



New South Wales

Legal Profession Amendment (National Practising Certificates) Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* so as:

- (a) to allow lawyers who are entitled to practise in other Australian jurisdictions to practise in New South Wales without having to be admitted in New South Wales or to obtain New South Wales practising certificates, and
 - (b) to recognise disciplinary action taken against New South Wales lawyers by interstate regulatory authorities, and
 - (c) to rename the practising certificate for a "solicitor" as a practising certificate for a "solicitor and barrister", and
 - (d) to repeal certain inoperative provisions of the Act relating to the application of the *Trade Practices Act 1974* of the Commonwealth, and
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- (e) to clarify the operation of the fees disclosure provisions of the Act, and
- (f) to provide for the mediation of costs disputes in certain minor matters, and
- (g) to enable application fees for costs assessments to be waived in cases of hardship, and
- (h) to make provision for the recovery of the costs of the proper officer of the Supreme Court in costs assessments.

Outline of provisions

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

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedules of amendments to the *Legal Profession Act 1987*.

National practising certificates

Schedule 1 [28] inserts proposed Part 3B (sections 48N–48ZD) into the Act. The Part will enable New South Wales to participate in a scheme applying throughout Australia providing for the legislative conferral of reciprocal rights to practise on the lawyers of participating States (defined in the proposed Part to include Territories). Each participating State will legislate to confer an automatic right to practise in the participating State on any lawyer entitled to practise in any other participating State. The scheme will not affect the ability of lawyers of one jurisdiction to seek registration as a lawyer in another under the *Mutual Recognition Act 1992* of the Commonwealth but differs from the scheme under that Act in that the right to practise is conferred simply by the lawyer being the holder of a current practising certificate (or a comparable authority) in a participating jurisdiction.

The right to practise will be subject to any conditions imposed on the lawyer by the practising certificate concerned and any conditions imposed in any participating jurisdiction as a result of disciplinary action. For example, if the practising certificate of a lawyer from another State permits the lawyer to practise in that State only under supervision, the lawyer will be required to practise in this State subject to the same limitation. A lawyer from another jurisdiction practising in this State will be subject to the same statutory requirements and rules of practice and regulatory action by the Supreme

Explanatory note

Court, the Bar Council, the Law Society Council, the Legal Services Tribunal and the Legal Services Commissioner as that to which a local lawyer is subject. If the lawyer establishes an office in this State he or she will be required to comply with additional obligations that are the same or comparable to those with which local lawyers must comply relating to trust money, fidelity fund contributions and maintenance of indemnity insurance.

Part 3B contains the following provisions:

Proposed section 48N defines various terms for the purposes of the Part.

Proposed section 48O enables the Attorney General, by order published in the Gazette, to declare a law of another State to be a corresponding law for the purposes of Part 3B. A State in which a corresponding law is in force is a participating State for the purposes of the Part.

Proposed section 48P states the object of the scheme, which is to enable any individual who is authorised to practise law in one State to practise law in an equivalent way in all other States participating in the scheme.

Proposed section 48Q sets out the right to practise in this State described above that derives from the holding of a practising certificate in another jurisdiction.

Proposed section 48R enables a regulatory authority in this State (for example, the Bar Council or Law Society Council) to attach certain conditions to the practising certificate from which a right to practise is derived that it might attach to the practising certificate of a local lawyer.

Proposed section 48S describes the circumstances in which a lawyer from another jurisdiction will be taken to have established an office in this State.

Proposed section 48T requires a lawyer from another jurisdiction who establishes an office in this State to notify the Bar Council or the Law Society Council, as appropriate, of having done so.

Proposed section 48U requires a lawyer from another jurisdiction who establishes an office in this State to maintain comparable indemnity insurance to that which local lawyers are required to maintain.

Proposed sections 48V–48Z enable the regulatory authorities in this State and in other participating States to deal with disputes and complaints and to discipline lawyers practising in their jurisdictions under the scheme. It also enables such matters to be referred by a regulatory authority in one participating State to another and enables regulatory authorities in participating States to furnish information to each other relating to disciplinary action against lawyers practising in participating States under the scheme.

Proposed section 48ZA requires a local lawyer who has not established an office in a participating State who receives trust money in the course of practising in that State to deal with it in accordance with Part 6.

Proposed section 48ZB enables a regulatory authority of this State to exercise functions conferred on it by a corresponding law.

Proposed section 48ZC enables a regulatory authority of this State to make various agreements and arrangements with regulatory authorities of other participating States.

Proposed section 48ZD requires a lawyer from another jurisdiction who does not establish an office in this State and whose indemnity under a policy of indemnity insurance is less than he or she would be required to maintain under section 48ZD if he or she had established such an office to disclose the difference to a client before he or she is retained.

Schedule 1 [1]–[3], [4], [7], [8], [10], [16], [20], [23]–[27], [29]–[46], [49]–[73] and [76]–[78] make related and consequential amendments. These include provisions to make it clear that a lawyer from another jurisdiction practising in this State under the scheme is an officer of the Supreme Court (**Schedule 1** [3]), to make it an offence for such a lawyer to practise in this State unless holding a practising certificate (**Schedule 1** [7]) and to apply provisions relating to trust accounts and fidelity fund contributions to such lawyers who open offices in this State (**Schedule 1** [30] and [34]). Provision is also made to except such lawyers from some provisions of the Act (for example, only a local lawyer can be a barrister or solicitor member of the Legal Services Tribunal) (**Schedule 1** [59]). Provision is also made to set out the circumstances in which a claim will lie against the Fidelity Fund in respect of pecuniary loss occurring as a result of failure to account or a dishonest default by lawyers practising under the scheme (**Schedule 1** [40]).

Schedule 2 [10] inserts proposed clause 55 into Schedule 8 of the Act to make it clear that the entitlement conferred by proposed Part 3B arises even if the practising certificate from which the entitlement is derived was issued before the commencement of the Part.

Nomenclature of solicitors' practising certificates

Schedule 1 [12] renames the practising certificate for a "solicitor" as a practising certificate for a "solicitor and barrister" and **Schedule 1** [5], [6], [9], [11]–[15], [17]–[19], [21], [22], [47], [48], [74] and [75] make consequential amendments flowing from this change.

Application of Trade Practices Act 1974

Schedule 2 [1] repeals Division 1AA of Part 3 of the Act, which is inoperative. Division 1AA applies the *Trade Practices Act 1974* of the Commonwealth to the legal profession, subject to corresponding Commonwealth laws.

The Division has been superseded by the *Competition Policy Reform (New South Wales) Act 1995*, which applies to the legal profession. Under the *Competition Code*, the rules made by the Law Society Council and Bar Council are subject to scrutiny by the Australian Competition and Consumer Commission which may seek to have a rule set aside if it imposes a restrictive or anti-competitive policy practice contrary to the provisions of the *Competition Code*.

Clarification of disclosure provisions

Schedule 2 [2] clarifies section 180 (which currently states that a disclosure of matters relating to costs is not required to be made if in the circumstances it is not reasonably practicable to do so) so that instead disclosure is not required when it would not be reasonable to be required to do so. The section in its current form has been interpreted as not permitting disclosure to be waived if, for example, a very low fee is involved. **Schedule 2 [3]** amends section 181 to enable the circumstances when disclosure is not required to be made to be specified in regulations or rules made with the approval of the Attorney General.

Mediation of costs disputes

Schedule 2 [4] inserts Division 5A into Part 11 of the Act. The proposed Division will enable the Legal Services Commissioner or the Bar Council or Law Society Council to mediate disputes about bills of costs on an informal basis if the amount in dispute is less than \$2,500.

Waiver of application fees for costs assessments

Schedule 2 [5] and **[6]** enable the proper officer of the Supreme Court to waive payment (in whole or in part) of the application fee for a costs assessment in cases of serious hardship to the applicant or his or her dependants.

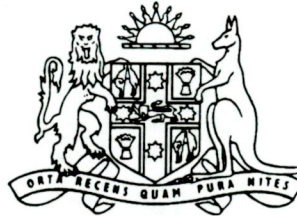
Recovery of costs of costs assessments

Schedule 2 [7] and **[8]** make provision for the recovery of the costs of the proper officer of the Supreme Court in costs assessments. **Schedule 2 [10]** inserts proposed clause 56 into Schedule 8 to the Act to apply the provisions to costs assessments for which application is made before the commencement of the amendments.

Savings, transitional and other provisions

Schedule 2 [9] enables regulations of a savings or transitional nature that are consequent on the enactment of the proposed Act to be made.

