



New South Wales

Legal Profession Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Legal Profession Act 2004* (the **Principal Act**) in a number of respects, including the following:
 - (i) to extend the prohibition on engaging in unqualified legal practice,
 - (ii) to extend the class of Australian lawyers to whom practising certificates may be granted,
 - (iii) to increase the maximum penalty that may be prescribed by regulations for offences relating to advertising by or for law practices,
 - (iv) to ensure that the Legal Services Commissioner is able to investigate and prosecute offences relating to advertising by or for law practices,
 - (v) to ensure that the Bar Council and Law Society Council are able to investigate and prosecute offences under the Principal Act whether committed by barristers or solicitors or by other persons,

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- (vi) to enable disclosure of the rate of interest payable on unpaid legal costs to be made by reference to a benchmark rate of interest,
- (vii) to narrow the restriction on entering costs agreements containing provision for uplift fees,
- (viii) to remove the restriction on recovering certain costs where prohibited uplift fees are involved, so that the rest of the costs can be recovered,
- (ix) to expand the categories of clients who are exempted from initial costs disclosure and some other requirements relating to costs,
- (x) to enable a client who has received a lump sum bill of costs from a law practice to request the practice to provide an itemised bill,
- (xi) to ensure that provisions relating to trust money and trust accounts extend to foreign lawyers,
- (xii) to provide for the summary conclusion of the complaint procedure, in suitable cases, by the imposition of a condition on the practitioner's practising certificate,
- (xiii) to enable complainants under the disciplinary provisions of the Principal Act to apply for compensation for loss suffered by clients of the law practices involved,
- (xiv) to provide that legal profession rules can apply to interstate-registered foreign lawyers,
- (xv) to provide that the Bar Association or Law Society cannot be required to divulge information received in connection with applications for pro bono legal services,
- (xvi) to make other amendments of a minor, consequential or ancillary nature, including amendments by way of statute law revision, and
- (b) to amend the *Legal Profession Regulation 2005* to make associated amendments, and
- (c) to amend a number of other Acts consequentially on the enactment of the Principal Act, and
- (d) to make other amendments of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 2004* set out in Schedules 1–8.

Clause 4 is a formal provision giving effect to the amendments to the Acts set out in Schedule 9.

Clause 5 is a formal provision giving effect to the amendments to the *Legal Profession Regulation 2005* set out in Schedule 10.

Clause 6 provides for the repeal of the proposed Act after all the amendments have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Chapter 1 of Legal Profession Act 2004

Schedule 1 amends Chapter 1, which contains introductory matters, including definitions of defined terms.

Section 4 is amended to recognise that the word “issue” is used in some contexts (including legislation of other States or Territories) instead of the word “grant” when referring to practising certificates. Sections 66, 485, 688 and 689 are correspondingly amended for this purpose.

Section 4 is amended to insert a definition of *show cause event*, which is transferred from section 65, so that the one definition applies wherever the term is used in the Principal Act. Section 184 is accordingly amended to omit the definition of the term in that section.

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

Schedule 2 amends Chapter 2, which contains provisions dealing with general requirements for engaging in legal practice, including provisions for the reservation of legal work and legal titles, for the admission of local lawyers, and for engaging in legal practice. Amendments include the following:

Prohibition on engaging in legal practice

Section 14 is amended to remove the reference to fee, gain or reward, so that it will be an offence to engage in legal practice without being an Australian legal

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practitioner, whether or not for fee, gain or reward. This amendment will ensure consistency with other jurisdictions.

Practising certificates

Section 45 is amended to extend the class of Australian lawyers to whom the Bar Council or Law Society Council may grant practising certificates so as to include persons whose principal place of legal practice is in a foreign country but who otherwise satisfy the requirements of the section. Provision is also made for the discretionary grant of local practising certificates to persons of a class or description prescribed by the regulations.

Legal practice by barristers

Section 54 is amended to provide that the statutory condition limiting the manner in which barristers may engage in legal practice (for example, as a sole practitioner) does not apply to barristers specified by the Bar Council or prescribed by the regulations.

Section 102 is amended to provide that the requirements for interstate legal practitioners regarding a period of supervised legal practice before engaging in unsupervised legal practice apply only to solicitors and therefore not to barristers.

Advertising offences

Section 85 (2) is amended to increase the maximum penalty (from 100 to 200 penalty units) that may be imposed under the regulations for an offence relating to advertising by barristers or solicitors or in connection with the provision of legal services or services connected with personal injury.

Section 85 (8) is amended to increase the maximum penalty (from 100 to 200 penalty units) for a contravention of a direction of the Administrative Decisions Tribunal that a barrister or solicitor not engage in conduct that contravenes the regulations under the *Workplace Injury Management and Workers Compensation Act 1998* concerning advertising work injury services.

These penalty levels are the same as those that were applicable under the *Legal Profession Act 1987*.

Section 85 (12) currently deals with payment from the Public Purpose Fund of costs and expenses of the Bar Council, Law Society Council or Legal Services Commissioner in exercising functions relating to advertising offences. The subsection is omitted and substantially re-enacted as section 290 (1) (p).

Foreign lawyers

Section 195 is amended:

- to ensure that any provision of the Principal Act, regulations or legal profession rules that is expressed in terms of “Australian legal practitioners” will apply to Australian-registered foreign lawyers by virtue of section 195
- to ensure that the regulations may adapt, for Australian-registered foreign lawyers, relevant provisions of the regulations and legal profession rules (as well as the Principal Act) that apply to law practices, so far as those provisions relate to trust money and trust accounts.

Schedule 3 Amendment of Chapter 3 of Legal Profession Act 2004

Schedule 3 amends Chapter 3, which contains provisions about the conduct of legal practice, including provisions regarding trust money, legal costs, professional indemnity insurance, fidelity cover and mortgage practices. Amendments include the following:

Public Purpose Fund

Section 290 (1) (k) is amended to ensure that the costs of the Legal Services Commissioner (as well as those of the Bar Council or Law Society Council) in relation to professional discipline are met from the Public Purpose Fund.

Proposed section 290 (1) (p) provides that the costs of the Bar Council, Law Society Council and Legal Services Commissioner in exercising functions under section 85 (including the prosecution of advertising offences under the section or regulations under the section) are met from the Public Purpose Fund. The provision is in effect a re-enactment of section 85 (12).

Costs

Section 309 is amended to provide that an initial costs disclosure relating to the rate of interest on overdue legal costs can be made by reference to a benchmark interest rate, rather than a specific percentage.

Section 312 is amended to expand the categories of clients exempted from initial costs disclosure, so as to include large proprietary companies, liquidators, administrators, receivers, large partnerships and participants in certain joint ventures.

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Section 321 is amended to replace a reference to the *Supreme Court Act 1970* with a reference to the *Civil Procedure Act 2005*, as the latter Act now deals with interest on unpaid judgments. Proposed section 321 (5) makes it clear that interest can be charged on unpaid legal costs after 30 days after a lump sum bill was given to the client, even if the client afterwards requests or is given an itemised bill.

Section 323 is amended to exempt conditional costs agreement from requirements as to their form and contents if the clients (such as public companies) were exempted from initial costs disclosure or the costs are subject to a tender process. The requirements include those relating to the need for the client's signature, notification of the right to seek independent legal advice and a mandatory cooling-off period.

Section 324 is amended to provide that the maximum 25% for uplift fees applies only to litigious matters.

