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**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>1</b>
1. Purposes	1
2. Commencement	1
3. Definitions	2
3A. When does a practitioner establish a practice?	17
4. When is money received?	17
5. Legal practitioner acting as agent for another	18
<b>PART 2—FORMAL REQUIREMENTS FOR LEGAL PRACTICE</b>	<b>19</b>
<b>Division 1—Admission to legal practice</b>	<b>19</b>
6. Admission to legal practice	19
7. Admission fee	19
8. Effect of admission	20
<b>Division 2—The Register</b>	<b>20</b>
9. Register of legal practitioners and firms	20
10. Inspection of the Register	23
11. Notification of changes by firms	24
12. Notification of changes by incorporated practitioners	24
13. Notification of changes by individual practitioners	25
13A. Notification of changes by interstate practitioners and registered foreign practitioners	26
14. Notification of deaths and liquidations	27
<b>Division 3—Registration and RPA allocation</b>	<b>27</b>
15. Application for registration by firms	27
16. Registration and RPA allocation	28
17. Allocation of practitioners who join firms or incorporated practitioners	29
18. Intending practitioners must notify Board	30
19. RPA allocation of intending practitioners	32

<i>Section</i>	<i>Page</i>
<b>Division 4—Practising certificates</b>	<b>33</b>
20. Practising certificates—form and conditions	33
21. Duration of practising certificates	34
22. Application for practising certificate (new or former practitioners)	35
23. Application for practising certificate (renewing practitioners)	37
23A. Late application for practising certificate	39
24. Application for variation of conditions	39
25. Further information	40
26. Mandatory refusal of practising certificates	41
27. Refusal of practising certificates for trust account irregularities	42
28. Refusal of practising certificates for misconduct or corporate irregularities	43
29. Issue or refusal of practising certificates or variation of conditions	43
30. Applicant may apply to Full Tribunal	45
31. Appeal to Court of Appeal	47
32. Payment and refund of fees and contributions	47
33. Surrender of practising certificate	48
34. Mandatory suspension or variation of practising certificate for insolvency	48
34A. Expungement of record of suspension or variation under section 34	50
35. Notification of failure to pay contributions or levies	51
36. Suspension of practising certificate for failure to pay contributions or levies	51
37. Suspension of practising certificate for trust account deficiencies	52
38. Other grounds for suspension	53
39. Effect of suspension	54
40. Application to Full Tribunal following suspension	54
41. Appeal to Court of Appeal	55
41A. Variation of practising certificate conditions pending criminal proceedings	56
41B. Appeal to Court of Appeal	57
<b>Division 5—Re-allocation of firms and practitioners</b>	<b>57</b>
42. Notice of ceasing to be eligible (firms and incorporated practitioners)	57
43. Re-allocation of firms and incorporated practitioners ceasing to be eligible	58
44. Notice of ceasing to be eligible (sole and corporate practitioners)	59
45. Re-allocation of sole and corporate practitioners ceasing to be eligible	59
46. Re-allocation as a result of becoming eligible	60
47. Firm or incorporated practitioner may apply for re-allocation	60

<i>Section</i>	<i>Page</i>
48. Re-allocation of firm or incorporated practitioner	61
49. Individual practitioner may apply for re-allocation	61
50. Re-allocation of individual practitioners	62
51. Exchange of information on re-allocation	62
52. Return of information necessary for disputes, investigations and charges	63
<b>PART 2A—INTERSTATE PRACTICE</b>	<b>64</b>
<b>Division 1—Preliminary</b>	<b>64</b>
53. Purposes of this Part	64
<b>Division 2—Legal practice by interstate practitioners</b>	<b>64</b>
54. Status of interstate practitioners	64
55. Interstate practitioner may practise in Victoria	64
56. Notification requirements for interstate practitioners	65
57. RPA allocation	68
<b>Division 3—Disputes, complaints and discipline</b>	<b>68</b>
58. Current practitioners practising interstate	68
59. Referral of disputes and disciplinary matters to interstate regulatory authorities	69
60. Dealing with matters referred by interstate regulatory authorities	70
61. Furnishing information	70
<b>Division 4—Further provisions for current practitioners in relation to interstate practice</b>	<b>71</b>
62. Current practitioners are subject to interstate regulatory authorities	71
63. Current practitioner receiving trust money interstate	72
63A. Current practitioner's professional indemnity insurance	72
<b>Division 5—General</b>	<b>73</b>
63B. Victorian regulatory authority may exercise powers conferred by interstate law	73
63C. Agreements and arrangements with interstate regulatory authorities	73
63D. <i>Repealed</i>	73
63E. Transitional	73
<b>PART 2B—PRACTICE OF FOREIGN LAW</b>	<b>74</b>
<b>Division 1—Preliminary</b>	<b>74</b>
63F. Purpose of this Part	74
63G. Definitions	74
63H. What is the practice of foreign law?	75

<i>Section</i>	<i>Page</i>
<b>Division 2—Unqualified foreign law practice</b>	<b>75</b>
63I. Prohibition on unqualified foreign law practice	75
<b>Division 3—Registration of foreign practitioners</b>	<b>76</b>
63J. Registration notice	76
63K. Fees and Fidelity Fund contributions	79
63L. Registration and RPA allocation	79
63M. Conditions	82
63N. Notification of decision	82
63O. Effect of registration and annual fee	83
63P. Suspension of registered foreign practitioner	83
63Q. Effect of suspension	84
63R. Cancellation of registration	85
63S. Application to Full Tribunal	87
63T. Appeal to Court of Appeal	88
<b>Division 4—Practice of foreign law</b>	<b>88</b>
63U. Scope of practice	88
63V. Form of practice	89
63W. Letterhead and other identifying documents	90
63X. Designation	90
63Y. Employment of current and interstate practitioners by foreign practitioners	91
63Z. Employment of foreign practitioners by current practitioners, interstate practitioners and firms	92
63ZA. Professional indemnity insurance	92
63ZB. Trust money	92
63ZC. Exemption by Board	93
<b>PART 3—THE MANNER OF LEGAL PRACTICE</b>	<b>94</b>
<b>Division 1—Principles of legal practice</b>	<b>94</b>
64. General principles of professional conduct	94
65. Co-advocacy	95
66. Client access	95
67. Compulsory clerking prohibited	95
68. Compulsory chambers prohibited	96
69. Sole practice by barristers	97
70. Compulsory robing abolished	97
71. Regulation of other businesses carried on by current practitioners	98

<i>Section</i>	<i>Page</i>
<b>Division 2—Practice rules</b>	<b>98</b>
72. Practice rules of RPAs	98
73. Practice rules of the Board	99
74. RPA must forward practice rules	99
75. Board must forward practice rules	100
76. Legal Ombudsman may recommend disallowance	101
77. Disallowance of practice rules	101
78. Effect of disallowance	102
79. Inspection and purchase of practice rules	102
80. Guidelines and model rules	103
81. Interpretation	103
<b>Division 3—Competition</b>	<b>103</b>
82. Legal Ombudsman to investigate matters relating to competition	103
83. Practitioner or firm must provide information and documents	104
84. Report of investigation	105
85. Tabling in Parliament and government response	106
<b>PART 4—INFORMATION AND LEGAL COSTS</b>	<b>107</b>
<b>Division 1—Information for clients</b>	<b>107</b>
86. What information must be given to a client?	107
87. Information if another legal practitioner is to be retained	108
88. Form of statements	109
89. Changes must be notified	109
90. Exceptions to requirement for information	110
91. Effect of failure to give information	111
92. Progress reports	112
<b>Division 2—Legal costs generally</b>	<b>112</b>
93. On what basis are legal costs recoverable?	112
94. Security for legal costs	112
95. Interest on unpaid legal costs	112
<b>Division 3—Costs agreements</b>	<b>113</b>
96. Making costs agreements	113
97. Costs agreements may be conditional on success	113
98. Uplifted fees are allowed	114
99. Contingency fees are prohibited	114
100. <i>Repealed</i>	115
101. Effect of costs agreement	115
102. Certain costs agreements are void	115
103. Cancellation of costs agreement	116
104. Appeal to Full Tribunal	117
105. Appeal to Court of Appeal	117

<i>Section</i>	<i>Page</i>
<b>Division 4—Bills of costs</b>	<b>117</b>
106. Legal costs cannot be recovered unless bill of costs has been served	117
107. Bill of costs	118
108. Person may request itemised bill	119
109. Interim bills	119
110. Defence costs in criminal matters	120
111. Practitioner remuneration orders	121
112. Publication and availability	121
113. Disallowance	122
114. Legal Costs Committee	122
<b>Division 5—Assessment of legal costs</b>	<b>123</b>
115. Person may apply for assessment of a bill of costs	123
116. Court may order assessment of costs	124
117. Court may order division of payments	125
118. Procedure on assessment	126
119. Costs of assessment	126
120. Review of assessment	127
121. Legal costs subject to a costs dispute are not assessable	127
<b>PART 5—DISPUTES WITH CLIENTS AND DISCIPLINE</b>	<b>128</b>
<b>Division 1—Disputes between clients and practitioners or firms</b>	<b>128</b>
122. What is a dispute?	128
123. How is dispute resolution initiated?	129
124. Other proceedings stayed	130
125. Lodgement of disputed legal costs with RPA or Board	131
126. What does the RPA or the Board do with the dispute?	132
127. Settlement agreements	133
128. What happens if dispute is not settled?	133
129. Conciliation of disputes	134
130. Conciliation agreements	135
131. What happens if a party does not attend a conference?	136
132. What happens if conciliation is not successful?	137
133. What may the Tribunal decide?	137
134. Costs of hearing	138
135. Enforcement of orders	139
136. Suspension of order pending appeal	139
136A. More appropriate forum	140
<b>Division 2—Complaints about practitioners' and firms' conduct</b>	<b>140</b>
137. What are misconduct and unsatisfactory conduct?	140
138. Who may complain?	142
139. When may a complaint be made?	143
140. Form of complaint	143

<i>Section</i>	<i>Page</i>
141. Dismissal of unjustified complaints	144
142. Complaint treated as dispute in some circumstances	144
143. Legal Ombudsman may refer complaints to RPA or Board	146
144. RPA or Board may refer complaints to Legal Ombudsman	146
<b>Division 3—Investigation of practitioners' and firms' conduct</b>	<b>146</b>
145. Investigation by Legal Ombudsman	146
146. Investigation by RPA or Board	147
147. Legal Ombudsman to monitor RPA and Board investigations	148
148. Legal Ombudsman may give directions to RPA and Board	148
149. Practitioner or firm must provide information and documents	149
150. Investigation to be conducted expeditiously	150
151. What happens after an investigation is completed?	150
152. Notice of decision	152
<b>Division 4—Review of RPA or Board decisions</b>	<b>153</b>
153. Application for review	153
154. Review of decision	154
155. Role of RPA and Board in review	154
156. What may the Legal Ombudsman decide?	154
<b>Division 5—Disciplinary jurisdiction of Tribunal</b>	<b>155</b>
157. When may the Tribunal hear a disciplinary matter?	155
158. Constitution of Tribunal to hear charge	155
159. Penalties for unsatisfactory conduct	156
160. Penalties for misconduct	157
161. Practitioner or firm may be found guilty of lesser offence	158
162. Orders for costs	158
163. Compensation orders	159
164. Enforcement of orders	159
165. Suspension of order pending appeal	159
166. Publication of orders	160
<b>Division 6—Appeals</b>	<b>160</b>
167. Appeal to Full Tribunal	160
168. Security for costs of appeal	161
169. Power of Full Tribunal on appeal	161
169A. Orders for costs in disputes appeals	162
170. Appeal to Court of Appeal	162
<b>Division 7—General</b>	<b>162</b>
171. Application of Part	162
171A. Application of Part to foreign practitioners	163
172. Power of Supreme Court to discipline practitioners	164

<i>Section</i>	<i>Page</i>
<b>PART 6—CLIENTS' MONEY</b>	<b>165</b>
<b>Division 1—How practitioners and firms must handle trust money</b>	<b>165</b>
173. Establishment of trust account	165
173A. Trust account details to be notified to Board	166
174. Dealing with trust money	166
175. Protection for authorised deposit-taking institutions	169
176. Board may make arrangement with authorised deposit-taking institutions	169
177. Approved clerks	170
178. Unqualified trust money receipt	170
<b>Division 2—Statutory deposit with Board</b>	<b>172</b>
179. Initial deposit of trust money with the Board	172
180. Continuing requirement to deposit	173
181. Repayment by Board	174
<b>Division 3—Record keeping, auditing and reporting</b>	<b>174</b>
182. What records must be kept?	174
182A. Board may require information about trust account balances	175
183. Annual audit of trust accounts	175
184. Annual report of trust account audit or statutory declaration	176
185. Final audit of trust account	177
186. Board's supervisory role in audits	178
187. Courses of education for auditors	179
<b>Division 4—Deficiencies in trust accounts</b>	<b>179</b>
188. Trust account must not be in deficit	179
189. Practitioner must inform Board of suspected deficiencies	180
190. Approved clerks must inform Board of suspected deficiencies	180
191. Authorised deposit-taking institutions must report deficiencies in trust accounts	181
<b>Division 5—Investigations</b>	<b>181</b>
192. RPA or Board may appoint inspector to investigate	181
193. Legal Ombudsman may appoint auditor to investigate	182
194. Assistance with investigation	183
195. Power of entry with warrant	184
196. Inspector must report on investigation	186
197. Cost of investigation	186
198. Secrecy	186
199. Rules for qualification of inspectors	188



<i>Section</i>	<i>Page</i>
<b>PART 7—DEFALCATIONS</b>	<b>189</b>
<b>Division 1—Contributions and Levies</b>	<b>189</b>
200. Determination of classes of practitioners	189
201. Determination of contributions	190
202. Payment of contributions	192
203. Levies	194
204. Who must pay a levy?	195
205. When is a levy payable?	196
206. Board may recover contribution or levy	196
207. Employer must pay contribution or levy or reimburse employee	196
<b>Division 2—Claims</b>	<b>197</b>
207A. Definitions	197
208. Entitlement to claim against the Fidelity Fund	198
209. Making a claim	200
210. Investigation of claim	201
211. Determination of claim	202
212. Assertion of claim in court	203
213. Court proceedings	204
214. Quantum of claim	205
215. Additional payments out of Fund	206
216. Payments out of Fund	206
217. Subrogation of Board	207
218. Immunity for innocent partners etc.	208
219. Subrogation of innocent partners etc.	209
220. Disallowance of subrogated claim	211
221. What is due diligence?	211
222. Board may insure against liability	212
223. Application of insurance money	213
<b>PART 8—PROFESSIONAL INDEMNITY INSURANCE</b>	<b>214</b>
<b>Division 1—Professional indemnity insurance</b>	<b>214</b>
224. Firms required to insure	214
225. Incorporated practitioners required to insure	214
226. Sole practitioners required to insure	215
227. Insurance to be maintained during legal practice	216
227A. Trade Practices Act and Competition Code	216
228. Terms and conditions of insurance	217
229. Interstate practitioners	218
229A. Exemption from insurance requirements	218

