practising certificate or for a variation of a condition of a practising certificate.

31. *Appeal to Court of Appeal*

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 30.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal⁶ runs from the time when the party receives the written reasons.

32. *Payment and refund of fees and contributions*

- (1) Subject to this section, an RPA must pay all practising certificate fees and Fidelity Fund contributions received by it to the Board as soon as practicable after receipt.
 - (2) If an application for a practising certificate or for variation of a condition of a practising certificate is refused, the RPA or the Board must refund to the applicant—
 - (a) any fee paid for the certificate or variation; and
 - (b) subject to sub-section (3), any Fidelity Fund contribution that accompanied the application.
 - (3) If an application is refused because of a failure to lodge a trust account audit or statutory declaration or because of a deficiency in a trust account, any Fidelity Fund contribution that accompanied the application is not to be refunded.
 - (4) The Board may authorise an RPA to retain a specified amount or proportion of the practising certificate fees to meet the reasonable expenses of
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the RPA in performing its functions under this Act, other than the regulation of trust accounts, investigations under Division 5 of Part 6, the investigation and defence of claims against the Fidelity Fund and the making of applications to the Supreme Court under Part 9.

33. *Surrender of practising certificate*

- (1) A legal practitioner whose practising certificate is suspended or cancelled must surrender it to the RPA that issued it or to the Board within 14 days after the suspension or cancellation takes effect.

Penalty: 20 penalty units.

- (2) A legal practitioner who ceases to engage in legal practice must surrender their practising certificate to the RPA that issued it or to the Board as soon as practicable after so ceasing, unless the certificate has expired.

Penalty: 20 penalty units.

- (3) An RPA must notify the Board as soon as practicable after receiving a surrendered practising certificate under this section.

34. *Mandatory cancellation or variation of practising certificate for insolvency*

- (1) If—
- (a) a regulated practitioner of an RPA or the Board (being a natural person) who is authorised to receive trust money becomes an insolvent under administration; or
 - (b) a regulated practitioner of an RPA or the Board (being an incorporated practitioner) who is authorised to receive trust money becomes an externally-administered body corporate within the meaning of the Corporations Law; or

(c) an RPA or the Board is satisfied that, on an application under section 459P of the Corporations Law, the Court would be required under section 459C(2) of that Law to presume that a regulated practitioner (being an incorporated practitioner) who is authorised to receive trust money is insolvent—

the RPA or the Board must either cancel the practitioner's practising certificate or vary the conditions of the certificate so that the practitioner is no longer authorised to receive trust money.

- (2) If an incorporated practitioner's practising certificate is cancelled or varied under this section, the RPA or the Board may cancel, or vary the conditions of, the practising certificate of each current practitioner who is a director of the incorporated practitioner.
- (3) A cancellation or variation under this section takes effect immediately written notice of it is given to the practitioner.
- (4) An RPA that cancels or varies the conditions of a practising certificate under this section must also give written notice of the cancellation or variation to the Board.

35. Notification of failure to pay levies

If a current practitioner does not pay by the due date a levy required to be paid under section 204, the Board must issue a written notice to the practitioner setting out the provisions of section 36.

36. *Suspension of practising certificate for failure to pay levies*

- (1) Subject to sub-section (2), if a current practitioner to whom a notice is issued under section 35 does not pay the required levy within 14 days after the day the notice was issued, the Board must suspend the practitioner's practising certificate until the levy is paid.
- (2) The Board is not required to suspend a practising certificate under sub-section (1) if satisfied that the failure to pay was inadvertent or due to other circumstances in which the certificate ought not be suspended.
- (3) A suspension under this section takes effect immediately written notice of the suspension is given to the practitioner.
- (4) The Board must also give written notice of a suspension under this section to the RPA (if any) of which the practitioner is a regulated practitioner.
- (5) Section 40 does not apply to a suspension under this section.

37. *Suspension of practising certificate for trust account deficiencies*

- (1) Subject to sub-section (2), an RPA or the Board must suspend the practising certificate of a regulated practitioner—
 - (a) in the case of a sole practitioner or corporate practitioner or an incorporated practitioner, if an audit of the practitioner's trust account reveals a deficiency in the trust account that has not been restored;
 - (b) in the case of a partner of a firm or a director of an incorporated practitioner, if an audit of
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the trust account of the firm or incorporated practitioner reveals a deficiency in the trust account that has not been restored.

- (2) An RPA or the Board is not required to suspend a practising certificate under sub-section (1) if satisfied that the deficiency in the trust account was inadvertent or due to other circumstances in which the certificate ought not be suspended.
- (3) Nothing in sub-section (2) prevents an RPA or the Board from undertaking an investigation into the conduct of the practitioner or firm or bringing a charge in the Tribunal against the practitioner or firm in relation to the deficiency.
- (4) A suspension under this section takes effect immediately written notice of the suspension is given to the practitioner.
- (5) An RPA that suspends a practising certificate under this section must also give written notice of the suspension to the Board.

38. *Other grounds for suspension*

- (1) An RPA or the Board must suspend the practising certificate of a regulated practitioner if the practitioner, in its opinion, is unfit to engage in legal practice.
 - (2) An RPA or the Board may suspend the practising certificate of a regulated practitioner if the practitioner, in its opinion—
 - (a) is guilty of misconduct; or
 - (b) is an incorporated practitioner that is being conducted in contravention of its constitution.
 - (3) An RPA or the Board must give written notice of a suspension under this section to the practitioner, including the reasons for the suspension.
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- (4) An RPA that suspends a practising certificate under this section must also give written notice of the suspension to the Board.
 - (5) Subject to sub-section (6) and section 40, a suspension under this section takes effect 14 days after the day notice is given under sub-section (3).
 - (6) An RPA or the Board may determine that a suspension take effect immediately notice is given under sub-section (3) if satisfied that immediate suspension is necessary—
 - (a) for the protection of the practitioner's clients or members of the public generally; or
 - (b) to protect the integrity of the legal profession or the administration of justice.

39. *Effect of suspension*

- (1) A legal practitioner whose practising certificate is suspended is deemed not to hold a practising certificate during the period of suspension.
- (2) If an RPA or the Board is satisfied that the grounds for a suspension do not or no longer exist, the RPA or the Board must lift the suspension immediately by giving written notice to the practitioner.
- (3) An RPA that lifts a suspension must also give written notice to the Board.

40. *Application to Full Tribunal following suspension*

- (1) Within 14 days after receiving notice of a suspension, a legal practitioner may apply to the Full Tribunal for an order lifting the suspension.
- (2) After hearing the matter, the Full Tribunal—
 - (a) if satisfied that the practitioner is unfit to engage in legal practice, must cancel the

- practitioner's practising certificate, in which case section 160(2)(a) applies accordingly;
- (b) if satisfied that the practitioner is guilty of misconduct, may make any order it could make against the practitioner under section 160(1), in which case sections 160(2), (3) and (4), 163, 164 and 166 apply accordingly;
 - (c) if satisfied that the practitioner, being an incorporated practitioner, is being conducted in contravention of its constitution, may cancel the practitioner's practising certificate, in which case section 160(2)(a) applies accordingly;
 - (d) if not satisfied as required by paragraph (a), (b) or (c)—
 - (i) must make an order directing the RPA or the Board to lift the suspension; and
 - (ii) if satisfied that the practitioner is guilty of unsatisfactory conduct, may make any order the Tribunal could make against the applicant under section 159, in which case sections 163, 164 and 166 apply accordingly;
 - (e) may order the payment of the costs of and incidental to the hearing and, for that purpose, sections 162 and 164 apply accordingly.

41. *Appeal to Court of Appeal*

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 40.
 - (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time
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for instituting the appeal⁷ runs from the time when the party receives the written reasons.

Division 5—Re-allocation of firms and legal practitioners

42. *Notice of ceasing to be eligible (firms and incorporated practitioners)*

- (1) If a firm or an incorporated practitioner ceases to be eligible to be a regulated practitioner of the RPA to which it is allocated, the RPA must give written notice to the firm or regulated practitioner and the Board, within 14 days after becoming aware of that fact, setting out a full explanation of the reasons for the firm or practitioner ceasing to be eligible.
- (2) Within 14 days after receiving a notice under sub-section (1), the firm or incorporated practitioner must give written notice to the Board nominating another RPA of which it is eligible to be a regulated practitioner or, if there is no such RPA, nominating the Board.

43. *Re-allocation of firms and incorporated practitioners ceasing to be eligible*

- (1) As soon as practicable after receiving a notice under section 42(2), the Board—
 - (a) must re-allocate the firm or incorporated practitioner to the RPA (if any) nominated by the firm or practitioner if satisfied that they are eligible to be a regulated practitioner of that RPA; or
 - (b) if not satisfied that the firm or practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the firm or practitioner, must re-allocate them to an RPA of which they are eligible to be a regulated practitioner; or

(c) if satisfied that the firm or practitioner is not eligible to be a regulated practitioner of any RPA, must re-allocate them to the Board.

(2) On the Board entering the details of a re-allocation on the Register, the firm or the incorporated practitioner and each legal practitioner who is a partner or an employee of the firm or a director or an employee of the incorporated practitioner become regulated practitioners of the RPA to which the firm or incorporated practitioner is allocated or, if sub-section (1)(c) applies, of the Board.

(3) The Board must give written notice to the firm or the incorporated practitioner, the RPA from which the firm or incorporated practitioner is re-allocated and the RPA to which it has been re-allocated (if any) as soon as practicable after the re-allocation.

44. *Notice of ceasing to be eligible (sole and corporate practitioners)*

(1) If a sole practitioner or corporate practitioner ceases to be eligible to be a regulated practitioner of the RPA to which they are allocated, the RPA must give written notice to the practitioner and the Board, within 14 days after becoming aware of that fact, setting out a full explanation of the reasons for the practitioner ceasing to be eligible.

(2) Within 14 days after receiving a notice under sub-section (1), the practitioner may give written notice to the Board nominating another RPA of which the practitioner is eligible to be a regulated practitioner.

45. *Re-allocation of sole and corporate practitioners ceasing to be eligible*

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- (1) Within 14 days after receiving a notice under section 44(2) or, if no such notice is received, within 42 days after receiving a notice under section 44(1), the Board must—
 - (a) re-allocate the practitioner to the RPA (if any) nominated by the practitioner if satisfied that they are eligible to be a regulated practitioner of that RPA; or
 - (b) if no RPA is nominated, or if the Board is not satisfied that the practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the practitioner, re-allocate them to an RPA of which they are eligible to be a regulated practitioner; or
 - (c) if satisfied that the practitioner is not eligible to be a regulated practitioner of any RPA, re-allocate them to the Board.
 - (2) The Board must give written notice to the practitioner, the RPA that ceases to regulate the practitioner and the RPA to which the practitioner is allocated (if any) as soon as practicable after making a re-allocation under this section.
 - (3) The re-allocation takes effect when the relevant entry is made in the Register.

46. *Re-allocation as a result of becoming eligible*

- (1) If the Board becomes aware that a legal practitioner or firm that is a regulated practitioner of the Board has become eligible to be a regulated practitioner of an RPA, the Board, after consultation with the practitioner or firm, must re-allocate them to the RPA or, if there is more than one such RPA, to one of those RPAs.
 - (2) The Board must give written notice to the practitioner or firm and the RPA of a re-allocation under this section.
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- (3) The re-allocation takes effect at the end of the calendar year in which notice is given by the Board under sub-section (2).

47. *Firm or incorporated practitioner may apply for re-allocation*

- (1) A firm or an incorporated practitioner may make a written application to the Board by 30 November in any year for re-allocation from the RPA of which it is a regulated practitioner to another RPA at the end of that year.
- (2) The new RPA nominated by the firm or incorporated practitioner must be an RPA of which each legal practitioner who is then a partner or an employee of the firm or a director or an employee of the incorporated practitioner will be a member, or will be eligible to be a member, at the end of the calendar year in which the application is made.

48. *Re-allocation of firm or incorporated practitioner*

- (1) If the Board is satisfied that the firm or incorporated practitioner is eligible to be a regulated practitioner of the nominated RPA, it must re-allocate the firm, its partners and employees or the incorporated practitioner, its directors and employees to that RPA.
- (2) The Board must give written notice to the firm or incorporated practitioner and both RPAs as soon as practicable after making a re-allocation under this section.
- (3) The re-allocation takes effect at the end of the calendar year in which the application under section 47 is made.
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49. Individual practitioner may apply for re-allocation

- (1) A legal practitioner (being a natural person) may make a written application to the Board at any time, but no more than twice in any year, for re-allocation from the RPA that currently regulates him or her to another RPA.
- (2) The application must specify the day on which the practitioner wishes the re-allocation to take effect, which must be at least 30 days after the day of the application.
- (3) The practitioner cannot apply to be re-allocated to an RPA if he or she intends to be a partner or an employee of a firm or a director or an employee of an incorporated practitioner after the re-allocation, unless that RPA also regulates that firm or incorporated practitioner.

50. Re-allocation of individual practitioners

- (1) If the Board is satisfied that a practitioner who applies under section 49 is eligible to be a regulated practitioner of the nominated RPA, it must re-allocate him or her to that RPA by making the appropriate entry in the Register.
- (2) The Board must give written notice to the practitioner and both RPAs as soon as practicable after making a re-allocation under this section.
- (3) The re-allocation takes effect at the beginning of the day specified by the practitioner in the application or such later day specified by the Board and notified to the practitioner under sub-section (2).

51. Exchange of information on re-allocation

- (1) If a legal practitioner or firm is re-allocated from one RPA to another RPA or to the Board, the RPA that ceases to regulate them must give the original

or a copy of any documents in its possession or control relating to them to the RPA to which they are re-allocated or to the Board, if they are re-allocated to the Board, within 30 days after the re-allocation takes effect.

- (2) If a legal practitioner or firm is re-allocated from the Board to an RPA, the Board must give the original or a copy of any documents, in its possession or control relating to them to the RPA within 30 days after the re-allocation takes effect.

52. *Return of information necessary for disputes, investigations and charges*

- (1) An RPA that has given an original document to another RPA or to the Board under section 51(1) may request that RPA or the Board to return the original, if it is necessary for the first RPA to settle a dispute, carry out an investigation or bring a charge against the practitioner or firm.
 - (2) If the Board has given an original document to an RPA under section 51(2), it may request that RPA to return the original, if it is necessary for the Board to settle a dispute, carry out an investigation or bring a charge against the practitioner or firm.
 - (3) An RPA must comply with a request under sub-section (1) or (2), but may retain copies of any originals given to the other RPA or the Board.
 - (4) The Board must comply with a request under sub-section (1), but may retain copies of any originals given to the RPA.
 - (5) An RPA or the Board must return originals received in response to a request under this section as soon as practicable after they are no longer required for the dispute, investigation or
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charge or any proceedings relating to the dispute, investigation or charge.

Division 6—Interstate practitioners

53. *Interstate practitioners may apply for registration*

- (1) An interstate practitioner may apply to the Board for registration as a registered interstate practitioner.
- (2) An application must contain—
 - (a) in the case of a natural person—
 - (i) the name, date of birth and date of registration of the practitioner in their home jurisdiction; and
 - (ii) the name of any firm of which the practitioner is a partner or an employee, any incorporated practitioner of which they are a director or an employee or any other person or body of which they are an employee; and
 - (iii) if the practitioner practises on their own account, any business names under which they engage in legal practice; and
 - (iv) any condition, limitation or restriction to which the practitioner is subject in respect of their legal practice in their home jurisdiction or elsewhere; and
 - (v) the practitioner's address for service of notices and other documents; and
 - (vi) a nomination—
 - (A) of an RPA of which the applicant is a member or is eligible to be a member; or

- (B) if there is no such RPA, the Board—
 - to regulate the applicant as a legal practitioner under this Act; and
- (vii) an address for service of documents; and
- (viii) the prescribed information (if any);
- (b) in the case of a body corporate—
 - (i) the name, A.C.N. and date of registration of the practitioner in its home jurisdiction; and
 - (ii) the name and date of birth of each director of the practitioner; and
 - (iii) any condition, limitation or restriction to which the practitioner is subject in respect of its legal practice in its home jurisdiction or elsewhere; and
 - (iv) a nomination—
 - (A) of an RPA of which the applicant or a director of the applicant is a member or is eligible to be a member; or
 - (B) if there is no such RPA, the Board—
 - to regulate the applicant as a legal practitioner under this Act; and
 - (v) the practitioner's address for service of notices and other documents; and
 - (vi) the prescribed information (if any).

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- (3) An application must be accompanied by—
- (a) satisfactory evidence that the applicant has professional indemnity insurance as required by this Act; and
 - (b) the required contribution to the Fidelity Fund under section 202(1) (if any).

54. *Registration and RPA allocation*

- (1) Subject to this section, as soon as practicable after receiving an application that complies with section 53, the Board must register the applicant as a registered interstate practitioner by making the appropriate entries in the Register and—
 - (a) must allocate the applicant to the RPA nominated by the applicant if satisfied that the applicant is entitled to nominate that RPA; or
 - (b) if not satisfied that the applicant is entitled to nominate the nominated RPA, after consultation with the applicant, must allocate the applicant to an RPA that the applicant is entitled to nominate; or
 - (c) if satisfied that there is no RPA that the applicant is entitled to nominate, must allocate the applicant to the Board.
 - (2) The Board must not register a body corporate as a registered interstate practitioner unless each interstate practitioner who is a director of the body corporate is, or has applied for registration as, a registered interstate practitioner.
 - (3) The Board must not register an applicant whose registration has been suspended or who has been de-registered if the application is made during a period specified by the Tribunal under section 61 or 160 or by the Supreme Court.
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- (4) An allocation takes effect when the relevant entry is made in the Register.
- (5) The Board must give written notice to the applicant and the RPA (if any) as soon as practicable after registering the applicant under this section.

55. *Effect of registration*

A registered interstate practitioner, while continuing to be registered in their home jurisdiction, is entitled to engage in legal practice in Victoria, but in so doing is subject to any condition, limitation or restriction of the practitioner's registration in their home jurisdiction.

56. *Mutual recognition laws not affected*

Nothing in this Division affects the operation of the **Mutual Recognition (Victoria) Act 1992**.

57. *Furnishing information*

- (1) The RPA of which a registered interstate practitioner is a regulated practitioner (if any) or the Board must furnish without delay any information about the practitioner reasonably required by an interstate authority in connection with actual or possible disciplinary action against the registered interstate practitioner.
 - (2) An RPA or the Board may provide the information despite any law relating to secrecy or confidentiality.
 - (3) Nothing in this section affects any obligation or power to provide information apart from this section.
 - (4) In this section, "**interstate authority**" means a person or authority in another State or in a Territory having the function conferred by
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legislation of registering persons to engage, or disciplining persons engaged, in legal practice in that State or Territory.

58. *Automatic suspension of registration*

- (1) If a registered interstate practitioner does not pay by the due date an annual contribution required to be paid under section 202(2) or a levy required to be paid under section 204, the Board must issue a written notice to the practitioner setting out the provisions of this section.
- (2) If a practitioner to whom a notice is issued under sub-section (1) does not pay the required contribution or levy within 14 days after the day the notice was issued, the practitioner's registration under this Division is suspended, by force of this section at the end of that period.
- (2) A suspension by force of this section lasts until the contribution is paid.
- (3) Section 61 does not apply to a suspension by force of this section.

59. *Other grounds for suspension*

- (1) The Board must suspend the registration of a registered interstate practitioner if of the opinion that the practitioner is unfit to engage in legal practice.
- (2) The Board may suspend the registration of a registered interstate practitioner if of the opinion that the practitioner is guilty of misconduct (whether on the basis of conduct in Victoria or elsewhere).
- (3) The Board must give written notice of a suspension under this section, including the reasons for suspension, to—
 - (a) the registered interstate practitioner; and

- (b) the RPA of which the practitioner is a regulated practitioner (if any); and
- (c) the interstate authority (within the meaning of section 57) in the practitioner's home jurisdiction.

60. *Effect of suspension*

- (1) An interstate practitioner whose registration is suspended is deemed not to be registered under this Division during the period of suspension.
- (2) If the Board is satisfied that the grounds for a suspension do not or no longer exist, it must lift the suspension immediately by giving written notice to the practitioner.

61. *Application to Full Tribunal following suspension*

- (1) A registered interstate practitioner whose registration is suspended under section 59 may apply to the Full Tribunal within 14 days after receiving notice of the suspension.
 - (2) After hearing the matter, the Full Tribunal—
 - (a) if satisfied that the practitioner is unfit to engage in legal practice, must make an order that the practitioner be de-registered, in which case section 160(4) applies accordingly;
 - (b) if satisfied that the practitioner is guilty of misconduct, may make any order it could make against the practitioner under section 160(1), in which case sections 160(4), 163, 164 and 166 apply accordingly;
 - (c) if not satisfied as required by paragraph (a) or (b)—
 - (i) must make an order directing the RPA or the Board to lift the suspension; and
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- (ii) if satisfied that the applicant is guilty of unsatisfactory conduct, may make any order the Tribunal could make against the practitioner under section 159, in which case sections 163, 164 and 166 apply accordingly;
 - (d) may order the payment of the costs of and incidental to the hearing and, for that purpose, sections 162 and 164 apply accordingly.

62. *Appeal to Court of Appeal*

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 61.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal⁸ runs from the time when the party receives the written reasons.

63. *Registered interstate practitioner is an officer of the Supreme Court*

- (1) A registered interstate practitioner is an officer of the Supreme Court and is subject to the Court's jurisdiction as such.
 - (2) Sub-section (1) does not confer on registered interstate practitioners any right to bring proceedings in the Supreme Court or any immunity from proceedings in any court that they would not have if they were not officers of the Supreme Court.
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PART 3—THE MANNER OF LEGAL PRACTICE

Division 1—Principles of legal practice

64. *General principles of professional conduct*

The general principles of professional conduct, to be reflected in the practice rules, are that a legal practitioner or firm, in the course of engaging in legal practice, should—

- (a) in the service of a client, act—
 - (i) honestly and fairly in the client's best interests; and
 - (ii) so as not to engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law; and
 - (iii) with all due skill and diligence; and
 - (iv) with reasonable promptness; and
- (b) report regularly to a client on the progress of the matter for which the practitioner or firm has been retained to provide legal services; and
- (c) maintain a client's confidences; and
- (d) avoid conflicts of interest—
 - (i) between the practitioner or firm and a client; and
 - (ii) between 2 or more clients; and
- (e) refrain from charging excessive legal costs; and
- (f) act with honesty and candour in all dealings with courts and tribunals and otherwise

discharge all duties owed to courts and tribunals; and

- (g) observe any undertaking given to a court or tribunal, the Legal Ombudsman, the Board, an RPA or another practitioner or firm; and
- (h) act with honesty, fairness and courtesy in all dealings with other practitioners and firms in a manner conducive to advancing the public interest; and
- (i) conduct all dealings with other members of the community and the affairs of clients that affect the interests of others with honesty, fairness and courtesy and in a manner conducive to advancing the public interest.

65. *Co-advocacy*

- (1) In any proceeding, 2 or more current practitioners may appear together as co-advocates.
- (2) The practice rules of an RPA or the Board may reasonably limit the application of sub-section (1).

66. *Client access*

- (1) A legal practitioner or firm may accept instructions in a matter from a client whether or not the client has retained any other legal practitioner or firm in that matter.
- (2) The practice rules of an RPA or the Board may reasonably limit the application of sub-section (1).

67. *Compulsory clerking prohibited*

- (1) An RPA must not require, as a condition of membership or eligibility for membership, that a member of the RPA employ or engage as a clerk any person licensed or approved by the RPA or any other person or body.

- (2) The practice rules of an RPA or the Board must not require a regulated practitioner to employ or engage as a clerk any person licensed or approved by the RPA, the Board or any other person or body.
- (3) Nothing in this section takes away from the requirements of Parts 6 and 12 in relation to the receipt of trust money.
- (4) Nothing in this section applies to the employment or engagement of articulated clerks or managing clerks.

68. *Compulsory chambers prohibited*

- (1) An RPA must not require, as a condition of membership or eligibility for membership, that a member of the RPA engage in legal practice in premises—
 - (a) obtained from a specified person or body or a person or body approved by the RPA or by any other person or body; or
 - (b) situated in a specified location.
- (2) The practice rules of an RPA or the Board must not require a regulated practitioner to engage in legal practice in premises—
 - (a) obtained from a specified person or body or a person or body approved by the RPA, the Board or by any other person or body; or
 - (b) situated in a specified location.
- (3) Nothing in this section allows a legal practitioner or firm to avoid the obligations of any lease or contract of sale.

69. *Sole practice by barristers*

The practice rules of an RPA may require that a regulated practitioner—

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- (a) must practise as a barrister only;
 - (b) must not carry on, engage in or practise any business, profession or occupation that is inconsistent with practice as a barrister;
 - (c) must not practise as a barrister in partnership with any person or as an employee of any person;
 - (d) must not share the income from practice as a barrister with any person—

except to the extent, if any, permitted by the rules.

70. *Compulsory robing abolished*

- (1) Despite any rule of practice or custom to the contrary, it is not necessary for a legal practitioner to robe to appear before any court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (2) An RPA must not require, as a condition of membership or eligibility for membership, that a member of the RPA appear robed before a court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (3) The practice rules of an RPA or the Board must not require a regulated practitioner to appear robed before a court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (4) Nothing in this section prevents a legal practitioner from robing voluntarily in any proceeding in which robes were customarily worn immediately before the commencement of this section.

71. Regulation of other businesses carried on by current practitioners

The Governor in Council, on the recommendation of the Board, may make regulations for or with respect to—

- (a) prohibiting current practitioners from carrying on, engaging in or practising any business, profession or occupation; or
- (b) regulating the manner in which a current practitioner carries on, engages in or practises any business, profession or occupation—

that is inconsistent with legal practice or that may cause a conflict of interest between the practitioner and a client.

Division 2—Practice rules**72. Practice rules of RPAs**

- (1) An RPA must have—
 - (a) rules for the engaging in of legal practice by its regulated practitioners; and
 - (b) if the RPA has any approved clerks, rules for the receipt and handling of trust money by them.
 - (2) The rules must include—
 - (a) rules for the professional conduct of regulated practitioners that are consistent with the general principles stated in section 64; and
 - (b) if the regulated practitioners include practitioners authorised to receive trust money, or if the RPA has any approved clerks, rules for the management,
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accounting, auditing and reporting of trust money and trust accounts.

- (3) The rules may include, with or without modification, any model rule issued by the Board under section 80.
- (4) The rules may include any other matter, not inconsistent with this or any other Act or the regulations, that the RPA thinks fit.

73. *Practice rules of the Board*

- (1) The Board must have rules for the engaging in of legal practice by its regulated practitioners.
- (2) The rules must include—
 - (a) rules for the professional conduct of regulated practitioners that are consistent with the general principles stated in section 64; and
 - (b) rules for the management, accounting, auditing and reporting of regulated practitioners' trust accounts.
- (3) The rules may include any other matter, not inconsistent with this or any other Act or the regulations, that the Board thinks fit.

74. *RPA must forward practice rules*

- (1) Within 14 days after accreditation as an RPA, an RPA must forward a copy of its practice rules to the Legal Ombudsman.
- (2) An RPA must forward a copy of any practice rule made after accreditation to—
 - (a) the Board; and
 - (b) the Legal Ombudsman—at least 21 days before the rule is to take effect.

- (3) At least 21 days before a practice rule made by it is to take effect, an RPA must publish in its official publication a notice that includes a summary of the rule.
- (4) An RPA must forward a copy of its practice rules, as in force for the time being, to each regulated practitioner—
 - (a) within 14 days after that regulated practitioner becomes a regulated practitioner; and
 - (b) thereafter, at least once a year.

75. Board must forward practice rules

- (1) Within 14 days after making its initial practice rules, the Board must forward a copy of those practice rules to the Legal Ombudsman.
- (2) The Board must forward any subsequent practice rule made by it to—
 - (a) each regulated practitioner; and
 - (b) the Legal Ombudsman—
at least 21 days before the rule is to take effect.
- (3) The Board must forward a copy of its practice rules, as in force for the time being, to each regulated practitioner—
 - (a) within 14 days after that regulated practitioner becomes a regulated practitioner; and
 - (b) thereafter, at least once a year.

76. Legal Ombudsman may recommend disallowance

- (1) The Legal Ombudsman may recommend to the Board that the Board disallow a practice rule of an RPA or any part of that rule on the ground that—
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- (a) the rule or part would impose an unreasonable cost on the public or on any sector of the public; or
 - (b) the rule or part would restrict competition in a market for legal services and is not otherwise justified in the public interest.
- (2) The Legal Ombudsman must consult the RPA before making a recommendation under subsection (1).

77. Disallowance of practice rules

- (1) The Board, by notice published in the Government Gazette, may disallow a practice rule of an RPA, or part of a rule, if the Legal Ombudsman has recommended disallowance.
 - (2) The Board, by notice published in the Government Gazette, may disallow a practice rule made by an RPA after accreditation, or part of a rule, if the Board considers that the rule or part is inconsistent with this or any other Act or the regulations.
 - (3) The disallowance takes effect on the publication of the notice.
 - (4) The Board must give a copy of the notice to the RPA and the Attorney-General within 28 days after it is published.
 - (5) The Attorney-General must cause a copy of the notice to be laid before each House of the Parliament within 7 sitting days of that House after receiving it.
 - (6) Sections 3 to 11 of the **Administrative Law Act 1978** apply to the disallowance of a practice rule as if references in those sections—
 - (a) to a decision were references to the decision to disallow the practice rule; and
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- (b) to a tribunal were references to the Board;
and
- (c) to a person affected were references to the RPA that made the disallowed rule.

78. *Effect of disallowance*

- (1) Subject to sub-section (2), if a practice rule, or part of a rule, is disallowed, the disallowance has the same effect as a revocation of the practice rule or part.
- (2) If a practice rule, or part of a rule, is disallowed—
 - (a) any practice rule, or part of a rule, that had been revoked by the disallowed practice rule or part is revived as from the beginning of the day on which the practice rule or part was disallowed; and
 - (b) any practice rule, or part of a rule, that had been amended by the disallowed practice rule or part takes effect without that amendment as from the beginning of the day on which the practice rule or part was disallowed in all respects as if the disallowed practice rule or part had not been made.

79. *Inspection and purchase of practice rules*

A person may inspect without charge or purchase practice rules during ordinary office hours—

- (a) in the case of practice rules made by an RPA, at the registered office of the RPA; or
- (b) in the case of practice rules made by the Board, at the office of the Board.

80. *Guidelines and model rules*

The Board may issue—

- (a) guidelines as to the matters that should be included in practice rules made by RPAs;
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(b) model practice rules.

81. Interpretation

- (1) A practice rule is not a statutory rule for the purposes of the **Subordinate Legislation Act 1994**.
- (2) In this Division, "**practice rule**" includes a practice rule that amends or revokes another practice rule.

Division 3—Competition

82. Legal Ombudsman to investigate matters relating to competition

- (1) The Legal Ombudsman may investigate the effect on competition in a market for legal services and the effect on consumers of those services of—
 - (a) any Act, subordinate instrument or rule of law relating to legal practice;
 - (b) the practice rules of an RPA or the Board;
 - (c) the constitution of an RPA;
 - (d) any agreements, arrangements, understandings or other things made or done by an RPA in relation to its functions as an RPA;
 - (e) any agreements, arrangements or understandings made by or involving a legal practitioner or firm in the course of, or in relation to, engaging in legal practice.
 - (2) An investigation under this section may be initiated in response to a dispute or complaint under Part 5 or on the Legal Ombudsman's own initiative.
 - (3) The Attorney-General may refer anything referred to in paragraphs (a) to (e) of sub-section (1) to the
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Legal Ombudsman for investigation under this section and if so, the Legal Ombudsmen must investigate it.

- (4) A reference under sub-section (3) may specify a period of time within which the Legal Ombudsman must submit a report of the investigation.
- (5) The conduct of an investigation is at the discretion of the Legal Ombudsman.

83. Practitioner or firm must provide information and documents

- (1) For the purposes of an investigation under this Division, the Legal Ombudsman may require a legal practitioner or firm, an RPA or the Board to provide any information or documents and to verify the information or documents by statutory declaration or another manner specified by the Legal Ombudsman.
 - (2) A requirement under sub-section (1) must be in writing and must allow the legal practitioner, firm, RPA or Board at least 21 days to comply.
 - (3) A practitioner or firm may not refuse to comply with sub-section (1)—
 - (a) on the ground of legal professional privilege or any other duty of confidence; or
 - (b) on the ground that the production of the document or giving of the information may tend to incriminate the practitioner or firm.
 - (4) If a practitioner or firm, before producing a document or giving information, objects to the Legal Ombudsman on the ground that the production of the document or giving of the information may tend to incriminate the practitioner or firm, the document or information
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is inadmissible in evidence in any proceeding against them for an offence, other than—

- (a) an offence in relation to the keeping of trust accounts or the receipt of trust money; or
- (b) perjury or an offence in relation to the giving of false or misleading information.

84. *Report of investigation*

- (1) The Legal Ombudsman must submit a written report of an investigation under this Division to the Attorney-General.
- (2) If a period of time for submitting a report is specified under section 82(4), the report must be submitted within that period.
- (3) The report—
 - (a) must contain reasons for the findings contained in it; and
 - (b) may contain any recommendations the Legal Ombudsman thinks fit.
- (4) In considering whether to make recommendations, and if so, the content of those recommendations, the Legal Ombudsman must take into account—
 - (a) whether, in his or her opinion, the subject-matter of the investigation has the effect of lessening competition in a market for legal services; and
 - (b) if it does, whether there is any public benefit that outweighs the lessening of competition and, if so, the nature of that benefit.
- (5) At the same time, or as soon as practicable after, a report is given to the Attorney-General under sub-section (1), the Legal Ombudsman must give a copy of the report—

- (a) in the case of an investigation into the practice rules of the Board, to the Board;
- (b) in the case of an investigation referred to in paragraph (b), (c) or (d) of section 82(1) in relation to an RPA, to the RPA and the Board;
- (c) in the case of an investigation referred to in paragraph (e) of section 82(1) in relation to a legal practitioner or firm, to the practitioner or firm and to the RPA of which they are regulated practitioners (or the Board, if they are regulated practitioners of the Board).

85. *Tabling in Parliament and government response*

- (1) The Attorney-General must cause the report of an investigation under this Division to be laid before each House of the Parliament within 7 sitting days of that House after receiving the report.
 - (2) If a report contains a recommendation that the government take any action, the Attorney-General, within 6 months after receiving the report, must report to the Parliament as to the action (if any) proposed to be taken by the government with respect to the recommendation.
 - (3) If the government does not propose to implement a recommendation of the Legal Ombudsman, the report under sub-section (2) must contain a full statement of the reasons.
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PART 4—INFORMATION AND LEGAL COSTS

Division 1—Information for clients

86. *What information must be given to a client?*

- (1) Before being retained by a client to provide legal services, a legal practitioner or firm must give the prospective client a statement setting out—
 - (a) details of the method of costing the legal services, billing intervals and arrangements; and
 - (b) the client's right to—
 - (i) negotiate a costs agreement with the legal practitioner or firm; and
 - (ii) receive a bill of costs from the practitioner or firm; and
 - (iii) request an itemised bill within 30 days after receipt of a lump sum bill.
- (2) A statement under sub-section (1) must be given in writing except in urgent circumstances, in which case it may be given orally before the practitioner is retained and confirmed in writing as soon as practicable afterwards.
- (3) As soon as practicable after being retained by a client to provide legal services, a legal practitioner or firm must give the client a concise written statement setting out—
 - (a) the name of the legal practitioner who will primarily perform the work (except in the case of a sole practitioner who is to perform the work personally) and whether that person practises as a principal or an employee;

- (b) an estimate of the total legal costs, if reasonably practicable;
- (c) if it is not reasonably practicable to estimate the total legal costs, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs;
- (d) if the legal services involve or are likely to involve litigation, an estimate of—
 - (i) the range of costs that may be recovered if the client is successful in that litigation; and
 - (ii) the range of costs the client may be ordered to pay if they are unsuccessful;
- (e) the client's right to progress reports in accordance with section 92;
- (f) the avenues that are open to the client in the event of a dispute or complaint in relation to legal costs or the provision of the legal services;
- (g) the name and address of the RPA of which the practitioner or firm is a regulated practitioner (or the address of the Board, if they are regulated practitioners of the Board).

87. Information if another legal practitioner is to be retained

- (1) If a legal practitioner or firm intends to retain another legal practitioner or firm on behalf of a client the first legal practitioner or firm must give the client a statement setting out the details specified in section 86(1)(a) and (3)(b) and (c) in relation to the other legal practitioner or firm, in addition to any information required to be given to the client under section 86.
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- (2) A legal practitioner or firm retained or to be retained on behalf of a client by another legal practitioner or firm is not required to give a statement to the client under section 86, but must disclose to the first legal practitioner or firm on request the information necessary for the first legal practitioner or firm to comply with this section.
 - (3) A statement under this section must be given in writing before the other practitioner or firm is retained except in urgent circumstances, in which case it may be given orally before they are retained and confirmed in writing as soon as practicable afterwards.

88. *Form of statements*

- (1) Statements under this Division must be expressed in clear plain language and may be in a language other than English if the client is more familiar with that language.
- (2) If the legal practitioner or firm is aware that the client is unable to read, the practitioner or firm must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written statements.

89. *Changes must be notified*

A legal practitioner or firm must notify the client of any substantial change to anything included in a statement under section 86, 87 or 90(2) as soon as practicable after the legal practitioner or firm becomes aware of that change.

90. Exceptions to requirement for information

- (1) A statement under section 86, 87 or 89 is not required to be given in any of the following cases—
 - (a) if the total legal costs, excluding disbursements, are not likely to exceed \$750;
 - (b) if the client has received statements under section 86(1) and (2) from the legal practitioner or firm at least twice in the previous 12 months and agrees in writing to waive the right to a statement;
 - (c) if the client is a public company, a subsidiary of a public company, a foreign company or a registered Australian body (within the meaning of the Corporations Law);
 - (d) if the client is a Minister acting in his or her capacity as such, a government department or a public authority.
 - (2) Despite sub-section (1)(a), if a legal practitioner or firm becomes aware that the total legal costs are likely to exceed \$750, the practitioner or firm must give the client a statement including the matters in section 86(1) and (2) as soon as practicable.
 - (3) Nothing in this section affects or takes away from any client's right—
 - (a) to progress reports in accordance with section 92;
 - (b) to obtain reasonable information from the legal practitioner or firm in relation to any of the matters specified in section 86 or 87;
 - (c) to negotiate a costs agreement with a legal practitioner or firm and to obtain a bill of costs from the practitioner or firm.
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91. *Effect of failure to give information*

If a legal practitioner or firm does not give to a client any information required to be given by this Division—

- (a) on an assessment of a bill of costs, the assessed amount of the bill may be reduced by an amount considered by the person conducting the assessment to be proportionate to the seriousness of the failure to give the information;
- (b) in determining a dispute in relation to legal costs, the Tribunal may reduce the amount of the legal costs by an amount considered by it to be proportionate to the seriousness of the failure to give the information.

92. *Progress reports*

A legal practitioner or firm must give to a client at reasonable intervals written reports of the progress of the matter in relation to which the practitioner or firm is retained.

Division 2—Legal costs generally

93. *On what basis are legal costs recoverable?*

Legal costs are recoverable—

- (a) under a costs agreement made in accordance with Division 3; or
- (b) in the absence of a costs agreement, in accordance with an applicable practitioner remuneration order or scale of; or
- (c) if neither paragraph (a) or (b) applies, according to the reasonable value of the legal services provided.

94. Security for legal costs

A legal practitioner or firm may take security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

95. Interest on unpaid legal costs

A legal practitioner or firm may charge interest on legal costs, at a rate not exceeding the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**, from the period beginning 30 days after payment is demanded until the legal costs are paid.

Division 3—Costs agreements**96. Making costs agreements**

- (1) A costs agreement may be made—
 - (a) between a client and a legal practitioner or firm retained by the client; or
 - (b) between a client and a legal practitioner or firm retained on behalf of the client by another legal practitioner or firm; or
 - (c) between a legal practitioner or firm and another legal practitioner or firm that retained that practitioner or firm on behalf of a client.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer that is accepted in writing or by other conduct.

97. Costs agreements may be conditional on success

- (1) A costs agreement may provide that the payment of some or all of the legal costs is contingent on
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the successful outcome of the matter to which those costs relate.

- (2) An agreement referred to in sub-section (1) is called a "**conditional costs agreement**".
- (3) A conditional costs agreement may relate to proceedings in any court or tribunal, except criminal proceedings or proceedings under the Family Law Act 1975 of the Commonwealth.
- (4) A conditional costs agreement—
 - (a) must set out the circumstances that constitute a successful outcome of the matter; and
 - (b) may exclude disbursements from the legal costs that are payable only on the successful outcome of the matter.
- (5) A legal practitioner or firm must not enter into a conditional costs agreement unless the practitioner or a partner of the firm has a reasonable belief that a successful outcome of the matter is reasonably likely.

98. *Uplifted fees are allowed*

- (1) A conditional costs agreement may provide for the payment of a premium on the legal costs otherwise payable under the agreement on the successful outcome of the matter in respect of which the agreement is made.
- (2) The premium must be a specified percentage of the legal costs otherwise payable, and must be separately identified in the agreement.
- (3) A legal practitioner or firm must not enter into a conditional costs agreement under which a premium, other than a specified percentage not

exceeding 25% of the costs otherwise payable, is payable on the successful outcome of any matter involving litigation.

Penalty: 100 penalty units.

99. *Contingency fees are prohibited*

- (1) A legal practitioner or firm must not enter into a costs agreement under which the amount payable to the legal practitioner or firm under the agreement, or any part of that amount, is calculated by reference to the amount of the award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs of a court or tribunal.

100. *Mortgage and loan costs*

A costs agreement with respect to the provision of legal services connected with a mortgage or negotiating or procuring an agreement for any other loan must not provide for the payment of legal costs in excess of the costs specified in the practitioner remuneration order that deals with those services.

101. *Effect of costs agreement*

- (1) Subject to this Division and Division 4, a costs agreement may be enforced in the same way as any other contract.
 - (2) To the extent that it provides for legal costs to be paid according to a practitioner remuneration order or scale of costs of a court or tribunal, a costs agreement is subject to assessment under Division 5.
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- (3) The procedure in Division 1 of Part 5 may be used to resolve a dispute over an amount claimed to be payable to a legal practitioner or firm under a costs agreement unless the practitioner or firm has commenced proceedings for recovery of the disputed amount.

102. *Certain costs agreements are void*

- (1) A costs agreement that contravenes any provision of this Division is void.
- (2) Subject to sub-section (3), legal costs under a void costs agreement are recoverable as set out in section 93(b) and (c).
- (3) A legal practitioner or firm that has entered into a costs agreement in contravention of section 97(5), 98(3) or 99 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (4) If a legal practitioner or firm does not repay an amount required by sub-section (3) to be repaid, the person entitled to be repaid may recover the amount from the practitioner or firm as a debt in a court of competent jurisdiction.

103. *Cancellation of costs agreement*

- (1) On application by a client, the Tribunal, constituted by the registrar or deputy registrar, may order that a costs agreement be cancelled if satisfied—
- (a) that the client was induced to enter into the agreement by the fraud or misrepresentation of the legal practitioner or firm; or
- (b) that the legal practitioner or firm has been guilty of misconduct or unsatisfactory
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conduct in relation to the provision of legal services to which the agreement relates; or

(c) that the agreement is not fair and reasonable.

- (2) The Tribunal may adjourn the hearing of an application under this section pending the completion of any investigation or charge in relation to the conduct of the legal practitioner or firm.
- (3) If the Tribunal orders that a costs agreement be cancelled, it may make such order as it thinks fit in relation to the payment of legal costs the subject of the cancelled agreement, taking into account the seriousness of the conduct of the legal practitioner or firm.
- (4) The Tribunal may order the payment of the costs of and incidental to a hearing under this section and, for that purpose, sections 162 and 164 apply accordingly.

104. *Appeal to Full Tribunal*

- (1) Any party may appeal to the Full Tribunal from an order of the Tribunal under section 103 by lodging a written notice of appeal with the registrar within 21 days after receiving a copy of the order.
- (2) The Full Tribunal is to hear the appeal by way of a rehearing and may make any order that the Tribunal could have made under section 103 at first instance.
- (3) Sections 165, 168 and 169(2), (3) and (4) apply to an appeal under this section.

105. *Appeal to Court of Appeal*

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 104.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal⁹ runs from the time when the party receives the written reasons.

