

National Legal Profession Reform Project

Legal Profession National Rules
14 May 2010
Consultation Draft



Legal Profession National Rules
under the
Legal Profession National Law
CONSULTATION DRAFT

14 May 2010

The overall structure is as follows:

<p>Chapter 1 Preliminary</p> <p>Chapter 2 Unqualified legal practice Part 1 Preliminary Part 2 Titles Part 3 Unqualified persons</p> <p>Chapter 3 Admission Part 1 Preliminary Part 2 Academic qualifications required for admission Part 3 Practical legal requirements Part 4 Prerequisites for admission</p> <p>Chapter 4 Australian practising certificates Part 1 Preliminary Part 2 Grant and renewal of Australian practising certificates Part 3 Variation, suspension or cancellation Part 4 Show cause procedure</p> <p>Chapter 5 Foreign lawyers Part 1 Preliminary Part 2 Registration of foreign lawyers Part 3 Variation, suspension or cancellation Part 4 Show cause procedure</p> <p>Chapter 6 Business structures Part 1 Preliminary Part 2 Incorporated and unincorporated legal practices Part 3 Disqualifications and prohibitions</p> <p>Chapter 7 Trust money and trust accounts Part 1 Preliminary Part 2 Trust money and trust accounts Part 3 External examinations Part 4 Controlled money</p>	<p>Chapter 8 Legal costs Part 1 Preliminary Part 2 Conditional costs agreements Part 3 Bills for costs</p> <p>Chapter 9 Professional indemnity insurance Part 1 Preliminary Part 2 Professional indemnity insurance</p> <p>Chapter 10 Fidelity cover Part 1 Preliminary Part 2 Defaults and claims</p> <p>Chapter 11 Continuing professional development Part 1 Preliminary Part 2 CPD activity</p> <p>Chapter 12 External intervention Part 1 Preliminary Part 2 Appointment of supervisors Part 3 Appointment of managers Part 4 Appointment of receivers Part 5 General</p> <p>Chapter 13 Australian Legal Profession Register Part 1 Preliminary Part 2 Details to be included in the Register</p> <p>Schedules 1 Synopsis of areas of knowledge 2 List of tertiary academic courses recognised by the Board 3 Competency standards for entry level lawyers 4 List of courses of study recognised by the Board</p>
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LEGAL PROFESSION NATIONAL RULES

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Legal Profession National Rules

Chapter 1 Preliminary

1.1 Citation

These Rules may be cited as the Legal Profession National Rules.

1.2 Commencement

- (1) Chapters # commence on [tbd].
- (2) The remaining provisions of these Rules commence on [tbd]

1.3 Authorising provision

These Rules are made under Part 9.1 of the Legal Profession National Law.

Chapter 2 Unqualified legal practice

Part 1 Preliminary

2.1.1 Objectives

The objectives of this Chapter are:

- (a) to provide for the entitlement to take or use a title;
- (b) to provide for exemptions from the prohibition of persons without certain qualifications from engaging in legal practice.

2.1.2 Authorising provision

The rules in this Chapter are made under Part 2.1 of the Legal Profession National Law.

Part 2 Titles

2.2.1 Entitlement to certain titles

For the purposes of section 2.1.5 of the Legal Profession National Law, a person listed in column 3 of an item in the Table below is entitled to take or use the title specified in column 2 of that item in the circumstances specified in column 4 of that item.

1 Item	2 Title	3 Person	4 Circumstances
1	Legal practitioner	Australian legal practitioner	All circumstances
2	Barrister and solicitor, solicitor and barrister, solicitor, attorney	Australian legal practitioner	When the Australian legal practitioner holds an Australian practising certificate that entitles him or her to engage in legal practice in the manner of a solicitor or a solicitor and barrister
3	Barrister	Australian legal practitioner	When the Australian legal practitioner holds an Australian practising certificate that entitles him or her to engage in legal practice only in the manner of a barrister or, in a jurisdiction without such a condition, when the Australian legal practitioner holds an Australian practising certificate that entitles him or her to engage in legal practice in the manner of a solicitor and barrister, and the practitioner engages in legal practice in the manner of a barrister
4	Counsel	Australian legal practitioner	All circumstances
5	Senior Counsel	Australian lawyer	When the Australian lawyer currently

1 Item	2 Title	3 Person	4 Circumstances
	or SC		holds the status of Senior Counsel as recognised by the High Court or a Supreme Court of any jurisdiction
6	Queen's Counsel or QC, King's Counsel or KC, Her Majesty's Counsel, His Majesty's Counsel	Australian lawyer	When the Australian lawyer currently holds the appropriate status, as conferred by the Crown in any capacity or as recognised by the High Court or a Supreme Court of any jurisdiction
7	Attorney	Australian-registered foreign lawyer	When entitled to use the name, title or description by or under a law
8	Attorney	Patent attorney	When using the expression "patent attorney"
9	Attorney	Donee of power of attorney	When indicating that the donee holds or is acting under a power of attorney
10	Attorney	Attorney-General of any jurisdiction, the Commonwealth or a foreign country	All circumstances
11	Solicitor	Solicitor-General of any jurisdiction, the Commonwealth or a foreign country	All circumstances
12	Lawyer	Australian Lawyer	All circumstances
13	Lawyer	Australian-registered foreign lawyer	All circumstances

Part 3 Unqualified persons

2.3.1 Exemption from prohibition on engaging in legal practice

The following persons are exempt from the operation of section 2.1.3 (1) of the Legal Profession National Law:

- (a) a person carrying out conveyancing work in accordance with a licence in force under relevant State or Territory legislation;
- (b) a land agent performing work in respect of instruments he or she is entitled to draw, fill up or prepare and to charge for, under relevant State or Territory legislation;
- (c) an officer or employee in the service of the Crown (including the Public Service) drawing instruments in the course of his or her duty;

- (d) a public trustee (however named) or a company performing trustee work on behalf of the government in the course of preparing a will or carrying out any other activities involving the administration of trusts, the estates of the living or deceased persons, or the affairs of living persons.

Chapter 3 Admission

Part 1 Preliminary

3.1.1 Objectives

The objectives of this Chapter are to provide for:

- (a) the academic qualifications required for admission to the legal profession;
- (b) the practical legal training required for admission;
- (c) the assessment of suitability for admission.

3.1.2 Authorising provision

The rules in this Chapter are made under Part 2.2 of the Legal Profession National Law.

3.1.3 Definitions

In this Chapter:

approved tertiary academic course means a course of study listed in Schedule 2 or approved under rule 3.2.2.

Part 2 Academic qualifications required for admission

3.2.1 Academic qualification

For the purposes of section 2.2.3 of the Legal Profession National Law, the academic qualification for admission is successful completion of an approved tertiary academic course in Australia.

3.2.2 Approval of tertiary academic courses

- (1) An academic institution may apply to the Board for approval of a tertiary academic course provided, or to be provided, by the institution.
- (2) The Board may approve an application under subrule (1) if the tertiary academic course:
 - (a) includes the equivalent of at least 3 years of full time study in law; and
 - (b) requires the student to acquire and demonstrate appropriate understanding of, and competence in, each of the elements of the areas of knowledge set out in Schedule 1.

Part 3 Practical legal training requirements

3.3.1 Practical legal training

- (1) For the purposes of section 2.2.3 of the Legal Profession National Law, the

practical legal training requirement for admission is acquiring and demonstrating an appropriate understanding of, and competence in, each element of the skills, values and practice areas set out in Schedule 3.

- (2) A person satisfies the practical legal training requirement by successfully completing either:
 - (a) a practical legal training course listed in Schedule 4 or approved by the Board under rule 3.3.2; or
 - (b) practical legal training, for a period of not less than 12 months under supervision in a workplace, in accordance with a plan approved by the Board.

3.3.2 Approval of providers of practical legal training courses

- (1) A person who provides, or proposes to provide, a practical legal training course, may apply to the Board for approval as a provider for the purposes of these Rules.
- (2) The Board may approve an application by a person under subrule (1) if it is satisfied that the person provides, or will provide, a practical legal training course that includes each element of the skills, values and practice areas set out in Schedule 3.