First print



New South Wales

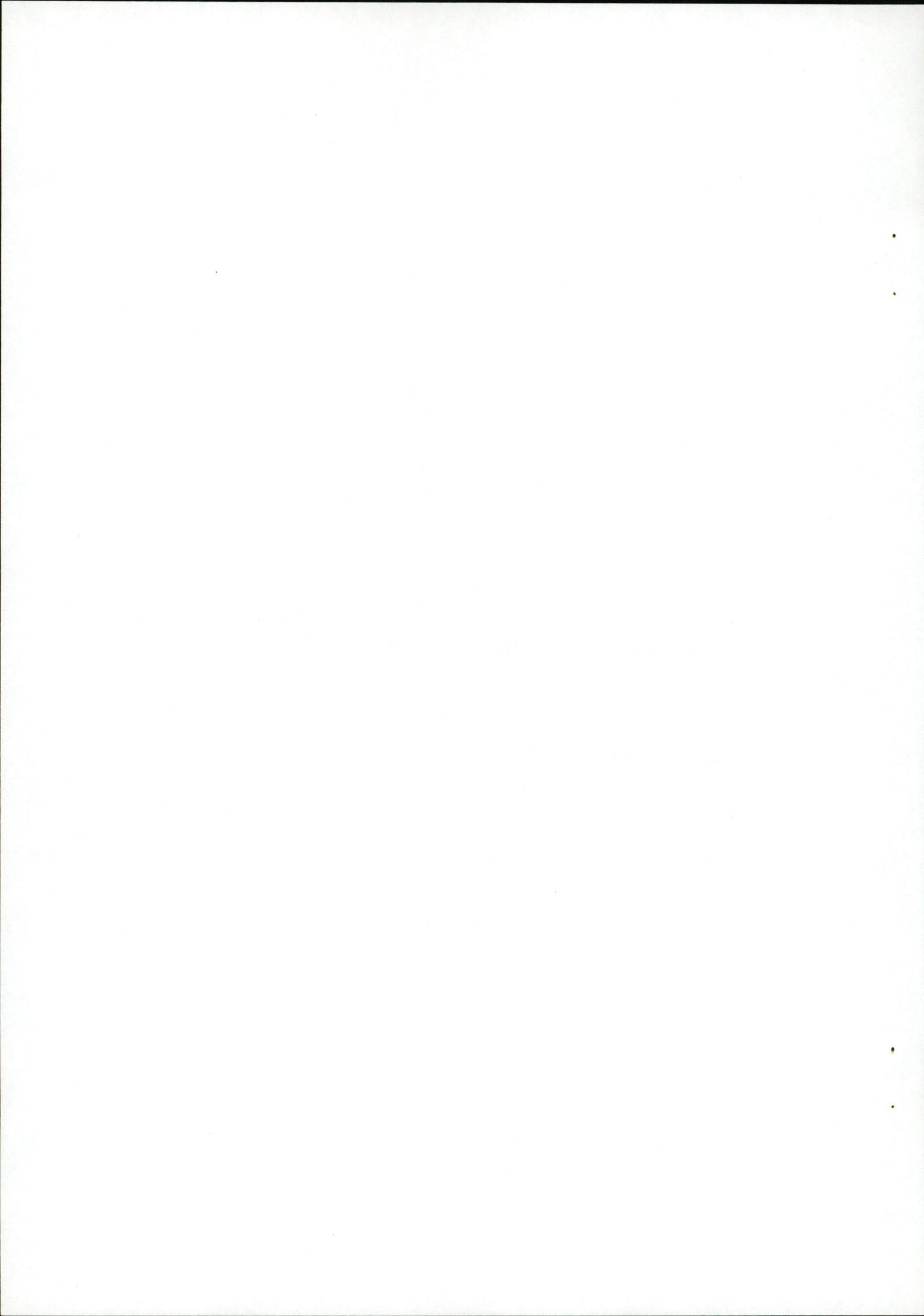
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New South Wales

Legal Profession Amendment (National Practising Certificates) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Legal Profession Act 1987* with respect to a national practising certificate scheme; the disclosure of fees, the mediation of costs disputes and recovery of costs of costs assessment; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Legal Profession Amendment (National Practising Certificates) Act 1996*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Legal Profession Act 1987 No 109

The *Legal Profession Act 1987* is amended as set out in Schedules 1 and 2.

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Schedule 1 Amendments relating to national practising certificates scheme

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *barrister* and *solicitor* from section 3 (1). 5
Insert instead:

barrister means:

- (a) a legal practitioner who holds a current practising certificate as a barrister, or
- (b) an interstate legal practitioner who practises as a barrister in this State. 10

solicitor means:

- (a) a legal practitioner who holds a current practising certificate as a solicitor and barrister, and includes a solicitor corporation, or 15
- (b) an interstate legal practitioner who practises as a solicitor and barrister in this State.

[2] Section 3 (1)

Insert in alphabetical order:

corresponding law see section 48N. 20

home State see section 48N.

interstate legal practitioner see section 48N.

interstate practising certificate see section 48N.

local legal practitioner see section 48N.

participating State see section 48N. 25

regulatory authority see section 48N.

[3] Section 5 Legal practitioners and interstate legal practitioners to be officers of Supreme Court

Insert at the end of section 5:

- (2) An interstate legal practitioner who practises as a barrister or solicitor and barrister in this State is an officer of the Supreme Court. 5

[4] Section 25 Requirement for practising certificate

Insert "whose sole or principal place of legal practice is this State" after "practitioner" wherever occurring in section 25 (1)–(3).

[5] Section 25 (1) 10

Insert "and barrister" after "solicitor".

[6] Section 25 (3)

Insert "and barrister" after "as a solicitor".

[7] Section 25 (3A)–(3C)

Insert after section 25 (3): 15

- (3A) An interstate legal practitioner must not practise as a barrister or solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.

- (3B) An interstate legal practitioner must not hold himself or herself out to be a barrister in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State. 20

(3C) An interstate legal practitioner must not hold himself or herself out to be a solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.

[8] Section 25 (4)

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Insert "or interstate legal practitioner" after "legal practitioner".

[9] Section 26 Election to practise as barrister or solicitor and barrister

Insert "and barrister" after "solicitor" in section 26 (1).

[10] Section 26 (3)

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Insert after section 26 (2):

(3) An interstate legal practitioner may, subject to this Act, elect to practise in this State as a barrister or as a solicitor and barrister.

[11] Section 26

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Omit the note to the section. Insert instead:

Note. A person may not hold current practising certificates at the same time as a barrister and as a solicitor and barrister, see section 38D.

[12] Section 28 Solicitors

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Insert "and barrister" after "as a solicitor" wherever occurring.

[13] Section 35 Additional conditions on practising certificates of solicitors and barristers

Insert "and barrister" after "acting as a solicitor" in section 35 (b).

- [14] Section 37 Refusal, suspension or cancellation of practising certificate generally**
Insert "and barrister" after "solicitor" in section 37 (1) (e).
- [15] Sections 38 and 38A**
Insert "and barrister" after "solicitor" where firstly occurring in section 38 and wherever occurring in section 38A (1) (a) and (3). 5
- [16] Section 38C Registers of barristers and solicitors**
Insert at the end of the section:
(2) A Council is required to keep, in such form as it thinks fit, a register of the interstate legal practitioners who have given notice under section 48T that they have established an office in this State. 10
- [17] Section 38D Dual certificates**
Insert "and barrister" after "solicitor" in section 38D (1).
- [18] Section 48A Crown Solicitor** 15
Insert "and barrister" after "solicitor" wherever occurring in section 48A (1) and (4).
- [19] Section 48B Unqualified person acting as a barrister or solicitor and barrister**
Insert "and barrister" after "solicitor" in section 48B (1). 20
- [20] Section 48B (6)**
Insert after section 48B (5):
(6) A person who is an interstate legal practitioner does not contravene this section if the person is the holder of a current interstate practising certificate issued by a regulatory authority of a participating State. 25

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- [21] Section 48C Unqualified person making false representation to be a barrister or solicitor and barrister**
Insert “and barrister” after “solicitor” wherever occurring.
- [22] Section 48D Offence by corporation or officers**
Insert “and barrister” after “solicitor” wherever occurring in section 48D (1) and (2). 5
- [23] Section 48G Multidisciplinary partnerships**
Insert “(other than a barrister or solicitor who is an interstate legal practitioner)” after “barrister or solicitor” where firstly occurring in section 48G (1). 10
- [24] Section 48H Community legal centres**
Insert “(other than a barrister or solicitor who is an interstate legal practitioner)” after “solicitor” in section 48H (1) (c).
- [25] Section 48I Prohibition on employment of certain non-legal clerks** 15
Insert “or interstate legal practitioner” after “practitioner” in section 48I (1) (a).
- [26] Section 48J Prohibition on partnerships with certain non-legal partners**
Insert “or interstate legal practitioner” after “practitioner” in section 48J (1) (a). 20
- [27] Section 48K Associates who are disqualified or convicted persons**
Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring in the definition of *associate* in section 48K (7). 25

[28] Part 3B

Insert after Part 3A:

Part 3B Interstate legal practitioners

Division 1 Preliminary

48N Definitions

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In this Act:

conditions means conditions, limitations, restrictions or prohibitions.

corresponding law means a law declared by an order in force under section 48O to be a corresponding law for the purposes of this Part. 10

home State of an interstate legal practitioner means the State in which the practitioner has his or her sole or principal place of legal practice.

interstate legal practitioner means a natural person: 15

(a) who has been admitted to legal practice in a participating State, and

(b) who holds an interstate practising certificate issued or given by a regulatory authority in that State, and 20

(c) whose sole or principal place of legal practice is that State.

interstate practising certificate means a certificate or other form of authorisation that confers an authority to practise that corresponds to the authority conferred by a practising certificate issued under Part 3 by the Bar Council or the Law Society Council. 25

local legal practitioner means a legal practitioner:

(a) who holds a current practising certificate, and

(b) whose sole or principal place of legal practice is this State, 30

and includes a person who is registered to practise law in this State in accordance with the *Mutual Recognition Act 1992* of the Commonwealth.

participating State means a State in which a corresponding law is in force.

regulatory authority:

- (a) of this State, means the Supreme Court, the Bar Council, the Law Society Council, the Tribunal or the Commissioner, and 5
- (b) of a participating State, means a person or body in that State having a function conferred by legislation relating to regulation of legal practice that corresponds to such a function exercised by a regulatory authority of this State. 10

State includes the Australian Capital Territory or the Northern Territory.