Division 4—Bills of costs

106. *Legal costs cannot be recovered unless bill of costs has been served*

- (1) A legal practitioner or firm must not commence legal proceedings to recover legal costs from a person until at least 30 days after the practitioner or firm has given a bill of costs to the person in accordance with section 107.
 - (2) A court of competent jurisdiction may make an order authorising a legal practitioner or firm to commence legal proceedings against a person sooner if satisfied that—
 - (a) the practitioner or firm has given a bill of costs to the person in accordance with section 107; and
 - (b) the person is about to leave Victoria.
 - (3) A court or tribunal before which any proceedings are brought in contravention of sub-section (1) must stay those proceedings on the application of a party, or on its own initiative.
 - (4) This section applies whether or not the legal costs are the subject of a costs agreement.
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107. Bill of costs

- (1) A bill of costs may be in the form of a lump sum bill or an itemised bill.
 - (2) A bill of costs—
 - (a) must be signed by the legal practitioner or by another legal practitioner authorised by them; or
 - (b) in the case of a firm, must be signed by a partner (in the name of the partner or the firm); or
 - (c) in the case of an incorporated practitioner, must—
 - (i) be signed by a director; or
 - (ii) be sealed by the practitioner in accordance with its articles of association.
 - (3) A bill of costs is to be given to a person—
 - (a) by delivering it personally to the person or to an agent of the person; or
 - (b) by sending it by post to the person or agent at the usual or last known business or residential address of the person or agent; or
 - (c) by leaving it for the person or agent at the usual or last known business or residential address of the person or agent with a person on the premises who is apparently at least 16 years old and apparently employed or residing there.
 - (4) In this section, "**agent**" of a person means an agent, legal practitioner or firm that has authority to accept service of legal process on behalf of the person.
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108. *Person may request itemised bill*

- (1) Within 30 days after receipt of a lump sum bill, a person may request the legal practitioner or firm to give them an itemised bill.
- (2) If a person makes a request under sub-section (1), the practitioner or firm must not commence any proceedings to recover those costs until at least 30 days after complying with the request.
- (3) A practitioner or firm must not charge a person for the preparation of an itemised bill requested under this section.
- (4) Section 107(2) and (3) apply to the giving of an itemised bill under this section.

109. *Interim bills*

- (1) A legal practitioner or firm may give a person an interim bill of costs covering part only of the legal services the practitioner or firm was retained to provide.
- (2) An interim bill may be assessed under Division 5.
- (3) An interim bill may be assessed under Division 5 as part of the assessment of the final bill, whether or not the interim bill has previously been assessed or paid.

110. *Defence costs in criminal matters*

- (1) Despite anything to the contrary in this Division, a legal practitioner or firm must not commence proceedings to recover, or apply any trust money towards, any legal costs for the defence of a person tried or committed for trial in the Supreme Court until—
 - (a) the practitioner or firm has—
 - (i) given, in accordance with section 107(3), an itemised bill that complies

- with section 107(2) to the person liable to pay the legal costs; and
- (ii) given to an associate of a Judge of the Supreme Court—
 - (A) a copy of that bill; and
 - (B) an affidavit verifying the payment of all disbursements included in the bill; and
 - (b) the bill of costs has been assessed in the manner directed by the Supreme Court; and
 - (c) the Supreme Court has considered the assessment and made an order it thinks fit with respect to the payment of the legal costs.
- (2) For the purpose of making an order under sub-section (1)(c), the Supreme Court may summon a person, on reasonable notice, to appear before it to give evidence or to produce any documents that are specified in the summons.
- (3) A court or tribunal before which any proceedings are brought in contravention of sub-section (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This section does not apply to the legal costs of a legal practitioner retained by or on behalf of a person solely as an advocate.

111. *Practitioner remuneration orders*

- (1) The Legal Costs Committee, after consultation with the Board, may make orders with respect to the costs that may be charged by legal practitioners or firms for providing non-litigious legal services.
 - (2) An order under this section is called a "**practitioner remuneration order**".
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- (3) A practitioner remuneration order may provide that legal practitioners or firms may charge—
- (a) according to a scale of rates of commission or percentages; or
 - (b) a specified amount; or
 - (c) a maximum amount; or
 - (d) in any other way or combination of ways.
- (4) A practitioner remuneration order—
- (a) may differ according to different classes of legal services;
 - (b) may confer a discretionary authority or impose a duty on a specified person or class of persons.

112. *Publication and availability*

- (1) The Legal Costs Committee must give a copy of each practitioner remuneration order to the Attorney-General, the Board and each RPA within 7 days after it is made.
- (2) Each RPA must publish the contents of a practitioner remuneration order in its next available official publication after it receives a copy of the order.
- (3) The Board must give a copy of a practitioner remuneration order to each of its regulated practitioners as soon as practicable after it receives a copy of the order.
- (4) A person may inspect without charge a copy of a practitioner remuneration order during ordinary office hours at the office of the Board, or purchase a copy from the Board.

113. Disallowance

- (1) The Attorney-General must cause a copy of each practitioner remuneration order to be laid before each House of the Parliament on or before the 6th sitting day of that House after the day on which the order is received by him or her.
- (2) A practitioner remuneration order is subject to disallowance by the Parliament and, for that purpose, sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if a practitioner remuneration order were a statutory rule within the meaning of that Act.

114. Legal Costs Committee

- (1) The Legal Costs Committee consists of—
 - (a) the Chief Justice of the Supreme Court or another Judge of the Supreme Court nominated by him or her;
 - (b) 2 members nominated by the Attorney-General, at least one of whom is not a legal practitioner;
 - (c) 2 members nominated by the Board;
 - (d) one member nominated by each RPA.
 - (2) The Chief Justice or his or her nominee is to be chairperson of the committee.
 - (3) A quorum of the committee is a majority of the members of the committee for the time being.
 - (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
 - (5) Subject to this Act, the Committee may regulate its own procedure.
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Division 5—Assessment of legal costs

115. *Person may apply for assessment of a bill of costs*

- (1) Any of the following may apply to the Taxing Master for the assessment of a bill of costs of a legal practitioner or firm—
 - (a) a person who has been given the bill of costs by the practitioner or firm;
 - (b) a person who has paid the legal costs the subject of the bill of costs;
 - (c) a person (other than the person who was given the bill of costs) who is liable to pay the legal costs the subject of the bill of costs;
 - (d) the executor, administrator or assignee of a person referred to in paragraph (a), (b) or (c);
 - (e) the trustee of the estate of a person referred to in paragraph (a), (b) or (c);
 - (f) a person interested in any property out of which a trustee, executor or administrator who is liable to pay the legal costs the subject of the bill of costs has paid, or is entitled to pay, those costs.
- (2) An application under sub-section (1) must be made—
 - (a) within 2 months after the bill of costs was given or the costs were paid (whichever is earlier); or
 - (b) if the legal practitioner or firm consents in writing, outside that time.
- (3) If an application is made under sub-section (1)—
 - (a) the assessment must take place without any money being paid into court; and

- (b) the legal practitioner or firm must not commence any proceedings to recover the legal costs the subject of the bill of costs until the assessment is completed.

116. Court may order assessment of costs

- (1) The Supreme Court, on the application of a person referred to in section 115(1) or the legal practitioner or firm, may order—
 - (a) that the bill of costs be assessed by the Taxing Master;
 - (b) that the legal practitioner or firm not commence or continue any proceedings to recover the legal costs the subject of the bill until the assessment is completed;
 - (c) unless the applicant was the person to whom the bill was given, that the legal practitioner or firm give a copy of the bill to the applicant on payment of the costs of the copy.
 - (2) If the application is made by a party referred to in section 115(1), the assessment must take place without any money being paid into court.
 - (3) Except in special circumstances, the Court must not order that a bill of costs be assessed if the application under sub-section (1) was made—
 - (a) after a judgment has been given in favour of the legal practitioner or firm for the recovery of the legal costs the subject of the bill; or
 - (b) more than 12 months after the bill was given or payment was demanded (as the case may be) by the legal practitioner or firm.
 - (4) Except in special circumstances, the Court must not order the assessment of a bill of costs (other
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than an interim bill) that has already been assessed.

- (5) If a bill of costs (other than an interim bill) has been paid, the Court may order the assessment of the bill only in special circumstances and in any event no later than 12 months after the payment.

117. *Court may order division of payments*

- (1) If, on the application of a person referred to in section 115(1)(f), the Supreme Court orders that a bill of costs be assessed, it may order that such payments as it thinks fit in respect of the amount found to be due and the costs of the assessment, be made to or by the applicant, the legal practitioner or firm or the trustee, executor or administrator.
- (2) In considering an application referred to in sub-section (1), the Court must have regard to the extent and nature of the applicant's interest.
- (3) If an applicant referred to in sub-section (1) pays any money to the legal practitioner or firm, the applicant has the same right to be paid that money by the trustee, executor or administrator as the legal practitioner or firm had.

118. *Procedure on assessment*

- (1) If, after proper notice that an assessment will take place, a party to the assessment does not attend, the Taxing Master may proceed with the assessment in the absence of that party.
- (2) If, before giving an itemised bill the legal practitioner or firm had previously given a lump sum bill, on an assessment the legal practitioner or firm is not bound by the amount and matters stated in the lump sum bill.
- (3) In assessing a bill in relation to non-litigious legal services, the Taxing Master must apply the
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practitioner remuneration order (if any) that applies to those services.

- (4) In assessing a bill for preparing a document, the Taxing Master must have regard to the skill, labour, expense and responsibility involved.

119. *Costs of assessment*

- (1) The Taxing Master must assess the costs of an assessment.
- (2) Unless the Taxing Master otherwise orders and subject to sub-section (3)—
- (a) if the bill of costs is reduced on assessment by one-sixth or more, the legal practitioner or firm must pay the costs of the assessment; or
- (b) if not, the other party must pay them.
- (3) The Taxing Master may refer to the Supreme Court any special circumstances relating to a bill or to the assessment of a bill and the Court may make any order it thinks fit concerning the costs of the assessment.

120. *Review of assessment*¹⁰

A person may apply to the Supreme Court for an order for the review of the assessment of a bill of costs.

121. *Legal costs subject to a costs dispute are not assessable*

Despite anything to the contrary in this Division, legal costs that are or have been the subject of a costs dispute under Division 1 of Part 5 are not assessable under this Division.

PART 5—DISPUTES WITH CLIENTS AND DISCIPLINE

Division 1—Disputes between clients and practitioners or firms

122. What is a dispute?

- (1) Any of the following is a "**dispute**" for the purpose of this Division—
 - (a) a dispute between a person and a legal practitioner or firm in relation to legal costs charged to the person that do not exceed \$15 000 ("**costs dispute**");
 - (b) a claim that a person has suffered pecuniary loss as a result of an act or omission by a legal practitioner or firm in the provision of legal services to the person, other than loss in respect of which a claim lies against the Fidelity Fund;
 - (c) any other genuine dispute between a person and a legal practitioner or firm arising out of, or in relation to, the provision of legal services to the person by the practitioner or firm.
 - (2) For the purposes of sub-section (1)(b) or (c)—
 - (a) a beneficiary under a will or trust in relation to which a legal practitioner or firm provides or has provided legal services is a person to whom the practitioner or firm provides or has provided legal services in relation to the will or trust;
 - (b) a person who is charged or is liable to pay legal costs (other than under a court or tribunal order for costs) is a person to whom the legal practitioner or firm provides the legal services related to those costs.
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123. How is dispute resolution initiated?

- (1) A client may initiate the dispute resolution process by lodging a written request, in the form (if any) approved by the Legal Ombudsman, setting out the details of the dispute and the name and address of the legal practitioner or firm to whom the dispute relates—
 - (a) with the RPA of which the legal practitioner or firm was a regulated practitioner at the time the matters that gave rise to the dispute arose; or
 - (b) with the Board, if—
 - (i) the RPA referred to in paragraph (a) is no longer accredited; or
 - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the matters that gave rise to the dispute arose.
 - (2) Subject to sub-section (3), a request in relation to—
 - (a) a costs dispute must be made within 6 months after the legal costs were payable by the client;
 - (b) a dispute referred to in section 122(1)(b) must be made within 6 years after the alleged act or omission to which the dispute relates;
 - (c) a dispute referred to in section 122(1)(c) must be made within 6 years after the subject-matter of the dispute first arose.
 - (3) An RPA or the Board may accept a request in relation to a costs dispute made outside the period referred to in sub-section (2)(a) if satisfied—
 - (a) that there was a reasonable cause for the delay in making the request; or
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- (b) that it is otherwise in the public interest to do so.
- (4) A request cannot be made if proceedings have been commenced by any person in relation to the subject-matter of the dispute including, in the case of a costs dispute, proceedings for an assessment of costs under Division 5 of Part 4.
- (5) The RPA or the Board must, and the Legal Ombudsman may, give reasonable assistance to a client in formulating a request.
- (6) The RPA or the Board must give written notice of receipt of a request to—
- (a) the legal practitioner or firm to whom the dispute relates; and
 - (b) the Legal Ombudsman—
- as soon as practicable after the request is lodged.

124. *Other proceedings stayed*

- (1) Subject to sub-section (2)—
- (a) a legal practitioner or firm must not commence proceedings in relation to the subject-matter of a dispute after receiving notice of a request under section 123(6);
 - (b) a client must not commence proceedings in relation to the subject-matter of a dispute after lodging a request under section 123(1)—
- until the dispute is determined and any appeal rights are exhausted.
- (2) Nothing in sub-section (1) prevents a legal practitioner or firm commencing proceedings (except proceedings against the client) on the lawful instructions of the client or a person other than the client.

- (3) A court or tribunal before which any proceedings are brought in contravention of sub-section (1) must stay those proceedings on the application of a party, or on its own initiative.

125. Lodgement of disputed legal costs with RPA or Board

- (1) Subject to sub-section (2), a client who lodges a request in relation to a costs dispute must also lodge the unpaid amount of the legal costs with the RPA or the Board.
- (2) The RPA or the Board may determine in any case that a client need not lodge a disputed amount, or may lodge an amount less than the disputed amount, if the RPA or the Board is satisfied that lodgement would cause the client undue hardship.
- (3) The RPA or the Board must refuse to accept a request in relation to a costs dispute unless the client complies with this section.
- (4) The RPA or the Board must notify the Legal Ombudsman of a refusal to accept a request under this section.
- (5) The RPA or the Board must cause money lodged under this section to be placed on deposit in an interest-bearing account with a bank or an authorised society in the name of the RPA or the Board.
- (6) Money in the account, including interest earned on money deposited in the account, is to be paid—
- (a) if the dispute is successfully settled by the RPA or the Board or by conciliation, as agreed by the parties; or
 - (b) if the dispute is not successfully settled by the RPA or the Board or by conciliation and proceeds to the Tribunal, in accordance with the order of the Tribunal under section 133; or
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- (c) if the client withdraws the request or does not refer the dispute to the Tribunal under section 128(2), to the legal practitioner or firm.

126. *What does the RPA or the Board do with the dispute?*

- (1) An RPA or the Board must attempt to settle a dispute and may take any action it considers necessary to assist the parties to reach agreement.
- (2) If the RPA or the Board considers that a dispute raises a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or a firm, the RPA or the Board may—
 - (a) treat the request as a complaint by the client under Division 2; and
 - (b) investigate the matter under Division 3.
- (3) Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in proceedings before the Tribunal or any other proceedings relating to the subject-matter of the dispute.

127. *Settlement agreements*

- (1) If the parties reach agreement in relation to the subject-matter of a dispute—
 - (a) the RPA or the Board must prepare a written record of the agreement; and
 - (b) the record must be signed by or on behalf of each party and certified by the RPA or the Board; and
 - (c) the RPA or the Board must give each party a copy of the signed and certified record; and

- (d) the RPA or the Board must notify the Legal Ombudsman that the parties have reached agreement.
- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the signed and certified record free of charge in the Magistrates' Court.
- (3) On filing, the record must be taken to be an order of the Magistrates' Court in accordance with its terms, and may be enforced accordingly.
- (4) A record may be filed only once under sub-section (2).

128. *What happens if dispute is not settled?*

- (1) If, having made reasonable attempts to settle a dispute, an RPA or the Board is satisfied that the parties cannot reach agreement, it may give written notice to that effect to each party and the Legal Ombudsman.
- (2) Within 30 days after receiving a notice under sub-section (1), a party may refer the dispute to the Tribunal by lodging with the registrar a written referral and the prescribed fee (if any)¹¹.
- (3) The registrar must give written notice of a referral to the other party, the Legal Ombudsman and the RPA or Board (as the case may be) as soon as practicable after lodgement.
- (4) The registrar must refer a dispute to a conciliator as soon as practicable after a referral in relation to the dispute has been lodged under sub-section (2).

129. *Conciliation of disputes*

- (1) A conciliator must attempt to settle a dispute by conciliation and, for that purpose, may arrange and conduct a conference of the parties to the dispute.
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- (2) A conciliator must give each party at least 14 days' written notice of the time and place for a conference.
 - (3) A party is entitled to attend a conference personally and to be represented at a conference by a legal practitioner or, with the leave of the conciliator, by any other person.
 - (4) If a conciliator considers that a dispute raises a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or a firm, the conciliator may refer the dispute—
 - (a) to the RPA of which the legal practitioner or firm was a regulated practitioner at the time the matter occurred; or
 - (b) to the Board, if—
 - (i) the RPA referred to in paragraph (a) is no longer accredited; or
 - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the matter occurred—for investigation under Division 3.
 - (5) A dispute referred under sub-section (4) for investigation is to be treated as a complaint by the client.
 - (6) Subject to section 131, evidence of anything said or done in the course of a conciliation is not admissible in proceedings before the Tribunal or any other proceedings relating to the subject-matter of the dispute.

130. Conciliation agreements

- (1) If, following conciliation, the parties to the dispute reach agreement with respect to the subject-matter of the dispute—
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- (a) the conciliator must prepare a written record of the agreement; and
 - (b) the record must be signed by or on behalf of each party and certified by the conciliator; and
 - (c) the conciliator must give each party and the registrar a copy of the signed and certified record.
- (2) Subject to sub-section (3), the registrar must register the record of agreement and give a certified copy of the registered record to each party, the Legal Ombudsman and the RPA or Board that originally handled the dispute.
- (3) If the registrar considers that it may not be practicable to enforce, or to supervise compliance with, a conciliation agreement, the registrar may refuse to register the record of agreement and may refer the matter back to the conciliator and the parties for further conciliation.
- (4) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified registered record free of charge in the Magistrates' Court.
- (5) On filing, the record must be taken to be an order of the Magistrates' Court in accordance with its terms, and may be enforced accordingly.
- (6) A record may be filed only once under sub-section (4).

131. *What happens if a party does not attend a conference?*

- (1) If a party does not attend a properly convened conference under section 129, the conciliator, within 7 days after the date of the conference—
 - (a) if the non-attending party is the client, may give written notice to the registrar requesting
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- that the dispute be dismissed and give a copy of the notice to the client;
- (b) if the non-attending party is the legal practitioner or firm, may give written notice to the registrar requesting the Tribunal to make an order it could make under section 133 and give a copy of the notice to the legal practitioner or firm.
- (2) Unless the non-attending party satisfies the registrar within 7 days after the date of the notice that there was a reasonable excuse for the non-attendance, the Tribunal, constituted by the registrar or deputy registrar—
- (a) if that party is the client, must dismiss the dispute;
 - (b) if that party is the legal practitioner or firm, may make an appropriate order.
- (3) The Tribunal need not have a hearing before dismissing a dispute or making an order under sub-section (2).

132. *What happens if conciliation is not successful?*

If a conciliation is not successful (other than in the circumstances set out in section 131)—

- (a) the conciliator must give the registrar and the parties written notice that conciliation has been unsuccessful; and
- (b) the Tribunal, constituted by the registrar or the deputy registrar, must hear and determine the dispute.

133. *What may the Tribunal decide?*

- (1) After hearing the dispute, the Tribunal may make any one or more of the following orders—

- (a) an order that the legal practitioner or firm pay to the client as compensation a specified amount not exceeding \$15 000 within a specified time ("**compensation order**");
 - (b) in a costs dispute, an order that the client pay the amount of legal costs in dispute or that the legal practitioner or firm reduce the amount of the legal costs by a specified amount (not exceeding the amount in dispute);
 - (c) an order that the legal practitioner or firm waive or repay the whole or a specified part of legal costs charged to the client for any specified legal services;
 - (d) an order that the legal practitioner or firm provide specified legal services to the client, either free of charge or at a specified cost;
 - (e) an order that the legal practitioner or firm waive any lien held over documents belonging to the client and deliver the documents to the client within a specified time;
 - (f) any other order the Tribunal thinks fit.
- (2) A compensation order does not affect the right of a client to recover damages for pecuniary loss, but a court in making an award of damages must take the compensation order into account.
- (3) If a client has lodged an amount with an RPA or the Board under section 125, an order under sub-section (1) must include directions as to the payment of that money.

134. Costs of hearing

- (1) Subject to this section, each party is to bear their own costs of a hearing of a dispute by the Tribunal.
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- (2) If the Tribunal considers that a party to a dispute has behaved unreasonably in relation to the hearing, the Tribunal may make an order that the party pay all or a specified part of the costs of the hearing of the other party or of the Tribunal, or both.
- (3) If the Tribunal considers that the dispute is frivolous, vexatious, misconceived or lacking in substance, the Tribunal may make an order that the client pay the costs of the hearing of the practitioner or firm and of the Tribunal.
- (4) The Tribunal must not make an order awarding costs against a party under sub-section (2) or (3) without giving that party a reasonable opportunity to be heard.

135. *Enforcement of orders*

- (1) The registrar must cause a copy of an order made under this Division, certified by the registrar, to be given to each party to the dispute, the Legal Ombudsman and the RPA or Board that originally handled the dispute.
- (2) Any party, after giving written notice to the other party, may enforce the order by filing a copy of the signed and certified order free of charge in the Magistrates' Court.
- (3) On filing, the order must be taken, for the purpose of enforcement, to be an order of the Magistrates' Court in accordance with its terms.
- (4) An order may be filed only once under sub-section (2).

136. *Suspension of order pending appeal*

- (1) On the application of a party intending to appeal against an order of the Tribunal under this Division, the chairperson or a deputy chairperson of the Tribunal may order that the operation of
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that order be suspended pending the determination of the appeal, or for a period specified in the order.

- (2) An order under sub-section (1) may be unconditional or subject to any conditions the person making it thinks fit.

Division 2—Complaints about practitioners' and firms' conduct

137. *What are misconduct and unsatisfactory conduct?*

In this Part—

"misconduct" means—

- (a) misconduct by a legal practitioner or firm in the course of engaging in legal practice, including—
- (i) wilful or reckless contravention of this Act, the regulations or practice rules that apply to the practitioner or firm or any other Act that relates to legal practice;
 - (ii) wilful or reckless failure to comply with a condition or restriction to which a practising certificate held by the legal practitioner is subject;
 - (iii) failure (whether or not wilful or reckless) to comply with an undertaking given to a court or tribunal or the Legal Ombudsman, the Board or an RPA;
 - (iv) unsatisfactory conduct that amounts to a substantial or consistent failure to reach
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reasonable standards of
competence and diligence;

(v) the charging of grossly excessive
legal costs; or

(b) conduct by a legal practitioner or firm
that is unconnected with legal practice
but that would justify a finding that the
practitioner or firm is not of good
character or is otherwise unsuited to
engage in legal practice;

"unsatisfactory conduct" means—

(a) conduct by a legal practitioner or firm
in the course of engaging in legal
practice that falls short of the standard
of competence and diligence that a
member of the public is entitled to
expect of a reasonably competent legal
practitioner or firm; or

(b) contravention of this Act, the
regulations or practice rules that apply
to the practitioner or firm or any other
Act that relates to legal practice, not
amounting to misconduct; or

(c) failure to comply with a condition or
restriction to which a practising
certificate held by the legal practitioner
is subject, not amounting to
misconduct; or

(d) failure to pay a premium or an
instalment of premium due under a
contract of professional indemnity
insurance, not amounting to
misconduct.

138. *Who may complain?*

Legal Practice Act 1996

Act No. 35/1996

- (1) Any person may make a complaint about the conduct of a legal practitioner or firm—
 - (a) to the Legal Ombudsman; or
 - (b) to the RPA of which the legal practitioner or firm was a regulated practitioner at the time the conduct allegedly occurred; or
 - (c) to the Board, if—
 - (i) the RPA referred to in paragraph (b) is no longer accredited; or
 - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the conduct allegedly occurred.
- (2) An RPA or the Board may make a complaint to the Legal Ombudsman about the conduct of a regulated practitioner.
- (3) An RPA or the Board must notify the Legal Ombudsman as soon as practicable after receiving a complaint under sub-section (1).
- (4) As soon as practicable after receiving a complaint under sub-section (1), the Legal Ombudsman must notify the RPA or the Board of which the legal practitioner the subject of the complaint is a regulated practitioner.

139. *When may a complaint be made?*

- (1) Subject to sub-section (2), a complaint may not be made more than 6 years after the conduct complained of is alleged to have occurred.
- (2) The Legal Ombudsman, an RPA or the Board may accept a complaint made more than 6 years after the conduct is alleged to have occurred if satisfied—
 - (a) that there was a reasonable cause for the delay in making the complaint; or
 - (b) that it is otherwise in the public interest to do so.

140. *Form of complaint*

- (1) A complaint must—
 - (a) be in writing in the form (if any) approved by the Legal Ombudsman; and
 - (b) identify the complainant and the legal practitioner or firm about whom the complaint is made; and
 - (c) give details of the alleged conduct of the practitioner or firm; and
 - (d) if compensation is claimed, specify to the best of the complainant's knowledge any pecuniary loss suffered.
 - (2) The Legal Ombudsman, an RPA or the Board must give reasonable assistance to a person in formulating a complaint.
 - (3) The Legal Ombudsman, an RPA or the Board may require a complainant to give further details of the complaint and may require the complainant to verify any details of the complaint by statutory declaration or in another manner specified by the Legal Ombudsman, RPA or Board.
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- (4) A requirement under sub-section (3) must be in writing and must allow the complainant a reasonable time to comply.

141. *Dismissal of unjustified complaints*

- (1) The Legal Ombudsman, an RPA or the Board may dismiss a complaint, by giving written notice to the complainant, if satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance.
- (2) The notice must include the reasons for the dismissal.
- (3) An RPA or the Board must notify the Legal Ombudsman as soon as practicable after dismissing a complaint under this section, including the reasons for the dismissal.
- (4) If an RPA or the Board dismisses a complaint under this section, the complainant may refer the complaint to the Legal Ombudsman in writing within 30 days after receiving notice of the dismissal.

142. *Complaint treated as dispute in some circumstances*

- (1) If the Legal Ombudsman considers that a complaint—
- (a) does not raise a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or firm; and
 - (b) raises matters that could constitute a dispute—

the Legal Ombudsman must refer the complaint—

- (c) to the RPA of which the legal practitioner or firm was a regulated practitioner at the time the matters referred to in the complaint arose; or
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(d) to the Board, if—

- (i) the RPA referred to in paragraph (c) is no longer accredited; or
- (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the matters referred to in the complaint arose.

(2) If an RPA or the Board considers that a complaint—

- (a) does not raise a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or firm; and
- (b) raises matters that could constitute a dispute—

the RPA or the Board must treat the complaint as a dispute between the complainant and the legal practitioner or firm and the provisions of Division 1, including section 125, apply accordingly.

(3) A complaint referred to an RPA or the Board under sub-section (1) is to be treated as a dispute between the complainant and the legal practitioner or firm and the provisions of Division 1, including section 125, apply as if the referral to the RPA or the Board were a request by the complainant as a client under section 123(1).

143. *Legal Ombudsman may refer complaints to RPA or Board*

The Legal Ombudsman may refer a complaint made to him or her for investigation under Division 3—

- (a) to the RPA of which the legal practitioner or firm complained of was a regulated practitioner at the time the conduct allegedly occurred; or

- (b) to the Board, if—
- (i) the RPA referred to in paragraph (a) is no longer accredited; or
 - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the conduct allegedly occurred.

144. *RPA or Board may refer complaints to Legal Ombudsman*

- (1) An RPA or the Board may refer a complaint made to it to the Legal Ombudsman for investigation under Division 3.
- (2) The Legal Ombudsman may decline to investigate a complaint referred to him or her by an RPA under sub-section (1) and refer the complaint back to the RPA for investigation.

Division 3—Investigation of practitioners' and firms' conduct

145. *Investigation by Legal Ombudsman*

- (1) The Legal Ombudsman must investigate—
 - (a) a complaint made to him or her, other than a complaint—
 - (i) dismissed by him or her under section 141; or
 - (ii) referred to an RPA or the Board under section 142 or 143;
 - (b) a complaint referred to him or her by the Board under section 144(1);
 - (c) a complaint taken over from an RPA or the Board under section 148(2) or (3);
 - (d) the conduct of a legal practitioner or firm if the Board requests an investigation (whether
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or not the practitioner or firm is regulated by the Board).

- (2) The Legal Ombudsman may investigate—
 - (a) a complaint referred to him or her by an RPA under section 144(1);
 - (b) the conduct of any legal practitioner or firm if he or she has reason to believe that the conduct may amount to misconduct or unsatisfactory conduct, even though no complaint has been made about the conduct.
- (3) An RPA or the Board must provide any reasonable assistance required by the Legal Ombudsman in the conduct of an investigation under this section, including access to, or copies of, any documents held by the RPA or the Board that relate to the matter under investigation.

146. *Investigation by RPA or Board*

- (1) An RPA or the Board must investigate—
 - (a) a complaint made to it, other than a complaint—
 - (i) dismissed under section 141; or
 - (ii) to be treated as a dispute in accordance with section 142; or
 - (iii) referred to the Legal Ombudsman under section 144(1) (unless, in the case of an RPA, the complaint is referred back under section 144(2)); or
 - (iv) taken over by the Legal Ombudsman under section 148(2) or (3);
 - (b) a complaint referred to it by the Legal Ombudsman under section 143.
- (2) An RPA or the Board may investigate the conduct of any legal practitioner or firm at a time when

that practitioner or firm was a regulated practitioner of that RPA or the Board if it has reason to believe that the conduct may amount to misconduct or unsatisfactory conduct, even though no complaint has been made about the conduct.

- (3) The Legal Ombudsman must provide any reasonable assistance required by an RPA or the Board in the conduct of an investigation under this section, including access to, or copies of, any documents held by the Legal Ombudsman that relate to the matter under investigation.

147. *Legal Ombudsman to monitor RPA and Board investigations*

- (1) The Legal Ombudsman must monitor investigations by RPAs and the Board under section 146.
- (2) An RPA or the Board must report to the Legal Ombudsman on request on the progress of an investigation it is conducting.

148. *Legal Ombudsman may give directions to RPA and Board*

- (1) The Legal Ombudsman may give written directions to an RPA or the Board on the handling of an investigation under section 146.
- (2) If an RPA does not comply with the directions, the Legal Ombudsman must—
 - (a) report the non-compliance to the Board; and
 - (b) take over the investigation.
- (3) If the Board does not comply with the directions, the Legal Ombudsman must take over the investigation.

149. *Practitioner or firm must provide information and documents*

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- (1) The Legal Ombudsman, an RPA or the Board may require a legal practitioner or firm subject to an investigation under this Division to provide—
 - (a) a full written explanation of the practitioner's or firm's conduct; and
 - (b) any other information or documents—and to verify the explanation, information or documents by statutory declaration or another manner specified by the Legal Ombudsman, RPA or Board.
 - (2) For the purpose of an investigation under this Division, the Legal Ombudsman, an RPA or the Board may require a legal practitioner or firm that is not under investigation to provide any information or documents and to verify the information or documents by statutory declaration or another manner specified by the Legal Ombudsman, RPA or Board.
 - (3) A requirement under sub-section (1) or (2) must be in writing and must allow the practitioner or firm at least 14 days to comply.
 - (4) A practitioner or firm may not refuse to comply with sub-section (1) or (2)—
 - (a) on the ground of legal professional privilege or any other duty of confidence; or
 - (b) on the ground that the production of the record or giving of the information may tend to incriminate the practitioner or firm.
 - (5) If a practitioner or firm, before producing a document or giving an explanation or information, objects to the Legal Ombudsman, the RPA or the Board on the ground that the production of the document or giving of the explanation or information may tend to incriminate the practitioner or firm, the document, explanation or
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information is inadmissible in evidence in any proceeding against them for an offence, other than—

- (a) an offence against this Act; or
- (b) any other offence in relation to the keeping of trust accounts or the receipt of trust money; or
- (c) an offence against section 314(1) of the **Crimes Act 1958** (perjury).

150. *Investigation to be conducted expeditiously*

- (1) An investigation under this Division must be conducted as expeditiously as possible.
- (2) Until an investigation arising from a complaint is completed and a decision is made under section 151, the body conducting the investigation must report its progress to the complainant and, if that body is an RPA or the Board, to the Legal Ombudsman at 6-monthly intervals.

151. *What happens after an investigation is completed?*

- (1) After completing an investigation under this Division, the Legal Ombudsman, an RPA or the Board must deal with the matter in accordance with this section.
 - (2) The Legal Ombudsman, an RPA or the Board must bring a charge in the Tribunal against the legal practitioner or firm the subject of the investigation if satisfied that there is a reasonable likelihood that the Tribunal would find the practitioner or firm guilty of misconduct.
 - (3) If the Legal Ombudsman, an RPA or the Board is satisfied that there is a reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of unsatisfactory conduct, the Legal Ombudsman, RPA or Board may—
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- (a) bring a charge in the Tribunal against the practitioner or firm; or
 - (b) with the consent of the practitioner or firm, reprimand or caution the practitioner or firm; or
 - (c) take no further action against the practitioner or firm if satisfied that—
 - (i) the practitioner or firm is generally competent and diligent; and
 - (ii) there has been no substantiated complaint (other than the complaint that led to the investigation) about the conduct of the practitioner or firm within the last 5 years.
- (4) If the investigation arose from a complaint under which the complainant requested a compensation order, the Legal Ombudsman, an RPA or the Board may require the legal practitioner or firm to pay compensation to the complainant as a condition of deciding under sub-section (3) not to bring a charge against the practitioner or firm.
- (5) If the Legal Ombudsman, an RPA or the Board is satisfied that there is no reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of misconduct or unsatisfactory conduct, the Legal Ombudsman, RPA or Board must take no further action against the legal practitioner or firm.

152. Notice of decision

- (1) If an investigation arose from a complaint—
 - (a) in the case of a Legal Ombudsman investigation, the Legal Ombudsman—
 - (i) must give the complainant and the RPA of which the legal practitioner or firm

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- investigated is a regulated practitioner (or the Board, if the practitioner or firm is a regulated practitioner of the Board) written notice of his or her decision under section 151 as soon as practicable after making it, including the reasons for the decision; and
- (ii) if the decision is to take no further action against the practitioner or firm, must dismiss the complaint;
- (b) in the case of an RPA or a Board investigation, the RPA or Board—
- (i) must give the complainant and the Legal Ombudsman written notice of its decision under section 151 as soon as practicable after making it, including the reasons for the decision; and
 - (ii) if the decision is to take no further action against the practitioner or firm, must dismiss the complaint.
- (2) A notice under sub-section (1)(b) to a complainant must include a statement outlining the procedure under Division 4 for a review of the decision.
- (3) If an investigation did not arise from a complaint—
- (a) in the case of a Legal Ombudsman investigation, the Legal Ombudsman must give the RPA of which the legal practitioner or firm investigated is a regulated practitioner (or the Board, if the practitioner or firm is a regulated practitioner of the Board or the investigation was requested by the Board under section 145(1)(d)) written notice of his or her decision under section 151 as soon as practicable after making it;
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- (b) in the case of an RPA or a Board investigation, the RPA or Board must give the Legal Ombudsman written notice of its decision under section 151 as soon as practicable after making it.

Division 4—Review of RPA or Board decisions

153. *Application for review*

- (1) A complainant may apply to the Legal Ombudsman for a review of a decision of an RPA or the Board under section 151 to dismiss a complaint or to reprimand or caution the legal practitioner or firm the subject of the complaint.
- (2) An application for a review must be in writing in the form (if any) approved by the Legal Ombudsman and must be made within 3 months after the RPA or the Board notifies the complainant of the decision.

154. *Review of decision*

- (1) The Legal Ombudsman must review the decision of an RPA or the Board in response to an application for review under section 153.
- (2) The Legal Ombudsman may review a decision of an RPA or the Board under section 151 to take no action against a practitioner or firm or to reprimand or caution a practitioner or firm on the Legal Ombudsman's own initiative.

155. *Role of RPA and Board in review*

- (1) The Legal Ombudsman must consult the body that made the decision under review as part of the review.
- (2) An RPA or the Board must provide any reasonable assistance required by the Legal Ombudsman in the conduct of a review, including access to, or copies of, any documents held by the RPA or the Board that relate to the matter under review.

156. *What may the Legal Ombudsman decide?*

- (1) After completing a review, the Legal Ombudsman may—
 - (a) confirm the decision of the RPA or Board under review; or
 - (b) re-investigate the matter that was the subject of the decision or direct the RPA or Board to do so.
- (2) The Legal Ombudsman must notify the body that made the decision under review and, if the decision was in response to a complaint, the complainant of his or her decision on the review.
- (3) If the Legal Ombudsman decides to re-investigate the matter, the provisions of Division 3 apply as if the Legal Ombudsman had taken over the investigation of the matter.

Division 5—Disciplinary jurisdiction of Tribunal**157. *When may the Tribunal hear a disciplinary matter?***

- (1) The Tribunal must hear and determine a charge brought against a legal practitioner or firm by the Legal Ombudsman, an RPA or the Board in accordance with this Act and the Tribunal rules.
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- (2) The Tribunal also has the disciplinary jurisdiction given under Division 4 of Part 2.

158. *Constitution of Tribunal to hear charge*

- (1) Subject to this section, a charge against a legal practitioner or firm is to be heard by the Tribunal constituted by the registrar or the deputy registrar.
- (2) A practitioner or firm may require a charge of misconduct against them to be heard by the Full Tribunal.
- (3) A body bringing a charge of misconduct may make a written request to the Tribunal, with a copy to the practitioner or firm charged, that the charge be heard by the Full Tribunal.
- (4) If a request is made under sub-section (3), the chairperson or a deputy chairperson of the Tribunal, having taken into account any objection made by the practitioner or firm, may direct that the charge be heard by the Full Tribunal.
- (5) The registrar, on his or her own initiative, may at any time refer a charge of misconduct to be heard by the Full Tribunal.

159. *Penalties for unsatisfactory conduct*

- (1) If the Tribunal finds a legal practitioner or firm guilty of unsatisfactory conduct, it may make any one or more of the following orders—
- (a) an order referred to in section 133(1)(a) to (e) as if a reference in that section to the client were a reference to the complainant;
- (b) an order imposing a fine not exceeding \$1000;
- (c) an order reprimanding the practitioner or firm;

- (d) an order that the practitioner or firm receive specified management or accounting advice;
 - (e) an order that the practitioner or a partner of the firm or, if the practitioner is an incorporated practitioner, a director of the incorporated practitioner undertake a specified course of education;
 - (f) an order that the legal practice of the practitioner or firm be subject to supervision as specified in the order;
 - (g) an order that the practitioner or firm report on the legal practice of the practitioner or firm to a specified person at specified intervals;
 - (h) an order that the practitioner or firm not employ, engage or recommend a specified person or class of persons;
 - (i) an order varying the conditions of the practitioner's practising certificate or imposing further conditions or restrictions on the certificate;
 - (j) any other order the Tribunal thinks fit.
- (2) If the Tribunal finds a legal practitioner or firm guilty of unsatisfactory conduct, it may order that no further action be taken against the practitioner or firm.

160. Penalties for misconduct

- (1) If the Tribunal finds a legal practitioner or firm guilty of misconduct, it may do any one or more of the following—
- (a) make an order referred to in section 159;
 - (b) in the case of the Tribunal constituted by the registrar or deputy registrar, make an order
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- imposing a fine not exceeding \$5000 on the practitioner or firm;
- (c) in the case of the Full Tribunal—
- (i) make an order imposing a fine not exceeding \$50 000 on the practitioner or firm;
 - (ii) make an order suspending the practitioner's practising certificate or, in the case of a registered interstate practitioner, suspending the practitioner's registration, for a period specified in the order;
 - (iii) make an order cancelling the practitioner's practising certificate;
 - (iv) make a recommendation to the Supreme Court that the practitioner's name be struck off the roll of practitioners;
 - (v) in the case of an incorporated practitioner or a registered interstate practitioner, make an order that the practitioner be de-registered;
- (d) make any other order the Tribunal thinks fit.
- (2) If the Tribunal makes an order cancelling a practising certificate—
- (a) it may specify a period during which the practitioner may not apply for a practising certificate or for a practising certificate with particular conditions; and
 - (b) it must refer the practitioner to the Supreme Court for the Court to determine whether the practitioner's name should be struck off the roll of practitioners.
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- (3) The Supreme Court must implement a recommendation of the Tribunal under sub-section (1)(c)(iv) unless satisfied that the Tribunal made an error of law in finding the practitioner guilty of misconduct.
- (4) An order under sub-section (1)(c)(v) may specify a period during which the practitioner may not apply to be registered again.

161. *Practitioner or firm may be found guilty of lesser offence*

A legal practitioner or firm charged only with misconduct may be found guilty instead of unsatisfactory conduct.

162. *Orders for costs*

- (1) The Tribunal may order the payment of the costs of and incidental to any hearing under this Division.
- (2) Subject to this section, the costs are in the discretion of the Tribunal.
- (3) The Tribunal must not make an order for costs against an RPA, the Board or the Legal Ombudsman unless satisfied that special circumstances make it appropriate to do so.
- (4) The Full Tribunal may fix the amount of costs itself or order that bills of costs be assessed or settled by the registrar or deputy registrar.

163. *Compensation orders*

- (1) A compensation order may not be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation under an order made by a court or tribunal or a payment from the Fidelity Fund.
 - (2) A compensation order does not affect the right of a complainant to recover damages for pecuniary
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loss, but a court in making an award of damages must take the compensation order into account.

164. *Enforcement of orders*

- (1) The registrar must cause a copy of an order made by the Tribunal under this Division certified by the registrar—
 - (a) to be given to each party; and
 - (b) to be filed in the Magistrates' Court.
- (2) On filing, the order must be taken, for the purpose of enforcement, to be an order of the Magistrates' Court in accordance with its terms.
- (3) No charge or fee is payable for filing an order under this section.

165. *Suspension of order pending appeal*

- (1) On the application of a party intending to appeal against an order of the Tribunal constituted by the registrar or deputy registrar under this Division, the chairperson or a deputy chairperson of the Tribunal may order that the operation of that order be suspended pending the determination of the appeal, or for a period specified in the order.
- (2) An order under sub-section (1) may be unconditional or subject to any conditions the person making it thinks fit.

166. *Publication of orders*

- (1) Subject to any order made under section 413, the details in sub-section (2) in relation to a legal practitioner or firm found guilty of misconduct or unsatisfactory conduct by the Tribunal must be published in the next annual report of the Tribunal, the next annual report of the Board and, if the practitioner or firm is a regulated practitioner of an RPA, the next available official publication of the RPA, after the later of—

- (a) the expiry of the period during which a party may appeal against the order; and
 - (b) the determination of any appeal against the order.
- (2) The details to be published are—
- (a) the name of the practitioner or firm;
 - (b) whether the practitioner or firm was found guilty of misconduct or unsatisfactory conduct and the nature of the offence;
 - (c) the order made by the Tribunal;
 - (d) the result of the appeal (if any).

Division 6—Appeals

167. *Appeal to Full Tribunal*

Any party may appeal to the Full Tribunal from an order of the Tribunal constituted by the registrar or deputy registrar under Division 1 or Division 5 by lodging a written notice of appeal with the registrar within 21 days after receiving a copy of the order.

168. *Security for costs of appeal*

The Full Tribunal, in special circumstances, may require an appellant to give security for the costs of an appeal before proceeding to hear the appeal.

169. *Power of Full Tribunal on appeal*

- (1) Subject to this section—
 - (a) the Full Tribunal is to hear an appeal by way of a rehearing;
 - (b) in the case of a dispute, the Full Tribunal may make any order that the Tribunal could have made under Division 1 at first instance;
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- (c) in the case of a charge, the Full Tribunal may make any order that the Full Tribunal could have made under Division 5 if it had heard the charge at first instance.
 - (2) The Full Tribunal may dismiss an appeal without a rehearing if it is satisfied that the appeal is frivolous, vexatious, misconceived or lacking in substance.
 - (3) In a rehearing, the Full Tribunal may—
 - (a) have regard to the record of the hearing before the Tribunal at first instance, including the record of any evidence taken in that hearing;
 - (b) receive fresh evidence itself.
 - (4) For the avoidance of doubt, it is declared that an appeal to the Full Tribunal is not required to be conducted as a hearing de novo.

170. *Appeal to Court of Appeal*

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under Division 1 or 5 or this Division.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal¹² runs from the time when the party receives the written reasons.

