

2007

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

LEGAL PROFESSION REGULATION 2007

SL2007-27

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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Legal Profession Regulation 2007

Background

The *Legal Profession Act 2006* (the Act) replaced the *Legal Practitioners Act 1970*. It provides for the regulation of legal practice in the ACT and facilitates the regulation of legal practice on a national basis, in conjunction with the National Legal Profession Model Laws Project. The project involved the development of a model Legal Profession Bill and model Legal Profession Regulations.

National Legal Profession Model Regulations

The model regulations were approved in July 2005 for adoption in connection with the model Bill, which had earlier been approved by the Standing Committee of Attorneys-General.

The model provisions are of three types:

- Core Uniform (CU) – core provisions that are to be adopted in each State and Territory, using the same wording as far as practicable.
- Core Non Uniform (CNU) – core provisions that are to be adopted in each State and Territory, but the wording of the model provisions need not be adopted.
- Non Core (NC) – States and Territories can choose the extent to which they will adopt these provisions.

Legal Profession Regulation 2007

The *Legal Profession Regulation 2006*, which commenced on 1 July 2006, incorporated, to the greatest extent practicable, the Core Uniform (CU) and Core Non Uniform (CNU) provisions mentioned above. Most of the Non Core (NC) provisions were also included.

The *Legal Profession Regulation 2007* repeals the *Legal Profession Regulation 2006* (the 2006 Regulation). It replaces, amends or adds to the provisions of the 2006 Regulation, primarily to implement the model regulations.

In particular, this Regulation inserts a number of provisions relating to:

- foreign lawyers;
- trust money and trust accounts; and
- costs disclosure and assessment.

This Regulation will commence on the date of commencement of Parts 3.1 and 3.2 of the Act and the *Legal Profession Amendment Act 2007*.

OUTLINE OF PROVISIONS

PART 1 PRELIMINARY

Section 1 – Name of regulation – specifies the name of the Regulation – the *Legal Profession Regulation 2007* (the Regulation).

Section 2 – Commencement – states that section 91 commences immediately before the remaining provisions, which will commence on the commencement of the *Legal Profession Amendment Act 2007*. Section 91 relocates, to Part 20 of this Regulation, all of Part 10 (Transitional) of the 2006 Regulation.

Section 3 – Dictionary – provides that the dictionary at the end of this Regulation is a part of this Regulation.

Section 4 – Notes – a note is explanatory and is not part of this Regulation.

PART 2 IMPORTANT TERMS

Section 5 – Default decision of associate’s home jurisdiction – Act, s 10(4)(b)(iii) – applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, for the purpose of working out the associate’s home jurisdiction. If no one jurisdiction is the home jurisdiction of all of the other associates of a practice who are Australian legal practitioners, and the associate’s home jurisdiction cannot be worked out under paragraph 10(4)(b)(i) or (ii) of the Act, this regulation sets out the criteria for working out the home jurisdiction. That jurisdiction is the associate’s place of residence in Australia but, if there is no such place, it is the jurisdiction of the associate’s last place of residence in Australia.

PART 3 RESERVATION OF LEGAL WORK AND LEGAL TITLES

Section 6 – Declaration of exempt person – certain supervised employees – Act, s 16(4)(e) – exempts from the operation of section 16 of the Act an employee of a corporation, described as an “ACTEW/AGL-linked corporation” (defined in this section), who engages in legal practice under the supervision of a person who holds an unrestricted practising certificate. The person is exempt only if the person is giving legal advice or legal services to an ACTEW/AGL-linked corporation (or a related body corporate of an ACTEW/AGL-linked corporation) in relation to the corporation’s functions.

Section 7 – Declaration of exempt person – member of organisation representing veterans – Act, s 16(4)(e) – exempts from the operation of section 16 of the Act a person who is a member of an organisation that represents veterans, who engages in legal practice, and who represents a member (or former member) of the defence force. The exemption is limited to the provision of ‘*pro bono*’ assistance in relation to the member’s benefits or claims or applications for benefits under veterans’ entitlement legislation.

Section 8 – Presumptions about taking or using certain names, titles or descriptions – Act, s 18(2) – prescribes the circumstances in which certain legal practitioners and lawyers are entitled to take or use the terms “lawyer”, “legal practitioner”, “barrister and solicitor”, “solicitor and barrister”, “solicitor”, “attorney”, “barrister”, “counsel”, “Queen’s Counsel” or “QC”, “King’s Counsel” or “KC”, Her Majesty’s Counsel”, “His Majesty’s Counsel” or “Senior Counsel” or “SC”.