<i>Section</i>	<i>Page</i>
<b>Division 2—Legal Practitioners' Liability Fund</b>	<b>218</b>
230. Establishment	218
231. Payments into Fund	219
232. Payments out of Fund	219
233. Investment of Fund	220
233A. Levies	220
<b>Division 3—Legal Practitioners' Liability Committee</b>	<b>221</b>
234. Establishment	221
235. Liability Committee not to represent the Crown	221
236. Functions and powers	222
237. Membership	223
238. Payment of members	223
239. Acting members	224
240. Meetings	224
241. Resolutions without meetings	225
242. Validity of acts or decisions	226
243. Conflicts of interest	226
244. Staff and consultants	227
245. Consolidated annual reports	228
246. Secrecy	228
247. Immunity	229
<b>PART 9—RECEIVERS AND MANAGERS</b>	<b>230</b>
<b>Division 1—Definitions</b>	<b>230</b>
248. Definitions	230
<b>Division 2—Appointment of receiver</b>	<b>231</b>
249. Application for appointment of receiver	231
250. Order appointing receiver	234
251. Trust account dealings	236
252. Carrying on of legal practice	237
253. Receiver may invest money	239
254. Receiver may require delivery of property	239
255. Delivery of property to receiver	240
256. Receiver may seek power of entry	241
257. Application in relation to accounts	242
258. Receiver may recover money paid away in bets	244
259. Recovery of property where there has been a breach of trust etc.	244
260. Time within which receiver may recover property	246
261. Requirement to pay compensation for defalcation to receiver	246
262. Subrogation of receiver	247
263. Improperly destroying property etc.	247
264. Receiver may deal with property	248

<i>Section</i>	<i>Page</i>
265. Claims to property	249
266. Summons for directions	249
267. Liens for regulated practitioner's legal costs	250
268. Examination by receiver	251
269. Termination of appointment of receiver	251
270. Property not dealt with by receiver	252
271. Remuneration of receiver	253
272. Receiver may be reimbursed for damages	253
273. Receiver is not personal representative	253
274. Property not to be levied	254
275. Returns by receivers	254
276. Surplus to be paid into Fidelity Fund	254
277. Costs	254
<b>Division 3—Appointment of manager</b>	<b>255</b>
278. Appointment of manager	255
279. Powers of manager	258
280. Receivership terminates management	258
281. Acts of manager to be taken as acts of regulated practitioner	258
282. Payment of expenses of management	259
283. Manager may be reimbursed for damages	259
284. Manager to report to RPA or Board	260
285. Termination of appointment of manager	260
286. Termination of management	260
287. Application of Part 6	261
288. Office accounts	261
<b>PART 10—INCORPORATED PRACTITIONERS</b>	<b>262</b>
289. Application for registration	262
290. Nomination of RPA	262
291. Registration	263
292. RPA allocation	264
293. Form and object of incorporated practitioner	264
294. Directors	265
295. Shares	265
296. Powers of incorporated practitioners	266
297. Directors' and members' liability	266
<b>PART 11—RECOGNISED PROFESSIONAL ASSOCIATIONS</b>	<b>268</b>
<b>Division 1—Accreditation</b>	<b>268</b>
298. Application for accreditation	268
299. Criteria for accreditation	268
300. Publication and duration of accreditation	270
301. Renewal of accreditation	271
302. Withdrawal from accreditation	271

<i>Section</i>	<i>Page</i>
303. Board may issue non-compliance notice	271
304. Effect of non-compliance notice	272
305. Suspension of accreditation	272
306. Appointment of administrator	273
307. Revocation of accreditation	274
308. Re-allocation of regulated practitioners	275
309. Application of Administrative Law Act	277
310. Board may advance money to prospective RPA	277
<b>Division 2—RPA administration</b>	<b>278</b>
311. Official publications	278
312. Reports to Board	278
313. Delegation	278
<b>PART 12—UNQUALIFIED PRACTICE</b>	<b>279</b>
314. Prohibition on unqualified legal practice	279
315. Exceptions to prohibition on unqualified legal practice	280
316. Injunction restraining unqualified practice	281
317. Sharing income with unqualified persons	282
318. Employment or engagement of practitioners without practising certificates	283
319. Employment or engagement of persons who have been banned from legal practice	284
320. Authorisation of employment or engagement	284
321. Orders prohibiting employment or engagement of certain persons	285
322. Appeal to Court of Appeal	286
323. Unqualified persons must inform prospective employers	286
324. Permitting or assisting unqualified persons to practise	287
325. Prisoners must not practise	287
<b>PART 13—CONVEYANCING BUSINESSES</b>	<b>288</b>
326. Definitions	288
327. Employment or engagement in conveyancing business	288
328. Authorisation of employment or engagement	289
329. Unqualified persons must inform prospective employers	290
330. Conveyancers must disclose insurance etc.	291
330A. Board may require information and documents from conveyancers	292

<i>Section</i>	<i>Page</i>
<b>PART 14—COUNCIL OF LEGAL EDUCATION AND BOARD OF EXAMINERS</b>	<b>293</b>
<b>Division 1—Council of Legal Education</b>	<b>293</b>
331. Council of Legal Education	293
332. Functions and powers	295
333. Meetings	295
334. Deputy for Attorney-General	296
335. Staff and consultants	296
336. Validity of acts or decisions	297
337. Rules	297
<b>Division 2—Board of Examiners</b>	<b>299</b>
338. Board of Examiners	299
339. Resignation and removal	300
340. Chairperson	300
341. Functions and powers	300
342. Appeal to Supreme Court	301
343. Meetings	301
344. Deputy members	302
345. Staff and consultants	302
346. Validity of acts or decisions	302
<b>PART 15—LEGAL PRACTICE BOARD</b>	<b>303</b>
<b>Division 1—The Board</b>	<b>303</b>
347. Establishment	303
348. Board not to represent the Crown	303
349. Membership	303
350. Chairperson and deputy chairperson	304
351. Practitioner members	305
352. Non-practitioner members	305
353. Payment of members	306
354. Vacancies, resignations, removal from office	306
355. Acting appointments	307
356. Casual vacancies of practitioner members	308
357. Meetings	308
358. Conflicts of interest	309
359. Resolutions without meetings	310
360. Validity of acts or decisions	311
361. Staff, consultants and delegation	311
362. Secrecy	312
363. Immunity	313

<i>Section</i>	<i>Page</i>
<b>Division 2—Election of practitioner members</b>	<b>313</b>
364. Electoral rolls	313
365. Enrolment	314
366. Elections	315
367. Preferential voting	316
368. Election of advocate and non-advocate members	317
369. Elections to fill casual vacancies	318
370. Arrangements with Victorian Electoral Commission	318
371. Regulations	318
<b>PART 16—ESTABLISHMENT OF FUNDS</b>	<b>320</b>
<b>Division 1—Public Purpose Fund</b>	<b>320</b>
372. Public Purpose Fund	320
373. Accounts in Public Purpose Fund	320
374. General Account	321
375. Statutory Deposit Account	323
376. Legal Practice Board Account	323
377. Legal Profession Tribunal Account	324
378. Legal Ombudsman	324
379. Trust Accounts Regulation Account	325
380. Legal Aid Fund	325
381. Victoria Law Foundation	326
382. Leo Cussen Institute	327
383. Law Reform and Research Account	327
384. Limit on amounts	328
384A. Board may take into account previous funding	329
384B. Timing of payments and instalments	329
385. Fidelity Fund	329
386. Legal Practice Fund	330
387. Payments to RPAs for continuing legal education programs etc.	330
<b>Division 2—Fidelity Fund</b>	<b>331</b>
388. Legal Practitioners' Fidelity Fund	331
389. Payments to liquidators etc.	333
390. Public Purpose Fund	333
<b>Division 3—Legal Practice Fund</b>	<b>334</b>
391. Legal Practice Fund	334
392. Payments to RPAs for regulating practitioners	336

<i>Section</i>	<i>Page</i>
<b>PART 17—LEGAL PROFESSION TRIBUNAL</b>	<b>337</b>
<b>Division 1—Tribunal</b>	<b>337</b>
393. Establishment	337
394. Chairperson and deputy chairpersons	338
395. Registrar and deputy registrar	339
396. Term of office and payment	339
397. Vacancies, resignation and removal from office	339
398. Acting chairperson	340
399. Acting registrar and deputy registrar	341
400. Composition of Tribunal for proceedings	342
401. Validity of proceedings	342
402. Majority decisions	343
403. Change in composition	343
404. Disclosure of interests	344
405. Staff	344
406. Protection of members, advocates and witnesses	344
<b>Division 2—Procedure of Tribunal</b>	<b>345</b>
407. Duty to act fairly	345
408. Evidence	345
409. Reasons	346
410. Who is entitled to appear?	346
411. Tribunal may join parties and grant leave to intervene	347
412. Tribunal must give notice of hearings and allow witnesses	347
413. Hearings are open to public unless otherwise ordered	347
413A. Interim orders	348
414. Directions	348
415. Rules	348
<b>Division 3—Conciliators</b>	<b>349</b>
416. Panel of conciliators	349
417. Payment of conciliators	349
418. Secrecy	349
419. Immunity	350
<b>PART 18—LEGAL OMBUDSMAN</b>	<b>351</b>
420. Appointment	351
421. Payment	351
422. Resignation, suspension and removal	351
423. Acting appointment	352
424. Validity of acts and decisions	353
425. Staff and consultants	354
425A. Delegation	354
426. Annual reports	354
427. Other reports	356

<i>Section</i>	<i>Page</i>
428. Secrecy	357
429. Immunity	357
430. Ex gratia payments	358
<b>PART 19—GENERAL</b>	<b>360</b>
<b>Division 1—Notices and evidentiary matters</b>	<b>360</b>
431. Service of notices on practitioners and firms	360
432. Service on the Board and RPAs	361
433. Service of notices on other persons	361
434. When is service effective?	362
435. Evidentiary matters	363
<b>Division 2—Offences</b>	<b>364</b>
436. Compliance with Tribunal orders etc.	364
437. Failing to appear or produce documents	364
438. Contempt of Tribunal	365
439. False or misleading information	365
440. Offences by firms	365
441. Who may prosecute offences?	366
<b>Division 2A—Investigation of offences</b>	<b>366</b>
441A. Board may appoint person to investigate	366
441B. Assistance with investigation	367
441C. Power of entry with warrant	368
441D. Inspector must report on investigation	369
441E. Secrecy	369
<b>Division 3—Miscellaneous</b>	<b>370</b>
442. Liability for negligence etc.	370
443. Destruction of documents	371
444. Supreme Court—limitation of jurisdiction	371
<b>Division 4—Regulations</b>	<b>372</b>
445. Regulations	372
<b>PART 20—<i>Repealed</i></b>	<b>374</b>
446–451. <i>Repealed</i>	374
<b>PART 21—REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONALS</b>	<b>375</b>
452, 453. <i>Repealed</i>	375
454. Savings, transitional and other provisions	375



<i>Section</i>	<i>Page</i>
<b>SCHEDULES</b>	<b>376</b>
SCHEDULE 1— <i>Repealed</i>	376
SCHEDULE 2—Savings, transitional and other provisions	377
<hr/>	
<b>ENDNOTES</b>	<b>408</b>
1. General Information	408
2. Table of Amendments	409
3. Explanatory Details	412

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**Version No. 035**  
**Legal Practice Act 1996**  
**Act No. 35/1996**

Version incorporating amendments as at 5 April 2005

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. Purposes**

The main purposes of this Act are—

- (a) to improve the regulation of legal practice in Victoria;
- (b) to repeal the **Legal Profession Practice Act 1958**;
- (c) to amend the **Partnership Act 1958**.

**2. Commencement**

- (1) This Part, section 448, Part 21 (except sections 452 and 453) and Schedule 2 come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 447 is deemed to have come into operation on 8 March 1988.
- (3) The remaining provisions of this Act (except section 67) come into operation on 1 January 1997.
- (4) Section 67 comes into operation on 1 July 1997.

### 3. Definitions

(1) In this Act—

**"admission rules"** means rules for the admission to legal practice made under section 337;

**"approved auditor"** means a person, other than a person to whom a direction under section 186(3) applies, who—

S. 3(1) def. of  
"approved  
auditor"  
amended by  
No. 79/1998  
s. 4(1)(a).

(a) is a member of the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia; and

(b) either—

(i) meets the requirements of one of those bodies to practise as a public accountant; or

(ii) is employed by an RPA and meets the requirements of the rules (if any) made by the Board under section 199 for qualification as an inspector—

or both; and

(c) has obtained a degree in commerce, accounting, business studies or a similar discipline from an Australian university or from a foreign university approved by the Board; and

(d) has successfully completed any courses of education required by the Board under section 187(1)(a); and

(e) subject to sub-section (3), has completed or substantially assisted in carrying out the audit of the trust account of at least 2 (or such higher

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

number as is prescribed) firms, legal practitioners or approved clerks in respect of any of the previous 3 audit years;

**"approved clerk"** means a person approved under section 177;

**"audit year"** means the year ending on 31 October;

S. 3(1) def. of "audit year" amended by No. 9/1999 s. 4(a).

**"authorised deposit-taking institution"** has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 3(1) def. of "authorised deposit-taking institution" inserted by No. 11/2001 s. 3(Sch. item 39.1).

\* \* \* \* \*

S. 3(1) def. of "authorised society" repealed by No. 11/2001 s. 3(Sch. item 39.2).

\* \* \* \* \*

S. 3(1) def. of "bank" repealed by No. 11/2001 s. 3(Sch. item 39.2).

**"Board"** means Legal Practice Board established by section 347;

**"Board of Examiners"** means Board of Examiners established by section 338;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

**"client"** means—

- (a) in Part 5, a person who has a dispute with a legal practitioner or firm;
- (b) in Part 13, a person who retains a conveyancer to perform conveyancing work for fee or reward;
- (c) elsewhere, a person who retains a legal practitioner or firm to provide legal services for fee or reward;

**"community legal centre"** means a body formed for the purpose of providing legal advice, aid or assistance, the profit or other income of which is not divided among or received by its members except by way of genuine remuneration;

**"compensation order"** has the meaning given in section 133(1)(a);

**"complaint"** means a complaint about the conduct of a legal practitioner or firm made under section 138;

**"conditional costs agreement"** has the meaning given in section 97;

**"constitution"** of a body corporate has the meaning given in section 9 of the Corporations Act;

**"corporate practitioner"** means a legal practitioner who engages in legal practice as an employee of a person or body other than a firm or another legal practitioner;

**"costs agreement"** means an agreement about the payment of legal costs;

**"Costs Committee"** means Legal Costs Committee established under section 114;

S. 3(1) def. of  
"constitution"  
amended by  
No. 9/2002  
s. 3(Sch.  
item 10).

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 1—Preliminary

s. 3

**"costs dispute"** means a dispute referred to in section 122(1)(a);

S. 3(1) def. of "costs dispute" substituted by No. 79/1998 s. 4(1)(b).

**"Council"** means Council of Legal Education established by section 331;

**"current practitioner"** means a legal practitioner who holds a practising certificate;

S. 3(1) def. of "current practitioner" substituted by No. 102/1997 s. 4(c).

**"defalcation"** means—

- (a) an offence under Division 2 of Part I of the **Crimes Act 1958** in relation to any money or other property; or
- (b) an offence in relation to any money or other property punishable by imprisonment, including embezzlement, failure to account and fraudulent misappropriation;

**"dispute"** has the meaning given in section 122;

**"domestic partner"** of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

S. 3(1) def. of "domestic partner" inserted by No. 72/2001 s. 3(Sch. item 9.1(a)).

- (a) for fee or reward; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

- (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

S. 3(1) def. of "engaged in the practice of foreign law" inserted by No. 102/1997 s. 4(a).

**"engage in the practice of foreign law"** has the meaning given in section 63H;

S. 3(1) def. of "establish a practice" inserted by No. 102/1997 s. 4(a).

**"establish a practice"** has the meaning given in section 3A;

S. 3(1) def. of "family member" amended by No. 72/2001 s. 3(Sch. item 9.1(b)).

**"family member"** of a person means a parent, spouse, domestic partner, child, grandchild, sibling, or child of a sibling of the person;