Section 327 is amended to provide that a costs agreement entered into in breach of the uplift fees restrictions in section 324 (2)–(5) disentitles the law practice from recovering just the uplift fee instead of all costs.

Section 328 provides for costs agreements that are not fair or reasonable to be set aside. The section is amended to provide that a provision of a costs agreement can be also set aside instead of the whole agreement. The section is also amended to provide a right of appeal against a determination to make or not make an order setting aside a costs agreement or provision of a costs agreement. Consequential amendments (referring to the setting aside of a provision of a costs agreement) are made to sections 309 (1) (i), 317 (2), 333 (a) (ii) and 373 (1).

Proposed section 332A confers a right on a person who receives a lump sum bill to request an itemised bill for the same costs. The law practice will not be able to commence proceedings to recover the costs until at least 30 days after the person has been given the itemised bill. A consequential amendment is made to section 331.

Section 333 is amended to exempt bills of costs having to include or be accompanied by a written statement if the clients (such as public companies) were exempted from initial costs disclosure or the costs are subject to a tender process. The written statement would set out the avenues open to the client in the event of a dispute as the costs.

Section 361 is amended to ensure that the duty of a costs assessor to assess costs in accordance with a complying costs agreement is subject to the provisions of section 328 that provide for the setting aside of costs agreements and for making associated orders for payment of costs.

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Proposed section 369 (2A) is inserted to provide that a costs assessor may determine by whom and to what extent the costs of assessment in respect of party/party costs are payable.

Sections 352, 368, 369 (5), 373 (1) and 485 are amended to clarify the arrangements regarding costs determinations, to reflect the arrangements under which certain costs determinations are issued by the costs assessors but forwarded to the parties by the Manager, Costs Assessment.

Schedule 4 Amendment of Chapter 4 of Legal Profession Act 2004

Schedule 4 amends Chapter 4, which contains provisions relating to complaints about and discipline of Australian legal practitioners. Amendments include the following:

Referral of matters to costs assessors

Section 533 is amended to provide that no application fee is payable when an application for costs assessment is made by the Legal Services Commissioner, Bar Council or Law Society Council in connection with the investigation of a complaint under the Principal Act.

Summary conclusion of complaint procedure

Section 540 is amended to enable a complaint against an Australian legal practitioner to be dealt with summarily by the imposition of a condition on the practitioner's practising certificate. This process will be available in addition to the current power to proceed by way of caution, reprimand or compensation order.

Compensation

Sections 570–575 are amended to enable complainants to apply for compensation for other persons who are clients of the legal practice concerned.

Sections 571 (5) and 573 are amended to include references to section 539, which also provides for the making of compensation orders.

Other amendments

Section 508 is amended to improve the structure of subsection (3).

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Section 511 is amended to ensure that the Legal Services Commissioner, Bar Council and Law Society Council are referred to, and to cover the possibility that an Australian legal practitioner may be enrolled in more than one interstate roll in some circumstances.

Schedule 5 Amendment of Chapter 5 of Legal Profession Act 2004

Schedule 5 amends Chapter 5, which contains provisions relating to external intervention in respect of law practices, by the appointment of supervisors, managers or receivers.

Sections 615 and 653 are amended to ensure consistency of expression.

Schedule 6 Amendment of Chapter 7 of Legal Profession Act 2004

Schedule 6 amends Chapter 7, which contains provisions relating to regulatory authorities and legal profession rules. Amendments include the following:

Advertising offences

Proposed section 689A ensures that the Legal Services Commissioner is able to investigate and prosecute advertising offences in regulations under section 85.

Legal profession rules

Sections 702 (2) and 703 (2) are amended to enable legal profession rules to be made for interstate-registered foreign lawyers, as well as locally registered foreign lawyers, consistently with local and interstate barristers and solicitors.

Other powers of Bar Council and Law Society Council

Sections 696 (2) and 699 (3) are amended to enable the Councils to delegate functions to their employees as well as to officers.

Sections 696 (3) and 699 (4) are amended to ensure that the Councils' powers may be exercised with respect to persons to whom the disciplinary provisions of Chapter 4 of the Principal Act apply and not just barristers or solicitors.

Proposed sections 696 (4) and 699 (5) ensure that the Bar Council and Law Society Council can investigate and prosecute offences committed by any person (including lay persons) under Part 2.2 of the Principal Act, which deals with unqualified legal practice.

Schedule 7 Amendment of Chapter 8 of Legal Profession Act 2004

Schedule 7 amends Chapter 8, which contains provisions of a general and miscellaneous nature. Amendments include the following:

Disclosure of information

Section 721 is amended to enable regulations to be made authorising additional disclosure of information relating to or arising under the Principal Act or a corresponding (interstate) law.

Proposed section 722A provides that the Bar Association or Law Society are not required to divulge information received in connection with an application for pro bono legal services.

Duty to report offences

Section 730A is amended to make it clear that the duty of the Legal Services Commissioner, Bar Council and Law Society Council to report suspected offences to law enforcement or prosecution authorities does not extend to offences under the Principal Act or other prescribed offences, as the Principal Act provides the mechanisms to deal with them.

Penalties under regulations

Section 738 is amended as a consequence of the insertion by the proposed Act of powers to make regulations for advertising offences carrying maximum penalties exceeding those available for other offences.

Schedule 8 Amendment of Schedule 9 to Legal Profession Act 2004

Schedule 8 to the proposed Act amends Schedule 9 to the Principal Act, which contains provisions of a savings, transitional or other nature. Amendments include the following:

Clause 1 is amended to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Proposed clause 17A covers disciplinary proceedings that were commenced on or after 1 October 2005 (the date of commencement of the *Legal Profession Act 2004*) in the Administrative Decisions Tribunal. The proceedings are to be dealt with in accordance with the Principal Act unless a direction of the President of the Tribunal

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otherwise provides. Decisions and directions already given are validated. Further information is contained in the note to the clause.

Proposed clause 22 covers appeal or review proceedings that were pending before 1 October 2005 in the Supreme Court or Administrative Decisions Tribunal. The proceedings are to be dealt with in accordance with the *Legal Profession Act 1987* unless a direction of the Supreme Court or President of the Tribunal otherwise provides. Decisions and directions already given are validated.

Proposed clause 22A covers appeal or review proceedings that were commenced on or after 1 October 2005 in the Supreme Court or Administrative Decisions Tribunal. The proceedings may be commenced under either the *Legal Profession Act 1987* or the Principal Act, and are to be dealt with in accordance with the Principal Act unless a direction of the Supreme Court or President of the Tribunal otherwise provides. Decisions and directions already given are validated.

Proposed clause 28 covers any existing solicitor corporations formed under the *Legal Profession Act 1987*. The clause substantially re-enacts clause 81 of Schedule 8 to that Act.

Proposed clause 29 provides that if a solicitor corporation becomes registered as a company under the *Corporations Act 2001* of the Commonwealth, the corporation ceases to be a solicitor corporation and becomes an incorporated legal practice under the Principal Act.

Proposed clause 30 covers costs that may be awarded in criminal cases, where rules of court were made under the *Criminal Procedure Act 1986* for that purpose. Clause 30 (1) ensures that such rules are not affected by section 353 (3) of the Principal Act, which provides that party/party costs may not be the subject of costs assessment. Clause 30 (2) validates certain rules already made for the Land and Environment Court, and clause 30 (3) provides that references in those rules to provisions of the *Legal Profession Act 1987* are taken to include references to the corresponding provisions of the Principal Act.

