



Australian Capital Territory

Legal Profession Regulation 2007

Subordinate Law SL2007-27

The Australian Capital Territory Executive makes the following regulation under the *Legal Profession Act 2006*.

Dated 25 September 2007.

SIMON CORBELL
Minister

JOHN HARGREAVES
Minister



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Part 1 Preliminary

1 Name of regulation

This regulation is the *Legal Profession Regulation 2007*.

2 Commencement

- (1) Section 91 commences immediately before the remaining provisions.
- (2) The remaining provisions commence on the commencement of the *Legal Profession Amendment Act 2007*.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*in-house lawyer*—see the Act, section 33 (3).' means that the term 'in-house lawyer' is defined in that section and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Important terms

5 Default decision of associate's home jurisdiction—Act, s 10 (4) (b) (iii)

- (1) This section applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, if—
 - (a) the Act, section 10 (4) (b) (What is the *home jurisdiction*?) applies to the associate; and
 - (b) the home jurisdiction for the associate can be decided under neither the Act, section 10 (4) (b) (i) nor section 10 (4) (b) (ii).
- (2) The home jurisdiction for the associate must be decided in accordance with the following criteria:
 - (a) the jurisdiction of the associate's place of residence in Australia;
 - (b) if the associate does not have a place of residence in Australia—the jurisdiction of the associate's last place of residence in Australia.

Part 3 Reservation of legal work and legal titles

6 Declaration of exempt person—certain supervised employees—Act, s 16 (4) (e)

- (1) This section applies to a person who—
 - (a) is an employee of an ActewAGL-linked corporation; and
 - (b) engages in legal practice; and
 - (c) is supervised by another employee who holds an unrestricted practising certificate.
- (2) The Act, section 16 does not apply to the person if the person is engaged in legal practice for the purpose of giving legal advice or legal services to an ActewAGL-linked corporation (or a related body corporate of an ActewAGL-linked corporation) in relation to the corporation's functions.
- (3) In this section:

ActewAGL-linked corporation means any of the following:

 - (a) ACTEW Distribution Ltd (ACN 073 025 224);
 - (b) AGL ACT Retail Investments Pty Ltd (ACN 093 631 586);
 - (c) Alinta GCA Pty Ltd (ACN 008 552 663);
 - (d) Ecowise Environmental Pty Ltd (ACN 074 205 780);
 - (e) TransACT Communications Pty Limited (ACN 091 752 297).

7 Declaration of exempt person—member of organisation representing veterans—Act, s 16 (4) (e)

- (1) This section applies to a person who—
- (a) is a member of an organisation representing veterans; and
 - (b) engages in legal practice; and
 - (c) represents a member or former member of the defence force.
- (2) The Act, section 16 does not apply to the person if—
- (a) the person provides legal services without fee, gain or reward to a member or former member of the defence force—
 - (i) for the purpose of assisting the member or former member in relation to a claim or application for a benefit under veterans' entitlement legislation; or
 - (ii) by acting as an advocate for the member or former member in a proceeding in a court or tribunal relating to an action, or a claim or application for a benefit, under veterans' entitlement legislation; and
 - (b) the person is indemnified against any loss the member or former member suffers as a result of the provision of the legal services.
- (3) In this section:

defence force—see the *Defence Act 1903* (Cwlth), section 30.

member, of the defence force—see the *Defence Act 1903* (Cwlth), section 4 (1).

organisation representing veterans—see the *Veterans Entitlements Act 1986* (Cwlth), section 5Q (1).

veterans' entitlement legislation means the following:

- (a) *Defence Act 1903* (Cwlth);
- (b) *Military Rehabilitation and Compensation Act 2004* (Cwlth);
- (c) *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;
- (d) *Safety, Rehabilitation and Compensation Act 1988*, part XI (except sections 143 (2) and (3), 144 (4), 149, 150, 153 (2), 156, 158 and 159);
- (e) *Veterans' Entitlements Act 1986* (Cwlth);
- (f) *Veterans' Entitlements (Clarke Review) Act 2004* (Cwlth).

8 Presumptions about taking or using certain names, titles or descriptions—Act, s 18 (2)

- (1) The kind of person mentioned in an item in table 8, column 3 is entitled, in the circumstances mentioned in column 4 of the item to take or use a name, title or description mentioned in column 2 of the item.

- (2) In this section:

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

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

- (a) the person works full-time, part-time, or on a temporary or casual basis; or
- (b) the person is employed as a law clerk.

government agency—see the Act, section 21 (5).

Part 3 Reservation of legal work and legal titles

Section 8

Table 8

column 1 item	column 2 name, title or description	column 3 kind of person	column 4 circumstances
1	lawyer	Australian lawyer	all (no restriction)
2	lawyer	Australian-registered foreign lawyer	all (no restriction)
3	legal practitioner	Australian legal practitioner	all (no restriction)
4	legal practitioner	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
5	<ul style="list-style-type: none"> • barrister and solicitor • solicitor and barrister • solicitor • attorney 	Australian legal practitioner	when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a solicitor

column 1 item	column 2 name, title or description	column 3 kind of person	column 4 circumstances
6	<ul style="list-style-type: none"> • barrister and solicitor • solicitor and barrister • solicitor • attorney 	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a solicitor as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
7	barrister	local legal practitioner	when the local legal practitioner holds a local practising certificate that restricts the practitioner to legal practice in the manner of a barrister
8	barrister	interstate legal practitioner	when the interstate legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a barrister

Part 3 Reservation of legal work and legal titles

Section 8

column 1 item	column 2 name, title or description	column 3 kind of person	column 4 circumstances
9	barrister	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a barrister as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
10	counsel	Australian legal practitioner	all (no restriction)
11	counsel	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate

column 1 item	column 2 name, title or description	column 3 kind of person	column 4 circumstances
12	counsel	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, provides legal services to his or her employer, or to a related entity, in the ordinary course of his or her employment and for no fee, gain or reward other than his or her ordinary remuneration as an employee
13	Senior Counsel or SC	Australian lawyer	when the Australian lawyer holds the status of Senior Counsel, as recognised by the High Court or a Supreme Court of any jurisdiction
14	<ul style="list-style-type: none"> • Queen's Counsel or QC • King's Counsel or KC • Her Majesty's Counsel • His Majesty's Counsel 	Australian lawyer	when the Australian lawyer holds the appropriate status as given by the Crown in any capacity or as recognised by the High Court or the Supreme Court of a jurisdiction

Part 3 Reservation of legal work and legal titles

Section 8

column 1 item	column 2 name, title or description	column 3 kind of person	column 4 circumstances
15	attorney	Australian-registered foreign lawyer	when entitled to use the name, title or description under the Act, section 160 (Designation of Australian-registered foreign lawyers)
16	attorney	patent attorney	when using the expression 'patent attorney'
17	attorney	donee of a power of attorney	when indicating that the donee holds or is acting under a power of attorney
18	attorney	Attorney-General of a jurisdiction or a foreign country	all (no restriction)
19	solicitor	Solicitor-General of a jurisdiction or a foreign country	all (no restriction)

Part 4 Legal practice—Australian legal practitioners

9 Application of Act, s 50 to certain practitioners—Act, s 33 (2)

- (1) The Act, section 50 (Statutory condition about practice as a solicitor) does not apply to an in-house lawyer in relation to the provision of in-house legal services for a corporation (other than an incorporated legal practice) by which the lawyer is employed.
- (2) The Act, section 50 does not apply to a government lawyer in relation to the exercise of his or her official functions as a government lawyer.

10 Criteria for grant or renewal of unrestricted practising certificate—Act, s 35

- (1) An applicant for the grant or renewal of an unrestricted practising certificate must be a person qualified as set out in table 10.