**"Fidelity Fund"** means Legal Practitioners' Fidelity Fund established under Division 2 of Part 16;

S. 3(1) def. of "financial institution" amended by No. 11/2001 s. 3(Sch. item 39.3(a)(b)).

**"financial institution"** means—

- (a) an authorised deposit-taking institution;  
or
- \*                      \*                      \*                      \*
- (c) a person (other than a legal practitioner) whose sole or principal business activities are the borrowing of money or the provision of finance or both; or
- (d) a person (other than a legal practitioner)—
- (i) whose business activities include the borrowing of money or the provision of finance or both; and

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 1—Preliminary

s. 3

- (ii) who is, or is a member of a class of persons that is, prescribed as a financial institution for the purposes of this Act;

**"firm"** means a firm (within the meaning of the **Partnership Act 1958**) of legal practitioners;

**"foreign practitioner"** has the meaning given in section 63G;

S. 3(1) def. of "foreign practitioner" inserted by No. 102/1997 s. 4(a).

**"Full Tribunal"** means the Tribunal constituted in accordance with section 400(2);

\* \* \* \* \*

S. 3(1) def. of "home jurisdiction" repealed by No. 102/1997 s. 4(b).

**"home State"**—

S. 3(1) def. of "home State" inserted by No. 102/1997 s. 4(a).

- (a) of a current practitioner means Victoria;

- (b) of an interstate practitioner means—

- (i) in the case of a natural person, the State in which they have been admitted to legal practice or, if they have been admitted to practice in more than one State, the State in which they have their principal place of practice; or
- (ii) in the case of a body corporate, the State in which they are incorporated or registered or, if they are registered in more than one State, the State in which they have their principal place of practice;



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

S. 3(1) def. of  
"incorporated  
practitioner"  
amended by  
No. 102/1997  
s. 4(d).

**"incorporated practitioner"** means a company that is registered under section 291 as an incorporated practitioner and in section 12, Division 5 of Part 2, Parts 3, 4, 5 and 6, Division 2 of Part 7 and Parts 9 and 19, includes an interstate practitioner that is a body corporate;

S. 3(1) def. of  
"insolvent  
under admini-  
stration"  
amended by  
No. 9/1999  
s. 4(b).

**"insolvent under administration"** means—

- (a) a person who is an undischarged bankrupt; or
- (b) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under Part IX of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the debt agreement has not ended or has not been terminated;

S. 3(1) def. of  
"inspector"  
substituted by  
No. 79/1998  
s. 4(1)(c).

**"inspector"** means—

- (a) in Division 5 of Part 6, a person appointed under section 192 or 193;
- (b) in Division 2A of Part 19, a person appointed under section 441A;

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 1—Preliminary

s. 3

**"interstate practising certificate"** means a certificate or other form of authorisation issued by an interstate regulatory authority that confers an authority to engage in legal practice in the State in which it is issued, whether—

S. 3(1) def. of "interstate practising certificate" inserted by No. 102/1997 s. 4(a).

- (a) generally or of a particular type; or
- (b) unconditionally or subject to conditions, restrictions or limitations;

**"interstate practitioner"** means a person—

S. 3(1) def. of "interstate practitioner" substituted by No. 102/1997 s. 4(e).

- (a) who—
  - (i) in the case of a natural person, has been admitted to legal practice in another State; or
  - (ii) in the case of a body corporate, has been incorporated or registered under the law of another State; and
- (b) who holds an interstate practising certificate, or is otherwise entitled to engage in legal practice in that State; and

- (c) who is not a current practitioner—

other than a person who is licensed in another State to perform legal work in relation to conveyancing but is not entitled to engage generally in legal practice in that State;

**"interstate regulatory authority"** means a person or body in another State having the function conferred by law of admitting persons to legal practice, issuing interstate practising certificates to persons, making rules for engaging in legal practice or receiving complaints against, investigating

S. 3(1) def. of "interstate regulatory authority" inserted by No. 102/1997 s. 4(a).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

the conduct of, or disciplining, persons engaged in legal practice in that State;

**"itemised bill"** means a bill of costs that specifies in detail how the legal costs are made up in a way that would allow the bill to be assessed under Division 5 of Part 4;

**"legal costs"** means all amounts that a person has been or may be charged by, or is or may become liable to pay, a legal practitioner or firm for the provision of legal services including disbursements but not including interest;

**"Legal Ombudsman"** means Legal Ombudsman appointed under Part 18;

**"Legal Practice Fund"** means Legal Practice Fund established under Division 3 of Part 16;

**"legal practitioner"** means a person admitted to legal practice in Victoria or an incorporated practitioner and includes—

- (a) an interstate practitioner in Parts 2B, 3, 4, 5, 9, 12 and 19;
- (b) an interstate practitioner who has established a practice in Victoria in Part 6 (except section 178);

**"Liability Committee"** means Legal Practitioners' Liability Committee established by section 234;

**"Liability Fund"** means Legal Practitioners' Liability Fund established by the Liability Committee under section 230;

**"lump sum bill"** means a bill of costs that describes the legal services to which the bill relates and specifies the total amount of the legal costs;

S. 3(1) def. of  
"legal  
practitioner"  
substituted by  
No. 102/1997  
s. 4(f).

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**"member"—**

- (a) of the Board includes the chairperson and deputy chairperson of the Board;
- (b) of the Tribunal includes the chairperson, deputy chairperson, registrar and deputy registrar of the Tribunal;

**"misconduct"** has the meaning given in section 137;

**"money"** includes any instrument for the payment of money that may be paid into a bank and in Part 7 also includes any security for money the title to which is transferable by delivery;

**"mortgage"** includes a charge, security, bill of sale, loan contract, lien and any other document purporting to secure or regulate the repayment of money or money's worth but does not include a terms contract of sale of land;

**"nominee mortgage"** means a mortgage—

- (a) under which the mortgagee is—
  - (i) a legal practitioner or interstate practitioner; or
  - (ii) a corporation, not being an authorised deposit-taking institution or a prescribed person, of or in which a legal practitioner or interstate practitioner or a family member of a legal practitioner or interstate practitioner—

S. 3(1) def. of "nominee mortgage" amended by Nos 102/1997 s. 4(g), 11/2001 s. 3(Sch. item 39.4).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

(A) holds the position of director or is otherwise concerned in the management of the corporation; or

(B) holds, whether legally or beneficially, a financial interest that carries with it power to control the making of any management decision; and

(b) that secures the repayment of a loan of money given to the legal practitioner or interstate practitioner by one or more clients for the purpose of investment;

**"non-litigious legal services"** means legal services that do not involve the commencement or conduct of proceedings in any court or tribunal;

**"official publication"** of an RPA means a newsletter, journal or other publication of the RPA that is circulated to all its regulated practitioners;

**"party"**, in relation to a charge brought in the Tribunal as a result of a complaint, includes the complainant;

**"practice rules"**—

(a) in relation to a legal practitioner or firm, means rules made under Division 2 of Part 3 by the RPA of which the practitioner or firm is a regulated practitioner or by the Board, if the practitioner or firm is a regulated practitioner of the Board;

(b) in relation to an approved clerk, means rules made under Division 2 of Part 3 by the RPA that approved the clerk;

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 1—Preliminary

s. 3

**"practising certificate"** means certificate to engage in legal practice in Victoria issued under Division 4 of Part 2;

**"practising certificate year"** means the year ending on 30 June;

S. 3(1) def. of "practising certificate year" inserted by No. 9/1999 s. 4(c).

**"practitioner remuneration order"** means an order made under section 111;

**"professional indemnity insurance"** means insurance against civil liability arising in connection with legal practice or the administration of trusts;

**"public notary"** means a person appointed as a public notary under the **Public Notaries Act 2001**;

S. 3(1) def. of "public notary" inserted by No. 52/2001 s. 13(1)(a).

**"Public Purpose Fund"** means Public Purpose Fund established under Division 1 of Part 16;

**"Register"** means Register of Legal Practitioners kept by the Board under section 9;

\* \* \* \* \*

S. 3(1) def. of "registered" repealed by No. 102/1997 s. 4(b).

**"registered foreign practitioner"** has the meaning given in section 63G;

S. 3(1) def. of "registered foreign practitioner" inserted by No. 102/1997 s. 4(a).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

S. 3(1) def. of  
"registered  
interstate  
practitioner"  
repealed by  
No. 102/1997  
s. 4(b).

\* \* \* \* \*

**"registrar"** means registrar of the Tribunal;

**"regulated practitioner"**—

S. 3(1) def. of  
"regulated  
practitioner"  
amended by  
No. 102/1997  
s. 4(h).

(a) of an RPA, means a legal practitioner,  
interstate practitioner, firm or registered  
foreign practitioner that has been  
allocated to the RPA by the Board;

(b) of the Board, means a legal practitioner,  
interstate practitioner, firm or registered  
foreign practitioner that has been  
allocated to the Board or that is a  
regulated practitioner of the Board by  
virtue of section 306(1);

**"RPA"** means recognised professional  
association accredited under section 299;

S. 3(1) def. of  
"society"  
repealed by  
No. 11/2001  
s. 3(Sch.  
item 39.2).

\* \* \* \* \*

**"sole practitioner"** means a legal practitioner  
(being a natural person) who engages in legal  
practice solely on his or her own account;

S. 3(1) def. of  
"spouse"  
inserted by  
No. 72/2001  
s. 3(Sch.  
item 9.1(a)).

**"spouse"** of a person means a person to whom the  
person is married;

*Legal Practice Act 1996*  
*Act No. 35/1996*  
Part 1—Preliminary

s. 3

**"State"** means a State or Territory of the Commonwealth;

S. 3(1) def. of  
"State"  
inserted by  
No. 102/1997  
s. 4(a).

**"Taxing Master"** means Taxing Master of the Supreme Court;

**"Tribunal"** means Legal Profession Tribunal established by Part 17;

**"trust"** includes a trust under which the trustee has a beneficial interest in the trust property;

**"trustee"** includes personal representative;

**"trust account"** means the trust account required to be established by a legal practitioner, a firm or an approved clerk under Part 6;

**"trust money"** means—

S. 3(1) def. of  
"trust money"  
amended by  
Nos 102/1997  
s. 4(i)(j),  
52/1999  
s. 9(a).

- (a) money given or paid to a firm, a legal practitioner or an interstate practitioner in the course of legal practice in Victoria for, or on behalf of, a person or body other than the firm or practitioner; or
- (b) money given or paid to a firm, a legal practitioner, an interstate practitioner or an approved clerk on account of legal costs in advance of legal services to be provided in the course of legal practice in Victoria; or
- (c) money given or paid to a registered foreign practitioner—
  - (i) in the course of engaging in the practice of foreign law for, or on behalf of, a person or body other than the practitioner; or



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 3

- (ii) on account of legal costs in advance of legal services to be provided in the course of engaging in the practice of foreign law;

**"unsatisfactory conduct"** has the meaning given in section 137;

S. 3(1) def. of "Victorian regulatory authority" inserted by No. 102/1997 s. 4(a).

**"Victorian regulatory authority"** means the Board, an RPA, the Legal Ombudsman, the Tribunal or the Supreme Court.

S. 3(1A) inserted by No. 72/2001 s. 3(Sch. item 9.2).

(1A) For the purposes of the definition of "domestic partner" in sub-section (1)—

- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;

- (b) a person is not a domestic partner of another person only because they are co-tenants.

(2) If this Act requires a notice or other document to be in a particular form, it is sufficient in law if the document is in a form to the like effect of that form.

S. 3(3) inserted by No. 79/1998 s. 4(2).

(3) The Board may exempt a person from the requirement of paragraph (e) of the definition of "approved auditor" in sub-section (1).

**3A. When does a practitioner establish a practice?**

S. 3A  
inserted by  
No. 102/1997  
s. 5.

- (1) For the purposes of this Act and subject to subsection (3), a current practitioner or an interstate practitioner establishes a practice in a State other than their home State when the practitioner first offers and provides legal services to the public in that State.
- (2) For the purposes of this Act and subject to subsection (3), a foreign practitioner establishes a practice in Victoria when the practitioner first offers and provides legal services to the public in Victoria.
- (3) A practitioner is not to be taken to establish a practice in a State—
  - (a) if the practitioner provides legal services in that State to one client only; or
  - (b) if the practitioner provides legal services in that State only in connection with one transaction or a series of associated transactions.

**4. When is money received?**

- (1) A reference in this Act to money given or paid to, or received by, a legal practitioner, interstate practitioner or firm for or on behalf of a person includes a reference to money given or paid to, or received by, the practitioner or firm as a stakeholder under the **Retirement Villages Act 1986** or the **Sale of Land Act 1962**.
- (2) A reference in this Act to money given or paid to, or received by, a legal practitioner, interstate practitioner or registered foreign practitioner includes a reference to money received in the course of or in connection with legal practice in Victoria (or, in the case of a registered foreign practitioner, in the course of or in connection with

S. 4(1)  
amended by  
No. 102/1997  
s. 6(a).

S. 4(2)  
amended by  
No. 102/1997  
s. 6(b)(i)(ii).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 1—Preliminary

s. 5

engaging in the practice of foreign law in Victoria)—

- (a) by any employee of the practitioner and, in the case of an incorporated practitioner, any director of the practitioner; or
- (b) by any legal practitioner, interstate practitioner or foreign practitioner with whom the practitioner shares income from any business.

S. 4(2)(b)  
amended by  
No. 102/1997  
s. 6(b)(iii).

- (3) A reference in this Act to money given or paid to, or received by, a firm includes a reference to money received in the course of or in connection with legal practice in Victoria—

- (a) by any partner or employee of the firm; or
- (b) by any legal practitioner, interstate practitioner or foreign practitioner with whom the firm shares income from any business.

S. 4(3)(b)  
amended by  
No. 102/1997  
s. 6(c).

S. 5  
amended by  
No. 102/1997  
s. 6(d).

**5. Legal practitioner acting as agent for another**

For the purposes of this Act a legal practitioner, interstate practitioner, registered foreign practitioner or firm that receives any income in respect of business transacted by the practitioner or firm as agent for another practitioner or firm must not be taken to be a practitioner or firm that shares income with that other practitioner.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 6

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**PART 2—FORMAL REQUIREMENTS FOR LEGAL PRACTICE**

**Division 1—Admission to legal practice**

**6. Admission to legal practice**

- (1) The Supreme Court may admit a person to legal practice in Victoria if he or she—
  - (a) meets the requirements of the admission rules; and
  - (b) pays the admission fee; and
  - (c) takes an oath of office, or makes an affirmation of office, in the form required by the Court.
- (2) A person admitted by the Supreme Court must sign the roll of practitioners kept by the Court.
- (3) The admission of a person to legal practice is effective from the time the person signs the roll of practitioners.
- (4) The Prothonotary must forward to the Board the name, date of birth and date of admission of each person admitted to legal practice as soon as practicable after the person has signed the roll of practitioners.

S. 6(1)(c)  
substituted by  
No. 51/2000  
s. 3.

**7. Admission fee**

- (1) The admission fee consists of a prescribed general fee and a prescribed library fee<sup>1</sup>.
- (2) The general fee is payable to the Supreme Court to be applied to meet the expenses of the Council of Legal Education and the Board of Examiners (other than expenses that are met from the Public Purpose Fund).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 8**

- (3) The library fee is payable to the Supreme Court Library Fund.