PART 4 LEGAL PRACTICE – AUSTRALIAN LEGAL PRACTITIONERS

Section 9 – Application of s 50 to certain practitioners – Act, s 33(2) – prescribes the circumstances in which an ‘in-house lawyer’ or a ‘government lawyer’ is not required to be supervised in accordance with section 50 of the Act.

Section 10 – Criteria for grant or renewal of a local practising certificate – Act, s 35 – provides that, to be eligible for the grant or renewal of a local practising certificate (an unrestricted practising certificate, a restricted practising certificate or a barrister certificate), a person must meet the criteria set out in Table 10.

Section 11 – Procedure for application for barrister’s practising certificate – Act, s 35 – provides that an application for renewal of a barrister practising certificate must be provided to the bar council (the Bar Association Council), and the bar council will provide a report about the application to the licensing body (the Law Society Council) within 7 days after the day the council receives the application, or within a further period agreed by the bar council, the law society and the applicant.

Section 12 – Period for applying for renewal of local practising certificate – Act, s 43 – specifies that the period for making an application for renewal of a local practising certificate is the period beginning on 1 April before the certificate ends, and ending on 31 May in that year. In exceptional circumstances, the licensing body may extend the period beyond 31 May, but the period must end before the certificate ends.

Section 13 – Period of supervised legal practice – Act, s 50 and s 75

Section 50 of the Act provides that a solicitor must not engage in unsupervised legal practice until the person has been supervised for the prescribed period.

Subsection 13(1) prescribes the period of:

- a) 18 months of practical legal training principally under the supervision of an Australian lawyer, calculated from the date of grant of the person's first practising certificate; and
- b) 2 years of other practical legal training to qualify the practitioner for admission to the legal profession in the ACT or another jurisdiction, calculated from the date of grant of the person's first practising certificate.

Subsection 13(2) applies the same requirements to interstate legal practitioners for the purposes of subsection (1) and section 75 of the Act (which contains special provisions about interstate legal practitioners engaging in unsupervised legal practice in the ACT).

Subsections 13(3) and (4) assist in working out the period of a person's supervision for the purposes of subsections (1) and (2).

Section 14 – Suspending or cancelling local practising certificate – additional grounds – Act, s 55(2) – section 55 of the Act sets out the principal grounds for amending, suspending or cancelling a local practising certificate. This section provides additional grounds for subsection 55(2) of the Act. Subsection (1) provides a number of additional grounds for suspending a local practising certificate. Subsection (2) sets out the additional grounds for cancelling a local practising certificate.

Section 15 – Particulars for register of local practising certificates – Act, s 79(2) – section 79(1) of the Act requires the licensing body to keep a register of the names of Australian lawyers to whom it grants local practising certificates. Subsection 79(2) of the Act provides for this Regulation to set out particulars to be contained in the register.

Subsections 15(2) and (3) set out in detail the particulars to be included in the register.

Subsections 15(4), (5) and (6) set out the circumstances in which the licensing body is required not to include in the register certain particulars relating to a barrister or solicitor. If the barrister or solicitor asks that particulars not be included, they are not to be included unless the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

Section 16 – Prescribed agency – Act, dictionary, definition of government lawyer, par (c) – prescribes the Australian Government Solicitor as a government agency.

Section 17 – Determination of service fee, barrister practising certificate applications – Act, s 84(1)(b) – section 84(1)(b) of the Act permits the licensing body to determine fees for the services that it provides as the licensing body in relation to an application for the grant or renewal of barrister practising certificates.

This section states that, in determining such a fee, the licensing body must consult with the bar council about the proposed fee and, if the law society and the bar council agree on the amount, determine the fee.

If the law society and the bar council are unable to agree on the amount, the law society must consult with the Minister about the amount and, if the Minister and the law society agree, determine the fee. The Minister must have regard to any representation made by the bar council about the fee.

A determination of a fee under section 84 of the Act is a disallowable instrument.

Section 18 – Corporations that are not incorporated legal practices – Act, s 101(2)(f) – section 101(2)(f) of the Act provides for regulations to state that a corporation is not an incorporated legal practice for the purposes of the Act.

This section states that the Law Society of the ACT, the ACT Bar Association and an “ACTEW/AGL-linked corporation” are not incorporated legal practices.

Section 19 – Prohibition on conduct of managed investment scheme by incorporated legal practice – Act, s 102(2) – section 102(2) of the Act is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act, in relation to the Corporations legislation.