Part 4 Prerequisites for admission

3.4.1 Board to consider certain matters

For the purposes of section 2.2.3 of the Legal Profession National Law, the matters to which the Board must have regard, before determining whether a person is a fit and proper person to be admitted are as follows:

- (a) whether the person is currently a fit and proper person;
- (b) whether the person is, or has been, an insolvent under administration;
- (c) whether the person has been convicted or found guilty of an offence in Australia or a foreign country, and if so:
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed;
- (d) whether the person engaged in legal practice in Australia:
 - (i) when not permitted to do so under a law or previous law of a State or Territory; or
 - (ii) if admitted, in contravention of a condition to which the admission was subject; or

- (iii) if holding an Australian practising certificate, in contravention of a condition to which the certificate was subject or while the certificate was suspended;
- (e) whether the person has engaged in legal practice in a foreign country:
 - (i) when not permitted by or under a law of that country to do so; or
 - (ii) if permitted to do so, in contravention of a condition to which the permission was subject;
- (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:
 - (i) the Legal Profession National Law, or a previous law of a jurisdiction that corresponds to that Law; or
 - (ii) a corresponding foreign law;
- (g) whether the person is, or has been, the subject of disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country;
- (h) whether the person's name has been removed from:
 - (i) a roll of Australian lawyers, however described or expressed, in any jurisdiction; or
 - (ii) a foreign roll of practitioners;
- (i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
- (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
- (k) whether, under the Legal Profession National Law, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is, or has been, appointed in relation to any legal practice engaged in by the person;
- (l) whether the person is, or has been, subject to an order under the Legal Profession National Law, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
- (m) whether the person is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner.

3.4.2 Suitability reports

For the purposes of rule 3.4.1, the Board may require an applicant for admission:

- (a) to provide either or both of the following:

- (i) a report from a Commissioner of Police as to whether the applicant has been convicted or found guilty of an offence in Australia;
 - (ii) a report by a registered medical practitioner in Australia as to the health of the applicant; and
- (b) if the applicant is:
- (i) a foreign lawyer; or
 - (ii) a person who obtained the whole or part of his or her qualifications, skills or experience overseas;
- and it is appropriate to do so, to demonstrate his or her proficiency in English.

3.4.3 Compliance certificate

- (1) An application to the Board for a compliance certificate in accordance with section 2.2.4 of Legal Profession National Law must include:
 - (a) details of the applicant's eligibility under Parts 2 and 3; and
 - (b) a response to each of the matters set out in rule 3.4.1; and
 - (c) details of all matters that are reasonably relevant to a matter referred to in rule 3.4.1.
- (2) The Board may determine that an application under subrule (1) must be accompanied by a fee.
- (3) The Board must give the applicant written notice of its decision on the application.

Chapter 4 Australian practising certificates

Part 1 Preliminary

4.1.1 Objectives

The objectives of this Chapter are to provide for:

- (a) prerequisites for the grant or renewal of Australian practising certificates;
- (b) discretionary conditions on Australian practising certificates;
- (c) administrative matters relating to Australian practising certificates.

4.1.2 Authorising provision

The rules in this Chapter are made under Part 3.3 of the Legal Profession National Law.

Part 2 Grant and renewal of Australian practising certificates

4.2.1 Application for grant or renewal of Australian practising certificate

- (1) An application by an Australian lawyer for the grant or renewal of an Australian practising certificate:
 - (a) must state the jurisdiction that he or she reasonably expects will be his or her principal place of legal practice;
 - (b) if a show cause event within the meaning of Division 3 of Part 3.5 of the Legal Profession National Law has occurred at any time in relation to the applicant and section 3.5.9 of that Law requires a statement as part of the application—must include such a statement;
 - (c) must address each of the matters set out in rule 4.2.2 (1) (a)–(g);
 - (d) must address any other matter the Board considers appropriate.
- (2) An application under subrule (1) must be accompanied by the fee applicable to the application.

4.2.2 Grant and renewal of Australian practising certificates

- (1) In determining whether an applicant is a fit and proper person to hold an Australian practising certificate, the Board may have regard to the matters specified in Chapter 3 and to any of the following:
 - (a) whether the applicant has obtained a previous Australian practising certificate under the Legal Profession National Law or a corresponding previous law of a jurisdiction because of incorrect or misleading information;

- (b) whether the applicant has contravened a condition of a previous Australian practising certificate under the Legal Profession National Law or a corresponding previous law of a jurisdiction;
 - (c) whether the applicant has contravened the Legal Profession National Law or these Rules or a corresponding previous law of a jurisdiction;
 - (d) whether the applicant has contravened an order of a disciplinary body or an order of a court or tribunal relating to an order of a disciplinary body;
 - (e) whether the applicant has failed at any time to pay a required contribution or levy to the fidelity fund of a jurisdiction;
 - (f) whether the applicant has failed to comply with a requirement under the Legal Profession National Law or these Rules or a corresponding previous law in relation to professional indemnity insurance;
 - (g) whether the applicant has failed to pay any costs or expenses for which the applicant was liable under the Legal Profession National Law or these Rules or a corresponding previous law of a jurisdiction;
 - (h) any other matter that the Board considers relevant.
- (2) In determining whether an applicant has or will have professional indemnity insurance in accordance with Chapter 9, the Board may have regard to:
- (a) evidence in the form of written advice from an insurer or insurance broker to the effect that an insurer has agreed to issue a policy of professional indemnity insurance; or
 - (b) evidence that the premium for a policy of professional indemnity insurance in accordance with Chapter 9 has been received and accepted by the insurer for the purposes of the issue of the policy.

4.2.3 Discretionary conditions on Australian practising certificates

- (1) For the purposes of section 3.3.11 of the Legal Profession National Law, the discretionary conditions that the Board may impose on an Australian practising certificate are any one or more of the following:
- (a) a condition:
 - (i) as to the type of legal practice in which the holder may engage; or
 - (ii) as to the type of legal practice in which the holder may not engage;
 - (b) subject to subrule (2), a condition that the holder undertake and complete one or more of the following:
 - (i) continuing legal education;
 - (ii) specific legal education or training;
 - (iii) a specified period of supervised legal practice;

- (c) a condition restricting the holder to particular arrangements concerning employment or supervision;
 - (d) a condition requiring the holder to undergo counselling or medical treatment or to act in accordance with medical advice given to the holder;
 - (e) a condition requiring the holder to use the services of an accountant or other financial specialist in connection with his or her legal practice;
 - (f) a condition requiring the holder to provide the Board or a specified body with evidence as to:
 - (i) any outstanding tax obligations of the holder; and
 - (ii) provision made by the holder to satisfy any such outstanding obligations;
 - (g) in relation to a holder who is authorised to engage in legal practice only as a barrister, a condition requiring the holder:
 - (i) not to engage in legal practice in partnership with another person;
 - (ii) not to engage in legal practice as an employee of another person;
 - (iii) not to hold office as a principal or director of a business, whether corporate or unincorporated, otherwise than as a sole practitioner;
 - (h) a condition agreed by the holder.
- (2) The Board must not impose a condition referred to in subrule (1) (b) unless the Board is satisfied that, having regard to the holder's academic qualifications, legal training or experience in legal practice or conduct, it is reasonable to impose the condition.

4.2.4 Duration of Australian practising certificate

- (1) An Australian practising certificate granted or renewed by the Board is in force:
- (a) if granted, from the commencement date specified in it until the following 30 June; or
 - (b) if renewed, from 1 July in the year for which it is renewed until the following 30 June;
- unless earlier suspended, cancelled or surrendered.
- (2) If the holder of an Australian practising certificate makes an application to the Board for a new Australian practising certificate before the expiry of the holder's current certificate, the current certificate continues in force, subject to the Legal Profession National Law, until:
- (a) the Board grants, or refuses to grant, a new Australian practising certificate; or

- (b) the applicant withdraws the application;

whichever first occurs.

Part 3 Variation, suspension or cancellation

4.3.1 Board to give notice before varying, suspending or cancelling certificate

If the Board considers that an Australian practising certificate should be varied, suspended or cancelled on a ground specified in Part 3.5 of the Legal Profession National Law, the Board must give the holder notice in writing:

- (a) stating that it proposes to vary, suspend or cancel the practising certificate (as the case requires) and the ground or grounds for the proposed action; and
- (b) if it proposes to vary or suspend the certificate, stating the proposed variation or period of suspension, as the cases requires; and
- (c) inviting the holder to respond in writing to the Board within a specified period (not being less than 7 nor more than 28 days after the notice is given) as to why the proposed action should not be taken.