**8. Effect of admission**

- (1) A person admitted to legal practice—
- (a) is a barrister and solicitor of the Supreme Court; and
  - (b) is an officer of the Supreme Court.
- (2) Sub-section (1)(b) does not confer on a person any right to bring proceedings in the Supreme Court, or any immunity from proceedings in any court, that the person would not have if he or she were not an officer of the Supreme Court.

**Division 2—The Register**

**9. Register of legal practitioners and firms**

- (1) The Board must keep a register of all legal practitioners, firms, interstate practitioners, registered foreign practitioners and public notaries.
- (2) The Register is to be called the Register of Legal Practitioners.
- (3) The following information must be included on the Register in respect of each legal practitioner (not being an incorporated practitioner)—
- (a) the name, date of birth and date of admission of the practitioner; and
  - (ab) if the practitioner is a public notary, the date of appointment as a public notary; and
- (b) whether or not the practitioner is a current practitioner; and

S. 9(1)  
amended by  
Nos 102/1997  
s. 7(1),  
52/2001  
s. 13(1)(b).

S. 9(3)(ab)  
inserted by  
No. 52/2001  
s. 13(1)(c).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 9
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- 
- (c) if the practitioner is a current practitioner—
- (i) the name of any firm of which they are a partner or an employee, any incorporated practitioner of which they are a director or an employee or any other person or body of which they are an employee; and
  - (ii) if the practitioner is a sole practitioner, any business names under which they engage in legal practice;
  - (iii) the RPA to which they have been allocated or, if they have been allocated to the Board, that fact; and
  - (iv) the conditions of the practising certificate held by the practitioner; and
  - (v) any other condition, limitation or restriction to which the practitioner is subject in respect of their legal practice; and
  - (vi) the practitioner's address for service of notices and other documents; and
- (ca) the information specified in section 173A (trust account details); and
- (d) any suspension or cancellation of a practising certificate held by the practitioner (whether or not the suspension or cancellation is current); and
- (e) the prescribed information (if any).
- (4) The following information must be included on the Register in respect of each incorporated practitioner—
- (a) the information specified in section 291(2); and
- 

S. 9(3)(ca)  
inserted by  
No. 79/1998  
s. 5(a).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 9**

**S. 9(4)(ba)**  
inserted by  
No. 79/1998  
s. 5(b).

(b) any other condition, limitation or restriction to which the incorporated practitioner is subject in respect of its legal practice; and

(ba) the information specified in section 173A (trust account details); and

(c) the prescribed information (if any).

(5) The following information must be included on the Register in respect of each firm—

(a) the name of each partner of the firm; and

(b) the RPA to which the firm has been allocated or, if the firm has been allocated to the Board, that fact; and

(c) any condition, limitation or restriction to which the firm is subject in respect of its legal practice; and

(d) the firm's address for service of notices and other documents; and

**S. 9(5)(da)**  
inserted by  
No. 79/1998  
s. 5(c).

(da) the information specified in section 173A (trust account details); and

(e) the prescribed information (if any).

**S. 9(6)**  
substituted by  
No. 102/1997  
s. 7(2).

(6) The following information must be included on the Register in respect of each interstate practitioner who gives notice to the Board under section 56—

(a) the information specified in section 56(2); and

(b) the RPA to which the practitioner has been allocated or, if they have been allocated to the Board, that fact; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 10**

- (c) any other condition, restriction or limitation to which the practitioner is subject in respect of their legal practice; and
- (ca) the information specified in section 173A (trust account details); and S. 9(6)(ca) inserted by No. 79/1998 s. 5(d).
- (d) the prescribed information (if any).
- (7) The following information must be included on the Register in respect of each registered foreign practitioner— S. 9(7) inserted by No. 102/1997 s. 7(2).
  - (a) the information specified in section 63L(6); and
  - (b) any other condition, restriction or limitation to which the practitioner is subject in respect of their practice of foreign law; and
  - (ba) the information specified in section 173A (trust account details); and S. 9(7)(ba) inserted by No. 79/1998 s. 5(e).
  - (c) the prescribed information (if any).

**10. Inspection of the Register**

- (1) A person may—
  - (a) inspect the Register at the office of the Board during ordinary office hours without charge;
  - (b) obtain an extract from the Register on payment of the fee determined by the Board.
- (2) If the Register includes a person's residential address, that address is not available to the public, unless—
  - (a) the person authorises it to be available; or
  - (b) the residential address is the person's address for service of documents.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 11**

**S. 10(3)**  
**inserted by**  
**No. 79/1998**  
**s. 6.**

- (3) Despite sub-section (1), information specified in section 173A (trust account details) that is on the Register is not available to the public.

**11. Notification of changes by firms**

- (1) A firm must notify the Board of any change to any of the particulars on the Register in respect of the firm (other than a re-allocation of the firm) within 14 days after becoming aware of the change.
- (2) A firm must give written notice to the Board of each legal practitioner—
- (a) who becomes a partner or an employee of the firm; or
  - (b) who ceases to be a partner or an employee of the firm—

within 14 days after the practitioner becomes or ceases to be a partner or an employee.

- (3) If the Board approves a form of notice for the purposes of this section, a notice under sub-section (1) or (2) must be in that form.

**12. Notification of changes by incorporated practitioners**

- (1) An incorporated practitioner must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 14 days after becoming aware of the change.
- (2) An incorporated practitioner—
- (a) must give written notice to the Board of each legal practitioner—
    - (i) who becomes a director or an employee of the incorporated practitioner; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 13

- (ii) who ceases to be a director or an employee of the incorporated practitioner—

within 14 days after the practitioner becomes or ceases to be a director or an employee;  
and

- (b) must, within 14 days after lodgement, give the Board a copy of each document relating to the practitioner lodged by or on behalf of the practitioner with the Australian Securities and Investments Commission under the Corporations Act.

S. 12(2)(b)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 72.1).

- (3) If the Board approves a form of notice for the purposes of this section, a notice under sub-section (1) or (2)(a) must be in that form.

**13. Notification of changes by individual practitioners**

- (1) A current practitioner who is a natural person must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 14 days after becoming aware of the change.

S. 13(1)  
amended by  
No. 102/1997  
s. 7(3).

- (2) Sub-section (1) does not apply to a practitioner who is—

- (a) a partner or an employee of a firm; or  
(b) a director or an employee of an incorporated practitioner; or  
(c) an employee of a sole practitioner—

if the firm, incorporated practitioner or sole practitioner has notified the Board of the change.

- (3) A sole practitioner must give written notice to the Board of any legal practitioner—  
(a) who becomes an employee of the practitioner; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 13A**

(b) who ceases to be an employee of the practitioner—

within 14 days after the person becomes or ceases to be an employee.

(4) If the Board approves a form of notice for the purposes of this section, a notice under sub-section (1) or (3) must be in that form.

**S. 13A**  
inserted by  
No. 102/1997  
s. 8.

**13A. Notification of changes by interstate practitioners and registered foreign practitioners**

(1) An interstate practitioner who engages in legal practice in Victoria must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 14 days after becoming aware of the change.

(2) If an interstate practitioner who has ceased to engage in legal practice in Victoria re-commences to engage in legal practice in Victoria, the practitioner must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 14 days after that re-commencement.

(3) A registered foreign practitioner must notify the Board of any change to any of the particulars on the Register in respect of the practitioner (other than a re-allocation of the practitioner) within 28 days after becoming aware of the change.

(4) If the Board approves a form of notice for the purposes of this section, a notice under sub-section (1), (2) or (3) must be in that form.

(5) Sub-section (1) or (2) does not apply to an interstate practitioner if an interstate regulatory authority has notified the Board of the change.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 14**

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**14. Notification of deaths and liquidations**

- (1) The personal representative of a deceased legal practitioner who was not, at the time of death, a partner or an employee of a firm, a director or an employee of an incorporated practitioner, or an employee of a sole practitioner must notify the Board of the death within 14 days after becoming the personal representative.

Penalty: 2 penalty units.

- (2) The receiver, receiver and manager, administrator or liquidator of an incorporated practitioner must notify the Board of his or her appointment within 14 days after the appointment (except in the case of an appointment made by or on behalf of the Board).

Penalty: 10 penalty units.

- (3) A legal practitioner who becomes an insolvent under administration must notify the Board of that fact within 14 days.

- (4) A guardian or administrator appointed in respect of a legal practitioner or a legal practitioner's estate under the **Guardianship and Administration Act 1986** must notify the Board of the appointment within 14 days after the appointment.

S. 14(4)  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 49).

- (5) On receiving a notice under this section, the Board must make the appropriate entry on the Register.

**Division 3—Registration and RPA allocation**

**15. Application for registration by firms**

- (1) A firm that intends to engage in legal practice in Victoria must make a written application to the Board for registration.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 16**

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- (2) An application must contain—
- (a) the name of and address for service of documents on the firm; and
  - (b) the name, date of birth and date of admission of each legal practitioner who is a partner or an employee of the firm; and
  - (c) a nomination—
    - (i) of an RPA of which the firm is eligible to be a regulated practitioner; or
    - (ii) if there is no such RPA, of the Board—to regulate the firm and the legal practitioners who are partners or employees of the firm.
- (3) A firm is eligible to be a regulated practitioner of any RPA of which each legal practitioner who is a partner or an employee of the firm is a member or is eligible to be a member.
- (4) If the Board approves a form of application for the purposes of this section, an application under subsection (1) must be in that form.

**16. Registration and RPA allocation**

- (1) As soon as practicable after receiving an application under section 15, the Board must register the firm by making the appropriate entries in the Register and—
- (a) must allocate the firm to the RPA nominated by the firm if satisfied that it is eligible to be a regulated practitioner of that RPA; or
  - (b) if not satisfied that the firm is eligible to be a regulated practitioner of the nominated RPA, after consultation with the firm, must allocate it to an RPA of which it is eligible to be a regulated practitioner; or
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 17**

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- (c) is satisfied that the firm is not eligible to be a regulated practitioner of any RPA, must allocate it to the Board.
- (2) On the Board registering the firm, the firm and each legal practitioner who is a partner or an employee of the firm become regulated practitioners of the RPA to which the firm is allocated or, if sub-section (1)(c) applies, of the Board.
- (3) The Board must give written notice to the firm and the RPA (if any) as soon as practicable after registering the firm under this section.
- (4) A firm must not commence to engage in legal practice before it has been registered and allocated to an RPA or the Board under this section.

Penalty: 20 penalty units.

**17. Allocation of practitioners who join firms or incorporated practitioners**

- (1) The Board must allocate a legal practitioner who becomes a partner or an employee of a firm to the RPA of which the firm is a regulated practitioner (or to the Board, if it is a regulated practitioner of the Board) as soon as practicable after receiving a notice under section 11(2), unless the practitioner is already a regulated practitioner of that body.
- (2) The Board must allocate a legal practitioner who becomes a director or an employee of an incorporated practitioner to the RPA of which the incorporated practitioner is a regulated practitioner (or to the Board, if it is a regulated practitioner of the Board) as soon as practicable after receiving a notice under section 12(2), unless the practitioner is already a regulated practitioner of that body.
- (3) An allocation takes effect when the relevant entry is made to the Register.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 18**

- (4) The Board must give written notice to the legal practitioner and the RPA (if any) as soon as practicable after making an allocation under this section.
- (5) A legal practitioner who ceases to be a partner or an employee of a firm or a director or an employee of an incorporated practitioner continues to be a regulated practitioner of the body of which he or she was a regulated practitioner immediately before so ceasing until the practitioner is re-allocated by the Board.
- (6) Despite anything to the contrary in this section, if a legal practitioner who is a partner or an employee of a firm, a director or an employee of an incorporated practitioner or an employee of a sole practitioner concurrently becomes a partner or an employee of another firm, a director or an employee of another incorporated practitioner or an employee of another sole practitioner that is a regulated practitioner of a different RPA, the legal practitioner must elect in writing to the Board to be re-allocated to that RPA or to remain a regulated practitioner of the RPA that regulates the first firm, incorporated practitioner or sole practitioner.
- (7) If a legal practitioner elects under sub-section (6) to be re-allocated, the Board must re-allocate the practitioner as soon as practicable.

**18. Intending practitioners must notify Board**

- (1) A legal practitioner (being a natural person) who intends to engage in legal practice in Victoria must give the Board a written notice—
  - (a) stating their name, date of birth and date of admission; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

<b>s. 18</b>
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- (b) if they intend to engage in legal practice—
    - (i) as a partner or an employee of a firm, stating the name and address of that firm; or
    - (ii) as a director or an employee of an incorporated practitioner, stating the name and address of the incorporated practitioner; or
    - (iii) as an employee of a sole practitioner, stating that practitioner's name and address; or
    - (iv) as a corporate practitioner, stating the name and address of the intended employer; or
    - (v) stating that they intend to practice as a sole practitioner; and
  - (c) stating their address for service of notices and other documents.
- (2) A practitioner intending to engage in legal practice as a corporate practitioner or sole practitioner may include in the notice under subsection (1) a nomination of an RPA of which they are eligible to be a regulated practitioner.
  - (3) A corporate practitioner or a sole practitioner is eligible to be a regulated practitioner of any RPA of which they are a member or are eligible to be a member.
  - (4) If the Board approves a form of notice for the purposes of this section, a notice under subsection (1) must be in that form.
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**19. RPA allocation of intending practitioners**

- (1) As soon as practicable after receiving a notice under section 18(1), the Board—
    - (a) in the case of a legal practitioner referred to in section 18(1)(b)(i), (ii) or (iii), must allocate them to the RPA of which the firm, incorporated practitioner or sole practitioner is a regulated practitioner (or to the Board if the firm, incorporated practitioner or sole practitioner is a regulated practitioner of the Board);
    - (b) in the case of a legal practitioner referred to in section 18(1)(b)(iv) or (v)—
      - (i) must allocate the practitioner to the RPA (if any) nominated by the practitioner if satisfied that they are eligible to be a regulated practitioner of that RPA; or
      - (ii) if no RPA is nominated, or if the Board is not satisfied that the practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the practitioner, must allocate them to an RPA of which they are eligible to be a regulated practitioner; or
      - (iii) if satisfied that the practitioner is not eligible to be a regulated practitioner of any RPA, must allocate them to the Board.
  - (2) An allocation under this section takes effect when the relevant entry is made in the Register.
  - (3) The Board must give written notice to the legal practitioner and the RPA (if any) as soon as practicable after making an allocation under this section.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

<b>s. 20</b>
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- (4) A legal practitioner must not commence to engage in legal practice before they have been allocated to an RPA or the Board under this section.

Penalty: 10 penalty units.

**Division 4—Practising certificates**

**20. Practising certificates—form and conditions**

- (1) A practising certificate is to be in a form approved by the Board.
- (2) A practising certificate is subject to the following conditions, as determined by the RPA or the Board that issues or varies it—
- (a) a condition that the holder is authorised or not authorised to receive trust money; and
  - (b) a condition that the holder is authorised to engage in legal practice—
    - (i) as a principal (that is, a sole practitioner, a partner in a firm or a director or an incorporated practitioner); or
    - (ii) as an incorporated practitioner; or
    - (iii) as an employee of another legal practitioner or firm or as a corporate practitioner.
- (3) A practising certificate is also subject to any condition imposed by the Tribunal under this Act or by the Supreme Court.
- (4) The conditions referred to in sub-section (2) to which a practising certificate is subject must appear on the face of the certificate.