Section 20 – Period of notice of ceasing to practice – Act, s 106(1)(b) – under section 106(1) of the Act, a corporation commits an offence if it ceases to practise in the ACT as an incorporated legal practice and it fails to give the law society notice within the period prescribed by regulation.

This section prescribes that period to be not later than 14 days after the day on which the corporation ceases to practise in the ACT as an incorporated legal practice.

Section 21 – Disqualifications and prohibitions – Act, s 122(10), 123(5) and 148(5) – makes provision in relation to the following kinds of orders:

- a) an order under section 122 of the Act, disqualifying a corporation from providing legal services in the Act;
- b) an order under section 123 of the Act, disqualifying a person from managing an incorporated legal practice;
- c) an order under section 148 of the Act, prohibiting any Australian legal practitioner from being a partner, in a business that includes the provision

of legal services, of a stated person (who is not an Australian legal practitioner and is or was the partner of an Australian legal practitioner).

This section sets out a number of formal requirements in relation to the publication of notices of orders made under sections 122, 123 and 148.

Subsection 21(7) protects from liability certain officials [see “protected person”, defined in subsection (8)] in relation to anything done, or omitted to be done, honestly for the purpose of this section.

PART 5 LEGAL PRACTICE – FOREIGN LAWYERS

Section 22 – Scope of practice – Act, s 157(1)(b) and (d) – paragraph 157(1)(b) of the Act states that a regulation may prescribe legal services in relation to arbitration that may be provided by an Australian-registered foreign lawyer.

Subsection 22(1) prescribes arbitration proceedings in which the arbitrator is not required to apply the rules of evidence, and arbitration proceedings in which knowledge of Australian law is not essential.

Subsection 22(2) prescribes all forms of dispute resolution other than those set out in paragraphs (2)(a), (b) and (c).

Section 23 – Trust money and trust accounts – Act, s 164(2) – states that the following provisions apply to Australian-registered lawyers in the same way that they apply to a law practice or an Australian legal practitioner:

- (a) Part 6 (Trust money and trust accounts of this Regulation);
- (b) Part 3.1 (trust money and trust accounts) of the Act;
- (c) any other provision of the Act other than Part 3.4 (Fidelity cover) relating to trust money and trust accounts;
- (d) any provision of the legal profession rules relating to trust money and trust accounts.

Section 24 – Disclosure requirements for professional indemnity insurance – Act, s 165(5B) – sets out a number of requirements in relation to the form and content of a disclosure statement, given to a client by an Australian-registered lawyer.

Section 25 – Contributions to a fidelity fund – Act, s 166 – applies section 323 (Contributions to fidelity fund) to a locally-registered foreign lawyer, practising law in the ACT, in the same way that it applies to a solicitor. The amount payable is the amount payable by a solicitor other than an interstate legal practitioner.

Section 26 – Levy to supplement fidelity fund – Act, s 166 – applies section 324 (Levy to supplement fidelity fund) to a locally-registered foreign lawyer, practising law in the ACT as an associate of a law practice, in the same way that it applies to a legal practitioner.

Section 27 – Locally-registered foreign lawyers not covered by fidelity fund – states that a locally-registered foreign lawyer, practising law in the ACT otherwise than as an associate of a law practice, may not practise foreign law in the ACT unless the lawyer has given the client a disclosure statement in relation to the lawyer’s lack of cover by the fidelity fund.

Subsection 27(2) sets out the requirements for the form and content of a disclosure statement.

Section 28 – Particulars for register of locally-registered foreign lawyers – Act, s 201 – sets out, in subsection 28(2) and (3), particulars to be included in the register of locally-registered foreign lawyers, required by subsection 201(1) of the Act.

Subsections 28(4) and (5) provide that a locally-registered lawyer may ask the licensing body not to include certain particulars on the ground that special circumstances justify those particulars not being available. If the licensing body is satisfied that those special circumstances exist, it must not include the particulars unless it considers that the public interest in doing so outweighs the individual interest of the lawyer.

PART 6 TRUST MONEY AND TRUST ACCOUNTS

Division 6.1 Preliminary

Section 29 – Application – pt 6 – this Part has effect for Part 3.1 of the Act, in relation to trust money received by a law practice:

- (e) in the ACT, unless the practice has an office in 1 or more other jurisdictions but not in the ACT; and
- (f) in another jurisdiction, if the practice has an office in the ACT, but in no other jurisdiction; and
- (g) in another jurisdiction, if the practice has an office in the ACT and in 1 or more other jurisdictions, but not in the jurisdiction in which the money was received.