48O Corresponding law

The Minister may, by order published in the Gazette, declare a law of another State relating to the regulation of legal practice to be a corresponding law for the purposes of this Part. 15

Division 2 National practising certificates scheme

48P Object of scheme 20

The object of the national practising certificates scheme is to enable any individual who is authorised to practise law in one State to practise law in an equivalent way in all other States participating in the scheme.

48Q Entitlement of interstate legal practitioners to practise in this State 25

- (1) A person who holds a current interstate practising certificate issued or given by a regulatory authority in any participating State is, by and subject to this Act, entitled to practise law in this State: 30
 - (a) as if the interstate practising certificate were a practising certificate issued under Part 3 by the Bar Council or the Law Society Council, and

- (b) as if any conditions to which his or her practice of law in the participating State is subject under the interstate practising certificate were conditions attached to the practice of law in this State by a practising certificate issued under Part 3. 5
- (2) Without limiting anything in this Part, a person is entitled to practise law in this State only if the person does so:
- (a) in compliance with any applicable requirements of this and any other Act relating to the practice of law that would apply to a local legal practitioner holding a practising certificate to which conditions corresponding to those attached to the interstate practising certificate were attached, and 10
- Note.** Interstate legal practitioners are, for example, officers of the Supreme Court (see section 5) and are subject to the barristers rules, solicitors rules and joint rules and to requirements relating to matters such as advertising and specialisation (see sections 38G–38O) and the disciplinary processes set out in Part 10. Those who establish offices are also subject to other requirements. See sections 48T and 48U. 15 20
- (b) subject to any conditions imposed on the person by a regulatory authority in this or any other participating State as a result of disciplinary action or that are of a kind referred to in section 33 (1) (a) or (b). 25
- (3) A contravention of this section does not of itself amount to a breach of this Act. However, failure to comply with this section is capable of being professional misconduct or unsatisfactory professional conduct. 30
- (4) A condition imposed on a person by a regulatory authority in this or any other participating State has no effect for the purposes of this section to the extent (if any) to which it is inconsistent with a more onerous condition imposed on the person by another regulatory authority. 35

48R Additional conditions on practice of interstate legal practitioners

- (1) A regulatory authority of this State may, by notice in writing, at any time impose any condition on the practice of law by an interstate legal practitioner in this State that it might impose by attaching a condition to the practising certificate of a local legal practitioner: 5
- (a) under Division 1 of Part 3 as a result of disciplinary action, or
 - (b) under section 33 (1) (a) or (b), 10
- and may at any time vary or revoke any such condition.
- (2) A regulatory authority of this State must not impose a condition that is more onerous than it would attach to the practising certificate of a local legal practitioner in the same or similar circumstances. 15

Division 3 Provisions applying to interstate legal practitioners who establish offices in this State

48S When does an interstate legal practitioner establish an office? 20

For the purposes of this Act, an interstate legal practitioner establishes an office in this State when the practitioner offers and provides legal services to the public in this State from an office maintained by the practitioner, or by the employer or a partner in legal practice of the practitioner, for that purpose in this State. 25

48T Notification of establishment of office required

- (1) An interstate legal practitioner who establishes an office in this State must, within the period after establishing the office prescribed by the regulations, give written notice: 30
- (a) if he or she proposes to practise as a barrister—to the Bar Council, or
 - (b) if he or she proposes to practise as a solicitor and barrister—to the Law Society Council.

Maximum penalty: 20 penalty units. 35

- (2) A notice under this section is to contain the particulars prescribed by the regulations.

Note. Interstate legal practitioners who establish an office in New South Wales have additional obligations relating to trust money, fidelity fund contributions and professional indemnity insurance under this Act to those interstate legal practitioners who have not established an office. See sections 48U, 60 and 76.

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48U Professional indemnity insurance required if office established

- (1) This section applies to an interstate legal practitioner: 10
- (a) who establishes an office in this State, and
 - (b) who, if he or she were a local legal practitioner, would be an insurable barrister or insurable solicitor (within the meaning of section 38R or 39, respectively). 15
- (2) An interstate legal practitioner to whom this section applies must not practise as a barrister or solicitor and barrister in this State unless he or she has **appropriate indemnity insurance** in respect of his or her practice in this State. 20
- Maximum penalty: 20 penalty units.
- (3) An interstate legal practitioner to whom this section applies who practises in this State as a barrister has **appropriate indemnity insurance** if there is in force in respect of the interstate legal practitioner a policy of indemnity insurance that provides a level of insurance in respect of his or her practice in this State that is the same as (or higher than) that approved by the Attorney General in respect of insurable barristers under section 38R (2) (b). 25
- (4) An interstate legal practitioner to whom this section applies who practises in this State as a solicitor and barrister has **appropriate indemnity insurance** if there is in force in respect of the interstate legal practitioner a policy of insurance that provides the same (or a higher) 30
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minimum level of indemnity in respect of his or her practice in this State, and the terms of which are broadly equivalent to, that provided by an approved insurance policy required by section 41.

Note. Section 48ZD imposes requirements concerning professional indemnity insurance on interstate legal practitioners who do not establish an office in this State. 5

Division 4 Disputes, complaints and discipline

Note. The provisions applicable generally to disputes, complaints and discipline of local legal practitioners also apply to interstate legal practitioners. See Part 10. Section 80 (1A) sets out the circumstances in which a claim may be made against the Fidelity Fund for pecuniary loss caused by the failure to account or a dishonest default of legal practitioners practising under the scheme. 10
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48V Disputes about the practice of local legal practitioners in participating States

- (1) A dispute between a person and a local legal practitioner in connection with the practitioner's legal practice in a participating State may be resolved under Part 10 or in the participating State in accordance with the law of that State. 20
- (2) A complaint may be made about the conduct of a local legal practitioner in respect of his or her legal practice in a participating State under Part 10 or in the participating State in accordance with the law of that State. 25
- (3) An investigation may be undertaken of the conduct of a local legal practitioner in respect of his or her legal practice in a participating State under section 55 or Part 10 or in the participating State in accordance with the law of that State. 30
- (4) If a dispute or complaint of the kind referred to in this section has been dealt with and finally determined in another participating State, no further action relating to the subject-matter of the dispute or complaint is to be taken under Part 10. 35

48W Referral of disputes and disciplinary matters to regulatory authorities in participating States

- (1) If it considers it appropriate to do so, a regulatory authority in this State may refer a dispute lodged with it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State. 5
- (2) If it considers it appropriate to do so, a regulatory authority in this State may refer a complaint made to it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State. 10
- (3) If it considers it appropriate to do so, a regulatory authority in this State may request a regulatory authority in a participating State to investigate the conduct of a local legal practitioner or an interstate legal practitioner, in accordance with the law of that State. 15
- (4) After a referral under subsection (1) or (2) or a request under subsection (3) has been made, no further action may be taken by any regulatory authority in this State in relation to the subject-matter of the referral or request, other than action required to comply with section 48Y. 20

48X Dealing with matters referred by regulatory authorities in participating States

- (1) A regulatory authority in this State may resolve a dispute between a person and a local legal practitioner or interstate legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject-matter of the dispute arose in or outside this State. 25 30
- (2) A regulatory authority in this State may investigate a complaint against a local legal practitioner or interstate legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject-matter of the complaint allegedly occurred in or outside this State. 35

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- (3) If a regulatory authority in a participating State requests a regulatory authority in this State to investigate the conduct of a local legal practitioner or interstate legal practitioner, the regulatory authority may investigate that conduct whether or not the conduct allegedly occurred in or outside this State. 5

48Y Furnishing information

- (1) A regulatory authority in this State must furnish without delay any information about a local legal practitioner or interstate legal practitioner reasonably required by a regulatory authority in a participating State in connection with actual or possible disciplinary action against the practitioner. 10
- (2) A regulatory authority may provide the information despite any law relating to secrecy or confidentiality. 15
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.

48Z Local legal practitioners are subject to interstate regulatory authorities

- (1) A local legal practitioner practising in this State must comply with any condition in respect of his or her practice imposed by a regulatory authority in a participating State as a result of disciplinary action against the practitioner. 20
- (2) A contravention of subsection (1) does not of itself amount to a breach of this Act. However, failure to comply with subsection (1) is capable of being professional misconduct or unsatisfactory professional conduct. 25
- (3) A regulatory authority in a participating State: 30
- (a) that has jurisdiction to suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions

- on, an interstate practising certificate issued to an interstate legal practitioner in that State as a result of disciplinary action against the practitioner, and
- (b) to which a local legal practitioner is subject in that State, 5
- may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions on, the local legal practitioner's practising certificate as a result of disciplinary action against the practitioner. 10
- (4) A regulatory authority in this State must comply with an order of a regulatory authority in a participating State under subsection (3).
- (5) A regulatory authority in a participating State that has jurisdiction to order the removal of the name of a person from the roll kept in that State that corresponds to the roll of practitioners in the Supreme Court in this State may order that the name of the local legal practitioner be removed from the roll. If such an order is made the local legal practitioner's name is to be removed from the roll in this State. 15
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Division 5 General

48ZA Local legal practitioner receiving trust money interstate

A local legal practitioner must deal with trust money received in the course of practising outside this State (other than trust money received in the course of practising in a participating State in which the practitioner has established an office) in accordance with Part 6 as if the trust money had been received in the course of practising in this State. 25
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48ZB Regulatory authority may exercise powers conferred by corresponding law

A regulatory authority in this State may exercise in respect of a local legal practitioner or an interstate legal practitioner any function under a corresponding law conferred on it by the corresponding law. 35

48ZC Agreements and arrangements with other regulatory authorities

A regulatory authority of this State may make agreements or arrangements with a regulatory authority of a participating State for or with respect to:

- (a) the investigation of complaints,
- (b) professional indemnity insurance,
- (c) fidelity fund contributions and payments,
- (d) trust account inspections,
- (e) the appointment of managers and receivers,
- (f) the exchange of information under section 48Y.