4.3.2 Variation, suspension or cancellation

If the Board:

- (a) has given notice under rule 4.3.1 to the holder of an Australian practising certificate of its proposed action; and
- (b) the time specified in the notice for a response from the holder has expired;

the Board, after considering any response made by the holder, by notice in writing given to the holder:

- (c) may take the proposed action specified in the notice; or
- (d) if the proposed action was cancellation, may:
 - (i) vary the certificate as specified in the notice; or
 - (ii) suspend the certificate for a period specified in the notice; or
- (e) if the proposed action was suspension of the certificate, may vary the certificate as specified in the notice.

4.3.3 Copy of amended Australian practising certificate to be provided

If the Board varies an Australian practising certificate in accordance with Part 3.5 of the Legal Profession National Law, the Board may give the holder an amended Australian practising certificate.

Part 4 Show cause procedure

4.4.1 Notice by holder of Australian practising certificate of show cause events

- (1) For the purposes of section 3.5.10 of the Legal Profession National Law, the holder of an Australian practising certificate must give to the Board:
 - (a) the notice in writing within 7 days; and
 - (b) the statement within 28 days;after the show cause event has occurred.
- (2) For the purposes of section 3.5.13 of the Legal Profession National Law, the holder of an Australian practising certificate must provide the statement to the Board within 28 days after the designated show cause event has occurred.

Chapter 5 Foreign lawyers

Part 1 Preliminary

5.1.1 Objectives

The objectives of this Chapter are to provide for:

- (a) requirements for the application for, and granting and renewal of, a registration certificate as an Australian-registered foreign lawyer;
- (b) discretionary conditions on registration certificates of Australian-registered foreign lawyers;
- (c) administrative matters relating to Australian-registered foreign lawyers.

5.1.2 Authorising provision

The rules in this Chapter are made under Part 3.4 of the Legal Profession National Law.

Part 2 Registration of foreign lawyers

5.2.1 Application for Australian registration certificate

- (1) An application by a foreign lawyer for the grant or renewal of an Australian registration certificate under Part 3.4.5 of Chapter 3 of the Legal Profession National Law:
 - (a) must state the jurisdiction that he or she reasonably expects will be his or her principal place of legal practice;
 - (b) if a show cause event within the meaning of Division 3 of Part 3.5 of the Legal Profession National Law has occurred at any time in relation to the applicant and section 3.5.9 of that Law requires a statement as part of the application—must include such a statement;
 - (c) must address each of the matters set out in section 3.4.5 (3) of the Legal Profession National Law;
 - (d) must address any other matter the Board considers appropriate.
- (2) A fee for an application for the grant or renewal of an Australian registration certificate must not exceed the maximum fee payable by an Australian lawyer for an Australian practising certificate.
- (3) The Board may require an applicant for the grant or renewal of an Australian registration certificate to provide evidence that verifies the accuracy of the information set out in the application.
- (4) The Board may require an applicant for the grant or renewal of an Australian registration certificate to pay the reasonable costs and expenses incurred by the

Board in making enquiries relating to the applicant's application.

5.2.2 Discretionary conditions on Australian registration certificate

For the purposes of section 3.4.10 of the Legal Profession National Law, the discretionary conditions that the Board may impose on an Australian registration certificate are any one or more of the following:

- (a) a condition:
 - (i) as to the type of legal practice in which the holder may engage; or
 - (ii) as to the type of legal practice in which the holder may not engage;
- (b) any other condition that may be imposed on an Australian practising certificate under the Legal Profession National Law;
- (c) a condition agreed by the holder.

5.2.3 Duration of Australian registration certificate

- (1) The registration certificate of an Australian-registered foreign lawyer under these Rules is in force from the commencement date specified in the certificate until the following 30 June, unless earlier suspended or cancelled.
- (2) If an Australian-registered foreign lawyer makes an application to the Board for the renewal of an Australian registration certificate before the expiry of the current certificate, the current certificate continues in force, subject to the Legal Profession National Law, until:
 - (a) the Board renews, or refuses to renew, the Australian registration certificate; or
 - (b) the applicant withdraws the application;whichever first occurs.
- (3) The renewal of an Australian registration certificate under this rule takes effect as from 1 July next after the date on which the application for renewal is made.

Part 3 Variation, suspension or cancellation

5.3.1 Board to give notice before varying, suspending or cancelling certificate

If the Board considers that an Australian registration certificate should be varied, suspended or cancelled on a ground specified in Part 3.5 of the Legal Profession National Law, the Board must give the holder notice in writing:

- (a) stating that it proposes to vary, suspend or cancel the registration certificate (as the case requires) and the ground or grounds for the proposed action; and
- (b) if it proposes to vary or suspend the certificate, stating the proposed

variation or period of suspension, as the cases requires; and

- (c) inviting the holder to respond in writing to the Board within a specified period (not being less than 7 nor more than 28 days after the notice is given) as to why the proposed action should not be taken.

5.3.2 Variation, suspension or cancellation

If the Board:

- (a) has given notice under rule 5.3.1 to the holder of an Australian registration certificate of its proposed action; and
- (b) the time specified in the notice for a response from the holder has expired;

the Board, after considering any response made by the holder, by notice in writing given to the holder:

- (c) may take the proposed action specified in the notice; or
- (d) if the proposed action was cancellation, may:
 - (i) vary the certificate as specified in the notice; or
 - (ii) suspend the certificate for a period specified in the notice; or
- (e) if the proposed action was suspension of the certificate, vary the certificate as specified in the notice.

5.3.3 Copy of amended Australian registration certificate to be provided

If the Board varies an Australian registration certificate in accordance with Part 3.5 of the Legal Profession National Law, the Board may give the holder an amended Australian registration certificate.

Part 4 Show cause procedure

5.4.1 Notice by holder of Australian registration certificate of show cause events

- (1) For the purposes of section 3.5.10 of the Legal Profession National Law, the holder of an Australian registration certificate must give to the Board:
 - (a) the notice in writing within 7 days; and
 - (b) the statement within 28 days;after the show cause event has occurred.
- (2) For the purposes of section 3.5.13 of the Legal Profession National Law, the holder of an Australian registration certificate must provide the statement to the Board within 28 days after the designated show cause event has occurred.

Chapter 6 Business structures

Part 1 Preliminary

Division 1 General

6.1.1 Objective

The objective of this Chapter is to make provision for the regulation of incorporated legal practices and unincorporated legal practices.

6.1.2 Authorising provision

The rules in this Chapter are made under Part 3.7 of the Legal Profession National Law.

6.1.3 Application of this Chapter

For the purposes of the Legal Profession National Law and these Rules, *incorporated legal practice* does not include:

- (a) the Law Society of a State or Territory; or
- (b) the Bar Association of a State or Territory.

Division 2 Relationship of rules to Corporations legislation

6.1.4 Incorporated legal practice not to conduct managed investment scheme

To the extent that section 4.6.3 of the Legal Profession National Law applies to an incorporated legal practice, that section is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

6.1.5 Directors of incorporated legal practice and pro bono services

- (1) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided on a pro bono basis by an Australian legal practitioner employed by the incorporated legal practice.
- (2) Subrule (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

Part 2 Incorporated and unincorporated legal practices

6.2.1 Notice of intention to engage in legal practice

For the purposes of section 3.7.3 of the Legal Profession National Law, the notice of intention to engage in legal practice must be given to the Board at least 7 days

before commencing to engage in legal practice.

6.2.2 Notice of cessation of practice

For the purposes of section 3.7.3 of the Legal Profession National Law, the notice of cessation of legal practice must be given to the Board within 14 days after the cessation of legal practice.

6.2.3 Disclosure obligations

For the purposes of section 3.7.6 of the Legal Profession National Law, the disclosure must be made by giving the person notice in writing:

- (a) setting out the legal services to be provided;
- (b) stating whether or not all of the services are to be provided by an Australian legal practitioner;
- (c) if some or all of the services are not to be provided by an Australian legal practitioner, identifying those services and indicating the status or qualifications of the person or persons who are to provide the services;
- (d) stating that the Legal Profession National Law and these Rules apply to the provision of legal services but do not apply to the provision of non-legal services.

6.2.4 Ombudsman to be advised of notices given under these Rules

The Board must advise the Ombudsman of each notice referred to in rule 6.2.1, 6.2.2 or 6.2.3 given to the Board.