Schedule 9 Amendment of other Acts

A number of Acts are amended to update references to barristers, solicitors and legal practitioners to terms used in the Principal Act.

The *Administrative Decisions Tribunal Act 1997* is amended to repeal clause 41 (2) of Schedule 5, which deals with disciplinary proceedings commenced on or after 1 October 2005 in the Administrative Decisions Tribunal. Transitional provisions relating to the repeal are included in new clause 17A of Schedule 9 to the Principal Act.

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Schedule 10 Amendment of Legal Profession Regulation 2005

Advertising offences

Clauses 24 and 34 are amended to increase the penalty for offences against regulations made under section 85 of the Principal Act, in line with increases effected by amendments made to that section by Schedule 2 to the proposed Act.

Maximum interest rate for unpaid legal costs

Proposed clause 110A provides that the maximum rate of interest payable on unpaid legal costs will be the Reserve Bank's Cash Rate Target increased by 2 percentage points.

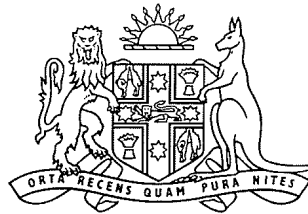


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New South Wales

Legal Profession Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Legal Profession Act 2004* in relation to the prohibition on engaging in unqualified legal practice, the grant of practising certificates, the penalties for and the investigation and prosecution of advertising offences, compensation orders, costs disclosures, costs agreements, costs assessments, foreign lawyers, and in other respects; to amend other Acts and the *Legal Profession Regulation 2005* to make consequential and other amendments; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Legal Profession Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Legal Profession Act 2004 No 112	7
The <i>Legal Profession Act 2004</i> is amended as set out in Schedules 1–8.	8 9
4 Amendment of other Acts	10
The Acts specified in Schedule 9 are amended as set out in that Schedule.	11 12
5 Amendment of Legal Profession Regulation 2005	13
The <i>Legal Profession Regulation 2005</i> is amended as set out in Schedule 10.	14 15
6 Repeal of Act	16
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	17 18
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	19 20 21

Schedule 1	Amendment of Chapter 1 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 4 Definitions	4
	Omit “or issue” from the definition of <i>admission to the legal profession</i> in section 4 (1).	5
		6
[2]	Section 4 (1)	7
	Insert in alphabetical order:	8
	<i>grant</i> of a practising certificate includes the issue of a practising certificate.	9
		10
	<i>show cause event</i> , in relation to a person, means:	11
	(a) his or her becoming bankrupt or being served with notice of a creditor’s petition presented to the Court under section 43 of the <i>Bankruptcy Act 1966</i> of the Commonwealth, or	12
		13
		14
		15
	(b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the <i>Bankruptcy Act 1966</i> of the Commonwealth of his or her intention to present a debtor’s petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act, or	16
		17
		18
		19
		20
		21
	(c) his or her applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit, or	22
		23
		24
		25
	(d) his or her conviction for a serious offence or a tax offence, whether or not:	26
		27
	(i) the offence was committed in or outside this jurisdiction, or	28
		29
	(ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires, or	30
		31
		32
		33
		34

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Schedule 1

Amendment of Chapter 1 of Legal Profession Act 2004

- (iii) other persons are prohibited from disclosing the identity of the offender. 1
2

Schedule 2	Amendment of Chapter 2 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 14 Prohibition on engaging in legal practice when not entitled	4
	Omit “for fee, gain or reward” from section 14 (1).	5
[2]	Section 45 Application for grant or renewal of local practising certificate	6
	Insert after section 45 (5):	7
	(6) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia. Accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section.	8 9 10 11 12 13 14
	Note. The purpose of this subsection is to deal with a case where a person practises both in Australia and overseas. In that case, overseas practice is to be disregarded (even if it forms the principal portion of the person’s overall practice), so that eligibility is determined by reference only to the person’s practice in Australia.	15 16 17 18 19
	(7) An Australian lawyer is also eligible to apply for the grant or renewal of a local practising certificate if the lawyer is of a class or description prescribed by the regulations. The regulations may provide that a Council has a discretion as to whether or not to grant or renew a local practising certificate to a person in his or her capacity as an Australian lawyer of that class or description.	20 21 22 23 24 25 26
	Note. The purpose of this subsection is to enable regulations to be made conferring eligibility on an Australian lawyer who is not otherwise eligible to apply for a local practising certificate. Regulations could be made conferring eligibility, for example, on an Australian lawyer who practises exclusively overseas, or an Australian lawyer who holds a public office of a specified kind.	27 28 29 30 31 32

[3] Section 54 Statutory condition regarding practice as a barrister	1
Insert at the end of the section:	2
(2) Subsection (1) does not apply to:	3
(a) a barrister who is, or who is of a class or description of barristers, specified by the Bar Council for the purposes of this section, or	4 5 6
(b) a barrister who is of a class or description of barristers prescribed by the regulations for the purposes of this section,	7 8 9
to the extent respectively specified by the Bar Council or prescribed by the regulations.	10 11
[4] Section 65 Definition of “show cause event”	12
Omit the section.	13
[5] Section 66 Applicant for local practising certificate—show cause event	14
Omit “issue” wherever occurring in section 66 (7) and (8).	15
Insert instead “grant”.	16
[6] Section 78 Immediate suspension of local practising certificate	17
Omit “section 61” from section 78 (2) (a). Insert instead “section 61 (4)”.	18
[7] Section 85 Regulation of advertising and other marketing of services	19
Omit “100 penalty units” wherever occurring in section 85 (2) and (8).	20
Insert instead “200 penalty units”.	21
[8] Section 85 (12)	22
Omit the subsection.	23
[9] Section 102 Special provisions about interstate legal practitioner engaging in unsupervised legal practice as solicitor in this jurisdiction	24 25
Insert “as a solicitor” after “practice” where firstly occurring.	26

[10]	Section 105 Consideration and investigation of applicants or holders	1
	Omit “authority” from section 105 (1) (c). Insert instead “Council”.	2
[11]	Section 129 Show cause procedure for cancellation of local practising certificate following foreign regulatory action	3
	Omit “lawyer” from section 129 (3). Insert instead “practitioner”.	4
[12]	Section 184 Definitions	6
	Omit the definition of <i>show cause event</i> .	7
[13]	Section 193 Advertising	8
	Omit “the practice of law” wherever occurring in section 193 (1).	9
	Insert instead “legal practice engaged in”.	10
[14]	Section 195 Trust money and trust accounts	11
	Insert “and Australian legal practitioners” after “practices” in section 195 (1).	12
		13
[15]	Section 195 (3)	14
	Insert “, the regulations or any legal profession rule” after “this Act”.	15
[16]	Section 203 Requirements regarding applications for grant or renewal of registration	16
	Omit “carrying on the practice of law” from section 203 (2) (f) (i).	17
	Insert instead “engaging in legal practice”.	18
		19
[17]	Section 203 (2) (f) (i)	20
	Omit “carry on the practice of law”. Insert instead “engage in legal practice”.	21
[18]	Section 203 (2) (f) (ii)	22
	Omit “carrying on any practice of law”.	23
	Insert instead “engaging in legal practice”.	24

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Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