Section 30 – Definitions – pt 6 – sets out a number of definitions for this Part.

Section 31 – Conditions on approval of ADIs – Act, s 250(2) – the kinds of conditions that may be imposed on the approval of an ADI are conditions that provide for, or require negotiations to be negotiated between the ADI and the licensing body to provide for, one or more of the matters set out in paragraphs (a) to (e) in relation to trust accounts:

- (a) the payment of interest to the law society council on the whole or part of deposits;
- (b) the way in which the law society council is told about amounts held;
- (c) the auditing of balances;
- (d) the keeping of any accounts or only accounts of a particular class (e.g. controlled money accounts);
- (e) any matters relevant to paragraphs (a) to (d).

Division 6.2 Computerised accounting systems

Section 32 – Application – div 6.2 – this Division applies if a law practice keeps trust records (including records about controlled money) by means of a computerised accounting system.

Section 33 – Copies of trust records to be printed – sets out detailed requirements for making a paper copy of trust records.

Section 34 – Chronological record of information to be made – requires a law practice to make and keep a record, in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the matters specified in paragraphs 35(1)(a) to (e).

Section 35 – Requirements about computer accounting systems – a computerised accounting system must not be capable of accepting, in relation to a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record is made that enables the production of a permanent, separate report of all occurrences of that kind.

Subsection 36(2) states that a system must not be capable of deleting a trust ledger account unless the balance is zero and all outstanding cheques have been presented, and a permanent copy of the account is kept.

Subsections 36(3) to (6) set out a number of requirements relating to the keeping of records.

Section 36 – Backups – sets out requirements for the keeping of backup copies of records required by this Part.

Division 6.3 General trust accounts

Section 37 – Establishment of general trust account – Act, s 221(2) – section 221(2) of the Act states that a law practice that is required to keep a general trust account in the ACT must establish and keep the account as required by regulation. This section enables a law practice, at any time, to establish a general trust account that satisfies the requirements of this section.

Subsection 38(2) requires a practice that does not have a general trust account to establish an account as soon as possible after receiving money that is required to be paid into a general trust account.

Subsection 38(3) sets out the criteria for a general trust account to satisfy the requirements of this section. This subsection does not apply to an account established before the commencement of this section.

Section 38 – Receipting of trust money – states that, if a law practice receives trust money that must be placed in a general trust account, the practice must make out a receipt for the money. Subsections 39(3) to (8) set out a number of requirements in relation to the making, delivery and cancellation of receipts for trust money.

Section 39 – Deposit records for trust money – if a law practice receives trust money that must be paid in a general trust account, and the money is not paid into such an account by direct deposit, a deposit record must be produced to the ADI at the time the deposit is made. Subsection 40(3) describes the particulars that must be recorded on the deposit record.

Subsection 40(4) states that the deposit record must be made out in duplicate.

Subsection 40(5) requires that the duplicate deposit record must be kept for each deposit to the general trust account, and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

Section 40 – Direction for non-deposit of trust money in general trust account – Act, s 222(4) – the period for which a written direction, mentioned in paragraph 222(2)(a) of the Act, must be kept is 7 years after finalisation of the matter to which the direction relates.

Section 41 – Payment by cheque – sets out, in subsection 41(2) and (3), requirements for the writing and signing of cheques withdrawing money from a general trust account. Subsections 41(4) to (7) set out the requirements for recording the “required particulars”, described in subsection (6). The requirement in paragraph 41(2)(c) does not apply to an account established in the ACT before the commencement of this section.

Section 42 – Payment by electronic transfer – sets out requirements for withdrawing money from a general trust account by electronic funds transfer. A transfer must be effected by, under the direction of or with the authority of a person referred to in subsection 42(2). Subsections 42(3) to (6) set out the requirements for recording the “required particulars”, described in subsection (5).

Section 43 – Recording transactions in trust account cash – requires a law practice that keeps a general trust account to keep a trust account receipts cash book in accordance with section 44, and a general trust account to keep a trust account payment cash book in accordance with section 45.

Section 44 – Trust account receipts cash book – sets out the particulars to be recorded in a trust account receipts cash book in relation to each receipt of trust money, and the way in which they must be recorded.

Section 45 – Trust account payments cash book – subsection 45(1) sets out the particulars to be recorded in a trust account payments cash book in relation to each payment of trust money by cheque. Subsection (2) sets out the required particulars in relation to payments by electronic transfer. Subsections (3) and (4) prescribe the way in which the particulars must be recorded.