6.2.5 Board to be notified of supervising legal practitioner

For the purposes of section 3.7.4 of the Legal Profession National Law, the notice must be given to the Board within 14 days of a person becoming, or ceasing to be, a supervising legal practitioner.

Part 3 Disqualifications and prohibitions

6.3.1 Ombudsman may publicise notices of disqualification or prohibition

The Ombudsman may publicise an order made under Part 3.7 of Chapter 3 of the Legal Profession National Law in any manner that the Ombudsman thinks fit.

Chapter 7 Trust money and trust accounts

Part 1 Preliminary

7.1.1 Objectives

The objectives of this Chapter are:

- (a) to ensure that trust money is held in a manner that protects the interests of the persons for whom or on whose behalf it is held;
- (b) to make provision relating to trust money, including trust accounts.

7.1.2 Authorising provision

The rules in this Chapter are made under Part 4.2 of the Legal Profession National Law.

7.1.3 Definitions

In this Chapter, *Australian financial services licence*, *authorised representative*, *financial service* and *financial services business* have the same meanings as they have in Chapter 7 of the Corporations Act.

7.1.4 Money that is not trust money

For the purposes of the definition of *trust money* in section 4.2.2 of the Legal Profession National Law, the following is not trust money:

- (a) money received by a law practice for the payment of costs due to the practice for the provision of legal services that have been provided;
- (b) money received by a law practice for or in connection with a financial service it provides in circumstances where the practice or an associate of the law practice:
 - (i) is required to hold an Australian financial services licence covering the provision of the service; or
 - (ii) provides the financial service as a representative of another person who carries on a financial services business;
- (c) money received by a law practice for investment purposes unless:
 - (i) the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services at the direction of the client; and
 - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property.

7.1.5 Application of these Rules—barristers

For the purposes of section 4.2.7 (2) of the Legal Profession National Law, the

applicable requirements relating to money received (otherwise than from an Australian legal practitioner acting in the manner of a solicitor) and held by a barrister on account of legal costs for legal services in advance of the provision by the barrister of the legal services are as follows:

- (a) that the money be deposited, within a reasonable time after receipt, in an account maintained with an ADI in connection with the barrister's law practice; and
- (b) that the money remains deposited in such an account until:
 - (i) the barrister gives a bill to the client; or
 - (ii) the money is refunded to the client; or
 - (iii) the money is paid to an Australian legal practitioner engaged by the client in the matter.

7.1.6 Application of these Rules—community legal service

For the purposes of the Legal Profession National Law and these Rules, money received by a law practice that is a community legal service on behalf of another person includes money received by an officer or employee of the community legal service, or a person whose services are made use of by the community legal service, on behalf of another person in the course of providing legal services.

Part 2 Trust money and trust accounts

7.2.1 Maintenance of general trust account

- (1) A law practice may maintain more than one general trust account in a jurisdiction unless the law practice has a single general trust account for more than one jurisdiction.
- (2) A general trust account established in a jurisdiction:
 - (a) must be established with an ADI; and
 - (b) must include in its name 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"; and
 - (c) must be an account of a kind that has not been subject to disapproval by the Ombudsman.

7.2.2 Withdrawal of trust money

A law practice may withdraw money for legal costs if:

- (a) it is authorised to do so under a costs agreement, under other written instructions or as a reimbursement of money already paid by the practice on behalf of the person; and
- (b) the law practice has given the person a written request for payment and

notice of the proposed withdrawal and:

- (i) within 7 days of the notice, the person has not objected to the withdrawal; or
- (ii) the person has objected to the withdrawal but has not referred the matter to the Ombudsman within 60 days after receiving the notice; or
- (iii) the money otherwise becomes payable.

7.2.3 Receipting of trust money

- (1) A law practice must make out a receipt as soon as practicable:
 - (a) after trust money is received; or
 - (b) in the case of trust money received by direct deposit, after the law practice receives or accesses notice or confirmation of the deposit from the ADI concerned.
- (2) The receipt must contain the following particulars:
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the number of the receipt;
 - (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 respect of 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) 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";
 - (i) the name of the person who made out the receipt.
- (3) The receipt must be made out in duplicate unless, when the receipt is made out the particulars referred to in subrule (2) are recorded by a computerised accounting system in the trust account receipts cash book.
- (4) The original receipt must, on request, be given to the person from whom the trust money was received.
- (5) Receipts must be consecutively numbered and issued in consecutive sequence.

- (6) If a receipt is cancelled or not delivered, the original receipt must be kept.

7.2.4 Deposit records for trust money

- (1) 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, a deposit record must be produced to the ADI at the time the deposit is made.
- (2) 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.
- (3) The deposit record must be made out in duplicate.
- (4) 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.

7.2.5 Application of rules 7.2.6–7.2.9

Rules 7.2.6–7.2.9 apply where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

7.2.6 Computerised accounting systems

- (1) A 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 is at that time kept in electronic form that is readable or reportable on demand;
 - (b) reconciliation statements 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 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 appointed under Chapter 7 of the Legal Profession National Law.
- (2) The trust records printed monthly as at the end of a named month under subrule (1) (a), (b), (c) or (d) must be printed within 15 working days after the named month.
 - (3) The law practice must keep paper copies except where they are printed on request.
 - (4) The law practice must keep the electronic copy of the trust account cash books.

7.2.7 Chronological record of information to be made

A law practice must maintain and keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to each of the following:

- (a) client name;
- (b) client address;
- (c) matter reference;
- (d) matter description;
- (e) ledger account number or other descriptor.

7.2.8 Requirements regarding computerised accounting systems

A law practice must ensure that:

- (a) its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debt balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind;
- (b) the system is not capable of deleting a trust ledger unless:
 - (i) the balance of the account is zero and all outstanding cheques have been presented; and
 - (ii) when the account is deleted, a copy of the account is kept in a permanent form;
- (c) any entry in a record produced in a permanent form appears in chronological sequence;
- (d) each page of each printed record is numbered sequentially or is printed in

such a way that no page can be extracted;

- (e) 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;
- (f) its computerised accounting system requires input in every field of a data entry screen intended to receive information required by these Rules to be included in trust records.

7.2.9 Back-ups

The law practice must ensure that:

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

7.2.10 Method of payment

- (1) If a withdrawal of trust money from a general trust account of a law practice is made by cheque, the cheque:
 - (a) must be made payable to or to the order of a specified person or persons 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".
- (2) A cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:
 - (a) an authorised principal of the law practice; or
 - (b) if such a principal is not available:
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) by two or more authorised associates jointly.

- (3) A written record of the required particulars must be kept of each payment made by cheque or electronic funds transfer unless, at the time the cheque is issued or the transfer is effected, those particulars are recorded by a computerised accounting system in the trust account payments cash book, in which case a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.
- (4) For the purposes of subrule (3), the *required particulars* are:
 - (a) the date and number of the cheque or transaction;
 - (b) the amount ordered to be paid by the cheque;
 - (c) in the case of a cheque, the name of the person to whom the payment is to be made or, if the cheque is made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) in the case of an electronic funds transfer, the name and number of the account to which the amount was transferred and relevant BSB number;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, 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;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (5) Written records relating to payments by cheque or electronic funds transfer (including cheque or transfer requisitions) must be kept in the order in which the cheques or transfers were issued or effected.

7.2.11 Trust account receipts cash books

- (1) A law practice that maintains a general trust account must keep a trust account cash book in which the following particulars must be recorded in respect of 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 respect of 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 respect of receipts must be recorded in the order in which the receipts are made out and must be recorded within 5 working days of the receipt being made out.

7.2.12 Trust account payments cash book

(1) A law practice that maintains a general trust account must keep a trust account payments cash book in which the following particulars are recorded in respect of each payment of trust money:

- (a) the date and number of the cheque or electronic funds transfer;
- (b) the amount ordered to be paid by the cheque or the amount transferred;
- (c) in the case of a cheque:
- (i) 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; and
 - (ii) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
- (d) in the case of an electronic funds transfer:
- (i) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (ii) 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.

(2) The particulars in respect of payments must be recorded:

- (a) in the order in which the payments are made; and
- (b) within 5 working days of the day the payment was made.

7.2.13 Journal transfers

- (1) Trust money may be transferred by journal entry from one 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) the transfer is authorised in writing by an authorised principal of the law practice or if such a principal is not available:
 - (i) an authorised legal practitioner associate of the law practice; or
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) two or more authorised associates jointly; or
 - (c) the transfer is authorised in writing by an external intervener for the law practice.
- (2) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (3) The following particulars must be recorded in the trust account transfer journal in respect of 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.
- (4) Journal pages or entries must be consecutively numbered.
- (5) 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.