Division 7—General

171. *Application of Part*

This Part applies to any legal practitioner or firm, including—

- (a) a legal practitioner who is not a current practitioner;
- (b) an incorporated practitioner;
- (c) a registered interstate practitioner;
- (d) a person who was a legal practitioner engaged in legal practice when the subject-matter of the dispute or the alleged misconduct or unsatisfactory conduct occurred but who is no longer engaged in legal practice or is no longer a legal practitioner (in which case this Part applies as if the person were still a legal practitioner).

172. *Power of Supreme Court to discipline practitioners*

Nothing in this Part affects or takes away from the inherent power of the Supreme Court to discipline legal practitioners.

PART 6—CLIENTS' MONEY

Division 1—How practitioners and firms must handle trust money

173. *Establishment of trust account*

- (1) An approved clerk or a legal practitioner or firm that is authorised to receive trust money must establish a trust account in a bank or an authorised society in Victoria before receiving any trust money.
- (2) If an arrangement under section 176 is in effect, the trust account must be established and maintained in an authorised bank or authorised society.
- (3) A trust account may consist of one or more separate bank or society accounts.
- (4) In this section, "**authorised bank**" means a bank that has an arrangement with the Board under section 176.

174. *Dealing with trust money*

- (1) Subject to sub-section (2) an approved clerk or a legal practitioner or firm that is authorised to receive trust money must deposit any trust money received by them into their trust account as soon as practicable after receipt.
- (2) Sub-section (1) does not apply—
 - (a) in the case of a legal practitioner or firm, if—
 - (i) the person for whom, or on whose behalf, the money is received gives the practitioner or firm a written direction, before or at the same time as the practitioner or firm receives the money,

- to pay the money to another person, or in accordance with the direction of another person; and
- (ii) the practitioner or firm complies with that direction;
- (b) in the case of an approved clerk, if—
- (i) the client to whom the legal services are to be provided gives the clerk a written direction, before or at the same time as the clerk receives the money, to pay the money to another person, or in accordance with the direction of another person; and
- (ii) the clerk complies with that direction.
- (3) A legal practitioner or firm may withdraw trust money from the trust account only—
- (a) for payment to the person for or on behalf of whom the money was received or in accordance with that person's direction; or
- (b) in accordance with this Act and the practice rules, to satisfy a claim that the practitioner or firm has against that person for legal costs; or
- (c) in accordance with a court order against that person; or
- (d) if the money is subject to a specific declaration of trust, for making a payment in accordance with the terms of that declaration; or
- (e) for payment in accordance with Part II of the **Unclaimed Moneys Act 1962**; or
- (f) for depositing with the Board under Division 2 for payment to the Public Purpose Fund; or
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- (g) as otherwise authorised by law.
- (4) An approved clerk may withdraw trust money from the trust account only—
- (a) in accordance with this Act and the practice rules, to satisfy a claim that a sole practitioner has against a client for legal costs in respect of which the trust money was received; or
 - (b) in accordance with a court order against such a client; or
 - (c) for payment in accordance with Part II of the **Unclaimed Moneys Act 1962**; or
 - (d) for depositing with the Board under Division 2 for payment to the Public Purpose Fund; or
 - (e) as otherwise authorised by law.
- (5) A legal practitioner or firm that contravenes sub-section (1) or (3), or an approved clerk who contravenes sub-section (1) or (4)—
- (a) with intent to defraud any person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years;
 - (b) in any other case, without reasonable excuse, is guilty of an offence and liable to a fine not exceeding 100 penalty units.

175. *Protection for banks and authorised societies*

- (1) Subject to sub-section (2), a bank or an authorised society—
- (a) is not to be taken to be affected with notice of any specific trust to which money deposited in a trust account is subject; and
 - (b) is not bound to satisfy itself of the due application of that money.
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- (2) This section does not relieve a bank or an authorised society of any liability for negligence.

176. *Board may make arrangement with banks and societies*

- (1) The Board may make an arrangement with a bank or society for the keeping of trust accounts.
- (2) An arrangement may provide for any one or more of the following—
- (a) the payment of interest to the Board on the whole or any part of deposits in the trust accounts;
 - (b) the manner in which the Board is informed of amounts held in the trust accounts;
 - (c) the auditing of balances in the trust accounts;
 - (d) any other relevant matter.
- (3) Interest received by the Board under an arrangement must be paid to the Public Purpose Fund.
- (4) A legal practitioner, a firm or an approved clerk must comply with an arrangement under this section.

177. *Approved clerks*

- (1) An RPA may approve a natural person to receive trust money on account of the legal costs of its regulated practitioners who are sole practitioners in advance of the provision of the legal services to which those costs relate.
- (2) An approval must be in writing and notified to the Board as soon as practicable after it is given.
- (3) An approved clerk must comply with the practice rules that apply to him or her.

Penalty: 50 penalty units.

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- (4) An approved clerk must pay by the due date a contribution required to be paid under section 202(3) or a levy required to be paid under section 204.

Penalty: 100 penalty units.

178. *Unqualified trust money receipt*

- (1) A legal practitioner (being a natural person) who does not hold a practising certificate authorising the receipt of trust money must not receive trust money.

Penalty: Imprisonment for 2 years.

- (2) A firm, an incorporated practitioner or a sole practitioner must not permit an employee of the firm or practitioner who does not hold a practising certificate authorising the receipt of trust money to receive trust money.

Penalty: 240 penalty units.

- (3) Sub-sections (1) and (2) do not apply in the case of—

- (a) a receipt of trust money by a legal practitioner if the practitioner as soon as practicable after receipt—

(i) pays the money into a trust account; or

(ii) gives the money to a legal practitioner who holds a practising certificate authorising the receipt of trust money or to an approved clerk and that legal practitioner or clerk accepts the money;

- (b) a receipt of trust money by a registered interstate practitioner who—

(i) is authorised to receive trust money in the practitioner's home jurisdiction; and

- (ii) has paid the annual contribution to the Fidelity Fund required to be paid by the practitioner under section 202(2) (if any).
- (4) Sub-section (2) does not apply in the case of a receipt of trust money by an employee (other than a legal practitioner) if the employee as soon as practicable after receipt—
 - (a) pays the money into a trust account; or
 - (b) gives the money to a legal practitioner who holds a practising certificate authorising the receipt of trust money and that legal practitioner accepts the money.
- (5) A firm must not receive trust money unless each partner of the firm whose principal place of legal practice is in Victoria holds a practising certificate authorising the receipt of trust money.
Penalty: 240 penalty units.
- (6) An incorporated practitioner must not receive trust money unless—
 - (a) the practitioner and each legal practitioner who is a director of the practitioner hold a practising certificate authorising the receipt of trust money; or
 - (b) the practitioner is a registered interstate practitioner that—
 - (i) is authorised to receive trust money in the practitioner's home jurisdiction; and
 - (ii) has paid the annual contribution to the Fidelity Fund required to be paid by the practitioner under section 202(2) (if any).

Penalty: 240 penalty units.

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- (7) A person who has been an approved clerk must not receive trust money as an approved clerk after ceasing to be an approved clerk.

Penalty: Imprisonment for 2 years.

Division 2—Statutory deposit with Board

179. Initial deposit of trust money with the Board

- (1) A person or firm that is required to maintain a trust account must deposit the prescribed amount with the Board out of the trust money received by the person or firm.
- (2) The deposit must be made within 7 days after the end of the first audit year in which the prescribed amount exceeds \$3000.
- (3) The "**prescribed amount**" is an amount that is 72% of the lowest daily balance of the trust account at any time during the audit year.
- (4) The Board must pay money deposited with it under this section to the Public Purpose Fund.
- (5) Nothing in this section applies to a separate trust account kept by a person or firm on the instructions of another person for the exclusive use of the other person.

180. Continuing requirement to deposit

- (1) At all times after making a deposit under section 179, the person or firm must keep deposited with the Board an amount that is not less than 72% of the sum of—
- (a) the lowest daily balance of the trust account at any time during the current audit year or the preceding audit year; and
- (b) the amount held on deposit with the Board on the day of the lowest daily balance.

- (2) The Board must pay money deposited with it in compliance with this section to the Public Purpose Fund.
- (3) Nothing in this section applies to a separate trust account kept by a person or firm on the instructions of another person for the exclusive use of the other person.

181. Repayment by Board

- (1) Money deposited with the Board under section 179 or in compliance with section 180—
 - (a) is held on trust for the person or firm that deposited the money; and
 - (b) is repayable on demand.
- (2) Money repaid under this section is to be deposited in the recipient's trust account.

Division 3—Record keeping, auditing and reporting**182. What records must be kept?**

- (1) An approved clerk or a legal practitioner or firm that is authorised to receive trust money must keep accurate records in accordance with subsection (2) of all trust money received by them.

Penalty: 100 penalty units.

- (2) The records must—
 - (a) in the case of a legal practitioner or firm, disclose the person who paid or gave the money to the practitioner or firm and the person for or on whose behalf the money was received; and
 - (b) in the case of a clerk, disclose the legal practitioner on account of whose legal costs the money was received and the client to whom the legal services are to be provided;
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- (c) show details of each transaction involving trust money, including the date on which, or period during which, the transaction took place; and
 - (d) adequately explain each transaction involving trust money; and
 - (e) be kept—
 - (i) in accordance with the practice rules that apply to the practitioner, firm or clerk; and
 - (ii) in a manner that enables them to be conveniently and properly audited.

183. *Annual audit of trust account*

- (1) A legal practitioner, a firm or an approved clerk must have the records kept under section 182 audited by an approved auditor in respect of each audit year.
- (2) For the purposes of an audit under this section—
 - (a) a practitioner, a firm or an approved clerk must—
 - (i) produce for inspection by the auditor any accounting or other records relating to the practitioner's or firm's legal practice or the clerk's business; and
 - (ii) give the auditor any other information he or she reasonably requires.
 - (b) a financial institution, despite any duty of confidence to the contrary, must without charge—
 - (i) produce for inspection by the auditor any records held by it relating to the trust account of, or trust money

deposited with it by, a practitioner, a firm or an approved clerk; and

- (ii) provide the auditor with full details of any transactions relating to the trust account or trust money.

Penalty: 50 penalty units.

- (3) An auditor may make copies of, or take extracts from, any records or other documents produced to the auditor in the course of an audit.
- (4) An auditor must not knowingly employ or engage a person to assist them in the conduct of an audit unless the person has satisfactorily completed a course required by the Board under section 187.

Penalty: 20 penalty units.

184. *Annual report of trust account audit or statutory declaration*

- (1) A legal practitioner or firm that is authorised to receive trust money must lodge with the RPA of which they are regulated practitioners (or with the Board if they are regulated practitioners of the Board) by 31 July each year, a report of the audit of their trust account for the audit year ending on the previous 31 March.

Penalty: 100 penalty units.

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- (2) An approved clerk must lodge with the RPA that approved them, by 31 July each year, a report of the audit of their trust account for the audit year ending on the previous 31 March.

Penalty: 100 penalty units.

- (3) If an approved clerk or a legal practitioner or firm that is authorised to receive trust money does not hold any trust money in an audit year, they must lodge with the relevant RPA or the Board a statutory declaration to that effect in the prescribed form by 30 April following that audit year.

185. *Final audit of trust account*

- (1) A person or firm that ceases to be authorised to receive trust money must have the records kept by them under section 182 audited by an approved auditor—
- (a) in respect of the period from the end of the preceding audit year until the date of ceasing to be so authorised; and
 - (b) in respect of each completed period of 12 months thereafter during which they continued to hold trust money; and
 - (c) in respect of the period from the end of the last period referred to in paragraph (b) until the date on which they ceased to hold trust money.
- (2) Section 183(2), (3) and (4) applies to an audit under sub-section (1).
- (3) A person or firm must lodge with the RPA of which they were regulated practitioners (or with the Board, if they were regulated practitioners of the Board) at the time of ceasing to be authorised to receive trust money or, in the case of a person

who was an approved clerk, with the RPA that approved them—

- (a) a report of each audit under sub-section (1) within 60 days after the end of the period to which the audit relates; and
- (b) a statutory declaration in the prescribed form within 60 days after ceasing to hold trust money.

Penalty: 100 penalty units.

- (4) If a legal practitioner or clerk dies, their personal representative must comply with this section as if the personal representative were the practitioner or clerk.

186. *Board's supervisory role in audits*

- (1) The Board may issue directions and guidelines in relation to the conduct of audits under this Division.
 - (2) An auditor must comply with directions issued by the Board under sub-section (1).
 - (3) If the Board is satisfied that an auditor has failed to comply with a direction issued under sub-section (1), it may direct that they no longer audit the trust accounts of a legal practitioner, a firm or an approved clerk.
 - (4) The Board must give an auditor a reasonable opportunity to make written or oral submissions or both before giving a direction under sub-section (3) in relation to them.
 - (5) A direction under sub-section (3) must be published in the Government Gazette and in the next available official publication of each RPA that has approved clerks or regulated practitioners who are authorised to receive trust money, and
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takes effect on the day it is published in the Government Gazette.

- (6) As soon as practicable after making a direction under sub-section (3), the Board must give a copy of it to the Legal Ombudsman and each RPA that has approved clerks or regulated practitioners who are authorised to receive trust money.

187. *Courses of education for auditors*

- (1) The Board, by notice published in the Government Gazette, may prescribe courses of education required to be completed by a person wishing—
- (a) to audit trust accounts; or
 - (b) to be employed or engaged to assist in the audit of trust accounts.
- (2) The Board must give a copy of a notice under sub-section (1) to the Legal Ombudsman, each RPA, the Australian Society of Certified Practising Accountants, the National Institute of Accountants and the Institute of Chartered Accountants Australia as soon as practicable after it is published.

Division 4—Deficiencies in trust accounts

188. *Trust account must not be in deficit*

- (1) A legal practitioner, a firm or an approved clerk must not, without reasonable excuse—
- (a) have a deficiency in their trust account; or
 - (b) fail to account for any trust money or security received from a client.

Penalty: Imprisonment for 10 years.

- (2) An offence against sub-section (1) is an indictable offence.

189. Practitioner must inform Board of suspected deficiencies

- (1) A legal practitioner who believes on reasonable grounds that there is a deficiency in the trust account of another legal practitioner or a firm must report it to the Board as soon as practicable after forming the belief.
- (2) A practitioner may not refuse to comply with sub-section (1)—
 - (a) on the ground of legal professional privilege or any other duty of confidence; or
 - (b) on the ground that making the report may tend to incriminate the practitioner.
- (3) A practitioner is not personally liable to any action for any loss or damage suffered by another person as a result of the practitioner making a report in accordance with sub-section (1).

190. Approved clerks must inform Board of suspected deficiencies

- (1) An approved clerk who believes on reasonable grounds that there is a deficiency in the trust account of another approved clerk must report it to the Board as soon as practicable after forming the belief.
 - (2) A clerk may not refuse to comply with sub-section (1)—
 - (a) on the ground of any duty of confidence; or
 - (b) on the ground that making the report may tend to incriminate the clerk.
 - (3) A clerk is not personally liable to any action for any loss or damage suffered by another person as a result of the clerk making a report in accordance with sub-section (1).
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191. Banks and societies must report deficiencies in trust accounts

- (1) Despite any duty of confidence to the contrary, a bank or an authorised society must report a suspected offence in relation to a trust account established in that bank or society to the Board as soon as practicable after forming the suspicion.

Penalty: 50 penalty units.

- (2) A bank, an authorised society or an officer or employee of a bank or an authorised society is not personally liable to any action for any loss or damage suffered by another person as a result of making a report in accordance with sub-section (1).

Division 5—Investigations

192. RPA or Board may appoint inspector to investigate

- (1) An RPA may appoint a person—
- (a) who is an approved auditor; or
 - (b) who—
 - (i) in the opinion of the RPA is an appropriate person to conduct an investigation under this Division; and
 - (ii) meets the requirements of the rules (if any) made by the Board under section 199—

to investigate the trust account of, and the records relating to trust money received by, any of its regulated practitioners or approved clerks.

- (2) The Board may appoint a person—
- (a) who is an approved auditor; or
 - (b) who—

- (i) in the opinion of the Board is an appropriate person to conduct an investigation under this Division; and
- (ii) meets the requirements of the rules (if any) made by the Board under section 199—

to investigate the trust account of, and the records relating to trust money received by, any legal practitioner or firm (whether or not they are regulated practitioners of the Board) or any approved clerk.

- (3) An investigation under this section may be initiated in response to a complaint under Part 5 or on the initiative of an RPA or the Board.

193. *Legal Ombudsman may appoint auditor to investigate*

- (1) The Legal Ombudsman may appoint a person—
 - (a) who is an approved auditor; or
 - (b) who—
 - (i) in the opinion of the Legal Ombudsman is an appropriate person to conduct an investigation under this Division; and
 - (ii) meets the requirements of the rules (if any) made by the Board under section 199—

to investigate the trust account of, and the records relating to trust money received by, any legal practitioner, firm or approved clerk.

- (2) An investigation under this section may be initiated in response to a complaint under Part 5 or on the Legal Ombudsman's own initiative.

194. Assistance with investigation

- (1) For the purposes of an investigation under this Division, a legal practitioner, a firm or an approved clerk must—
- (a) produce for inspection or copying by the inspector any accounting or other records relating to the legal practice of the practitioner or firm or the business of the approved clerk; and
 - (b) give the inspector any other information he or she reasonably requires.

Penalty: 50 penalty units.

- (2) A practitioner, a firm or an approved clerk may not refuse to comply with sub-section (1)—
- (a) on the ground of legal professional privilege or any other duty of confidence; or
 - (b) on the ground that the production of the record or giving of the information may tend to incriminate them.
- (3) If a practitioner, a firm or an approved clerk, before producing a record or giving information, objects to the inspector on the ground that the production of the record or giving of the information may tend to incriminate them, the record or information is inadmissible in evidence in any proceeding against them for an offence, other than—
- (a) an offence in relation to the keeping of trust accounts or the receipt of trust money; or
 - (b) an offence in relation to the giving of false or misleading information.
- (4) An inspector may retain for a reasonable period and may make copies of, or take extracts from,

any documents produced or given to the inspector in the course of an investigation under this Division.

- (5) A financial institution, despite any duty of confidence to the contrary, must without charge—
- (a) produce for inspection or copying by the inspector any records held by it relating to the trust account of, or trust money deposited with it by, a practitioner, a firm or an approved clerk; and
 - (b) provide the inspector with full details of any transactions relating to the trust account or trust money.

Penalty: 50 penalty units.

- (6) A person must not hinder or obstruct an inspector who is carrying out an investigation under this Division.

Penalty: 50 penalty units.

195. *Power of entry with warrant*

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to any premises, or part of any premises, if the inspector—
- (a) reasonably suspects that a defalcation, or an offence under this Part, has been committed in relation to any trust money; and
 - (b) believes on reasonable grounds that there may be on those premises, or that part, any article, document or thing that may afford evidence as to the commission of that defalcation or offence.
- (2) If the magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for
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doing so, the magistrate may issue a search warrant.

- (3) A search warrant issued under this section must be directed to the applicant for it and must authorise them, and any assistants they reasonably require, to enter the premises, or the part of the premises, named or described in the warrant to search for any article, document or thing of a kind named or described in the warrant that there is reasonable ground to believe will afford evidence as to a defalcation or the commission of an offence under this Part.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) any conditions to which the warrant is subject; and
 - (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

196. *Inspector must report on investigation*

As soon as practicable after completing an investigation under this Division, an inspector must give a written report on the result of the investigation to the body that appointed the inspector.

197. Cost of investigation

If an investigation reveals that a legal practitioner, a firm or an approved clerk has contravened any provision of this Act or the practice rules in relation to the keeping of trust accounts or the receipt of trust money, the RPA, Board or Legal Ombudsman that initiated the investigation may recover the cost of the investigation from the practitioner, firm or clerk as a debt.

198. Secrecy

- (1) An inspector must not disclose information acquired in the course of an investigation under this Division except—
 - (a) as is necessary for the purpose of conducting the investigation and making the report of the investigation; or
 - (b) as is permitted by sub-section (2); or
 - (c) with the consent of the person to whom the information relates.

Penalty: 100 penalty units.

- (2) An inspector may disclose information acquired in the course of an investigation—
 - (a) to a member of the police force, if the inspector reasonably suspects that an offence has been committed;
 - (b) to the RPA, Board or Legal Ombudsman that appointed the inspector, in connection with any proceedings arising out of the investigation or concerning the practitioner, firm or approved clerk the subject of the investigation;
 - (c) to a receiver of the property, or a manager of the legal practice, of the practitioner or firm the subject of the investigation;
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- (d) to the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia, if the information relates to the conduct of a member of that body who audited the trust account the subject of the investigation;
 - (e) to a court or tribunal.
- (3) In addition to any penalty and any civil liability to the legal practitioner, firm or approved clerk, an inspector who contravenes sub-section (1) is liable—
- (a) to a client of the legal practitioner or firm to the same extent (if any) that the legal practitioner or firm would have been liable had they disclosed the information;
 - (b) to a legal practitioner who has employed or engaged the clerk, or to a client of that practitioner, to the same extent (if any) that the clerk would have been liable to the practitioner, or the practitioner would have been liable to the client, had they disclosed the information.

199. *Rules for qualification of inspectors*

- (1) The Board may make rules for the qualifications necessary for a person to be appointed as an inspector for the purposes of this Division.
 - (2) The Board must give a copy of rules made under this section, and a copy of any amendment or revocation of them, to the Legal Ombudsman and each RPA as soon as practicable after making, amending or revoking them.
 - (3) Rules under this section are not statutory rules for the purposes of the **Subordinate Legislation Act 1994**.
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Legal Practice Act 1996
Act No. 35/1996

PART 7—DEFALCATIONS

Division 1—Contributions and Levies

200. *Determination of classes of practitioners*

- (1) For the purposes of this Division the Board may from time to time determine different classes of holders of practising certificates or of registered interstate practitioners according to any or all of the following factors—
- (a) the type of practising certificate held by members of the class;
 - (b) the date on which applications for a practising certificate or for registration as a registered interstate practitioner are made by members of the class;
 - (c) the number and type of practising certificates (if any) previously held by members of the class;
 - (d) whether members of the class received at any time in a specified period money from a client to be lent on the security of a nominee mortgage;
 - (e) whether members of the class were at any time in a specified period—
 - (i) a partner of a firm or director of an incorporated practitioner that was authorised to receive trust money; or
 - (ii) an employee of a legal practitioner or firm that was authorised to receive trust money; or
 - (f) the amount of trust money received in a specified period by—
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- (i) a member of the class; or
 - (ii) a legal practitioner or firm of which a member of the class was an employee, a partner or a director;
 - (g) whether the principal place of practice of members of the class is in or outside Victoria;
 - (h) the conditions, limitations or restrictions to which members of the class are subject in their home jurisdiction in respect of their legal practice.
- (2) For the purposes of this Division the Board may from time to time determine different classes of approved clerks according to the amount of trust money received in a specified period by a member of the class.

201. *Determination of contributions*

- (1) The Board, on or before the prescribed date in each year, must determine the amount of the contribution to the Fidelity Fund (not exceeding \$1500 per member or, in the case of a member employed by a community legal centre, not exceeding \$100 per member) payable in respect of the immediately following calendar year by members of each class determined under section 200.
 - (2) The prescribed date is 30 September or such later date up to 30 November as the Attorney-General may fix by notice published in the Government Gazette before 30 September.
 - (3) In determining the amount of the contributions payable the Board must have regard to—
 - (a) the advice of an actuary engaged by the Board to advise it on the appropriate provision to be made for all ascertained or
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- contingent liabilities of the Fidelity Fund, including any contingent liability in respect of defalcations that have occurred but have not yet been reported to the Board;
- (b) the solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 388(6).
- (4) As soon as practicable after making a determination under sub-section (1), the Board must—
- (a) cause notice of the determination to be published in the Government Gazette; and
- (b) give written notice of the determination to every RPA that has regulated practitioners or approved clerks who are affected by the determination.
- (5) An RPA to which notice is given under sub-section (4)(b) must cause notice of the determination to be published in the next available official publication of the RPA.
- (6) For the purpose of enabling it to make a determination under sub-section (1), the Board may, in writing, require an RPA to give it any information that the Board considers necessary.

202. *Payment of contributions*

- (1) An applicant for a practising certificate, or for a variation of a condition of a practising certificate, the holding or variation of which, or an applicant for registration as a registered interstate practitioner the granting of which, would make them a member of a class determined by the Board under section 200(1) must pay in respect of the certificate, variation or registration the contribution determined by the Board under

section 201(1) as the contribution payable by members of that class.

- (2) A registered interstate practitioner who is a member of a class determined by the Board under section 200(1) must, in respect of each calendar year during the currency of the registration commencing at midnight on 31 December in the first year after the year in which application was made for registration, pay to the Board for payment into the Fidelity Fund the contribution determined by the Board under section 201(1) as the contribution payable in respect of that calendar year by members of that class.
 - (3) An approved clerk who is a member of a class determined by the Board under section 200(2) must, in respect of each calendar year, pay to the Board for payment into the Fidelity Fund the contribution determined by the Board under section 201(1) as the contribution payable in respect of that calendar year by members of that class.
 - (4) A contribution referred to in sub-section (2) or (3) is payable at the time, and in the manner, fixed by the Board.
 - (5) If—
 - (a) a person is eligible to be a member of more than one class determined by the Board under section 200 depending on the amount of trust money received by them or by the legal practitioner or firm of which they are an employee, a partner or a director (as the case may be); and
 - (b) the amount of contribution payable by members of each of those classes is different; and
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- (c) the person wishes to claim membership of one of those classes other than the one whose members pay the highest contribution—

the person must give the Board a statutory declaration stating that the class of which membership is claimed is the appropriate class.

- (6) Despite anything to the contrary in this Division, if a person required by sub-section (5) to give the Board a statutory declaration does not do so before or at the time of paying the contribution, the contribution payable by that person is the contribution payable by members of the class referred to in sub-section (5)(c) who pay the highest contribution.

203. Levies

- (1) If the Board is at any time of the opinion that the amount standing to the credit of the Fidelity Fund is likely to be insufficient to meet the liabilities to which it is subject, the Board may determine the amount of a levy to be paid to the Fidelity Fund by members of the classes determined under section 200 who are legal practitioners or registered interstate practitioners authorised to receive trust money in Victoria or approved clerks.
- (2) The amount of the levy may differ for different classes and must not exceed \$1500 per member or, in the case of a member employed by a community legal centre, \$100 per member.
- (3) As soon as practicable after making a determination under sub-section (1), the Board must—
- (a) cause notice of the determination to be published in the Government Gazette; and

- (b) give written notice of the determination to every RPA that has regulated practitioners or approved clerks who are affected by the determination.
- (4) An RPA to which notice is given under sub-section (3)(b) must cause notice of the determination to be published in the next available official publication of the RPA.
- (5) For the purpose of enabling it to make a determination under sub-section (1), the Board may, in writing, require an RPA to give it any information that the Board considers necessary.

204. *Who must pay a levy?*

- (1) A legal practitioner or registered interstate practitioner authorised to receive trust money in Victoria, or an approved clerk, who is a member of a class determined by the Board under section 200 must contribute to the Fidelity Fund the levy determined by the Board under section 203(1) as the levy payable by a person who is a member of that class.
- (2) If—
 - (a) a person is eligible to be a member of more than one class determined by the Board under section 200 depending on the amount of trust money received by them; and
 - (b) the amount of levy payable by members of each of those classes is different; and
 - (c) the person wishes to claim membership of one of those classes other than the one whose members pay the highest levy—

the person must give to the Board a statutory declaration stating that the class of which membership is claimed is the appropriate class.

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- (3) Despite anything to the contrary in this Division, if a person required by sub-section (2) to give a statutory declaration to the Board does not do so before or at the time of paying the levy, the levy payable by that person is the levy payable by members of the class referred to in sub-section (2)(c) who pay the highest levy.
 - (4) A person must not be required to pay by way of levy more than \$1500 in the aggregate in any period of 12 months or more than \$7500 during the whole period of their engagement in legal practice or carrying on the business of an approved clerk (as the case may be).
 - (5) A levy payable by a practitioner or clerk under this section is in addition to any contribution paid or payable by them under this Division.

205. *When is a levy payable?*

- (1) A levy is payable at the time, and in the manner, fixed by the Board.
- (2) The Board may, in a special case, allow further time for the payment of a levy or of a part of a levy.

206. *Board may recover contribution or levy*

The amount of a contribution or levy that is not paid by a person in accordance with this Division is recoverable in the Magistrates' Court from that person by the Board as a debt.

207. *Employer must pay contribution or levy or reimburse employee*

- (1) The employer of a person who is required to pay a contribution or levy under this Division may pay the contribution or levy on behalf of the person.
 - (2) If the employer does not pay the contribution or levy on behalf of the person, the employer must,
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at the request of the person, reimburse the person the amount of the contribution or levy paid by the person within 21 days after the request.

Penalty: 100 penalty units.

- (3) If a person who is required to pay a contribution or levy under this Division has more than one employer for the purposes of sub-section (2), the employer to whom that sub-section applies is the employer who employs the person for the most number of hours in any week.
- (4) If—
- (a) membership of a class is determined under section 200 by reference to a specified period; and
 - (b) a member of that class has more than one employer during that period—

the employer of the member as at the end of that period is their employer for the purposes of this section.

Division 2—Claims

208. Entitlement to claim against the Fidelity Fund

- (1) The Fidelity Fund is held, and is to be applied, by the Board for the purpose of compensating persons who suffer pecuniary loss from a defalcation of, or in relation to, any money or other property to which this section applies committed—
- (a) by a current practitioner (being a natural person) or an employee of such a practitioner; or
 - (b) by a firm, a partner or an employee of a firm; or

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- (c) by an incorporated practitioner, a director or member, or an employee of an incorporated practitioner; or
 - (d) by an approved clerk or an employee of an approved clerk; or
 - (e) by a current practitioner with whom a practitioner referred to in paragraph (a) or (c), or a firm or any partner of a firm referred to in paragraph (b), shares income from any business.
- (2) This section applies to trust money or other property that was, in the course of or in connection with the practitioner's or firm's legal practice or the approved clerk's business, given or paid to, or received by, a person or body referred to in sub-section (1)(a), (b), (c), (d) or (e)—
- (a) for or on behalf of a person or body other than the current practitioner, the firm, a partner of the firm or the approved clerk; or
 - (b) for or on behalf of the current practitioner, the firm, a partner of the firm or the approved clerk, as sole or joint trustee of the money or other property.
- (3) A claim does not lie against the Fidelity Fund—
- (a) in respect of a defalcation arising out of anything done or omitted to be done by a current practitioner, a firm or a partner of a firm in connection with a nominee mortgage; or
 - (b) in respect of a defalcation arising out of the investment or re-investment of any money by a current practitioner, a firm or a partner of a firm that is not—
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- (i) merely incidental to the legal practice engaged in by the practitioner or the firm; or
- (ii) done in the course of or in connection with the administration of the estate of a deceased person or of a represented person or protected person within the meaning of the **Guardianship and Administration Board Act 1986**; or
- (c) in respect of a defalcation of or in relation to any trust money or other property of which a current practitioner, a firm, a partner of a firm or an approved clerk was sole or joint trustee but that before the commission of the defalcation had in the due course of the administration of the trust ceased to be under the sole control of the practitioner, firm, partner or clerk, as the case requires.

209. Making a claim

- (1) If the Board has reason to believe that claims may lie against the Fidelity Fund arising out of anything done or omitted to be done by a particular legal practitioner, firm or approved clerk, it may cause a notice in the prescribed form calling for claims to be published in a newspaper circulating generally in the area in which the legal practitioner or firm engaged in legal practice or the clerk carried on business and also in a daily newspaper circulating generally in Victoria.
 - (2) A notice under sub-section (1) must fix a date, not being earlier than 3 months after the date of publication of the notice, on or before which claims may be made.
 - (3) A claim against the Fidelity Fund is made by writing to the Board in the form approved by the Board—
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- (a) if a notice has been published under sub-section (1), on or before the date fixed by the notice;
 - (b) in any other case, within 6 months after the claimant has become aware of the defalcation.
- (4) A claim is made within the period fixed by sub-section (3) if it is made on or before the date fixed by a notice published under sub-section (1) even if the claimant became aware of the defalcation 6 months or more before making the claim.
 - (5) Unless the Board determines to accept it, a claim that is not made within the period fixed by sub-section (3) is barred.
 - (6) The Board is not liable for any loss suffered by a legal practitioner, a firm or an approved clerk because of the publication by the Board in good faith of a notice under sub-section (1).

210. *Investigation of claim*

- (1) The Board may refer a claim to the RPA that regulated the legal practitioner or firm at the time the matters referred to in the claim arose or, in the case of an approved clerk, to the RPA that approved them.
- (2) An RPA must investigate a claim referred to it under sub-section (1) and recommend to the Board, within the period specified by the Board in referring the claim to it, whether it should allow or disallow the claim.

211. Determination of claim

- (1) Subject to section 209, the Board may allow and settle a claim against the Fidelity Fund at any time after the commission of the defalcation in respect of which the claim arose.
 - (2) In determining a claim the Board must have regard to any recommendation made by an RPA under section 210(2).
 - (3) The Board must disallow a claim against the Fidelity Fund if the claim does not lie under section 208.
 - (4) The Board may disallow a claim against the Fidelity Fund if—
 - (a) without lawful excuse, the person making the claim used a false name for the purposes of or in connection with any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation; or
 - (b) any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation involved fraud on the part of the person making the claim; or
 - (c) any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation involved the unreceipted payment of more than \$10 000 in cash by the person making the claim to the legal practitioner, approved clerk or other person who committed the defalcation; or
 - (d) any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation involved the receipt of money or other property under a joint venture or other profit-sharing
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arrangement entered into by the person making the claim with the legal practitioner or other person who committed the defalcation.

- (5) The Board may at any time require the production and delivery of any security, document or statement of evidence necessary or available—
- (a) to support a claim made against the Fidelity Fund; or
 - (b) to enable the Board to exercise its rights against any legal practitioner, firm, approved clerk or other person concerned; or
 - (c) to enable a criminal proceeding to be commenced against a person who committed the defalcation—

and, in default of delivery of any such security, document or statement, may disallow a claim made against the Fidelity Fund.

- (6) The Board, if satisfied that the defalcation was actually committed, may allow a claim despite the fact that the legal practitioner or other person who committed the defalcation has not been charged with, or found guilty of, the defalcation or that the evidence on which the Board is acting would not be sufficient to establish the guilt of that person in a criminal proceeding for the defalcation.

212. *Assertion of claim in court*

- (1) Subject to this section, a person may commence a proceeding in a court of competent jurisdiction against the Board to assert a claim against the Fidelity Fund.
- (2) A person is not entitled without leave of the court to commence a proceeding referred to in sub-section (1) unless the Board has disallowed the claim wholly or partly.

- (3) A person whose claim against the Fidelity Fund has been disallowed wholly or partly by the Board is not entitled without leave of the court to commence a proceeding referred to in sub-section (1) if 3 months or longer has passed since the person was given written notice by the Board.

213. Court proceedings

- (1) In any proceeding brought in a court of competent jurisdiction to assert a claim against the Fidelity Fund—
- (a) evidence of any admission or confession by, or other evidence that would be admissible against, the legal practitioner or other person by whom it is alleged that the defalcation was committed is admissible to prove the commission of the defalcation despite the fact that the legal practitioner or other person is not the defendant in, or a party to, the proceeding; and
 - (b) any defence that would have been available to the legal practitioner or other person is available to the Board.
- (2) The court, if satisfied in a proceeding referred to in sub-section (1) that the defalcation was actually committed and that otherwise the claimant has a valid claim, must by order—
- (a) declare the fact and the date of the defalcation and the amount of the claim of the claimant; and
 - (b) direct that the Board allow the claim as so declared and deal with it in accordance with this Division—

and may do so despite the fact that the legal practitioner or other person who committed the defalcation has not been charged with, or found

guilty of, the defalcation or that the evidence on which the court is acting would not be sufficient to establish the guilt of that person in a criminal proceeding for the defalcation.

- (3) In any proceeding referred to in sub-section (1) all questions of costs are in the discretion of the court.

214. *Quantum of claim*

The amount that a person who is entitled to make a claim against the Fidelity Fund may claim as compensation from the Fidelity Fund is the amount of the actual pecuniary loss suffered by the person less the amount or value of all money or other benefits received or receivable by the person in reduction of the loss from any source other than the Fidelity Fund.

215. *Additional payments out of Fund*

- (1) A person who is entitled to be paid compensation out of the Fidelity Fund is also entitled to be paid out of that Fund—
- (a) interest on the amount of compensation payable calculated from the day on which the defalcation was committed and continuing until the day on which the claim is satisfied; and
 - (b) the reasonable costs of, and disbursements incidental to, making and proving the claim assessed on a solicitor and client basis as if they were costs and disbursements in a proceeding in a court that would have jurisdiction to hear and determine the claim if the claim were a claim for a debt.
- (2) Interest under sub-section (1)(a) is payable in respect of any day at a rate calculated in accordance with the method determined by the

Attorney-General from time to time and published in the Government Gazette.

216. *Payments out of Fund*

- (1) Only money standing to the credit of the Fidelity Fund is available for the payment of any claim made under this Division, whether the claim is allowed by the Board or is made the subject of an order of a court under section 213.
- (2) If at any time the amount standing to the credit of the Fidelity Fund (including any amount likely to be credited to it within a reasonable period, whether under section 385 or 202 or otherwise) is insufficient to pay the whole amount of all claims that at that time are required to be paid out of that Fund and meet all other ascertained or contingent liabilities of the Fidelity Fund, including any contingent liability in respect of defalcations that have occurred but have not yet been reported to the Board, the Board may—
 - (a) apportion the amount available between the claimants in any manner that it thinks equitable; or
 - (b) pay those claims by instalments of such amounts and at such intervals as it may reasonably determine having regard to the state of the Fund.
- (3) If the Board acts under sub-section (2)(a) with respect to any claim, the Board may pay the claim, to the extent that it remains unpaid, out of the Fidelity Fund when money is available to pay it.

217. Subrogation of Board

- (1) Subject to section 262, on payment out of the Fidelity Fund of any money in satisfaction of a claim for compensation under this Division, the Board is subrogated to the extent of that payment to the rights and remedies of the claimant against any person in relation to the defalcation.
- (2) The Board may exercise its rights and remedies under this section in its own name or in the name of the claimant and must pay into the Fidelity Fund any money paid to it as a result of it doing so.
- (3) If the Board brings a proceeding under this section in the name of a claimant, the Board must indemnify the claimant against any costs awarded against the claimant in the proceeding.
- (4) Despite anything to the contrary in the **Limitation of Actions Act 1958**, if, immediately before the subrogation of the Board by virtue of this section to the rights and remedies of a claimant against any person in relation to a defalcation, the period within which the claimant could bring a proceeding in relation to the defalcation had expired or was due to expire within 12 months, the Board may bring a proceeding under this section at any time before the expiration of 2 years after the date of the subrogation.

218. Immunity for innocent partners etc.

- (1) Despite anything to the contrary in the **Partnership Act 1958** or any rule of law to the contrary, an action does not lie against a partner of a firm in respect of a defalcation committed by another partner of that firm, or by an employee of that firm, if a claim lies against the Fidelity Fund

under section 208 in respect of the defalcation and that partner—

- (a) was not a party to the defalcation; and
 - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (2) An action does not lie against a director or member of an incorporated practitioner in respect of a defalcation committed by the incorporated practitioner, or by another director or member of the incorporated practitioner, or by an employee of the incorporated practitioner, if a claim lies against the Fidelity Fund under section 208 in respect of the defalcation and that director or member—
- (a) was not a party to the defalcation; and
 - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (3) An action does not lie against a legal practitioner or an approved clerk in respect of a defalcation committed by an employee of that legal practitioner or clerk if a claim lies against the Fidelity Fund under section 208 in respect of the defalcation and that legal practitioner or clerk—
- (a) was not a party to the defalcation; and
 - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.

219. *Subrogation of innocent partners etc.*

- (1) If a person entitled to make a claim under this Division in respect of a defalcation committed by a partner of a firm, or by an employee of a firm, has been paid compensation by another partner of that firm to the fullest extent possible under this Division, the partner who paid the compensation is subrogated to the extent of that payment to the
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rights and remedies of the claimant against any person, including the Board, in relation to the defalcation if that partner—

- (a) was not a party to the defalcation; and
 - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (2) If a person entitled to make a claim under this Division in respect of a defalcation committed by an incorporated practitioner, or by a director, a member or an employee of an incorporated practitioner, has been paid compensation by one, or more than one, of the other directors or members of that incorporated practitioner to the fullest extent possible under this Division, the director or member who paid the compensation is subrogated to the extent of that payment to the rights and remedies of the claimant against any person, including the Board, in relation to the defalcation if that director or member—
- (a) was not a party to the defalcation; and
 - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (3) If a person entitled to make a claim under this Division in respect of a defalcation committed by an employee of a legal practitioner or of an approved clerk has been paid compensation by that legal practitioner or clerk to the fullest extent possible under this Division, that legal practitioner or clerk is subrogated to the extent of that payment to the rights and remedies of the claimant against any person, including the Board, in relation to the defalcation if that practitioner or clerk—
- (a) was not a party to the defalcation; and

- (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (4) A person may exercise their rights and remedies under this section in their own name or in the name of the person who was paid the compensation.
- (5) If a person brings a proceeding under this section in the name of the person who was paid the compensation, the person bringing the proceeding must indemnify the person who was paid the compensation against any costs awarded against that person in the proceeding.

220. *Disallowance of subrogated claim*

- (1) A person who, in the exercise of rights and remedies under section 219, makes a claim against the Fidelity Fund that is disallowed by the Board on the ground that the person—
 - (a) was a party to the defalcation; or
 - (b) had not acted honestly and reasonably and with due diligence in relation to the defalcation—may appeal to an appropriate court against that disallowance within 28 days after being notified of it by the Board.
 - (2) For the purposes of sub-section (1) an appropriate court is any court that would have jurisdiction to hear and determine the claim if the claim were a claim for a debt.
 - (3) An appeal under sub-section (1) is to be conducted as a hearing de novo.
 - (4) After hearing and determining the appeal, the court may make any order that it thinks appropriate, including an order remitting the claim
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to the Board for re-consideration with or without any direction in law.

221. *What is due diligence?*

In determining for the purposes of this Division whether a person acted with due diligence in relation to a defalcation, regard must be had to the steps taken by the person to prevent the commission of defalcations—

- (a) by the firm of which he or she is a partner or by any of the partners of that firm or by any employee of that firm; or
- (b) by the incorporated practitioner of which he or she is a director or member or by any of the directors or members of that incorporated practitioner; or
- (c) by an employee of that person—

as the case requires.

222. *Board may insure against liability*

- (1) Despite anything to the contrary in this Division, the Board may enter into a contract with any person or body carrying on fidelity insurance business (whether in or outside Victoria) whereby the Board will be insured or indemnified to the extent and in the manner provided in the contract against liability to pay claims under this Division.
- (2) A contract referred to in sub-section (1) may be entered into—
 - (a) in relation to legal practitioners, firms and approved clerks generally; or
 - (b) in relation to any particular practitioner, firm or clerk named in the contract; or
 - (c) in relation to practitioners, firms and clerks generally with the exclusion of any particular

practitioner, firm or clerk named in the contract.

- (3) The Board is not liable for any loss suffered by a legal practitioner, firm or approved clerk because of the publication by the Board in good faith of a statement that a contract entered into under this section does or does not apply with respect to that practitioner, firm or clerk.

223. *Application of insurance money*

- (1) A claimant does not have any right of action against any person or body in respect of a contract of insurance or indemnity entered into with that person or body under section 222 or have any right or claim with respect to any money paid to the Board under that contract.
 - (2) Any money paid to the Board under a contract referred to in sub-section (1) must be paid into the Fidelity Fund and be applied in accordance with the provisions of this Division.
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PART 8—PROFESSIONAL INDEMNITY INSURANCE

Division 1—Professional indemnity insurance

224. *Firms required to insure*

- (1) Before commencing to engage in legal practice in Victoria, a firm must obtain professional indemnity insurance.
- (2) The insurance must be obtained with the Liability Committee or another insurer.
- (3) The insurance must—
 - (a) cover the firm and each partner, former partner, employee and former employee of the firm in connection with its legal practice and administration of trusts in Victoria; and
 - (b) contain at least the minimum terms and conditions set by the Board under section 228(1).

225. *Incorporated practitioners required to insure*

- (1) Before commencing to engage in legal practice, an incorporated practitioner must obtain professional indemnity insurance.
- (2) The insurance must be obtained with the Liability Committee or another insurer.
- (3) The insurance must—
 - (a) cover the incorporated practitioner and each director, former director, employee and former employee of the incorporated practitioner in connection with its legal practice and administration of trusts in Victoria; and

- (b) contain at least the minimum terms and conditions set by the Board under section 228(1).