Table 10

column 1 item	column 2 qualification
1	A person who holds an unrestricted practising certificate in relation to a period ending on 30 June in the year in which the person applies for renewal of the certificate.
2	A person who— <ol style="list-style-type: none"> (a) held an unrestricted practising certificate during the relevant 5-year period; and (b) has retained such a level of professional skill that it is appropriate that a further unrestricted practising certificate be issued to the person.

column 1 item	column 2 qualification
3	<p>A person who—</p> <ul style="list-style-type: none"><li data-bbox="687 607 1174 667">(a) has not previously held an unrestricted practising certificate; and<li data-bbox="687 685 1235 775">(b) during the relevant 5-year period, has, for a period of not less than 2 years or for periods that total not less than 2 years—<ul style="list-style-type: none"><li data-bbox="783 797 1262 857">(i) been employed in a jurisdiction under articles of clerkship; or<li data-bbox="783 880 1235 1059">(ii) been engaging in legal practice in a jurisdiction as an employee of a solicitor who holds an unrestricted practising certificate in a law firm, incorporated legal practice or multidisciplinary partnership; or<li data-bbox="783 1081 1235 1142">(iii) been engaging in legal practice as a government lawyer; or<li data-bbox="783 1164 1262 1283">(iv) practised in a jurisdiction as a solicitor, either on the person's own account or in partnership with another legal practitioner; or<li data-bbox="783 1305 1270 1424">(v) been employed, or engaged in legal practice in any 2 or more of the capacities mentioned in subparagraphs (i), (ii), (iii) and (iv); and<li data-bbox="687 1447 1270 1563">(c) has attained such a level of professional skill, and gained such professional experience, that it is appropriate that an unrestricted practising certificate be issued to the person.

column 1 item	column 2 qualification
4	<p>A person who—</p> <ul style="list-style-type: none"> (a) has during the relevant 5-year period— <ul style="list-style-type: none"> (i) practised in a jurisdiction as a barrister for a period of not less than 2 years; or (ii) practised in a jurisdiction as a barrister for a period of not less than 1 year and been employed, performed work or practised in any 1 or more of the capacities mentioned in item 3, column 2, paragraph (b) for a period of not less than 1 year or for periods that total not less than 1 year; and (b) has attained such a level of professional skill, and gained such professional experience, that it is appropriate that an unrestricted practising certificate be issued to the person.
5	<p>A person who—</p> <ul style="list-style-type: none"> (a) has previously held a practising certificate; and (b) has attained such a level of professional skill, and gained such professional experience, that it is appropriate that an unrestricted practising certificate be issued to the person.
6	<p>A person who—</p> <ul style="list-style-type: none"> (a) is a New Zealand barrister and solicitor; and (b) has for a continuous period of not less than 6 months after the person's admission in the ACT been employed in the ACT by a legal practitioner; and (c) has attained such a level of professional skill, and gained such professional experience, that it is appropriate that an unrestricted practising certificate be issued to the person.

- (2) In this section:
- relevant 5-year period*, in relation to an applicant for an unrestricted practising certificate, means the period of 5 years immediately before the day the person makes the application.
- (3) A reference in this section to a period includes a reference to any part of the period that happened before the commencement of this section.
- (4) Subsection (3) and this subsection are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) Subsections (3) and (4), and this subsection, expire 5 years after the day this section commences.

11 Procedure for applications for barrister practising certificate—Act, s 35

- (1) An application for the grant or renewal of a barrister practising certificate must be given to the bar council.
- (2) The bar council's report under the Act, section 45 (2) (Grant or renewal of barrister practising certificate) in relation to the application must be given to the licensing body—
- (a) not later than 7 days after the day the bar council receives the application; or
- (b) within a further period agreed by the bar council, the licensing body and the applicant.

Note 1 The licensing body must not consider an application for a barrister practising certificate unless it has received a report by the bar council about the application and the payment of the required fees (see the Act, s 45).

Note 2 A determination under the Act, s 84 (Determination of fees by law society council and bar council) may provide for payment of fees in relation to applications and services. A determination may include provision about when a fee is payable, and how it is payable eg by instalments (see Legislation Act, s 56 (5) (e)).

12 Period for applying for renewal of local practising certificate—Act, s 43

The period for making an application for renewal of a local practising certificate is the period beginning on 1 April and ending—

- (a) on 31 May before the certificate ends; or
- (b) if the licensing body is satisfied there are exceptional circumstances—after 31 May but before the certificate ends.

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

- (1) For the Act, section 50 (Statutory condition about practice as a solicitor), the period of supervised legal practice is—
 - (a) if the practitioner completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in the ACT or another jurisdiction—a period or periods equivalent to 18 months, worked out under this section, after the day the practitioner's first practising certificate was granted; or
 - (b) if the practitioner completed other practical legal training to qualify for admission to the legal profession in the ACT or another jurisdiction—a period or periods equivalent to 2 years, worked out under this section, after the day the practitioner's first practising certificate was granted.

- (2) For subsection (1) and the Act, section 75 (Special provisions about interstate legal practitioner engaging in unsupervised legal practice in ACT), completion by a person of a period or periods of supervised legal practice equivalent to the required period of 18 months or 2 years must be worked out by satisfying the requirements of this section.
- (3) To satisfy the requirements of this section, a person must complete—
 - (a) 1 period of supervised legal practice, worked on a full-time basis, that is equal to the required period; or
 - (b) 1 period of supervised legal practice, worked on a part-time basis, that is equivalent to the required period; or
 - (c) 2 or more periods of supervised legal practice, worked on either or both of those bases, that together are equal or equivalent to the required period.
- (4) In working out a period of supervised legal practice for a person for this section—
 - (a) a public holiday in the period is included as a day of supervised legal practice whether or not the person engaged in legal practice on the day; and
 - (b) normal periods of leave taken in the period by the person are included as periods of supervised legal practice.

14 Suspending or cancelling local practising certificate—additional grounds—Act, s 55 (2)

- (1) Each of the following is a ground for suspending a local practising certificate:
 - (a) the holder fails to pay any fine, or any costs, fees or expenses, payable by the holder under the Act;

- (b) if requested, in writing, by the relevant council to explain stated conduct by the holder as a legal practitioner, the holder fails, without reasonable excuse, to give a reasonable written explanation to the council about the conduct;
 - (c) for the holder of an unrestricted practising certificate—a report under the Act, section 237 (Investigator’s report) or the Act, section 247 (External examiner’s report) discloses a deficiency in any trust money of a law practice of which the practitioner is an associate and for which the practitioner did not have a reasonable excuse;
 - (d) the holder fails to comply with a direction of the relevant council under the Act, section 413 (2) (d) (Summary conclusion of complaint procedure by fine etc);
 - (e) the holder fails to comply with an order of the disciplinary tribunal under the Act, section 430 (6) (b), (c), (d), (e) or (h) (Decisions of disciplinary tribunal—unsatisfactory professional conduct or professional misconduct);
 - (f) the holder fails to comply with an order of the disciplinary tribunal under the Act, section 431 (1) (a) or (b) (Decisions of disciplinary tribunal—unsatisfactory employment conduct).
- (2) Each of the following is a ground for cancellation of a local practising certificate:
- (a) the holder is sentenced to a term of imprisonment;
 - (b) for the holder of an unrestricted practising certificate—the holder becomes bankrupt or executes a personal insolvency agreement.