48ZD Professional indemnity insurance where no office established in this State

- (1) If the indemnity under a policy of indemnity insurance in force in respect of an interstate legal practitioner who has not established an office in this State is less than that required to be maintained by an interstate legal practitioner to whom section 48U applies, the interstate legal practitioner must disclose the difference to a client before he or she is retained by the client.
- (2) A contravention of this section does not of itself amount to a breach of this Act. However, failure to comply with this section is capable of being professional misconduct or unsatisfactory professional conduct.

[29] Section 55 Investigation of affairs of solicitor

Insert "(subject to Part 3B)" after "investigate" in section 55 (1) (a).

[30] Section 60 Definitions

Omit "acting as a solicitor" from section 60 (1).

Insert instead "a local legal practitioner acting as a solicitor, or an interstate legal practitioner who has established an office in New South Wales, acting as a solicitor".

- [31] Section 61 Money received by solicitor on behalf of another**
Insert "in this State" after "practising as a solicitor" in section 61 (1) (as substituted by the *Legal Profession Amendment Act 1996*).
- [32] Section 67 Statutory Interest Account**
Insert "or interstate legal practitioner" after "legal practitioner" in section 67 (3) (j). 5
- [33] Section 76 Contributions**
Insert "(other than a solicitor who is an interstate legal practitioner)" after "solicitor" in section 76 (1).
- [34] Section 76 (1A)** 10
Insert after section 76 (1):
(1A) A solicitor who is an interstate legal practitioner who has established an office in this State must, when notifying the Law Society Council under section 48T, pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which any legal services are to be provided at that office. 15
Note. Section 48S provides for when an office is established.
- [35] Section 77 Levies** 20
Insert "the solicitor is an interstate legal practitioner and to whether" after "whether" in section 77 (2).
- [36] Section 78**
Omit the section. Insert instead:
78 Failure to pay contribution or levy 25
If a solicitor fails to pay a contribution required under section 76 or, after being given the prescribed notice, fails to pay a levy in accordance with this Part, the Law Society Council may:

-
- (a) in the case of a local legal practitioner—suspend the solicitor’s practising certificate while the failure continues, or
- (b) in the case of an interstate legal practitioner—suspend that practitioner’s entitlement under Part 3B to practise in this State while the failure continues and request the regulatory authority in the interstate legal practitioner’s home State to suspend the solicitor’s interstate practising certificate until the Law Society Council notifies the regulatory authority that the contribution or levy has been paid. 5 10

[37] Section 79 Definitions

Insert in alphabetical order:

contributing interstate legal practitioner means an interstate legal practitioner who has paid any contribution required under section 76. 15

[38] Section 79 (1)

Insert “or interstate legal practitioner” after “legal practitioner” in the definition of *legal costs*. 20

[39] Section 79 (2)

Insert at the end of the section:

- (2) A reference in this Division to the practice of a solicitor who is an interstate legal practitioner is a reference to the solicitor’s practice in this State. 25

[40] Section 80 Claims against the Fidelity Fund

Insert after section 80 (1):

- (1A) Without limiting subsection (1), a claim lies against the Fidelity Fund for the purpose of compensating persons who suffer pecuniary loss: 30

Legal Profession Amendment (National Practising Certificates) Bill 1996

Schedule 1 Amendments relating to national practising certificates scheme

- (a) occurring wholly in this State from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner or a contributing interstate legal practitioner, or 5
- (b) occurring both in this State and in a participating State from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner, or 10
- (c) occurring both in this State and in a participating State from a failure to account or a dishonest default (in the course of practising in this State) of a solicitor who is a contributing interstate legal practitioner, or 15
- (d) occurring in this State or a participating State, or both, in circumstances in which it cannot be determined precisely where the loss occurred, from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner, or 20
- (e) occurring in this State or in a participating State, or both, in circumstances in which it cannot be determined precisely where the loss occurred, from a failure to account or a dishonest default (in the course of practising in this State) of a solicitor who is a contributing interstate legal practitioner, or 25
- (f) in any other circumstances in which an agreement or arrangement under section 48ZC provides that a claim is payable. 30

[41] Section 80 (5)

Insert "or interstate legal practitioner" after "legal practitioner".

[42] Section 80 (5) (d)

Insert “or interstate practising certificate” after “practising certificate”.

[43] Section 91 Definitions

Insert at the end of the section:

5

- (2) A reference in this Part to the practice of a solicitor who is an interstate legal practitioner is a reference to the solicitor’s practice in this State.

[44] Section 92 Supreme Court may appoint receiver

Insert after section 92 (3) (b):

10

- (b1) a request for the regulatory authority of a participating State to refuse to issue an interstate practising certificate to a solicitor who is an interstate legal practitioner or to cancel the solicitor’s interstate practising certificate, or

15

[45] Section 101 Other powers of receiver

Insert “or interstate legal practitioner” after “legal practitioner” in section 101 (1) (d).

[46] Section 114A Definitions

Insert after section 114A (3):

20

- (4) A reference in this Part to a solicitor’s practice is a reference, in the case of a solicitor who is an interstate legal practitioner, to the solicitor’s practice in this State.

[47] Section 114B Appointment of manager

Insert “and barrister” after “solicitor” in section 114B (3).

25

- [48] Section 114C Powers of manager**
Insert “and barrister” after “solicitor” wherever occurring in section 114C (1) (a) and (b).
- [49] Sections 123–125**
Insert “and interstate legal practitioners” after “legal practitioners” wherever occurring. 5
- [50] Section 124 Objects of Part relating to users of legal services**
Insert “or interstate legal practitioner” after “legal practitioner” in section 124 (e).
- [51] Section 127 Professional misconduct and unsatisfactory professional conduct** 10
Insert after section 127 (1) (b):
(b1) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law which, if established, would justify a finding that an interstate legal practitioner is not of good fame or character or is not a fit and proper person to remain on the roll in the practitioner’s home State that corresponds to the roll of legal practitioners, or 15
20
- [52] Section 127 (2) and (3)**
Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring.
- [53] Section 128 Legal practitioners to whom Part applies**
Insert after section 128 (2): 25
(3) In this section:
legal practitioner includes an interstate legal practitioner who practises as a barrister or solicitor and barrister in this State.

[54] Section 131 Functions of Commissioner

Insert “and interstate legal practitioners” after “legal practitioners” wherever occurring.

[55] Sections 131 (1) (c), 134, 135, 136

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring. 5

[56] Section 148 Investigation of complaints by Council

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring in section 148 (2A) (as inserted by the *Legal Profession Amendment Act 1996*). 10

[57] Section 148 (2B)

Insert after section 148 (2A) (as inserted by the *Legal Profession Amendment Act 1996*):

(2B) The Law Society Council or Bar Council may consult and cooperate with the appropriate regulatory authority of a participating State when dealing with a complaint against an interstate legal practitioner under this Act or under a corresponding law. For the purposes of this subsection, the Councils and regulatory authority may exchange information concerning the complaint. 15
20

[58] Sections 152 (as amended by the Legal Profession Amendment Act 1996), 153, 155, 158, 160

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring.

[59] Section 162 The Legal Services Tribunal

25

Insert “who are local legal practitioners” after “barristers” in section 162 (2) (a).

[60] Section 162 (2) (b)

Insert "who are local legal practitioners" after "solicitors" in section 162 (2) (b).

[61] Section 167 Institution of proceedings and hearings

Insert "or interstate legal practitioner" after "legal practitioner" wherever occurring. 5

[62] Section 167 (4)

Insert "or interstate legal practitioners" after "legal practitioners".

[63] Section 169 Parties

Insert "or interstate legal practitioner" after "legal practitioner" in section 169 (1). 10

[64] Section 171C Determinations of the Tribunal

Insert "or interstate legal practitioners" after "legal practitioners" in section 171C (1).

[65] Section 171C (1) (a1)

Insert after section 171C (1) (a):

- (a1) order that the name of the interstate legal practitioner be removed by the appropriate regulatory authority of a participating State from the roll of that State that corresponds to the roll of legal practitioners if the interstate legal practitioner is guilty of professional misconduct, 20

[66] Section 171C (1) (c1)

Insert after section 171C (1) (c):

- (c1) order that the appropriate regulatory authority of a participating State cancel the interstate legal practitioner's practising certificate or order that an interstate practising certificate not be issued to the interstate legal practitioner until the end of the period specified in the order,

5

[67] Section 171C (2) (h)

Insert after section 171 (2) (g):

- (h) order that the appropriate regulatory authority of a participating State endorse the interstate practising certificate of a solicitor who is an interstate legal practitioner with a condition restricting the solicitor from acting as a solicitor otherwise than in the course of employment by a solicitor holding an unrestricted practising certificate (or its equivalent) in that participating State.

10

15

[68] Sections 171D (1) and (2), 171E, 171J, 171K

Insert "or interstate legal practitioner" after "legal practitioner" wherever occurring.

20

[69] Section 171M Jurisdiction of the Supreme Court not affected

Insert at the end of the section:

- (2) For the purposes of this section, an interstate legal practitioner is taken to be a legal practitioner.