226. *Sole practitioners required to insure*

- (1) A legal practitioner who intends to engage in legal practice as a sole practitioner, before commencing to practise as such, must obtain professional indemnity insurance.
- (2) The insurance must be obtained with the Liability Committee or another insurer.
- (3) The insurance must—
 - (a) cover the practitioner and each employee and former employee of the practitioner in connection with the practitioner's legal practice and administration of trusts in Victoria; and
 - (b) contain at least the minimum terms and conditions set by the Board under section 228(1).

227. *Insurance to be maintained during legal practice*

- (1) At all times whilst a firm or a legal practitioner (other than a corporate practitioner) is engaged in legal practice, the firm or practitioner must maintain professional indemnity insurance.
 - (2) The insurance must contain at least the minimum terms and conditions set by the Board under section 228(1).
 - (3) A legal practitioner who is an employee of a sole practitioner, a partner or an employee of a firm or a director or employee of an incorporated practitioner maintains professional indemnity insurance if the sole practitioner, firm or incorporated practitioner maintains professional
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indemnity insurance that covers the legal practitioner.

228. *Terms and conditions of insurance*

- (1) The Board, by notice published in the Government Gazette, must set minimum terms and conditions, including levels of cover, of professional indemnity insurance for the purposes of this Part.
- (2) In determining the minimum terms and conditions of insurance, the Board must consult the Legal Ombudsman, each RPA, the Insurance Council of Australia Ltd A.C.N. 005 617 318 and a person or body that, in the opinion of the Board, represents the views of consumers of legal services.
- (3) The Board must give a copy of a notice under sub-section (1) to each RPA and the Insurance Council of Australia Ltd.
- (4) Subject to sub-section (1), the Liability Committee, with the approval of the Board, may determine the arrangements for, including the terms of contracts of, professional indemnity insurance for practitioners and firms that choose to insure with it.
- (5) In determining premiums and excesses in relation to contracts of professional indemnity insurance, the Liability Committee must take into account the following—
 - (a) any significant differences in risk attaching to—
 - (i) the different types of legal practices of practitioners or firms;
 - (ii) the different types of matters handled by practitioners or firms;

- (b) the number of other practitioners employed by practitioners and the number of partners of, and practitioners employed by, firms;
- (c) the need to encourage proper management of risk;
- (d) the past claims records of practitioners or firms;
- (e) the cost and difficulty of differentiating between different classes of legal practitioners and firms.

229. *Interstate practitioners*

- (1) A registered interstate practitioner must maintain professional indemnity insurance with respect to the practitioner's legal practice in Victoria.
- (2) The insurance must contain at least the minimum terms and conditions set by the Board under section 228(1).
- (3) A registered interstate practitioner must give to the Board a copy of each contract of professional indemnity insurance entered into by the practitioner as soon as practicable after the contract is entered into.

Division 2—Legal Practitioners' Liability Fund**230. *Establishment***

- (1) The Liability Committee must establish a fund to be known as the Legal Practitioners' Liability Fund.
- (2) The Liability Fund may be kept in one or more accounts.

231. *Payments into Fund*

There must be paid into the Liability Fund—

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- (a) insurance premiums paid by firms and legal practitioners under contracts of insurance with the Liability Committee;
 - (b) any money derived from any investment of the Fund;
 - (c) any other money received by the Liability Committee.

232. *Payments out of Fund*

There may be paid out of the Liability Fund—

- (a) premiums, brokerage and commissions payable by the Liability Committee for insurance, re-insurance or any other arrangements for limitation of liability entered into by it;
- (b) amounts payable under contracts of insurance entered into by the Liability Committee with firms or legal practitioners;
- (c) the costs of the administration of the Fund, including remuneration of staff of the Liability Committee and amounts (if any) payable to consultants engaged by the Committee;
- (d) any other costs and expenses incurred by the Liability Committee under this Part.

233. *Investment of Fund*

The Liability Committee may invest any money standing to the credit of the Liability Fund that is not immediately required for the purposes of the Fund in the manner in which money may be invested under the **Trustee Act 1958**.

Division 3—Legal Practitioners' Liability Committee

234. *Establishment*

- (1) The Legal Practitioners' Liability Committee is established.
- (2) The Liability Committee—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued in its corporate name;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all things that a body corporate may, by law, do and suffer and that are necessary or expedient for the purpose of performing functions and exercising powers under this Act.
- (3) The common seal must be kept as directed by the Liability Committee and must not be used except as authorised by the Committee.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the seal was properly affixed.

235. *Liability Committee not to represent the Crown*

The Liability Committee is a public authority but does not represent the Crown.

236. *Functions and powers*

- (1) The Liability Committee has the following functions—

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- (a) to carry on the business of providing professional indemnity insurance for firms and legal practitioners;
 - (b) to undertake liability under contracts of professional indemnity insurance entered into with firms and legal practitioners;
 - (c) any other functions conferred by this Act.
- (2) The Liability Committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting sub-section (2), the Liability Committee may—
- (a) enter into contracts or arrangements in relation to insurance, re-insurance or limitation of any liability undertaken by it under sub-section (1);
 - (b) with the approval of the Board, borrow money from a bank by way of overdraft or otherwise obtain financial accommodation and give security for that financial accommodation;
 - (c) require an RPA or the Board to give it, in the form it requires, access to any information held by the RPA or the Board that is necessary for it to perform its functions;
 - (d) exercise any other powers conferred by this Act.
- (4) The Liability Committee is not obliged to provide professional indemnity insurance to any firm or legal practitioner.
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237. Membership

- (1) The Liability Committee consists of a chairperson and not less than 4 nor more than 6 other members appointed by the Board.
- (2) At least one of the members must be a person who has knowledge of or experience in the insurance industry.
- (3) A member holds office, subject to this Act, for a term specified in his or her instrument of appointment, not exceeding 5 years from the date of appointment, and is eligible for re-appointment.
- (4) A member may be removed from office at any time by the Board.
- (5) A member may resign by writing delivered to the Board.
- (6) The **Public Sector Management Act 1992** (including Part 9) does not apply to a person appointed under this section.

238. Payment of members

- (1) A member of the Liability Committee, other than a member who is a member of the Board or an officer or employee of the public service within the meaning of the **Public Sector Management Act 1992**, is entitled to receive the fees that are fixed from time to time by the Board.
- (2) Each member of the Liability Committee is entitled to receive the allowances that are fixed from time to time by the Board.

239. Acting members

- (1) The Board may appoint a person to act in the place of a member who is absent or who, for any other reason, is unable to perform the duties of the office.
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- (2) An acting appointment is for the term (not exceeding the balance of the member's term) determined by the Board.
 - (3) A person appointed under sub-section (1) is eligible for re-appointment.
 - (4) A person appointed under sub-section (1) has all the powers and may perform all the duties of the member for whom he or she is acting.
 - (5) The Board may at any time terminate an acting appointment.

240. Meetings

- (1) The chairperson of the Liability Committee, or in his or her absence a member elected by the members present, must preside at a meeting of the Committee.
- (2) The quorum of the Liability Committee is a majority of the members for the time being.
- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (4) The Liability Committee must ensure that accurate minutes are kept of its meetings.
- (5) Subject to this Division, the Liability Committee may regulate its own procedure.

241. Resolutions without meetings

- (1) If—
 - (a) the Liability Committee has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
 - (b) a majority of the members for the time being sign a document containing a statement that

they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Liability Committee held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Liability Committee, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) In this section, "**member**", in relation to a resolution, does not include a member who, because of section 243, is not entitled to vote on the resolution.

242. *Validity of acts or decisions*

An act or decision of the Liability Committee is not invalid—

- (a) only because—
 - (i) of a defect or irregularity in, or in connection with, the appointment of a member; or
 - (ii) of a vacancy in the office of a member; or
- (b) on the ground that the occasion for an acting member to act had not arisen or had ceased.

243. *Conflicts of interest*

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- (1) If—
- (a) a member has a personal interest (whether pecuniary or otherwise) in a matter being considered or about to be considered by the Liability Committee; and
 - (b) the interest appears to raise a conflict of interest with the proper performance of the member's duties in relation to the consideration of the matter—
- the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest at a meeting of the Committee.
- Penalty: 5 penalty units.
- (2) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.
- (3) After becoming aware of the conflict of interest in a matter—
- (a) unless the Liability Committee directs otherwise, the member must not be present during any deliberations on the matter; and
 - (b) the member is not entitled to vote on the matter; and
 - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section and section 241, a member is not to be regarded as having a conflict of interest—
- (a) in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to
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members of the public on the same terms and conditions; or

- (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body; or
- (c) in a matter only because the member, or a firm or incorporated practitioner of which the member is a partner, a director or an employee, has, or is required to have, a contract of professional indemnity insurance with the Committee.

244. *Staff and consultants*

The Liability Committee may employ any staff and engage any consultants required for the purpose of carrying out its functions or exercising its powers under this Act.

245. *Consolidated annual reports*

The Minister may consolidate in the one document the report of operations and financial statements of the Liability Committee and the Board under Part 7 of the **Financial Management Act 1994**.

246. *Secrecy*

- (1) A person who is, or has been, a member or an acting member of the Liability Committee or an employee of or consultant to the Liability Committee must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or exercise of powers under this Act, unless—
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- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
 - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent a person—
 - (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings, proceedings under this Act or proceedings relating to a contract of professional indemnity insurance; or
 - (b) disclosing or communicating to the Board or an RPA the name of a firm or legal practitioner suspected of breaching a provision of, or failing to maintain, a contract of professional indemnity insurance; or
 - (c) reporting a suspected defalcation to an RPA, the Board or the police or assisting any of them in their investigations.

247. Immunity

- (1) A member or an acting member of the Liability Committee, or an employee of the Liability Committee, is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
 - (a) in the exercise of a power or the performance of a function or duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or

the performance of a function or duty under this Act.

- (2) Any liability resulting from an act or omission that, but for sub-section (1), would attach to a member, an acting member or an employee, attaches instead to the Board.
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PART 9—RECEIVERS AND MANAGERS

Division 1—Definitions

248. Definitions

In this Part—

"legal practitioner" includes—

- (a) the executor (original or by representation) or administrator for the time being of a deceased legal practitioner or of his or her estate;
- (b) the administrator, or receiver, or receiver and manager, or official manager, of the property of an incorporated practitioner;
- (c) the liquidator of an incorporated practitioner that is being or has been wound up;

"property" includes—

- (a) trust money; or
- (b) other property that—
 - (i) in the course of or in connection with the legal practice of a legal practitioner, or of a firm of which a legal practitioner is or has been a partner, was given to or received by the practitioner or the firm or by an employee of the practitioner or of the firm or by a legal practitioner with whom the practitioner or firm shares income from any business; and

- (ii) was so given or received for or on behalf of a person or body other than the practitioner or the firm;
or
- (c) a nominee mortgage or a payment or repayment of money secured by a nominee mortgage.

Division 2—Appointment of receiver

249. *Application for appointment of receiver*

- (1) An RPA or the Board may apply to the Supreme Court for the appointment of a receiver in respect of a regulated practitioner—
 - (a) if of the opinion that a defalcation has been, or may have been, committed in relation to any property of the regulated practitioner; or
 - (b) if of the opinion—
 - (i) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, has failed or is unable to attend to the legal practice; or
 - (ii) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, is unfit to engage in legal practice; or
 - (c) because of—
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- (i) the death of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
 - (ii) the contravention by the regulated practitioner of any provision made by or under this or any other Act in relation to trust money received, or a trust account maintained or required to be maintained, by the regulated practitioner; or
 - (iii) the striking off the roll of practitioners of the Supreme Court of the name of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
 - (iv) the suspension or cancellation of the practising certificate of, or the refusal to issue a practising certificate to, the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
 - (v) the suspension or cancellation of the registration of a registered interstate practitioner; or
 - (vi) the regulated practitioner, or a partner of the regulated practitioner if the
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- regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, being an insolvent under administration; or
- (vii) the regulated practitioner (being an incorporated practitioner)—
- (A) being an externally-administered body corporate within the meaning of the Corporations Law; or
- (B) being a body that, on an application under section 459P of the Corporations Law, the Court would be required under section 459C(2) of that Law to presume to be insolvent.
- (2) The Board may apply under sub-section (1) with respect to a legal practitioner or firm that is regulated by an RPA.
- (3) Unless the Supreme Court for any reason dispenses with service, a copy of an application under sub-section (1) must be served on the regulated practitioner to whom it relates at least 48 hours before it is due to be heard.
- (4) If an application under sub-section (1) is made by an RPA, the RPA must serve a copy of the application on the Board.
- (5) If an application under sub-section (1) is made by the Board, the Board must serve a copy of the application on the RPA (if any) that regulates the practitioner.
- (6) The Supreme Court may, on the application of a party or on its own initiative, make an order forbidding the publication of any report or
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account of the evidence or other proceedings on
the hearing of an application under sub-section
(1).

250. Order appointing receiver

- (1) On an application under section 249(1), the Supreme Court if satisfied that the RPA or the Board has reasonable grounds for making the application may appoint a receiver of all or any property—
 - (a) that is held by the regulated practitioner or by another person on the practitioner's behalf or, in the case of the death of a legal practitioner, by his or her personal representative; or
 - (b) that, but for the default of the regulated practitioner, would have been held by the practitioner or, in the case of the death of a legal practitioner, by his or her personal representative; or
 - (c) that is recoverable by the regulated practitioner or, in the case of the death of a legal practitioner, by his or her personal representative.
 - (2) If the receiver appointed is a current practitioner, the Supreme Court may, by the order appointing the receiver, authorise the receiver to carry on the legal practice of the regulated practitioner.
 - (3) If the receiver appointed is not a current practitioner, the Supreme Court may, by the order appointing the receiver—
 - (a) authorise a current practitioner named in the order to carry on the legal practice of the regulated practitioner on behalf of the receiver for such period and so far as it is necessary or desirable in order to wind up the practice properly in the interests of the practitioner's clients; and
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- (b) make provision for or with respect to the termination of the authority of the practitioner named in the order to carry on that legal practice.
 - (4) A copy of the order appointing a receiver must be served within the period specified in the order—
 - (a) on the regulated practitioner to whom the order relates; and
 - (b) on any other person to whom the Supreme Court directs that notice of the order should be given.
 - (5) If the order appointing a receiver is made on the application of an RPA, the RPA must serve a copy of the order on the Board.
 - (6) If the order appointing a receiver is made on the application of the Board, the Board must serve a copy of the order on the RPA (if any) that regulates the practitioner.

251. *Trust account dealings*

- (1) The receiver may serve on a bank or an authorised society a written notice forbidding, except by the receiver, any withdrawal of money from or other dealing with, or the completion of any dealing with, a trust account in the name of the regulated practitioner or of a firm of which the regulated practitioner is or has been a partner.
 - (2) The receiver must attach to a notice under sub-section (1) a copy of the order under section 250 appointing him or her as receiver.
 - (3) Without limiting the power to serve it in any other way, a notice under sub-section (1) may be served on a bank or an authorised society by leaving it with the manager, accountant or other person at the time of service apparently in charge of the branch at which the trust account is kept.
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- (4) A bank or an authorised society must not contravene a notice under sub-section (1).

Penalty: 50 penalty units.

- (5) The receiver may withdraw all the money in the trust account to which the notice under sub-section (1) relates and pay it into a special account or accounts in the receiver's own name and may withdraw money from or otherwise deal with any such special account in the same manner and to the same extent as the regulated practitioner might have done so in respect of the trust account.

252. *Carrying on of legal practice*

- (1) In addition to any other powers conferred on him or her by or under this Division, a receiver who is authorised by the Supreme Court to carry on a regulated practitioner's legal practice may do all acts or things in relation to the practice that the regulated practitioner might lawfully have done including, but not limited to—
- (a) on behalf of or in the name of the regulated practitioner or in the receiver's own name—
 - (i) charging legal costs for the provision of legal services to clients of the regulated practitioner;
 - (ii) dealing with any property held in connection with the practice in accordance with section 264;
 - (iii) entering into, executing or performing any agreement;
 - (iv) commencing, continuing, defending or settling any proceeding;
 - (v) retaining any property held in connection with the practice for so long
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as is necessary or desirable in order to carry on the practice properly and efficiently;

- (vi) paying any accounts payable in connection with the practice out of any legal costs received;
 - (b) terminating the practice;
 - (c) paying to the RPA or the Board all money lawfully owing to it by the regulated practitioner, including money owed under section 271;
 - (d) doing any other act or thing necessary or expedient to be done in the exercise of those powers or in carrying on the practice with a view properly to wind it up in the interests of the regulated practitioner's clients.
- (2) For the purposes of this Division, money received by the receiver in the course of carrying on under this section the regulated practitioner's practice, including money received in respect of legal costs for the provision of legal services by the regulated practitioner before the appointment of the receiver, must be regarded as property of the receivership.
- (3) Subject to the direction of the receiver, a legal practitioner authorised by the Supreme Court to carry on a legal practice on behalf of a receiver has and may exercise all the powers conferred on the receiver by this section and any property held, or money received, by that legal practitioner in the course of carrying on or terminating that practice must be taken to have been held or received by the receiver.
- (4) The receiver must pay a legal practitioner authorised by the Supreme Court to carry on a

legal practice on behalf of the receiver such reasonable remuneration for the services provided by the practitioner as is agreed between the receiver, the practitioner and the Board or, failing agreement, as is determined by the Supreme Court on an application made by the receiver, the practitioner or the Board.

- (5) Any amount paid to a legal practitioner under sub-section (4) must be included in the expenses of the receivership.

253. Receiver may invest money

- (1) A receiver may invest any money that comes into his or her possession in the course of the receivership in the manner in which money may be invested under the **Trustee Act 1958**.
- (2) Any money derived from an investment under sub-section (1) and any profit arising on the realisation or revaluation of such an investment is added to and forms part of the property of which he or she has been appointed receiver.

254. Receiver may require delivery of property

- (1) The receiver may require the regulated practitioner or any other person to deliver to the receiver any property of which he or she has been appointed receiver and to give to the receiver all information concerning the property that may reasonably be required by the receiver.
- (2) A regulated practitioner or other person must not—
- (a) without lawful excuse, refuse or fail to comply with a requirement under sub-section (1); or
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- (b) otherwise hinder, obstruct or delay the receiver in the performance of his or her duties or in the exercise of his or her powers under this Division.

Penalty: 100 penalty units.

- (3) If a regulated practitioner or other person, before delivering property or giving information, objects to the receiver on the ground that the delivering of the property or giving of the information may tend to incriminate them, the property or information is inadmissible in evidence in any proceeding against them for an offence, other than an offence in relation to the keeping of trust accounts or the receipt of trust money or the giving of false or misleading information.

255. *Delivery of property to receiver*

- (1) The receiver may acquire or take possession of any property of which he or she has been appointed receiver but must return any document (other than one relating to property of a kind referred to in paragraph (a), (b) or (c) of the definition of "property" in section 248 or to the regulated practitioner's legal practice or former practice) to the person from whom it was obtained as soon as is reasonable.
- (2) The receiver may apply to the Supreme Court for an order for the transfer or delivery to him or her of property if—
- (a) the regulated practitioner or any other person, on being required by the receiver to transfer or deliver to him or her, or to permit the receiver to take possession of, any property in the possession, at the disposition or under the control of the regulated

- practitioner or other person, does not fully comply with the requirement; or
- (b) it appears to the receiver that a person has not fully complied with a requirement under paragraph (a); or
 - (c) it appears to the receiver that he or she is more likely to obtain possession or control of property if the order is made without a requirement under paragraph (a) having been imposed on the regulated practitioner or any other person than if such a requirement had been imposed.
- (3) Unless the Supreme Court for any reason dispenses with service, a copy of an application under sub-section (2) must be served on the person against whom the order is sought at least 48 hours before it is due to be heard.
 - (4) The Supreme Court, on an application under sub-section (2), may make an order for the transfer or delivery of property.
 - (5) An order under sub-section (4) must not require a person to transfer or deliver to the receiver any property acquired by the person in good faith and for value and without notice of any trust attaching to it.

256. Receiver may seek power of entry

- (1) The receiver may apply to the Supreme Court for an order authorising the receiver, or another person, together with any member of the police force to enter any premises or other place specified in the order and to search for and seize any property of which the receiver is entitled to take possession and remove that property to any place that the receiver thinks fit.
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- (2) The Supreme Court, on an application under sub-section (1), may make any order that it thinks fit.

257. *Application in relation to accounts*

- (1) An RPA or the Board may apply to the Supreme Court for an order directed to a financial institution at which there is kept an account (not being a trust account) in the name of—
- (a) the regulated practitioner; or
 - (b) a firm of which the regulated practitioner is or has been a partner; or
 - (c) a family member of the regulated practitioner; or
 - (d) a corporation of or in which the regulated practitioner or a family member of the regulated practitioner—
 - (i) holds the position of director or is otherwise concerned in the management of the corporation; or
 - (ii) holds, whether legally or beneficially, a financial interest that carries with it power to control the making of any management decision.
- (2) An RPA or the Board may apply under sub-section (1) if of the opinion—
- (a) that a defalcation has been, or may have been, committed in relation to a trust account in the name of the regulated practitioner or of a firm of which the regulated practitioner is or has been a partner; and
 - (b) that money from a trust account referred to in paragraph (a) has been, or may have been, transferred to the account in relation to
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which the application is made or used for the benefit of the holder of that account.

- (3) An application under sub-section (1) may be made in relation to an account without giving notice to the holder of that account.
 - (4) The Board may apply under sub-section (1) with respect to a legal practitioner or firm that is regulated by an RPA.
 - (5) If an application under sub-section (1) is made by an RPA, the RPA must serve a copy of the application on the Board.
 - (6) If an application under sub-section (1) is made by the Board, the Board must serve a copy of the application on the RPA (if any) that regulates the practitioner.
 - (7) On an application under sub-section (1), the Supreme Court, if satisfied that the RPA or the Board has reasonable grounds for the opinion referred to in sub-section (2), may make an order forbidding any withdrawal of money from or other dealing with, or the completion of any dealing with, the account to which the order relates for a specified period or until the happening of a specified event.
 - (8) The applicant must cause a copy of an order under sub-section (7) to be served on the financial institution at which the account to which the order relates is kept.
 - (9) Without limiting the power to serve it in any other way, an order under sub-section (7) may be served on a financial institution by leaving it with the manager, accountant or other person at the time of service apparently in charge of the branch at which the account is kept.
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258. Receiver may recover money paid away in bets

If any money has been stolen or embezzled the receiver must be taken, for the purposes of section 67 of the **Lotteries Gaming and Betting Act 1966**, to have been the person from whom the money was stolen or embezzled.

259. Recovery of property where there has been a breach of trust etc.

- (1) This sub-section applies where money has been taken by, or paid or transferred to, a person ("**the transferee**") in breach of trust, improperly or unlawfully and the transferee—
 - (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
 - (b) did not provide to the regulated practitioner or any other person any or any adequate consideration for the taking, payment or transfer; or
 - (c) because of the taking, payment or transfer, became indebted or otherwise liable to the regulated practitioner or to a client of the regulated practitioner in the amount of the payment or in another amount.
 - (2) A receiver is entitled to recover from the transferee—
 - (a) if paragraph (a) of sub-section (1) applies, the amount of the payment or the value of the property taken or transferred;
 - (b) if paragraph (b) of that sub-section applies, the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or
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the value of the property taken or transferred;

- (c) if paragraph (c) of that sub-section applies, the amount of the debt or liability—

and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.

- (3) If any money is paid in breach of trust, improperly or unlawfully to a person ("**the prospective plaintiff**") in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party—
- (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or
- (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.
- (4) If any property has been used in breach of trust, improperly or unlawfully so as to discharge a debt or liability of a person ("**the debtor**"), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.
- (5) An approved auditor authorised by the RPA or the Board (as the case requires) to do so may give a certificate with respect to all or any of the following facts—
- (a) the receipt of property by the regulated practitioner from any person, the nature and value of the property, the date of receipt and
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- the identity of the person from whom it was received;
- (b) the taking, payment or transfer of property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person by whom it was taken or to whom it was paid or transferred;
 - (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the regulated practitioner and the truth or falsity of those entries;
 - (d) the money and securities held by the regulated practitioner at any stated time.
- (6) If the receiver brings a proceeding under sub-section (2), (3) or (4), a certificate given under sub-section (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it.

260. *Time within which receiver may recover property*

Despite anything to the contrary in the **Limitation of Actions Act 1958**, a receiver may bring an action to recover property at any time before the expiration of 6 years after his or her appointment as receiver.

261. *Requirement to pay compensation for defalcation to receiver*

If a person who has been paid compensation out of the Fidelity Fund in respect of a defalcation subsequently receives from any other person any sum by way of damages, compensation or indemnity in respect of the pecuniary loss arising from the defalcation or any repayment of money in respect of which the defalcation occurred, the

person who was paid compensation out of the Fidelity Fund—

- (a) if the compensation out of the Fidelity Fund was for the whole of the loss, must pay to the receiver, the sum subsequently received or the money subsequently repaid; or
- (b) if the compensation out of the Fidelity Fund was for part of the loss, must pay to the receiver, any amount by which the aggregate of the compensation out of the Fund and the sum subsequently received or the money subsequently repaid exceeds the amount of the loss.

262. *Subrogation of receiver*

On payment to a person out of the Fidelity Fund of any money in satisfaction of a claim for compensation under Division 2 of Part 7, the receiver is subrogated to the extent of that payment to the rights and remedies of that person against any other person in relation to the defalcation.

263. *Improperly destroying property etc.*

- (1) A person must not, with intent to defeat the purposes of this Division, and whether before or after the appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any property of which a receiver has been or is likely to be appointed.

Penalty: Imprisonment for 3 years.

- (2) An offence against sub-section (1) is an indictable offence.

264. *Receiver may deal with property*

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- (1) Subject to this section, the receiver may deal with any property that he or she has acquired or of which he or she has taken possession under this Division in any manner in which the regulated practitioner might lawfully have dealt with it.
 - (2) Without limiting his or her powers under sub-section (1), the receiver may—
 - (a) prove, grant, claim and draw a dividend in respect of any debt due to the regulated practitioner in connection with any property of which the receiver has been appointed receiver;
 - (b) give receipts for any money received by the receiver and thereby effectively discharge the person paying the money from all responsibility in respect of its application;
 - (c) employ a current practitioner or other agent to give advice, commence proceedings or otherwise act for the receiver in relation to any property of which the receiver has been appointed receiver.
 - (3) The receiver may retain any property belonging to the regulated practitioner of which he or she has taken possession under this Division until all claims against the Fidelity Fund arising out of anything done or omitted to be done by the regulated practitioner have been settled and must, as soon as practicable thereafter, apply to the Supreme Court for an order as to the disposition of the property.
 - (4) The Supreme Court may, on an application under sub-section (3), make any order that it thinks fit.

265. *Claims to property*

- (1) The receiver may give notice to the regulated practitioner or any other person that, if the
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regulated practitioner or that other person has a claim to any property, the practitioner or other person must, within the period specified in the notice, submit to the receiver full details of the property claimed and the grounds of the claim.

- (2) The period specified in a notice under sub-section (1) must not be less than 30 days from the date on which the notice was given.
- (3) If a notice has been given under sub-section (1), the receiver may disregard any claim made otherwise than in accordance with its terms.
- (4) The regulated practitioner is not entitled to any payment in respect of, or otherwise to enforce, a claim and is not entitled to a lien on any document held by the receiver until the proper claims of all other claimants are fully satisfied.

266. *Summons for directions*

- (1) The receiver, the regulated practitioner or any person who has submitted a claim to the receiver in respect of any property may apply to the Supreme Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on him or her by this Division, either generally or in respect of a particular matter specified in the application.
- (2) The Supreme Court may, on an application under sub-section (1), make any order that it thinks fit.
- (3) Without limiting any other power that it has, the Supreme Court has power to authorise a receiver to do anything that it thinks fit for carrying out the objects of this Division or the administration by the receiver of any property and may give directions accordingly.

267. *Liens for regulated practitioner's legal costs*

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- (1) If the regulated practitioner claims a lien for legal costs on any document or other property held by the receiver, the receiver may, by written notice given to the practitioner, require the practitioner to give to the receiver within the period specified in the notice full details of all documents or other property on which the practitioner claims a lien together with an itemised bill of costs in respect of which each lien is claimed.
 - (2) The period specified in a notice under sub-section (1) must not be less than 30 days from the date on which the notice was given.
 - (3) The receiver may, by the notice under sub-section (1) or a subsequent written notice given to the regulated practitioner, require the practitioner to have any bill of costs assessed under Division 5 of Part 4 within the reasonable period specified in the notice.
 - (4) If the regulated practitioner fails to comply with a requirement under sub-section (1) or (3) in respect of a claimed lien, the receiver may disregard the lien in dealing with the document or other property.
 - (5) If the regulated practitioner so requests in writing, the receiver must give to the practitioner or any other person on the practitioner's behalf such access to all relevant documents as is reasonably necessary to enable the preparation of any bill of costs required by the receiver.
 - (6) If a request is made under sub-section (5), the period specified in a notice under sub-section (1) does not commence until access is given as requested by the regulated practitioner.

268. Examination by receiver

- (1) The receiver may apply to the Supreme Court for an order that the regulated practitioner or other person specified in the application appear before the Supreme Court to be examined by the receiver about any property of which the receiver has been appointed receiver.
- (2) The Supreme Court may, on an application under sub-section (1), make any order that it thinks fit.
- (3) The receiver and the regulated practitioner or other person may be legally represented on an examination before the Supreme Court in accordance with an order made under sub-section (2).
- (4) The Supreme Court may put, or allow to be put, to a person being examined any question that it thinks fit.
- (5) An oath is to be administered to any person being examined and he or she must answer all questions put to him or her.
- (6) A person being examined may object to a question on the ground that the answer may tend to incriminate him or her but is compellable to answer the question despite the objection.
- (7) No answer given subject to an objection is admissible in evidence in any proceeding for an offence except one for perjury arising out of the examination.

269. *Termination of appointment of receiver*

- (1) The RPA or the Board (as the case requires) or the regulated practitioner may at any time apply to the Supreme Court for an order that the appointment of a receiver be terminated.
 - (2) The Supreme Court may, on an application under sub-section (1), make any order that it thinks fit
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including an order appointing another person as receiver.

- (3) If a receiver's appointment is terminated by order of the Supreme Court and another person appointed as receiver in his or her place, the former receiver must, as soon as practicable and subject to any directions given by the Supreme Court under this section, transfer or deliver to the new receiver all documents and other property held by the former receiver by virtue of his or her appointment as receiver.
- (4) Subject to any directions given by the Supreme Court under this section and subject (unless the Board otherwise determines) to the payment by the regulated practitioner to the Board of the expenses of the receivership as defined in section 271, if a receiver's appointment is terminated by order of the Supreme Court and no other person is appointed as receiver in his or her place within 14 days after the termination, the former receiver may, and must as soon as practicable if the regulated practitioner requests in writing that he or she do so, transfer or deliver to the regulated practitioner all documents and other property held by him or her by virtue of his or her appointment as receiver.

270. *Property not dealt with by receiver*

- (1) Any money or other property that comes into the possession of the receiver in the course of the receivership and is not dealt with by the receiver in accordance with section 252, 255(1) or 264 must be paid or delivered by the receiver to the Board.
- (2) Any money paid by the receiver to the Board must be paid into the Public Purpose Fund.

271. *Remuneration of receiver*

- (1) The expenses of the receivership, that is all money payable to the receiver as remuneration for his or her services and all expenses incurred by the receiver in the course of the receivership and all expenses incurred by a former receiver under section 269, must be paid to the receiver or former receiver by the Board out of the Public Purpose Fund.
- (2) Any amount paid under sub-section (1) is recoverable by the Board from the regulated practitioner as a debt owing by the practitioner to the Board.
- (3) The amount to be paid to the receiver as remuneration for his or her services is as agreed between the receiver and the Board (even if the receiver was appointed on an application by an RPA) or, failing agreement, as is determined by the Supreme Court on an application made by the receiver or the Board.

272. Receiver may be reimbursed for damages

The Board may reimburse a receiver out of the Public Purpose Fund for all or any damages and costs recovered against the receiver, or an employee or agent of the receiver, in respect of any act done or omitted to be done by the receiver, or by an employee or agent of the receiver, in good faith in the exercise or discharge, or the purported exercise or discharge, of the powers or duties conferred or imposed on the receiver by or under this Division.

273. Receiver is not personal representative

If the regulated practitioner dies, the receiver must not be taken to be the personal representative of the practitioner or of his or her estate.

274. Property not to be levied

Property held by a receiver under this Division must not be levied on or taken or attached under any judgment.

275. *Returns by receivers*

- (1) Subject to any directions given by the Supreme Court, a receiver must at any times determined by the Supreme Court furnish to the Court and to the RPA or the Board (as the case requires) a report of the receivership containing any information required by the Court.
- (2) The RPA or the Board (as the case requires) may require a receiver to furnish to it at any times determined by it a report of the receivership containing any information required by it.
- (3) As soon as practicable after the conclusion of the receivership, the receiver must furnish to the Supreme Court a final report of the receivership.

276. *Surplus to be paid into Fidelity Fund*

If, after all claims and expenses of the receivership have been paid in full out of the Public Purpose Fund in accordance with this Division, there remains a surplus of money paid by the receiver to the Board, the surplus must be paid out of that Fund and into the Fidelity Fund.

277. *Costs*

In any proceeding in the Supreme Court under this Division, the Supreme Court may make any order about the payment of costs of, and incidental to, the proceeding, or of costs incurred in executing an order made by it, that it thinks fit.

Division 3—Appointment of manager

278. *Appointment of manager*

- (1) An RPA or the Board may appoint a manager for the legal practice of a regulated practitioner—
- (a) if of the opinion that a defalcation has been, or may have been, committed in relation to any property of the regulated practitioner; or
 - (b) if of the opinion—
 - (i) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, has failed or is unable to attend to the legal practice; or
 - (ii) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, is unfit to engage in legal practice; or
 - (c) because of—
 - (i) the death of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
 - (ii) the contravention by the regulated practitioner of any provision made by or under this or any other Act in relation to trust money received, or a trust account maintained or required to
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- be maintained, by the regulated practitioner; or
- (iii) the striking off the roll of practitioners of the Supreme Court of the name of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
 - (iv) the suspension or cancellation of the practising certificate of, or the refusal to issue a practising certificate to, the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
 - (v) the suspension or cancellation of the registration of a registered interstate practitioner; or
 - (vi) the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, being an insolvent under administration; or
 - (vii) the regulated practitioner (being an incorporated practitioner)—
 - (A) being an externally-administered body corporate within the meaning of the Corporations Law; or
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- (B) being a body that, on an application under section 459P of the Corporations Law, the Court would be required under section 459C(2) of that Law to presume to be insolvent.
- (2) The Board may, in accordance with sub-section (1), appoint a manager for the legal practice of a legal practitioner or firm that is regulated by an RPA.
- (3) An RPA or the Board must not appoint a manager for the legal practice of a regulated practitioner without giving the regulated practitioner a reasonable opportunity to object to the appointment.
- (4) A person is not eligible to be appointed as a manager under this section unless he or she is a natural person who holds a practising certificate that authorises him or her to receive trust money.
- (5) A person may not engage in legal practice in a practice for which a manager has been appointed otherwise than as an employee of the manager.
- (6) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the legal practice for which the manager is appointed.

279. Powers of manager

The manager of a legal practice may, subject to the terms of his or her appointment, do all acts or things in relation to the practice that the regulated practitioner might lawfully have done including, but not limited to—

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- (a) charging legal costs for the provision of legal services to clients of the regulated practitioner;
 - (b) dealing with any property held in connection with the practice;
 - (c) entering into, executing or performing any agreement;
 - (d) commencing, continuing, defending or settling any proceeding;
 - (e) retaining any property held in connection with the practice for so long as is necessary or desirable in order to carry on the practice properly and efficiently;
 - (f) paying any accounts payable in connection with the practice out of any legal costs received.

280. *Receivership terminates management*

The appointment of a receiver under Division 2 in respect of a legal practice for which a manager has been appointed terminates the appointment of the manager.

281. *Acts of manager to be taken as acts of regulated practitioner*

- (1) An act done or omitted to be done by the manager of a legal practice must, for the purpose of any proceeding or transaction that relies on that act or omission, be taken to have been done or omitted to be done by the regulated practitioner.
- (2) Nothing in this section subjects a regulated practitioner to any personal liability in relation to any act done or omitted to be done by the manager of the legal practice.

282. *Payment of expenses of management*

- (1) So much of the expenses of the management of a legal practice as have not otherwise been paid to the manager out of the receipts of the practice are to be paid to the manager by the Board out of the Public Purpose Fund.
- (2) The expenses of the management comprise the money payable to the manager as remuneration for his or her services and all expenses incurred by the manager in the course of managing the legal practice.
- (3) Any amount paid under sub-section (1) is recoverable by the Board from the regulated practitioner as a debt owing by the practitioner to the Board.

283. *Manager may be reimbursed for damages*

- (1) The Board may reimburse a manager of a legal practice out of the Public Purpose Fund for all or any damages and costs recovered against the manager, or an employee or agent of the manager, in respect of any act done or omitted to be done by the manager, or by an employee or agent of the manager, in good faith in the exercise or discharge, or the purported exercise or discharge, of the powers or duties conferred or imposed on the manager by or under this Division.
- (2) Neither the manager of a legal practice nor the RPA or the Board are liable for any loss incurred by the regulated practitioner as a consequence of any act done or omitted to be done by the manager or the RPA or the Board in, or in relation to, the conduct of the legal practice if the act was done or omitted to be done in good faith in the exercise or discharge, or the purported exercise or discharge, of a power or duty conferred or imposed by or under this Division.

284. *Manager to report to RPA or Board*

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- (1) The manager of a legal practice must report to the RPA or the Board, as the case requires, on the management of the legal practice—
 - (a) at such times as are fixed by the RPA or the Board; and
 - (b) in accordance with any directions given by the RPA or the Board.
 - (2) A report must include any information that the RPA or the Board (as the case requires) directs.

285. *Termination of appointment of manager*

The RPA or the Board (as the case requires) may at any time and for any reason terminate the appointment of a manager.

286. *Termination of management*

- (1) On the termination of the appointment of a manager, the manager must as soon as practicable give to the RPA or the Board, as the case requires, in addition to his or her final report, all documents in his or her possession or under his or her control relating to the management.
- (2) On a legal practice ceasing to be under management, any money or other property held by the manager in connection with the practice, after discharge of any liabilities arising in relation to the practice by virtue of this Act, becomes the property of the regulated practitioner unless section 280 applies, in which case it becomes the property of the receivership.

287. *Application of Part 6*

- (1) Part 6 applies to a trust account kept by a manager in the same way that it applies to a trust account kept by any other legal practitioner.
 - (2) A trust account maintained in relation to a legal practice under management is to be maintained
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separately from the trust accounts of any other legal practice under management and separately from any trust account kept by the manager in the course of his or her own legal practice.

288. *Office accounts*

The Governor in Council may make regulations in accordance with section 445 for or with respect to—

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a legal practice in connection with the conduct of the practice;
 - (b) the purposes for which money in any such account may be expended.
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PART 10—INCORPORATED PRACTITIONERS

289. *Application for registration*

- (1) A company may apply to the Board for registration as an incorporated practitioner.
- (2) The application must be made in the manner determined by the Board and contain—
 - (a) a nomination under section 290; and
 - (b) the name and date of birth of each director of the applicant and each legal practitioner who is an employee of the applicant; and
 - (c) the name of each member of the applicant; and
 - (d) the applicant's address for service of notices and other documents; and
 - (e) the applicant's constitution; and
 - (f) any other information required by the Board.

290. *Nomination of RPA*

- (1) Subject to sub-section (3), an applicant must nominate an RPA of which it is eligible to be a regulated practitioner to regulate it, its directors and its employees who are legal practitioners.
- (2) An incorporated practitioner is eligible to be a regulated practitioner of any RPA of which each director and each employee who is a legal practitioner is a member or is eligible to be a member.
- (3) If there is no such RPA, the applicant must nominate the Board.

291. Registration

- (1) The Board may register an applicant as an incorporated practitioner if satisfied that—
 - (a) the applicant satisfies the criteria for an incorporated practitioner set out in this Part; and
 - (b) the applicant's constitution is appropriate to a company formed for the purpose of engaging in legal practice.
- (2) The Board registers an incorporated practitioner by entering the following details in the Register—
 - (a) the name and A.C.N. of the incorporated practitioner; and
 - (b) the name and date of birth of each director of the incorporated practitioner; and
 - (c) the incorporated practitioner's address for service of notices and other documents; and
 - (d) the RPA to which the incorporated practitioner has been allocated or, if it has been allocated to the Board, that fact.
- (3) The Board must give written notice to the incorporated practitioner and the RPA (if any) to whom the practitioner is allocated as soon as practicable after registering the incorporated practitioner.

292. RPA allocation

- (1) The Board must—
 - (a) allocate an incorporated practitioner to the RPA nominated by it if satisfied that it is eligible to be a regulated practitioner of that RPA; or
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- (b) if not satisfied that the incorporated practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the incorporated practitioner, allocate it to an RPA of which it is eligible to be a regulated practitioner; or
 - (c) if satisfied that the incorporated practitioner is not eligible to be a regulated practitioner of any RPA, allocate it to the Board.
- (2) On the Board registering an applicant as an incorporated practitioner under section 291, the incorporated practitioner and each director and employee who is a legal practitioner become regulated practitioners of the RPA to which the incorporated practitioner is allocated or, if sub-section (1)(c) applies, of the Board.

293. *Form and object of incorporated practitioner*

- (1) An incorporated practitioner must be a proprietary company incorporated under the Corporations Law.
- (2) The sole object of an incorporated practitioner must be to engage in legal practice.
- (3) The constitution of an incorporated practitioner may limit the liability of members.
- (4) An alteration to the constitution of an incorporated practitioner is not effective until it has been approved by the Board.

294. *Directors*

Each director of an incorporated practitioner must be a current practitioner.

295. *Shares*

- (1) A share in an incorporated practitioner may be held only—

- (a) by a current practitioner who is a director or any employee of the incorporated practitioner; or
- (b) by another incorporated practitioner, either beneficially or on trust for—
 - (i) a current practitioner who is a director or an employee of that other incorporated practitioner; or

a family member of a practitioner referred to in sub-paragraph (i).

- (2) The shares of a member who is not, or who ceases to be, eligible to hold or own shares in an incorporated practitioner under this section must be transferred to a person who is entitled to hold or own shares in the incorporated practitioner.
- (3) If any shares are not transferred as required by sub-section (2) within 6 months after the member ceases to be eligible to hold or own them, the Supreme Court, on application by the Board, the incorporated practitioner or the member, may vest the shares in a person appointed by the Court on trust for sale to a person who is eligible to hold or own them.
- (4) A member of the incorporated practitioner must notify it of the name and address of any person who acquires or disposes of an interest registered in the name of the member in the incorporated practitioner's books as soon as practicable after the acquisition or disposal.
- (5) In this section, "**share**" includes a right to participate in a distribution of profits.

296. Powers of incorporated practitioners

- (1) An incorporated practitioner that holds a practising certificate may do anything that is authorised or required to be done by a legal
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practitioner by or under any other Act or law, unless in the circumstances it can only be done by a natural person.

- (2) An incorporated practitioner that holds a practising certificate may engage in legal practice for the benefit of a trust—
- (a) of which the practitioner is sole trustee; and
 - (b) the beneficiaries of which are limited to current practitioners who are directors or employees of the incorporated practitioner or their family members or both.

297. *Directors' and members' liability*

- (1) A director or member of an incorporated practitioner is liable for the acts and omissions of the incorporated practitioner in the course of, or in connection with, its engaging in legal practice to the same extent as if they were acts or omissions of the director or member, insofar as those acts or omissions constitute a contravention of this Act, misconduct or unsatisfactory conduct.
- (2) Subject to section 218(2), a director or member of an incorporated practitioner is liable for a defalcation committed by the incorporated practitioner or another director or member of the incorporated practitioner or an employee of the incorporated practitioner in the course of, or in connection with, engaging in legal practice, to the same extent as if the director or member had committed it.
- (3) This section prevails over section 293(3) to the extent of any inconsistency between them.

PART 11—RECOGNISED PROFESSIONAL ASSOCIATIONS

Division 1—Accreditation

298. *Application for accreditation*

- (1) A body corporate may make a written application to the Board for accreditation as a recognised professional association.
- (2) The application must be accompanied by the information required by the Board.