[19] Section 203 (2) (g)	1
Omit “the practice of law”. Insert instead “legal practice engaged in”.	2
[20] Section 203 (2) (g)	3
Omit “the applicant’s practice of law”.	4
Insert instead “legal practice by the applicant”.	5
[21] Section 203 (3) (b)	6
Omit “practise law”. Insert instead “engage in legal practice”.	7
[22] Section 205 Requirement to grant or renew registration if criteria satisfied	8
	9
Omit “the practice of law” wherever occurring in section 205 (1) (b) and (c) (ii).	10
Insert instead “legal practice”.	11
	12
[23] Section 205 (1) (c) (i)	13
Omit “carrying on the practice of law”.	14
Insert instead “engaging in legal practice”.	15
[24] Section 206 Refusal to grant or renew registration	16
Omit “carries on the practice of law” from section 206 (2) (h).	17
Insert instead “engages in legal practice”.	18

Schedule 3	Amendment of Chapter 3 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 290 Payment of certain costs and expenses from Fund	4
	Omit “a Council in exercising its functions” from section 290 (1) (k).	5
	Insert instead “a Council or the Commissioner in exercising functions”.	6
[2]	Section 290 (1) (p)	7
	Insert after section 290 (1) (o):	8
	(p) without limiting any other paragraph, the costs of a Council or the Commissioner in exercising functions under section 85 (Regulation of advertising and other marketing of services) or regulations under that section (including the prosecution of offences under that section or those regulations).	9 10 11 12 13 14
[3]	Section 297 Application of Part to community legal centres	15
	Omit “an Australian legal practitioner” from section 297 (2) (a).	16
	Insert instead “a law practice”.	17
[4]	Section 297 (2) (b)	18
	Omit “an Australian legal practitioner on behalf of another person in the course of practising as an Australian legal practitioner”.	19 20
	Insert instead “a law practice on behalf of another person”.	21
[5]	Section 309 Disclosure of costs to clients	22
	Insert “, whether a specific rate or a benchmark rate,” after “(if any)” in section 309 (1) (e).	23 24
[6]	Section 309 (1) (i) (ii)	25
	Omit the subparagraph. Insert instead:	26
	(ii) the setting aside of a costs agreement or a provision of a costs agreement under section 328	27 28

(Setting aside costs agreements or provisions of costs agreements),	1 2
[7] Section 309 (1A) and (1B)	3
Insert after section 309 (1):	4
(1A) For the purposes of subsection (1) (e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.	5 6 7 8 9 10
(1B) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.	11 12 13 14 15
[8] Section 312 Exceptions to requirement for disclosure	16
Omit section 312 (1) (c). Insert instead:	17
(c) if the client or prospective client is:	18
(i) a law practice or an Australian legal practitioner,	19
or	20
(ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (respectively within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth), or	21 22 23 24 25 26
(iii) a financial services licensee (within the meaning of that Act), or	27 28
(iv) a liquidator, administrator or receiver (as respectively referred to in that Act), or	29 30
(v) a partnership that carries on the business of providing professional services if the partnership consists of 20 or more members or if the partnership would be a large proprietary company (within the meaning of that Act) if it were a company, or	31 32 33 34 35 36

(vi)	a proprietary company (within the meaning of that Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required, or	1 2 3 4 5
(vii)	an unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other members of the group who are not such persons have indicated that they waive their right to disclosure, or	6 7 8 9 10 11
(viii)	a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth,	12 13 14 15 16
[9]	Section 317 Effect of failure to disclose	17
	Insert “or a provision of the costs agreement” after “the costs agreement” in section 317 (2).	18 19
[10]	Section 321 Interest on unpaid legal costs	20
	Insert “, whether the bill is given in the form of a lump sum bill or an itemised bill” after “Part” in section 321 (1).	21 22
[11]	Section 321 (4) (a)	23
	Omit “prescribed under the <i>Supreme Court Act 1970</i> ”.	24
	Insert instead “prescribed by rules under section 101 (Interest after judgment) of the <i>Civil Procedure Act 2005</i> ”.	25 26
[12]	Section 321 (5)	27
	Insert after section 321 (4):	28
	(5) Subsection (1) applies in relation to a bill of costs given in the form of a lump sum bill even if the client afterwards requests or is afterwards given an itemised bill.	29 30 31

[13] Section 323 Conditional costs agreements	1
Insert after section 323 (4):	2
(4A) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional costs agreement if disclosure under:	3
(a) section 309 (Disclosure of costs to clients), or	4
(b) section 310 (1) (Disclosure if another law practice is to be retained),	5
in relation to the agreement was not or would not be required	6
in the circumstances referred to in section 312 (1) (c) or (d)	7
(Exceptions to requirement for disclosure).	8
[14] Section 324 Conditional costs agreements involving uplift fees	9
Omit section 324 (4). Insert instead:	10
(4) If a conditional costs agreement relates to a litigious matter, the premium must not exceed 25% of the legal costs (excluding unpaid disbursements) otherwise payable.	11
[15] Section 327 Certain costs agreements are void	12
Insert after section 327 (3):	13
(3A) A law practice that has entered into a costs agreement in contravention of section 324 (2)–(5) (Conditional costs agreements involving uplift fees) is not entitled to recover the whole or any part of the uplift fee and must repay any amount received in respect of the uplift fee to the person from whom it was received.	14
[16] Section 327 (4)	15
Omit “section 324”. Insert instead “section 324 (1)”.	16
[17] Section 328 Setting aside costs agreements or provisions of costs agreements	17
Insert “or a provision of a costs agreement” after “a costs agreement” wherever occurring in section 328 (1) and the note to the subsection.	18
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[18] Section 328 (1A)	1
Insert after section 328 (1):	2
(1A) The costs assessor may:	3
(a) set aside merely a provision of the costs agreement even if the client applied for the whole agreement to be set aside, or	4 5 6
(b) set aside the whole costs agreement even if the client applied merely for a provision of the agreement to be set aside.	7 8 9
[19] Section 328 (4)	10
Insert “or a provision of a costs agreement” after “a costs agreement”.	11
[20] Section 328 (4) and (5)	12
Insert “or the provision of the agreement” after “the agreement” wherever occurring.	13 14
[21] Section 328 (6)	15
Insert “or the provision of the costs agreement” after “agreement”.	16
[22] Section 328 (11)	17
Insert after section 328 (10):	18
(11) Subdivision 6 (Appeals) of Division 11 applies in relation to a determination to make, or not make, an order under subsection (1) or (4) as if references in that Subdivision to an application for a costs assessment were references to an application to set aside a costs agreement or a provision of a costs agreement.	19 20 21 22 23
[23] Section 331 Legal costs cannot be recovered unless bill has been served	24 25
Omit “A law practice” from section 331 (1).	26
Insert instead “Subject to section 332A (Person may request itemised bill), a law practice”.	27 28