25

[70] Section 171N Annual report of Commissioner

Insert "or interstate legal practitioner" after "legal practitioner" in section 171N (3) (f).

- [71] Section 171N (5)**
Omit "or legal practitioners".
Insert instead ", legal practitioners or interstate legal practitioners".
- [72] Section 171S Duty of confidentiality of client communications**
Insert "or interstate legal practitioner" after "legal practitioner" where firstly occurring in section 171S (1) and (2). 5
- [73] Section 171S (1) and (2)**
Omit "legal practitioner" where secondly occurring in the subsections.
Insert instead "practitioner". 10
- [74] Section 172U Recognition of foreign corporations**
Insert "and barrister" after "solicitor" in section 172U (1) (b).
- [75] Section 172U (1) (c)**
Insert "and barristers" after "solicitors".
- [76] Section 174A Application of Part to cross-vested matters (as inserted by the Legal Profession Amendment Act 1996)** 15
Insert "or interstate legal practitioner" after "legal practitioner" in section 174A (2).
- [77] Section 213A Evidentiary certificates**
Insert after section 213A (2): 20
- (3) A certificate issued by a regulatory authority of a participating State and that states that, on a date and during a period specified in the certificate:
- (a) a specified person was or was not the holder of an interstate practising certificate, or 25

(b) that a specified interstate legal practitioner's practising certificate was or was not subject to a specified condition,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

5

[78] Section 216 Regulations

Insert "and interstate legal practitioners" after "legal practitioners" in section 216 (3) (d).

Schedule 2 Miscellaneous amendments

(Section 3)

- [1] **Part 3, Division 1AA Application of Trade Practices Act 1974**
Omit the Division.
- [2] **Section 180** 5
Omit the section. Insert instead:
180 Exception to disclosure
A disclosure is not required to be made under this Division when it would not be reasonable to be required to do so. 10
- [3] **Section 181 Regulations, rules and guidelines as to disclosure**
Omit section 181 (b). Insert instead:
(b) with the approval of the Attorney General, when it would not be reasonable to require a disclosure to be made under this Division. 15
- [4] **Part 11, Division 5A**
Insert after Division 5:
Division 5A Mediation of costs disputes
198A Costs dispute
For the purposes of this Division, a *costs dispute* is a dispute between a client and a legal practitioner or interstate legal practitioner concerning a bill of costs. 20
- 198B Referral for mediation**
(1) A client who is given a bill of costs may refer a costs dispute about the bill of costs to the Commissioner or to a Council for mediation if the amount in dispute is less than \$2,500. 25

-
- (2) The proper officer of the Supreme Court may refer a costs dispute about a bill of costs to the Commissioner if the amount in dispute is less than \$2,500.
- (3) A costs dispute about a bill of costs may be referred under this section at any time before an application for an assessment of the whole or part of a bill of costs is accepted by the proper officer of the Supreme Court. 5
- (4) Mediation is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, such as the giving of informal advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute. 10
- [5] Section 203 How is an application to be made?** 15
Insert “, subject to subsection (3),” after “and is” in section 203 (1).
- [6] Section 203 (4)**
Insert at the end of the section:
- (4) The proper officer of the Supreme Court may waive payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants. 20
- [7] Section 208J A Recovery of costs of costs assessment (as inserted by the Legal Profession Amendment Act 1996)** 25
Insert “or proper officer of the Supreme Court” after “costs assessor” wherever occurring in section 208JA (1) and (5).
- [8] Section 208JA (2)**
Insert “or proper officer of the Supreme Court” after “costs assessor” where secondly occurring. 30

[9] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Legal Profession Amendment (National Practising Certificates) Act 1996

[10] Schedule 8, Part 9 5

Insert at the end of the Schedule:

**Part 9 Provisions consequent on enactment of the
Legal Profession Amendment (National
Practising Certificates) Act 1996**

53 Definition 10

In this Part:

amending Act means the *Legal Profession Amendment (National Practising Certificates) Act 1996*.

54 Practising certificate of a solicitor

A person holding a practising certificate as a solicitor at the commencement of Schedule 1 [6] to the amending Act is taken to have been issued with a practising certificate as a solicitor and barrister under this Act as amended by Schedule 1 [6]. The certificate continues in force accordingly. 15
20

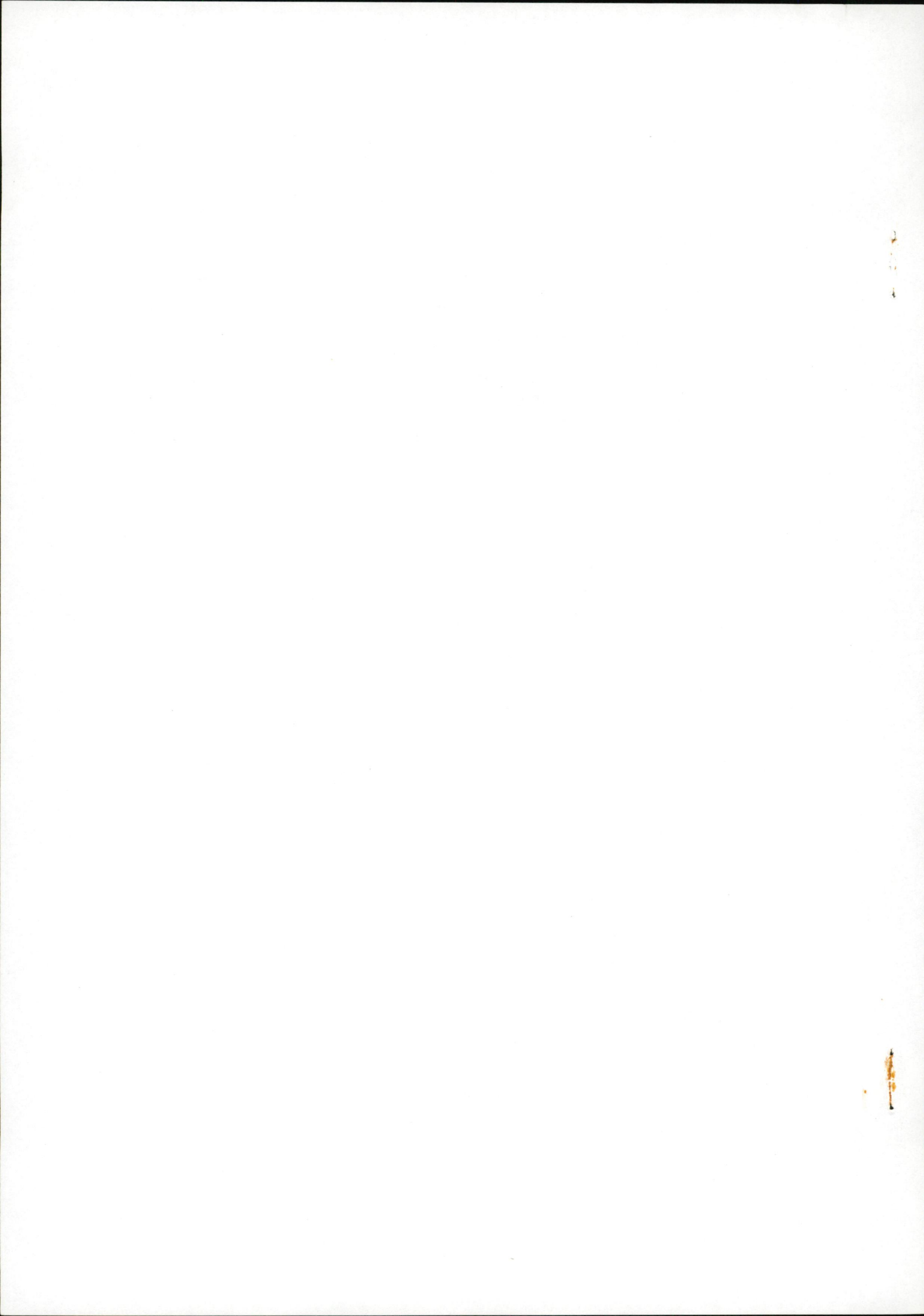
55 Provisions relating to interstate legal practitioners

An interstate legal practitioner is entitled to practise law in this State in accordance with this Act as amended by the amending Act even if the interstate practising certificate conferring the entitlement was issued before or after the commencement of Part 3B. 25

56 Costs assessments

The amendments made to section 208JA by the amending Act extend to the payment of costs in respect of applications for costs assessments made before the commencement of the amendments.

5





New South Wales

Legal Profession Amendment (National Practising Certificates) Act 1996 No 113

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New South Wales

Legal Profession Amendment (National Practising Certificates) Act 1996 No 113

Act No 113, 1996

An Act to amend the *Legal Profession Act 1987* with respect to a national practising certificate scheme; the disclosure of fees, the mediation of costs disputes and recovery of costs of costs assessment; and for other purposes.
[Assented to 2 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Legal Profession Amendment (National Practising Certificates) Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Legal Profession Act 1987 No 109

The *Legal Profession Act 1987* is amended as set out in Schedules 1 and 2.

Schedule 1 Amendments relating to national practising certificates scheme

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *barrister* and *solicitor* from section 3 (1).
Insert instead:

barrister means:

- (a) a legal practitioner who holds a current practising certificate as a barrister, or
- (b) an interstate legal practitioner who practises as a barrister in this State.

solicitor means:

- (a) a legal practitioner who holds a current practising certificate as a solicitor and barrister, and includes a solicitor corporation, or
- (b) an interstate legal practitioner who practises as a solicitor and barrister in this State.