Section 46 – Recording transactions in trust ledger accounts – requires a law practice that keeps a general trust account to keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.

Subsection 46(2) sets out the particulars to be recorded in the title of a trust ledger account. Any changes in the title of a ledger must be recorded.

Subsection 46(4) sets out the particulars that must be recorded in the trust ledger account in relation to each receipt of trust money for the matter.

Subsection (5) sets out the particulars in relation to payments by cheque.

Subsection (6) sets out the particulars in relation to payment by electronic transfer. Subsection (7) sets out the particulars in relation to payment by journal entry.

Subsections 46(8) and (9) prescribe the way in which the particulars must be recorded.

Section 47 – Journal transfers – trust money may be transferred between accounts in a law practice’s trust account ledger only if the practice is entitled to withdraw and transfer the money, and only in accordance with subsection 47(2).

Subsection 47(3) requires a law practices to keep a trust account transfer journal if it transfers trust money by journal entry. Subsection (4) sets out the particulars to be recorded in the journal in relation to each transfer. The pages or entires must be consecutively numbered.

Subsection 47(6) requires a law practice to keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

Section 48 – Reconciliation of trust records – requires a law practice that keeps a general trust account to reconcile the trust records relating to each general trust account. Subsections 48(2), (3) and (4) set out the requirements for preparing and keeping reconciliation statements.

Section 49 – Trust ledger account in name of law practice or legal practitioner associate – a law practice may not keep a trust ledger account in the name of the practice or of a legal practitioner associate, except as authorised by this section.

Section 50 – Notification requirements for general trust accounts – prescribes a number of notification requirements in relation to general trust accounts.

Subsection 50(1) requires a law practice to give the licensing body notice of the establishment of a general trust account. The notice must be given within 14 days of establishment of the account.

Subsection 50(2) sets out the obligation of a law practice to notify the licensing body in relation to authorising, or ending the authority of, an associate of the practice to sign cheques drawn on a general trust account, or to otherwise effect, direct or authorise withdrawals of money from a general trust account.

Subsection 50(3) requires a law practice to give the licensing body notice of the closure of a general trust account. The notice must be given within 14 days of the closure.

Subsection 50(4) states that notices given under this section must include particulars sufficient to identify the general trust accounts of the practice.

Subsection 50(6) ensures that the requirements of this section do not apply to the establishment or closure of a general trust account, or an authority given, before the commencement of this section.

Division 6.4 Controlled money

Section 51 – Maintenance of controlled money accounts – Act, s 224(4)

– states that a controlled money account must include the particulars set out in subsection 51(1). The requirement does not apply to an account established before the commencement of this section.

Section 52 – Receipt of controlled money – states that, if a law practice receives controlled money, the practice must make out a receipt for the money. The practice must operate a single controlled money receipt system for the receipt of controlled money for all of its controlled money accounts. Subsections 52(4) to (11) set out a number of requirements in relation to the making, delivery and cancellation of receipts for trust money.

Section 53 – Deposit of controlled money – Act, s 224(5) – the period for which a written direction, mentioned in subsection 224(1) of the Act, must be kept is 7 years after finalisation of the matter to which the direction relates.

Section 54 – Withdrawal of controlled money must be authorised – sets out requirements for withdrawing money from a controlled money account by electronic funds transfer. A withdrawal must be effected by, under the direction of or with the authority of a person referred to in subsection 54(1). Subsections 54(2) to (5) set out the requirements for recording the “required particulars”, described in subsection (4).

Section 55 – Register of controlled money – requires a law practice that receives controlled money to keep a register of controlled money, consisting of the records of controlled money movements for the controlled money accounts of the practice. A separate record of movements is required for each account.

Subsections 55(3) and (4) set out requirements for information and records relating to records of controlled money movements.

Subsection 55(5) requires particulars of receipts and payments of controlled money, with the exception of interest and other income, to be entered in the register as soon as practicable after the controlled money is received by the law practice, or after any payment is made. Subsection (6) requires interest and other income to be entered in the register as soon as practicable after the law practice is notified of the receipt.

Subsection 55(7) requires a law practice to keep, as part of its trust records, all supporting records (including statements and notifications of interest) relating to controlled money.

Subsection 55(8) requires a law practice to prepare, within 15 working days after each named month (see the Dictionary), and keep as a permanent record, a statement as at the end of the month containing a list of the

practice's controlled money accounts showing the information set out in paragraphs 55(a)(i) to (iii) and (b).