**15 Particulars for register of local practising certificates—
Act, s 79 (2)**

- (1) The particulars mentioned in subsection (2) and (3) are prescribed as particulars to be included in the register under the Act, section 79 (Register of local practising certificates) in relation to a local legal practitioner, unless the licensing body is required under subsection (5) or (6) not to include them.
- (2) The following are particulars applying in relation to all local legal practitioners:
 - (a) the name of the local legal practitioner;
 - (b) the kind of local practising certificate granted to the practitioner;
 - (c) any other particulars that the licensing body considers should be included.
- (3) The following are particulars applying in relation to a local legal practitioner who holds a restricted or unrestricted practising certificate:
 - (a) the name of the law practice of which the practitioner is an associate or, if the practitioner is not an associate of a law practice, the name of the entity of which the practitioner is a director, officer or employee or with which the practitioner is otherwise engaged in legal practice;
 - (b) by way of separate entry, the name of the law practice or other entity mentioned in paragraph (a) and the contact details of the office of the law practice or other entity—
 - (i) in the ACT; and
 - (ii) in the other jurisdictions where it has an office, unless the licensing body considers that the particulars need not be included for an entity that is not a law practice;

- (c) any other particulars about the practitioner, or the law practice or other entity mentioned in paragraph (a), that the licensing body considers should be included.
- (4) A local legal practitioner may ask the licensing body, in writing, not to include in the register stated particulars about the practitioner, or a law practice or other entity, on the ground that special circumstances justify the particulars not being publicly available.

Example—special circumstances

if the safety or wellbeing of someone would be substantially affected by making the particulars publicly available

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) If the request under subsection (4) is by a solicitor and the licensing body is satisfied that the special circumstances exist, the licensing body is required not to include the particulars in the register unless the licensing body considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.
- (6) If the request under subsection (4) is by a barrister and the bar council tells the licensing body that it is satisfied that the special circumstances exist, the licensing body is required not to include the particulars in the register unless the bar council tells the licensing body that the bar council considers the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.
- (7) In this section:
- contact details**, for a law practice or other entity, means—
- (a) its street address, that is, the address where it is physically located; and

- (b) its postal address, that is, its post office box number (if any) and the location and postcode of the post office where the box is kept; and
- (c) its DX address, that is, the number of its exchange box (if any) in a document exchange.

16 Prescribed agency—Act, dictionary, definition of government lawyer, par (c)

The Australian Government Solicitor, established under the *Judiciary Act 1903* (Cwlth), is a government agency.

17 Determination of service fee, barrister practising certificate applications—Act, s 84 (1) (b)

- (1) In determining a fee for the Act, section 84 (1) (b), the law society council must—
 - (a) consult with the bar council about the amount of the proposed fee; and
 - (b) if the law society council and the bar council agree on the amount of the proposed fee—determine the amount of the fee agreed on.
- (2) If the law society and the bar council are unable to agree on the amount of a fee under subsection (1), the law society must—
 - (a) consult with the Minister about the amount of the proposed fee; and
 - (b) if the law society council and the Minister agree on the amount of the proposed fee—determine the amount of the fee agreed on.
- (3) For subsection (2), the Minister must have regard to any representation made to the Minister by the bar council about the fee.

Note A determination of fees under the Act, s 84 is a disallowable instrument (see the Act, s 84 (4)).

**18 Corporations that are not incorporated legal practices—
Act, s 101 (2) (f)**

- (1) The following corporations are not incorporated legal practices:
 - (a) the law society;
 - (b) the bar association;
 - (c) an ActewAGL-linked corporation.

- (2) In this section:

ActewAGL-linked corporation—see section 6 (3).

**19 Prohibition on conduct of managed investment scheme
by incorporated legal practice—Act, s 102 (2)**

- (1) The Act, section 102 (2) is declared to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G in relation to the Corporations legislation.
- (2) In this section:

Corporations legislation—see the Corporations Act, section 9.

20 Period of notice of ceasing to practice—Act, s 106 (1) (b)

The period of notice for a corporation is not later than 14 days after the day it ceases to engage in legal practice in the ACT.

**21 Disqualifications and prohibitions—Act, s 122 (10),
s 123 (5) and s 148 (5)**

- (1) This section applies to the following orders:
 - (a) an order made under the Act, section 122 (Banning of incorporated legal practices);
 - (b) an order made under the Act, section 123 (Disqualification from managing incorporated legal practice);

- (c) an order made under the Act, section 148 (Prohibition on multidisciplinary partnerships with certain partners who are not Australian legal practitioners).
- (2) The law society council, or, for an order under the Act, section 122, the regulator of another jurisdiction (within the meaning of that section), may publicise the order in any way the council or regulator considers appropriate.
 - (3) The law society council—
 - (a) must, as soon as practicable after the order is made, give written notice of the order to the corresponding authority of every other jurisdiction; and
 - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.
- Note* If a form is approved by the law society council under the Act, s 583 for this provision, the form must be used.
- (4) A notice for an order made in relation to a corporation under the Act, section 122 must state—
 - (a) the corporation's name; and
 - (b) the Australian company number (ACN) of the corporation; and
 - (c) the office or business address of the corporation last known to the law society council; and
 - (d) the date of the order.
 - (5) A notice for an order made in relation to a person under the Act, section 123 or section 148 must state—
 - (a) the person's name; and
 - (b) the person's address last known to the law society council; and
 - (c) the date of the order.

- (6) A notice may also—
- (a) contain other relevant information; and
 - (b) be accompanied by a copy or summary of, or extract from, the order.
- (7) No civil liability (including liability in defamation) is incurred by a protected person in relation to anything done or omitted to be done honestly for the purpose of this section.
- (8) In this section:
- protected person*** means any of the following:
- (a) the law society;
 - (b) a member of the law society council;
 - (c) any member of the staff of the law society;
 - (d) the regulator of another jurisdiction;
 - (e) a person responsible for keeping a register or any similar record, or any part of a register or similar record, in or by which an order is publicised;
 - (f) an internet service provider or internet content host;
 - (g) a person acting at the direction of the Territory or of an entity mentioned in this definition.

Part 5 Legal practice—foreign lawyers

22 Scope of practice—Act, s 157 (1) (b) and (d)

- (1) For the Act, s 157 (1) (b), the following arbitration proceedings are kinds of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services (including appearances):
 - (a) an arbitration proceeding in which the arbitrator is not required to apply the rules of evidence;
 - (b) an arbitration proceeding in which knowledge of Australian law is not essential.
- (2) For the Act, s 157 (1) (d), all forms of dispute resolution are kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent that participation in the dispute resolution is restricted to people that do not include Australian-registered foreign lawyers by—
 - (a) the provisions of other legislation applying to the dispute resolution; or
 - (b) the requirements of an entity responsible for the dispute resolution; or
 - (c) the provisions of a contract that provides for the dispute resolution.
- (3) In this section:

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

23 Trust money and trust accounts—Act, s 164 (2)

The following provisions apply to Australian-registered foreign lawyers as if a reference in the provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer:

- (a) part 6 (Trust money and trust accounts);
- (b) the Act, part 3.1 (Trust money and trust accounts);
- (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.

24 Disclosure statements for professional indemnity insurance—Act, s 165 (5B)

A disclosure statement must—

- (a) be in English or, if the client does not have a reasonable understanding of English, in another language of which the client has a reasonable understanding; and
- (b) state that the lawyer is covered by professional indemnity insurance, but that the insurance does not conform with the requirements for professional indemnity insurance applicable to local legal practitioners or interstate legal practitioners; and
- (c) if the insurance covers the lawyer for less than the relevant amount for the Act, section 165—state the amount for which the lawyer is covered by professional indemnity insurance; and
- (d) state the insurer by whom the insurance cover is provided; and
- (e) indicate whether or not the insurance is provided in conformity with the requirements of a corresponding foreign law or the requirements of a foreign registration authority.