[24] Section 332A	1
Insert after section 332:	2
332A Person may request itemised bill	3
(1) Within 30 days after receiving a lump sum bill, a person may request the law practice to give them an itemised bill.	4 5
(2) If a person makes a request under subsection (1), the law practice must not commence any proceedings to recover those costs until at least 30 days after complying with the request.	6 7 8
(3) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.	9 10
(4) Section 332 (2)–(7) (Bills) apply to the giving of an itemised bill under this section.	11 12
[25] Section 333 Notification of client’s rights	13
Omit section 333 (a) (ii). Insert instead:	14
(ii) the setting aside of a costs agreement or a provision of a costs agreement under section 328 (Setting aside costs agreements or provisions of costs agreements),	15 16 17 18
[26] Section 333 (2)	19
Insert at the end of the section after the note:	20
(2) Subsection (1) does not apply to a bill if disclosure under:	21
(a) section 309 (Disclosure of costs to clients), or	22
(b) section 310 (1) (Disclosure if another law practice is to be retained),	23 24
in relation to the relevant costs agreement was not or would not be required in the circumstances referred to in section 312 (1) (c) or (d) (Exceptions to requirement for disclosure).	25 26 27
[27] Section 352 Application for costs assessment by law practice giving bill	28
Omit “a costs assessor” from section 352 (1).	29
Insert instead “the Manager, Costs Assessment”.	30

[28] Section 361 Assessment of complying costs agreements	1
Omit “costs, and” from section 361 (1) (b). Insert instead “costs”.	2
[29] Section 361 (1) (c)	3
Omit the paragraph.	4
[30] Section 361 (2)	5
Omit the subsection and note. Insert instead:	6
(2) This section has effect subject to section 328 but does not limit the operation of section 365.	7
	8
Note. Section 328 provides for the setting aside of a costs agreement or a provision of a costs agreement. Section 365 provides that a costs assessor may have regard to, but not apply the terms of, a costs agreement in assessing party/party costs.	9
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[31] Section 368 Certificate as to determination	13
Omit “to each party and the Manager, Costs Assessment” from section 368 (1).	14
	15
[32] Section 368 (5A)	16
Insert after section 368 (5):	17
(5A) The costs assessor must forward the certificate or a copy of the certificate to:	18
	19
(a) the Manager, Costs Assessment, and	20
(b) each party to the assessment, unless subsection (6) applies.	21
	22
[33] Section 368 (6) (a)	23
Omit the paragraph. Insert instead:	24
(a) forward a copy of the certificate to the Manager, Costs Assessment only, and	25
	26

Legal Profession Amendment Bill 2006

Schedule 3 Amendment of Chapter 3 of Legal Profession Act 2004

[34] Section 369 Recovery of costs of costs assessment	1
Insert after section 369 (2):	2
(2A) Subject to any order of or the rules of the relevant court or tribunal, the costs assessor may determine by whom and to what extent the costs of an assessment referred to in section 364 (Assessment of costs—costs ordered by court or tribunal) are payable and include the determination in the certificate issued under this section in relation to the assessment.	3 4 5 6 7 8
[35] Section 369 (5)	9
Insert “and forward” after “issue”.	10
[36] Section 369 (10)	11
Omit “means”. Insert instead “includes”.	12
[37] Section 369 (10)	13
Insert “also” before “includes”.	14
[38] Section 373 Application by party for review of determination	15
Omit “the issue of” from section 373 (1).	16
[39] Section 373 (1)	17
Insert “has been forwarded to the parties” before “that”.	18
[40] Section 373 (1), note	19
Insert “or a provision of the costs agreement” after “the costs agreement”.	20
[41] Section 485 Failure to obtain fidelity insurance for regulated mortgage	21
Omit “issue” from section 485 (1). Insert instead “grant”.	22

Schedule 4	Amendment of Chapter 4 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 508 Practitioner to be notified of complaint	4
	Insert “to” after “likely” in section 508 (3).	5
[2]	Section 508 (3) (a)–(d)	6
	Omit “to” wherever occurring at the beginning of each paragraph.	7
[3]	Section 511 Summary dismissal of complaints	8
	Omit “authority” wherever occurring in section 511 (1) (a) and (h).	9
	Insert instead “Commissioner or Council”.	10
[4]	Section 511 (1) (f)	11
	Omit “an”. Insert instead “any”.	12
[5]	Section 533 Referral of matters to costs assessors	13
	Insert after section 533 (4):	14
	(5) No fee is payable under section 354 (How to make an application for costs assessment) for any such application.	15
		16
[6]	Sections 537 (1) (c) and (2), 542 (1) (c), 559 (2) (b) and 571 (5) (b) (i)	17
	Omit “section 540 (Summary conclusion of complaint procedure by caution, reprimand or compensation order)” wherever occurring.	18
	Insert instead “section 540 (Summary conclusion of complaint procedure by caution, reprimand, compensation order or imposition of conditions)”.	19
		20
		21
[7]	Section 540 Summary conclusion of complaint procedure by caution, reprimand, compensation order or imposition of conditions	22
	Insert after section 540 (2) (c):	23
		24
	(d) determine that a specified condition be imposed on the practitioner’s practising certificate.	25
		26

Legal Profession Amendment Bill 2006

Schedule 4 Amendment of Chapter 4 of Legal Profession Act 2004

[8] Section 540 (5)	1
Insert “or that a condition be imposed on an Australian legal practitioner’s practising certificate under this section,” after “this section,”.	2 3
[9] Section 540 (6)	4
Insert after section 540 (5) after the note:	5
(6) If the Commissioner determines that a specified condition be imposed on a practising certificate, the appropriate Council is required to impose and maintain the condition. The condition may be amended, suspended, reinstated or revoked with the concurrence of the Commissioner.	6 7 8 9 10
[10] Section 570 Request by complainant for compensation order	11
Omit section 570 (1). Insert instead:	12
(1) A complainant may request a compensation order in respect of loss suffered by:	13 14
(a) the complainant, or	15
(b) another person who is a client of the law practice to which the Australian legal practitioner concerned belongs,	16 17 18
(or both) because of the conduct the subject of the complaint. The complainant, or other person, suffering the loss is referred to in this Part as an <i>aggrieved person</i> .	19 20 21
[11] Section 570 (2)	22
Omit “the complainant”. Insert instead “the aggrieved person”.	23
[12] Section 571 Compensation orders	24
Omit “complainant” from section 571 (1) and (2) wherever occurring. Insert instead “aggrieved person”.	25 26
[13] Section 572 Prerequisites to making of compensation orders	27
Omit “complainant” from section 572 (1) (a). Insert instead “aggrieved person”.	28 29

[14] Section 572 (2)	1
Omit “complainant”. Insert instead “aggrieved person”.	2
[15] Section 573 Making of compensation orders	3
Insert “539 or” after “section” in section 573 (3) (a) (i).	4
[16] Section 573 (7)	5
Insert after section 573 (6):	6
(7) A compensation order may specify the person to whom monetary compensation is payable, whether to the aggrieved person or to another person on behalf of the aggrieved person.	7 8 9
[17] Section 575 Other remedies not affected	10
Omit “a complainant”. Insert instead “an aggrieved person”.	11
[18] Section 575	12
Omit “the complainant”. Insert instead “the aggrieved person”.	13
[19] Section 599	14
Insert after section 598:	15
599 Conditions imposed under this Chapter	16
Any requirements of Chapter 2 (General requirements for engaging in legal practice) relating to the imposition of conditions do not apply to conditions imposed under this Chapter.	17 18 19 20

Legal Profession Amendment Bill 2006

Schedule 5 Amendment of Chapter 5 of Legal Profession Act 2004

Schedule 5	Amendment of Chapter 5 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 615 Circumstances warranting external intervention	4
	Omit “law practice” from section 615 (d). Insert instead “practice”.	5
[2]	Section 653 Reports by external intervener	6
	Omit “authority” from section 653 (3).	7
	Insert instead “Law Society Council”.	8