299. *Criteria for accreditation*

- (1) The Board may grant accreditation to an applicant if satisfied that—
 - (a) the applicant's constitution—
 - (i) requires the applicant to regulate firms, legal practitioners and registered interstate practitioners allocated to it by the Board; and
 - (ii) prohibits the applicant from discriminating against regulated practitioners who are not members of the applicant in its functions as an RPA under this Act; and
 - (iii) requires the applicant to account separately for its funds relating to its functions as an RPA and its funds relating to any other functions or activities; and
 - (iv) requires the applicant to comply with any non-compliance notice issued by the Board under section 303; and

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- (v) provides that any amendment of it is not effective until approved by the Board; and
 - (b) the applicant—
 - (i) has made practice rules required to be made by this Act; and
 - (ii) does not have any practice rule that is inconsistent with this or any other Act or the regulations; and
 - (c) subject to sub-section (3), the applicant has—
 - (i) at least 200 members who are current practitioners; and
 - (ii) members representing at least 20 different legal practices; and
 - (d) the eligibility criteria for membership of the applicant are not unnecessarily restrictive, having regard to the types of practitioners who may wish to be a member of the applicant; and
 - (e) the applicant has a publication that is suitable to be its official publication; and
 - (f) taking into account the matters in sub-section (2), the applicant can adequately perform the functions of an RPA.
- (2) The matters referred to in sub-section (1)(f) are—
- (a) the organisation and management structure of the applicant;
 - (b) how the applicant makes and alters its practice rules;
 - (c) the adequacy of the applicant's practice rules (including whether they cover all areas of practice of regulated practitioners);
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- (d) the adequacy of the applicant's procedures for dealing with client disputes and complaints;
 - (e) the adequacy of the applicant's financial and personnel resources;
 - (f) any other criteria that the Board considers relevant in determining whether the applicant can adequately perform the functions of an RPA under this Act.
- (3) The Board may grant accreditation to an applicant that has fewer than 200 members who are current practitioners or members representing fewer than 20 different legal practices if—
- (a) the Board considers that there are special circumstances such that it is desirable that the applicant be accredited as an RPA; and
 - (b) the Board is satisfied as to the matters in sub-section (1) (other than paragraph (c)).
- (4) In this section, "**legal practice**" means—
- (a) a sole practitioner; or
 - (b) a firm; or
 - (c) an incorporated practitioner.

300. Publication and duration of accreditation

- (1) The Board must publish notice of the accreditation of an RPA in the Government Gazette in the prescribed form and the accreditation takes effect on the date of publication.
 - (2) Subject to suspension, revocation and withdrawal, an accreditation lasts for 10 years and may be renewed.
 - (3) The Board may extend an accreditation for a period of up to 12 months if the RPA has applied
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for renewal of its accreditation in accordance with section 301 and the Board has not determined the application at the expiry of the 10 year period.

301. Renewal of accreditation

- (1) An application for renewal of accreditation—
 - (a) must be made in writing at least 12 months before the expiry of the accreditation under section 300(2); and
 - (b) must contain the information required by the Board; and
 - (c) is to be treated as an application for accreditation and the provisions of this Part apply accordingly.
- (2) If it thinks fit, the Board may accept an application for renewal made within 12 months before the expiry of the accreditation.
- (3) There is no limit to the number of times an accreditation may be renewed.

302. Withdrawal from accreditation

An RPA may withdraw from accreditation on giving not less than 12 months' written notice to the Board.

303. Board may issue non-compliance notice

- (1) If the Board—
 - (a) reasonably suspects that an RPA has contravened a provision of this Act or the regulations; or
 - (b) is of the opinion that an RPA cannot perform, or is not performing, its functions as an RPA adequately; or
 - (c) becomes aware of any other matter that, had the Board known of it at the time that an

RPA applied for accreditation, would have resulted in the Board not granting the RPA accreditation—

the Board may give a written notice to the RPA requiring it, within 7 days, to provide an explanation to the Board.

- (2) If the Board is not satisfied with the RPA's explanation, or if no explanation is given within the 7 day period, the Board may issue a non-compliance notice to the RPA.
- (3) The non-compliance notice may require the RPA to take the steps specified in the notice to remedy the non-compliance within the time specified in the notice.
- (4) Sub-section (1)(c) applies irrespective of the time at which the matter arose.

304. Effect of non-compliance notice

If the Board issues a non-compliance notice to an RPA—

- (a) the RPA must comply with the notice; and
- (b) the RPA is not entitled to any further payment from the Legal Practice Fund, Public Purpose Fund or Fidelity Fund until the Board is satisfied that it has complied with the notice.

305. Suspension of accreditation

- (1) If an RPA does not take the steps specified in the non-compliance notice within the time specified in the notice, the Board, by written notice, may suspend the RPA's accreditation.
 - (2) A suspension is effective from the time the notice of suspension is given to the RPA.
 - (3) Notice of suspension must—
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- (a) set out the reasons for the suspension; and
 - (b) require the RPA, within 14 days, to show cause why the accreditation should not be revoked.
- (4) During the currency of a suspension each regulated practitioner of the suspended RPA is a regulated practitioner of the Board.
- (5) An RPA that is suspended must give to the Board the original or a copy of any documents in its possession or control relating to a regulated practitioner referred to in sub-section (4) within 7 days after the Board requests them.

Penalty: 50 penalty units.

306. *Appointment of administrator*

- (1) If an RPA does not take the steps specified in a non-compliance notice issued under section 303(2) within the time specified in the notice, the Board, instead of suspending the RPA's accreditation, may appoint an administrator to manage the affairs of the RPA.
- (2) If an administrator is appointed under sub-section (1), the RPA must—
- (a) perform its functions and exercise its powers under this Act or the regulations in accordance with the directions of the administrator; or
 - (b) as directed by the administrator, cease to perform its functions or exercise its powers either completely or to the extent specified in the direction.

Penalty: 100 penalty units.

- (3) An officer or employee of, or a person engaged by, an RPA must comply with the directions of the administrator.

Penalty: 20 penalty units.

- (4) An administrator has and may exercise all of the functions or powers of the RPA under this Act or the regulations.
- (5) An RPA must give an administrator free and unfettered access at all times, together with any assistants and equipment that the administrator considers necessary—
 - (a) to the RPA's premises; and
 - (b) to all documents in the possession of the RPA—

for the purpose of enabling the administrator to carry out his or her powers and functions under this section.

Penalty: 100 penalty units.

307. Revocation of accreditation

- (1) After the end of the period specified in section 305(3)(b), and having taken into account any written or oral submission made by or on behalf of the RPA, the Board, by written notice, may revoke the accreditation if the Board is satisfied that the RPA cannot or will not perform the functions of an RPA adequately.
 - (2) If an administrator of the affairs of an RPA is appointed under section 306, the Board, not less than 3 months nor more than 6 months after the appointment, may revoke the accreditation by written notice to the RPA, if satisfied that the RPA cannot or will not perform the functions of an RPA adequately.
 - (3) The Board must not revoke the accreditation of an RPA under sub-section (2) until it has consulted the administrator, the board of directors or other
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governing body of the RPA and the members of the RPA.

- (4) For the purpose of consulting the members of an RPA, the Board may—
 - (a) require the administrator to convene a general meeting of the RPA; and
 - (b) address the members at that meeting.
- (5) A revocation takes effect 60 days after the day the notice is given to the RPA.
- (6) If the Board does not revoke accreditation under this section it must lift the suspension or terminate the appointment of the administrator.

308. *Re-allocation of regulated practitioners*

- (1) If—
 - (a) the Board gives notice of revocation of accreditation to an RPA; or
 - (b) an RPA gives notice of withdrawal from accreditation to the Board; or
 - (c) an RPA does not apply for renewal of accreditation by the time referred to in section 301(1)(a), unless excused by the Board—

the Board must give written notice to each regulated practitioner of the RPA requesting the regulated practitioner to nominate another RPA of which the regulated practitioner or, in the case of a regulated practitioner that is a firm or an incorporated practitioner, each legal practitioner who is a partner or director or an employee of the regulated practitioner is eligible to be a member.

- (2) If a regulated practitioner nominates another RPA within 21 days, the Board, if satisfied that the

practitioner is entitled to nominate the RPA, must re-allocate the practitioner to the RPA.

- (3) If—
- (a) a regulated practitioner does not nominate another RPA within 21 days; or
 - (b) the Board is not satisfied that the regulated practitioner is entitled to nominate the nominated RPA—

the Board must re-allocate the practitioner to an RPA of which the practitioner or, in the case of a regulated practitioner that is a firm or an incorporated practitioner, each legal practitioner who is a partner or director or an employee of the regulated practitioner is eligible to be a member.

- (4) If the Board is satisfied that there is no other RPA of which a regulated practitioner or, in the case of a regulated practitioner that is a firm or an incorporated practitioner, each legal practitioner who is a partner or director or an employee of the regulated practitioner is eligible to be a member, the Board must re-allocate the practitioner to the Board.
- (5) A re-allocation takes effect when the accreditation of the RPA ceases.
- (6) The Board must give written notice of a re-allocation to the regulated practitioner, the RPA from which the practitioner is re-allocated and the RPA to which the practitioner is re-allocated (if any) as soon as practicable after making the re-allocation.

309. *Application of Administrative Law Act*

Sections 3 to 11 of the **Administrative Law Act 1978** apply to a decision of the Board to grant or refuse accreditation or renewal of accreditation or

to revoke accreditation as an RPA or to appoint an administrator of the affairs of an RPA as if references in those sections—

- (a) to a decision were references to the decision to grant or refuse accreditation or renewal of accreditation, to revoke accreditation or to appoint an administrator; and
- (b) to a tribunal were references to the Board; and
- (c) to a person affected were references to the applicant for accreditation or the RPA concerned.

310. Board may advance money to prospective RPA

- (1) A body corporate that intends to apply for accreditation as an RPA may apply to the Board for an advance of money for the purposes of establishing its regulatory framework and preparing its application for accreditation.
- (2) The Board may advance an amount it thinks fit from the Public Purpose Fund to a body in response to an application under sub-section (1) on such terms and conditions, including guarantees for the repayment of the advance, as the Board thinks fit.

Division 2—RPA administration

311. Official publications

An RPA must have an official publication.

312. Reports to Board

- (1) An RPA must report at intervals of no longer than 12 months to the Board on the performance of the RPA's functions as an RPA under this Act.
- (2) The report must contain the information specified by the Board.
- (3) The Board, by written notice, may at any time require an RPA to provide to it information or documents specified by the Board relating to the RPA's functions as an RPA under this Act within the time specified by the Board.

313. Delegation

- (1) An RPA may delegate in writing to an officer, an employee or the members of a committee of the RPA any of its powers or functions under Division 4 of Part 2 or under Part 5 or 9.
 - (2) An RPA must give written notice to the Board of any delegation under sub-section (1) and of any revocation or variation of any delegation, as soon as practicable after making it.
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PART 12—UNQUALIFIED PRACTICE

314. Prohibition on unqualified legal practice

- (1) A person must not engage in legal practice in Victoria unless the person—
- (a) is a natural person who—
 - (i) is admitted to legal practice; and
 - (ii) holds a practising certificate; or
 - (b) is an incorporated practitioner that holds a practising certificate; or
 - (c) is a registered interstate practitioner.
- Penalty: Imprisonment for 2 years.
- (2) A person must not represent or advertise that they are qualified to engage in legal practice unless the person—
- (a) is a natural person who—
 - (i) is admitted to legal practice; and
 - (ii) holds a practising certificate; or
 - (b) is an incorporated practitioner that holds a practising certificate; or
 - (c) is a registered interstate practitioner.
- Penalty: 240 penalty units.
- (3) A person who is authorised to engage in legal practice only as an employee of another legal practitioner or firm or as a corporate practitioner must not engage in legal practice as a sole practitioner, a partner of a firm or a director of an incorporated practitioner.
- Penalty: Imprisonment for 2 years.
- (4) For the purposes of this section, engaging in legal practice may consist of a single act.
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- (5) A person who contravenes sub-section (1), (2) or (3) commits a contempt of the Supreme Court and is liable to be punished for that contempt in addition to, or instead of, being prosecuted for the contravention.
- (6) A person who contravenes sub-section (1) or (3) is not entitled to recover any amount in respect of anything done during the course of that contravention and must repay any amount so received to the person from whom it was received.
- (7) If a person does not repay an amount required by sub-section (6) to be repaid, the person entitled to be repaid may recover the amount from the practitioner or firm as a debt in a court of competent jurisdiction.

315. Exceptions to prohibition on unqualified legal practice

- (1) For the purposes of this Part, a person is not to be taken to engage in legal practice in any of the following circumstances—
 - (a) a person who prepares an employment agreement within the meaning of the **Employee Relations Act 1992** on behalf of a party or proposed party to the agreement;
 - (b) in the circumstances described in section 53A of the **Estate Agents Act 1980**;
 - (c) a person (other than a legal practitioner) who represents another person in proceedings before a court or tribunal, or in arbitration proceedings, if the person is so authorised by or under any Act or statutory rule, or has leave of the court or tribunal or the arbitrator or umpire;
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- (d) a person acting in the course of their employment with the Crown or a public authority;
 - (e) a person registered as a patent attorney under the Patents Act 1990 of the Commonwealth who practises as such in accordance with that Act.
- (2) For the avoidance of doubt, nothing in sub-section (1)(c) affects the power of a court, a tribunal, an arbitrator or an umpire to give or refuse leave for a person to represent another.

316. Injunction restraining unqualified practice

- (1) On application by an RPA or the Board, the Supreme Court, if it thinks fit, may grant an injunction restraining a person from engaging in legal practice, or representing or advertising that they are qualified to engage in legal practice, in contravention of section 314.
- (2) An injunction under sub-section (1) may be granted or applied for without notice to any person.

317. Sharing income with unqualified persons

- (1) A current practitioner or firm must not enter into an agreement or arrangement with a person who is not a current practitioner under which that person is entitled to share in the income from the practitioner's or firm's legal practice otherwise than as is permitted by this section.

Penalty: 240 penalty units.

- (2) A current practitioner or firm—
- (a) may pay an annuity or other amount out of the income from legal practice to a retired legal practitioner or to the dependants or personal representatives of a deceased practitioner;
 - (b) may share income from legal practice with a community legal centre.
- (3) A current practitioner (being a natural person) may share income from legal practice—
- (a) with a family member; or
 - (b) with a corporation the total beneficial interests in which are held by the practitioner or family members or both; or
 - (c) in the case of a corporate practitioner, with his or her employer.
- (4) A firm or an incorporated practitioner may share income from legal practice—
- (a) with a family member of a partner, of a director or of an employee who is a current practitioner; or
 - (b) with a corporation the total beneficial interests in which are held by that partner, director or employee and their family members or both.
- (5) A firm, or a current practitioner who is a partner of a firm, may share income from legal practice with an interstate practitioner who is a partner of the firm.
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318. *Employment or engagement of practitioners without practising certificates*

- (1) A legal practitioner or firm must not knowingly employ or engage a legal practitioner who does not hold a practising certificate (other than a registered interstate practitioner) in connection with the practitioner's or firm's legal practice.

Penalty: 120 penalty units.

- (2) Sub-section (1) does not apply to a legal practitioner or firm—
- (a) in the case of a newly-admitted legal practitioner who was employed by the practitioner or firm immediately before his or her admission if that person obtains a practising certificate within 30 days after admission; or
 - (b) who employs or engages a legal practitioner in accordance with an authorisation of the Board under sub-section (3).
- (3) The Board, on application by a legal practitioner or firm, may authorise the practitioner or firm to employ or engage a specified legal practitioner who does not hold a practising certificate in connection with specified activities or functions that do not constitute engaging in legal practice.
- (4) A legal practitioner or firm must not permit or assist a legal practitioner (other than a registered interstate practitioner) to engage in legal practice without holding a practising certificate.

Penalty: 120 penalty units.

319. *Employment or engagement of persons who have been banned from legal practice*

Subject to section 320, a legal practitioner or firm must not knowingly employ or engage in connection with the practitioner's or firm's legal practice—

- (a) a person whose name has been struck off the roll of practitioners of the Supreme Court (unless the person has been re-admitted); or
- (b) a person who is suspended, disqualified or otherwise prohibited from engaging in legal practice in Victoria or in any place outside Victoria (whether in or outside Australia); or
- (c) a person who is subject to an order under section 321.

Penalty: 240 penalty units.

320. *Authorisation of employment or engagement*

- (1) On application by a legal practitioner or firm, the Board may authorise the practitioner or firm to employ or engage a person referred to in paragraph (a), (b) or (c) of section 319 for the period and subject to the conditions (if any) specified by the Board.
 - (2) A legal practitioner or firm may appeal to the Supreme Court within 30 days—
 - (a) from a refusal of the Board to give an authorisation; or
 - (b) against any conditions imposed on an authorisation by the Board.
 - (3) If the Board has not given or refused to give an authorisation within 60 days after an application for authorisation was made, the Board must be taken to have refused to give the authorisation.
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- (4) After hearing the matter, the Supreme Court—
- (a) may refuse, grant or confirm an authorisation; and
 - (b) if it grants an authorisation, may impose any conditions on the authorisation it thinks fit; and
 - (c) if it confirms an authorisation, may confirm or vary any conditions imposed on that authorisation by the Board and impose any further conditions on the authorisation it thinks fit.
- (5) A legal practitioner or firm must comply with any conditions imposed on an authorisation by the Board or the Supreme Court.

Penalty: 50 penalty units.

321. *Orders prohibiting employment or engagement of certain persons*

- (1) An RPA, the Board or the Legal Ombudsman may apply to the Full Tribunal for an order that a person (other than a legal practitioner) who—
- (a) has been convicted in Australia or elsewhere of an offence involving fraud, dishonesty, drug trafficking or violence; or
 - (b) in the opinion of the RPA, Board or Legal Ombudsman has been a party to an act or omission that, if the person had been a legal practitioner or firm, may have resulted in a charge being brought in the Tribunal—
- not be employed or engaged in connection with legal practice or conveyancing work within the meaning of Part 13.
- (2) The Full Tribunal may order that the person is not to be employed, for a specified period or

indefinitely, in connection with legal practice or conveyancing work within the meaning of Part 13.

- (3) If an order under this section specifies that a person not be employed indefinitely, the person may apply to the Full Tribunal to have the order revoked.
- (4) The Full Tribunal, on application under section (3), may revoke an order if it considers it appropriate to do so.

322. Appeal to Court of Appeal

- (1) A person against whom an order is made under section 321 may appeal to the Court of Appeal on a question of law.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and the person then requests it to give written reasons under section 409, the time for instituting the appeal¹³ runs from the time when the party receives the written reasons.

323. Unqualified persons must inform prospective employers

A person referred to in paragraph (a), (b) or (c) of section 319 must not seek or accept employment or engagement with a legal practitioner or a firm in connection with the legal practice of the practitioner or firm unless the person has informed them that they are a person to whom that section applies.

Penalty: 50 penalty units.

324. Permitting or assisting unqualified persons to practise

- (1) A legal practitioner or firm must not permit or assist a person who is not admitted to legal practice in Victoria (other than a registered interstate practitioner) to engage in legal practice in Victoria.
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- (2) A practitioner or firm that contravenes sub-section (1) commits a contempt of the Supreme Court.

325. Prisoners must not practise

- (1) A legal practitioner who is a prisoner (within the meaning of the **Corrections Act 1986**) must not, as a legal practitioner, commence or continue to act in any civil or criminal proceeding.
- (2) A person who contravenes sub-section (1)—
- (a) commits a contempt of the Supreme Court; and
 - (b) is not entitled to recover any amount in respect of anything done during the course of that contravention; and
 - (c) must repay any amount so received to the person from whom they were received.
- (3) If a legal practitioner does not repay an amount required by sub-section (2)(c) to be repaid, the person entitled to be repaid may recover the amount from the practitioner as a debt in a court of competent jurisdiction.
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PART 13—CONVEYANCING BUSINESSES

326. Definitions

In this Part—

"conveyancer" means a person, other than a current practitioner or registered interstate practitioner, who carries on a business in the course of which conveyancing work is carried out directly or indirectly for fee or reward;

"conveyancing work" means work, other than legal work, carried out in connection with the transfer or conveyance of a freehold or leasehold interest in land;

"legal work" means—

- (a) the preparation of any document that creates, varies, transfers or extinguishes an interest in land; or
- (b) the giving of legal advice.

327. Employment or engagement in conveyancing businesses

(1) This section applies to a person—

- (a) whose name has been struck off the roll of practitioners of the Supreme Court (unless he or she has been re-admitted); or
 - (b) who is suspended, disqualified or otherwise prohibited from engaging in legal practice in Victoria or in any place outside Victoria (whether in or outside Australia); or
 - (c) who is subject to an order under section 321; or
 - (d) who is an insolvent under administration; or
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- (e) who is prohibited under the Corporations Law from managing a corporation; or
 - (f) who has been convicted in Victoria or elsewhere within the last 10 years of an offence involving fraud, dishonesty, drug trafficking or violence.
- (2) A person to whom this section applies must not—
- (a) carry on business as a conveyancer; or
 - (b) subject to section 328, accept employment or engagement with a conveyancer in connection with the performance of conveyancing work; or
 - (c) have any pecuniary interest in the business of a conveyancer.

Penalty: 100 penalty units.

- (3) Subject to section 328, a conveyancer must not knowingly employ or engage a person to whom this section applies in connection with the performance of conveyancing work.

Penalty: 100 penalty units.

328. *Authorisation of employment or engagement*

- (1) On application by a conveyancer, the Board may authorise the conveyancer to employ or engage a person to whom section 327 applies for the period and subject to the conditions (if any) specified by the Board.
- (2) A conveyancer may appeal to the Supreme Court within 30 days—
 - (a) from a refusal of the Board to give an authorisation; or
 - (b) against any conditions imposed on an authorisation by the Board.

- (3) If the Board has not given or refused to give an authorisation within 60 days after an application for authorisation was made, the Board must be taken to have refused to give the authorisation.
- (4) After hearing the matter, the Supreme Court—
- (a) may refuse, grant or confirm an authorisation; and
 - (b) if it grants an authorisation, may impose any conditions on the authorisation it thinks fit; and
 - (c) if it confirms an authorisation, may confirm or vary any conditions imposed on that authorisation by the Board and impose any further conditions on the authorisation it thinks fit.
- (5) A conveyancer must comply with any conditions imposed on an authorisation by the Board or the Supreme Court.

Penalty: 50 penalty units.

329. Unqualified persons must inform prospective employers

A person to whom section 327 applies must not seek or accept employment or engagement with a conveyancer in connection with the performance of conveyancing work unless the person has informed the conveyancer that they are a person to whom that section applies.

Penalty: 50 penalty units.

330. Conveyancers must disclose insurance etc

- (1) A conveyancer must set out a statement, in a form approved by the Board, of whether or not the conveyancer holds insurance that covers them against civil liability in connection with
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conveyancing work carried on in the course of their business—

- (a) in every public document of the conveyancer; and
- (b) in a conspicuous place, and in letters easily legible, on the outside of every office and place at which the business is carried on and that is open and accessible to the public.

Penalty: 100 penalty units.

- (2) A conveyancer must give a written notice to a prospective client—
 - (a) indicating—
 - (i) whether or not the conveyancer holds insurance that covers the conveyancer against civil liability in connection with conveyancing work carried on in the course of their business; and
 - (ii) if the conveyancer holds insurance, the amount of cover and any relevant exclusions or limitations on the cover; and
 - (b) if the conveyancer intends to retain a legal practitioner or firm to perform legal work in connection with the transaction, indicating the name and address of that practitioner or firm; and
 - (c) if not, indicating that the conveyancer is not authorised to perform legal work.

Penalty: 100 penalty units.

- (3) In this section, "**public document**" includes a business letter, statement of account, invoice, receipt and offer or agreement to supply services.

**PART 14—COUNCIL OF LEGAL EDUCATION AND BOARD
OF EXAMINERS**

Division 1—Council of Legal Education

331. Council of Legal Education

- (1) The Council of Legal Education is established.
 - (2) The Council consists of—
 - (a) the Chief Justice of the Supreme Court and 6 other Judges of the Supreme Court nominated by the Chief Justice;
 - (b) the President of the Court of Appeal and 2 other Judges of Appeal nominated by the President;
 - (c) the Attorney-General;
 - (d) the Solicitor-General;
 - (e) the Director of Public Prosecutions;
 - (f) the Chief Judge of the County Court and another judge of the County Court nominated by the Chief Judge;
 - (g) the Chief Magistrate and another magistrate nominated by the Chief Magistrate;
 - (h) the Chairperson of the Board and a person nominated by the Board;
 - (i) the Dean of the Faculty of Law of the University of Melbourne and a person nominated by the council of the University of Melbourne;
 - (j) the Dean of the Faculty of Law of Monash University and a person nominated by the council of Monash University;
 - (k) the Head of the School of Law and Legal Studies of La Trobe University and a person
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- nominated by the council of La Trobe University;
- (l) the Head of the School of Law of Deakin University and a person nominated by the council of Deakin University;
- (m) 2 persons nominated by each RPA.
- (3) A nomination by a person or body of a person as a member of the Council must be made for the next 3 calendar years or for the balance of the calendar year in which the nomination is made and the next 2 calendar years, and a nominated member may be re-nominated.
- (4) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member in respect of the office of member.
- (5) A nominated member may resign his or her office in writing delivered to the Chief Justice.
- (6) A member is entitled to receive the fees (if any) that are fixed by the Governor in Council from time to time in respect of him or her or in respect of a class of member that includes him or her.
- (7) The appointment of a judge of the Supreme Court or the County Court as a member does not affect the tenure of office of the judge nor the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of an office as a judge of the Supreme Court or County Court and, for all purposes, service as a member is to be taken to be service as the holder of an office as a judge.
- (8) The appointment of a person who has been a judge of the Supreme Court or the County Court as a member does not affect any pension or other rights or privileges the person has as a former judge.
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- (9) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of member is not to be taken to be a judicial office or an office or place of profit under the Crown.

332. Functions and powers

- (1) The functions of the Council are—
- (a) to determine the qualifications required for admission to legal practice;
 - (b) the other functions conferred on it by or under this or any other Act.
- (2) The Council has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting sub-section (2), the Council has the rule-making power conferred on it by section 337.

333. Meetings

- (1) The Chief Justice of the Supreme Court must preside at any meeting of the Council at which he or she is present.
- (2) If the Chief Justice is absent, the next most senior Judge of the Supreme Court present must preside or, if there is no Supreme Court Judge present, a member appointed by the members present must preside.
- (3) The quorum of the Council is 7 members.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
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- (5) The Council must meet at the times and places that are determined by the Chief Justice or the Council.
 - (6) The Council must ensure that accurate minutes are kept of its meetings.
 - (7) Subject to this Division, the Council may regulate its own procedure.

334. Deputy for Attorney-General

- (1) The Attorney-General may appoint a person to be his or her deputy as a member of the Council.
- (2) A deputy member appointed under sub-section (1) may, in the absence of the Attorney-General, attend a meeting of the Council in his or her place and exercise any power and perform any function at that meeting that the Attorney-General could have exercised or performed.

335. Staff and consultants

- (1) There may be appointed or employed under the **Public Sector Management Act 1992** a secretary of the Council and any other officers and employees that are necessary for the performance by the Council of its functions.
- (2) The Council may engage any consultants required for the purposes of carrying out its functions.
- (3) The Council may engage a person as secretary in an honorary capacity.

336. Validity of acts or decisions

An act or decision of the Council is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member or deputy member.

337. Rules

- (1) The Council may at a meeting make rules for or with respect to the courses of study, examinations, service of articles and other qualifications required for admission to legal practice.
 - (2) A power conferred by this section to make rules may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
 - (3) Rules made under this section may be made—
 - (a) so as to apply at all times or at a specified time; and
 - (b) so as to require a matter affected by the rules to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body; or
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- (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
 - (i) wholly or partially or as amended by the rules; or
 - (ii) as in force at a particular time or as in force from time to time; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body; and
 - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the rules, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (4) For the purposes of the **Subordinate Legislation Act 1994**, rules made under this section are deemed to be statutory rules.

Division 2—Board of Examiners

338. Board of Examiners

- (1) The Board of Examiners for Legal Practitioners is established.
 - (2) The Board of Examiners consists of—
 - (a) the Attorney-General;
 - (b) the Solicitor-General;
 - (c) 6 legal practitioners nominated by the Council of Legal Education after consultation with each RPA and the Board.
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- (3) A nomination by the Council of Legal Education of a person as a member of the Board of Examiners must be made for the next 3 calendar years or for the balance of the calendar year in which the nomination is made and the next 2 calendar years, and a nominated member may be re-nominated.
- (4) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member in respect of the office of member.
- (5) A nominated member is entitled to receive the fees (if any) that are fixed by the Governor in Council from time to time in respect of him or her or in respect of a class of member that includes him or her.

339. Resignation and removal

- (1) A nominated member may resign his or her office in writing delivered to the chairperson.
- (2) The Council of Legal Education may at any time remove a nominated member from office on the ground that he or she—
 - (a) is, in the opinion of the Council, incapable of carrying out the duties of the office; or
 - (b) has become an insolvent under administration; or
 - (c) has been found guilty by the Tribunal of misconduct or unsatisfactory conduct.

340. Chairperson

- (1) At its first meeting in each calendar year the Board of Examiners must elect one of its members to be chairperson.
 - (2) The chairperson may resign his or her office in writing delivered to the Council.
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341. Functions and powers

- (1) The functions of the Board of Examiners are—
 - (a) to consider applications by persons for admission to legal practice;
 - (b) to certify to the Supreme Court that an applicant for admission meets all the requirements of the admission rules;
 - (c) the other functions conferred on it by or under this or any other Act, including by the admission rules.
- (2) The Board of Examiners has the powers conferred on it by or under this or any other Act, including by the admission rules.
- (3) The Board of Examiners may refer to the Supreme Court for determination any question concerning the eligibility for admission of an applicant.

342. Appeal to Supreme Court

- (1) A person may appeal to the Supreme Court against a decision of the Board with respect to his or her application for admission to legal practice.
- (2) An appeal under sub-section (1) must be made within 30 days after being notified of the decision.
- (3) An appeal under sub-section (1) is to be conducted as a hearing de novo.

343. Meetings

- (1) The chairperson must preside at any meeting of the Board of Examiners at which he or she is present.
- (2) If the chairperson is absent from a meeting, or there is a vacancy in the office of chairperson, a member appointed by the members present, must preside.

- (3) The quorum of the Board of Examiners is 4 members.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The Board of Examiners must meet at the times and places that are determined by the chairperson or the Board.
- (6) The Board of Examiners must ensure that accurate minutes are kept of its meetings.
- (7) Subject to this Division, the Board of Examiners may regulate its own procedure.

344. Deputy members

- (1) The Council may appoint a qualified person to be the deputy of any person nominated by it as a member of the Board of Examiners.
- (2) A deputy member appointed under sub-section (1) may, in the absence of the member, attend a meeting of the Board of Examiners in the place of the member and exercise any power and perform any function at that meeting that the member could have exercised or performed.
- (3) The appointment of a deputy member continues until the member ceases to hold office.

345. Staff and consultants

- (1) There may be appointed or employed under the **Public Sector Management Act 1992** a secretary of the Board of Examiners and any other officers and employees that are necessary for the performance by that Board of its functions.
 - (2) The Board of Examiners may engage any person as a consultant on any terms and conditions that it thinks fit.
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346. *Validity of acts or decisions*

An act or decision of the Board of Examiners is not invalid only because—

- (a) of a vacancy in the office of a member; or
 - (b) of a defect or irregularity in, or in connection with, the appointment of a member or deputy member.
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PART 15—LEGAL PRACTICE BOARD

Division 1—The Board

347. *Establishment*

- (1) The Legal Practice Board is established.
- (2) The Board—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of the Board affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Board must be kept in such custody as the Board directs and must not be used except as authorised by the Board.

348. *Board not to represent the Crown*

The Board is a public authority but does not represent the Crown.

349. *Membership*

- (1) The Board consists of—
 - (a) a chairperson appointed under section 350;
 - (b) 3 legal practitioners elected in accordance with section 351 ("**practitioner members**");
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(c) 3 persons appointed under section 352 ("non-practitioner members").

(2) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member of the Board in respect of the office of member.

350. Chairperson and deputy chairperson

(1) The Governor in Council may appoint a person to be chairperson of the Board.

(2) A person is not eligible for appointment as chairperson unless he or she is, or has been, a judge of the High Court of Australia, the Supreme Court, the County Court or the Federal Court of Australia.

(3) The appointment of a judge of the Supreme Court or the County Court as the chairperson does not affect the tenure of office of the judge nor the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of an office as a judge of the Supreme Court or County Court and, for all purposes, service as the chairperson is to be taken to be service as the holder of an office as a judge.

(4) The appointment of a person who has been a judge of the Supreme Court or the County Court as the chairperson or a deputy chairperson does not affect any pension or other rights or privileges the person has as a former judge.

(5) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of chairperson is not to be taken to be a judicial office or an office or place of profit under the Crown.

- (6) The chairperson holds office, subject to this Act, for a term of 4 years from the date of appointment and is eligible for re-appointment.
- (7) The Governor in Council may appoint a member of the Board (other than the chairperson) to be the deputy chairperson.

351. Practitioner members¹⁴

- (1) 3 persons are to be elected to the Board in accordance with this section, Division 2 and the regulations.
- (2) A person is not eligible for election unless he or she is a legal practitioner of not less than 7 years' standing.
- (3) A practitioner member holds office, subject to this Act, from 1 January immediately following his or her election for a period of 4 years and is eligible for re-election.

352. Non-practitioner members

- (1) The Governor in Council may appoint a person to be a non-practitioner member of the Board.
 - (2) A person is not eligible to be appointed as a non-practitioner member if he or she—
 - (a) is, or has been, a legal practitioner; or
 - (b) is qualified to be admitted as a legal practitioner.
 - (3) At least one of the non-practitioner members must be a person who has experience in risk management or prudential supervision.
 - (4) The Governor in Council may not appoint a person as a non-practitioner member unless the Attorney-General has caused notice of the proposed appointment to be given in each House
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of the Parliament and at least 5 sitting days of that House have elapsed since the giving of the notice.

- (5) A non-practitioner member holds office, subject to this Act, for a term of 4 years from the date of appointment and is eligible for re-appointment.

353. *Payment of members*

- (1) A member of the Board (except the chairperson if he or she is a judge other than a reserve judge) is entitled to receive the remuneration that is fixed from time to time by the Governor in Council.
- (2) Each member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.
- (3) The Governor in Council may fix different remuneration for different classes of members of the Board.

354. *Vacancies, resignations, removal from office*

- (1) The office of a member becomes vacant if the member—
- (a) becomes an insolvent under administration;
or
 - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A member may resign by writing delivered to the Governor in Council.
- (3) The Governor in Council may suspend a member from office and, subject to this section, may remove a member from office.
- (4) The Attorney-General must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of a member of the

Board within 7 sitting days of the House after the suspension.

- (5) The suspended member must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it, declares by resolution that the member ought to be removed from office.
- (6) Unless each House of the Parliament makes a declaration under sub-section (5) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the member to office.

355. *Acting appointments*

- (1) The Governor in Council may appoint a person to act as a member of the Board—
 - (a) during a vacancy in the office of member; or
 - (b) in the place of a member who is absent or who, for any other reason, is unable to perform the duties of the office.
 - (2) Before a person is appointed to act in the place of a practitioner member, or during a vacancy in an office of practitioner member, each RPA of which legal practitioners who are on the roll of practitioners that elected the member are regulated practitioners must be consulted about the appointment.
 - (3) An acting appointment is for the term (not exceeding 3 months in the case of a person to act in the place of a practitioner member) specified in the instrument of appointment.
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- (4) An acting member—
- (a) has all the powers and must perform all the duties of the member for whom, or the office in which, he or she is acting; and
 - (b) is entitled to be paid the remuneration and allowances that the member would have been entitled to for performing those duties; and
 - (c) is eligible for re-appointment.
- (5) Section 350(3), (4) and (5) applies to the appointment of an acting chairperson of the Board.
- (6) The Governor in Council may at any time terminate an acting appointment.

356. *Casual vacancies of practitioner members*

- (1) If the office of a practitioner member becomes vacant (other than within 3 months before the expiry of the term of the member vacating office) an election must be held in accordance with Division 2 to fill the vacancy.
- (2) A member elected to fill a vacancy referred to in sub-section (1) holds office for the remainder of the term of the practitioner member who vacated the office.

357. *Meetings*

- (1) The chairperson of the Board or, in his or her absence, the deputy chairperson of the Board or, in the absence of both of them, a member appointed by the members present, must preside at a meeting of the Board.
- (2) A majority of the members of the Board for the time being, consisting of at least one

non-practitioner member and one practitioner member, constitutes a quorum of the Board.

- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (4) The Board must ensure that accurate minutes are kept of its meetings.
- (5) For the purpose of making a decision or exercising a power under Part 9, the Board may permit members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication that does not require the physical presence of each member in the same place.
- (6) Subject to this Division, the Board may regulate its own procedure.

358. *Conflicts of interest*

- (1) If—
 - (a) a member has a personal interest (whether pecuniary or otherwise) in a matter being considered or about to be considered by the Board; and
 - (b) the interest appears to raise a conflict of interest with the proper performance of the member's duties in relation to the consideration of the matter—

the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest at a meeting of the Board.

Penalty: 5 penalty units.

- (2) The person presiding at a meeting at which a declaration is made must cause a record of the
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declaration to be made in the minutes of the meeting.

- (3) After becoming aware of the conflict of interest in a matter—
 - (a) unless the Board directs otherwise, the member must not be present during any deliberations on the matter; and
 - (b) the member is not entitled to vote on the matter; and
 - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section and section 359, a member is not to be regarded as having a conflict of interest—
 - (a) in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
 - (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body.

359. Resolutions without meetings

- (1) If—
 - (a) the Board has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
 - (b) a majority of the members, including at least one non-practitioner member and one practitioner member, sign a document containing a statement that they are in favour
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of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Board, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) In this section, "**member**", in relation to a resolution, does not include a member who, by reason of section 358, is not entitled to vote on the resolution.

360. Validity of acts or decisions

An act or decision of the Board is not invalid—

- (a) only because—
 - (i) of a defect or irregularity in, or in connection with, the appointment of a member or an acting member or the election of a member; or
 - (ii) of a vacancy in the office of a member; or
- (b) on the ground that the occasion for an acting member to act had not arisen or had ceased.

361. Staff, consultants and delegation

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- (1) The Board may employ any staff and engage any consultants required for the purposes of carrying out its functions or exercising its powers under this Act.
 - (2) The Board may delegate in writing to an employee of the Board any of its powers or functions under Division 4 of Part 2 or under Part 5 or 9.

362. *Secrecy*

- (1) A person who is, or has been, a member or an acting member of the Board or an employee of or a consultant to the Board must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or exercise of powers under this Act, unless—
 - (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
 - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent a person—
 - (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act; or
 - (b) reporting a suspected offence to the police or assisting them in their investigations.

363. *Immunity*

- (1) A member, an acting member or an employee of the Board is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
 - (a) in the exercise of a power or the performance of a function or duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty under this Act.
- (2) Any liability resulting from an act or omission that, but for sub-section (1), would attach to a member, an acting member or an employee attaches instead to the Board.

Division 2—Election of practitioner members

364. Electoral rolls

- (1) The Board must keep the following rolls of electors for the purpose of elections of practitioner members—
 - (a) a roll of advocates;
 - (b) a roll of non-advocates;
 - (c) a combined roll of advocates and non-advocates.
- (2) Subject to this Act and the regulations, the rolls are to be kept in the manner and form determined by the Board, and may be kept in the Register.

365. Enrolment

- (1) A current practitioner (being a natural person) may apply at any time for enrolment on the roll of advocates or the roll of non-advocates by giving a written notice to the Board.
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- (2) A current practitioner (being a natural person) may apply at any time to be transferred from the roll of advocates to the roll of non-advocates or vice versa by giving a written notice to the Board.
 - (3) Subject to sub-sections (4) and (5), as soon as practicable after receiving a notice under this section, the Board must—
 - (a) in the case of a notice under sub-section (1), enrol the practitioner on the roll specified by him or her and the combined roll;
 - (b) in the case of a notice under sub-section (2), delete the practitioner from the roll from which he or she has requested a transfer and enrol him or her on the roll to which he or she has requested to be transferred.
 - (4) A person may be enrolled on the roll of advocates only if he or she engages in legal practice primarily as an advocate.
 - (5) The Board may require a person to provide satisfactory evidence that he or she is entitled to be enrolled on the roll of advocates.
 - (6) The Board must remove from the rolls a person who ceases to be a current practitioner.

366. Elections

- (1) The 3 practitioner members are to be elected as follows—
 - (a) one is to be elected by electors on the roll of advocates;
 - (b) one is to be elected by electors on the roll of non-advocates;
 - (c) one is to be elected by electors on the combined roll.
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- (2) The first election must be held on or before 30 November 1997 and, despite anything to the contrary in section 351(3), the member elected from the combined roll at that election holds office until 31 December 1999, but is eligible for re-election.
- (3) Subsequent elections are to be held in the last quarter of every second calendar year, alternately for the member to be elected from the combined roll and the members to be elected from the roll of advocates and the roll of non-advocates.
- (4) Subject to sub-section (5) and section 351(2), a person is eligible to be a candidate for election as a practitioner member if the person is enrolled on the roll of electors for that member.
- (5) A regulated practitioner of an RPA is not eligible to be a candidate for election from the combined roll if the continuing members elected from the roll of advocates and the roll of non-advocates are both regulated practitioners of that RPA.

367. Preferential voting¹⁵

- (1) If there are only 2 candidates for election of a practitioner member the result is to be determined as follows—
 - (a) the candidate who has received the greater number of first preference votes is to be declared elected;
 - (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot.
 - (2) If there are more than 2 candidates for election of a practitioner member, the result is to be determined as follows—
 - (a) the candidate who has received the greatest number of first preference votes, if that
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- number constitutes an absolute majority of votes, is to be declared elected;
- (b) if no candidate has received an absolute majority of votes—
- (i) the candidate who has received the fewest first preference votes is to be declared a defeated candidate; and
 - (ii) the ballot-papers counted to the defeated candidate are to be distributed amongst the non-defeated candidates next in order of the voters' preference; and
 - (iii) after the distribution, the total number of votes given to each non-defeated candidate is to be ascertained;
- (c) the candidate who has then received the greatest number of votes, if that number constitutes an absolute majority of votes, is to be declared elected;
- (d) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected;
- (e) if on any count 2 or more candidates have an equal number of votes and one of them has to be declared a defeated candidate the result is to be determined by lot;
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- (f) if on the final count 2 candidates have received an equal number of votes the result is to be determined by lot.

368. *Election of advocate and non-advocate members*

- (1) This section applies to elections for the members from the roll of advocates and the roll of non-advocates, if the candidates who would, apart from this section, be declared elected are both regulated practitioners of the same RPA as the continuing member elected from the combined roll.
- (2) If this section applies—
 - (a) the candidate referred to in sub-section (1) who received the higher proportion of first preference votes out of the total number of eligible voters on the relevant roll is to be declared elected; and
 - (b) the other candidate referred to in sub-section (1) and any other candidate in that election who is a regulated practitioner of the same RPA are not eligible to be elected, and their first preference votes are to be distributed amongst the other eligible candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates.

369. *Elections to fill casual vacancies*

The provisions of this Division apply, with any necessary modifications, to an election to fill a casual vacancy in the office of a practitioner member.

370. *Arrangements with Electoral Commissioner*

The Board may enter into arrangements with the Electoral Commissioner in relation to the conduct of elections for the purposes of this Division.

371. Regulations

- (1) For the purposes of this Division, the regulations may make provision for or with respect to—
 - (a) the rolls of electors;
 - (b) nomination of candidates for election;
 - (c) polling places;
 - (d) hours of polling;
 - (e) appointment of scrutineers;
 - (f) ballot-papers;
 - (g) postal voting;
 - (h) any other matter or thing required or permitted by this Division to be prescribed or necessary to be prescribed to give effect to this Division.
 - (2) The regulations may—
 - (a) require a nomination for election—
 - (i) to be supported by a specified number of electors;
 - (ii) to be accompanied by a deposit of a specified amount not exceeding \$500;
 - (b) make provision for the forfeiture and return of deposits.
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PART 16—ESTABLISHMENT OF FUNDS

Division 1—Public Purpose Fund

372. *Public Purpose Fund*

- (1) The Board must establish and maintain a fund called the Public Purpose Fund.
- (2) Subject to this Part, the amount standing to the credit of the Public Purpose Fund must—
 - (a) be kept separate from any other money held by the Board;
 - (b) be held in trust for the purposes set out in this Part.
- (3) The Board may invest any money standing to the credit of the Public Purpose Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.