25 Contributions to fidelity fund—Act, s 166

- (1) The Act, section 323 (Contributions to fidelity fund) applies to a locally-registered foreign lawyer practising foreign law in the ACT as an associate of a law practice in the same way as it applies to a solicitor.
- (2) However, the amount payable by the locally-registered foreign lawyer is the amount payable by a solicitor, other than an interstate legal practitioner.

26 Levy to supplement fidelity fund—Act, s 166

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

27 Locally-registered foreign lawyers not covered by fidelity fund

- (1) This section applies to a locally-registered foreign lawyer practising foreign law in the ACT otherwise than as an associate of a law practice.
- (2) The foreign lawyer may not practise foreign law in the ACT on behalf of a client unless the lawyer has provided the client with a disclosure statement in relation to the lawyer's lack of cover by the fidelity fund.
- (3) A disclosure statement must—
 - (a) be in writing; and
 - (b) be in English or, if the client does not have a reasonable understanding of English, in another language of which the client has a reasonable understanding; and

- (c) state that the lawyer is not covered by the fidelity fund in relation to the practice of foreign law in the ACT; and
- (d) state that Australian legal practitioners generally are covered by the fidelity fund.

28 Particulars for register of locally-registered foreign lawyers—Act, s 201

- (1) The particulars mentioned in subsections (2) and (3) are prescribed as particulars to be included in the register under the Act, section 201 (Register of locally-registered foreign lawyers) in relation to a locally-registered foreign lawyer, unless the licensing body is required under subsection (5) not to include them.
- (2) The following are the particulars:
 - (a) the name of the foreign lawyer;
 - (b) the contact details of the office of the foreign lawyer in the ACT;
 - (c) any other particulars that the licensing body considers should be included.
- (3) For a foreign lawyer who practices in the manner of a solicitor, the following are additional particulars:
 - (a) the name of the partnership of which the lawyer is a member or employee or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a director, officer or employee or with which the lawyer is otherwise engaged in legal practice;
 - (b) by way of separate entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity—
 - (i) in the ACT; and

- (ii) in any other jurisdictions where it has an office, except if the licensing body considers those particulars need not be included for an entity that is not a law practice;
 - (c) details of the foreign registration authority or authorities by which the lawyer is registered to engage in legal practice in a foreign country or foreign countries;
 - (d) any other particulars about the lawyer, partnership or other entity that the licensing body considers should be included.
- (4) A locally-registered foreign lawyer may ask the licensing body, in writing, not to include in the register stated particulars about the lawyer, partnership or other entity, on the ground that special circumstances justify the particulars not being publicly available.

Example—special circumstances

if the safety or wellbeing of someone would be substantially affected by making the particulars publicly available

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) If the licensing body is satisfied that the special circumstances exist, the licensing body is required not to include the particulars in the register unless the licensing body considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.
- (6) In this section:
- contact details** for an office means—
- (a) its street address, that is, the address where it is physically located; and
 - (b) its postal address, that is, its post office box number (if any) and the location and postcode of the post office where the box is kept; and

- (c) its DX address, that is, the number of its exchange box (if any) in a document exchange.

Part 6 Trust money and trust accounts

Division 6.1 Preliminary

29 Application—pt 6

This part has effect for the Act, part 3.1 (Trust money and trust accounts) and applies to a law practice in relation to—

- (a) trust money received by the practice in the ACT, unless the practice has an office in 1 or more other jurisdictions but not in the ACT; and
- (b) trust money received by the practice in another jurisdiction, if the practice has an office in the ACT but in no other jurisdiction; and
- (c) trust money received by the practice in another jurisdiction, if the practice has an office in—
 - (i) the ACT; and
 - (ii) 1 or more other jurisdictions but not in the jurisdiction in which the money was received;

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

30 Definitions—pt 6

In this part:

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

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

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

Note 1 *Deposit record* is defined in the Act, s 210 (1).

Note 2 *Trust money* is defined in the Act, dict.

31 Conditions on approval of ADIs—Act, s 250 (2)

The kinds of conditions that may be imposed on an approval of an ADI under the Act, section 250 (Approval of ADIs for pt 3.1) are conditions that provide for, or conditions that require arrangements to be negotiated and entered into between the ADI and the law society council that provide for, 1 or more of the following:

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

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 6.2 Computerised accounting systems

32 Application—div 6.2

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

33 Copies of trust records to be printed

- (1) The law practice must print a paper copy of trust records as follows:
 - (a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;
 - (b) reconciliation statements prepared under section 48 (Reconciliation of trust records) are to be printed as at the end of each named month;
 - (c) lists of trust account ledgers and their balances are to be printed monthly as at the end of each named month;
 - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;
 - (e) trust ledger accounts, the register of controlled money and the trust account transfer journal are to be printed before they are archived or deleted from the system;
 - (f) trust ledger account and controlled money account details are to be printed on request by and provided to an investigator.
- (2) The trust records printed monthly as at the end of a named month under subsection (1) (a) to (d) must be printed not later than 15 working days after the named month.
- (3) The paper copies printed under subsection (1) are to be kept by the law practice, except if they are printed on request under that subsection.
- (4) The electronic copy of the trust account receipts and payments cash books under subsection (1) (a) must be kept by the law practice.

34 Chronological record of information to be made

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

35 Requirements about computer accounting systems

- (1) The law practice must ensure that its computerised accounting system is not 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 of the transaction is made in a way that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.
- (2) The law practice must ensure that the system is not capable of deleting a trust ledger account unless—
 - (a) the balance of the account is zero and all outstanding cheques have been presented; and
 - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure that any entry in a record produced in a permanent form appears in chronological sequence.

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

36 Backups

The law practice must ensure that—

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

Division 6.3 General trust accounts

37 Establishment of general trust account—Act, s 221 (2)

- (1) A law practice may at any time establish a general trust account that satisfies the requirements of this section.
- (2) However, a law practice must, as soon as practicable after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies the requirements if the practice does not already have a general trust account that satisfies the requirements.

- (3) A general trust account satisfies the requirements of this section if—
- (a) the account is established in the ACT, before or after the commencement of this section, with an approved ADI; and
 - (b) the account is and must be kept in the ACT; and
 - (c) the name of the account includes—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression “law practice trust account” or “law practice trust a/c”; and
 - (d) the account is of a kind that is for the time being approved by the licensing body.
- (4) Subsection (3) (c) does not apply to an account established in the ACT before the commencement of this section.
- (5) Subsection (3) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.

38 Receipting of trust money

- (1) This section applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made out as soon as practicable—
- (a) after the trust money is received, except as provided by paragraph (b); or
 - (b) in the case of trust money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.

- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.
- (5) For subsection (4), the *required particulars* are as follows:
- (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “trust account” or “trust a/c”;
 - (h) the name of the person who made out the receipt;
 - (i) the number of the receipt.
- (6) The original receipt must be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

39 Deposit records for trust money

- (1) This section applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record:
 - (a) the date of the deposit;
 - (b) the amount of the deposit;
 - (c) whether the deposit consists of cheques, notes or coins (and the amount of each);
 - (d) for each cheque:
 - (i) the name of the drawer of the cheque;
 - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn;
 - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

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 the Act, section 222 (2) (a) must be kept is 7 years after finalisation of the matter to which the direction relates.

41 Payment by cheque

- (1) This section applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (2) A cheque—
 - (a) must be made payable to or to the order of a stated person or people and not to bearer or cash; and
 - (b) must be crossed “not negotiable”; and
 - (c) must include—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression “law practice trust account” or “law practice trust a/c”.
- (3) A cheque must be signed—
 - (a) by an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly.
- (4) A written record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.