7.2.14 Recording transactions in trust ledger accounts

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each person in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded, and kept up to date, 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) The following particulars must be recorded in the trust ledger account in respect of 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.
- (4) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money:
- (a) the date and number of the cheque or electronic funds transfer;
 - (b) the amount ordered to be paid by the cheque or the amount transferred;
 - (c) in the case of a cheque, 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) in the case of an electronic funds transfer, the name and number of the account to which the amount was transferred and the relevant BSB number, 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.
- (5) The following particulars must be recorded in the trust ledger account in respect of 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.
- (6) Transactions relating to trust money must be recorded in the trust ledger account:
 - (a) in the order in which the transactions occur; and
 - (b) within 5 working days of the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (7) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

7.2.15 Reconciliation of trust records

- (1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account are to 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 within 15 working days after the end of the month concerned.
- (4) The statements must be kept by the law practice.

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

- (1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this rule.
- (2) A law practice may maintain 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 respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.

7.2.17 Notification requirements regarding general trust accounts

- (1) Within 14 days after establishing a general trust account, a law practice must give the Ombudsman written notice of that fact.

- (2) A law practice:

- (a) either before, or within 14 days after, authorising or terminating 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 Ombudsman written notice of that fact (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 in each year, must give the Ombudsman written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July in 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) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the Ombudsman written notice of that fact.

- (4) A notice under this rule given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.

- (5) In this rule, *law practice* includes a former law practice and the persons who were principals of a law practice immediately before the practice ceased to exist as a law practice or to engage in legal practice.

7.2.18 Notification requirement regarding each general trust account

- (1) A law practice must notify the Ombudsman of the following details in respect of each account that is maintained at an ADI by the law practice (or by any legal practitioner associate of the practice) and in which is held money entrusted to the law practice (or to any legal practitioner associate of the practice):

- (a) the name of the ADI, together with its BSB number;

- (b) the name of the account, together with its account number;
 - (c) the name of each person who is authorised to operate on the account;
 - (d) for each amount of money so entrusted:
 - (i) the name of the person for whom the money is entrusted;
 - (ii) the purpose for which the money is entrusted;
 - (iii) the date on which the money is deposited in the account, together with the manner in which it is deposited;
 - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn.
- (2) The matters referred to in this rule must be notified to the Ombudsman at such times and in such manner as the Ombudsman requires.

7.2.19 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 Ombudsman at least 14 days' written notice of its intention:
- (a) to cease to exist as a law practice;
 - (b) to cease to engage in legal practice;
 - (c) to cease to practice in such a way as to receive trust money.
- (2) Within 14 days of ceasing to hold trust money, a law practice that holds trust money must give the Ombudsman:
- (a) written notice of that fact; and
 - (b) if the practice has not given a notice under subrule (1) within the previous 28 days, a notice that complies with that subrule.
- (3) A notice under this rule 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) pursuant to a power; and
 - (c) trust money invested by the practice.
- (4) In this rule, *law practice* includes a former law practice and the persons who were principals of the law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice.

7.2.20 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) Where relevant, the law practice must also give the person a separate statement for:
 - (a) each trust ledger account; and
 - (b) each record of controlled money movements; and
 - (c) each record of dealings with the money that is the subject of a power to which the practice or associate is a party.
- (3) A trust account statement is to contain particulars of:
 - (a) all the information required to be kept under the Legal Profession National Law or these Rules in relation to the trust money included in the relevant ledger account or record; and
 - (b) the remaining balance (if any) of the money.
- (4) A trust account statement is to 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 subrule (5), as soon as practicable after 30 June in each year.
- (5) The law practice is not required to give a trust account statement under subrule (4) in respect of 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 furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (6) The law practice must keep a copy of a trust account statement given under this rule.

7.2.21 Trust account statements for commercial or government clients

- (1) Rule 2.17 does not apply to a commercial or government client to the extent to which the client directs the law practice not to provide trust account statements under that rule.
- (2) If the commercial or government client directs the law practice to provide trust

account statements on a basis different from that prescribed by rule 7.2.20, the law practice must provide 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 rule.

7.2.22 Statements regarding receipt or holding of trust money

- (1) The Ombudsman may, by written notice, require a law practice to give the Ombudsman a statement within a specified period:
 - (a) specifying whether or not the practice has, during a period specified by the Ombudsman, received or held trust money; and
 - (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs:
 - (i) general trust money;
 - (ii) controlled money;
 - (iii) transit money;
 - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise) and may be withdrawn or varied by a further notice.

7.2.23 Register of investments

- (1) If a law practice invests trust money for or on behalf of a client, the law practice must maintain a register of investments of trust money that records 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;
 - (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.
- (2) This rule does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another rule.

7.2.24 Register of powers and estates in relation to trust money

- (1) A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the law practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the law practice, in relation to trust money.
- (2) Subrule (1) does not apply where the law practice or an associate of the law practice is also required to act jointly with one or more persons who are not associates of the law 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 respect of each estate of which the law practice or associate is executor or administrator.

7.2.25 Unclaimed money

- (1) If a law practice holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the practice may:
 - (a) pay the money to the Treasurer for credit to the Consolidated Fund; and
 - (b) give the Treasurer such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the practice.
- (2) If a law practice pays money to the Treasurer under subrule (1), the practice is relieved from any further liability in relation to the money.
- (3) The Treasurer must pay money deposited under this rule to a person who satisfies the Treasurer as to his or her entitlement to the money.
- (4) Payment of money to a person under subrule (3):
 - (a) discharges the Crown and the Treasurer from any liability in relation to the money; and
 - (b) does not discharge the person from any liability to another person who establishes a right to the money.
- (5) The Treasurer may require any person to give information that the person has, or can obtain, about the entitlement of a person to money paid to the Treasurer under this rule and attempts made to locate the person.
- (6) A person to whom a requirement is made under this rule must comply with the

requirement and must not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.

Part 3 External examinations

7.3.1 External examiners

- (1) For the purposes of Part 6.2 of Chapter 6 of the Legal Profession National Law, the Ombudsman may, in writing, designate persons (including persons employed or engaged by the Ombudsman) as eligible to be appointed as external examiners.
- (2) A person who is not designated under subrule (1) is not eligible to be appointed as an external examiner.
- (3) The Ombudsman may, in writing, revoke the designation of a person under subrule (1).
- (4) In this Part, other than this rule, *external examiner* means a person eligible under this rule to hold appointment as an external examiner.

7.3.2 Appointment of external examiner

A law practice must give to the Ombudsman:

- (a) within 30 days after first receiving trust money (other than transit money) in this jurisdiction—written notice of the external examiner appointed by the practice as its external examiner;
- (b) within 7 days after an external examiner ceases to be the external examiner of the law practice—written notice of that fact;
- (c) within 30 days after an external examiner ceases to be the external examiner appointed by the practice—written notice of the successor external examiner appointed by the practice as its external examiner.

7.3.3 Standard form reports by external examiners

- (1) If the Ombudsman publishes a standard form for an external examiner's report, each external examiner must report in accordance with that form.
- (2) The Ombudsman may, in writing given to an external examiner, exempt the examiner from the requirement to report in accordance with the standard form.

7.3.4 Final external examination

- (1) If a law practice:
 - (a) ceases to be authorised to receive trust money or ceases to engage in legal practice; and
 - (b) has held a trust account;

the law practice must appoint an external examiner to examine and report on the trust records of the practice:

- (c) in respect of the period since an external examination was last conducted; and
- (d) in respect of each period of 12 months after that period; and
- (e) any remaining period thereafter;

during which, or any part of which, the practice held trust money.

- (2) The law practice must give the Ombudsman a copy of each report undertaken by its external examiner in accordance with this rule within 60 days after the end of the period to which the report relates.

Part 4 Controlled money

7.4.1 Receipt of controlled money

- (1) If a law practice receives controlled money, it must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (2) A law practice must make out a receipt as soon as possible after receiving controlled money or, in relation to a direct deposit, after receiving notice or confirmation of the deposit from the relevant ADI.
- (3) On request from the person from whom controlled money is received, the law practice must give that person a copy of the receipt.
- (4) The receipt must be made out in duplicate, unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the register of controlled money, and must contain the following particulars:
 - (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.
- (5) 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).
- (6) Receipts must be consecutively numbered and issued in consecutive sequence.
- (7) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (8) 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.