373. *Accounts in Public Purpose Fund*

The Board must establish and maintain in the Public Purpose Fund the following accounts separate from each other—

- (a) General Account;
- (b) Statutory Deposit Account;
- (c) Legal Practice Board Account;
- (d) Legal Profession Tribunal Account;
- (e) Trust Accounts Regulation Account;
- (f) Law Reform and Research Account.

374. General Account

- (1) There must be credited to the General Account—
- (a) any fine imposed by an order of the Tribunal;
 - (b) any money received by the Board under an arrangement under section 176 (Board arrangements with banks and societies);
 - (c) any money received by the Board under section 270;
 - (d) any repayments received by the Board in respect of an advance made by it under section 310;
 - (e) any money transferred to the Public Purpose Fund from the Fidelity Fund under section 390;
 - (f) any money derived from any investment of the Public Purpose Fund;
 - (g) any profit arising on the realisation or revaluation of any investment of the Public Purpose Fund;
 - (h) any other money received by the Board that is not by this Part required to be credited to another account in the Public Purpose Fund or to the Fidelity Fund or the Legal Practice Fund.
- (2) There must be debited to the General Account—
- (a) first—
 - (i) any amount required to be credited to the Legal Practice Board Account under section 376;
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- (ii) any amount required to be credited to the Legal Profession Tribunal Account under section 377;
 - (iii) any amount required to be paid to the Legal Ombudsman under section 378;
 - (iv) any amount required to be credited to the Trust Accounts Regulation Account under section 379;
 - (v) any money required to be paid to a receiver or manager or to a regulated practitioner out of the Public Purpose Fund under Part 9;
 - (vi) any loss incurred on the realisation or revaluation of any investment of the Public Purpose Fund;
 - (vii) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Public Purpose Fund;
 - (viii) any amount for which the Board is liable under a judgment or order for the recovery or payment of money given or made by a court in a proceeding;
 - (ix) any amount required to meet the fees, remuneration or allowances of members and employees of the Council and the Board of Examiners;
- (b) secondly—
- (i) any amount required to be transferred to the Fidelity Fund under section 276 or 385;
 - (ii) any amount required to be transferred to the Legal Practice Fund under section 386;
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(iii) any advance made by the Board under section 310;

(c) thirdly—

(i) any amount required to be paid out of the Public Purpose Fund under section 380 to the Legal Aid Fund or to the Treasurer;

(ii) any amount required to be paid to the Victoria Law Foundation under section 381;

(iii) any amount required to be paid to the Leo Cussen Institute under section 382;

(iv) any amount required to be credited to the Law Reform and Research Account under section 383;

(d) fourthly, out of the balance (if any) any payment that the Board determines under section 387 to make to an RPA.

375. *Statutory Deposit Account*

(1) There must be credited to the Statutory Deposit Account any money paid into Public Purpose Fund under section 179 (initial deposit of trust money with Board) or in compliance with section 180 (continuing requirement to deposit).

(2) There must be debited to the Statutory Deposit Account any money required to be repaid to a legal practitioner or firm under section 181 (repayment by Board).

376. *Legal Practice Board Account*

(1) There must be credited to the Legal Practice Board Account on or before 30 September in each year such amount as the Board, with the approval of the Attorney-General, directs.

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- (2) The money standing to the credit of the Legal Practice Board Account is to be applied by the Board in the payment of the expenses and discharge of the liabilities incurred by it in carrying out its functions, other than—
- (a) regulating regulated practitioners or their trust accounts; or
 - (b) functions relating to investigations under Division 5 of Part 6; or
 - (c) functions in respect of which it is entitled to payment out of the Fidelity Fund in accordance with section 388(3)(b).

377. *Legal Profession Tribunal Account*

- (1) There must be credited to the Legal Profession Tribunal Account on or before 30 September in each year such amount as the Board directs.
- (2) The amount credited under sub-section (1) in any year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.
- (3) The money standing to the credit of the Legal Profession Tribunal Account is to be applied as directed by the Tribunal in the payment of the expenses incurred by it in carrying out its functions.

378. *Legal Ombudsman*

- (1) There must be paid to the Legal Ombudsman on or before 30 September in each year such amount as the Board directs.
- (2) The amount paid under sub-section (1) in any year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.

- (3) The money paid to the Legal Ombudsman is to be applied in the payment of the expenses incurred by the Legal Ombudsman in carrying out his or her functions.

379. Trust Accounts Regulation Account

- (1) There must be credited to the Trust Accounts Regulation Account on or before 30 September in each year such amount as is determined by the Board in respect of that year and published in the Government Gazette.
- (2) In determining an amount for the purposes of this section the Board must have regard to the need to maintain the efficient and effective regulation of the trust accounts of legal practitioners, firms and approved clerks.
- (3) The amount credited under sub-section (1) in any year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.
- (4) The Board must at least once in each quarter pay to an RPA out of the Public Purpose Fund debited to the Trust Accounts Regulation Account an amount determined by the Board in respect of the reasonable costs incurred by the RPA in the preceding quarter in regulating the trust accounts of regulated practitioners and approved clerks and in respect of investigations under Division 5 of Part 6.

380. Legal Aid Fund

- (1) On or before the prescribed date in each year there must be paid out of the Public Purpose Fund and into the Legal Aid Fund established under the **Legal Aid Act 1978** such amount as is determined by the Board.
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- (2) The prescribed date is 30 September or such later date up to 30 November as the Attorney-General may fix by notice published in the Government Gazette before 30 September.
 - (3) A notice under sub-section (2) must state the reasons for extending the prescribed date.
 - (4) The amount determined under sub-section (1) in any year must not be more than 30% of the amount standing to the credit of the General Account on 30 June last past or less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.
 - (5) The Board must, at the direction of the Attorney-General, pay out of the Public Purpose Fund to the Treasurer, by way of advance on account of an amount to which the Legal Aid Fund may become entitled under sub-section (1), such amount as the Attorney-General directs.
 - (6) Any amount paid by way of advance under sub-section (5) is repayable to the Board by the Treasurer at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

381. *Victoria Law Foundation*

- (1) There must be paid to the Victoria Law Foundation on or before the prescribed date in each year such amount as the Board directs.
 - (2) The prescribed date is 30 September or such later date up to 30 November as the Attorney-General may fix by notice published in the Government Gazette before 30 September.
 - (3) A notice under sub-section (2) must state the reasons for extending the prescribed date.
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- (4) Subject to section 384, the amount paid under sub-section (1) in any year must not be more than 10% of the amount standing to the credit of the General Account on 30 June last past.
- (5) The Board must, at the direction of the Attorney-General, pay out of the Public Purpose Fund to the Victoria Law Foundation, by way of advance on account of an amount to which it may become entitled under sub-section (1), such amount as the Attorney-General directs.
- (6) Any amount paid by way of advance under sub-section (5) is repayable to the Board by the Victoria Law Foundation at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

382. *Leo Cussen Institute*

- (1) There must be paid to the Leo Cussen Institute on or before the prescribed date in each year such amount as the Board directs.
 - (2) The prescribed date is 30 September or such later date up to 30 November as the Attorney-General may fix by notice published in the Government Gazette before 30 September.
 - (3) A notice under sub-section (2) must state the reasons for extending the prescribed date.
 - (4) Subject to section 384, the amount paid under sub-section (1) in any year must not be more than 5% of the amount standing to the credit of the General Account on 30 June last past.
 - (5) The Board must, at the direction of the Attorney-General, pay out of the Public Purpose Fund to the Leo Cussen Institute, by way of advance on account of an amount to which it may
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become entitled under sub-section (1), such amount as the Attorney-General directs.

- (6) Any amount paid by way of advance under sub-section (5) is repayable to the Board by the Leo Cussen Institute at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

383. *Law Reform and Research Account*

- (1) There must be credited to the Law Reform and Research Account on or before the prescribed date in each year such amount as the Board directs.
- (2) The prescribed date is 30 September or such later date up to 30 November as the Attorney-General may fix by notice published in the Government Gazette before 30 September.
- (3) A notice under sub-section (2) must state the reasons for extending the prescribed date.
- (4) Subject to section 384, the amount credited under sub-section (1) in any year must not be more than 10% of the amount standing to the credit of the General Account on 30 June last past.
- (5) The amount standing to the credit of the Law Reform and Research Account is to be applied as directed by the Attorney-General.

384. *Limit on amounts*

The total of the amounts to be paid to the Victoria Law Foundation and the Leo Cussen Institute and credited to the Law Reform and Research Account in any year must not be more than 15% of the amount standing to the credit of the General Account on 30 June last past.

385. *Fidelity Fund*

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The Board may at any time pay out of the Public Purpose Fund and into the Fidelity Fund such amount as it thinks fit if it is of the opinion—

- (a) that the income of the Fidelity Fund from contributions by applicants for practising certificates and for registration as registered interstate practitioners and by registered interstate practitioners and from levies payable by legal practitioners under Division 1 of Part 7 is or is likely to be insufficient to satisfy claims made against the Fidelity Fund as and when they fall due; or
- (b) that the Fidelity Fund is or is likely to become insolvent; or
- (c) that it is appropriate to do so in order to establish the solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 388(6).

386. *Legal Practice Fund*

The Board may at any time pay out of the Public Purpose Fund and into the Legal Practice Fund such amount as it thinks fit if of the opinion—

- (a) that the income of the Legal Practice Fund from practising certificate fees is or is likely to be insufficient to make the payments required to be made to RPAs from that Fund under Division 3 as and when those payments are due to be made; or
- (b) that the Legal Practice Fund is or is likely to become insolvent.

387. *Payments to RPAs for continuing legal education programs etc.*

- (1) The Board may at any time pay an amount out of the Public Purpose Fund to an RPA as a contribution towards the costs incurred by the RPA in providing continuing legal education programs for regulated practitioners or other programs aimed at improving the quality of legal services provided by regulated practitioners or access by the public to legal services provided by regulated practitioners.
- (2) The Board determines the amount to be paid under sub-section (1) and may decide to make the payment of that amount to an RPA subject to a condition or conditions determined by the Board and notified to the RPA.

Division 2—Fidelity Fund

388. *Legal Practitioners' Fidelity Fund*

- (1) The Board must establish and maintain a fund called the Legal Practitioners' Fidelity Fund.
- (2) There must be paid into the Fidelity Fund—
 - (a) all contributions and levies paid under Division 1 of Part 7;
 - (b) any money received by or on behalf of the Board as a result of the exercise of any right or remedy conferred on it by Division 2 of Part 7;
 - (c) any money transferred to the Fidelity Fund from the Public Purpose Fund under section 276 or 385;
 - (d) any money derived from any investment of the Fidelity Fund;

- (e) any profit arising on the realisation or revaluation of any investment of the Fidelity Fund.
- (3) There must be paid out of the Fidelity Fund—
- (a) any claim (including interest, costs and disbursements) allowed or established against the Fidelity Fund;
 - (b) all legal and other expenses incurred—
 - (i) by RPAs or the Board in investigating or defending claims made against the Fidelity Fund;
 - (ii) in the exercise by the Board of the rights, powers and authorities vested in it by Division 2 of Part 7 in relation to the Fidelity Fund;
 - (c) any amounts required to be paid out of the Fidelity Fund under section 389;
 - (d) any amount required to be transferred to the Public Purpose Fund under section 390;
 - (e) any loss incurred on the realisation or revaluation of any investment of the Fidelity Fund;
 - (f) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Fidelity Fund.
- (4) Subject to this Part, the amount standing to the credit of the Fidelity Fund must—
- (a) be kept separate from any other money held by the Board;
 - (b) be held in trust for the purposes set out in this Part.
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- (5) The Board may invest any money standing to the credit of the Fidelity Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.
 - (6) The Governor in Council may from time to time, by Order made on the recommendation of the Attorney-General and published in the Government Gazette, fix a solvency level for the Fidelity Fund.
 - (7) The Attorney-General may only make a recommendation under sub-section (6) at any time if he or she has had regard to the advice of an actuary engaged by the Attorney-General to advise him or her on the appropriate provision to be made at that time for the solvency level of the Fidelity Fund.
 - (8) The Attorney-General may engage an actuary who has been engaged by the Board under section 201(3)(a).

389. *Payments to liquidators etc.*

- (1) This section applies if—
 - (a) a legal practitioner who, in the opinion of the Board, has committed a defalcation, becomes an insolvent under administration; or
 - (b) an incorporated practitioner that, in the opinion of the Board, has committed a defalcation, becomes an externally-administered body corporate within the meaning of the Corporations Law.
 - (2) The Board may pay out of the Fidelity Fund to the trustee in bankruptcy, trustee or liquidator (as the case requires) any amount or amounts and on any terms and conditions that the Board from time to time thinks fit for the purpose of enabling legal
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proceedings to be commenced or defended by the trustee in bankruptcy, trustee or liquidator.

390. Public Purpose Fund

- (1) The Board may at any time pay out of the Fidelity Fund and into the Public Purpose Fund such amount as it directs if it is of the opinion—
 - (a) that the income of the Fidelity Fund from contributions by applicants for practising certificates and for registration as regulated practitioners and by registered interstate practitioners and from levies payable by legal practitioners under Division 1 of Part 7 and the net assets of that Fund are or are likely to be sufficient to satisfy claims made against the Fidelity Fund as and when they fall due; and
 - (b) that the Fidelity Fund is not or is not likely to become insolvent; and
 - (c) that the appropriate solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 388(6) has been established and will be maintained after the payment.
- (2) The amount paid under sub-section (1) at any time must not be of such an amount as, when added to amounts previously paid under sub-section (1), would be more than the cumulative amounts paid up to that time into the Fidelity Fund under section 385.

Division 3—Legal Practice Fund

391. Legal Practice Fund

- (1) The Board must establish and maintain a fund called the Legal Practice Fund.
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- (2) There must be paid into the Legal Practice Fund—
- (a) all practising certificate fees received by the Board;
 - (b) any money transferred to the Legal Practice Fund from the Public Purpose Fund under section 386;
 - (c) any money derived from any investment of the Legal Practice Fund;
 - (d) any profit arising on the realisation or revaluation of any investment of the Legal Practice Fund.
- (3) There must be paid out of the Legal Practice Fund—
- (a) any payment that the Board has determined under section 392 to make to an RPA;
 - (b) an amount in respect of the reasonable costs incurred, or to be incurred, in a particular period by the Board in regulating regulated practitioners;
 - (c) any repayment or refund of practising certificate fees under section 29(6) or 32(2);
 - (d) any loss incurred on the realisation or revaluation of any investment of the Legal Practice Fund;
 - (e) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Legal Practice Fund.
- (4) Subject to this Part, the amount standing to the credit of the Legal Practice Fund must—
- (a) be kept separate from any other money held by the Board;
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(b) be held in trust for the purposes set out in this Part.

- (5) The Board may invest any money standing to the credit of the Legal Practice Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.

392. *Payments to RPAs for regulating practitioners*

- (1) The Board must from time to time pay out of the Legal Practice Fund to an RPA an amount in respect of the reasonable costs incurred, or to be incurred, in a particular period by the RPA in regulating legal practitioners and firms.
- (2) The Board determines the amount to be paid under sub-section (1) and may decide to make the payment of that amount to the RPA subject to a condition or conditions determined by the Board and notified to the RPA.
- (3) For the purpose of enabling it to determine the amount to be paid to an RPA under sub-section (1) in respect of a particular period the Board may, in writing, require the RPA to give it any information that the Board considers necessary.
- (4) The Board is not required to pay any amount to an RPA in respect of a particular period until any requirement made by it under sub-section (3) in respect of that period has been complied with by the RPA.
- (5) In determining the amount to be paid under sub-section (1) the Board must take into account any amount paid to the RPA out of the Trust Accounts Regulation Account under section 379(4), or out of the Fidelity Fund under section 388(3)(b)(i), or retained by the RPA out of
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practising certificate fees under section 32(4),
with respect to the relevant period.

PART 17—LEGAL PROFESSION TRIBUNAL

Division 1—Tribunal

393. Establishment

- (1) The Legal Profession Tribunal is established.
 - (2) The Tribunal consists of the following members—
 - (a) a chairperson and not more than 3 deputy chairpersons;
 - (b) a registrar and a deputy registrar;
 - (c) not more than 40 legal practitioners enrolled on the roll of non-advocates¹⁶ ("**non-advocate members**");
 - (d) not more than 20 legal practitioners enrolled on the roll of advocates¹⁷ ("**advocate members**");
 - (e) not more than 40 persons who are not qualified to be admitted to legal practice ("**lay members**").
 - (3) The chairperson, deputy chairpersons, registrar and deputy registrar are to be appointed by the Governor in Council on the recommendation of the Attorney-General.
 - (4) The non-advocate members, advocate members and lay members are to be appointed by the Attorney-General.
 - (5) Before making an appointment or recommendation under this section, the Attorney-General must consult with each RPA.
 - (6) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member of the Tribunal.
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394. Chairperson and deputy chairpersons

- (1) A person is not eligible for appointment as chairperson unless he or she—
 - (a) has been a judge of the High Court of Australia, the Supreme Court, the County Court or the Federal Court of Australia; or
 - (b) is a reserve judge of the Supreme Court or the County Court.
- (2) A person is not eligible for appointment as a deputy chairperson unless he or she—
 - (a) has been a judge of the High Court of Australia, the Supreme Court, the County Court or the Federal Court of Australia; or
 - (b) is a reserve judge of the Supreme Court or the County Court; or
 - (c) has engaged in legal practice for a period of at least 7 years.
- (3) The appointment of a person who has been a judge of the Supreme Court or the County Court as the chairperson or a deputy chairperson does not affect any pension or other rights or privileges the person has as a former judge.
- (4) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of chairperson or deputy chairperson is not to be taken to be a judicial office or an office or place of profit under the Crown.

395. Registrar and deputy registrar

A person is not eligible for appointment as registrar or deputy registrar unless he or she is a legal practitioner of not less than 7 years' standing.

396. *Term of office and payment*

- (1) A member of the Tribunal holds office, subject to this Act, for a term of 5 years and is eligible for re-appointment.
- (2) A member of the Tribunal is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (3) The Governor in Council may fix different remuneration for different classes of members of the Tribunal.

397. *Vacancies, resignation and removal from office*

- (1) The office of a member becomes vacant if the member—
 - (a) becomes an insolvent under administration;
or
 - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
 - (2) A member may resign by writing delivered to the Governor in Council.
 - (3) The Governor in Council may suspend a member from office and, subject to this section, may remove a member from office.
 - (4) The Attorney-General must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of a member of the Tribunal within 7 sitting days of the House after the suspension.
 - (5) The suspended member must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it,
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declares by resolution that the member ought to be removed from office.

- (6) Unless each House of the Parliament makes a declaration under sub-section (5) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the member to office.

398. Acting chairperson

- (1) The Governor in Council may appoint a person who is eligible to be appointed as chairperson of the Tribunal to act as chairperson—
- (a) during a vacancy in the office of chairperson; or
 - (b) if the chairperson is absent or, for any other reason, is unable to perform the duties of office.
- (2) An acting appointment is for the term, not exceeding 6 months, specified in the instrument of appointment.
- (3) A person appointed under sub-section (1)—
- (a) has all the powers and must perform all the duties of the chairperson; and
 - (b) is entitled to be paid the remuneration and allowances that the chairperson would have been entitled to for performing those duties; and
 - (c) is eligible for re-appointment.
- (4) Section 394(3) and (4) applies to the appointment of an acting chairperson.
- (5) The Governor in Council may at any time terminate an acting appointment.

399. Acting registrar and deputy registrar

- (1) The Governor in Council may appoint a person who is eligible to be appointed as registrar or deputy registrar of the Tribunal to act as registrar or deputy registrar—
 - (a) during a vacancy in the office of registrar or deputy registrar; or
 - (b) if the registrar or deputy registrar is absent or, for any other reason, is unable to perform the duties of office; or
 - (c) if it would be improper, because of a personal interest in a matter before the Tribunal constituted by the registrar or deputy registrar, for the registrar or deputy registrar to perform the duties of the office.
- (2) An acting appointment is for the term, not exceeding 6 months, specified in the instrument of appointment.
- (3) A person appointed under sub-section (1)—
 - (a) has all the powers and must perform all the duties of the registrar or deputy registrar; and
 - (b) is entitled to be paid the remuneration and allowances that the registrar or deputy registrar would have been entitled to for performing those duties; and
 - (c) is eligible for re-appointment.
- (4) The Governor in Council may at any time terminate an acting appointment.

400. Composition of Tribunal for proceedings

- (1) If this Act requires or permits a matter to be heard by the Tribunal constituted by the registrar or deputy registrar, the Tribunal is to be so constituted at the direction of the registrar.
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- (2) Subject to sub-section (3), if this Act requires or permits a matter to be heard by the Full Tribunal, the Tribunal is to be constituted by—
 - (a) the chairperson or a deputy chairperson; and
 - (b) one, or 2, non-advocate members or advocate members and the same number of lay members.
 - (3) Unless a party objects, in a matter before the Full Tribunal the chairperson or a deputy chairperson may sit alone for the purpose of making interlocutory orders, including orders giving directions and adjourning proceedings.
 - (4) The members who are to constitute the Full Tribunal for a hearing are to be nominated by the chairperson or, in the absence of the chairperson, by a deputy chairperson, having regard, in relation to the non-advocate or advocate members, to the expertise or experience relevant to the particular hearing.
 - (5) The chairperson or a deputy chairperson must preside at a Full Tribunal hearing.
 - (6) The Tribunal may operate concurrently in more than one division.

401. *Validity of proceedings*

A decision of the Tribunal is not invalid only because—

- (a) of a vacancy in the office of a member;
 - (b) of a defect or irregularity in, or in connection with, the appointment of a member or acting member;
 - (c) in the case of a person appointed to act as chairperson, registrar or deputy registrar, that the occasion for so acting had not arisen or had ceased.
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402. Majority decisions

A question before the Full Tribunal must be decided according to the opinion of a majority of the members constituting that Tribunal.

403. Change in composition

- (1) If one of the members of the Tribunal (other than the presiding member) constituting the Full Tribunal for the purpose of a hearing vacates office or becomes incapable of sitting—
 - (a) before the Tribunal has completed the hearing; or
 - (b) before the Tribunal has made a determination in respect of a hearing—if the remaining members of that Full Tribunal agree, the hearing may be continued, or a determination may be made, by those remaining members and, if they are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member prevails.
- (2) If the presiding member or more than one other member vacates office or becomes incapable of sitting before the Full Tribunal has completed the hearing or made a determination in respect of a hearing, the hearing is terminated and a new hearing may be commenced before the Full Tribunal constituted in accordance with this Part.
- (3) In a new hearing the Full Tribunal may have regard to the record of the proceeding before the Tribunal as previously constituted, including the record of any evidence taken in the proceeding.

404. Disclosure of interests

- (1) If the registrar or deputy registrar or an acting registrar or deputy registrar has a personal interest
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in a matter referred to the Tribunal that would make it improper for him or her to perform the duties of office, he or she must declare the interest to the registrar or, in the case of the registrar or acting registrar, to the chairperson or acting chairperson, and must not constitute, or continue to constitute, the Tribunal for the purposes of a hearing of the matter.

- (2) A member or acting member of the Tribunal (other than the registrar or deputy registrar or an acting registrar or deputy registrar) who has a personal interest in a matter referred to the Full Tribunal must declare the interest to the chairperson or acting chairperson or, in the case of the chairperson or acting chairperson, to a deputy chairperson, and must not be, or continue as, a member of the Full Tribunal as constituted for the purposes of a hearing of the matter.

405. Staff

There may be appointed or employed under the **Public Sector Management Act 1992** any officers and employees that are necessary for the purposes of this Part.

406. Protection of members, advocates and witnesses

- (1) A member or acting member of the Tribunal has, in the exercise of powers or performance of duties as a member or acting member, the same protection and immunity as a judge of the Supreme Court.
- (2) A legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

- (3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Division 2—Procedure of Tribunal

407. Duty to act fairly

The Tribunal must act fairly and according to the substantial merits of the case in all matters before it.

408. Evidence

- (1) Except to the extent determined by it, the Tribunal is not bound by the rules of evidence or by practices and procedures applicable to courts of record.
- (2) The Tribunal may take evidence on oath or affirmation and, for that purpose, a member of the Tribunal may administer an oath or affirmation.
- (3) The Tribunal, on the application of a party or on its own initiative, may summon a person, on reasonable notice, to appear before the Tribunal to give evidence and to produce any documents that are specified in the summons.
- (4) The Tribunal may retain for a reasonable period and may make copies of, or take extracts from, any document produced to the Tribunal in the course of a hearing before it.

409. Reasons

- (1) The Tribunal must give reasons for any order made in relation to a matter before it.
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- (2) If the Tribunal gives oral reasons, a party, within 28 days, may request the Tribunal to give written reasons.
- (3) The Tribunal must comply with a request under sub-section (2) within 28 days after the request is made.
- (4) The reasons for an order, whether oral or written, form part of the record of the hearing in which the order was made.

410. *Who is entitled to appear?*

- (1) Subject to this section, any party to a matter before the Tribunal is entitled to appear in the hearing of that matter.
- (2) A party may appear personally or by a legal practitioner or, with the leave of the Tribunal, by any other representative.
- (3) A party that is a body corporate may appear by an officer of the body authorised in writing to appear on the body's behalf.
- (4) A party that is a firm may appear by a partner of the firm or by an employee of the firm authorised in writing to appear on the firm's behalf.
- (5) Unless the Tribunal gives leave, a complainant is entitled to appear only if the Tribunal is considering making an order referred to in section 133(1)(a) to (e) (whether at the request of the complainant or otherwise).

411. *Tribunal may join parties and grant leave to intervene*

If the Tribunal considers that a person ought to be bound by, or have the benefit of, an order of the Tribunal, or is otherwise legitimately interested in a matter before the Tribunal, it may—

- (a) direct that the person be joined as a party; or
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(b) grant the person leave to intervene.

412. Tribunal must give notice of hearings and allow witnesses

- (1) The Tribunal must give a party to a matter before it—
- (a) reasonable notice of the time and place of the hearing; and
 - (b) a reasonable opportunity to—
 - (i) call or give evidence;
 - (ii) examine, cross-examine or re-examine witnesses;
 - (iii) make submissions to the Tribunal.
- (2) If a person to whom notice has been given under sub-section (1) does not attend at the time and place specified in the notice, the Tribunal may hear the matter in the person's absence.

413. Hearings are open to public unless otherwise ordered

- (1) Subject to this section, all hearings of the Tribunal must be held in public.
- (2) The Tribunal may direct that a hearing or any part of it be held in private.
- (3) The Tribunal may order—
- (a) that any evidence given at a hearing;
 - (b) that the content of any documents produced to the Tribunal;

- (c) that any information that might enable a party or another person who has appeared at a hearing to be identified—

must not be published except in the manner and to the persons specified in the order.

- (4) A direction or order under this section may be given or made on the application of a party or on the Tribunal's own initiative.

414. Directions

- (1) The Tribunal may give directions as to any matter or thing not provided for by this Act, the regulations or the rules in relation to any proceeding before the Tribunal.
- (2) Directions may be given on the motion of any party or on the initiative of the Tribunal.

415. Rules¹⁸

A committee comprising the chairperson and deputy chairpersons of the Tribunal and the registrar may make rules, not inconsistent with this Act, for the practice and procedure with respect to applications to, and hearings by, the Tribunal and appeals from the Tribunal constituted by the registrar or deputy registrar to the Full Tribunal.

Division 3—Conciliators

416. Panel of conciliators

- (1) The registrar is to appoint a panel of conciliators for the purposes of Part 5.
- (2) Each conciliator must be, or have been within 10 years before their appointment, a current practitioner.

- (3) Each conciliator holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment and is eligible for re-appointment.
- (4) The **Public Sector Management Act 1992** (including Part 9) does not apply to a conciliator in respect of his or her appointment as such.
- (5) The registrar may at any time remove a conciliator from office.
- (6) A conciliator may resign by writing delivered to the registrar.

417. Payment of conciliators

A conciliator is entitled to receive the remuneration and allowances that are fixed from time to time by the registrar.

418. Secrecy

- (1) A person who is or has been a conciliator must not, directly or indirectly, make a record of, disclose or communicate to any person information about the affairs of any person acquired in that capacity unless—
 - (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or the exercise of a power under this Act; or
 - (b) the person to whom the information relates gives written consents to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent a person from producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act.
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419. Immunity

A conciliator is not personally liable for anything done or omitted to be done in good faith—

- (a) in the capacity of conciliator under this Act;
or
 - (b) in the reasonable belief that the thing was done or omitted to be done in the capacity of conciliator under this Act.
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PART 18—LEGAL OMBUDSMAN

420. *Appointment*

- (1) The Governor in Council, on the recommendation of the Attorney-General, may appoint a person to be Legal Ombudsman.
- (2) A person is not eligible to be appointed as Legal Ombudsman if, at any time during the preceding 7 years, the person has engaged in legal practice.
- (3) The Legal Ombudsman holds office, subject to this Act, for a term of 7 years from the date of appointment and is eligible for re-appointment.
- (4) The **Public Sector Management Act 1992** (including Part 9) does not apply to the Legal Ombudsman, except as provided in section 17 of that Act.

421. *Payment*

The Legal Ombudsman is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.

422. *Resignation, suspension and removal*

- (1) The Legal Ombudsman ceases to hold office if he or she—
 - (a) becomes an insolvent under administration;
or
 - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) The Legal Ombudsman may resign in writing delivered to the Attorney-General.
- (3) The Governor in Council may suspend the Legal Ombudsman from office and, subject to this

section, may remove the Legal Ombudsman from office.

- (4) The Attorney-General must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of the Legal Ombudsman within 7 sitting days of the House after the suspension.
- (5) The Legal Ombudsman must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it, declares by resolution that the Legal Ombudsman ought to be removed from office.
- (6) Unless each House of the Parliament makes a declaration under sub-section (5) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the Legal Ombudsman to office.

423. Acting appointment

- (1) The Attorney-General may appoint a person to act in the office of Legal Ombudsman—
 - (a) during a vacancy in that office; or
 - (b) during a period or all periods, when the person holding that office is absent from duty or is, for any reason, unable to perform the duties of the office.
- (2) An appointment under sub-section (1) is for such period, not exceeding 6 months, as is specified in the instrument of appointment and, subject to sub-section (3), a person appointed to act is eligible for re-appointment.
- (3) A person is not eligible to be appointed under sub-section (1)—

- (a) if, at any time during the preceding 7 years, the person has engaged in legal practice; or
 - (b) if, at any time during the preceding 6 months, the person has held the office of acting Legal Ombudsman.
- (4) The Attorney-General may at any time remove the acting Legal Ombudsman from office.
- (5) While a person is acting in the office of the Legal Ombudsman in accordance with this section, the person—
- (a) has, and may exercise, all the powers and must perform all the duties of that office under this Act; and
 - (b) is entitled to be paid the remuneration and allowances that the Legal Ombudsman would have been entitled to for performing those duties.

424. *Validity of acts and decisions*

An act or decision of the Legal Ombudsman or acting Legal Ombudsman is not invalid only because—

- (a) of a defect or irregularity in or in connection with their appointment;
- (b) in the case of the acting Legal Ombudsman, that the occasion for so acting had not arisen or had ceased.

425. *Staff and consultants*

- (1) There may be appointed or employed under the **Public Sector Management Act 1992** any officers and employees that are necessary for the purposes of this Part.
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- (2) The Legal Ombudsman may engage any consultants required for the purposes of carrying out the functions of the office.

426. Annual reports

- (1) The Legal Ombudsman must include the following information in the report of operations of the office under Part 7 of the **Financial Management Act 1994** each year—
- (a) the number and type of complaints made under Part 5 during the preceding financial year—
 - (i) to the Legal Ombudsman;
 - (ii) to each RPA;
 - (iii) to the Board—and the time intervals involved in the investigation of those complaints;
 - (b) the number and type of complaints dismissed during the preceding financial year—
 - (i) by the Legal Ombudsman;
 - (ii) by each RPA;
 - (iii) by the Board;
 - (c) the number and type of charges brought in the Tribunal during the preceding financial year—
 - (i) by the Legal Ombudsman;
 - (ii) by each RPA;
 - (iii) by the Board—and the results of those charges;
 - (d) the number and type of complaints outstanding as at the end of the preceding
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- financial year and the date on which each was made—
- (i) to the Legal Ombudsman;
 - (ii) to an RPA;
 - (iii) to the Board;
- (e) the number and type of complaints made to an RPA or the Board and reviewed by the Legal Ombudsman during the preceding financial year at the request of the complainant and the outcome of those reviews;
- (f) the types of subject-matter of complaints made during the preceding financial year;
- (g) the number and type of disputes lodged with RPAs and the Board during the preceding financial year and the outcome of those disputes;
- (h) a list of any reports of investigations made under Division 3 of Part 3 during the preceding financial year;
- (i) any other information that the Attorney-General directs to be included.
- (2) The Legal Ombudsman may include in a report of operations—
- (a) recommendations as to prudent practices to be adopted by legal practitioners and firms in relation to legal practice;
 - (b) any other information that the Legal Ombudsman considers appropriate to be included.
- (3) Matters included in a report of operations must not identify individual complainants, clients, legal practitioners or firms, unless their names have
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already lawfully been made public in connection with the complaint or dispute concerned.

427. Other reports

- (1) In addition to the report of operations under the **Financial Management Act 1994**, and any report under Division 3 of Part 3, the Legal Ombudsman may make such reports to the Attorney-General as the Legal Ombudsman considers necessary or desirable.
- (2) The Legal Ombudsman must specify in a report under sub-section (1) whether he or she requires the report to be laid before the Parliament and, if he or she does so require, the Attorney-General must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the Attorney-General receives the report.

428. Secrecy

- (1) A person who is or has been the Legal Ombudsman, an acting Legal Ombudsman, an officer or employee of the office of the Legal Ombudsman or a consultant engaged by the Legal Ombudsman must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or the exercise of powers under this Act, unless—
 - (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or

- (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent a person—
 - (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act; or
 - (b) reporting a suspected offence to the police or assisting them in their investigations.

429. Immunity

The Legal Ombudsman, an acting Legal Ombudsman or an officer or employee of the office of the Legal Ombudsman is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—

- (a) in the exercise of a power or the performance of a function or duty under this Act; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty under this Act.

430. Ex gratia payments

- (1) Subject to this section, the Legal Ombudsman, after consultation with the chairperson of the Board, may pay a complainant under Part 5 an amount determined by the Legal Ombudsman as compensation for pecuniary loss suffered as a result of an act or omission by a legal practitioner or firm if the Legal Ombudsman considers it fair to do so.
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- (2) Receipt of a payment under sub-section (1) does not affect the right of a complainant to recover damages for pecuniary loss, but a court in making an award of damages must take the payment into account.
 - (3) In deciding whether or not to make a payment under sub-section (1) to a complainant, and the amount of any such payment, the Legal Ombudsman may take into account—
 - (a) whether or not the legal practitioner or firm the subject of the complaint has ceased engaging in legal practice; and
 - (b) the financial position of the practitioner or firm.
 - (4) Nothing in sub-section (3) limits the matters the Legal Ombudsman may take into account in making a decision under sub-section (1).
 - (5) The Board, by written notice to the Legal Ombudsman before the beginning of a financial year, may set a maximum amount that may be paid to complainants (whether individually or in total or both) in that year and may, in special circumstances, vary that amount at any time during the year.
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PART 19—GENERAL

Division 1—Notices and evidentiary matters

431. Service of notices on practitioners and firms

- (1) For the purposes of this Act, a notice or other document may be served on, or given to, a legal practitioner (being a natural person)—
 - (a) by delivering it personally to the practitioner; or
 - (b) by sending it by post to the practitioner at the address for service appearing on the Register.
- (2) For the purposes of this Act, a notice or other document may be served on, or given to, a firm—
 - (a) by delivering it personally to a partner of the firm; or
 - (b) by sending it by post to the firm at the address for service appearing on the Register.
- (3) For the purposes of this Act, a notice or other document may be served on, or given to, an incorporated practitioner—
 - (a) by delivering it personally to a director of the incorporated practitioner; or
 - (b) by sending it by post to the incorporated practitioner at the address for service appearing on the Register; or
 - (c) in any other way that service of documents may be effected on a body corporate.

432. Service on the Board and RPAs

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- (1) For the purposes of this Act, a notice or other document may be served on, lodged with or given to the Board—
 - (a) by delivering it personally to the office of the Board; or
 - (b) by sending it by post to the office of the Board.
 - (2) For the purposes of this Act, a notice or other document may be served on, lodged with or given to, an RPA—
 - (a) if the RPA is a company incorporated under the Corporations Law—
 - (i) by delivering it personally to the registered office of the RPA; or
 - (ii) by sending it by post to the registered office of the RPA; or
 - (b) if the RPA is an incorporated association within the meaning of the **Associations Incorporation Act 1981**, in accordance with section 48 of that Act; or
 - (c) in any other way that service of documents may be effected on a body corporate.

433. Service of notices on other persons

For the purposes of this Act, a notice or other document may be served on, or given to, a person (other than a person referred to in section 431 or 432)—

- (a) if the person is a natural person—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post to the person at his or her usual or last known residential or business address; or
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- (iii) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- (b) if the person is a company incorporated under the Corporations Law—
 - (i) by delivering it personally to the registered office of the company; or
 - (ii) by sending it by post to the registered office of the company; or
 - (iii) in any other way that service of documents may be effected on a body corporate; or
- (c) if the person is an incorporated association within the meaning of the **Associations Incorporation Act 1981**, in accordance with section 48 of that Act.

434. When is service effective?

- (1) For the purposes of this Act, a notice or other document must be taken to have been served on, or given to, a person or firm—
 - (a) in the case of delivery in person, at the time the document is delivered;
 - (b) in the case of posting, 2 business days after the day on which the document was posted.
- (2) In this section, "**business day**" means a day other than a Saturday, Sunday, public holiday or public half-holiday.

435. Evidentiary matters

- (1) A certificate sealed by, or signed on behalf of, the Board specifying that a legal practitioner or firm
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is, or was at any time specified in the certificate, a regulated practitioner of the RPA specified in the certificate, or of the Board, is, in the absence of proof to the contrary, proof of the matters stated in it.

- (2) A certificate sealed by, or signed on behalf of, the Board specifying that a matter specified in the certificate is, or was at any time specified in the certificate, on the Register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on the Register.
- (3) A certificate sealed by, or signed on behalf of, an RPA or the Board, specifying that, on a date or during a period specified in the certificate—
 - (a) a regulated practitioner held or did not hold a practising certificate;
 - (b) the practising certificate of a regulated practitioner was subject to a specified condition or restriction—

is, in the absence of proof to the contrary, proof of the matters stated in it.

- (4) A document purporting to be a copy of the practice rules of an RPA or the Board and certified as such by the RPA or the Board is, in the absence of proof to the contrary, proof of the due making, existence and content of the practice rules of the RPA or the Board.
- (5) A certificate sealed by, or signed on behalf of, the Board specifying that a body corporate is, or was at any time specified in the certificate, an RPA is, in the absence of proof to the contrary, proof that the body is, or was at the specified time, an RPA.

Division 2—Offences

436. Compliance with Tribunal orders etc

A person or firm must comply with—

- (a) an order of the Tribunal;
- (b) a record of agreement filed in the Magistrates' Court under section 127 or 130.

Penalty: 50 penalty units and 5 penalty units for each day the non-compliance continues after the making of the order or the filing of the record of agreement.

437. *Failing to appear or produce documents*

(1) A person who is properly served with a summons to appear as a witness before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons;
- (b) fail to appear and report from day to day unless excused or released from attendance by the Tribunal.

Penalty: 50 penalty units.

(2) A person appearing as a witness before the Tribunal must not, without reasonable excuse—

- (a) refuse to be sworn or make an affirmation;
- (b) refuse to answer a question that the person is required by the person presiding to answer;
- (c) refuse to produce a document that the person was required by the summons to produce.

Penalty: 50 penalty units.

438. *Contempt of Tribunal*

A person must not—

- (a) hinder or obstruct a member of the Tribunal in the exercise of the powers or the performance of the functions of the member under this Act;

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- (b) interrupt any proceedings of the Tribunal;
 - (c) use insulting language towards a member of the Tribunal when the member is exercising powers or performing functions under this Act;
 - (d) create a disturbance or take part in creating a disturbance in or near a place where the Tribunal is sitting;
 - (e) do any other thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 50 penalty units.

439. *False or misleading information*

A person must not give any information or make any statement to any person exercising powers or performing functions under this Act if the person knows that the information or statement is false or misleading in any material particular.

Penalty: 50 penalty units.

440. *Offences by firms*

Where this Act provides that a firm is guilty of an offence, that reference must be read as a reference to each partner of the firm.

441. *Who may prosecute offences and contempts?*

- (1) A charge against a legal practitioner or firm for an offence under this Act may only be filed by—
 - (a) the Board; or
 - (b) the RPA (if any) of which the practitioner or firm was a regulated practitioner at the time of the alleged offence; or
 - (c) a member of the police force; or
 - (d) the Director of Public Prosecutions.

- (2) Despite anything to the contrary in section 46 of the **Public Prosecutions Act 1994**, the Board, on behalf of the Attorney-General, may apply to the Supreme Court for punishment of a person for contempt of court under this Act.

Division 3—Miscellaneous

442. Liability for negligence etc.

- (1) Nothing in this Act abrogates any immunity from liability for negligence enjoyed by legal practitioners before the commencement of this section.
- (2) A legal practitioner or firm must not make any agreement or arrangement with a client to the effect that the practitioner or firm is not liable to the client for any loss or damage caused to the client in connection with the provision of legal services to the client for which, but for the agreement or arrangement, the practitioner or firm would be liable.
- (3) Any agreement or arrangement that contravenes sub-section (2) is void.

443. Destruction of documents

- (1) A legal practitioner or firm may destroy or dispose of any documents held by them relating to a matter after a period of 7 years has elapsed since the completion of the matter if the practitioner or firm has been unable, despite making reasonable efforts, to obtain instructions from the client to whom the documents relate as to the destruction or disposal of the documents.
- (2) The Board may destroy or dispose of any documents received from a receiver under section 270(1) after a period of 7 years has elapsed since the documents were so received.
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444. Supreme Court—limitation of jurisdiction

It is the intention of sections 102(3), 106, 110, 115(3)(b), 116(3), 116(4), 121, 124, 189(3), 190(3), 191(2), 209(6), 218, 222(3), 419 and 429 to alter or vary section 85 of the **Constitution Act 1975**.

Division 4—Regulations

445. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting the generality of sub-section (1), the Governor in Council may make regulations for or with respect to—
 - (a) prescribing a fee, not exceeding \$50, for lodging a dispute with the registrar;
 - (b) prescribing a general fee and a library fee to be paid before admission to legal practice;
 - (c) prescribing fees to be paid for practising certificates;
 - (d) prescribing persons or classes of persons as financial institutions¹⁹;
 - (e) prescribing persons for the purposes of paragraph (a)(ii) of the definition of "nominee mortgage" in section 3(1);
 - (f) penalties, not exceeding 20 penalty units, for breaches of the regulations.
- (3) Regulations under sub-section (2)(c) are to be made on the recommendation of the Board.

- (4) In making a recommendation, the Board must take into account—
- (a) the costs of regulating different classes of legal practitioners; and
 - (b) the desirability of the income of the Legal Practice Fund from those fees being sufficient to meet the costs incurred by RPAs and the Board under Division 4 of Part 2 and under Part 5; and
 - (c) any representations made to the Board by an RPA regarding appropriate levels for fees for classes of regulated practitioners of the RPA.
- (5) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (6) Regulations under this Act may be made—
- (a) so as to apply at all times or at a specified time; and
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- (b) so as to require matters affected by the regulations to be—
- (i) in accordance with specified standards or specified requirements; or
 - (ii) approved by or to the satisfaction of specified persons or bodies or specified classes of persons or bodies; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
- (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
- (e) so as to provide in specified cases or classes of case for the exemption of persons or things or classes of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
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PART 20—AMENDMENT OF OTHER ACTS

446. *Amendment of Attorney-General and Solicitor-General Act 1972*

In section 5 of the **Attorney-General and Solicitor-General Act 1972** after paragraph (b) insert—

"(c) has precedence after the Attorney-General in all cases whatever."

447. *New section 64B inserted in Legal Profession Practice Act 1958*

After section 64A of the **Legal Profession Practice Act 1958** insert—

"64B. *Immunity for innocent partners*

Despite anything to the contrary in the **Partnership Act 1958** or any rule of law to the contrary, an action does not lie against a partner of a firm in respect of a defalcation committed by another partner or other partners of that firm, or by an employee of that firm or of any partner of that firm, if—

- (a) all persons have been compensated for the pecuniary loss suffered by them by reason of the defalcation, whether as a result of a claim under section 64 or by payment by another partner or other partners of that firm; and
- (b) the council is of the opinion having regard to all the circumstances that that partner—
 - (i) was not a party to the defalcation; and

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- (ii) acted honestly and reasonably in the matter."