- (5) If at the time the cheque is issued the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For subsections (4) and (5), the *required particulars* are as follows:
- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.
- (8) Subsection (2) (c) does not apply to an account established in the ACT before the commencement of this section.
- (9) Subsection (2) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.
- (10) In this section:
- associate* means an associate of the law practice.
- authorised* means authorised by the law practice to sign cheques drawn on the general trust account.

42 Payment by electronic funds transfer

- (1) This section applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.
- (2) An electronic funds transfer must be effected by, under the direction of or with the authority of—
 - (a) an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (3) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (4) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (5) For subsections (3) and (4), the *required particulars* are as follows:
 - (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and relevant BSB number;

- (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (6) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be kept in the order in which the transfers were effected.
- (7) In this section:

associate means an associate of the law practice.

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

43 Recording transactions in trust account cash

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

- (a) a trust account receipts cash book in accordance with section 44;
- (b) a trust account payments cash book in accordance with section 45.

44 Trust account receipts cash book

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in relation to each receipt of trust money:
 - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the form in which the money was received;
 - (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the purpose for which the money was received;
 - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in relation to receipts must be recorded in the order in which the receipts are made out.
- (4) The particulars in relation to a receipt must be recorded not later than 4 working days after the day the receipt was made out.

Example

If the receipt is made out on Monday, that day is not counted in working out the day by when the particulars in relation to the receipt must be recorded. To comply with s (4), the particulars in relation to the receipt must be recorded not later than Friday.

Note 1 See the Legislation Act, s 151 (Working out periods of time generally).

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

45 Trust account payments cash book

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

- (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in relation to payments must be recorded in the order in which the payments are made.
- (4) The particulars in relation to a payment must be recorded not later than 4 working days after the day the payment was made.

Example

If the payment is made on Monday, that day is not counted in working out the day by when the particulars in relation to the receipt must be recorded. To comply with s (4), the particulars in relation to the receipt must be recorded not later than Friday.

Note 1 See the Legislation Act, s 151 (Working out periods of time generally).

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

46 Recording transactions in trust ledger accounts

- (1) A law practice that keeps a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded in the title of a trust ledger account:
- (a) the name of the person for or on behalf of whom the trust money was paid;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter in relation to which the trust money was received.

- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in relation to each receipt of trust money for the matter:
 - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the name of the person from whom the money was received;
 - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in relation to each payment of trust money by cheque:
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in relation to each payment of trust money by electronic funds transfer:
 - (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;

- (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (7) The following particulars must be recorded in the trust ledger account in relation to each transfer of trust money effected by a journal entry:
- (a) the date of the transfer;
 - (b) the amount transferred;
 - (c) the journal reference number;
 - (d) the name of the other trust ledger account from which or to which the money was transferred;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in relation to a receipt, payment or transfer of trust money must be recorded not later than 4 working days after the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.

Example

If the receipt is made out on Monday, that day is not counted in working out the day by when the particulars in relation to the receipt must be recorded. To comply with s (4), the particulars in relation to the receipt must be recorded not later than Friday.

Note 1 See the Legislation Act, s 151 (Working out periods of time generally).

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (10) The trust ledger account balance must be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

47 Journal transfers

- (1) Trust money may be transferred by journal entry from 1 trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if—
- (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
 - (b) subsection (2) is complied with.
- (2) The transfer must be authorised in writing—
- (a) by an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly; or
 - (c) by an external intervener for the practice.
- (3) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (4) The following particulars must be recorded in the trust account transfer journal in relation to each transfer of trust money by journal entry:
- (a) the date of the transfer;
 - (b) the trust ledger account from which the money is transferred (including its identifying reference);

- (c) the trust ledger account to which the money is transferred (including its identifying reference);
 - (d) the amount transferred;
 - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (5) Journal pages or entries must be consecutively numbered.
- (6) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.
- (7) In this section:

associate means an associate of the law practice.

authorised means authorised by the law practice or an external intervener for the practice to effect, direct or give authority for the transfer of trust money by journal entry from 1 trust ledger account in the practice's trust ledger to another trust ledger account in the trust ledger.

external intervener—see the Act, section 473 (1).

48 Reconciliation of trust records

- (1) A law practice that keeps 1 or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account must be reconciled as at the end of each named month by preparing—
- (a) a statement—
 - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
 - (ii) showing the date the statement was prepared; and

- (b) a statement—
 - (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
 - (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
 - (iii) showing the date the statement was prepared.
- (3) The statements must be prepared no later than 15 working days after the end of the month to which the statements relate.
- (4) The statements must be kept by the law practice.

49 Trust ledger account in name of law practice or legal practitioner associate

- (1) A law practice must not keep a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this section.
- (2) A law practice may keep in its trust ledger—
 - (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and
 - (b) a trust ledger account in a legal practitioner associate's name, but only in relation to money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subsection (2) (a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than 1 month after the day on which the money was transferred to the trust ledger account.

- (4) In a case to which subsection (2) (b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

50 Notification requirements for general trust accounts

- (1) Not later than 14 days after establishing a general trust account, a law practice must give the licensing body written notice of the establishment of the account.
- (2) A law practice—
- (a) either before, or not later than 14 days after, authorising or ending the authority of an associate of the practice or an Australian legal practitioner—
- (i) to sign cheques drawn on a general trust account of the practice; or
- (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice;
- must give the licensing body written notice of the authorisation or ending of authorisation (including the name and address of the associate or practitioner and indicating, in the case of an associate, whether the associate is an employee of the practice); and
- (b) during July of each year, must give the licensing body written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July of that year:
- (i) to sign cheques drawn on a general trust account of the practice; or

- (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (3) Not later than 14 days after the closure of a general trust account kept by it, a law practice must give the licensing body written notice of the closure.
- (4) A notice under this section given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this section—
- law practice* includes a former law practice and the people who were principals of a law practice immediately before the law practice stopped existing as a law practice or engaging in legal practice in the ACT.
- (6) Despite anything else in this section—
- (a) subsection (1) does not apply to a general trust account established before the commencement of this subsection; and
- (b) subsection (2) (a) does not apply to an authority that was given or ended before the commencement of this subsection; and
- (c) subsection (3) does not apply to a general trust account that was closed before the commencement of this subsection.
- (7) Subsection (6) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (8) Subsections (6) and (7) and this subsection expire 1 year after the day this subsection commences.

Division 6.4 Controlled money

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

- (1) A controlled money account must be kept under an account name that includes the following particulars:
 - (a) the name of the law practice concerned;
 - (b) the expression “controlled money account” or the abbreviation “CMA” or “CMA/c”;
 - (c) other particulars sufficient to identify the purpose of the account and to distinguish the account from any other account kept by the law practice.
- (2) This section does not apply to an account established in the ACT before the commencement of this section.

52 Receipt of controlled money

- (1) This section applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable—
 - (a) after the controlled money is received except as provided by paragraph (b); or
 - (b) in the case of controlled money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.

- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For subsection (5), the *required particulars* are as follows:
- (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
 - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “controlled money receipt”;
 - (i) the name of the person who made out the receipt;
 - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt must be given, on request, to the person from whom the controlled money was received.

- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

53 Deposit of controlled money—Act, s 224 (5)

The period for which a written direction mentioned in the Act, section 224 (1) must be kept is 7 years after finalisation of the matter to which the direction relates.

54 Withdrawal of controlled money must be authorised

- (1) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of—
 - (a) an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.

- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (4) For subsections (2) and (3), the *required particulars* are as follows:
- (a) the date and number of the transaction;
 - (b) the amount withdrawn;
 - (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) particulars sufficient to identify the purpose for which the payment was made;
 - (g) the person or people effecting, directing or authorising the withdrawal.
- (5) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.
- (6) In this section:

associate means an associate of the law practice.