[2] Section 3 (1)

Insert in alphabetical order:

corresponding law see section 48N.

home State see section 48N.

interstate legal practitioner see section 48N.

interstate practising certificate see section 48N.

local legal practitioner see section 48N.

participating State see section 48N.

regulatory authority see section 48N.

[3] Section 5 Legal practitioners and interstate legal practitioners to be officers of Supreme Court

Insert at the end of section 5:

- (2) An interstate legal practitioner who practises as a barrister or solicitor and barrister in this State is an officer of the Supreme Court.

[4] Section 25 Requirement for practising certificate

Insert “whose sole or principal place of legal practice is this State” after “practitioner” wherever occurring in section 25 (1)–(3).

[5] Section 25 (1)

Insert “and barrister” after “solicitor”.

[6] Section 25 (3)

Insert “and barrister” after “as a solicitor”.

[7] Section 25 (3A)–(3C)

Insert after section 25 (3):

- (3A) An interstate legal practitioner must not practise as a barrister or solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.
- (3B) An interstate legal practitioner must not hold himself or herself out to be a barrister in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.

(3C) An interstate legal practitioner must not hold himself or herself out to be a solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.

[8] Section 25 (4)

Insert “or interstate legal practitioner” after “legal practitioner”.

[9] Section 26 Election to practise as barrister or solicitor and barrister

Insert “and barrister” after “solicitor” in section 26 (1).

[10] Section 26 (3)

Insert after section 26 (2):

(3) An interstate legal practitioner may, subject to this Act, elect to practise in this State as a barrister or as a solicitor and barrister.

[11] Section 26

Omit the note to the section. Insert instead:

Note. A person may not hold current practising certificates at the same time as a barrister and as a solicitor and barrister, see section 38D.

[12] Section 28 Solicitors

Insert “and barrister” after “as a solicitor” wherever occurring.

[13] Section 35 Additional conditions on practising certificates of solicitors and barristers

Insert “and barrister” after “acting as a solicitor” in section 35 (b).

[14] Section 37 Refusal, suspension or cancellation of practising certificate generally

Insert “and barrister” after “solicitor” in section 37 (1) (e).

[15] Sections 38 and 38A

Insert “and barrister” after “solicitor” where firstly occurring in section 38 and wherever occurring in section 38A (1) (a) and (3).

[16] Section 38C Registers of barristers and solicitors

Insert at the end of the section:

- (2) A Council is required to keep, in such form as it thinks fit, a register of the interstate legal practitioners who have given notice under section 48T that they have established an office in this State.

[17] Section 38D Dual certificates

Insert “and barrister” after “solicitor” in section 38D (1).

[18] Section 48A Crown Solicitor

Insert “and barrister” after “solicitor” wherever occurring in section 48A (1) and (4).

[19] Section 48B Unqualified person acting as a barrister or solicitor and barrister

Insert “and barrister” after “solicitor” in section 48B (1).

[20] Section 48B (6)

Insert after section 48B (5):

- (6) A person who is an interstate legal practitioner does not contravene this section if the person is the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.

[21] Section 48C Unqualified person making false representation to be a barrister or solicitor and barrister

Insert “and barrister” after “solicitor” wherever occurring.

[22] Section 48D Offence by corporation or officers

Insert “and barrister” after “solicitor” wherever occurring in section 48D (1) and (2).

[23] Section 48G Multidisciplinary partnerships

Insert “(other than a barrister or solicitor who is an interstate legal practitioner)” after “barrister or solicitor” where firstly occurring in section 48G (1).

[24] Section 48H Community legal centres

Insert “(other than a barrister or solicitor who is an interstate legal practitioner)” after “solicitor” in section 48H (1) (c).

[25] Section 48I Prohibition on employment of certain non-legal clerks

Insert “or interstate legal practitioner” after “practitioner” in section 48I (1) (a).

[26] Section 48J Prohibition on partnerships with certain non-legal partners

Insert “or interstate legal practitioner” after “practitioner” in section 48J (1) (a).

[27] Section 48K Associates who are disqualified or convicted persons

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring in the definition of *associate* in section 48K (7).

[28] Part 3B

Insert after Part 3A:

Part 3B Interstate legal practitioners

Division 1 Preliminary

48N Definitions

In this Act:

conditions means conditions, limitations, restrictions or prohibitions.

corresponding law means a law declared by an order in force under section 48O to be a corresponding law for the purposes of this Part.

home State of an interstate legal practitioner means the State in which the practitioner has his or her sole or principal place of legal practice.

interstate legal practitioner means a natural person:

- (a) who has been admitted to legal practice in a participating State, and
- (b) who holds an interstate practising certificate issued or given by a regulatory authority in that State, and
- (c) whose sole or principal place of legal practice is that State.

interstate practising certificate means a certificate or other form of authorisation that confers an authority to practise that corresponds to the authority conferred by a practising certificate issued under Part 3 by the Bar Council or the Law Society Council.

local legal practitioner means a legal practitioner:

- (a) who holds a current practising certificate, and
- (b) whose sole or principal place of legal practice is this State,

and includes a person who is registered to practise law in this State in accordance with the *Mutual Recognition Act 1992* of the Commonwealth.

participating State means a State in which a corresponding law is in force.

regulatory authority:

- (a) of this State, means the Supreme Court, the Bar Council, the Law Society Council, the Tribunal or the Commissioner, and
- (b) of a participating State, means a person or body in that State having a function conferred by legislation relating to regulation of legal practice that corresponds to such a function exercised by a regulatory authority of this State.

State includes the Australian Capital Territory or the Northern Territory.

48O Corresponding law

The Minister may, by order published in the Gazette, declare a law of another State relating to the regulation of legal practice to be a corresponding law for the purposes of this Part.

Division 2 National practising certificates scheme

48P Object of scheme

The object of the national practising certificates scheme is to enable any individual who is authorised to practise law in one State to practise law in an equivalent way in all other States participating in the scheme.

48Q Entitlement of interstate legal practitioners to practise in this State

- (1) A person who holds a current interstate practising certificate issued or given by a regulatory authority in any participating State is, by and subject to this Act, entitled to practise law in this State:
 - (a) as if the interstate practising certificate were a practising certificate issued under Part 3 by the Bar Council or the Law Society Council, and

- (b) as if any conditions to which his or her practice of law in the participating State is subject under the interstate practising certificate were conditions attached to the practice of law in this State by a practising certificate issued under Part 3.
- (2) Without limiting anything in this Part, a person is entitled to practise law in this State only if the person does so:
- (a) in compliance with any applicable requirements of this and any other Act relating to the practice of law that would apply to a local legal practitioner holding a practising certificate to which conditions corresponding to those attached to the interstate practising certificate were attached, and
- Note.** Interstate legal practitioners are, for example, officers of the Supreme Court (see section 5) and are subject to the barristers rules, solicitors rules and joint rules and to requirements relating to matters such as advertising and specialisation (see sections 38G–38O) and the disciplinary processes set out in Part 10. Those who establish offices are also subject to other requirements. See sections 48T and 48U.
- (b) subject to any conditions imposed on the person by a regulatory authority in this or any other participating State as a result of disciplinary action or that are of a kind referred to in section 33 (1) (a) or (b).
- (3) A contravention of this section does not of itself amount to a breach of this Act. However, failure to comply with this section is capable of being professional misconduct or unsatisfactory professional conduct.
- (4) A condition imposed on a person by a regulatory authority in this or any other participating State has no effect for the purposes of this section to the extent (if any) to which it is inconsistent with a more onerous condition imposed on the person by another regulatory authority.

48R Additional conditions on practice of interstate legal practitioners

- (1) A regulatory authority of this State may, by notice in writing, at any time impose any condition on the practice of law by an interstate legal practitioner in this State that it might impose by attaching a condition to the practising certificate of a local legal practitioner:
 - (a) under Division 1 of Part 3 as a result of disciplinary action, or
 - (b) under section 33 (1) (a) or (b),and may at any time vary or revoke any such condition.
- (2) A regulatory authority of this State must not impose a condition that is more onerous than it would attach to the practising certificate of a local legal practitioner in the same or similar circumstances.

Division 3 Provisions applying to interstate legal practitioners who establish offices in this State

48S When does an interstate legal practitioner establish an office?

For the purposes of this Act, an interstate legal practitioner establishes an office in this State when the practitioner offers and provides legal services to the public in this State from an office maintained by the practitioner, or by the employer or a partner in legal practice of the practitioner, for that purpose in this State.

48T Notification of establishment of office required

- (1) An interstate legal practitioner who establishes an office in this State must, within the period after establishing the office prescribed by the regulations, give written notice:
 - (a) if he or she proposes to practise as a barrister—to the Bar Council, or
 - (b) if he or she proposes to practise as a solicitor and barrister—to the Law Society Council.

Maximum penalty: 20 penalty units.

- (2) A notice under this section is to contain the particulars prescribed by the regulations.

Note. Interstate legal practitioners who establish an office in New South Wales have additional obligations relating to trust money, fidelity fund contributions and professional indemnity insurance under this Act to those interstate legal practitioners who have not established an office. See sections 48U, 60 and 76.