448. New section 116 inserted in Legal Profession Practice Act 1958

After section 115 of the **Legal Profession Practice Act 1958** insert—

"116. Supreme Court—limitation of jurisdiction

It is the intention of section 64B to alter or vary section 85 of the **Constitution Act 1975**."

449. Amendment of Partnership Act 1958

(1) In section 14 of the **Partnership Act 1958**—

- (a) for "Where" **substitute** "(1) Subject to sub-section (2), where";
- (b) after "his" **insert** "or her".

(2) At the end of section 14 of the **Partnership Act 1958** **insert**—

"(2) For the purposes of sub-section (1), a partner who commits a wrongful act or omission as a director of a body corporate, within the meaning of the Corporations Law, is not to be taken to be acting in the ordinary course of the business of the firm or with the authority of his or her co-partners only because—

- (a) the partner obtained the agreement or authority of his or her co-partners, or some of them, to be appointed or to act as a director; or
- (b) remuneration that the partner receives for acting as a director of a body corporate forms part of the income of the firm; or

- (c) any co-partner is also a director of that or any other body corporate."

450. Amendment of Public Sector Management Act 1992

After section 17(1)(g) of the **Public Sector Management Act 1992** insert—

- "(h) the Legal Ombudsman in relation to the office of the Legal Ombudsman."

451. Amendment of Unclaimed Moneys Act 1962

(1) In the **Unclaimed Moneys Act 1962**—

- (a) in section 9(1), in the definition of "business", after paragraph (k) insert—

"(ka) a sole practitioner within the meaning of the **Legal Practice Act 1996**; or";

- (b) in section 9(2), omit "section 40A of the **Legal Profession Practice Act 1958** and by".

(2) After section 9(2) of the **Unclaimed Moneys Act 1962** insert—

- "(3) A reference in this Act to a business holding unclaimed moneys, being a business that is a firm, an incorporated practitioner or a sole practitioner (within the meaning of the **Legal Practice Act 1996**) includes a reference to unclaimed money being held in the trust account of the firm or practitioner."
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**PART 21—REPEALS, CONSEQUENTIAL AMENDMENTS
AND TRANSITIONALS**

452. Repeals

The following Acts are **repealed**—

Legal Profession Practice Act 1958
Legal Profession Practice (Amendment)
Act 1989
Legal Profession Practice (Amendment)
Act 1995
Legal Profession Practice (Guarantee
Fund) Act 1993
Legal Profession Practice (Professional
Indemnity) Act 1987
Legal Profession Practice (Solicitors'
Disciplinary Tribunal) Act 1978
Legal Profession Practice (Direct
Mortgages) Act 1996.

453. Consequential amendments

An Act specified in the heading to an item in
Schedule 1 is amended as set out in that item.

454. Savings, transitional and other provisions

Schedule 2 has effect.

SCHEDULES

SCHEDULE 1

Section 453

CONSEQUENTIAL AMENDMENTS

1. *Accident Compensation Act 1985*

- 1.1 In section 46(1) for "solicitor" **substitute** "legal practitioner".
- 1.2 In section 58A(2) for "barrister" **substitute** "legal practitioner".
- 1.3 In section 115A(7) and (8) for "solicitor or" **substitute** "legal practitioner acting for or an".

2. *Administrative Appeals Tribunal Act 1984*

- 2.1 In section 3(1) the definition of "legal practitioner" is **repealed**.
- 2.2 In section 50(5) for "taxed" **substitute** "assessed".
- 2.3 In section 57(2) for "barrister" **substitute** "legal practitioner".

3. *Administration and Probate Act 1958*

- 3.1 In section 5A(3) for "solicitor" **substitute** "legal practitioner".
 - 3.2 In section 5C(1) for "solicitor" (wherever occurring) **substitute** "legal practitioner".
 - 3.3 In section 78 for "barrister and solicitor" **substitute** "legal practitioner".
 - 3.4 In section 81(1) for "some barrister and solicitor" (wherever occurring) **substitute** "a legal practitioner".
 - 3.5 In section 83 for "some solicitor" **substitute** "a legal practitioner".
 - 3.6 In section 99A(4) for "solicitor" **substitute** "legal practitioner".
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4. Adoption Act 1984

In section 107(1) for "counsel, solicitors" **substitute** "legal practitioners".

5. Ambulance Services Act 1986

In section 13(4) for "counsel" **substitute** "a legal practitioner".

6. Appeal Costs Act 1964

6.1 For section 4(2) **substitute**—

"(2) The Board consists of the following members appointed by the Attorney-General—

- (a) a chairperson;
- (b) a nominee of each RPA (within the meaning of the **Legal Practice Act 1996**)."

6.2 In section 4(3)—

- (a) for "either of the bodies aforesaid" **substitute** "an RPA";
- (b) for "body concerned" **substitute** "RPA".

6.3 In section 5—

- (a) in sub-section (1) for "Chairman" **substitute** "chairperson";
- (b) In sub-section (2) for "Two members of the Board" **substitute** "One half of the members of the Board for the time being".

6.4 For section 5(3) **substitute**—

"(3) Subject to sub-section (4), a matter arising at a meeting of the Board is determined by a majority of votes and the chairperson has a deliberative vote and, in the case of an equality of votes, a second or casting vote."

6.5 In sections 14(1)(b) and (c), 14B(1)(a) and (b), 19(1)(b) and (c) and 19A(1)(b) and (c) for "taxed" (wherever occurring) **substitute** "assessed".

6.6 In sections 14(1)(b), 14(5)(b), 14B(1)(a), 19(1)(b) and 21(1) for "solicitor" (wherever occurring) **substitute** "legal practitioner".

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6.7 In section 19A(1)(b) for "solicitors" **substitute** "legal practitioner".

6.8 In section 20—

(a) in paragraph (b)—

(i) **omit** "taxation or";

(ii) for "tax" substitute "assess";

(b) in paragraphs (c) and (d) for "taxed" **substitute** "assessed".

7. *Architects Act 1991*

In section 28 for "lawyer" (wherever occurring) **substitute** "legal practitioner".

8. *Bail Act 1977*

8.1 In section 8(d) for "his counsel" **substitute** "his or her legal practitioner".

8.2 In section 18(4) for "counsel or a solicitor" **substitute** "a legal practitioner".

8.3 In section 18A(5) for "counsel" (wherever occurring) **substitute** "a legal practitioner".

9. *Children and Young Persons Act 1989*

9.1 In section 3(1)—

1 the definition of "legal practitioner" is **repealed**;

(b) in the definition of "legal representation" for "counsel or a solicitor" **substitute** "a legal practitioner";

9.2 In section 20—

(a) in sub-section (4) for "counsel or solicitor" **substitute** "legal practitioner";

1 in sub-section (9) for "Counsel or a solicitor" **substitute** "A legal practitioner".

9.3 In section 82(3)(b) and (6) for "counsel or a solicitor" **substitute** "a legal practitioner".

10. *Commercial Arbitration Act 1984*

10.1 In section 20 sub-section (5) is **repealed**.

10.2 In section 35—

- (a) for "taxed" (wherever occurring) **substitute** "assessed";
- (b) for "taxation" (wherever occurring) **substitute** "assessment".

11. Constitution Act 1975

11.1 In section 80A(5A)—

- (a) in paragraph (b) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
- (b) in paragraph (c)—
 - (i) for "barrister or solicitor" **substitute** "legal practitioner";
 - (ii) for "barrister or solicitor's practice" **substitute** "practitioner's legal practice".

11.2 In section 80A(5C)—

- (a) in paragraph (b) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
- (b) in paragraph (c)—
 - (i) for "barrister or solicitor" **substitute** "legal practitioner";
 - (ii) for "barrister or solicitor's practice" **substitute** "practitioner's legal practice".

11.3 In section 83(4)(ii)—

- (a) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
- (b) for "barrister or solicitor" (where secondly occurring) **substitute** "legal practitioner".

12. Co-operation Act 1981

12.1 In sections 87(1)(h) and 95(2) for "solicitor" **substitute** "legal practitioner".

12.2 In section 115(1) in paragraph (a) of the definition of "officer" for "solicitor" **substitute** "legal practitioner".

12.3 In section 148(7)(a) for "solicitors" **substitute** "legal practitioners".

12.4 In section 237—

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- (a) in sub-section (4) for "solicitor or counsel" **substitute** "legal practitioner";
- (b) in sub-section (6) for "solicitor with or without counsel" **substitute** "legal practitioner".

13. Coroners Act 1985

In section 46(2) for "counsel" **substitute** "a legal practitioner".

14. Council of Law Reporting in Victoria Act 1967

14.1 In section 2—

1 the definitions of "Law Institute" and "Victorian Bar Council" are **repealed**;

1 after the definition of "Member" **insert**—

"RPA" has the same meaning as in the Legal Practice Act 1996;

14.2 In section 5(1)—

1 for paragraph (c) **substitute**—

"(c) one member appointed by each RPA;"

(b) paragraph (d) is **repealed**.

14.3 For section 5(2) **substitute**—

"(2) Despite anything to the contrary in this section, the members holding office under sub-section (1)(c) and (d) as in force immediately before the commencement of section 453 of the **Legal Practice Act 1996** continue in office, subject to this Act, until the expiry of their current term of office."

14.4 In section 7 for "Law Institute or Victorian Bar Council" **substitute** "or RPA".

15. County Court Act 1958

15.1 In section 3(1) the definitions of "counsel" and "practitioner" are **repealed**.

15.2 In section 13(1) for "practise as a barrister or solicitor or as a barrister and solicitor" **substitute** "engage in legal practice".

15.3 In section 13A(5A)—

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- (a) in paragraph (b) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
 - (b) in paragraph (c)—
 - (i) for "barrister or solicitor" **substitute** "legal practitioner";
 - (ii) for "barrister or solicitor's practice" **substitute** "practitioner's legal practice".

15.4 In section 13A(5C)—

- (a) in paragraph (b) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
- (b) in paragraph (c)—
 - (i) for "barrister or solicitor" **substitute** "legal practitioner";
 - (ii) for "barrister or solicitor's practice" **substitute** "practitioner's legal practice".

15.5 In section 14(3A)(b)(ii)—

- (a) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
- (b) for "barrister or solicitor" (where secondly occurring) **substitute** "legal practitioner".

15.6 In section 17B(7)(b)(ii)—

- (a) for "the practice of the profession of a barrister or solicitor" **substitute** "legal practice";
- (b) for "barrister or solicitor" (where secondly occurring) **substitute** "legal practitioner";
- (c) for "barrister or solicitor's practice" **substitute** "practitioner's legal practice".

15.7 In the heading to Division 9 of Part I for "**Counsel and**" **substitute** "**Legal**".

15.8 In section 33—

- (a) for "counsel and practitioners respectively" **substitute** "legal practitioners";
- (b) for "counsel or solicitor" **substitute** "practitioners".

15.9 In section 34—

- (a) in sub-section (1)—

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- (i) for "counsel or" **substitute** "legal";
- (ii) **omit** "or such counsel (if in the opinion of the court he has not been bona fide instructed by a practitioner)";
- (iii) **omit** "or counsel" wherever occurring;
- (iv) for "tax" **substitute** "assess";
- (b) in sub-section (2)—
 - (i) **omit** "or counsel" wherever occurring;
 - (ii) for "some special contract" **substitute** "an enforceable costs agreement under the **Legal Practice Act 1996** to the contrary".
- 15.10 In section 48B—
 - (a) in sub-section (1) for "counsel" **substitute** "a legal practitioner";
 - (b) in sub-section (2) for "counsel" **substitute** "the legal practitioner".
- 15.11 In section 51(1) for "solicitors" **substitute** "legal practitioners".
- 15.12 In section 73(4)—
 - (a) for "taxed" **substitute** "assessed";
 - (b) for "taxation" **substitute** "assessment";
- 15.13 In section 83(2) for "taxed" **substitute** "assessed".
- 15.14 After section 87 **insert**—

"88. Robing of Judges

All matters pertaining to the robing of judges are to be determined by the Chief Judge after consultation with the Council of the Judges."

16. Crimes Act 1958

- 16.1 In section 317(7)—
 - (a) **omit** "counsel for";
 - (b) for "his" **substitute** "its";
 - (c) for "he" **substitute** "it".
 - 16.2 In section 359(3) for "counsel or solicitor" **substitute** "legal practitioner".
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- 16.3 In section 388 for "counsel" **substitute** "legal practitioner".
- 16.4 In the proviso to section 391 **omit** "counsel for" wherever occurring.
- 16.5 In section 395(1)(e)(i) **omit** "counsel for".
- 16.6 In section 397 for "counsel" **substitute** "legal practitioner".
- 16.7 In section 398—
- (a) for "counsel or solicitor" **substitute** "a legal practitioner";
 - (b) in paragraph (a) **omit** "counsel for".
- 16.8 In section 399(3) **omit** "counsel for".
- 16.9 In section 399A(6) for "his solicitor" **substitute** "his or her legal practitioner".
- 16.10 In section 399B for "barrister or solicitor" **substitute** "legal practitioner".
- 16.11 In section 400(5) **omit** "counsel for".
- 16.12 In section 417—
- (a) in sub-section (1)—
 - (i) **omit** "counsel for";
 - (ii) for "his" **substitute** "its";
 - (iii) for "he" **substitute** "it";
 - (b) in sub-section (2) for "counsel" **substitute** "a legal practitioner";
 - (c) in sub-section (3) **omit** "counsel for".
- 16.13 In section 418—
- (a) in paragraph (c)(ii)—
 - (i) for "counsel or solicitor" (where first occurring) **substitute** "a legal practitioner";
 - (ii) for "counsel or solicitor" (where secondly occurring) **substitute** "legal practitioner";
 - (iii) in sub-sub-paragraph A. for "counsel or solicitor" **substitute** "a legal practitioner";
 - (b) in paragraph (d) for "counsel or solicitor" **substitute** "legal practitioner".
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- 16.14 In section 450A(2) and (3) for "counsel" (wherever occurring) **substitute** "a legal practitioner".
- 16.15 Sections 451 and 452 are **repealed**.
- 16.16 In section 453, for "tax" **substitute** "assess".
- 16.17 In sections 464M(8), 464T(6) and 464U(13) for "counsel or a solicitor" **substitute** "a legal practitioner".
- 16.18 In sections 567A(5) and 577 for "counsel" **substitute** "a legal practitioner".
- 16.19 In section 578(2) for "solicitor or counsel" **substitute** "legal practitioner".
- 16.20 In the Sixth Schedule, in rule 4(2A)—
- (a) in paragraph (a) for "solicitor" (wherever occurring) **substitute** "legal practitioner";
 - (b) in paragraph (b) for "solicitors" **substitute** "legal practitioners".

17. Crimes (Confiscation of Profits) Act 1986

In section 41O(1)(d) and (2)(a)(iii) for "barrister or solicitor" **substitute** "legal practitioner".

18. Crimes (Criminal Trials) Act 1993

- 18.1 In sections 13 and 14 for "counsel for the accused" (wherever occurring) **substitute** "the accused or his or her legal practitioner".
- 18.2 In section 16(d) for "of counsel" **substitute** "for the prosecution and the defence".
- 18.3 In section 19(1)—
- (a) for "counsel or solicitor" (wherever occurring) **substitute** "legal practitioner";
 - (b) in paragraph (b) for "an employee solicitor" **substitute** "a legal practitioner who is employed by another legal practitioner or a firm of legal practitioners";
 - (c) for "solicitor" (where last occurring) **substitute** "legal practitioner".
- 18.4 In section 21—
- (a) for "solicitor" **substitute** "legal practitioner";
 - (b) for "solicitor's" **substitute** "legal practitioner's".
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19. Criminal Injuries Compensation Act 1983

- 19.1 In section 11(1) for "barrister, a solicitor," **substitute** "legal practitioner".
- 19.2 In section 27(4) for "barrister or solicitor" **substitute** "legal practitioner".
- 19.3 In section 31(1) and (5) for "solicitor" (wherever occurring) **substitute** "legal practitioner".
- 19.4 In section 32(3)—
- 1 for "The solicitor of" **substitute** "A legal practitioner acting for";
 - 1 for "solicitor" (where secondly and thirdly occurring) **substitute** "practitioner".

20. Crown Proceedings Act 1958

In section 12 for "counsel and solicitor" (wherever occurring) **substitute** "legal practitioners".

21. Dairy Industry Act 1992

In section 77(6) for "counsel" **substitute** "legal practitioners".

22. Dangerous Goods Act 1985

In section 43(4) for "counsel or solicitor" **substitute** "legal practitioner".

23. Domestic Building Contracts and Tribunal Act 1995

- 23.1 In section 34(4) for "practising solicitor" **substitute** "current practitioner or registered interstate practitioner (within the meaning of the **Legal Practice Act 1996**)".
- 23.2 In section 84(2) for "barrister" **substitute** "legal practitioner".

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24. *Employee Relations Act 1992*

- 24.1 In section 112(2) and 154(5)(c) for "barrister and solicitor" **substitute** "legal practitioner".
- 24.2 In section 129(2) for "barrister" **substitute** "legal practitioner".

25. *Employment Agents Act 1983*

- 25.1 In section 5(1)(a) for "barrister or solicitor" **substitute** "legal practitioner".
- 25.2 In section 17(4)(b) for "counsel or a solicitor" **substitute** "legal practitioner".

26. *Environment Protection Act 1970*

In section 59AC(b) for "counsel or a solicitor" **substitute** "a legal practitioner".

27. *Equal Opportunity Act 1995*

In section 138(3) for "taxed" **substitute** "assessed".

28. *Estate Agents Act 1980*

- 28.1 For section 5(2)(e) **substitute**—
- "(e) any legal practitioner for the purpose only of carrying out the ordinary functions of a legal practitioner;".
- 28.2 In section 53A(1)—
- (a) in paragraph (a) for "approved by the Council of the Law Institute of Victoria" **substitute** "approved by the Legal Practice Board or an RPA (within the meaning of the **Legal Practice Act 1996**)";
- (b) in paragraph (b) for "barrister or solicitor" **substitute** "legal practitioner";
- (c) for "section 93 of the **Legal Profession Practice Act 1958**" **substitute** "section 314 of the **Legal Practice Act 1996**".
- 28.3 In section 59(1)(b)(i) for "solicitors" **substitute** "legal practitioners".
- 28.4 In sections 68(1) and 81(5) for "solicitor" **substitute** "legal practitioner".
-

29. Evidence Act 1958

29.1 In section 21D for the definition of "private practitioner" **substitute—**

"private practitioner" means a person engaged in legal practice—

- (a) as a sole practitioner or an incorporated practitioner (within the meaning of the **Legal Practice Act 1996**); or
- (b) in partnership; or
- (c) as the employee of a person referred to in paragraph (a) or (b); or
- (d) as a director of an incorporated practitioner; or
- (e) as a registered interstate practitioner within the meaning of the **Legal Practice Act 1996**;

29.2 In section 37C(3)(d) and (e) for "counsel" **substitute** "legal practitioners".

29.3 In section 55AB(2)(b)(i) for "counsel or solicitor" (wherever occurring) **substitute** "legal practitioner".

29.4 In section 107A(2)—

- (a) in paragraph (a) for "the barrister and solicitor or barrister or solicitor" **substitute** "acting";
- (b) in paragraph (b) for "such a person" **substitute** "a person so acting".

29.5 In section 123C—

- (a) in sub-section (1) after paragraph (da) **insert—**
"(db) the registrar or deputy registrar of the Legal Profession Tribunal";
- (b) in sub-section (1) for paragraph (g) **substitute—**
"(g) a natural person who is a current practitioner or registered interstate practitioner within the meaning of the **Legal Practice Act 1996**";
- (c) in sub-section (4)—
 - (i) for "solicitor" (where first and secondly occurring) **substitute** "legal practitioner";

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- (ii) for "the solicitor" (where secondly occurring) **substitute** "acting".

30. Evidence (Commissions) Act 1982

In section 4(5) for "barrister or solicitor" (wherever occurring) **substitute** "legal practitioner".

31. Financial Institutions Duty Act 1982

31.1 In section 25(7)—

- (a) for "Law Institute of Victoria" (wherever occurring) **substitute** "Legal Practice Board";
- (b) in paragraph (a) for "section 40(2A) of the **Legal Profession Practice Act 1958**" **substitute** "Division 2 of Part 6 of the **Legal Practice Act 1996**";
- (c) in paragraph (b) for "Solicitors' Guarantee Fund" **substitute** "Legal Practitioners' Fidelity Fund".

31.2 In section 25(10)(b) for "Law Institute of Victoria" **substitute** "Legal Practice Board".

31.3 For section 25(12)(c) **substitute**—
"(c) the Legal Practice Board;".

32. Firearms Act 1958

32.1 In section 53(2)(a) for "of five persons submitted to the Minister by the Law Institute of Victoria" **substitute** "constituted in accordance with sub-section (2A)".

32.2 After section 53(2) **insert**—

- "(2A) The panel referred to in sub-section (2)(a) is constituted by the following nominees submitted to the Minister—
- (a) a nominee of each RPA (within the meaning of the **Legal Practice Act 1996**); or
 - (b) if there are only 2 RPAs, 3 nominees of each RPA; or
 - (c) if there is only 1 RPA, 5 nominees of that RPA.
- (2B) Despite anything to the contrary in this section, the members holding office under sub-section (2)(a) as in force immediately before the commencement of section 453 of the **Legal Practice Act 1996** continue in office, subject to this Act, until the expiry of their current term of office."
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33. Food Act 1984

In section 46(4)(a) for "counsel or solicitor" **substitute** "legal practitioner".

34. Freedom of Information Act 1982

In section 57(1) for "counsel" **substitute** "legal representation".

35. Friendly Societies Act 1986

In section 102 in paragraph (b) of the definition of "prescribed officer" for "solicitor" **substitute** "legal practitioner".

36. Girl Guides Association Act 1952

In the proviso to section 7(2) for "barrister or solicitor" **substitute** "legal practitioner".

37. Guardianship and Administration Board Act 1986

In section 58E for "solicitor" (wherever occurring) **substitute** "legal practitioner".

38. Health Services Act 1988

In section 144(2)(c) for "counsel" **substitute** "a legal practitioner".

39. Hire-Purchase Act 1959

39.1 In section 15(4)(a)(ii) for "solicitor" **substitute** "legal practitioner".

39.2 In section 19 for "solicitor" (wherever occurring) **substitute** "legal practitioner".

40. Instruments Act 1958

40.1 In section 4 for "taxed" **substitute** "assessed".

40.2 In sections 17 and 111(1)(b) and the Second Schedule for "solicitor" (wherever occurring) **substitute** "legal practitioner".

40.3 In the Second Schedule for "taxed" **substitute** "assessed".

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41. *Judicial Proceedings Reports Act 1958*

41.1 In section 3(1)(c)(v) for "counsel and solicitors" **substitute** "legal practitioners".

41.2 In section 3(1C) for "counsel" **substitute** "a legal practitioner".

42. *Judicial Studies Board Act 1990*

In section 5(e) for "lawyers" **substitute** "legal practitioners".

43. *Labour and Industry Act 1958*

In section 194(2) for "barrister or solicitor" **substitute** "legal practitioner".

44. *Land Act 1958*

In section 369(2) for "counsel" **substitute** "legal practitioner".

45. *Landlord and Tenant Act 1958*

In section 59(3) for "counsel solicitor" **substitute** "legal practitioner".

46. *Land Tax Act 1958*

In section 61 for "barrister and solicitor" (wherever occurring) **substitute** "legal practitioner".

47. *Legal Aid Act 1978*

47.1 In section 2(1)—

1 After the definition of "Court" **insert**—

"current practitioner" means—

- (a) a practitioner or an incorporated practitioner that holds a practising certificate, other than a corporate practitioner within the meaning of the **Legal Practice Act 1996**; or
- (b) a registered interstate practitioner within the meaning of the **Legal Practice Act 1996**;

-
- (b) After the definition of "Fund" **insert**—
"**incorporated practitioner**" has the same meaning as in the **Legal Practice Act 1996**;';
- (c) for the definition of "private practitioner" **substitute**—
"**private practitioner**" means a person engaged in legal practice—
(a) as a sole practitioner, an incorporated practitioner or a registered interstate practitioner; or
(b) in partnership;'
- (d) the definition of "solicitor" is **repealed**.
- 47.2 In section 16(1) and (2) for "solicitor" **substitute** "legal practitioner".
- 47.3 Section 16(3) is **repealed**.
- 47.4 For section 16(5) **substitute**—
"(5) Part 6 and Division 2 of Part 7 of the **Legal Practice Act 1996** apply to VLA as if it were an incorporated practitioner that held a practising certificate authorising the receipt of trust money."
- 47.5 In section 17 for "solicitor" (wherever occurring) **substitute** "legal practitioner".
- 47.6 In section 30—
1 for "firm of solicitors" (wherever occurring except in sub-sections (9)(a), (9A), (15), (18) and (19)) **substitute** "firm or incorporated practitioner";
1 in sub-section (3) for "and firms of solicitors" **substitute** ", firms and incorporated practitioners";
1 in sub-section (4) for "practitioner's or firm's" **substitute** "sole practitioner's, firm's or incorporated practitioner's";
1 in sub-section (5)—
1 for "and firms of solicitors" **substitute** ", firms and incorporated practitioners";
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- 1 for "and firms" (where secondly occurring) **substitute** ", firms and incorporated practitioners";
- 1 in sub-section (6) for "partners and employee solicitors for the time being of the firm" **substitute** "partners or directors and the practitioners who are employed by the firm or incorporated practitioner";
- 1 in sub-section (8)—
- 1 in paragraph (c) for "employee solicitor" **substitute** "practitioner who is an employee";
- 1 in paragraph (d) for "participating employee or employee solicitor" **substitute** "director or practitioner who is an employee";
- 1 for sub-section (9)(a) **substitute**—
- "(a) exclude or remove from a referral panel the name of—
- (i) a sole practitioner if the name of a practitioner who is his or her employee is excluded or removed from the panel; or
- (ii) a firm or incorporated practitioner if the name of a partner, director or practitioner who is an employee of the firm or incorporated practitioner is excluded or removed from the panel; and";
- (h) in sub-section (9)(c) and (d) for "or firm" **substitute** ", firm or incorporated practitioner";
- (i) in sub-section (9A) for "firm of solicitors, partner, participating employee or employee solicitor" **substitute** "firm, incorporated practitioner, partner, director or employee";
- (j) in sub-section (10)—
- (i) in paragraph (a) for "or firm or partner or participating employee or employee solicitor" **substitute** ", firm, incorporated practitioner, partner, director or employee";
- (ii) in paragraph (b) for "participating employee of the firm or the partner or participating employee or employee solicitor" **substitute** "director of the firm or incorporated
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practitioner or the partner, director or employee";

- (k) in sub-section (11) for "participating employee" **substitute** "director";
- (l) in sub-section (15) for "firm of solicitors, partner, participating employee or employee solicitor" **substitute** "firm, incorporated practitioner, partner, director or employee";
- (m) in sub-section (18) for "firm of solicitors, partner or participating employee of a firm of solicitors or employee solicitor" **substitute** "firm, incorporated practitioner, partner, director or employee";
- (n) in sub-section (19)—
 - (i) for the definition of "Firm of solicitors" **substitute**—
"**firm**" has the same meaning as in the **Legal Practice Act 1996**;
 - (ii) the definitions of "Participating employee" and "Sole practitioner" are **repealed**.

47.7 In section 31—

- in sub-section (1) for "counsel and solicitor" **substitute** "legal practitioner";
- in sub-section (2) for "solicitor" (wherever occurring) **substitute** "legal practitioner".

47.8 In section 32(2B) for "with the Law Institute of Victoria and the Victorian Bar Council, as the case requires" **substitute** "the Legal Practice Board and any RPAs (within the meaning of the **Legal Practice Act 1996**) that VLA considers it appropriate to consult".

47.9 Section 40D(2), (3) and (4) are **repealed**.

47.10 Section 40E is **repealed**.

47.11 In section 40G(4) for "solicitor" (wherever occurring) **substitute** "legal practitioner".

47.12 In section 40G(5) for "taxation" (wherever occurring) **substitute** "assessment".

47.13 In section 41(2)—

- (a) for paragraph (b) **substitute**—

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"(b) all amounts payable to the fund under section 380 of the **Legal Practice Act 1996**";

(b) paragraph (ba) is **repealed**;

1 in paragraph (d) for "referred to in section 40 of the **Legal Profession Practice Act 1958**" **substitute** "by section 174 of the **Legal Practice Act 1996**".

47.14 In section 43—

(a) in sub-section (1)(b) for "solicitor" **substitute** "legal practitioner";

(b) in sub-section (4) after "partner" **insert** "or director".

47.15 In section 46(3) for "solicitor" (wherever occurring) **substitute** "legal practitioner".

48. *Legal Aid Commission (Amendment) Act 1989*

In section 9(1)—

1 in paragraph (b) for "or firm of solicitors" **substitute** ", firm or incorporated practitioner";

1 in paragraph (d)—

1 sub-paragraph (i) is **repealed**;

1 in sub-paragraph (ii) for "participating employees and employee solicitors" **substitute** "directors and employees";

1 in paragraph (e) for "employee solicitors" **substitute** "employees".

49. *Leo Cussen Institute Act 1972*

In section 2 the definitions of "Bar Council" and "Law Institute" are **repealed**.

50. *Libraries Act 1988*

In section 22(1)(d) for "lawyer" **substitute** "legal practitioner".

51. *Liquor Control Act 1987*

In section 3 the definition of "legal practitioner" is **repealed**.

52. *Local Government Act 1989*

In clause 6(2) of Schedule 4—

1 **omit** "duly qualified";

1 for "barrister" **substitute** "legal practitioner".

53. *Magistrates' Court Act 1989*

53.1 In section 4(3B) for "counsel or a solicitor" **substitute** "a legal practitioner".

53.2 In section 9(11)(c) for "practises as counsel or a solicitor" **substitute** "engages in legal practice".

53.3 In sections 38(b), 46, 47(1), 100(6)(b) and clauses 10(b) and 15(2) of Schedule 5 for "counsel or a solicitor" **substitute** "a legal practitioner".

53.4 In section 47(4) for "counsel or solicitor" **substitute** "legal practitioner".

53.5 In section 125(2) for "counsel" **substitute** "legal practitioners".

53.6 In section 132—

(a) for "solicitor" (wherever occurring) **substitute** "legal practitioner";

(b) sub-section (5) is **repealed**.

53.7 At the end of Schedule 4 **insert**—

"63. Improperly destroying property, etc.

Offences under section 263(1) of the **Legal Practice Act 1996**."

53.8 In Schedule 5—

(a) in clause 3(5) for "counsel or solicitor" **substitute** "legal practitioner";

(b) in clause 3(6) for "counsel or solicitors" **substitute** "legal practitioners";

(c) in clause 15(3)(c) for "counsel and solicitors" **substitute** "legal practitioners".

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53.9 In clause 6(3) of Schedule 6 for "solicitor" **substitute** "legal practitioner".

54. Maintenance Act 1965

In section 111—

- (a) in sub-section (1)(b) for "barristers and solicitors" (wherever occurring) **substitute** "legal practitioners";
- (b) in sub-section (4) for "counsel or solicitors" **substitute** "legal practitioners".

55. Marine Act 1988

In section 110(1)(a) for "counsel or solicitor of" **substitute** "legal practitioner or".

56. Market Court Act 1978

In section 9(b) for "counsel or a solicitor" **substitute** "a legal practitioner".

57. Medical Practice Act 1994

In section 24(3)(b) for "solicitor" **substitute** "legal practitioner".

58. Mental Health Act 1986

In section 130A(2)—

- (a) **omit** "duly qualified";
- (b) for "barrister" **substitute** "legal practitioner".

59. Mines Act 1958

In sections 386(3L) and (3M)(a) and 397(4) and (5)(a) for "counsel" (wherever occurring) **substitute** "a legal practitioner".

60. National Crime Authority (State Provisions) Act 1984

In section 29(2) for "barrister" **substitute** "legal practitioner".

61. Nurses Act 1993

In section 22(3)(b) for "solicitor or" **substitute** "legal practitioner or an".

62. Ombudsman Act 1973

62.1 In section 13(3)(aa) for "barrister or solicitor" **substitute** "or legal practitioner".

62.2 In section 17(3) for "counsel" **substitute** "a legal practitioner".

63. Optometrists Registration Act 1958

In section 18(4) for "counsel" **substitute** "a legal practitioner".

64. Parliamentary Committees Act 1968

64.1 In section 4I(3) for "counsel or a solicitor" **substitute** "a legal practitioner".

64.2 After section 7(2) **insert**—

"(3) A provision of this Part that is inconsistent with any provision in the **Legal Practice Act 1996** prevails to the extent of the inconsistency."

64.3 In section 9(1) and (2) for "taxed" **substitute** "assessed".

64.4 In section 11—

(a) in sub-section (1)—

(i) for "solicitor" **substitute** "legal practitioner";

(ii) for "tax" **substitute** "assess";

(iii) for "taxation" **substitute** "assessment";

(b) in sub-section (3)—

(i) for "tax" **substitute** "assess";

(ii) for "solicitor" **substitute** "legal practitioner".

64.5 In section 12(1) and (2) for "taxation" **substitute** "assessment".

64.6 In section 13(1) and (2) for "taxed" **substitute** "assessed".

64.7 In section 16—

(a) for "solicitor" (wherever occurring) **substitute** "legal practitioner";

(b) for "taxation" **substitute** "assessment".

64.8 In sections 17 and 18 for "solicitor" (wherever occurring) **substitute** "legal practitioner".

64.9 In section 19—

(a) for "solicitor" (wherever occurring) **substitute** "legal practitioner";

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(b) for "taxation" **substitute** "assessment";

(c) for "tax" **substitute** "assess".

64.10 In section 20—

(a) in sub-section (1)—

(i) for "taxation" (wherever occurring) **substitute** "assessment";

(ii) for "tax" **substitute** "assess";

(b) in sub-section (2) for "taxation" **substitute** "assessment".

64.11 In section 21 for "tax" **substitute** "assess".

64.12 In section 22—

(a) for "taxation" (wherever occurring) **substitute** "assessment";

(b) in paragraph (b) for "solicitor" **substitute** "legal practitioner".

64.13 In section 23 for "taxation" (wherever occurring) **substitute** "assessment".

64.14 In section 27—

(a) in sub-section (1) for "solicitors" **substitute** "legal practitioners";

(b) in sub-section (2) for "taxation" **substitute** "assessment".

64.15 In sections 28, 29 and 31 for "taxation" (wherever occurring) **substitute** "assessment".

64.16 In section 32—

(a) in sub-section (1)—

(i) for "taxation" (wherever occurring) **substitute** "assessment";

(ii) for "taxable" **substitute** "assessable";

(iii) for "tax" **substitute** "assess";

(iv) for "taxing" (where thirdly occurring) **substitute** "assessing";

- (b) in sub-section (2)—
- (i) for "tax" (wherever occurring) **substitute** "assess";
 - (ii) for "taxing" (where first and thirdly occurring) **substitute** "assessing";
 - (iii) for "taxation" **substitute** "assessment";
 - (iv) for "taxed" **substitute** "assessed".

64.17 In section 33—

- (a) for "taxed" (wherever occurring) **substitute** "assessed";
- (b) for "taxation" **substitute** "assessment".

64.18 In section 34—

- (a) for "taxing" (where secondly occurring) **substitute** "assessing";
- (b) in paragraphs (a) and (b) for "tax" **substitute** "assess";
- (c) in paragraph (c) for "taxation" (wherever occurring) **substitute** "assessment".

64.19 In section 35 for "taxation" (wherever occurring) **substitute** "assessment".

65. Police Regulation Act 1958

- 65.1 In sections 75(1) and 84(1) for "person admitted to practice as a barrister or solicitor of the Supreme Court" **substitute** "legal practitioner".
- 65.2 In section 91H(1) for "barrister or solicitor of the Supreme Court" **substitute** "legal practitioner".

66. Pollution of Waters by Oil and Noxious Substances Act 1986

In section 24C(1)(a) for "counsel or solicitor" **substitute** "legal practitioner".

67. Private Agents Act 1966

In section 4(1)(d)—

- (a) for "barrister and solicitor" (wherever occurring) **substitute** "legal practitioner";
- (b) for "profession" (wherever occurring) **substitute** "legal practice".

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68. Property Law Act 1958

- 68.1 In section 7(1) for "barrister or solicitor" **substitute** "legal practitioner".
- 68.2 In sections 23(2), 42(3), 48(1) and (2), 75(1), 96 and 146(3) for "solicitor" (wherever occurring) **substitute** "legal practitioner".
- 68.3 In section 199(1)(b)—
- (a) **omit** "his counsel, as such, or of";
 - (b) for "solicitor" (wherever occurring) **substitute** "legal practitioner".
- 68.4 In the Third Schedule—
- 1 in clauses 1, 2 and 7 for "solicitor" (wherever occurring) **substitute** "legal practitioner";
 - 1 in clause 13—
 - 1 for "solicitor" (wherever occurring) **substitute** "legal practitioner";
 - 1 for "solicitors" **substitute** "legal practitioners".

69. Public Prosecutions Act 1994

- 69.1 In section 3, in paragraphs (d) and (e) of the definition of "special decision", for "other counsel" **substitute** "another legal practitioner".
- 69.2 In section 11 for "counsel or a solicitor" **substitute** "a legal practitioner".
- 69.3 In section 22(1)(b)(iii) for "counsel" **substitute** "legal practitioners".
- 69.4 In section 23(2)(c) for "counsel" (wherever occurring) **substitute** "legal practitioner".
- 69.5 In sections 36(1)(b) and 36E(1)(a) **omit** "as counsel".
- 69.6 In section 38(1)(b) and (1A) for "counsel" (wherever occurring) **substitute** "legal practitioners".

70. Racing Act 1958

In section 83MA(2) for "barrister" **substitute** "legal practitioner".

71. Residential Tenancies Act 1980

In section 44(5)(b) for "solicitor" **substitute** "legal practitioner".

72. Retirement Villages Act 1986

72.1 In section 3(1) after the definition of "services" **insert**—
"**society**" has the same meaning as in the AFIC (Victoria) Code;".

72.2 In section 25—

1 for "solicitor" (wherever occurring) **substitute** "legal practitioner";

1 sub-section (4) is **repealed**;

(c) in sub-section (5)(b) for "bank account established at a bank" **substitute** "account established at a bank or society";

(d) in sub-section (7) after "bank" **insert** "or society".

72.3 In Schedule 3, in Part 1 of the check list, for "solicitor" **substitute** "legal practitioner".

73. Sale of Land Act 1962

73.1 In section 2(1) after the definition of "Schedule" **insert**—
"**society**" has the same meaning as in the AFIC (Victoria) Code;".

73.2 In section 9AA—

(a) in sub-section (1)—

(i) in paragraph (a)(i) for "solicitor" (wherever occurring) **substitute** "legal practitioner";

(ii) in paragraph (a)(ii) for "banking account in a bank" **substitute** "account in a bank or society";

(b) in sub-section (2)—

(i) in paragraph (a) for "solicitor" **substitute** "legal practitioner";

(ii) in paragraph (b) for "banking account in the bank" **substitute** "account in the bank or society";

(c) in sub-section (3) for "A banking account" **substitute** "An account";

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- (d) in sub-section (4) after "bank" **insert** "or society".
- 73.3 In section 15(1)(b) for "solicitor" **substitute** "legal practitioner".
- 73.4 In section 23 the definition of "solicitor" is **repealed**.
- 73.5 In section 24—
- (a) for "solicitor" (wherever occurring) **substitute** "legal practitioner";
 - (b) sub-section (2) is **repealed**.
- 73.6 In section 25—
- (a) in sub-section (1)—
 - (i) in paragraph (a) for "solicitor" **substitute** "legal practitioner";
 - (ii) in paragraph (b) for "banking account in a bank" **substitute** "account in a bank or society";
 - (b) in sub-section (3) after "bank" **insert** "or society".
- 73.7 In sections 25(1)(a) and 27(1) and (11) for "solicitor" (wherever occurring) **substitute** "legal practitioner".
- 73.8 In section 30 the definition of "solicitor" is **repealed**.
- 73.9 In section 31(5)(e) for "solicitor" **substitute** "legal practitioner".
- 73.10 In section 33—
- (a) in sub-sections (1), (2) and (4) for "solicitor" (wherever occurring) **substitute** "legal practitioner";
 - (b) in sub-section (3)—
 - 1 for "solicitor" **substitute** "legal practitioner";
 - 1 paragraph (a) is **repealed**;
 - 1 in paragraph (b)—
 - 1 for "he" (where first occurring) **substitute** "the practitioner";
 - 1 for "he" (where secondly occurring) **substitute** "the purchaser".
- 73.11 In section 34(1) for "solicitor" **substitute** "legal practitioner".
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74. *Scout Association Act 1932*

In the proviso to section 9(2) for "barrister or solicitor" **substitute** "legal practitioner".

75. *Settled Land Act 1958*

In sections 91(1)(c)(i) and 101 for "solicitor" (wherever occurring) **substitute** "legal practitioner".

76. *Small Claims Tribunals Act 1973*

76.1 In section 6(1) for "or has been a barrister or solicitor or a barrister and solicitor" **substitute** "a legal practitioner".

76.2 In section 30(3) for "practising as a barrister or solicitor or as a barrister and solicitor or as an advocate" **substitute** "a current practitioner or registered interstate practitioner (within the meaning of the **Legal Practice Act 1996**)".

77. *Stamps Act 1958*

In section 149(a) for "solicitor" **substitute** "legal practitioner".

78. *State Trustees (State Owned Company) Act 1994*

In section 14(1) and (2) for "solicitor" **substitute** "legal practitioner".

79. *Status of Children Act 1974*

In section 8(2) for "solicitor" **substitute** "legal practitioner".

80. *Supreme Court Act 1986*

80.1 In section 3(1)—

(a) the following definitions are **repealed**—

"Law Institute"

"non-contentious business"

"solicitor"

"solicitor-client agreement";

(b) in the definition of "court official", in paragraph (a), after "Court" **insert** "(except a person who is an officer of the Court only because he or she is a legal practitioner or registered interstate practitioner within the meaning of the **Legal Practice Act 1996**)".

80.2 After section 9 **insert**—

"9A. *Robing of Judges*

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All matters pertaining to the robing of Judges are to be determined by the Chief Justice after consultation with the Council of the Judges."

80.3 Divisions 8 and 9 of Part 5 are **repealed**.

80.4 Division 1 of Part 6 is **repealed**.

80.5 In the heading to Division 2 of Part 6 for "**Taxation of Costs**" substitute "**Delivery of documents**";

80.6 Sections 70, 71, 72, 73, 74 and 75 are **repealed**;

80.7 In section 76 for "solicitor" (wherever occurring) substitute "legal practitioner or firm of legal practitioners";

80.8 In the heading to Division 3 of Part 6 for "**Counsel**" substitute "**Legal Practitioners**".

80.9 In section 78—

(a) in sub-section (1) for "counsel" substitute "a legal practitioner";

(b) in sub-section (2) for "counsel" substitute "the legal practitioner".

80.10 In sections 79(5)(a), 84(4)(a), 92 and 93 for "solicitor" (wherever occurring) substitute "legal practitioner".

81. Surveyors Act 1978

In section 18(4) for "counsel or a solicitor" substitute "a legal practitioner".

82. The Constitution Act Amendment Act 1958

82.1 In section 294(1) for "counsel or solicitor" substitute "a legal practitioner".

82.2 In section 294(2) for "counsel or one solicitor" substitute "legal practitioner".

83. Transfer of Land Act 1958

83.1 In section 4(1)—

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- (a) after the definition of "Land" **insert**—
 "**legal practitioner's certificate**" means a certificate under section 26G;";
- (b) the definition of "Solicitor's certificate" is **repealed**.
- 83.2 In section 10(2) for "solicitor's" **substitute** "legal practitioner's".
- 83.3 In the heading to Division 3 of Part II for "**Solicitor's**" **substitute** "**Legal Practitioner's**".
- 83.4 In section 26A the definition of "Solicitor" is **repealed**.
- 83.5 In sections 26C(1), (2) and (5), 26D(2)(c) and 26E(2)(c) and (d) and (3) for "solicitor's" **substitute** "legal practitioner's".
- 83.6 In section 26G—
 1 for "solicitor's" (wherever occurring) **substitute** "legal practitioner's";
 1 for "solicitor" (wherever occurring) **substitute** "legal practitioner".
- 83.7 In sections 26H, 26K, 26N and 26O for "solicitor's" (wherever occurring) **substitute** "legal practitioner's".
- 83.8 In section 52(2) for "solicitor" **substitute** "legal practitioner".
- 83.9 In section 82(2) for "solicitors" **substitute** "legal practitioners".
- 83.10 In section 89A(2)(b) for "practising as a barrister or a solicitor, or as a barrister and solicitor, of the Supreme Court of Victoria" **substitute** "engaged in legal practice in Victoria".
- 83.11 In section 109(4)—
 (a) for "solicitor" **substitute** "legal practitioner";
 (b) for "solicitor's" **substitute** "legal practitioner's".
- 83.12 In section 110—
 (a) in sub-section (1)(aa) for "solicitor's" (wherever occurring) **substitute** "legal practitioner's";
 (b) in sub-section (3)(a) for "solicitor" (wherever occurring) **substitute** "legal practitioner".
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83.13 In the Fifth Schedule, in Part III, for "solicitor's" **substitute** "legal practitioner's".