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

55 Register of controlled money

- (1) A law practice that receives controlled money must keep a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be kept for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information:
 - (a) the name of the person on whose behalf the controlled money is held;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter;
 - (d) any changes to the information referred to in paragraphs (a) to (c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account:
 - (a) the date the controlled money was received;
 - (b) the number of the receipt;
 - (c) the date the money was deposited in the controlled money account;
 - (d) the name of and other details clearly identifying the controlled money account;
 - (e) the amount of controlled money deposited;
 - (f) details of the deposit sufficient to identify the deposit;
 - (g) interest received;

- (h) details of any payments from the controlled money account, including the particulars required to be recorded under section 54 (4).
- (5) With the exception of interest and other income received in relation to controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in relation to controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must keep as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Not later than 15 working days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month—
 - (a) containing a list of the practice's controlled money accounts showing—
 - (i) the name, number and balance of each account in the register; and
 - (ii) the name of the person on whose behalf the controlled money in each account was held; and
 - (iii) a short description of the matter to which each account relates; and
 - (b) showing the date the statement was prepared.

Division 6.5 Transit money

56 Information to be recorded about transit money—Act, s 225

- (1) This section has effect for the Act, section 225 (Transit money).
- (2) 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

57 Trust account statements

- (1) A law practice must 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 law practice or an associate of the practice.
- (2) In the case of trust money in relation to which the law practice is required to keep a trust ledger account, the practice must give a separate statement for each trust ledger account.
- (3) In the case of controlled money in relation to which the law practice is required to keep a record of controlled money movements, the practice must give a separate statement for each record.
- (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in relation to which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must give a separate statement for each record.

- (5) A trust account statement is to contain particulars of—
- (a) all the information required to be kept under this part in relation to the trust money included in the relevant ledger account or record; and
 - (b) the remaining balance (if any) of the money.
- (6) A trust account statement must be given—
- (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or
 - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
 - (c) except as provided by subsection (7), as soon as practicable after 30 June in each year.
- (7) The law practice is not required to give a trust account statement under subsection (6) (c) in relation to a ledger account or record if at 30 June—
- (a) the ledger account or record has been open for less than 6 months; or
 - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
 - (c) a trust account statement has been given within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must keep a copy of a trust account statement given under this section.

58 Trust account statements for sophisticated clients

- (1) Section 57 does not apply to a sophisticated client to the extent to which the client directs the law practice not to provide trust account statements under that section.
- (2) If the sophisticated client directs the law practice to provide trust account statements on a basis different from that under section 57, the law practice must supply those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (3) The law practice must keep a copy of a trust account statement given under this section.
- (4) In this section:
sophisticated client—see the Act, section 261.

59 Register of investments—Act, s 221

- (1) This section applies if trust money mentioned in the Act, section 212 (3) (Money involved in financial services or investments) is invested by a law practice for or on behalf of a client, but this section does not itself give power to make investments.
- (2) The law practice must keep a register of investments of trust money.
- (3) The register must record the following information in relation to each investment:
 - (a) the name in which the investment is held;
 - (b) the name of the person on whose behalf the investment is made;
 - (c) the person's address;
 - (d) particulars sufficient to identify the investment;
 - (e) the amount invested;

- (f) the date the investment was made;
- (g) particulars sufficient to identify the source of the investment, including, for example—
 - (i) a reference to the relevant trust ledger; and
 - (ii) a reference to the written authority to make the investment; and
 - (iii) the number of the cheque for the amount to be invested;
- (h) details of any documents evidencing the investment;
- (i) details of any interest received from the investment or credited directly to the investment;
- (j) details of the repayment of the investment and any interest, on maturity or otherwise.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) This section does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another section.

60 Trust money subject to specific powers—Act, s 226

- (1) This section has effect for the Act, section 226 (Trust money subject to specific powers).
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep—
 - (a) a record of all dealings with the money to which the practice or associate is a party; and
 - (b) all supporting information in relation to the dealings;in a way that enables the dealings to be clearly understood.

- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

61 Register of powers and estates in relation to trust money

- (1) A law practice must keep a register of powers and estates in relation to which the law practice or an associate of the practice 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.
- (2) Subsection (1) does not apply if the law practice or associate is also required to act jointly with 1 or more people who are not associates of the practice.
- (3) The register of powers and estates must record—
- (a) the name and address of the donor and date of each power; and
 - (b) the name and date of death of the deceased in relation to each estate of which the law practice of the associate is executor or administrator.

62 Withdrawing trust money for legal costs—Act, s 229 (1) (b)

- (1) This section prescribes, for the Act, section 229 (1) (b) the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn as set out in subsection (3) or (4).
- (3) The law practice may withdraw the trust money—
- (a) if—
 - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or

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

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

63 Keeping of trust records—Act, s 232 (2) (a)

- (1) This section has effect for the Act, section 232 (Keeping trust records).
- (2) Trust records must be kept for a period of 7 years after—
- (a) for a trust record mentioned in the Act, section 210 (2), definition of *trust records*, paragraphs (a) to (m)—the only or the last transaction entry in the trust record is made; or
 - (b) for any other trust record—finalisation of the matter to which the trust record relates.
- (3) This section does not apply to a written direction mentioned in the Act, section 222 (2) (a) (Certain trust money to be deposited in general trust account) or section 224 (1) (Controlled money).

64 Keeping other records and information

- (1) A record kept under section 34 (Chronological record of information to be made) is, so far as it relates to particular information, to be kept by the law practice for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this part to be kept by a law practice is to be kept for a period of 7 years after finalisation of the matter to which the record or information relates.
- (3) 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.

65 **Statements about receipt or holding of trust money**

- (1) The licensing body may, by notice given under this section, require a law practice to give the licensing body a statement—
 - (a) stating whether or not the practice has during a stated period received or held trust money; and
 - (b) if it has received or held trust money during the period, stating to which of the following categories the trust money belongs:
 - (i) general trust money (other than that mentioned in subparagraphs (ii) to (iv));
 - (ii) controlled money;
 - (iii) transit money;
 - (iv) money subject to a power.
- (2) A notice may be given to apply in relation to 1 or more periods (whether occurring annually or otherwise), and may be withdrawn or amended by a further notice.
- (3) A notice may state the time by which or the period during which the requirement must be complied with.
- (4) A notice is given to—
 - (a) a particular law practice by sending the notice by post to the practice; or
 - (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.
- (5) A law practice—
 - (a) must comply with a requirement imposed on it under this section and must do so by the time or during the period stated in the notice for compliance; and

- (b) must not include in the statement any information that is false or misleading in a material particular.

Division 6.7 External examinations

66 Appointment of external examiners—Act, s 241 (1)

- (1) This section applies to a law practice that receives or holds trust money or controlled money in a trust accounting year.
- (2) The law practice must—
 - (a) appoint an external examiner not later than 8 April in the trust accounting year; and
 - (b) give the law society council written notice each time it appoints an external examiner.
- (3) A notice under subsection (2) (b) must be given to the law society council not later than 1 month after the appointment of the external examiner.
- (4) In this section:
trust accounting year—see section 69 (1).

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.

68 Carrying out examination—Act, s 246

- (1) An external examination of trust records must be carried out in accordance with this section.

- (2) An external examiner's report on an examination must include the information, and be given in the way, approved by the law society council.

Note If a form is approved by the law society council under the Act, s 583 for this provision, the form must be used.