**S. 20(2)**  
**amended by**  
**No. 102/1997**  
**s. 9(1).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 21

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**21. Duration of practising certificates**

S. 21(1)(b)  
substituted by  
No. 9/1999  
s. 5(1).

- (1) A practising certificate issued to an applicant under section 22 (new or former practitioner)—
- (a) takes effect at the time of issue; and
  - (b) subject to sub-section (3), is valid until the following 30 June unless cancelled or suspended sooner.

S. 21(2)  
substituted by  
No. 9/1999  
s. 5(2).

- (2) A practising certificate issued to an applicant under section 23 (renewing practitioner)—
- (a) subject to section 23(3C), takes effect on 1 July in the year in which it is issued or at the time of issue, whichever is the later; and
  - (b) subject to sub-section (3), is valid until the following 30 June unless suspended or cancelled sooner.

S. 21(3)  
substituted by  
No. 102/1997  
s. 9(2),  
amended by  
No. 9/1999  
s. 5(3).

- (3) If an application by a current practitioner for a practising certificate has not been finally determined before 1 July in the year in which it was made, the practising certificate already held by the practitioner remains in force, unless suspended or cancelled sooner, until the application has been finally determined.

S. 21(4)  
inserted by  
No. 102/1997  
s. 9(2).

- (4) For the purposes of sub-section (3), an application is finally determined—
- (a) by the issue of a new practising certificate to the applicant; or
  - (b) by the exhaustion of all rights of appeal in relation to a refusal to issue a new practising certificate to the applicant.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 22

**22. Application for practising certificate (new or former practitioners)**

- (1) A legal practitioner who is not a current practitioner may apply to the RPA of which the practitioner is, or is to be, a regulated practitioner (or to the Board, if the practitioner is, or is to be a regulated practitioner of the Board) for a practising certificate.
- (2) An application under this section—
  - (a) must be in a form approved by the Board; and
  - (b) must be accompanied by—
    - (i) the prescribed fee<sup>2</sup> for the certificate; and
    - (ii) the required contribution to the Fidelity Fund under section 202(1) (if any); and
    - (iii) a statutory declaration in the form approved by the Board; and
    - (iv) satisfactory evidence, in a form approved by the Board, that the applicant has, or will have at the time of commencing to engage in legal practice, professional indemnity insurance as required by this Act; and
    - (v) except in the case of an incorporated practitioner, a nomination of the roll on which the applicant wishes to be enrolled for the purpose of elections of practitioner members to the Board<sup>3</sup>; and
  - (c) if the application is for a certificate that authorises the receipt of trust money, must also be accompanied by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.

S. 22(2)(b)(v)  
inserted by  
No. 9/1999  
s. 6(1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 22
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S. 22(3)  
inserted by  
No. 9/1999  
s. 6(2).

- (3) An RPA must notify the Board of nominations made under sub-section (2)(b)(v).

S. 22(4)  
inserted by  
No. 9/1999  
s. 6(2).

- (4) A person—
- (a) who applies under this section for a practising certificate during the first 3 months of a practising certificate year; and
  - (b) who was a current practitioner immediately before the end of the previous practising certificate year—

must pay a surcharge of 200% of the prescribed fee for the certificate.

S. 22(5)  
inserted by  
No. 9/1999  
s. 6(2).

- (5) Sub-section (4) does not apply if the application is accompanied by a statutory declaration from the applicant stating—
- (a) that the applicant has not engaged in legal practice since the end of the previous practising certificate year; and
  - (b) that, as at the end of the previous practising certificate year, the applicant did not intend to engage in legal practice for at least the first 3 months of the current practising certificate year; and
  - (c) the reasons why the intention referred to in paragraph (b) has changed.

S. 22(6)  
inserted by  
No. 9/1999  
s. 6(2).

- (6) An RPA must forward each statutory declaration received under sub-section (5) to the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 23

**23. Application for practising certificate (renewing practitioners)**

- (1) A current practitioner may apply to the RPA of which the practitioner is a regulated practitioner (or to the Board, if the practitioner is a regulated practitioner of the Board) for a new practising certificate.
- (2) An application under this section—
- (a) must be made on or before 30 April (except as provided by section 23A) or, in the case of a person who is not a current practitioner on 30 April, on or before 30 June; and
  - (b) must be in a form approved by the Board; and
  - (c) must be accompanied by—
    - (i) the prescribed fee<sup>4</sup> for the new certificate; and
    - (ii) the required contribution to the Fidelity Fund under section 202(1) (if any); and
    - (iii) except in the case of an incorporated practitioner, a nomination of the roll on which the applicant wishes to be enrolled for the purpose of elections of practitioner members to the Board<sup>5</sup>; and
  - (d) if the application is for a certificate that authorises the receipt of trust money and the applicant has not already held such a certificate, must also be accompanied by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.

S. 23(2)(a)  
substituted by  
No. 9/1999  
s. 6(3)(a).

S. 23(2)(c)(iii)  
substituted by  
No. 9/1999  
s. 6(3)(b).

S. 23(2)(d)  
substituted by  
No. 79/1998  
s. 7.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 23
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S. 23(3)  
substituted by  
No. 9/1999  
s. 6(4).

- (3) An RPA must notify the Board of nominations made under sub-section (2)(c)(iii).

S. 23(3A)  
inserted by  
No. 9/1999  
s. 6(4).

- (3A) An applicant under this section must, on or before 31 May, give the RPA or the Board (as the case requires) satisfactory evidence, in a form approved by the Board, that the applicant has professional indemnity insurance as required by this Act in respect of the year for which the practising certificate is sought.

S. 23(3B)  
inserted by  
No. 9/1999  
s. 6(4).

- (3B) If, as at 31 May, an applicant under this section—
- (a) has not complied with sub-section (3A); or
  - (b) has not complied with section 184 in relation to the preceding audit year; or
  - (c) has not restored a deficiency in the applicant's trust account as revealed by the audit report in relation to that account—
- the RPA or the Board (as the case requires) must give notice to the applicant on or before 15 June of the failure to comply or to restore the deficiency.

S. 23(3C)  
inserted by  
No. 9/1999  
s. 6(4).

- (3C) A practising certificate issued on application under this section does not take effect—
- (a) in the circumstances referred to in sub-section (3B)(a) or (b)—until the applicant has remedied the failure to comply to the satisfaction of the RPA or the Board (as the case requires); or
  - (b) in the circumstances referred to in sub-section (3B)(c)—until the deficiency has been restored to the satisfaction of the RPA or the Board (as the case requires).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 23A

- (3D) A legal practitioner whose practising certificate does not take effect because of sub-section (3C) must surrender it to the RPA that issued it or the Board within 14 days after being requested to do so by the RPA or the Board, unless the certificate has taken effect in the meantime.

**S. 23(3D)**  
inserted by  
No. 9/1999  
s. 6(4).

Penalty: 20 penalty units.

- (4) If the practitioner is to be re-allocated under Division 5, an application under this section must be made to the RPA to which the practitioner is to be re-allocated or to the Board, if the practitioner is to be re-allocated to the Board.

**23A. Late application for practising certificate**

**S. 23A**  
inserted by  
No. 9/1999  
s. 7.

- (1) A current practitioner may apply under section 23 for a new practising certificate after 30 April in any year on payment of a surcharge of—
- (a) if the application is made on or before 31 May—25% of the prescribed fee for the new certificate;
  - (b) if the application is made after 31 May—50% of the prescribed fee for the new certificate.
- (2) The RPA or the Board (as the case requires) may refund all or part of a surcharge paid under sub-section (1) if it considers that there are special circumstances.
- (3) This section does not apply to a person who was not a current practitioner on 30 April in the relevant year.

**24. Application for variation of conditions**

- (1) At any time a current practitioner may apply to the RPA of which the practitioner is a regulated practitioner (or to the Board, if the practitioner is a regulated practitioner of the Board) for a variation of the conditions of their practising certificate.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 25**

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- (2) An application under this section—
- (a) must be in a form approved by the Board;  
and
  - (b) if the prescribed fee<sup>6</sup> for the certificate as varied is greater than the fee paid by the practitioner for the certificate, must be accompanied by the difference between those fees; and
  - (c) must be accompanied by the required contribution to the Fidelity Fund under section 202(1) (if any); and
  - (d) if the application is for a variation so that the certificate authorises the receipt of trust money, must also be accompanied, if applicable, by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.
- (3) If the practitioner is to be re-allocated under Division 5, an application under this section must be made to the RPA to which the practitioner is to be re-allocated or to the Board, if the practitioner is to be re-allocated to the Board.

**25. Further information**

For the purpose of considering an application for a practising certificate or for variation of a condition of a practising certificate, an RPA or the Board may require the applicant to provide any further information or documents, and to verify the information or documents by statutory declaration or another manner, specified by the RPA or the Board.

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**26. Mandatory refusal of practising certificates**

- (1) An RPA or the Board must refuse to issue a practising certificate to an applicant—
  - (a) who has had a previous application refused, if the application is made during the period specified by the Tribunal under section 30 or 160 or by the Supreme Court; or
  - (b) whose practising certificate has been suspended or cancelled if the application is made during a period specified by the Tribunal under section 160 or by the Supreme Court; or
  - (c) who has not paid an amount (whether by way of premium, excess or otherwise) payable by the applicant for, under or in relation to a contract of professional indemnity insurance; or
  - (d) who, in its opinion, is unfit to engage in legal practice.
- (2) An RPA or the Board must refuse an application to vary a condition of a practising certificate if the applicant—
  - (a) has had a previous application refused, if the application is made during a period specified by the Tribunal under section 30 or by the Supreme Court; or
  - (b) has not paid an amount (whether by way of premium, excess or otherwise) payable by the applicant for, under or in relation to a contract of professional indemnity insurance.
- (3) In addition to any of the grounds in sub-section (1) or (2), an RPA or the Board must refuse to issue a practising certificate authorising the receipt of trust money or to vary a condition so

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 27**

that a practising certificate authorises the receipt of trust money—

- (a) if the applicant is a natural person who is an insolvent under administration;
- (b) if the applicant is an incorporated practitioner—
  - (i) that is an externally-administered body corporate within the meaning of the Corporations Act; or

S. 26(3)(b)(i) amended by No. 44/2001 s. 3(Sch. item 72.2(a)).

- (ii) if the RPA or the Board is satisfied that, on an application under section 459P of the Corporations Act, the Court would be required under section 459C(2) of that Act to presume that the applicant is insolvent.

S. 26(3)(b)(ii) amended by No. 44/2001 s. 3(Sch. item 72.2 (a)(b)).

**27. Refusal of practising certificates for trust account irregularities**

- (1) An RPA or the Board may refuse to issue a practising certificate—
  - (a) to a sole practitioner, a corporate practitioner or an incorporated practitioner—
    - (i) if the practitioner has failed to lodge an audit of their trust account or a statutory declaration as required by Division 3 of Part 6 and has not remedied the failure; or
    - (ii) if the audit reveals a deficiency in the trust account that has not been restored;
  - (b) to a partner of a firm or a director of an incorporated practitioner—
    - (i) if the firm or incorporated practitioner has failed to lodge an audit of their trust account or a statutory declaration as

S. 27(1) amended by No. 9/1999 s. 8(a).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 28

required by Division 3 of Part 6 and has not remedied the failure; or

- (ii) if the audit reveals a deficiency in the trust account that has not been restored.

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S. 27(2)(3)  
repealed by  
No. 9/1999  
s. 8(b).

**28. Refusal of practising certificates for misconduct or corporate irregularities**

An RPA or the Board may refuse to issue a practising certificate to a legal practitioner if the practitioner, in its opinion—

- (a) is guilty of misconduct; or
- (b) is an incorporated practitioner that is being conducted in contravention of its constitution.

**29. Issue or refusal of practising certificates or variation of conditions**

- (1) Within 30 days after receiving an application under section 22 (new or former practitioner), an RPA or the Board must issue a practising certificate, or give a written notice refusing to issue a practising certificate, to the applicant.
- (2) Within 60 days after receiving an application for a practising certificate under section 23 (renewing practitioner), an RPA or the Board may give the applicant a written notice refusing to issue the practising certificate.
- (3) If an RPA or the Board does not give a notice under sub-section (2) within the period specified in that sub-section, it must issue a practising certificate to the applicant.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 29**

- (4) Within 30 days after receiving an application under section 24 (variation of conditions), an RPA or the Board must give the applicant written notice varying the conditions as requested in the application or refusing to vary the conditions.
- (5) A notice of refusal under this section must include the reasons for the refusal.

**S. 29(6)**  
**amended by**  
**No. 9/1999**  
**s. 9(a)(b).**

- (6) If—
- (a) an RPA or the Board varies the conditions of a practising certificate in response to an application under section 24; and
- (b) the prescribed fee for the certificate as varied (for a whole practising certificate year) is less than the fee paid by the practitioner for the certificate—

**S. 29(6)(b)**  
**amended by**  
**No. 9/1999**  
**s. 9(a).**

the RPA or the Board must pay to the practitioner an amount determined in accordance with the following formula, rounded to the nearest dollar—

$$A = (B - C) \times \frac{D}{365 \cdot 25}$$

where—

- A is the amount to be paid to the practitioner;
- B is the fee paid by the practitioner for the certificate;
- C is the prescribed fee for the certificate as varied (for a whole practising certificate year);
- D is the number of days remaining in the practising certificate year from, and including, the day on which the variation takes effect.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 30**

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- (7) Within 14 days after an RPA issues a practising certificate or varies the conditions of a practising certificate under this section, the RPA must give a notice to the Board setting out—
- (a) the name and address of the current practitioner; and
  - (b) the conditions attaching to the practising certificate; and
  - (c) the amount of Fidelity Fund contribution (if any) that accompanied the application for the certificate or variation of conditions.

**30. Applicant may apply to Full Tribunal**

- (1) Within 14 days after receiving a notice of refusal under section 29, a person may apply to the Full Tribunal for the issue of a practising certificate or a variation of a condition of a practising certificate.
- (2) Sub-section (1) does not apply if the application was refused under section 26 (except under sub-section (1)(d) (unfitness to engage in legal practice)).
- (3) After hearing the matter, the Full Tribunal—
  - (a) if satisfied that the applicant is unfit to engage in legal practice, must make an order—
    - (i) in the case of an application for a practising certificate, confirming the refusal to issue a practising certificate;
    - (ii) in the case of an application to vary a condition of a practising certificate, cancelling the practising certificate;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 30**

- (b) if satisfied that the applicant is guilty of misconduct, may make—
  - (i) an order confirming the refusal to issue a practising certificate or vary the condition; or
  - (ii) any order it could make against the applicant under section 160(1), in which case sections 160(2), (3) and (4), 163, 164 and 166 apply accordingly;
- (c) if satisfied that the applicant, being an incorporated practitioner, is being conducted in contravention of its constitution, may make an order confirming the refusal to issue a practising certificate or vary the condition;
- (d) if not satisfied as required by paragraph (a), (b) or (c)—
  - (i) must make an order setting aside the notice and directing the RPA or the Board to issue a practising certificate or to vary the condition; and
  - (ii) if satisfied that the applicant is guilty of unsatisfactory conduct, may make any order the Tribunal could make against the applicant under section 159, in which case sections 163, 164 and 166 apply accordingly;
- (e) may order the payment of the costs of and incidental to the hearing and, for that purpose, sections 162 and 164 apply accordingly;
- (f) may make any other order the Tribunal thinks fit.