Schedule 6	Amendment of Chapter 7 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 688 Functions of Commissioner	4
	Omit “issue” from section 688 (1) (j). Insert instead “grant”.	5
[2]	Section 689 Commissioner may require Councils to provide information	6
	Omit “issue” wherever occurring in section 689 (1) (d).	7
	Insert instead “grant”.	8
[3]	Section 689A	9
	Insert after section 689:	10
689A	Functions of Commissioner in relation to advertising offences	11
	(1) In addition to the Commissioner’s other functions, the Commissioner may institute prosecutions for an offence against section 85 (Regulation of advertising and other marketing of services) or regulations made under that section.	12 13 14 15
	(2) If the Commissioner suspects on reasonable grounds that a person (whether or not an Australian lawyer) may have committed an offence against section 85 or regulations made under that section, the Commissioner or a person authorised by the Commissioner may conduct an investigation in relation to the matter.	16 17 18 19 20 21
	(3) The Commissioner or authorised person has and may exercise, in relation to the matter referred to in subsection (2), the same powers as an investigator has under Chapter 6 (Provisions relating to investigations) in relation to a matter that is the subject of a complaint under Chapter 4 (Complaints and discipline).	22 23 24 25 26 27
	(4) Accordingly, the provisions of Chapter 6 apply in relation to the matter referred to in subsection (2), and so apply with any necessary modifications and as if a reference to an Australian lawyer included a reference to a lay person.	28 29 30 31

Legal Profession Amendment Bill 2006

Schedule 6 Amendment of Chapter 7 of Legal Profession Act 2004

(5) This section does not limit any powers that may be exercised apart from this section by the Commissioner or by any other person.	1 2 3
[4] Section 696 Functions of Bar Council	4
Omit “or to an officer of the Bar Council” from section 696 (2).	5
Insert instead “, to an officer of the Bar Council or to an employee of the Bar Association”.	6 7
[5] Section 696 (3) (a)	8
Omit the paragraph. Insert instead:	9
(a) a person to whom Chapter 4 (Complaints and discipline) applies, other than an Australian legal practitioner who is, or was at the relevant time, a solicitor, or	10 11 12 13
[6] Section 696 (4)	14
Insert after section 696 (3):	15
(4) Without limiting any other provision of this section, the Bar Council may investigate and bring proceedings for a breach of Part 2.2 by any person, including a lay person.	16 17 18
[7] Section 699 Functions of Law Society Council	19
Omit “or to an officer of the Law Society Council” from section 699 (3).	20
Insert instead “, to an officer of the Law Society Council or to an employee of the Law Society”.	21 22
[8] Section 699 (4) (a)	23
Omit the paragraph. Insert instead:	24
(a) a person to whom Chapter 4 (Complaints and discipline) applies, other than an Australian legal practitioner who is, or was at the relevant time, entitled to engage in legal practice only as or in the manner of a barrister, or	25 26 27 28 29

[9] Section 699 (5)	1
Insert after section 699 (4):	2
(5) Without limiting any other provision of this section, the Law Society Council may investigate and bring proceedings for a breach of Part 2.2 by any person, including a lay person.	3 4 5
[10] Section 701 Purpose	6
Omit “locally registered foreign lawyers”.	7
Insert instead “Australian-registered foreign lawyers”.	8
[11] Section 702 Rules for barristers	9
Omit “practice” from section 702 (1).	10
Insert instead “engaging in legal practice”.	11
[12] Section 702 (2)	12
Omit the subsection. Insert instead:	13
(2) The Bar Council may make rules for or with respect to engaging in legal practice as an Australian-registered foreign lawyer who engages in legal practice only as or in the manner of a barrister.	14 15 16 17
[13] Section 703 Rules for solicitors	18
Omit “practice” from section 703 (1).	19
Insert instead “engaging in legal practice”.	20
[14] Section 703 (2)	21
Omit the subsection. Insert instead:	22
(2) The Law Society Council may make rules for or with respect to engaging in legal practice as an Australian-registered foreign lawyer who engages in legal practice as or in the manner of a solicitor.	23 24 25 26

Legal Profession Amendment Bill 2006

Schedule 6 Amendment of Chapter 7 of Legal Profession Act 2004

[15]	Section 706 Subject-matter of legal profession rules	1
	Omit “locally registered foreign lawyers” from section 706 (1).	2
	Insert instead “Australian-registered foreign lawyers”.	3
[16]	Section 711 Binding nature of legal profession rules	4
	Omit “locally registered foreign lawyers” from section 711 (1).	5
	Insert instead “Australian-registered foreign lawyers”.	6

Schedule 7	Amendment of Chapter 8 of Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Section 721 Disclosure of information by local regulatory authorities	4
	Insert after section 721 (2):	5
	(2A) The regulations may authorise a local regulatory authority to disclose information to a person or body prescribed, or of a class prescribed, by the regulations relating to or arising under this Act or a corresponding law, subject to any limitations or restrictions specified in the regulations.	6 7 8 9 10
[2]	Section 722A	11
	Insert after section 722:	12
722A	Protection of applications for referral for pro bono legal services	13
	(1) A protected person is not required to divulge or produce to any person, court or tribunal (whether in response to a subpoena or otherwise) any information or document received by a protected person in connection with an application made by or on behalf of a person for a referral for the provision of legal services on a pro bono basis.	14 15 16 17 18 19
	(2) This section has effect despite section 730A (Duty to report suspected offences).	20 21
	(3) In this section:	22
	<i>protected person</i> means:	23
	(a) the Bar Association or Law Society, or	24
	(b) a Council or a member of a Council, or	25
	(c) a committee or member of a committee of the Bar Association, Law Society or a Council, or	26 27
	(d) an Australian legal practitioner to whom a person or body mentioned in a preceding paragraph of this definition gives any information or document referred to in subsection (1) for the purpose of advising such a person or body on the application, or	28 29 30 31 32

Legal Profession Amendment Bill 2006

Schedule 7 Amendment of Chapter 8 of Legal Profession Act 2004

- (e) an employee or agent of, or a person acting at the direction of, a person or body mentioned in a preceding paragraph of this definition. 1
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[3] Section 730A Duty to report suspected offences 4

Insert after section 730A (3): 5

(4) This section does not apply to: 6

(a) offences against this Act or the *Legal Profession Act 1987* or the regulations under either Act, or 7
8

(b) offences specified, or of a class or description specified, by the regulations for the purposes of this section. 9
10

[4] Section 738 Regulations 11

Insert “, unless another maximum penalty is authorised by another provision of this Act to be included in relation to the offence concerned” after “units” in section 738 (3). 12
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14

Schedule 8	Amendment of Schedule 9 to Legal Profession Act 2004	1
		2
	(Section 3)	3
[1]	Schedule 9 Savings, transitional and other provisions	4
	Insert at the end of clause 1 (1):	5
	<i>Legal Profession Amendment Act 2006</i>	6
[2]	Schedule 9, clause 13 Multi-disciplinary partnerships	7
	Omit “section 137 (Notice of intention to start providing legal services)” from clause 13 (1).	8 9
	Insert instead “section 167 (Notice of intention to start practice in multi-disciplinary partnership)”.	10 11
[3]	Schedule 9, clause 17A	12
	Insert after clause 17:	13
17A	Proceedings before Tribunal instituted on or after 1 October 2005	14
	(1) Proceedings before the Tribunal that were instituted on or after 1 October 2005 but before the commencement of this clause in respect of a complaint about conduct occurring before 1 October 2005 are to be dealt with in accordance with:	15 16 17 18
	(a) this Act (including clauses 16 and 17 of this Schedule), and	19 20
	(b) the <i>Administrative Decisions Tribunal Act 1997</i> (as in force on or after 1 October 2005),	21 22
	except in so far as a direction of the President of the Tribunal under this clause otherwise provides.	23 24
	(2) The President of the Tribunal may direct that the proceedings be dealt with in accordance with:	25 26
	(a) the old Act, or	27
	(b) the old Act and this Act as regards different aspects of the proceedings, as indicated in the direction.	28 29