Division 6.8 Statutory deposits

69 Interpretation—div 6.8

- (1) In this division:
- trust accounting year* means a period of 12 months commencing on 1 April.
- (2) In this division, a reference to the *notional amount* standing to the credit of the general trust account of a law practice on the day immediately before the date fixed for section 71 (1) (Law practice to deposit part of trust money with law society) is a reference to the lowest amount that stood to the credit of the account at any time during the 6 months immediately before that date.
- (3) In this division, a reference to the *notional amount* standing to the credit of the general trust account of a law practice on the last day of a year is a reference to the lowest amount that stood to the credit of the account at any time during that year.
- (4) For the period beginning on the date fixed for section 71 (1) and ending on the next 31 March, this division applies as if that period were a year.
- (5) If a law practice keeps more than 1 general trust account in accordance with this division, a reference in this division to the general trust account kept by the law practice is a reference to each general trust account kept by the law practice.

- (6) If a law practice has—
- (a) in the 6 months immediately before the date fixed for section 71 (1); or
 - (b) in any year;
- kept 2 or more general trust accounts, the law practice is taken, for this division, to have kept, during the period for which the practice kept the general trust accounts, only 1 general trust account and the amount that stood, on any day during that period, to the credit of the general trust account that the practice is to be taken to have kept is taken, for this division, to be the total of the amounts that stood to the credit of the bank accounts that were in fact kept by the law practice on that day.
- (7) For this division, the amount standing to the credit of a general trust account on a day is the amount shown by the bank statement in relation to the account as standing to the credit of the account on that day.
- (8) For this division, the amount of any trust money paid into the general trust account kept by a law practice and subsequently paid by the practice into a special trust account in accordance with the instructions of the client from whom, or on whose behalf, the money was received must not be taken into account in working out the lowest amount that stood to the credit of that general trust account at any time.

70 Statutory interest account—Act, s 253 (2) (a) and (b)

- (1) The law society must open and keep an account at an ADI in the ACT under the title of the ‘statutory interest account’.

- (2) The law society must deposit in the account—
 - (a) the interest received from money deposited with the society by a law practice under this part; and
 - (b) any other money required by law to be deposited in the account.
- (3) The law society must operate the account for the Act, section 253 (Statutory Deposits) and this division.

71 Law practice to deposit part of trust money with law society

- (1) If the notional amount standing to the credit of the general trust account kept by a law practice on the day immediately before a date fixed by the Attorney-General under subsection (5) is not less than \$3 000, the law practice must deposit, within 1 month after that day, with the law society an amount that is equal to $\frac{2}{3}$ of that notional amount.
- (2) If, on the last day of a trust accounting year—
 - (a) the notional amount standing to the credit of the general trust account kept by a law practice is not less than \$3 000; and
 - (b) no trust money of the law practice is on deposit with the law society;the law practice must deposit, within 3 months after that day, with the law society an amount equal to $\frac{2}{3}$ of the notional amount referred to in paragraph (a).
- (3) If, on the last day of a trust accounting year —
 - (a) trust money of a law practice is on deposit with the law society; and

- (b) the amount of the money is less than $\frac{2}{3}$ of the total of the amount of the money and the notional amount standing on that day to the credit of the general trust account kept by the law practice;

the law practice must deposit, within 3 months after that day, with the law society the amount that will bring the amount of the money on deposit with the law society to an amount equal to $\frac{2}{3}$ of the total mentioned in paragraph (b).

- (4) Subsections (2) and (3) do not apply in relation to a trust accounting year that ends before the day fixed for subsection (1).
- (5) The Attorney-General may fix a day for subsection (1).
- (6) The fixing of a day under subsection (5) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

72 Repayment of deposits

- (1) Money on deposit with the law society in a statutory deposit account is repayable on demand to the law practice that deposited the money.
- (2) However, a law practice must not make a demand for repayment of money under subsection (1) unless—
- (a) the repayment of the money is required to enable necessary payments to be made out of the general trust account of the practice; and
- (b) the law practice has reasonable grounds for believing that the payment is to be made within 7 days after the day when the demand is made.
- (3) If, on the last day of a trust accounting year—
- (a) trust money of a law practice is on deposit with the law society; and

- (b) the amount of the money exceeds $\frac{2}{3}$ of the total of the amount of the money and the notional amount standing on that day to the credit of the general trust account kept by the law practice;

the law practice is entitled to be repaid an amount equal to the amount of the excess.

- (4) If, on the last day of a trust accounting year—

- (a) trust money of a law practice is on deposit with the law society; and
- (b) the total of the amount of the money and the notional amount standing to the credit of the general trust account kept by the law practice on that day is less than \$3 000;

the law practice is entitled to have repaid to the law practice the amount that the law practice has on deposit.

73 Obligation to deposit subject to availability of trust funds

- (1) If—

- (a) a law practice has not, before the end of a period within which the law practice is required to make a deposit under this division, made the deposit; and
- (b) on the last day of the period, the money standing to the credit of the law practice's general trust account is not sufficient to enable the deposit to be made;

the period is extended until there is standing to the credit of the general trust account of the law practice on a subsequent quarter day in the trust accounting year in which the end of that period happens an amount sufficient to enable the deposit to be made.

- (2) In this section:

quarter day means 30 September, 31 December, 31 March or 30 June.

74 Amendment of notional amount by law society

- (1) If the law society is during a trust accounting year satisfied, on an application made to it by a law practice that is under an obligation to deposit, or has on deposit, with the law society money under this division, that, having regard to the amount of trust money standing, on the day the application is made, to the credit of the general trust account of the practice, it is appropriate that the notional amount standing to the credit of the general trust account of the law practice on the last day of the previous trust accounting year should be reduced, the law society may decide that that notional amount be reduced to an amount stated in the decision.
- (2) If the law society makes a decision mentioned in subsection (1) in relation to a law practice—
 - (a) this division, in its application to the law practice, applies, during the remainder of the trust accounting year in which the decision is made, as if the amount stated in the decision had been the notional amount standing to the credit of the general trust account of the law practice on the last day of the previous trust accounting year; and
 - (b) if, on the day when the decision is made, the law practice has on deposit with the law society money exceeding the amount that the practice would have been required to have on deposit with the law society if the amount stated in the decision had been the notional amount standing to the credit of the general trust account of the practice on the last day of the previous year—the practice is entitled to be repaid an amount equal to the amount of the excess.

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

- (1) The law society must open and keep an account at an ADI in the ACT under the title of the ‘statutory deposit account’.

- (2) The law society must deposit in the account—
 - (a) the money deposited with the society by a law practice under this division; and
 - (b) any other money required by law to be deposited in the account.
- (3) The law society must operate the account for the Act, section 253 (Statutory Deposits) and this division.

76 Arrangements relating to statutory interest account

- (1) The law society may enter into an arrangement with an ADI in the ACT for payment by the ADI to the law society of amounts in relation to money held in any trust account kept by a law practice at the ADI.
- (2) The law society must credit an amount paid to it under an arrangement under subsection (1) to a statutory interest account.

**77 Use of money in statutory interest account—
Act, s 253 (2) (c)**

- (1) This section applies if the bar council asks the law society to ask the Attorney-General to consent to the use (the *proposed use*) of money in the statutory interest account for a purpose stated by the bar council.
- (2) The bar council must give the law society reasonable written notice of the request, including details of—
 - (a) the proposed use; and
 - (b) the proposed amount; and
 - (c) the proposed purpose.

- (3) The law society—
 - (a) must tell the Attorney-General about the bar council's request; and
 - (b) may tell the Attorney-General its view on the proposed use.
- (4) If the law society tells the Attorney-General its view on the proposed use, it must, at the same time, also tell the bar council.
- (5) The bar council may also tell the Attorney-General its view on the proposed use.
- (6) The law society or the bar association may use money in the statutory interest account in accordance with the Attorney-General's written consent.