48U Professional indemnity insurance required if office established

- (1) This section applies to an interstate legal practitioner:
- (a) who establishes an office in this State, and
 - (b) who, if he or she were a local legal practitioner, would be an insurable barrister or insurable solicitor (within the meaning of section 38R or 39, respectively).
- (2) An interstate legal practitioner to whom this section applies must not practise as a barrister or solicitor and barrister in this State unless he or she has **appropriate indemnity insurance** in respect of his or her practice in this State.
- Maximum penalty: 20 penalty units.
- (3) An interstate legal practitioner to whom this section applies who practises in this State as a barrister has **appropriate indemnity insurance** if there is in force in respect of the interstate legal practitioner a policy of indemnity insurance that provides a level of insurance in respect of his or her practice in this State that is the same as (or higher than) that approved by the Attorney General in respect of insurable barristers under section 38R (2) (b).
- (4) An interstate legal practitioner to whom this section applies who practises in this State as a solicitor and barrister has **appropriate indemnity insurance** if there is in force in respect of the interstate legal practitioner a policy of insurance that provides the same (or a higher)

minimum level of indemnity in respect of his or her practice in this State, and the terms of which are broadly equivalent to, that provided by an approved insurance policy required by section 41.

Note. Section 48ZD imposes requirements concerning professional indemnity insurance on interstate legal practitioners who do not establish an office in this State.

Division 4 Disputes, complaints and discipline

Note. The provisions applicable generally to disputes, complaints and discipline of local legal practitioners also apply to interstate legal practitioners. See Part 10. Section 80 (1A) sets out the circumstances in which a claim may be made against the Fidelity Fund for pecuniary loss caused by the failure to account or a dishonest default of legal practitioners practising under the scheme.

48V Disputes about the practice of local legal practitioners in participating States

- (1) A dispute between a person and a local legal practitioner in connection with the practitioner's legal practice in a participating State may be resolved under Part 10 or in the participating State in accordance with the law of that State.
- (2) A complaint may be made about the conduct of a local legal practitioner in respect of his or her legal practice in a participating State under Part 10 or in the participating State in accordance with the law of that State.
- (3) An investigation may be undertaken of the conduct of a local legal practitioner in respect of his or her legal practice in a participating State under section 55 or Part 10 or in the participating State in accordance with the law of that State.
- (4) If a dispute or complaint of the kind referred to in this section has been dealt with and finally determined in another participating State, no further action relating to the subject-matter of the dispute or complaint is to be taken under Part 10.

48W Referral of disputes and disciplinary matters to regulatory authorities in participating States

- (1) If it considers it appropriate to do so, a regulatory authority in this State may refer a dispute lodged with it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.
- (2) If it considers it appropriate to do so, a regulatory authority in this State may refer a complaint made to it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.
- (3) If it considers it appropriate to do so, a regulatory authority in this State may request a regulatory authority in a participating State to investigate the conduct of a local legal practitioner or an interstate legal practitioner, in accordance with the law of that State.
- (4) After a referral under subsection (1) or (2) or a request under subsection (3) has been made, no further action may be taken by any regulatory authority in this State in relation to the subject-matter of the referral or request, other than action required to comply with section 48Y.

48X Dealing with matters referred by regulatory authorities in participating States

- (1) A regulatory authority in this State may resolve a dispute between a person and a local legal practitioner or interstate legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject-matter of the dispute arose in or outside this State.
- (2) A regulatory authority in this State may investigate a complaint against a local legal practitioner or interstate legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject-matter of the complaint allegedly occurred in or outside this State.

- (3) If a regulatory authority in a participating State requests a regulatory authority in this State to investigate the conduct of a local legal practitioner or interstate legal practitioner, the regulatory authority may investigate that conduct whether or not the conduct allegedly occurred in or outside this State.

48Y Furnishing information

- (1) A regulatory authority in this State must furnish without delay any information about a local legal practitioner or interstate legal practitioner reasonably required by a regulatory authority in a participating State in connection with actual or possible disciplinary action against the practitioner.
- (2) A regulatory authority may provide the information despite any law relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.

48Z Local legal practitioners are subject to interstate regulatory authorities

- (1) A local legal practitioner practising in this State must comply with any condition in respect of his or her practice imposed by a regulatory authority in a participating State as a result of disciplinary action against the practitioner.
- (2) A contravention of subsection (1) does not of itself amount to a breach of this Act. However, failure to comply with subsection (1) is capable of being professional misconduct or unsatisfactory professional conduct.
- (3) A regulatory authority in a participating State:
 - (a) that has jurisdiction to suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions

- on, an interstate practising certificate issued to an interstate legal practitioner in that State as a result of disciplinary action against the practitioner, and
- (b) to which a local legal practitioner is subject in that State,

may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions on, the local legal practitioner's practising certificate as a result of disciplinary action against the practitioner.

- (4) A regulatory authority in this State must comply with an order of a regulatory authority in a participating State under subsection (3).
- (5) A regulatory authority in a participating State that has jurisdiction to order the removal of the name of a person from the roll kept in that State that corresponds to the roll of practitioners in the Supreme Court in this State may order that the name of the local legal practitioner be removed from the roll. If such an order is made the local legal practitioner's name is to be removed from the roll in this State.

Division 5 General

48ZA Local legal practitioner receiving trust money interstate

A local legal practitioner must deal with trust money received in the course of practising outside this State (other than trust money received in the course of practising in a participating State in which the practitioner has established an office) in accordance with Part 6 as if the trust money had been received in the course of practising in this State.

48ZB Regulatory authority may exercise powers conferred by corresponding law

A regulatory authority in this State may exercise in respect of a local legal practitioner or an interstate legal practitioner any function under a corresponding law conferred on it by the corresponding law.

48ZC Agreements and arrangements with other regulatory authorities

A regulatory authority of this State may make agreements or arrangements with a regulatory authority of a participating State for or with respect to:

- (a) the investigation of complaints,
- (b) professional indemnity insurance,
- (c) fidelity fund contributions and payments,
- (d) trust account inspections,
- (e) the appointment of managers and receivers,
- (f) the exchange of information under section 48Y.

48ZD Professional indemnity insurance where no office established in this State

- (1) If the indemnity under a policy of indemnity insurance in force in respect of an interstate legal practitioner who has not established an office in this State is less than that required to be maintained by an interstate legal practitioner to whom section 48U applies, the interstate legal practitioner must disclose the difference to a client before he or she is retained by the client.
- (2) A contravention of this section does not of itself amount to a breach of this Act. However, failure to comply with this section is capable of being professional misconduct or unsatisfactory professional conduct.

[29] Section 55 Investigation of affairs of solicitor

Insert “(subject to Part 3B)” after “investigate” in section 55 (1) (a).

[30] Section 60 Definitions

Omit “acting as a solicitor” from section 60 (1).

Insert instead “a local legal practitioner acting as a solicitor, or an interstate legal practitioner who has established an office in New South Wales, acting as a solicitor”.

[31] Section 61 Money received by solicitor on behalf of another

Insert "in this State" after "practising as a solicitor" in section 61 (1) (as substituted by the *Legal Profession Amendment Act 1996*).

[32] Section 67 Statutory Interest Account

Insert "or interstate legal practitioner" after "legal practitioner" in section 67 (3) (j).

[33] Section 76 Contributions

Insert "(other than a solicitor who is an interstate legal practitioner)" after "solicitor" in section 76 (1).

[34] Section 76 (1A)

Insert after section 76 (1):

- (1A) A solicitor who is an interstate legal practitioner who has established an office in this State must, when notifying the Law Society Council under section 48T, pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which any legal services are to be provided at that office.

Note. Section 48S provides for when an office is established.

[35] Section 77 Levies

Insert "the solicitor is an interstate legal practitioner and to whether" after "whether" in section 77 (2).

[36] Section 78

Omit the section. Insert instead:

78 Failure to pay contribution or levy

If a solicitor fails to pay a contribution required under section 76 or, after being given the prescribed notice, fails to pay a levy in accordance with this Part, the Law Society Council may:

- (a) in the case of a local legal practitioner—suspend the solicitor’s practising certificate while the failure continues, or
- (b) in the case of an interstate legal practitioner—suspend that practitioner’s entitlement under Part 3B to practise in this State while the failure continues and request the regulatory authority in the interstate legal practitioner’s home State to suspend the solicitor’s interstate practising certificate until the Law Society Council notifies the regulatory authority that the contribution or levy has been paid.

[37] Section 79 Definitions

Insert in alphabetical order:

contributing interstate legal practitioner means an interstate legal practitioner who has paid any contribution required under section 76.

[38] Section 79 (1)

Insert “or interstate legal practitioner” after “legal practitioner” in the definition of *legal costs*.

[39] Section 79 (2)

Insert at the end of the section:

- (2) A reference in this Division to the practice of a solicitor who is an interstate legal practitioner is a reference to the solicitor’s practice in this State.

[40] Section 80 Claims against the Fidelity Fund

Insert after section 80 (1):

- (1A) Without limiting subsection (1), a claim lies against the Fidelity Fund for the purpose of compensating persons who suffer pecuniary loss:

- (a) occurring wholly in this State from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner or a contributing interstate legal practitioner, or
- (b) occurring both in this State and in a participating State from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner, or
- (c) occurring both in this State and in a participating State from a failure to account or a dishonest default (in the course of practising in this State) of a solicitor who is a contributing interstate legal practitioner, or
- (d) occurring in this State or a participating State, or both, in circumstances in which it cannot be determined precisely where the loss occurred, from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner, or
- (e) occurring in this State or in a participating State, or both, in circumstances in which it cannot be determined precisely where the loss occurred, from a failure to account or a dishonest default (in the course of practising in this State) of a solicitor who is a contributing interstate legal practitioner, or
- (f) in any other circumstances in which an agreement or arrangement under section 48ZC provides that a claim is payable.