7.4.2 Withdrawal of controlled money from controlled money account

- (1) Despite any directions to the contrary, a law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) 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 referred to in paragraph (a) is not available:
 - (i) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose; or
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) two or more associates of the law practice jointly.
- (3) A written record of the required particulars must be kept of each withdrawal.
- (4) If at the time the withdrawal is made the required particulars are recorded by a computerised accounting system, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.
- (5) For the purposes of this rule, the *required particulars* are:
- (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 persons effecting, directing or authorising the withdrawal.
- (6) 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.

7.4.3 Register of controlled money

- (1) A law practice that receives controlled money must maintain 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 maintained 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)–(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 these Rules.

- (5) Subject to subrule (6), 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 respect of 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) Within 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.

Chapter 8 Legal costs

Part 1 Preliminary

8.1.1 Objective

The objective of this Chapter is to provide for matters relating to legal costs.

8.1.2 Authorising provision

The rules in this Chapter are made under Part 4.3 of the Legal Profession National Law.

Part 2 Conditional costs agreements

8.2.1 Conditional costs agreements

- (1) For the purposes of section 4.3.11 of the Legal Profession National Law, a conditional costs agreement must:
 - (a) be in writing and in plain language; and
 - (b) set out the circumstances that constitute the successful outcome of the matter to which it relates.
- (2) A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter.
- (3) A conditional costs agreement must:
 - (a) be signed by the client; and
 - (b) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement; and
 - (c) include a cooling-off period in accordance with section 4.3.11 of the Legal Profession National Law.
- (4) Subrule (3) does not apply to a conditional costs agreement between:
 - (a) law practices; or
 - (b) between a law practice and a commercial or government client.

8.2.2 Uplift fees

A conditional costs agreement that includes an uplift fee:

- (a) must identify the basis on which the uplift fee is to be calculated;
- (b) must include an estimate of the uplift fee or, if that is not reasonably practical:

- (i) a range of estimates for the uplift fee; and
- (ii) an explanation of the major variables that may affect the calculation of the uplift fee.

8.2.3 Litigious matters

If a conditional costs agreement relates to a litigious matter, the agreement must not provide:

- (a) for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; or
- (b) an uplift fee that exceeds the amount permitted by the Legal Profession National Law.

Part 3 Bills for costs

8.3.1 How a bill for costs is to be given

- (1) A bill for costs given by a law practice to a client must be given:
 - (a) by personal delivery to the client or an agent of the client; or
 - (b) by sending it by post to the client or an agent of the client:
 - (i) at the usual or last known business or residential address of the client or an agent of the client; or
 - (ii) at the address nominated to the law practice for that purpose by the client or an agent of the client; or
 - (c) by delivery to a person:
 - (i) at the usual or last known business or residential address of the client or an agent of the client; or
 - (ii) at the address nominated to the law practice for that purpose by the client or an agent of the client;

being a person who appears to be at least 16 years of age and to be employed at, or to reside at, that address; or
 - (d) electronically to an electronic address given to the law practice by the client for that purpose.
- (2) In this rule, *agent*, in relation to a person, means an agent, a law practice or an Australian legal practitioner who has authority to accept service of legal process on behalf of the person.

8.3.2 Interest on unpaid legal costs

- (1) For the purposes of section 4.3.24 of the Legal Profession National Law, the rate of interest is the rate that is equal to the Cash Rate Target as at the relevant date,

increased by 2 percentage points.

(2) In this rule:

Cash Rate Target means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target.

relevant date means the date the bill was issued by the law practice concerned.

Chapter 9 Professional indemnity insurance

Part 1 Preliminary

9.1.1 Objectives

The objectives of this Chapter are to provide for:

- (a) requirements for complying policies of professional indemnity insurance;
- (b) inspection by the Board of professional indemnity insurance policies.

9.1.2 Authorising provision

The rules in this Chapter are made under Part 4.4 of the Legal Profession National Law.

Part 2 Professional indemnity insurance

9.2.1 Minimum standards for professional indemnity insurance

- (1) This rule sets out the minimum standards for professional indemnity insurance for the purposes of section 4.4.3 of the Legal Profession National Law.
- (2) Professional indemnity insurance may be underwritten on the basis of:
 - (a) coverage of a law practice, including all the legal practitioner associates of the law practice; or
 - (b) coverage of an individual Australian legal practitioner.
- (3) Professional indemnity insurance must provide indemnity for the private legal practice of the insured in relation to the provision of legal services within Australia.
- (4) Professional indemnity insurance must extend to civil liability incurred in connection with the legal services of the insured and persons engaged by the insured in the provision of legal services.
- (5) Professional indemnity insurance must provide indemnity for claims actually made during the period of insurance that arise from the insured's law practice and for claims made in respect of circumstances notified during the period of insurance.
- (6) Professional indemnity insurance must provide minimum coverage of \$1.5 million for each and every claim, or each and every loss, inclusive of the claimant's costs and defence costs.
- (7) Professional indemnity insurance must provide indemnity for any former principals of, or those formerly engaged by, the insured and by any prior law practice of the insured.

- (8) Professional indemnity insurance must provide indemnity for a minimum of seven years for run-off liabilities in the event that the insured dies or ceases to exist or to provide legal services for any reason.
- (9) In the case of a claim arising from dishonesty or fraud, professional indemnity insurance must not exclude indemnity of a principal of, or person engaged by, the insured who was not knowingly connected with any dishonesty or fraud related to the claim.
- (10) Professional indemnity insurance need not but may provide indemnity to the extent that the subject matter of the claim entitles a claimant to claim and receive compensation from a fidelity fund, guarantee fund or similar cover provided under jurisdictional legislation.
- (11) Professional indemnity insurance must not provide the insurer with a right to avoid or cancel cover because of any innocent or non-fraudulent non-disclosure or misrepresentation by the insured.
- (12) Professional indemnity insurance must provide retroactive cover except for claims arising out of fraud or dishonesty.

9.2.2 Notice to be given where certain legal services not covered by insurance

- (1) A law practice which, or an Australian legal practitioner who, provides legal services outside Australia to a client based in Australia that are not covered by professional indemnity insurance in accordance with the Legal Profession National Law and these Rules must give written notice to the client of that fact.
- (2) A notice under subrule (1) must be given before the legal services are provided.

9.2.3 Approval by the Board of professional indemnity insurance policies

For the purposes of section 4.4.3 of the Legal Profession National Law, the Board must not approve an insurer or a professional indemnity insurance policy unless the Board considers it appropriate to do so.

9.2.4 Board may inspect policies

The Board may request a law practice or an Australian legal practitioner to submit a legal professional indemnity insurance policy, other than a policy approved by the Board, to the Board for assessment as to whether the policy is a complying policy of professional indemnity insurance.

9.2.5 Exemptions

For the purposes of section 4.4.5 of the Legal Profession National Law, an Australian legal practitioner is exempt from the requirement to have professional indemnity insurance by reason only that:

- (a) the practitioner is a government lawyer or corporate lawyer who:
 - (i) provides legal services only as an employee to his or her employer in the course of employment; and
 - (ii) does not receive a fee, gain or reward other than his or her ordinary

remuneration as an employee; or

- (b) the practitioner is the holder of a statutory office under the Crown; or
- (c) the practitioner acts as parliamentary counsel under a contract of service, or contract for services, with the Crown; or
- (d) the practitioner holds, or seeks to hold, an Australian practising certificate that is subject to a condition that the holder engage in legal practice only as a volunteer lawyer at a community legal service.

9.2.6 Community legal service

A law practice that is a community legal service must have a complying policy of professional indemnity insurance that covers the civil liability of the community legal service and each person who is or has been a director, employee or contractor of, or a volunteer at, the community legal service in connection with the provision of legal services.

Chapter 10 Fidelity cover

Part 1 Preliminary

10.1.1 Objective

The objective of this Chapter is to make provision relating to defaults of law practices and claims against fidelity funds.

10.1.2 Authorising provision

The rules in this Chapter are made under Part 4.5 of the Legal Profession National Law.

Part 2 Defaults and claims

10.2.1 Time of default

- (1) A default is to be taken to have occurred when the act or omission giving rise to or constituting the default occurred.
- (2) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed.