Division 6.5 Transit money

Section 56 – Information to be recorded about transit money – Act, s 225 – for the purposes of section 225 of the Act, a law practice must, in relation to transit money received by the practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Division 6.6 Trust money generally

Section 57 – Trust account statements – requires a law practice to give a trust account statement to each person for whom, or on whose behalf, trust money other than transit money is held or controlled by the practice or any of its associates. Different requirements apply to 'sophisticated clients' – see section 58.

Subsections 57(2) and (3) state that a separate statement must be given for each trust ledger account and each record of controlled money movements.

Subsection 57(4) states that, if trust money is subject to a power, given to the law practice or an associate of the practice, in relation to which the practice is required to keep a record of all dealings with the money, to which the practice is a party, the practice must give a separate statement for each record.

Subsections 57(5) and (6) set out requirements for the content and delivery of trust account statements.

Subsection 57(7) sets out the circumstances in which a law practice is not required to give a trust account statement in relation to a ledger account or record. The exemption applies if the account or record has been open for less than 12 months as 30 June in the relevant year, or the balance of the account or ledger is zero and has been inactive for at least 12 months, or a trust account statement has been given within the previous 12 months and has since been inactive.

Subsection 57(8) requires a law practice to keep a copy of a trust account statement given under this section.

Section 58 – Trust account statements for sophisticated clients – states that section 57 does not apply to a sophisticated client (defined in section 261 of the Act) to the extent to which the client directs the law practice not to provide trust accounts under section 57.

Under section 58(2), if the sophisticated client directs the law practice to provide trust account statements on a basis different from that under

section 57, the practice must comply with the direction to the extent that the direction is not unreasonably onerous.

Subsection 58(3) requires a law practice to keep a copy of a trust account statement given under this section.

Section 59 – Register of investments – Act, s 221 – relates to trust money, which is referred to in section 212(3) of the Act, is invested by a law practice for or on behalf of a client. This section does not itself give power to make investments.

Subsection 59(2) requires the practice to keep a register of investment of trust money, which records the information set out in subsection (3). Particulars are not required to be recorded in the register if they are required to be recorded elsewhere in accordance with another section.

Section 60 – Trust money subject to specific powers – Act, s 226 – if a law practice, or an associate of the practice, is given power to deal with trust money for or on behalf of another person, subsection 226(2) of the Act requires the practice to account for the money as required by regulation.

Subsection 60(2) requires a law practice to keep a record of all dealings with the money to which the practice or associate is a party, and to keep all supporting information relating to the dealings. The record and information must be kept as part of the practice's trust records.

Section 61 – Register of powers and estates in relation to trust money – requires a law practice to keep a register of powers and estates in relation to which the law practice or an associate is acting or entitled to act, alone or jointly with the law practice or 1 or more associates of the practice, in relation to trust money. The requirement does not apply if the practice or associate is also required to act jointly with one or more people who are not associates of the practice.

Subsection 61(3) sets out the information that the register of powers and estates must contain.

Section 62 – Withdrawing trust money for legal costs – Act, s 229(1)(b) – prescribes, for the purposes of section 229(1)(b) of the Act, the procedure to be followed by a law practice for withdrawal of trust money from a general trust account or a controlled money account, for payment of the practice's legal costs. Trust money may be withdrawn as set out in subsection 62(3) and (4).

Section 63 – Keeping of trust records – Act, s 232(2)(a) – subsection 232(1)(a) of the Act requires a law practice law to keep permanent trust records, in relation to trust money received by the practice, in accordance with the regulations.

Subsection 63(2) states that the records must be kept, if the record is a document defined in subsection 210(2) of the Act as a “trust record”, for a period of 7 years after the only or last transaction entry in the record is made. For any other record, subsection 63(2) requires that the record be kept until finalisation of the matter to which the record relates.

Section 64 – Keeping other records and information – a record kept under section 34 that requires a law practice to keep chronological records relating to information in a computerised accounting system must, so far as it relates to the particular information, be kept for a period of 7 years after finalisation of the matter to which the record relates.

Any other record or information must, under subsection 64(2), be kept, for a period of 7 years after finalisation of the matter to which the record or information relates.

Subsection 64(3) provides that this section does not apply to records to which section 39 (Deposit records for trust money), section 53 (Deposit of controlled money— Act s 224(5)) or section 63 (Keeping of trust records—Act s 232(2)(a)) applies.

Section 65 – Statements about receipt or holding of trust money – the licensing body may give written notice to a law practice requiring the practice to give the licensing body a statement about whether or not the practice has received or held trust money during a stated period and, if it did, which of the categories described in paragraphs 65(1)(b)(i) to (iv) the trust money belongs.