**S. 30(3)(f)**  
inserted by  
No. 102/1997  
s. 9(3).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 31**

- (4) An order under sub-section (3)(a), (3)(b)(i) or (3)(c) may specify a period during which the legal practitioner may not apply for a practising certificate or for a variation of a condition of a practising certificate.

**31. Appeal to Court of Appeal**

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 30.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal<sup>7</sup> runs from the time when the party receives the written reasons.

**32. Payment and refund of fees and contributions**

- (1) Subject to this section, an RPA must pay all practising certificate fees and Fidelity Fund contributions received by it to the Board as soon as practicable after receipt.
- (2) If an application for a practising certificate or for variation of a condition of a practising certificate is refused, the RPA or the Board must refund to the applicant—
  - (a) any fee paid for the certificate or variation; and
  - (b) subject to sub-section (3), any Fidelity Fund contribution that accompanied the application.
- (3) If an application is refused because of a failure to lodge a trust account audit or statutory declaration or because of a deficiency in a trust account, any Fidelity Fund contribution that accompanied the application is not to be refunded.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 33**

- (4) The Board may authorise an RPA to retain a specified amount or proportion of the practising certificate fees to meet the reasonable expenses of the RPA in performing its functions under this Act, other than the regulation of trust accounts, investigations under Division 5 of Part 6, the investigation and defence of claims against the Fidelity Fund and the making of applications to the Supreme Court under Part 9.

**33. Surrender of practising certificate**

- (1) A legal practitioner whose practising certificate is suspended or cancelled must surrender it to the RPA that issued it or to the Board within 14 days after the suspension or cancellation takes effect.

Penalty: 20 penalty units.

- (2) A legal practitioner who ceases to engage in legal practice must surrender their practising certificate to the RPA that issued it or to the Board as soon as practicable after so ceasing, unless the certificate has expired.

Penalty: 20 penalty units.

- (3) An RPA must notify the Board as soon as practicable after receiving a surrendered practising certificate under this section.

- (4) If a practising certificate is surrendered under subsection (2), the Board may refund the whole or part of the fee paid for the certificate, as determined by the Board, to the practitioner.

S. 33(4)  
inserted by  
No. 102/1997  
s. 9(4).

**34. Mandatory suspension or variation of practising certificate for insolvency**

- (1) If—

- (a) a regulated practitioner of an RPA or the Board (being a natural person) who is authorised to receive trust money becomes an insolvent under administration; or

S. 34(1)  
amended by  
No. 102/1997  
s. 10(1)(a).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 34

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| <p>(b) a regulated practitioner of an RPA or the Board (being an incorporated practitioner) who is authorised to receive trust money becomes an externally-administered body corporate within the meaning of the Corporations Act; or</p> <p>(c) an RPA or the Board is satisfied that, on an application under section 459P of the Corporations Act, the Court would be required under section 459C(2) of that Act to presume that a regulated practitioner (being an incorporated practitioner) who is authorised to receive trust money is insolvent—</p> <p>the RPA or the Board must either suspend the practitioner's practising certificate or vary the conditions of the certificate so that the practitioner is no longer authorised to receive trust money.</p> | <p>S. 34(1)(b) amended by No. 44/2001 s. 3(Sch. item 72.2(a)).</p> <p>S. 34(1)(b) amended by No. 44/2001 s. 3(Sch. item 72.2 (a)(b)).</p> |
| <p>(2) If an incorporated practitioner's practising certificate is suspended or varied under this section, the RPA or the Board may suspend, or vary the conditions of, the practising certificate of each current practitioner who is a director of the incorporated practitioner.</p>   | <p>S. 34(2) amended by No. 102/1997 s. 10(1)(b) (i)(ii).</p>  |
| <p>(3) A suspension or variation under this section takes effect immediately written notice of it is given to the practitioner.</p>   | <p>S. 34(3) amended by No. 102/1997 s. 10(1)(c).</p>  |
| <p>(4) An RPA that suspends or varies the conditions of a practising certificate under this section must also give written notice of the suspension or variation to the Board.</p>  | <p>S. 34(4) amended by No. 102/1997 s. 10(1)(d) (i)(ii).</p>  |
| <p>(5) Section 40 does not apply to a suspension under this section.</p>  | <p>S. 34(5) inserted by No. 102/1997 s. 10(2).</p>  |
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 34A**

S. 34(6)  
inserted by  
No. 102/1997  
s. 10(2).

- (6) If an RPA or the Board that has varied the conditions of a practising certificate under this section is satisfied that the grounds for variation do not or no longer exist, the RPA or the Board must vary the conditions back (so that the practitioner is authorised to receive trust money) immediately by giving written notice to the practitioner<sup>8</sup>.

S. 34(7)  
inserted by  
No. 102/1997  
s. 10(2).

- (7) No fee is payable by a practitioner for a variation back under sub-section (6).

S. 34(8)  
inserted by  
No. 102/1997  
s. 10(2).

- (8) An RPA that varies a condition back under sub-section (6) must also give written notice to the Board.

S. 34A  
inserted by  
No. 102/1997  
s. 11.

**34A. Expungement of record of suspension or variation under section 34**

- (1) If—
- (a) a suspension of a practitioner's practising certificate under section 34 is lifted; or
  - (b) a practitioner's practising certificate is varied back under section 34(6)—

the practitioner may apply to the Full Tribunal for an order that the Board expunge the record of the suspension or original variation from the Register.

- (2) On an application under sub-section (1), the Full Tribunal, if satisfied that it is appropriate to do so, may order that the Board expunge the record of the suspension or original variation from the Register.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 35

**35. Notification of failure to pay contributions or levies**

If a current practitioner does not pay by the due date a contribution required to be paid by section 202 or a levy required to be paid under section 204, the Board must issue a written notice to the practitioner setting out the provisions of section 36.

**S. 35**  
amended by  
**No. 9/1999**  
**s. 10(a).**

**36. Suspension of practising certificate for failure to pay contributions or levies**

- (1) Subject to sub-section (2), if a current practitioner to whom a notice is issued under section 35 does not pay the required contribution or levy within 14 days after the day the notice was issued, the Board must suspend the practitioner's practising certificate until the contribution or levy is paid.
- (2) The Board is not required to suspend a practising certificate under sub-section (1) if satisfied that the failure to pay was inadvertent or due to other circumstances in which the certificate ought not be suspended.
- (3) A suspension under this section takes effect immediately written notice of the suspension is given to the practitioner.
- (4) The Board must also give written notice of a suspension under this section to the RPA (if any) of which the practitioner is a regulated practitioner.
- (5) Section 40 does not apply to a suspension under this section.

**S. 36(1)**  
amended by  
**No. 9/1999**  
**s. 10(b).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 37

**37. Suspension of practising certificate for trust account deficiencies**

- (1) Subject to sub-section (2), an RPA or the Board must suspend the practising certificate of a regulated practitioner—
  - (a) in the case of a sole practitioner or corporate practitioner or an incorporated practitioner, if an audit of the practitioner's trust account reveals a deficiency in the trust account that has not been restored;
  - (b) in the case of a partner of a firm or a director of an incorporated practitioner, if an audit of the trust account of the firm or incorporated practitioner reveals a deficiency in the trust account that has not been restored.
- (2) An RPA or the Board is not required to suspend a practising certificate under sub-section (1) if satisfied that the deficiency in the trust account was inadvertent or due to other circumstances in which the certificate ought not be suspended.
- (3) Nothing in sub-section (2) prevents an RPA or the Board from undertaking an investigation into the conduct of the practitioner or firm or bringing a charge in the Tribunal against the practitioner or firm in relation to the deficiency.
- (4) An RPA or the Board must give written notice of a suspension under this section to the practitioner.
- (5) An RPA that suspends a practising certificate under this section must also give written notice of the suspension to the Board.
- (6) Subject to sub-section (7) and section 40, a suspension under this section takes effect 14 days after the day notice is given under sub-section (4).

S. 37(4)  
substituted by  
No. 102/1997  
s. 12(1).

S. 37(6)  
inserted by  
No. 102/1997  
s. 12(2).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 38

- (7) An RPA or the Board may determine that a suspension take effect immediately notice is given under sub-section (4) if satisfied that immediate suspension is necessary—
- (a) for the protection of the practitioner's clients or members of the public generally; or
  - (b) to protect the integrity of the legal profession or the administration of justice.

**S. 37(7)**  
**inserted by**  
**No. 102/1997**  
**s. 12(2).**

**38. Other grounds for suspension**

- (1) An RPA or the Board must suspend the practising certificate of a regulated practitioner if the practitioner, in its opinion, is unfit to engage in legal practice.
- (2) An RPA or the Board may suspend the practising certificate of a regulated practitioner if the practitioner, in its opinion—
  - (a) is guilty of misconduct; or
  - (b) is an incorporated practitioner that is being conducted in contravention of its constitution.
- (3) An RPA or the Board must give written notice of a suspension under this section to the practitioner, including the reasons for the suspension.
- (4) An RPA that suspends a practising certificate under this section must also give written notice of the suspension to the Board.
- (5) Subject to sub-section (6) and section 40, a suspension under this section takes effect 14 days after the day notice is given under sub-section (3).
- (6) An RPA or the Board may determine that a suspension take effect immediately notice is given under sub-section (3) if satisfied that immediate suspension is necessary—

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 39**

- (a) for the protection of the practitioner's clients or members of the public generally; or
- (b) to protect the integrity of the legal profession or the administration of justice.

**39. Effect of suspension**

- (1) A legal practitioner whose practising certificate is suspended is deemed not to hold a practising certificate during the period of suspension.
- (2) If an RPA or the Board is satisfied that the grounds for a suspension do not or no longer exist, the RPA or the Board must lift the suspension immediately by giving written notice to the practitioner.
- (3) An RPA that lifts a suspension must also give written notice to the Board.

**40. Application to Full Tribunal following suspension**

- (1) Within 14 days after receiving notice of a suspension, a legal practitioner may apply to the Full Tribunal for an order lifting the suspension.
- (2) After hearing the matter, the Full Tribunal—
  - (a) if satisfied that the practitioner is unfit to engage in legal practice, must cancel the practitioner's practising certificate, in which case section 160(2)(a) applies accordingly;
  - (b) if satisfied that the practitioner is guilty of misconduct, may make any order it could make against the practitioner under section 160(1), in which case sections 160(2), (3) and (4), 163, 164 and 166 apply accordingly;
  - (c) if satisfied that the practitioner, being an incorporated practitioner, is being conducted in contravention of its constitution, may cancel the practitioner's practising certificate,

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 41

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- in which case section 160(2)(a) applies accordingly;
- (d) if not satisfied as required by paragraph (a), (b) or (c)—
- (i) must make an order directing the RPA or the Board to lift the suspension; and
- (ii) if satisfied that the practitioner is guilty of unsatisfactory conduct, may make any order the Tribunal could make against the applicant under section 159, in which case sections 163, 164 and 166 apply accordingly;
- (e) may order the payment of the costs of and incidental to the hearing and, for that purpose, sections 162 and 164 apply accordingly;
- (f) may make any other order the Tribunal thinks fit.

S. 40(2)(f)  
inserted by  
No. 102/1997  
s. 12(3).

**41. Appeal to Court of Appeal**

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 40.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal<sup>9</sup> runs from the time when the party receives the written reasons.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 41A

S. 41A  
inserted by  
No. 79/1998  
s. 8.

**41A. Variation of practising certificate conditions  
pending criminal proceedings**

- (1) If a current practitioner has been charged with a relevant offence but that charge has not been determined, the Board, the Legal Ombudsman or the RPA of which the practitioner is a regulated practitioner may apply to the Full Tribunal for an order under sub-section (2).
- (2) On an application under sub-section (1), the Full Tribunal, if it considers it appropriate to do so, may make either or both of the following orders—
  - (a) an order varying the conditions of the practitioner's practising certificate; or
  - (b) an order imposing further conditions on the practitioner's practising certificate.
- (3) An order under sub-section (2) has effect until the sooner of—
  - (a) the period specified by the Full Tribunal; or
  - (b) if the practitioner is convicted of the relevant offence—28 days after the day of the conviction; or
  - (c) if the charge is dismissed or the practitioner is found guilty without the recording of a conviction—the day of the dismissal or the decision not to record a conviction, as the case may be.
- (4) The Full Tribunal, on application by any party, may vary or revoke an order under sub-section (2) at any time.
- (5) In this section—

**"relevant offence"** means—

  - (a) an offence against Division 2 of Part I of the **Crimes Act 1958**; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 41B**

- (b) an offence against the law of another jurisdiction (whether in or outside Australia) that, in the opinion of the Full Tribunal, is equivalent to an offence against Division 2 of Part I of the **Crimes Act 1958**.

**41B. Appeal to Court of Appeal**

**S. 41B**  
inserted by  
**No. 79/1998**  
**s. 8.**

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 41A.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal runs from the time when the party receives the written reasons.

**Division 5—Re-allocation of firms and practitioners**

**Pt 2 Div. 5**  
(Heading)  
amended by  
**No. 102/1997**  
**s. 13(1)(a).**

**42. Notice of ceasing to be eligible (firms and incorporated practitioners)**

- (1) If a firm or an incorporated practitioner ceases to be eligible to be a regulated practitioner of the RPA to which it is allocated, the RPA must give written notice to the firm or incorporated practitioner and the Board, within 14 days after becoming aware of that fact, setting out a full explanation of the reasons for the firm or practitioner ceasing to be eligible.
- (2) Within 14 days after receiving a notice under subsection (1), the firm or incorporated practitioner must give written notice to the Board nominating another RPA of which it is eligible to be a regulated practitioner or, if there is no such RPA, nominating the Board.

**S. 42(1)**  
amended by  
**No. 102/1997**  
**s. 13(1)(b).**

**43. Re-allocation of firms and incorporated practitioners ceasing to be eligible**

- (1) As soon as practicable after receiving a notice under section 42(2), the Board—
  - (a) must re-allocate the firm or incorporated practitioner to the RPA (if any) nominated by the firm or practitioner if satisfied that they are eligible to be a regulated practitioner of that RPA; or
  - (b) if not satisfied that the firm or practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the firm or practitioner, must re-allocate them to an RPA of which they are eligible to be a regulated practitioner; or
  - (c) if satisfied that the firm or practitioner is not eligible to be a regulated practitioner of any RPA, must re-allocate them to the Board.
- (2) On the Board entering the details of a re-allocation on the Register, the firm or the incorporated practitioner and each legal practitioner, interstate practitioner and registered foreign practitioner (if any) who is a partner or an employee of the firm or a director or an employee of the incorporated practitioner become regulated practitioners of the RPA to which the firm or incorporated practitioner is allocated or, if subsection (1)(c) applies, of the Board.
- (3) The Board must give written notice to the firm or the incorporated practitioner, the RPA from which the firm or incorporated practitioner is re-allocated and the RPA to which it has been re-allocated (if any) as soon as practicable after the re-allocation.

S. 43(2)  
amended by  
No. 102/1997  
s. 13(1)(c).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 44

**44. Notice of ceasing to be eligible (sole and corporate practitioners)**

- (1) If a sole practitioner, corporate practitioner, interstate practitioner or registered foreign practitioner ceases to be eligible to be a regulated practitioner of the RPA to which they are allocated, the RPA must give written notice to the practitioner and the Board, within 14 days after becoming aware of that fact, setting out a full explanation of the reasons for the practitioner ceasing to be eligible.
- (2) Within 14 days after receiving a notice under sub-section (1), the practitioner may give written notice to the Board nominating another RPA of which the practitioner is eligible to be a regulated practitioner.
- (3) Sub-section (1) does not apply in the case of an interstate practitioner or registered foreign practitioner who is a partner or an employee of a firm or an employee of an incorporated practitioner.