- (3) The President of the Tribunal may, for the purposes of this clause, direct that the Tribunal be constituted as determined by the President or the Divisional Head of the Legal Services Division, being a determination that is consistent with requirements for the constitution of the Division under the *Administrative Decisions Tribunal Act 1997* at or at any time before the commencement of this clause.
- (4) The President of the Tribunal may give any such direction at any stage of the proceedings.
- (5) Any decisions of the Tribunal or directions of the President of the Tribunal that:
- (a) were made or given before the commencement of this clause, and
 - (b) would have been valid had the *Legal Profession Amendment Act 2006* (which inserted this clause and omitted clause 41 (2) (Pending proceedings) of Schedule 5 (Savings and transitional provisions) to the *Administrative Decisions Tribunal Act 1997*) been in force at the relevant time,
- are taken to have been validly made or given.
- Note.** The purpose of clause 17A is to provide for determining how disciplinary proceedings commenced in the Tribunal on or after 1 October 2005 but before the commencement of the clause are to be dealt with. Clauses 16 and 17 in effect provide that those proceedings are to be dealt with substantially in accordance with this Act. However, clause 41 (2) of Schedule 5 to the *Administrative Decisions Tribunal Act 1997* in effect provided that those proceedings are to be initiated and dealt with in accordance with the *Legal Profession Act 1987* and in accordance with the *Administrative Decisions Tribunal Act 1997* as in force before the commencement of clause 41. Clause 41 (2) was repealed by the *Legal Profession Amendment Act 2006*.
- Clause 17A provides that the proceedings are to be dealt with in accordance with this Act and the *Administrative Decisions Tribunal Act 1997* as currently in force, subject to any directions that the President is authorised to give under the clause.

[4] Schedule 9, clauses 22 and 22A

Omit clause 22. Insert instead:

22 Pending appeals or reviews

- (1) An appeal or review that was pending under or in relation to any matter under the old Act immediately before 1 October

- 2005 is to be dealt with as if this Act had not been enacted, except in so far as a direction of the Supreme Court or the President of the Tribunal, as the case requires, under this clause otherwise provides. 1
2
3
4
- (2) The Supreme Court or the President of the Tribunal, as the case requires, may direct that the appeal or review proceedings be dealt with in accordance with the provisions of: 5
6
7
- (a) this Act, or 8
- (b) the old Act and this Act as regards different aspects of the proceedings, as indicated in the direction. 9
10
- Those provisions apply accordingly, and so apply with any necessary adaptations. 11
12
- (3) The President of the Tribunal may, for the purposes of this clause, direct that the Tribunal be constituted as determined by the President or the Divisional Head of the Legal Services Division, being a determination that is consistent with requirements for the constitution of the Division under the *Administrative Decisions Tribunal Act 1997* at or at any time before the commencement of this clause. 13
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- (4) The Supreme Court or the President of the Tribunal, as the case requires, may give any such direction at any stage of the proceedings. 20
21
22
- (5) The Supreme Court or the Tribunal, as the case requires, may make orders declaring how the decision on the appeal or review is to have effect in relation to the provisions of this Act. 23
24
25
- (6) Any decisions of the Supreme Court or the Tribunal or directions of the Supreme Court or the President of the Tribunal that: 26
27
28
- (a) were made or given before the commencement of this clause, and 29
30
- (b) would have been valid had the *Legal Profession Amendment Act 2006* (which substituted this clause) been in force at the relevant time, 31
32
33
- are taken to have been validly made or given. 34

22A	New appeals or reviews about old matters	1
(1)	A matter arising under the old Act may be the subject of an appeal or review made or applied for on or after 1 October 2005 if the appeal or review could have been made or applied for had this Act not been enacted.	2 3 4 5
(2)	The appeal or review may be made or applied for under the provisions of either the old Act or this Act (even if the matter could not otherwise be the subject of appeal or review under this Act if the matter had arisen on or after 1 October 2005).	6 7 8 9
(3)	The appeal or review may be dealt with under this Act (even if the matter could not otherwise be the subject of appeal or review under this Act if the matter had arisen after 1 October 2005), except in so far as a direction of the Supreme Court or the President of the Tribunal, as the case requires, under this clause otherwise provides.	10 11 12 13 14 15
(4)	The Supreme Court or the President of the Tribunal, as the case requires, may direct that the appeal or review proceedings be dealt with in accordance with the provisions of:	16 17 18
	(a) the old Act, or	19
	(b) the old Act and this Act as regards different aspects of the proceedings, as indicated in the direction.	20 21
	Those provisions apply accordingly, and so apply with any necessary adaptations.	22 23
(5)	The President of the Tribunal may, for the purposes of this clause, direct that the Tribunal be constituted as determined by the President or the Divisional Head of the Legal Services Division, being a determination that is consistent with requirements for the constitution of the Division under the <i>Administrative Decisions Tribunal Act 1997</i> at or at any time before the commencement of this clause.	24 25 26 27 28 29 30
(6)	The President may give any such direction at any stage of the proceedings.	31 32
(7)	The Supreme Court or the Tribunal, as the case requires, may make orders declaring how the decision on the appeal or review is to have effect in relation to the provisions of this Act.	33 34 35

- (8) Any decisions of the Supreme Court or the Tribunal or directions of the Supreme Court or the President of the Tribunal that:
- (a) were made or given before the commencement of this clause, and
 - (b) would have been valid had the *Legal Profession Amendment Act 2006* (which inserted this clause) been in force at the relevant time,
- are taken to have been validly made or given.
- [5] Schedule 9, clauses 28–30**
- Insert after clause 27:
- 28 Existing solicitor corporations**
- (1) This clause applies to a solicitor corporation that was formed under Division 1 of Part 10A of the old Act and that was in existence immediately before the repeal of that Part by the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*.
 - (2) Any such solicitor corporation in existence immediately before 1 October 2005 is taken for all purposes to have continued in existence on and from that date, and Part 10A of the old Act continues to apply to the solicitor corporation (despite its repeal), until:
 - (a) the registration of the corporation as a company under the *Corporations Act 2001* of the Commonwealth, or
 - (b) the winding up of the corporation in accordance with that Part or with the regulations made under this Schedule.
 - (3) Any such regulations may apply provisions of the *Corporations Act 2001* of the Commonwealth or any other Act, with or without modification.
 - (4) Solicitor corporations are taken to be, and to have been on and after 1 October 2005, law practices within the meaning of this Act. The regulations may modify the operation of this Act in relation to solicitor corporations.