Subsection 65(2) states that a notice may apply to 1 or more periods, and may be withdrawn or amended by a further notice.

Under subsection 65(3), a notice may state the time by which, or the period during which, the notice must be complied with.

Subsection 65(4) provides for the giving of a notice to an individual law practice or a particular class of practices.

Subsection 65(5) requires a law practice to comply with a notice, and not to include any false or misleading information in a statement.

Division 6.7 External examinations

Section 66 – Appointment of external examiners – Act, s 241(1) – if a law practice receives or holds trust money or controlled money in a trust accounting year, subsection 66(2) states that the practice must appoint an external examiner not later than 8 April in that trust accounting year, and give the law society council written notice each time it does so.

Subsection 66(3) states that the notice to the law society must be given not later than 1 month after the appointment of the external examiner.

Section 67 – Requirement for external examination – Act, s 241(3) – if the only trust money received or held by a law practice during a financial year is transit money, the practice’s trust records in relation to the year are not required to be externally examined.

Section 68 – Carrying out examination – Act, s 246 – an external examination must be carried out in accordance with this section.

Subsection 68(2) requires an external examiner’s report on an examination to include the information, and be given in the way, approved by the law society council.

Division 6.8 Statutory Deposits

Section 69 – Interpretation – div 6.9 – contains a number of provisions to assist the interpretation of other regulations relating to statutory deposits.

Section 70 – Statutory interest account – Act, s 253(2)(a) and (b) – section 253(2)(a) and (b) of the Act state that a regulation may make provision relating to the type of statutory account to be kept by the law society, and relating to payments to be made to the account. This section requires the law society to open an account under the title of the ‘statutory interest account’. The law society must deposit in the account:

- a) money deposited with the law society by a law practice under this division; and
- b) any other money required by law to be deposited in the account.

Section 71 – Law practice to deposit portion of trust money with law society – sets out the obligation of a law practice to pay to the law society a portion of amounts standing to the credit of the general trust account held by the practice, and the manner in which the amount is to be calculated. The “notional amount” is determined by reference to section 69 (Interpretation – div 6.9).

Section 72 – Repayment of deposits – Money on deposit with the law society in a statutory interest account is repayable on demand to the law practice that deposited the money. However, the law practice must not demand repayment unless the money is required to enable payments to be made from the general trust account of the law practice, and the practice believes the payment is to be made within 7 days of the demand.

Subsection 72(3) provides for the repayment of excess funds to law practices.

Subsection 72(4) provides that a law practice is entitled to have money on deposit with the law society repaid if, on the last day of a year, the notional amount in the general trust account of the practice is less than \$3000.

Section 73 – Obligation to deposit subject to availability of trust funds

– if a law practice has not, before the end of a period within which it is required to make a deposit with the law society, made that deposit; and on the last day of the period, the money standing to the credit of the law practice's general trust account are not sufficient to enable the deposit to be made, the period for making payment is extended until the next "quarter day" on which the practice has sufficient funds in its general trust account to make the payment.

Section 74 – Amendment of notional amount by law society –

empowers the law society, upon application by a law practice, to reduce the notional amount in the general trust account of the practice. The decision to reduce the amount stands until the end of the year in which the decision is made. If a decision to reduce the notional amount for a practice means that the practice has deposited an excess amount with the law society, the practice is entitled to a refund of that excess amount.

Section 75 – Statutory deposit account – Act, s 253(2)(a) and (b) –

paragraphs 253(2)(a) and (b) state that regulations may provide for the type of account to be kept by the law society and for payments to be made to the account. This section requires the law society to open an account under the title of the 'statutory interest account'. The law society must deposit in the account:

- a) money deposited with the law society by a law practice under this division; and
- b) any other money required by law to be deposited in the account.

Section 76 – Arrangements relating to statutory interest account –

enables the law society to enter into an arrangement with an ADI in the ACT for payments by the ADI, into a statutory interest account held by the law society, of amounts held in a trust account held by a law practice with the ADI.

Section 77 – Use of money in statutory interest account – Act,

s 253(2)(c) – section 253(2)(c) of the Act states that a regulation may make provision in relation to the use of money in a statutory interest account held by the law society. This section sets out the procedure to be followed by the law society when asked, by the bar council, to seek the consent of the Attorney General to the use of money in the statutory interest account for a purpose stated by the bar council.