[41] Section 80 (5)

Insert “or interstate legal practitioner” after “legal practitioner”.

[42] Section 80 (5) (d)

Insert “or interstate practising certificate” after “practising certificate”.

[43] Section 91 Definitions

Insert at the end of the section:

- (2) A reference in this Part to the practice of a solicitor who is an interstate legal practitioner is a reference to the solicitor’s practice in this State.

[44] Section 92 Supreme Court may appoint receiver

Insert after section 92 (3) (b):

- (b1) a request for the regulatory authority of a participating State to refuse to issue an interstate practising certificate to a solicitor who is an interstate legal practitioner or to cancel the solicitor’s interstate practising certificate, or

[45] Section 101 Other powers of receiver

Insert “or interstate legal practitioner” after “legal practitioner” in section 101 (1) (d).

[46] Section 114A Definitions

Insert after section 114A (3):

- (4) A reference in this Part to a solicitor’s practice is a reference, in the case of a solicitor who is an interstate legal practitioner, to the solicitor’s practice in this State.

[47] Section 114B Appointment of manager

Insert “and barrister” after “solicitor” in section 114B (3).

[48] Section 114C Powers of manager

Insert “and barrister” after “solicitor” wherever occurring in section 114C (1) (a) and (b).

[49] Sections 123–125

Insert “and interstate legal practitioners” after “legal practitioners” wherever occurring.

[50] Section 124 Objects of Part relating to users of legal services

Insert “or interstate legal practitioner” after “legal practitioner” in section 124 (e).

[51] Section 127 Professional misconduct and unsatisfactory professional conduct

Insert after section 127 (1) (b):

- (b1) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law which, if established, would justify a finding that an interstate legal practitioner is not of good fame or character or is not a fit and proper person to remain on the roll in the practitioner’s home State that corresponds to the roll of legal practitioners, or

[52] Section 127 (2) and (3)

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring.

[53] Section 128 Legal practitioners to whom Part applies

Insert after section 128 (2):

- (3) In this section:

legal practitioner includes an interstate legal practitioner who practises as a barrister or solicitor and barrister in this State.

[54] Section 131 Functions of Commissioner

Insert “and interstate legal practitioners” after “legal practitioners” wherever occurring.

[55] Sections 131 (1) (c), 134, 135, 136

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring.

[56] Section 148 Investigation of complaints by Council

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring in section 148 (2A) (as inserted by the *Legal Profession Amendment Act 1996*).

[57] Section 148 (2B)

Insert after section 148 (2A) (as inserted by the *Legal Profession Amendment Act 1996*):

(2B) The Law Society Council or Bar Council may consult and cooperate with the appropriate regulatory authority of a participating State when dealing with a complaint against an interstate legal practitioner under this Act or under a corresponding law. For the purposes of this subsection, the Councils and regulatory authority may exchange information concerning the complaint.

[58] Sections 152 (as amended by the Legal Profession Amendment Act 1996), 153, 155, 158, 160

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring.

[59] Section 162 The Legal Services Tribunal

Insert “who are local legal practitioners” after “barristers” in section 162 (2) (a).

[60] Section 162 (2) (b)

Insert “who are local legal practitioners” after “solicitors” in section 162 (2) (b).

[61] Section 167 Institution of proceedings and hearings

Insert “or interstate legal practitioner” after “legal practitioner” wherever occurring.

[62] Section 167 (4)

Insert “or interstate legal practitioners” after “legal practitioners”.

[63] Section 169 Parties

Insert “or interstate legal practitioner” after “legal practitioner” in section 169 (1).

[64] Section 171C Determinations of the Tribunal

Insert “or interstate legal practitioners” after “legal practitioners” in section 171C (1).

[65] Section 171C (1) (a1)

Insert after section 171C (1) (a):

- (a1) order that the name of the interstate legal practitioner be removed by the appropriate regulatory authority of a participating State from the roll of that State that corresponds to the roll of legal practitioners if the interstate legal practitioner is guilty of professional misconduct,

[66] Section 171C (1) (c1)

Insert after section 171C (1) (c):

- (c1) order that the appropriate regulatory authority of a participating State cancel the interstate legal practitioner's practising certificate or order that an interstate practising certificate not be issued to the interstate legal practitioner until the end of the period specified in the order,

[67] Section 171C (2) (h)

Insert after section 171 (2) (g):

- (h) order that the appropriate regulatory authority of a participating State endorse the interstate practising certificate of a solicitor who is an interstate legal practitioner with a condition restricting the solicitor from acting as a solicitor otherwise than in the course of employment by a solicitor holding an unrestricted practising certificate (or its equivalent) in that participating State.

[68] Sections 171D (1) and (2), 171E, 171J, 171K

Insert "or interstate legal practitioner" after "legal practitioner" wherever occurring.

[69] Section 171M Jurisdiction of the Supreme Court not affected

Insert at the end of the section:

- (2) For the purposes of this section, an interstate legal practitioner is taken to be a legal practitioner.

[70] Section 171N Annual report of Commissioner

Insert "or interstate legal practitioner" after "legal practitioner" in section 171N (3) (f).

[71] Section 171N (5)

Omit “or legal practitioners”.

Insert instead “, legal practitioners or interstate legal practitioners”.

[72] Section 171S Duty of confidentiality of client communications

Insert “or interstate legal practitioner” after “legal practitioner” where firstly occurring in section 171S (1) and (2).

[73] Section 171S (1) and (2)

Omit “legal practitioner” where secondly occurring in the subsections.

Insert instead “practitioner”.

[74] Section 172U Recognition of foreign corporations

Insert “and barrister” after “solicitor” in section 172U (1) (b).

[75] Section 172U (1) (c)

Insert “and barristers” after “solicitors”.

[76] Section 174A Application of Part to cross-vested matters (as inserted by the Legal Profession Amendment Act 1996)

Insert “or interstate legal practitioner” after “legal practitioner” in section 174A (2).

[77] Section 213A Evidentiary certificates

Insert after section 213A (2):

(3) A certificate issued by a regulatory authority of a participating State and that states that, on a date and during a period specified in the certificate:

(a) a specified person was or was not the holder of an interstate practising certificate, or

- (b) that a specified interstate legal practitioner's practising certificate was or was not subject to a specified condition,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

[78] Section 216 Regulations

Insert "and interstate legal practitioners" after "legal practitioners" in section 216 (3) (d).

Schedule 2 Miscellaneous amendments

(Section 3)

[1] **Part 3, Division 1AA Application of Trade Practices Act 1974**

Omit the Division.

[2] **Section 180**

Omit the section. Insert instead:

180 Exception to disclosure

A disclosure is not required to be made under this Division when it would not be reasonable to be required to do so.

[3] **Section 181 Regulations, rules and guidelines as to disclosure**

Omit section 181 (b). Insert instead:

(b) with the approval of the Attorney General, when it would not be reasonable to require a disclosure to be made under this Division.

[4] **Part 11, Division 5A**

Insert after Division 5:

Division 5A Mediation of costs disputes

198A Costs dispute

For the purposes of this Division, a *costs dispute* is a dispute between a client and a legal practitioner or interstate legal practitioner concerning a bill of costs.

198B Referral for mediation

(1) A client who is given a bill of costs may refer a costs dispute about the bill of costs to the Commissioner or to a Council for mediation if the amount in dispute is less than \$2,500.

- (2) The proper officer of the Supreme Court may refer a costs dispute about a bill of costs to the Commissioner if the amount in dispute is less than \$2,500.
- (3) A costs dispute about a bill of costs may be referred under this section at any time before an application for an assessment of the whole or part of a bill of costs is accepted by the proper officer of the Supreme Court.
- (4) Mediation is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, such as the giving of informal advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute.

[5] Section 203 How is an application to be made?

Insert “, subject to subsection (3),” after “and is” in section 203 (1).

[6] Section 203 (4)

Insert at the end of the section:

- (4) The proper officer of the Supreme Court may waive payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.

[7] Section 208J A Recovery of costs of costs assessment (as inserted by the Legal Profession Amendment Act 1996)

Insert “or proper officer of the Supreme Court” after “costs assessor” wherever occurring in section 208JA (1) and (5).

[8] Section 208JA (2)

Insert “or proper officer of the Supreme Court” after “costs assessor” where secondly occurring.

[9] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Legal Profession Amendment (National Practising Certificates) Act 1996

[10] Schedule 8, Part 9

Insert at the end of the Schedule:

**Part 9 Provisions consequent on enactment of the
Legal Profession Amendment (National
Practising Certificates) Act 1996**

53 Definition

In this Part:

amending Act means the *Legal Profession Amendment (National Practising Certificates) Act 1996*.

54 Practising certificate of a solicitor

A person holding a practising certificate as a solicitor at the commencement of Schedule 1 [6] to the amending Act is taken to have been issued with a practising certificate as a solicitor and barrister under this Act as amended by Schedule 1 [6]. The certificate continues in force accordingly.

55 Provisions relating to interstate legal practitioners

An interstate legal practitioner is entitled to practise law in this State in accordance with this Act as amended by the amending Act even if the interstate practising certificate conferring the entitlement was issued before or after the commencement of Part 3B.

56 Costs assessments

The amendments made to section 208JA by the amending Act extend to the payment of costs in respect of applications for costs assessments made before the commencement of the amendments.

[Minister's second reading speech made in—
Legislative Council on 14 November 1996
Legislative Assembly on 21 November 1996]

BY AUTHORITY