83.14 In Schedule 5A—

- (a) in the headings to Parts 1 and 2 for "SOLICITOR'S" **substitute** "LEGAL PRACTITIONER'S";
- (b) for "solicitor" (wherever occurring) **substitute** "legal practitioner";

omit "19";

for "I hold a current practising certificate issued pursuant to the provisions of the **Legal Profession Practice Act 1958**." (wherever occurring) **substitute**—

"*I hold a practising certificate under the **Legal Practice Act 1996**."

OR

I am a registered interstate practitioner within the meaning of the **Legal Practice Act 1996**."

(*Delete as applicable);

- (e) in footnote *2 for "solicitor's" **substitute** "legal practitioner's".

83.15 In the Seventh Schedule—

for "solicitor" (wherever occurring) **substitute** "legal practitioner";

in clause 13 for "solicitors" **substitute** "legal practitioners".

84. Trade Unions Act 1958

In section 12 for "taxed" **substitute** "assessed".

85. Trustee Act 1958

In section 65 for "counsel or solicitor" **substitute** "legal practitioner".

86. Trustee Companies Act 1984

86.1 In section 20A—

for "**Legal Profession Practice Act 1958**" (where first occurring) **substitute** "**Legal Practice Act 1996**";

1□ for "solicitor who holds a current practising certificate under the **Legal Profession Practice Act 1958**" **substitute** "current practitioner or registered interstate practitioner within the meaning of that Act".

86.2 In section 54—

- (a) before "Where" **insert** "(1)";
- (b) for "practising solicitor" (wherever occurring) **substitute** "current practitioner";
- (c) for "such a solicitor" (wherever occurring) **substitute** "the practitioner";
- (d) for "the solicitor" **substitute** "the legal practitioner".

86.3 At the end of section 54 **insert**—

"(2) In this section, "**current practitioner**" has the same meaning as in the **Legal Practice Act 1996**".

87. *Victoria Law Foundation Act 1978*

87.1 In section 2 the definitions of "Bar Council", "Law Institute" and "Solicitors' Guarantee Fund" are **repealed**.

87.2 In section 12(c) for "moneys standing to the credit of the Victoria Law Foundation Account in the Solicitors' Guarantee Fund and any other funds" **substitute** "money".

87.3 Section 14 is **repealed**.

88. *Vocational Education and Training Act 1990*

In section 64(4) for "person who is practising as a barrister or solicitor" **substitute** "current practitioner or registered interstate practitioner within the meaning of the **Legal Practice Act 1996**".

89. *Wildlife Act 1975*

In section 85(1)(b) for "counsel or solicitor" **substitute** "legal practitioner".

90. *Wrongs Act 1958*

90.1 In section 13 for "taxed" **substitute** "assessed".

90.2 In section 21 for "solicitor" **substitute** "legal practitioner".

SCHEDULE 2

Section 454

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**PART 1—GENERAL****1. Definitions**

In this Schedule—

"Bar" means "The Victorian Bar Incorporated", a body incorporated under the **Associations Incorporation Act 1981**;

"barristers' rules" means—

- (a) the bar rules (within the meaning of section 14A of the old Act) as in force immediately before the commencement day; and
- (b) any ruling made and published by the Victorian Bar Council (within the meaning of section 14A of the old Act) on a matter of professional conduct or practice in force immediately before the commencement day;

"commencement day" means 1 January 1997;

"existing firm" means a firm of existing practitioners that, immediately before the commencement day, was engaged in legal practice;

"existing incorporated practitioner" means a person that was an incorporated practitioner, within the meaning of the old Act, immediately before the commencement day;

"existing practitioner" means a person who immediately before the commencement day was a barrister and solicitor of the Supreme Court;

"Institute" means the Institute within the meaning of section 2A of the old Act;

"old Act" means the **Legal Profession Practice Act 1958** as in force immediately before its repeal;

"Society" means Victorian Lawyers RPA Limited
A.C.N. 075 475 731.

2. General transitional provision

- (1) Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a provision of the old Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—
 - (a) any other provision of the old Act necessary to give effect to that continued provision; and
 - (b) any regulation made under the old Act for the purposes of that continued provision.

3. Savings and transitional regulations

The regulations may contain provisions of a savings and transitional nature consequent on the repeal of the old Act.

PART 2—LEGAL PRACTITIONERS AND FIRMS

4. Admission

- (1) On the commencement day, an existing practitioner becomes a legal practitioner as if he or she had been admitted to legal practice under this Act.
- (2) Despite anything to the contrary in sub-clause (1), the day of admission of an existing practitioner is the day he or she was admitted by the Supreme Court to practise as a barrister and solicitor.
- (3) Until the regulations provide otherwise, the prescribed general fee for admission is \$100 and the prescribed library fee for admission is \$560.

5. Sole practitioners and corporate practitioners must notify Board

- (1) Each existing practitioner who is a sole practitioner or corporate practitioner must give the Board a notice in writing within 14 days after the commencement day—
 - (a) stating his or her name, date of birth and date of admission; and
 - (b) in the case of a corporate practitioner, stating the name and address of his or her employer; and
 - (c) in the case of a sole practitioner, stating any business name under which he or she engages in legal practice; and
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- (d) stating his or her address for service of documents.
- (2) Sub-clause (1) does not apply to the extent that the information has been provided to the Attorney-General under clause 9.

6. *Firms and incorporated practitioners to notify Board*

- (1) Each existing firm must give the Board a written notice within 14 days after the commencement day—
 - (a) stating the name of, and address for service of notices and other documents on, the firm; and
 - (b) stating the name, date of birth and date of admission of each existing practitioner who was a partner or an employee of the firm on that day.
- (2) Sections 15 and 16(4) do not apply to an existing firm.
- (3) Each existing incorporated practitioner must give the Board a written notice within 14 days after the commencement day—
 - (a) stating the name and A.C.N. of, and address for service of notices and other documents on, the practitioner; and
 - (b) stating the name, date of birth and date of admission of each existing practitioner who was a director or an employee of the practitioner on that day; and
 - (c) stating the name of each member of the incorporated practitioner and each director (if any) who is not a legal practitioner; and
 - (d) attaching a copy of the practitioner's constitution.
- (4) Sub-clauses (1) and (3) do not apply to the extent that the information has been provided to the Attorney-General under clause 9.

7. *Prothonotary to notify Board*

The Prothonotary of the Supreme Court must provide the Board with access, in the form requested by the Board, to the roll of practitioners kept by the Court.

8. Existing incorporated practitioners

- (1) On the commencement day, each existing incorporated practitioner is deemed to be registered as an incorporated practitioner under this Act.
- (2) Despite anything to the contrary in Part 10, section 87B(1)(a)(ii) and (vii) of the old Act continue to apply to an existing incorporated practitioner that has 2 directors.

9. Attorney-General may require information from practitioners and firms

- (1) The Attorney-General, by notice published in a newspaper circulating generally in Victoria on or before 31 December 1996, may require all legal practitioners, incorporated practitioners or firms to provide to the Attorney-General any information specified in the notice that the Attorney-General considers necessary for the Board to establish the Register or to perform its other functions.
- (2) A legal practitioner, an incorporated practitioner or a firm that does not comply with a notice under sub-clause (1) within 14 days after the date of publication of the notice—
 - (a) intentionally or recklessly, is guilty of an offence and liable to a fine not exceeding 50 penalty units;
 - (b) in any other case, without reasonable excuse, is guilty of an offence and liable to a fine not exceeding 10 penalty units.
- (3) In this clause, "**incorporated practitioner**" includes an incorporated practitioner within the meaning of the old Act.

10. Practising certificates

- (1) On the commencement day, a practising certificate issued under the old Act is deemed to be a practising certificate issued under this Act for the remaining period of its validity, and may be suspended or cancelled accordingly.
- (2) If an application made under the old Act for a practising certificate has not been determined before the commencement day—
 - (a) the application is to be determined as if it were an application under this Act for a practising certificate; and
 - (b) the practising certificate already held by the applicant (if any) remains in force as if it were a practising

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certificate issued under this Act until a new certificate is issued or the application is refused.

- (3) Any conditions or restrictions attaching to a practising certificate issued under the old Act continue to attach to the certificate on and after the commencement day.
 - (4) A full practising certificate issued under the old Act authorises the holder to receive trust money.
 - (5) Despite anything to the contrary in section 314, an existing practitioner who, immediately before the commencement day, was a barrister within the meaning of Part IIA of the old Act, is not required to hold a practising certificate to engage in legal practice as a barrister before 1 April 1997.
 - (6) A practitioner referred to in sub-clause (5) may apply for a practising certificate for 1997 under section 23 as if he or she were a current practitioner but, despite anything to the contrary in that section, the application must be made on or before 15 February 1997. A practising certificate issued as a result of such an application is valid until 31 December 1997.
 - (7) Despite anything to the contrary in Division 4 of Part 2 or section 445 the prescribed fee for a practising certificate valid for all or part of 1997 is—
 - (a) for a practising certificate authorising the receipt of trust money, valid for all of 1997, \$400;
 - (b) for a practising certificate not authorising the receipt of trust money, valid for all of 1997—
 - (i) if the applicant is a current practitioner, \$250;
 - (ii) if the applicant is not a current practitioner, \$200;
 - (c) for a practising certificate valid for part of 1997 only, an amount that bears the same proportion to the relevant fee in paragraph (a) or (b) as the period of validity of the certificate bears to the whole year, rounded to the nearest dollar.
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11. RPA allocation

- (1) Each existing practitioner who holds a practising certificate becomes a regulated practitioner of the Society on the commencement day.
- (2) Each existing practitioner who, immediately before the commencement day, was a barrister within the meaning of Part IIA of the old Act and practising as a barrister immediately before that day becomes a regulated practitioner of the Bar on that day.
- (3) Each existing firm and incorporated practitioner becomes a regulated practitioner of the Society on the commencement day.

12. Unqualified practice

- (1) An order made under section 90(7) of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an injunction under section 316 of this Act.
- (2) An order made under section 95A of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an order under section 321 of this Act.
- (3) A permission given under section 95 of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an authorisation under section 320 of this Act.
- (4) Despite anything in Part 13, if a person to whom section 327 applies is employed by a conveyancer in connection with the performance of conveyancing work immediately before the commencement day, that person may remain so employed for a period not exceeding 12 months after the commencement day.

PART 3—THE BAR AND THE SOCIETY

13. Society succeeds Institute

- (1) On the commencement day—
 - (a) the Institute is abolished;
 - (b) the council of the Institute is abolished and its members go out of office as members;

- (c) all rights, property and assets that, immediately before the commencement day, were vested in the Institute (other than the Solicitors' Guarantee Fund and any rights attaching to the Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money and any rights in connection with arrangements under section 53A of the old Act) are, by force of this sub-clause, vested in the Society;
 - (d) all debts, liabilities and obligations of the Institute existing immediately before that day (other than debts, liabilities or obligations relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act) become, by force of this sub-clause, debts, liabilities and obligations of the Society;
 - (e) the Society is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the Institute was a party immediately before that day, other than a proceeding relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act;
 - (f) the Society is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the Institute as a party and in force immediately before that day, other than an arrangement or contract relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money or an arrangement under section 53A of the old Act;
 - (g) any reference to the Institute in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever (other than a document relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money or relating to an arrangement under section 53A of the old Act) must, so far as it relates to any period on or after that day and if not inconsistent with
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the context or subject-matter, be construed as a reference to the Society.

- (2) On the commencement day—
- (a) the property in and rights attaching to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act that, immediately before the commencement day, were vested in the Institute are, by force of this sub-clause, vested in the Board;
 - (b) all debts, liabilities and obligations of the Institute relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the Board;
 - (c) the Board is, by force of this sub-clause, substituted as a party to any proceeding relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act pending in any court or tribunal to which the Institute was a party immediately before that day;
 - (d) the Board is, by force of this sub-clause, substituted as a party to any arrangement or contract relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money and any arrangement under section 53A of the old Act entered into by or on behalf of the Institute as a party and in force immediately before that day;
 - (e) any reference to the Institute in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Board.
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- (3) Without prejudice to the generality of this clause and despite anything to the contrary in any other Act or law, if, immediately before the commencement day, the Institute is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that day—
- (a) the Society is to be taken to be the registered proprietor of that interest in land; and
 - (b) the Society has the same rights and remedies in respect of that interest as the Institute had.
- (4) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title, must make any amendments in the Register that are necessary because of the operation of this clause.

14. References to the Bar

From the commencement day, any reference to the Victorian Bar Council in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Bar.

15. Bar and Society are RPAs

- (1) On the commencement day, the Bar and the Society are deemed to be accredited by the Board under Part 11 as RPAs.
 - (2) Subject to earlier suspension or revocation, a deemed accreditation under this clause lasts for 2 years from the commencement day.
 - (3) Despite anything to the contrary in section 302, the Bar or the Society may not give notice of withdrawal from accreditation under that section before 1 January 1998.
 - (4) The Bar and the Society may apply for renewal of accreditation in accordance with Part 11.
 - (5) Within 30 days after the commencement day, the Bar and the Society must give the following information to the Board in the form required by the Board—
 - (a) the name, address and date of birth or A.C.N. (as applicable) of its regulated practitioners;
 - (b) a copy of its constitution;
 - (c) in the case of the Bar, a copy of the barristers' rules;
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- (d) in the case of the Society, a copy of the rules made under section 88 of the old Act as in force immediately before the commencement day.
 - (6) Within such time that the Board allows after the commencement day, the Bar and the Society must give the following information to the Board in the form required by the Board—
 - (a) in the case of the Bar, details of any disciplinary order made against an existing practitioner by the Bar Tribunal under Part IIA of the old Act (as in force from time to time);
 - (b) in the case of the Society, details of the suspension and cancellation of practising certificates by the Institute under the old Act (as in force from time to time) since 1 January 1980.
 - (7) Sub-clauses (5) and (6) do not apply to the extent that the information has been provided to the Attorney-General under clause 16.

16. *Attorney-General may require information from Institute or Victorian Bar Council*

- (1) The Attorney-General, by written notice on or before 24 December 1996, may require the Institute or the Victorian Bar Council (within the meaning of the old Act) to provide to the Attorney-General any information specified in the notice, in the form specified in the notice, that the Attorney-General considers necessary for the Board to establish the Register or to perform its other functions.
 - (2) If the Institute does not comply with a notice under sub-clause (1) within 7 days after the date of the notice, the Board may withhold from any amount that may become payable by the Board to the Society an amount of \$5000 for each day from the end of that period until the day on which the Institute complied with the notice or 31 December 1996, whichever is sooner.
 - (3) If the Victorian Bar Council does not comply with a notice under sub-clause (1) within 7 days after the date of the notice, the Board may withhold from any amount that may become payable by the Board to the Bar an amount of \$5000 for each day from the end of that period until the day on which the Victorian Bar Council complied with the notice or 31 December 1996, whichever is sooner.
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17. Practice rules

- (1) The barristers' rules are deemed to be practice rules made by the Bar under section 72 and are subject to disallowance under Division 2 of Part 3.
- (2) The rules made under section 88 of the old Act as in force immediately before the commencement day are deemed to be practice rules made by the Society under section 72 and are subject to disallowance under Division 2 of Part 3.

PART 4—RELATIONS WITH CLIENTS

18. Client information and legal costs

- (1) Division 1 of Part 4 of this Act applies where a legal practitioner or firm is retained on or after the commencement day to provide legal services.
- (2) Despite anything to the contrary in section 87, Division 1 of Part 4 does not apply in respect of a legal practitioner who is retained by another legal practitioner on behalf of a client on or after the commencement day in relation to a matter in which the other legal practitioner was retained by the client before the commencement day.
- (3) Division 3 of Part 4 of this Act applies to costs agreements made after the commencement day.
- (4) Despite the repeal of section 62 of the **Supreme Court Act 1986**, any order made under that section that was in force immediately before the commencement day continues in force until 31 December 1997 as if it were a practitioner remuneration order made under section 111 of this Act, unless revoked earlier and applies to all legal practitioners and firms.
- (5) Despite the repeal of the old Act, section 104 of that Act continues to apply in relation to an action, matter, proceeding or arbitration commenced before the commencement day to which it applied immediately before the commencement day.

19. Taxation of costs

- (1) Any taxation commenced under Division 2 of Part 6 of the **Supreme Court Act 1986** before the commencement day but not completed by that day may be completed under that Division as if it had not been repealed.
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- (2) Any bill awaiting taxation as a result of an application under section 71 of the **Supreme Court Act 1986** as in force immediately before the commencement day or the subject of an order for taxation under section 72 of that Act may be assessed under Division 5 of Part 4 of this Act as if the application were an application for assessment under section 115 or the order were an order for assessment under section 116.

20. Disputes

- (1) Divisions 2, 4 and 5 of Part IIIA of the old Act apply to a dispute in respect of which a request was made under section 38O of the old Act before the commencement day as if—
- (a) references to the secretary and the council were references to the Society;
 - (b) a reference to a conciliator were a reference to a conciliator appointed under this Act;
 - (c) a reference to the registrar were a reference to the registrar of the Tribunal;
 - (d) a reference to a registrar's hearing were a reference to a hearing by the Tribunal constituted by the registrar or deputy registrar;
 - (e) a reference to the Board were a reference to the Full Tribunal.
- (2) For the purpose of a hearing arising out of a dispute referred to in sub-clause (1), the Full Tribunal is to be constituted by the chairperson or a deputy chairperson and either one or two non-advocate members and the same number of lay members.
- (3) A dispute may be lodged under Division 1 of Part 5 of this Act whether the events giving rise to the dispute occurred before, on or after the commencement day, unless a dispute was lodged under section 38O of the old Act in relation to those events before the commencement day.
- (4) This clause applies despite anything to the contrary in the **Interpretation of Legislation Act 1984**.

21. Complaints and investigations already on foot

- (1) Part IIA of the old Act (other than section 14Q) applies to a complaint made or a preliminary investigation commenced
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under section 14D of the old Act before the commencement day as if—

- (a) a reference to the Chairman of the Victorian Bar Council, the Victorian Bar Council or the Committee were a reference to the Bar;
 - (b) a reference to the Bar Tribunal were a reference to the Full Tribunal;
 - (c) a reference to the Chairman of the Bar Tribunal were a reference to the chairperson or a deputy chairperson of the Tribunal;
 - (d) a reference to the Treasurer were a reference to the Board.
- (2) For the purpose of a hearing arising out of a complaint or investigation referred to in sub-clause (1), the Full Tribunal is to be constituted by the chairperson or a deputy chairperson and either one or two advocate members and the same number of lay members.
- (3) Divisions 3, 4 and 5 of Part IIIA of the old Act apply to a complaint made or an investigation commenced under section 38Q of the old Act before the commencement day as if—
- (a) references to the secretary and the council were references to the Society;
 - (b) references in section 38Q to a member of the council were references to a member of the governing body of the Society;
 - (c) a reference in section 38ZB(1)(b) or (c)(i) of the old Act to the Institute were a reference to the Board;
 - (d) a reference to the registrar were a reference to the registrar of the Tribunal;
 - (e) a reference to a registrar's hearing were a reference to a hearing by the Tribunal constituted by the registrar or deputy registrar;
 - (f) a reference to the Board were a reference to the Full Tribunal;
 - (g) a reference to the lay observer were a reference to the Legal Ombudsman.
- (4) For the purpose of a hearing arising out of a complaint or investigation referred to in sub-clause (3), the Tribunal is to
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be constituted by the chairperson or a deputy chairperson and either one or two non-advocate members and the same number of lay members.

- (5) Despite anything to the contrary in Division 3 of Part 16, any money received by the Board under an order of the Tribunal under this clause is to be paid to the Legal Practice Fund.

22. *New complaints and investigations*

- (1) Subject to sub-clause (2), a complaint may be made under Division 2 of Part 5 of this Act and an investigation may be undertaken under Division 3 of Part 5 of this Act whether the alleged conduct giving rise to the complaint or investigation occurred before, on or after the commencement day, unless a complaint was made or an investigation was undertaken under the old Act in relation to that conduct before the commencement day.

- (2) If—

- (a) a complaint was made under section 14D of the old Act on or after 1 January 1995 and the Committee had resolved under section 14E(a) of the old Act to take no further action in the matter; or
- (b) a complaint was made under section 38Q of the old Act on or after 1 January 1995 and—
- (i) the secretary of the Institute had decided not to investigate the matter under section 38Q(2) of the old Act; or
- (ii) the secretary had investigated the matter but had not taken any action under section 38Q(5) of the old Act—

the complainant may, no later than 31 December 1997, lodge a complaint with the Legal Ombudsman under Division 2 of Part 5 of this Act in relation to the same subject-matter, unless a complaint was made to the lay observer under section 14Q(4) of the old Act, or an allegation was made to the lay observer under section 32F(1) of the old Act, in relation to that subject-matter.

- (3) Despite anything to the contrary in this clause or in Part 5—
- (a) a legal practitioner who is the subject of a complaint or investigation under this Act in relation to conduct allegedly occurring before the commencement day is

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not subject to any penalty that he or she could not have been subject to had this Act not been enacted; and

- (b) Part 5 applies to such a practitioner as if a reference in that Part—
- (i) to misconduct were a reference to misconduct within the meaning of the old Act; and
 - (ii) to unsatisfactory conduct were a reference to standards breach within the meaning of the old Act.

23. *Tribunal may make orders of a transitional nature*

- (1) If any difficulty arises in any proceeding or matter because of the operation of this Part, the Tribunal may make any order it considers appropriate to resolve the difficulty.
- (2) The Tribunal may make such an order on the application of any party to the proceeding or matter or on its own initiative.

PART 5—CLIENTS' MONEY

24. *Statutory deposit*

- (1) On the commencement day, money deposited with the Institute under section 40(2A) of the old Act that is not currently invested under section 40(2CA) of that Act must be paid to the Board.
- (2) All such money is deemed to have been deposited with the Board under Division 2 of Part 6 of this Act and must be credited to the Statutory Deposit Account.

25. *Arrangements with banks*

Section 176 of this Act applies to any arrangement under section 53A of the old Act that is in force immediately before the commencement day as if it were an arrangement under that section.

26. *Attorney-General may require information from banks*

- (1) The Attorney-General, by written notice, may require a bank to provide to the Attorney-General any information specified in the notice in respect of a trust account held by that bank under section 40 of the old Act.

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- (2) A bank must comply with a notice under sub-section (1), despite any duty of confidence, within 7 days after receiving it.

Penalty: 100 penalty units.

27. *Approved auditors*

- (1) A person who has completed an audit of a trust account under the old Act in the year immediately preceding the commencement day is to be taken to have satisfied the requirement of paragraph (e) of the definition of "approved auditor" in section 3(1) until 31 December 1997.
- (2) Despite anything to the contrary in section 3, a person employed by an RPA need not comply with paragraph (e) of the definition of "approved auditor" to be an approved auditor for the purposes of Part 6 until 31 December 1997.
- (3) Despite anything to the contrary in section 3(1), a person who was a member of the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia immediately before the commencement day need not comply with paragraph (c) of the definition of "approved auditor" to be an approved auditor for the purposes of this Act.

28. *Deficiencies in trust accounts*

Division 4 of Part 6 of this Act applies to a deficiency in a trust account or a failure to account for trust money or security whether the deficiency or failure to account relates to money or security received before, on or after the commencement day.

29. Investigations

- (1) Part IV of the old Act continues to apply to any examination or audit in respect of which an inspector has been appointed under section 44, 73 or 74 of the old Act before the commencement day.
- (2) An investigation may be undertaken under Division 5 of Part 6 of this Act in relation to a trust account or trust money received by a regulated practitioner whether that account was established, or that money was received, before, on or after the commencement day.

30. Contributions

In respect of the calendar year 1997, Division 1 of Part 7 applies as if—

- (a) the references in section 200, 201, 202(1), 202(2) (except the second reference) and 202(3) (the first reference only) to the Board were references to the Attorney-General;
- (b) sub-sections (1) and (2) of section 201 required the determination of the amount of the contribution to the Fidelity Fund to be made by the Attorney-General on or before 1 January 1997;
- (c) sub-sections (3) and (6) did not form part of section 201;
- (d) that Division required the contribution to be paid to the Board—
 - (i) in the case of a person who is an existing practitioner, on or before 31 March 1997;
 - (ii) in the case of a person who becomes a practitioner after the commencement day (whether or not the person was a practitioner at any time before the commencement day), at the same time as the person applies for a practising certificate.

31. Levies

In calculating the aggregate amount by way of levy paid by a legal practitioner for the purposes of section 204(4), account must be taken of any levy paid by the practitioner under section 61 of the old Act.

32. Defalcations

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- (1) Division 2 of Part 7 of this Act applies to defalcations committed after the commencement day.
 - (2) For the purposes of this clause a defalcation is not committed after the commencement day if it is committed between two days, one before and one after the commencement day.
 - (3) Division 2 of Part V of the old Act continues to apply to a claim for compensation from the Solicitors' Guarantee Fund made before the commencement day in relation to which, before that day, no decision to allow or disallow had been made by the council of the Institute or the committee of management as its delegate but that Division applies to that claim as if—
 - (a) a reference to the Institute or the council of the Institute or the committee of management were a reference to the Board;
 - (b) a reference to the Solicitors' Guarantee Fund were a reference to the Fidelity Fund.
 - (4) Division 2 of Part V of the old Act applies to a claim for compensation from the Solicitors' Guarantee Fund that could have been but was not made before the commencement day but that Division applies to that claim as if—
 - (a) a reference to the Institute or the council of the Institute or the committee of management were a reference to the Board;
 - (b) a reference to the Solicitors' Guarantee Fund were a reference to the Fidelity Fund.
 - (5) Division 2 of Part V of the old Act continues to apply to a claim for compensation from the Solicitors' Guarantee Fund made before the commencement day in relation to which, before that day, a decision to allow or disallow the claim had been made by the council of the Institute or the committee of management as its delegate but that Division applies to that claim as if—
 - (a) a reference to the Institute or the council of the Institute or the committee of management were a reference to the Board;
 - (b) a reference to the Solicitors' Guarantee Fund were a reference to the Fidelity Fund.
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33. Mortgages

Section 208(3)(a), in excluding claims against the Fidelity Fund in respect of a defalcation arising out of anything done or omitted to be done in connection with a nominee mortgage, applies only to nominee mortgages for which the principal sum of money, or any part of it, was lent on or after 1 April 1996 or, having been lent before that day, is re-lent on or after that day without having been repaid to the client who lent it.

PART 6—PROFESSIONAL INDEMNITY INSURANCE

34. Contracts of insurance under old Act

Until 31 December 1997, while an existing practitioner or firm maintains a contract of professional indemnity insurance in accordance with Division 5A of Part V of the old Act or in accordance with the barristers' rules, the practitioner or firm is deemed to maintain professional indemnity insurance for the purposes of Part 8 of this Act.

35. Insurance contracts entered into during 1997

- (1) Despite anything to the contrary in Part 8, a legal practitioner or firm authorised to receive trust money that enters a contract of professional indemnity insurance necessary to comply with this Act on or after the commencement day that is to have effect at any time during the period up to and including 31 December 1997 must do so with the Liability Committee.
- (2) For the purposes of the Trade Practices Act 1974 of the Commonwealth and the Competition Code, the entering into and performance of a contract in compliance with sub-clause (1) is authorised by this Act.

36. Liability Committee

- (1) In this clause—

"former body" means the Solicitors' Liability Committee established by section 88B of the old Act;

"new body" means the Liability Committee established by section 234 of this Act.
 - (2) On the commencement day—
 - (a) the former body is abolished and its members go out of office as members;
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- (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-clause, vested in the new body;
 - (c) all debts, liabilities and obligations of the former body existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the new body;
 - (d) the new body is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the former body was a party immediately before that day;
 - (e) the new body is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day;
 - (f) any reference to the former body in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.
- (3) A person who, immediately before the commencement day, was employed by the Institute exclusively in connection with the functions of the former body becomes, on that day, an employee of the new body on the same terms and conditions and with the same rights and accrued and accruing entitlements as he or she had before that day.
 - (4) Despite anything to the contrary in section 237, the members of the former body who were in office immediately before the commencement day become the first members of the new body, hold office until 31 December 1997 and, subject to this Act, are eligible for re-appointment.
 - (5) The new body must give to the Board and the Minister, by 31 March 1997, the report and financial statements that would have been required under section 88E of the old Act, had that Act not been repealed, for the year ending on 31 December 1996.

37. Liability Fund

All money forming part of the Solicitors' Liability Fund established under section 88I of the old Act immediately before the commencement day, on and from that day forms part of the Liability Fund established under section 230 of this Act and may be dealt with in accordance with this Act.

38. Board review of Liability Committee

The Board must review the functions and operations of the Liability Committee and report to the Attorney-General by 30 June 1997, or such later date as the Attorney-General allows, including a recommendation as to whether or not the Committee should cease to exist.

PART 7—RECEIVERS

39. Receivers

- (1) Division 8 of Part V of the old Act continues to apply to an application for the appointment of a receiver made under that Division before the commencement day but which had not been determined before that day.
- (2) Part 9 of this Act applies in relation to the receivership after the commencement day of a receiver appointed under Division 8 of Part V of the old Act before that day or, in accordance with sub-clause (1), after that day as if the receiver had been appointed under that Part.

40. Destruction of old receivership documents

The Society may destroy or dispose of any documents received from a receiver (either by the Institute under the old Act or under section 270(1)) after a period of 7 years has elapsed since the documents were so received.

PART 8—STATUTORY BODIES

41. Council of Legal Education

- (1) In this clause—
"former body" means the Council of Legal Education established under Part II of the old Act;
"new body" means the Council of Legal Education established by section 331(1) of this Act.
 - (2) On the commencement day—
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- (a) the former body is abolished and its members go out of office as members;
 - (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-clause, vested in the new body;
 - (c) all debts, liabilities and obligations of the former body existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the new body;
 - (d) the new body is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the former body was a party immediately before that day;
 - (e) the new body is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day;
 - (f) any reference to the former body in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.
- (3) The person who immediately before the commencement day held office as secretary of the former body holds office, subject to this Act, on and after that day as secretary of the new body for the balance of his or her period of appointment and on the same terms and conditions as applied with respect to that appointment.
 - (4) Despite the repeal of the old Act, the Rules of the Council of Legal Education 1993 continue in force until 31 December 1997 as if they were rules made by the new body under section 337.

42. Board of Examiners

- (1) In this clause—

"former body" means the Board of Examiners established under Part II of the Rules of the Council of Legal Education 1993;

"new body" means the Board of Examiners established by section 338(1).

- (2) On the commencement day—
- (a) the former body is abolished and its members go out of office as members;
 - (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-clause, vested in the new body;
 - (c) all debts, liabilities and obligations of the former body existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the new body;
 - (d) the new body is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the former body was a party immediately before that day;
 - (e) the new body is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day;
 - (f) any reference to the former body in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.
- (3) The person who immediately before the commencement day held office as secretary of the former body holds office on and after that day as secretary of the new body for the balance of his or her period of appointment and on the same terms and conditions as applied with respect to that appointment.
- (4) Despite anything to the contrary in section 338, the first nominated members of the Board of Examiners hold office until 31 December 1997 and may be nominated without prior consultation with RPAs or the Board. Subject to this Act, they are eligible for re-nomination.

43. Legal Practice Board

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- (1) Despite anything to the contrary in Part 15, the first practitioner members of the Board are to be appointed by the Governor in Council as follows—
 - (a) 1 is to be a current practitioner nominated by the Society;
 - (b) 1 is to be a current practitioner nominated by the Bar;
 - (c) 1 is to be a current practitioner nominated jointly by the Society and the Bar or, failing agreement between them, nominated by the Attorney-General after consultation with them.
 - (2) The first practitioner members of the Board hold office until 31 December 1997 and, subject to this Act, are eligible for election under Part 15.
 - (3) Despite anything to the contrary in section 350(6) or 352(4), the first chairperson and non-practitioner members of the Board hold office until 31 December 2001, and, subject to this Act, are eligible for re-appointment.
 - (4) Section 352(3) does not apply to the appointment of the first members of the Board, but the Attorney-General must cause notice of the appointments to be given in each House of the Parliament within 3 sitting days after the commencement day.
 - (5) In the first election of practitioner members of the Board—
 - (a) the counting and distribution of votes in the election of the practitioner members from the roll of advocates and roll of non-advocates must occur before the counting and distribution of votes in the election of the practitioner member from the combined roll;
 - (b) if a candidate for election from the combined roll is declared elected from the roll of advocates or the roll of non-advocates, he or she is ineligible to be elected from the combined roll and his or her first preference votes (if any) in that election are to be distributed amongst the other candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates;
 - (c) if the candidates declared elected from the roll of advocates or roll of non-advocates are regulated practitioners of the same RPA, any candidate for election from the combined roll who is a regulated practitioner of that RPA is ineligible to be elected
-

from that roll and his or her first preference votes (if any) in that election are to be distributed amongst the other eligible candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates.

44. *First advocate and non-advocate members of the Tribunal*

- (1) Despite anything to the contrary in Part 17—
 - (a) the first advocate members of the Tribunal are to be appointed by the Attorney-General after consultation with the Bar;
 - (b) the first non-advocate members of the Tribunal are to be appointed by the Attorney-General after consultation with the Society.
- (2) The members appointed under this clause hold office until 31 December 1997 and, subject to Part 17, are eligible to be re-appointed under that Part.

45. *First chairperson, deputies and lay members of the Tribunal*

Despite anything to the contrary in section 397(1), the first chairperson, deputy chairpersons, deputy registrar and lay members of the Tribunal hold office until 31 December 2002 and, subject to this Act, are eligible for re-appointment.

46. *Transfer of Solicitors' Board staff*

- (1) A person who, immediately before the commencement day, was employed by the Institute exclusively in connection with the functions of the Solicitors' Board within the meaning of the old Act becomes, on that day, an officer under the **Public Sector Management Act 1992** on terms and conditions with respect to ordinary pay no less favourable than those of the former employment and with the same rights and accrued and accruing entitlements in respect of the former employment.
- (2) The person who was, immediately before the commencement day, the registrar of the Solicitors' Board, becomes on that day the registrar of the Tribunal, holds office, subject to this Act, until 31 December 2001 and, subject to this Act, is eligible for re-appointment.

47. *Transitional arrangements for Board staff and premises*

- (1) A person who, immediately before the commencement day, was employed under the **Public Sector Management Act**
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1992 exclusively in connection with the establishment and functions of the Board, becomes on that day an employee of the Board on terms and conditions with respect to ordinary pay no less favourable than those of the former employment and with the same rights and accrued and accruing entitlements as applied to that person in respect of the former employment immediately before the commencement day.

- (2) On the commencement day, the Board, by force of this sub-clause, is substituted for the Minister administering Part 7B of the **Financial Management Act 1994** as a party to any lease, contract or other arrangement entered into by that Minister before that day in connection with land or premises to be used for the purposes of the Board.

48. Transitional arrangements for Legal Ombudsman premises

On the commencement day, the Legal Ombudsman, by force of this clause, is substituted for the Minister administering Part 7B of the **Financial Management Act 1994** as a party to any lease, contract or other arrangement entered into by that Minister before that day in connection with land or premises to be used for the purposes of the Legal Ombudsman.

PART 9—FUNDS

49. Solicitors' Guarantee Fund

- (1) All money forming part of the Income Suspense Account of the Solicitors' Guarantee Fund immediately before the commencement day on and from that day forms part of the General Account of the Public Purpose Fund and may be dealt with in accordance with this Act.
- (2) All money forming part of the Fidelity Account of the Solicitors' Guarantee Fund immediately before the commencement day on and from that day forms part of the Legal Practitioners' Fidelity Fund and may be dealt with in accordance with this Act.
- (3) All money forming part of the Victoria Law Foundation Account of the Solicitors' Guarantee Fund immediately before the commencement day must, on that day, be paid to the Victoria Law Foundation or be otherwise dealt with as directed by that Foundation. The money to which this sub-clause applies must not, for the purposes of section 381(4) or 384, be taken to be paid under section 381(1).

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- (4) All money forming part of the Leo Cussen Institute Account of the Solicitors' Guarantee Fund immediately before the commencement day must, on that day, be paid to the Leo Cussen Institute or be otherwise dealt with as directed by that Institute. The money to which this sub-clause applies must not, for the purposes of section 382(4) or 384, be taken to be paid under section 382(1).
- (5) All money forming part of the Law Reform Account of the Solicitors' Guarantee Fund immediately before the commencement day on and from that day forms part of the Law Reform and Research Account of the Public Purpose Fund and may be dealt with in accordance with this Act. The money to which this sub-clause applies must not, for the purposes of section 383(4) or 384, be taken to be credited under section 383(1).
- (6) All money standing immediately before the commencement day to the credit of the Solicitors' Guarantee Fund Capital Investment Account must, on that day, be credited to the Fidelity Fund and may be dealt with in accordance with this Act.
- (7) Subject to this clause, all property in and rights attaching to the Solicitors' Guarantee Fund that are, by force of clause 12(2), vested in the Board must be applied by the Board for the purposes of the Fidelity Fund.

50. *Audit of Solicitors' Guarantee Fund*

- (1) As soon as practicable after the commencement day, the Auditor-General (or a person authorised by the Auditor-General) must audit the accounts of the Solicitors' Guarantee Fund.

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- (2) The purpose of the audit is to determine—
- (a) whether any amount was credited or debited to the accounts of the Fund inconsistently with the applicable accounting standards, unlawfully or improperly, within the period (commencing on or after 1 January 1991) specified by the Attorney-General; and
 - (b) the identity and value of the assets of the Fund as at 31 December 1996.
- (3) For the purposes of the audit, sections 11, 12 and 13 of the **Audit Act 1994** apply as if—
- (a) the audit were an audit under that Act; and
 - (b) a reference in those sections to an authority were a reference to the Society; and
 - (c) if the audit is conducted by a person authorised by the Auditor-General, a reference in those sections to the Auditor-General were a reference to that person.
- (4) The person conducting the audit must comply with any directions given by the Attorney-General as to the scope of the audit (within the meaning of the general auditing standards as issued by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia).
- (5) The Auditor-General must cause a report on the audit to be given to the Attorney-General as soon as practicable after the completion of the audit, and give a copy to the Board and the Society.
- (6) Within 30 days after receiving a copy of the report—
- (a) if the report reveals that the balance of an account that, by operation of clause 49, became part of the Fidelity Fund or the Public Purpose Fund on the commencement day was higher than it ought to have been because of credits or debits referred to in sub-clause (2), the Board must pay the difference and interest at the rate of 6.5% per annum from the commencement day, from the relevant fund, to the Society;
 - (b) if the report reveals that the balance of an account that, by operation of clause 49, became part of the Fidelity Fund or the Public Purpose Fund on the
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commencement day was lower than it ought to have been because of credits or debits referred to in sub-clause (2), the Society must pay the difference and interest at the rate of 6.5% per annum from the commencement day to the Board, for payment into the relevant fund.

- (7) Despite anything to the contrary in Part 16, the cost of the audit is to be paid out of the Public Purpose Fund and debited to the General Account in that Fund.

51. *Law Institute Discretionary Fund*

All money standing immediately before the commencement day to the credit of the Law Institute Discretionary Fund must, on that day, be paid to the Legal Ombudsman. Section 378 applies to that money as if it were paid under that section.

52. *Public Purpose Fund*

Despite anything to the contrary in Part 16 and in addition to any other amount payable from the Public Purpose Fund under this Act, there is to be paid out of the Public Purpose Fund on or before 30 June 1997, and debited to the General Account, an amount determined by the Attorney-General for the costs incurred in establishing the Board, the Tribunal and the office of the Legal Ombudsman.

53. *Payments in 1996-97 financial year*

Despite anything to the contrary in Part 16, in relation to the financial year beginning on 1 July 1996 the Attorney-General may at any time or times on or after the commencement day—

- (a) direct the crediting of an amount to the Legal Practice Board Account or the Legal Profession Tribunal Account;
- (b) pay an amount to the Legal Ombudsman.

PART 10—LEGAL OMBUDSMAN

54. *Current investigations by lay observers*

- (1) Any complaint made to the lay observer under section 14Q of the old Act that has not finally been disposed of before the commencement day is to be dealt with in accordance with the old Act as if a reference to the lay observer were a reference to the Legal Ombudsman.
- (2) Any allegation made to the lay observer under section 32F of the old Act that has not finally been disposed of before the commencement day is to be dealt with in accordance with the old Act as if a reference to the lay observer were a reference to the Legal Ombudsman.

55. *Final annual reports of lay observers*

- (1) The person who was the lay observer appointed under section 14Q of the old Act who held office immediately before the commencement day must make to the Attorney-General a report on the performance of his or her functions under that section for the 6 months ending on 31 December 1996.
- (2) The person who was the lay observer appointed under section 32F of the old Act who held office immediately before the commencement day must make to the Attorney-General the annual report that would have been required under section 32F(2)(viii) of the old Act, had that Act not been repealed, for the year ending on 31 December 1996.
- (3) A report under this clause must be made as soon as practicable after the commencement day.
- (4) The Attorney-General must cause a report received under this clause to be laid before each House of the Parliament as soon as practicable after it is received.

PART 11—COMPETITION

56. *Temporary authorisation*

For the purposes of the Trade Practices Act 1974 of the Commonwealth and the Competition Code—

- (a) the making or enforcement by an RPA of a practice rule; or

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- (b) the imposition of a condition of membership or eligibility for membership of an RPA—
that a regulated practitioner or member of the RPA—
 - (c) employ or engage as a clerk a person licensed or approved by the RPA or by another person or body;
or
 - (d) not employ or engage as a clerk a person other than a person licensed or approved by the RPA or by another person or body—
- is authorised by this Act until 30 June 1997.

PART 12—GENERAL

57. *Government assistance for regulatory bodies*

- (1) Until 30 June 1997, the Attorney-General may provide administrative assistance to an RPA in the performance of its functions under this Act.
 - (2) For the avoidance of doubt it is declared that nothing in this Act affects or takes away from section 38 of the **Public Sector Management Act 1992**.
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[†] *Minister's second reading speech—*

Legislative Assembly: 20 June 1996

Legislative Council: 8 October 1996

The long title for the Bill for this Act was "to improve the regulation of legal practice in Victoria, to amend and repeal the **Legal Profession Practice Act 1958**, to amend the **Partnership Act 1958**, to make consequential amendments to other Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 20 June 1996

Legislative Council: 8 October 1996

Absolute majorities:

Legislative Assembly: 12 September 1996 and 17 October 1996

Legislative Council: 15 October 1996

¹ Clause 27 of Schedule 2 has transitional provisions covering persons who have carried out trust account audits under the **Legal Profession Practice Act 1958** and auditors employed by RPAs.

² Clause 4(3) of Schedule 2 provides that, until the regulations provide otherwise, the prescribed general fee is \$100 and the prescribed library fee is \$560.

³ Clause 10(7) of Schedule 2 sets out the prescribed practising certificate fees applicable until 31 December 1997.

⁴ See note 3.

⁵ See note 3.

⁶ The time for appealing is 30 days (Order 4.04(b) of Chapter 2 of the Rules of the Supreme Court (S.R. No. 334/1988)).

⁷ See note 6.

⁸ See note 6.

⁹ See note 6.

¹⁰ This provision re-enacts section 75 of the **Supreme Court Act 1986**.

¹¹ Section 445(2)(a) provides that this fee is not to exceed \$50.

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- ¹² See note 6.
- ¹³ See note 6.
- ¹⁴ Schedule 2 provides for the appointment of practitioner members of the Board who will hold office until the first election has taken place—see clause 43.
- ¹⁵ Schedule 2 prevents the first election of the practitioner members of the Board resulting in each member being a regulated practitioner of the same RPA—see clause 43.
- ¹⁶ Schedule 2 provides for the appointment of advocate and non-advocate members of the Tribunal to hold office until the first election for practitioner members of the Board has taken place—see clause 44.
- ¹⁷ See note 16.
- ¹⁸ Rules made under this section are statutory rules for the purposes of the **Subordinate Legislation Act 1994** (see paragraph (b) of the definition of "statutory rule" in section 3 of that Act).
- ¹⁹ See paragraph (d) of the definition of "financial institution" in section 3.

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