78 Audit of deposits etc

- (1) The law society must keep records of each of the following:
 - (a) money deposited with it under this division;
 - (b) interest received by it from the investment of the money;
 - (c) amounts credited to an account under section 76 (2) (Arrangements relating to statutory interest account);
 - (d) payments made by it out of the statutory interest account;
 - (e) the use of money standing to the credit of a statutory interest account.
- (2) The law society must have the records audited annually by a registered company auditor within the meaning of the Corporations Act.
- (3) The law society must give a copy of each audit under this section to the Attorney-General.

Division 6.9 Miscellaneous

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

- (1) A law practice that holds trust money must give the licensing body at least 14 days written notice of its intention—
 - (a) to stop existing as a law practice; or
 - (b) to stop engaging in legal practice in the ACT; or
 - (c) to stop practising in a way that involves receiving trust money.
- (2) Not later than 14 days after the day it stops holding trust money, a law practice that holds trust money must give the licensing body—
 - (a) written notice that it has stopped holding trust money; and
 - (b) if the practice has not given a notice under subsection (1) within the previous 28 days, a notice that complies with that subsection.
- (3) A notice under this section must include particulars sufficient to identify—
 - (a) a law practice's general trust accounts and controlled money accounts; and
 - (b) trust money controlled by the practice (or by an associate) under a power; and
 - (c) trust money invested by the practice.
- (4) In this section:

law practice includes a former law practice and the people who were principals of a law practice immediately before the law practice stopped existing as a law practice or engaging in legal practice in the ACT.

80 Disclosure of accounts used to hold money entrusted to legal practitioners—Act, s 258 (1)

- (1) A law practice must give the licensing body the following details for each account that is kept at an ADI by the law practice in which the money entrusted to the law practice, or a legal practitioner associate of the law practice, is held:
- (a) the name of the ADI and its BSB number;
 - (b) the name and number of the account;
 - (c) the name of each person who is authorised to operate on the account;
 - (d) for each amount of money entrusted to the practice or associate—
 - (i) the name of the person for whom the money is entrusted; and
 - (ii) the purposes for which the money is entrusted; and
 - (iii) the date on which, and the way in which, the money is deposited in the account; and
 - (iv) the date on which, and the way in which, the money is withdrawn from the account.
- (2) The details must be given to the licensing body at the times and in the way the licensing body requires.

81 Exemptions

The licensing body may—

- (a) exempt a law practice from complying with any of the provisions of this part, subject to any conditions that may be imposed by the licensing body; and

- (b) at any time, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

Part 7 Costs disclosure and assessment

82 When does a matter have a substantial connection with the ACT—Act, s 267

A matter involving a client of a law practice has a substantial connection with the ACT in any of the following circumstances:

- (a) the client is an individual and lives in the ACT;
- (b) the client is a body corporate and—
 - (i) the client carries on its business activities principally in the ACT; or
 - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in the ACT;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in the ACT;
- (d) the legal services provided or to be provided relate to the ACT, including, for example, legal services provided or to be provided for or in connection with—
 - (i) the conveyance or transfer of real property located in the ACT; or
 - (ii) court proceedings in the ACT.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

83 Exceptions to disclosure requirement—Act, s 272 (1) (f)

- (1) The following circumstances are circumstances in which disclosure under the Act, section 269 (Disclosure of costs to clients) or section 270 (1) (Disclosure if another law practice is to be retained) is not required to be made:
- (a) the client is an overseas-registered foreign lawyer or a foreign law practice;
 - (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or a Territory;
 - (c) the client is a legally assisted person under the *Legal Aid Act 1977* in relation to the matter to which the disclosure relates.
- (2) In this section:

foreign law practice—see the Act, section 152.

legally assisted person—see the *Legal Aid Act 1977*, dictionary.

overseas-registered foreign lawyer—see the Act, section 152.

Part 8 Professional indemnity insurance

84 Professional indemnity insurance for insurable legal practitioners—Act, s 311 (2) (c)

- (1) The licensing body is entitled to accept as evidence that there will be an approved indemnity insurance policy in force in relation to an insurable barrister a report from the bar council in relation to the barrister stating that the bar council is satisfied that the barrister will be covered by an approved policy of indemnity insurance during the currency of the barrister's practising certificate.
- (2) In this section:
insurable barrister—see the Act, section 308.

Part 9 Fidelity cover

85 Caps on payments from fidelity fund—Act, s 348

The maximum amount that may be paid from the fidelity fund in relation to a claim is—

- (a) 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—\$50 000; and
- (b) for any other claim—\$200 000.

86 Protocols—Act, s 354

- (1) The law society council may enter into a protocol with a corresponding authority for or in relation to any of the following matters:
 - (a) the forwarding of claims, or copies of claims, under the Act, section 355 (Forwarding of claims) and corresponding laws;
 - (b) the making and acceptance of requests to act as agent under the Act, part 3.4 (Fidelity cover) and corresponding laws;
 - (c) the processing or investigation of claims or aspects of claims as agent under the Act, part 3.4 and corresponding laws.
- (2) A protocol may be amended, revoked or replaced by agreement of the parties to the protocol.

87 Notice of authority for interstate legal practitioner to withdraw from local trust account—Act, s 364 (2)

- (1) This section applies to an interstate legal practitioner who (whether alone or with a cosignatory) becomes authorised to withdraw money from a local trust account of a law practice.

- (2) The practitioner must give the law society council written notice in accordance with subsection (3) of the authorisation not later than 7 days after the day the practitioner becomes authorised.
- (3) The notice must include the following information:
 - (a) the practitioner's name;
 - (b) the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted;
 - (c) the practitioner's principal business address;
 - (d) details of the local trust account, including the following:
 - (i) the name of the law practice operating the account;
 - (ii) the practice's principal business address;
 - (iii) the name of the ADI with which the account is held;
 - (iv) the names of any other signatories to the account;
 - (e) the day when the practitioner became authorised to withdraw money from the trust account.
- (4) The practitioner must tell the law society council in writing of any change to the information mentioned in subsection (3) not later than 7 days after the change happens.

88 Contribution by interstate legal practitioner to fidelity fund—Act, s 364 (2)

- (1) This section applies to an interstate legal practitioner who gives the law society council notice under section 87.
- (2) The law society council may, in writing, require the practitioner to pay a contribution to the fidelity fund.
- (3) The amount payable under subsection (2) for a period must not be more than the amount that would be payable to the fidelity fund for that period by the holder of a local unrestricted practising certificate.

Part 10 Complaints and discipline

89 Register of disciplinary action—Act, s 448 (2) (e)

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 must be included in the register of disciplinary action.

Part 11 Consequential amendments

90 Legal Profession Regulation 2006—repeal

The *Legal Profession Regulation 2006* (SL2006-37) is repealed.

91 Legal Profession Regulation 2006, part 10

relocate to this regulation as part 20, sections 100 to 110

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- ACT
- ADI
- Corporations Act
- entity
- under.

Note 3 Terms used in this regulation have the same meaning that they have in the *Legal Profession Act 2006* (see Legislation Act, s 148). For example, the following terms are defined in the *Legal Profession Act 2006*, dict:

- Australian-registered foreign lawyer
- government lawyer
- interstate legal practitioner (see s 8)
- jurisdiction
- law firm
- law practice
- legal services
- licensing body
- local legal practitioner (see s 8)
- locally-registered foreign lawyer
- local practising certificate
- register of disciplinary action (see s 448)
- relevant council
- trust money
- unrestricted practising certificate.

in-house lawyer—see the Act, section 33 (3).

named month means 1 of the 12 named months of the year starting with January.

notional amount, for division 6.8 (Statutory deposits)—see section 69.

trust accounting year, for division 6.8 (Statutory deposits)—see section 69.

Endnotes

1 Notification

Notified under the Legislation Act on 28 September 2007.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