S. 44(1)  
amended by  
No. 102/1997  
s. 13(1)(d).

S. 44(3)  
inserted by  
No. 102/1997  
s. 13(2).

**45. Re-allocation of sole and corporate practitioners ceasing to be eligible**

- (1) Within 14 days after receiving a notice under section 44(2) or, if no such notice is received, within 42 days after receiving a notice under section 44(1), the Board must—
  - (a) re-allocate the practitioner to the RPA (if any) nominated by the practitioner if satisfied that they are eligible to be a regulated practitioner of that RPA; or
  - (b) if no RPA is nominated, or if the Board is not satisfied that the practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the practitioner,

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

**s. 46**

re-allocate them to an RPA of which they are eligible to be a regulated practitioner; or

(c) if satisfied that the practitioner is not eligible to be a regulated practitioner of any RPA, re-allocate them to the Board.

(2) The Board must give written notice to the practitioner, the RPA that ceases to regulate the practitioner and the RPA to which the practitioner is allocated (if any) as soon as practicable after making a re-allocation under this section.

(3) The re-allocation takes effect when the relevant entry is made in the Register.

**46. Re-allocation as a result of becoming eligible**

S. 46(1)  
amended by  
No. 102/1997  
s. 13(3)(a).

(1) If the Board becomes aware that a legal practitioner, interstate practitioner, registered foreign practitioner or firm that is a regulated practitioner of the Board has become eligible to be a regulated practitioner of an RPA, the Board, after consultation with the practitioner or firm, must re-allocate them to the RPA or, if there is more than one such RPA, to one of those RPAs.

(2) The Board must give written notice to the practitioner or firm and the RPA of a re-allocation under this section.

S. 46(3)  
amended by  
No. 9/1999  
s. 11(a).

(3) The re-allocation takes effect at the end of the practising certificate year in which notice is given by the Board under sub-section (2).

**47. Firm or incorporated practitioner may apply for re-allocation**

S. 47(1)  
amended by  
No. 9/1999  
s. 11(b).

(1) A firm or an incorporated practitioner may make a written application to the Board by 31 May in any practising certificate year for re-allocation from the RPA of which it is a regulated practitioner to another RPA at the end of that year.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

s. 48

- (2) The new RPA nominated by the firm or incorporated practitioner must be an RPA of which each legal practitioner who is then a partner or an employee of the firm or a director or an employee of the incorporated practitioner will be a member, or will be eligible to be a member, at the end of the practising certificate year in which the application is made.

S. 47(2)  
amended by  
No. 9/1999  
s. 11(c).

**48. Re-allocation of firm or incorporated practitioner**

- (1) If the Board is satisfied that the firm or incorporated practitioner is eligible to be a regulated practitioner of the nominated RPA, it must re-allocate the firm, its partners and employees or the incorporated practitioner, its directors and employees to that RPA.
- (2) The Board must give written notice to the firm or incorporated practitioner and both RPAs as soon as practicable after making a re-allocation under this section.
- (3) The re-allocation takes effect at the end of the practising certificate year in which the application under section 47 is made.

S. 48(3)  
amended by  
No. 9/1999  
s. 11(c).

**49. Individual practitioner may apply for re-allocation**

- (1) A legal practitioner (being a natural person), an interstate practitioner or a registered foreign practitioner may make a written application to the Board at any time, but no more than twice in any year, for re-allocation from the RPA that currently regulates them to another RPA.
- (2) The application must specify the day on which the practitioner wishes the re-allocation to take effect, which must be at least 30 days after the day of the application.

S. 49(1)  
amended by  
No. 102/1997  
s. 13(3)(b)  
(i)(ii).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

<b>s. 50</b>
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**S. 49(3)**  
amended by  
No. 102/1997  
s. 13(3)(c).

- (3) The practitioner cannot apply to be re-allocated to an RPA if they intend to be a partner or an employee of a firm or a director or an employee of an incorporated practitioner after the re-allocation, unless that RPA also regulates that firm or incorporated practitioner.

**50. Re-allocation of individual practitioners**

**S. 50(1)**  
amended by  
No. 102/1997  
s. 13(3)(d).

- (1) If the Board is satisfied that a practitioner who applies under section 49 is eligible to be a regulated practitioner of the nominated RPA, it must re-allocate them to that RPA by making the appropriate entry in the Register.
- (2) The Board must give written notice to the practitioner and both RPAs as soon as practicable after making a re-allocation under this section.
- (3) The re-allocation takes effect at the beginning of the day specified by the practitioner in the application or such later day specified by the Board and notified to the practitioner under subsection (2).

**51. Exchange of information on re-allocation**

**S. 51(1)**  
amended by  
No. 102/1997  
s. 13(3)(e).

- (1) If a legal practitioner, interstate practitioner, registered foreign practitioner or firm is re-allocated from one RPA to another RPA or to the Board, the RPA that ceases to regulate them must give the original or a copy of any documents in its possession or control relating to them to the RPA to which they are re-allocated or to the Board, if they are re-allocated to the Board, within 30 days after the re-allocation takes effect.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2—Formal Requirements for Legal Practice

<b>s. 52</b>
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- (2) If a legal practitioner, interstate practitioner, registered foreign practitioner or firm is re-allocated from the Board to an RPA, the Board must give the original or a copy of any documents, in its possession or control relating to them to the RPA within 30 days after the re-allocation takes effect.

**S. 51(2)**  
**amended by**  
**No. 102/1997**  
**s. 13(3)(e).**

**52. Return of information necessary for disputes, investigations and charges**

- (1) An RPA that has given an original document to another RPA or to the Board under section 51(1) may request that RPA or the Board to return the original, if it is necessary for the first RPA to settle a dispute, carry out an investigation or bring a charge against the practitioner or firm.
- (2) If the Board has given an original document to an RPA under section 51(2), it may request that RPA to return the original, if it is necessary for the Board to settle a dispute, carry out an investigation or bring a charge against the practitioner or firm.
- (3) An RPA must comply with a request under subsection (1) or (2), but may retain copies of any originals given to the other RPA or the Board.
- (4) The Board must comply with a request under subsection (1), but may retain copies of any originals given to the RPA.
- (5) An RPA or the Board must return originals received in response to a request under this section as soon as practicable after they are no longer required for the dispute, investigation or charge or any proceedings relating to the dispute, investigation or charge.



Pt 2 Div. 6  
(Heading and  
ss 53–63)  
substituted  
as Pt 2A  
(Heading and  
ss 53–63E) by  
No. 102/1997  
s. 14.

## **PART 2A—INTERSTATE PRACTICE**

### **Division 1—Preliminary**

S. 53  
substituted by  
No. 102/1997  
s. 14.

#### **53. Purposes of this Part**

The main purposes of this Part are—

- (a) to allow interstate practitioners to engage in legal practice in Victoria without having to be admitted in Victoria or obtain Victorian practising certificates; and
- (b) to recognise disciplinary action taken against current practitioners by interstate authorities.

### **Division 2—Legal practice by interstate practitioners<sup>10</sup>**

S. 54  
substituted by  
No. 102/1997  
s. 14.

#### **54. Status of interstate practitioners**

- (1) An interstate practitioner who engages in legal practice in Victoria is an officer of the Supreme Court and is subject to the Court's jurisdiction as such.
- (2) Sub-section (1) confers on an interstate practitioner the same rights and privileges and imposes on the practitioner the same duties as are conferred and imposed on a legal practitioner as an officer of the Supreme Court.

S. 55  
substituted by  
No. 102/1997  
s. 14.

#### **55. Interstate practitioner may practise in Victoria**

- (1) An interstate practitioner is entitled to engage in legal practice in Victoria, subject to this Act, in accordance with the terms of the practitioner's entitlement to practise in their home State.

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- (2) In so doing, the practitioner—
- (a) must comply with this Act and the regulations and with any other Act that relates to legal practice; and
  - (b) must comply with the practice rules of the Victorian regulatory authority to which they have been allocated; and
  - (c) is subject to any condition, limitation or restriction imposed on the practitioner in respect of their practice by a Victorian regulatory authority or an interstate regulatory authority as a result of disciplinary action against the practitioner.
- (3) A Victorian regulatory authority must not impose a condition, restriction or limitation on an interstate practitioner in respect of their practice that is more onerous than it would impose on a current practitioner in the same or similar circumstances.

**56. Notification requirements for interstate practitioners**

**S. 56**  
substituted by  
**No. 102/1997**  
**s. 14.**

- (1) An interstate practitioner must give written notice to the Board within 28 days after first engaging in legal practice in Victoria.

Penalty: 10 penalty units in the case of a natural person;

20 penalty units in the case of a body corporate.

- (2) A notice under this section must contain—
- (a) in the case of a natural person—
    - (i) the name, date of birth and date of admission of the practitioner in their home State; and

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- (ii) the name of any firm of which the practitioner is a partner or employee, any incorporated practitioner of which they are a director or an employee or any other person or body of which they are an employee; and
  - (iii) if the practitioner practises on their own account, any business names under which they engage in legal practice; and
  - (iv) any condition, limitation or restriction to which the practitioner is subject in respect of their legal practice in their home State or elsewhere; and
  - (v) an address in Victoria for service of notices and other documents on the practitioner; and
  - (vi) a nomination—
    - (A) of an RPA of which the practitioner is a member or is eligible to be a member; or
    - (B) if there is no such RPA, the Board—  
to regulate the practitioner in respect of their legal practice in Victoria; and
  - (vii) a statement as to whether the practitioner has established, or intends to establish, a practice in Victoria; and
  - (viii) the prescribed information (if any);
- (b) in the case of a body corporate—
- (i) the name, A.C.N. or A.R.B.N. and date of incorporation or registration of the practitioner in its home State; and
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- (ii) the name and date of birth of each director of the practitioner; and
  - (iii) any condition, limitation or restriction to which the practitioner is subject in respect of their legal practice in their home State or elsewhere; and
  - (iv) an address in Victoria for service of notices and other documents on the practitioner; and
  - (v) a nomination—
    - (A) of an RPA of which the practitioner is a member or is eligible to be a member; or
    - (B) if there is no such RPA, the Board—  
to regulate the practitioner in respect of their legal practice in Victoria; and
  - (vi) a statement as to whether the practitioner has established, or intends to establish, a practice in Victoria; and
  - (vii) the prescribed information (if any).
- (3) A notice under this section must be accompanied by—
- (a) satisfactory evidence, in a form approved by the Board, that the applicant has professional indemnity insurance as required by this Act; and
  - (b) if the practitioner has established, or intends to establish, a practice in Victoria, the required contribution to the Fidelity Fund under section 202(1A) (if any).
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2A—Interstate Practice

**s. 57**

- (4) If an interstate practitioner who has indicated that they do not intend to establish a practice in Victoria subsequently establishes a practice in Victoria, they must give notice to the Board within 14 days, accompanied by the required contribution to the Fidelity Fund under section 202(1A) (if any).

**S. 57**  
substituted by  
No. 102/1997  
s. 14.

**57. RPA allocation**

On receipt of a notice under section 56(1) from an interstate practitioner, the Board—

- (a) must allocate the practitioner to the RPA nominated by the practitioner if satisfied that the practitioner is entitled to nominate that RPA; or
- (b) if not satisfied that the practitioner is entitled to nominate the nominated RPA, after consultation with the practitioner, must allocate the practitioner to an RPA that the practitioner is entitled to nominate; or
- (c) if satisfied that there is no RPA that the practitioner is entitled to nominate, must allocate them to the Board.

**Division 3—Disputes, complaints and discipline<sup>11</sup>**

**S. 58**  
substituted by  
No. 102/1997  
s. 14.

**58. Current practitioners practising interstate**

- (1) A dispute between a person and a current practitioner in connection with the practitioner's legal practice in another State may be resolved under Division 1 of Part 5.
- (2) A complaint may be made under Division 2 of Part 5 about the conduct of a current practitioner in respect of their legal practice in another State.

- (3) An investigation may be undertaken under Division 3 of Part 5 of the conduct of a current practitioner in respect of their legal practice in another State.
- (4) A charge may be brought in the Tribunal against a current practitioner in respect of their legal practice in another State.
- (5) If a dispute, complaint or investigation of a kind referred to in this section has been dealt with and finally determined in another State, no further action may be taken in relation to the subject-matter of the dispute, complaint or investigation under Part 5.

**59. Referral of disputes and disciplinary matters to interstate regulatory authorities**

**S. 59**  
substituted by  
No. 102/1997  
s. 14.

- (1) If it considers it appropriate to do so, a Victorian regulatory authority may refer a dispute lodged with it in relation to a current practitioner or an interstate practitioner to an interstate regulatory authority, to be dealt with according to the law of the other State.
- (2) If it considers it appropriate to do so, a Victorian regulatory authority may refer a complaint made to it in relation to a current practitioner or an interstate practitioner to an interstate regulatory authority, to be dealt with according to the law of the other State.
- (3) If it considers it appropriate to do so, a Victorian regulatory authority may request an interstate regulatory authority to investigate the conduct of a current practitioner or an interstate practitioner, in accordance with the law of the other State.
- (4) After a referral under sub-section (1) or (2) or a request under sub-section (3) has been made, no further action may be taken by any Victorian regulatory authority in relation to the subject-

matter of the referral or request, other than action required to comply with section 62, unless the interstate regulatory authority declines to deal with the matter.

S. 60  
substituted by  
No. 102/1997  
s. 14.

**60. Dealing with matters referred by interstate regulatory authorities**

- (1) A Victorian regulatory authority may resolve a dispute between a person and a current practitioner or an interstate practitioner referred to it by an interstate regulatory authority whether the subject-matter of the dispute arose in or outside Victoria.
- (2) A Victorian regulatory authority may investigate a complaint against a current practitioner or an interstate practitioner referred to it by an interstate regulatory authority and bring a charge in the Tribunal against the practitioner as a result of such investigation whether the subject-matter of the complaint allegedly occurred in or outside Victoria.
- (3) If an interstate regulatory authority requests a Victorian regulatory authority to investigate the conduct of a current practitioner or an interstate practitioner, the authority may investigate that conduct and bring a charge in the Tribunal against the practitioner as a result of such investigation whether the conduct allegedly occurred in or outside Victoria.

S. 61  
substituted by  
No. 102/1997  
s. 14.

**61. Furnishing information**

- (1) A Victorian regulatory authority must furnish without delay any information about a current practitioner or an interstate practitioner reasonably required by an interstate regulatory authority in connection with actual or possible disciplinary action against the practitioner.

- (2) A Victorian regulatory authority may notify an interstate regulatory authority of any condition, restriction, limitation or prohibition imposed in Victoria on a current practitioner or an interstate practitioner in respect of their legal practice as a result of disciplinary action against the practitioner.
- (3) Sub-sections (1) and (2) apply despite any law relating to secrecy or confidentiality.
- (4) Nothing in this section affects any obligation or power to provide information apart from this section.

**Division 4—Further provisions for current practitioners in relation to interstate practice**

**62. Current practitioners are subject to interstate regulatory authorities**

S. 62  
substituted by  
No. 102/1997  
s. 14.

- (1) A current practitioner, in engaging in legal practice in Victoria, must comply with any condition, restriction or limitation in respect of their practice imposed by an interstate regulatory authority as a result of disciplinary action against the practitioner.
- (2) An interstate regulatory authority—
  - (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 practitioner; and
  - (b) to which a current practitioner is subject—may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2A—Interstate Practice

s. 63

conditions of or imposition of further conditions on, the current practitioner's practising certificate.