10.2.2 Defaults to which Legal Profession National Law does not apply

- (1) Part 4.5 of the Legal Profession National Law does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the law practice for or in connection with:
 - (a) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate is required to hold an Australian financial services licence covering the provision of the financial service; or
 - (b) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate provides the service as a representative of another person who carries on a financial services business; or
 - (c) investment purposes, whether on its own account or as an agent, unless:
 - (i) the money or property was entrusted to or held by the law practice in the ordinary course of legal practice and primarily in connection with the provision of legal services to or at the direction of the client; and
 - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

- (2) In this rule, *Australian financial services licence*, *authorised representative*, *financial service* and *financial services business* have the same meanings as in Chapter 7 of the Corporations Act.

10.2.3 Making a claim

- (1) For the purposes of section 4.5.17 of the Legal Profession National Law, a claim against a fidelity fund is to be given to a nominated authority.
- (2) Where necessary, a nominated authority must give a claim received by it to the relevant nominated authority.

10.2.4 Claims

- (1) The nominated authority may require a person who makes a claim:
- (a) to give further information about the claim or any dispute to which the claim relates; or
 - (b) to verify the claim or any further information by statutory declaration.
- (2) A claim about a default of a law practice:
- (a) may be made despite a change in the status of the law practice or the associate concerned after the occurrence of the default; and
 - (b) is not affected by the change in status.
- (3) In this rule:
- change in status* includes:
- (a) in relation to a law practice:
 - (i) a change in the directorship, membership or staffing of the law practice; or
 - (ii) the dissolution or winding up of the law practice; or
 - (b) in relation to an associate who is an Australian legal practitioner, the fact that the associate has ceased to practise or to hold an Australian practising certificate or has died.

10.2.5 Advertisements

- (1) A notice under section 4.5.18 of the Legal Profession National Law must be published:
- (a) in a newspaper circulating generally throughout Australia; and
 - (b) in a newspaper circulating generally in each jurisdiction in which the law practice has, or at any relevant time, had, an office; and
 - (c) if the nominated authority has an internet site, on that site.

- (2) Apart from extending the period during which claims can be made, publication of a notice under this rule does not confer any entitlement in relation to a claim or the default to which it relates or provide any grounds affecting the determination of a claim.

10.2.6 Notification of delay in making decision

If the nominated authority considers that a claim is not likely to be determined within 12 months after the claim was made, the nominated authority must notify the claimant in writing to that effect and provide a brief statement of the reasons for the delay.

10.2.7 Recommendations by the nominated authority to other nominated authorities

If the nominated authority is acting as agent of another nominated authority in relation to a claim:

- (a) the nominated authority acting as agent may make recommendations about the decision that the other authority might make about the claim; and
- (b) the nominated authority acting as agent cannot make a decision about the claim; and
- (c) the other nominated authority:
 - (i) may make a decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or
 - (ii) may disregard the recommendations.

Chapter 11 Continuing professional development

Part 1 Preliminary

11.1.1 Objective

The objective of this Chapter is to provide the minimum requirements for continuing professional development for Australian legal practitioners.

11.1.2 Authorising provision

The rules in this Chapter are made under Part 4.7.4 of the Legal Profession National Law.

11.1.3 Definitions

In this Chapter:

CPD means continuing professional development.

CPD activity has the meaning given by rule 11.2.1 (1).

CPD unit has the meaning given by rule 11.2.2 (2).

CPD year means a year beginning on 1 April.

Part 2 CPD activity

11.2.1 Definition of CPD activity and CPD unit

(1) In this Chapter:

CPD activity means:

- (a) attendance at, or preparing or presenting material for, a seminar, workshop, lecture, conference, educational program or discussion group; or
- (b) completing a non-award course at a tertiary institution relevant to law or legal practice; or
- (c) viewing or listening to, or preparing material for, a multi-media or web-based program or recorded material; or
- (d) publishing, or structurally editing or refereeing, an article in a legal or non-legal publication; or
- (e) regular attendance at meetings, and participation as a member, of a committee of a legal professional association undertaking work of substantial significance to the practice of the law and which is reasonably likely to assist the attendee's professional development;

but does not include any other activity or private study (other than listening to or viewing recorded material).

(2) In this Chapter:

CPD unit means:

- (a) in relation to a CPD activity referred to in subrule (1) (a), (b) or (c), one hour of the activity;
- (b) in relation to a CPD activity referred to in subrule (1) (d), 1000 words of the article;
- (c) in relation to a CPD activity referred to in subrule (1) (e), two hours of the activity.

11.2.2 Legal practitioners to undertake CPD activities

- (1) Subject to this rule, an Australian legal practitioner must complete 10 CPD units of CPD activity in each CPD year:
 - (a) including:
 - (i) one CPD unit relating to practical legal ethics;
 - (ii) one CPD unit relating to practice management and business skills; and
 - (iii) one CPD unit relating to professional skills; and
 - (b) in respect of each period of 3 years, one CPD unit relating to the management of the practice of law that deals predominantly with the following issues:
 - (i) principles of equal employment opportunity; or
 - (ii) the law relating to discrimination and harassment; or
 - (iii) occupational health and safety law; or
 - (iv) employment law.
- (2) Each CPD activity undertaken by an Australian legal practitioner for the purposes of subrule (1) must be an activity:
 - (a) of significant intellectual or practical content and must deal primarily with matters related to the practice of law; and
 - (b) conducted by persons qualified by practical or academic experience in the subject covered; and
 - (c) relevant to the Australian legal practitioner's immediate or long-term professional development needs.
- (3) In calculating the 10 CPD units of CPD activity in respect of a CPD year, the total must not include:
 - (a) more than 5 CPD units of CPD activity referred to in paragraph (b) of the definition of CPD activity; or

- (b) more than 5 CPD units of CPD activity referred to in paragraph (c) of the definition of CPD activity; or
 - (c) more than 5 CPD units of CPD activity referred to in paragraph (d) of the definition of CPD activity; or
 - (d) more than 3 CPD units of CPD activity referred to in paragraph (e) of the definition of CPD activity.
- (4) Where an Australian legal practitioner accrues CPD units in January, February or March of a CPD year, the practitioner may elect to assign all or any of them either to that CPD year or to the next CPD year.
 - (5) An Australian legal practitioner must maintain a written record of CPD units accrued by the practitioner in respect of each CPD year.
 - (6) In relation to an Australian legal practitioner who holds a practising certificate for less than a CPD year, the reference in this rule to 10 CPD units in respect of that year is proportionally reduced.

11.2.3 Exemptions

The Board may exempt an Australian legal practitioner from compliance with rule 11.2.2 on written application by the practitioner on the ground of:

- (a) illness or disability; or
- (b) the location of the practitioner's legal practice; or
- (c) the absence of the practitioner from legal practice; or
- (d) hardship or other special circumstances.

11.2.4 Board to monitor compliance

- (1) The Board may, by written notice, require an Australian legal practitioner to give it information about the practitioner's compliance with his or her CPD obligations.
- (2) An Australian legal practitioner must comply with a requirement under subrule (1) within 14 days after receiving the notice.

11.2.5 Certificate of compliance with this Chapter on application for renewal of practising certificate

An Australian legal practitioner who makes an application for renewal of a practising certificate must certify that he or she has completed 10 CPD units in respect of the CPD year preceding the year to which the application relates.

11.2.6 Non-compliance may be remedied

- (1) If:
 - (a) an Australian legal practitioner has not certified that he or she has completed 10 CPD units in respect of a year; or

- (b) the Board is not satisfied that an Australian legal practitioner has complied with these Rules;

the Board may give notice in writing to the Australian legal practitioner requiring the practitioner to submit a plan to the Board within 21 days setting out the steps that the practitioner proposes to take to remedy the non-compliance.

- (2) If the holder of an Australian practising certificate to whom notice is given under this rule does not comply with the notice within 30 days after the giving of the notice, the Board may:
- (a) refuse to renew an Australian practising certificate; or
 - (b) suspend the holder's Australian practising certificate; or
 - (c) make a complaint to the Ombudsman under Part 5.2 of the Legal Profession National Law.

Chapter 12 External intervention

Part 1 Preliminary

12.1.1 Objective

The objective of Chapter is to make provision relating to:

- (a) notices of appointment of external interveners;
- (b) the fees, costs and expenses of external interveners;
- (c) reporting by external interveners.