(5)	The transfer, in accordance with the <i>Corporations Act 2001</i> of the Commonwealth, of the incorporation of any such solicitor corporation to incorporation under that Act is authorised.	1 2 3
29	Solicitor corporation becoming company	4
(1)	This clause applies to a corporation that is registered as a company under the <i>Corporations Act 2001</i> of the Commonwealth and that immediately before its registration as such a company was a solicitor corporation to which clause 28 applied.	5 6 7 8 9
(2)	The corporation:	10
(a)	ceases to be a solicitor corporation when it is registered as a company under the <i>Corporations Act 2001</i> of the Commonwealth, and	11 12 13
(b)	becomes an incorporated legal practice (subject to and in accordance with section 134 of this Act and any other relevant provisions of Part 2.6 of this Act).	14 15 16
(3)	Part 10A of the old Act ceases to apply to the corporation.	17
(4)	The corporation must, within the period of 7 days commencing with the day on which the corporation becomes registered as a company, give:	18 19 20
(a)	the Law Society Council, and	21
(b)	the Commissioner for Fair Trading in the Department of Commerce or (if that position does not exist) the Director-General of the Department of Commerce,	22 23 24
	a written notice of that fact.	25
	Maximum penalty: 50 penalty units.	26
(5)	Sections 137 and 138 do not apply, and are taken not to have applied, to the corporation if it gives the Law Society Council the notice referred to in subclause (4) within the required period and in the approved form.	27 28 29 30
30	Costs in criminal matters	31
(1)	Section 353 (3) (Application for assessment of party/party costs) does not affect, and is taken never to have affected, rules of court, or the power to make rules of court, under section 253	32 33 34

- (Court may order payment of costs) of the *Criminal Procedure Act 1986* in connection with criminal proceedings in any court. 1
2
- (2) The *Land and Environment Court Rules (Amendment No 16) 2005* (the **amending Rules**) are taken to have been validly made. 3
4
5
- (3) References in Division 3 of Part 16 of the *Land and Environment Court Rules 1996* as inserted by the amending Rules to provisions of the old Act are taken to include references to the corresponding provisions of this Act. 6
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Schedule 9 Amendment of other Acts	1
(Section 4)	2
9.1 Aboriginal Land Rights Act 1983 No 42	3
Section 179 Constitution of Pecuniary Interest Tribunal	4
Omit “a barrister or solicitor” from section 179 (1).	5
Insert instead “an Australian legal practitioner”.	6
9.2 Administrative Decisions Tribunal Act 1997 No 76	7
Schedule 5 Savings and transitional provisions	8
Omit clause 41 (2).	9
9.3 Architects Act 2003 No 89	10
Sections 45 (3) and 60 (2) (d)	11
Omit “a legal practitioner” wherever occurring.	12
Insert instead “an Australian legal practitioner”.	13
9.4 Casino Control Act 1992 No 15	14
Sections 23 (7), 59 (7), 135 (2) (b) and 143A (1) (b)	15
Omit “a legal practitioner” wherever occurring.	16
Insert instead “an Australian lawyer”.	17

9.5	Chiropractors Act 2001 No 15	1
[1]	Section 87 Membership of the Board	2
	Omit “legal practitioner” from section 87 (2) (f).	3
	Insert instead “Australian lawyer”.	4
[2]	Section 100 Chairperson and Deputy Chairpersons of the Tribunal	5
	Omit “a legal practitioner” from section 100 (1).	6
	Insert instead “an Australian lawyer”.	7
[3]	Section 100 (1)	8
	Omit “legal practitioners”. Insert instead “Australian lawyers”.	9
9.6	Health Services Act 1997 No 154	10
	Section 108 Constitution of Committee of Review	11
	Omit “a legal practitioner” from section 108 (2) (a).	12
	Insert instead “an Australian lawyer”.	13
9.7	Judicial Officers Act 1986 No 100	14
	Section 5 The Commission	15
	Omit “a legal practitioner” from section 5 (5) (a).	16
	Insert instead “an Australian legal practitioner”.	17

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Schedule 9 Amendment of other Acts

9.8 Law and Justice Foundation Act 2000 No 97	1
Schedule 1 Constitution and procedure of Board	2
Omit “a legal practitioner” wherever occurring in clause 2 (2) (c) and (d) and (4).	3
Insert instead “an Australian legal practitioner”.	4
Insert instead “an Australian legal practitioner”.	5
9.9 Law Reform Commission Act 1967 No 39	6
Section 3 Constitution of the Commission	7
Omit “a lawyer” from section 3 (3) (b).	8
Insert instead “an Australian legal practitioner”.	9
9.10 Local Government Act 1993 No 30	10
Section 488 Constitution of Pecuniary Interest and Disciplinary Tribunal	11
Omit “a barrister or solicitor” from section 488 (1).	12
Insert instead “an Australian lawyer”.	13
Insert instead “an Australian lawyer”.	14
9.11 Medical Practice Act 1992 No 94	15
Section 130 Membership	16
Omit “a barrister or solicitor” from section 130 (2) (b).	17
Insert instead “an Australian legal practitioner”.	18

9.12	Mental Health Act 1990 No 9	1
[1]	Section 253 Additional provisions relating to members	2
	Omit “barristers and solicitors” from section 253 (1) (a).	3
	Insert instead “Australian legal practitioners”.	4
[2]	Section 264 Composition of the Tribunal generally	5
	Omit “a barrister or solicitor” from 264 (a).	6
	Insert instead “an Australian legal practitioner”.	7
[3]	Section 264 (c)	8
	Omit “a barrister, solicitor”. Insert instead “an Australian lawyer”.	9
[4]	Section 265 Composition of the Tribunal for dealing with forensic patients	10 11
	Omit “a psychiatrist or a barrister or solicitor” from section 265 (c).	12
	Insert instead “an Australian lawyer or a psychiatrist”.	13
[5]	Section 270 Chairperson and votes of members	14
	Omit “a barrister or solicitor, as the case may be,” from section 270 (a).	15
	Insert instead “an Australian legal practitioner”.	16
[6]	Schedule 4, clause 1 (2) (a) and Schedule 6, clause 1 (1)	17
	Omit “a legal practitioner” wherever occurring.	18
	Insert instead “an Australian lawyer”.	19
[7]	Schedule 6 Provisions relating to members of the Tribunal	20
	Omit “a barrister or a solicitor” from clause 1 (2).	21
	Insert instead “an Australian legal practitioner”.	22

Schedule 10 Amendment of Legal Profession Regulation 2005	1
	2
(Section 5)	3
[1] Clause 24 Restriction on advertising personal injury services	4
Omit “100 penalty units” from clause 24 (1).	5
Insert instead “200 penalty units”.	6
[2] Clause 34 Restrictions on personal injury advertisements	7
Omit “100 penalty units” wherever occurring.	8
Insert instead “200 penalty units”.	9
[3] Clause 110A	10
Omit the clause. Insert instead:	11
110A Interest on unpaid legal costs—section 321 (4) (b) of the Act	12
(1) This clause is made for the purposes of section 321 (4) (b) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under section 321 of the Act or under a costs agreement.	13 14 15 16
(2) The rate for the period commencing with 1 October 2005 and ending immediately before the date of commencement of subclause (3) is 9%.	17 18 19
(3) The rate for the period commencing with the date of commencement of this subclause is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.	20 21 22 23

- (4) In this clause: 1
- Cash Rate Target* means the percentage (or maximum 2
percentage) specified by the Reserve Bank of Australia as the 3
Cash Rate Target. 4
- relevant date* means the date the bill was issued by the law 5
practice concerned. 6