Section 78 – Audit of deposits etc

Subsection (1) sets out the kinds of records the law society must keep in relation to statutory interest account. Subsections (2) and (3) require the law society to have the records audited annually, and to provide a copy of each audit to the Attorney-General.

Division 6.9 Miscellaneous

Section 79 – Law practice closing down, closing office or ceasing to receive or hold trust money – subsection 79(1) requires a law practice that holds trust money to give the law society at least 14 days written notice of its intention to stop existing as a law practice, stop engaging in legal practice in the ACT, or stop practising in a way that involves receiving trust money.

Subsection 79(2) requires a law practice, not later than 14 days after it stops holding trust money, to give the law society written notice that it has stopped holding trust money and, if it has not given a notice under subsection (1), to give a notice that complies with that subsection.

Subsection 79(3) sets out the particulars to be included in this section.

Section 80 – Disclosure of accounts used to hold money entrusted to legal practitioners – Act, s 258(1) – sets out the details to be given by a law practice to the law society, for each account kept at an ADI by the practice in which money entrusted to the practice, or to an associate of the practice, is held. The details must be given at the times, and in the manner, required by the law society.

Section 81 – Exemptions – the law society may exempt a law practice from complying with this Part, subject to any conditions it may impose. The law society may at any time impose a new condition, amend or revoke a condition, or revoke an exemption.

PART 7 COSTS DISCLOSURE AND ASSESSMENT

Section 82 – When does a matter have a substantial connection with the ACT – Act, s 267 – sets out the circumstances in which a matter has a substantial connection with the ACT.

Section 83 – Exceptions to disclosure requirement – Act, s 272(1)(f) – sets out the circumstances in which disclosure under section 269 or section 270 of the Act is not required.

PART 8 PROFESSIONAL INDEMNITY INSURANCE

Section 84 – Professional indemnity insurance for insurable legal practitioners – Act, s 311(2)(c) – subsection 311(2) of the Act provides that the licensing body may accept a number of things as evidence that there is, or will be, an approved indemnity insurance policy in force in relation to an insurable legal practitioner, including evidence prescribed by regulation. This

section prescribes, in relation to an insurable barrister, a report from the bar council stating that the council is satisfied that the lawyer will be covered by an approved policy of indemnity insurance during the currency of the practising certificate.

PART 8 FIDELITY COVER

Section 85 – Caps on payments from fidelity fund – Act, s 348 – section 348(1) of the Act provides that a regulation may fix the maximum amount (or the method of working out that amount) that may be paid from the fidelity fund in relation to claims. This section prescribes the amount of \$50 000 for a claim by an associate of a law practice in relation to a default of the law practice arising from an act or omission of another associate of the practice. For any other claim, the amount is \$200 000.

Section 86 – Protocols – Act, s 354 – sets out the matters in relation to which the law society council may enter into a protocol with a corresponding authority.

Section 87 – Notice of authority for interstate legal practitioner to withdraw from local trust account – Act, s 364(2) – if an interstate legal practitioner becomes authorised to withdraw money from a local trust account, the practitioner must give notice to the law society no later than 7 days after the practitioner becomes authorised.

Subsection 87(3) sets out the kind of information to be contained in the notice, and subsection (4) requires the practitioner to give the law society notice of any change to that information.

Section 88 – Contribution by interstate legal practitioner to fidelity fund – Act, s 364(2) – when an interstate legal practitioner gives notice under section 87, the law society may require the authorised legal practitioner to pay a contribution to the fidelity fund. The amount payable by the interstate legal practitioner must not exceed the amount that would be payable by a local practitioner holding an unrestricted practising certificate for the same period.

PART 10 COMPLAINTS AND DISCIPLINE

Section 89 – Register of disciplinary action – Act, s 448(2)(e) – section 448 of the Act requires the licensing body to maintain a register of disciplinary action. The register is required to contain information including particulars prescribed by regulation.

This section requires the register of disciplinary action to include:

- For disciplinary action taken against an Australian legal practitioner, particulars of the date and jurisdiction of the person's first and any later admission to the legal profession.

PART 11 CONSEQUENTIAL AMENDMENTS

Section 90 – Legal Profession Regulation 2006 – repeal – the *Legal Profession Regulation 2006* is repealed.

Section 91 – Legal Profession Regulation 2006, part 10 – this section provides for Part 10 (Transitional) of the repealed Regulation to be relocated to this Regulation as Part 20, sections 100 to 110. Section 2(1) provides for the commencement of this section immediately before the remaining sections of this Regulation.

DICTIONARY