12.1.2 Authorising provision

The rules in this Chapter are made under Parts 6.3 and 6.6 of the Legal Profession National Law.

Part 2 Appointment of supervisors

12.2.1 Appointment of supervisor of trust money

- (1) The instrument of appointment under section 6.3.1 of the Legal Profession National Law of a supervisor of trust money of a law practice must:

- (a) identify the law practice and the supervisor of trust money of the law practice; and
- (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice; and
- (c) specify the term of the appointment; and
- (d) specify any conditions imposed by the Ombudsman when the appointment is made; and
- (e) specify any fees payable by way of remuneration to the supervisor of trust money of the law practice specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the Ombudsman.

- (g) provide for the legal costs and the expenses that may be incurred by the supervisor of trust money of the law practice in relation to the external intervention.
- (2) The instrument of appointment may specify any reporting requirements to be observed by the supervisor of trust money of a law practice.

12.2.2 Notice of appointment

- (1) As soon as possible after an appointment under section 6.3.1 of the Legal Profession National Law of a supervisor of trust money of a law practice is made, the Ombudsman must serve a notice of the appointment on:
 - (a) the law practice; and
 - (b) any other person authorised to operate any trust account of the law practice; and
 - (c) any external examiner appointed to examine the law practice's trust records; and
 - (d) the ADI with which any trust account of the law practice is maintained; and
 - (e) any person whom the Ombudsman reasonably believes should be served with the notice.
- (2) The notice must:
 - (a) identify the law practice and the supervisor of trust money of the law practice; and
 - (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice; and
 - (c) specify the term of the appointment; and
 - (d) specify any reporting requirements to be observed by the supervisor of trust money of the law practice; and
 - (e) specify any conditions imposed by the Ombudsman when the appointment is made; and
 - (f) include a statement that the law practice may appeal against the appointment of the supervisor of trust money of the law practice under the Legal Profession National Law.

Part 3 Appointment of managers

12.3.1 Appointment of manager

- (1) The instrument of appointment under section 6.4.1 of the Legal Profession National Law of a manager of a law practice must:
 - (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and

- (d) specify any conditions imposed by the Ombudsman when the appointment is made; and
- (e) specify any fees payable by way of remuneration to the manager specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the Ombudsman.

- (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.

- (2) The instrument of appointment may specify any reporting requirements to be observed by the manager.

12.3.2 Notice of appointment

- (1) As soon as possible after an appointment under section 6.4.1 of a manager for a law practice is made, the Ombudsman must serve a notice of the appointment on:

- (a) the law practice; and
- (b) any other person authorised to operate any trust account of the law practice; and
- (c) any external examiner appointed to examine the law practice's trust records; and
- (d) the ADI with which any trust account of the law practice is maintained; and
- (e) any person whom the Ombudsman reasonably believes should be served with the notice.

- (2) The notice must:

- (a) identify the law practice and the manager; and
- (b) indicate that the external intervention is by way of appointment of a manager; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the manager; and
- (e) specify any conditions imposed by the Ombudsman when the appointment is made; and
- (f) include a statement that the law practice may appeal against the appointment of the manager under the Legal Profession National Law.

Part 4 Appointment of receivers

12.4.1 Appointment of receiver

- (1) The instrument of appointment under section 6.5.1 of the Legal Profession National Law of a person as a receiver for a law practice must:
 - (a) identify the law practice and the receiver; and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify any conditions imposed by the Supreme Court when the appointment is made; and
 - (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (d) is intended to exclude remuneration payable generally, eg as an employee of the Ombudsman.

 - (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (2) The instrument of appointment may:
 - (a) specify the term (if any) of the appointment; and
 - (b) specify any reporting requirements to be observed by the receiver.

12.4.2 Notice of appointment

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the Ombudsman must serve a notice of the appointment on:
 - (a) the law practice; and
 - (b) any other person authorised to operate any trust account of the law practice; and
 - (c) any external examiner appointed to examine the law practice's trust records; and
 - (d) the ADI with which any trust account of the practice is maintained; and
 - (e) any person whom the Supreme Court directs should be served with the notice; and
 - (f) any person whom the Ombudsman reasonably believes should be served with the notice.
- (2) The notice must:
 - (a) identify the law practice and the receiver; and

- (b) indicate that the external intervention is by way of appointment of a receiver; and
- (c) specify the term (if any) of the appointment; and
- (d) indicate the extent to which the receiver has the powers of a manager for the law practice; and
- (e) specify any reporting requirements to be observed by the receiver; and
- (f) specify any conditions imposed by the Supreme Court when the appointment is made; and
- (g) include a statement that the law practice may appeal against the appointment of the receiver under the Legal Profession National Law.

Part 5 General

12.5.1 Fees, legal costs and expenses

- (1) An external intervener is entitled to be paid, in accordance with the instrument of appointment:
 - (a) fees by way of remuneration; and
 - (b) the legal costs and the expenses incurred in relation to the external intervention.
- (2) An account of the external intervener for fees, costs and expenses may, on the application of the Ombudsman, be taxed or assessed.
- (3) The fees, costs and expenses are payable by and recoverable from the law practice.
- (4) Fees, costs and expenses not paid to the external intervener by the law practice are payable from the relevant Fidelity Fund or, if the law of the jurisdiction otherwise provides, in accordance with that law.
- (5) The Ombudsman may recover any unpaid fees, costs and expenses from the law practice.
- (6) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from a Fidelity Fund or in accordance with a jurisdiction's law are to be paid into that Fund or refunded in accordance with that law.

12.5.2 Reports by external intervener

- (1) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment.
- (2) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide—
 - (a) written reports as required from time to time by the Ombudsman; and

- (b) a written report to the Ombudsman at the termination of the appointment.
- (3) An external intervener must also keep the Ombudsman informed of the progress of the external intervention, including providing reports about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.
- (4) Nothing in this rule affects any other reporting obligations that may exist in respect of the law practice concerned.

12.5.3 Report to Ombudsman on disciplinary matters

- (1) This rule applies where an external intervener becomes aware of any matter in the course of an external intervention that the external intervener thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.
- (2) If this rule applies, the external intervener must (unless the matter is or has already been the subject of a complaint) refer the matter to the Ombudsman to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

Chapter 13 Australian Legal Profession Register

Part 1 Preliminary

13.1.1 Objective

The objective of this Chapter is to make provision relating to the Australian Legal Profession Register.

13.1.2 Authorising provision

The rules in this Chapter are made under Part 9.2 of the Legal Profession National Law.

13.1.3 Definition

In this Chapter, *Register* means the Australian Legal Profession Register.

Part 2 Details to be included in the Register

13.2.1 Details of disciplinary orders

Details of disciplinary orders made under Chapter 5 of the Legal Profession National Law against a lawyer must be included in the Register.

13.2.2 Entities to furnish details of certain matter

- (1) For the purposes of section 9.2.1 of the Legal Profession National Law, the Ombudsman must give to the Board:
 - (a) information about each order made in relation to a lawyer under section 5.4.5 or 5.4.9 of the Legal Profession National Law as soon as practicable after the order is made; and
 - (b) information about the quashing or overturning of a disciplinary order as soon as practicable after the order is quashed or overturned.
- (2) For the purposes of section 9.2.1 of the Legal Profession National Law, a local representative of the Board must give the Board information about:
 - (a) the grant or renewal of an Australian practising certificate as soon as practicable after the issue or renewal;
 - (b) the variation, suspension or cancellation of an Australian practising certificate as soon as practicable after the variation, suspension or cancellation.
- (3) The information given to the Board under this rule must include such details as are reasonably required for the purpose of maintaining the Register.

13.2.3 Certain details not to be included in publicly available version of Register

For the purposes of section 9.2.2 of the Legal Profession National Law, the

following details relating to a person must not be included in the publicly available version of the Register:

- (a) the residential address of the person;
- (b) any information that may indicate that the person has a mental or physical illness or an infirmity or injury.

Schedules

Schedule 1 Synopsis of areas of knowledge

[To reflect the LACC Synopsis of Areas of Knowledge]

Schedule 2 List of tertiary academic courses recognised by the Board

[To reflect existing recognised academic courses]

Schedule 3 Competency standards for entry level lawyers

[To reflect the LACC Competency Standards for Entry Level Lawyers]

Schedule 4 List of courses of study recognised by the Board

[To reflect existing recognised practical legal training courses]