- (3) A Victorian regulatory authority must comply with an order of an interstate regulatory authority under sub-section (2).
- (4) An interstate regulatory authority that has jurisdiction to order the removal of the name of a person from the roll that corresponds to the roll of practitioners in Victoria may order that the name of a current practitioner be removed from the roll. If it does so, the practitioner's name is to be removed from the roll in Victoria.

S. 63  
substituted by  
No. 102/1997  
s. 14.

**63. Current practitioner receiving trust money interstate**

- (1) A current practitioner must deal with trust money received in the course of engaging in legal practice in another State in accordance with Part 6 as if the trust money had been received in the course of engaging in legal practice in Victoria.
- (2) Sub-section (1) does not apply to trust money received in the course of engaging in legal practice in another State that the practitioner is required to deal with in another manner under the law of that State.

S. 63A  
inserted by  
No. 102/1997  
s. 14.

**63A. Current practitioner's professional indemnity insurance**

Unless exempted by the Board under Part 8, a current practitioner must maintain professional indemnity insurance in Victoria that covers the provision of legal services in another State to a client resident in Victoria or instructions given to the practitioner in Victoria.

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**Division 5—General**

**63B. Victorian regulatory authority may exercise powers conferred by interstate law**

S. 63B  
inserted by  
No. 102/1997  
s. 14.

A Victorian regulatory authority may exercise in respect of a current practitioner or an interstate practitioner any function or power conferred on it by the law of another State.

**63C. Agreements and arrangements with interstate regulatory authorities**

S. 63C  
inserted by  
No. 102/1997  
s. 14.

A Victorian regulatory authority may make agreements or arrangements with an interstate regulatory authority 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 61.

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S. 63D  
inserted by  
No. 102/1997  
s. 14,  
repealed by  
No. 62/1998  
s. 8(2).

**63E. Transitional**

S. 63E  
inserted by  
No. 102/1997  
s. 14.

A person who was a registered interstate practitioner under Division 6 of Part 2 immediately before the commencement of section 14 of the **Legal Practice (Amendment) Act 1997** is deemed, on the commencement of that section, to be an interstate practitioner who has complied with the requirements of section 56(1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

s. 63F

Pt 2B  
(Heading and  
ss 63F–63ZC)  
inserted by  
No. 102/1997  
s. 15.

**PART 2B—PRACTICE OF FOREIGN LAW**

**Division 1—Preliminary**

S. 63F  
inserted by  
No. 102/1997  
s. 15.

**63F. Purpose of this Part**

The purpose of this Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in Victoria by foreign-qualified lawyers as a recognised aspect of legal practice.

S. 63G  
inserted by  
No. 102/1997  
s. 15.

**63G. Definitions**

In this Part—

**"Australia"** includes the external Territories within the meaning of the Acts Interpretation Act 1901 of the Commonwealth;

**"engage in the practice of foreign law"** has the meaning given in section 63H;

**"foreign law"** means law of a place outside Australia;

**"foreign practitioner"** means a natural person, other than a legal practitioner, who is registered to engage in legal practice in a place outside Australia by a foreign registration authority;

**"foreign registration authority"** means a person or authority in a place outside Australia having the function conferred by law of registering persons to engage in legal practice in that place;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

s. 63H

**"home registration authority"** of a foreign practitioner means the foreign registration authority stated in the practitioner's registration notice under section 63J;

**"registered"** when used in connection with a place outside Australia, means having all necessary licences, approvals, admissions, certificates or other forms of authorisation (including practising certificates) required by or under the law of that place for engaging in legal practice in that place;

**"registered foreign practitioner"** means a person who is registered as a foreign practitioner under Division 3.

**63H. What is the practice of foreign law?**

S. 63H  
inserted by  
No. 102/1997  
s. 15.

- (1) For the purposes of this Act, a person engages in the practice of foreign law if the person does any work or transacts any business in Victoria concerning foreign law of a kind that, if it concerned the law of Victoria, would constitute engaging in legal practice.
- (2) Engaging in the practice of foreign law may consist of a single act.

**Division 2—Unqualified foreign law practice**

**63I. Prohibition on unqualified foreign law practice**

S. 63I  
inserted by  
No. 102/1997  
s. 15.

- (1) A person must not engage in the practice of foreign law in Victoria unless the person—
  - (a) is a registered foreign practitioner; or
  - (b) is a foreign practitioner who—
    - (i) engages in the practice of foreign law in Victoria on a temporary basis or is subject to a migration restriction; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63J**

(ii) does not establish a practice in Victoria;  
or

(c) is a current practitioner or an interstate practitioner (other than an interstate practitioner who is suspended or prohibited from engaging in legal practice in Victoria).

Penalty: Imprisonment for 2 years.

(2) A person who contravenes sub-section (1) is not entitled to recover any amount in respect of anything done during the course of that contravention and must repay any amount so received to the person from whom it was received.

(3) If a person does not repay an amount required by sub-section (2) to be repaid, the person entitled to be repaid may recover the amount from the person as a debt in a court of competent jurisdiction.

(4) In this section—

**"migration restriction"** means a restriction imposed on a person who is not an Australian citizen under the Migration Act 1958 of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person.

**Division 3—Registration of foreign practitioners**

S. 63J  
inserted by  
No. 102/1997  
s. 15.

**63J. Registration notice**

(1) A foreign practitioner may apply for registration under this Division by lodging a written notice with the Board.

(2) The notice must—

(a) state the applicant's educational and professional qualifications; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63J**

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- (b) state that the applicant is registered to engage in legal practice in a place outside Australia by a specified foreign registration authority in that place; and
  - (c) state whether the applicant is the subject of any disciplinary proceedings in that place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration and, if so, give details of those proceedings or investigations or that action; and
  - (d) state whether the applicant is a party in any pending criminal or civil proceeding that is likely to result in disciplinary action being taken against the applicant and, if so, give details of that proceeding; and
  - (e) state that the applicant's registration in that place is not cancelled or currently suspended as a result of disciplinary action; and
  - (f) state whether or not the applicant is otherwise prohibited from engaging in legal practice in that place or bound by any undertaking not to engage in legal practice in that place, or is subject to any conditions in engaging in that practice as a result of criminal, civil or disciplinary proceedings in that place; and
  - (g) specify any conditions imposed as a restriction on the legal practice of the applicant or any undertaking given by the applicant restricting their legal practice; and
  - (h) contain an address in Victoria for service of notices and other documents on the applicant; and
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63J**

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- (i) contain a nomination—
    - (i) of an RPA of which the practitioner is a member or is eligible to be a member; or
    - (ii) if there is no such RPA, the Board—to regulate the practitioner in respect of their practice of foreign law; and
  - (j) give consent to the making of enquiries of, and the exchange of information with, the applicant's home registration authority regarding the applicant's activities in engaging in legal practice in that place or otherwise regarding matters relevant to the notice; and
  - (k) contain any other information required by the Board.
- (3) The notice must be accompanied by an original instrument, or a copy of an original instrument, from the applicant's home registration authority—
- (a) verifying the applicant's educational and professional qualifications or, if it is not in a position to do so, stating that fact; and
  - (b) verifying the applicant's registration by the authority to engage in legal practice in the place concerned and the date of that registration; and
  - (c) stating whether there is any matter known to the authority that, in its opinion, may render the applicant unfit to engage in legal practice in the place concerned or to engage in the practice of foreign law and, if so, giving details of that matter.
- (4) The applicant must certify in the notice that the accompanying instrument is the original or a complete and accurate copy of the original.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63K**

- (5) The Board may require the applicant to verify the statements in the notice by statutory declaration or another manner specified by the Board.
- (6) If the accompanying instrument is not in English it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Board.

**63K. Fees and Fidelity Fund contributions**

**S. 63K**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

- (1) A notice under section 63J is to be accompanied by—
  - (a) an application fee (if any) determined by the Board; and
  - (b) a registration fee (if any) determined by the Board; and
  - (c) the required contribution to the Fidelity Fund under section 202(1) (if any).
- (2) The combined amount of the application fee and the registration fee is not to be greater than the maximum fee for a practising certificate.
- (3) If an application for registration is refused, the Board must refund the registration fee and the Fidelity Fund contribution to the applicant.

**63L. Registration and RPA allocation**

**S. 63L**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

- (1) As soon as practicable after receiving a notice under section 63J but subject to sub-section (2), the Board must register the applicant as a foreign practitioner if—
  - (a) the Board is satisfied that the applicant is registered to engage in legal practice in a place outside Australia; and
  - (b) the Board considers that an effective system exists in that place for the regulation of legal practice in that place; and



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63L**

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- (c) the Board considers that the applicant is not, or is not likely to become, subject to any conditions in engaging in legal practice in that place or any undertakings concerning his or her legal practice in that place that would make it inappropriate to register the applicant; and
    - (d) the applicant demonstrates to the satisfaction of the Board an intention to establish a practice in Victoria within a reasonable period after the grant of registration.
  - (2) The Board must refuse to register a foreign practitioner if the application is made within a period specified by the Full Tribunal under section 171A(6) or by the Supreme Court.
  - (3) Residence or domicile in Victoria is not a pre-requisite for, or a factor in determining entitlement to, registration as a foreign practitioner.
  - (4) In considering whether or not to register a foreign practitioner, the Board may rely on—
    - (a) any material provided by or on behalf of the practitioner;
    - (b) any further investigations it considers necessary to undertake;
    - (c) any investigations undertaken by it in relation to other applicants for registration or registered foreign practitioners.
  - (5) If the Board registers a foreign practitioner, the Board—
    - (a) must allocate the practitioner to the RPA nominated by the practitioner if satisfied that the practitioner is entitled to nominate that RPA; or
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63L**

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- (b) if not satisfied that the practitioner is entitled to nominate the nominated RPA, after consultation with the practitioner, must allocate the practitioner to an RPA that the practitioner is entitled to nominate; or
  - (c) if satisfied that there is no RPA that the practitioner is entitled to nominate, must allocate them to the Board.
- (6) The Board registers a foreign practitioner by entering the following information on the Register—
- (a) the date of registration; and
  - (b) the practitioner's educational and professional qualifications; and
  - (c) the place outside Australia in which the practitioner is registered to engage in legal practice; and
  - (d) the name and address of the practitioner's home registration authority; and
  - (e) any conditions imposed on the practitioner by their home registration authority in respect of their legal practice or any undertakings given by the practitioner in respect of that practice; and
  - (f) any conditions imposed on the practitioner by a Victorian regulatory authority in respect of their practice of foreign law or any undertaking given by the practitioner in respect of that practice; and
  - (g) the RPA to which the practitioner has been allocated or, if they have been allocated to the Board, that fact; and
  - (h) the practitioner's address for service of notices and other documents.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63M**

**S. 63M**  
inserted by  
No. 102/1997  
s. 15.

**63M. Conditions**

- (1) At the time of registration, the Board may impose any condition on the foreign practitioner in respect of the practitioner's practice of foreign law and may at any time by notice in writing revoke or vary any such condition.
- (2) At any time, the RPA of which a registered foreign practitioner is a regulated practitioner or the Board, if the practitioner is a regulated practitioner of the Board, may impose any condition on the foreign practitioner in respect of the practitioner's practice of foreign law and may at any time by notice in writing revoke or vary any such condition.
- (3) The Board or an RPA must not impose a condition on a foreign practitioner in respect of their practice of foreign law that is more onerous than it would impose on a current practitioner or interstate practitioner in the same or similar circumstances.
- (4) An RPA that imposes, varies or revokes a condition under this section must notify the Board.

**S. 63N**  
inserted by  
No. 102/1997  
s. 15.

**63N. Notification of decision**

- (1) The Board must give an applicant written notice of its decision to register the applicant as a foreign practitioner, to refuse registration or to impose conditions on registration.
- (2) If notice is not given to an applicant within 45 days after the applicant lodges a notice in accordance with section 63J, the Board is to be taken to have refused to register the applicant.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63O**

**63O. Effect of registration and annual fee**

**S. 63O**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

- (1) A registered foreign practitioner is entitled to engage in the practice of foreign law in accordance with Division 4.
- (2) A registered foreign practitioner must pay—
  - (a) an annual fee determined by the Board; and
  - (b) the required contribution to the Fidelity Fund under section 202(2A) (if any).
- (3) The annual fee is payable on or before the date notified in writing to the registered foreign practitioner by the Board.
- (4) The annual fee is not to be greater than the maximum fee payable for a practising certificate.

**63P. Suspension of registered foreign practitioner**

**S. 63P**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

- (1) The RPA of which a registered foreign practitioner is a regulated practitioner or the Board, if the practitioner is a regulated practitioner of the Board, may suspend the practitioner from engaging in the practice of foreign law, by giving written notice to the practitioner, if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for suspension, a registered foreign practitioner may be suspended from engaging in the practice of foreign law if—
  - (a) the practitioner's home registration authority suspends or cancels registration of the practitioner as a result of criminal, civil or disciplinary proceedings;
  - (b) the practitioner fails to comply with any requirement of this Act;
  - (c) the practitioner's registration by the practitioner's home registration authority lapses;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63Q**

- (d) the practitioner does not establish a practice in Victoria within a reasonable period after being registered; or
  - (e) the practitioner fails to comply with any condition imposed on the practitioner's registration under this Act;
  - (f) the practitioner becomes an insolvent under administration.
- (3) The practitioner is not to be suspended on the ground referred to in sub-section (2)(c) if the practitioner demonstrates to the satisfaction of the RPA or the Board that the lapse did not result from any criminal, civil or disciplinary proceedings against the practitioner, but from circumstances beyond the practitioner's control.
- (4) An RPA that suspends a registered foreign practitioner under this section must also give written notice of the suspension to the Board.
- (5) Subject to sub-section (6) and section 63S, a suspension under this section takes effect 28 days after the day notice is given under sub-section (1).
- (6) An RPA or the Board may determine that a suspension take effect immediately notice is given under sub-section (1) if satisfied that immediate suspension is necessary—
- (a) for the protection of the practitioner's clients or members of the public generally; or
  - (b) to protect the integrity of the legal profession or the administration of justice.

**S. 63Q**  
inserted by  
No. 102/1997  
s. 15.

**63Q. Effect of suspension**

- (1) A registered foreign practitioner who is suspended under section 63P is deemed not to be registered under this Division during the period of suspension.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63R**

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- (2) If an RPA or the Board is satisfied that the grounds for the suspension do not or no longer exist, the RPA or the Board must lift the suspension immediately by giving written notice to the practitioner.
  - (3) An RPA that lifts a suspension must also give written notice to the Board.

**63R. Cancellation of registration**

**S. 63R**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

- (1) The Board, by written notice to a registered foreign practitioner, may cancel the practitioner's registration if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for cancellation, registration may be cancelled if—
  - (a) the practitioner's home registration authority cancels registration of the practitioner as a result of criminal, civil or disciplinary proceedings;
  - (b) the practitioner fails to comply with any requirement of this Act;
  - (c) the practitioner's registration by the practitioner's home registration authority lapses;
  - (d) the practitioner does not establish a practice in Victoria within a reasonable period after being registered;
  - (e) the practitioner fails to comply with any condition imposed on the practitioner's registration under this Act;
  - (f) the practitioner becomes an insolvent under administration.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63R**

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- (3) Registration is not to be cancelled on the ground referred to in sub-section (2)(c) if the practitioner demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the practitioner, but from circumstances beyond the practitioner's control.
  - (4) Registration as a foreign practitioner is automatically cancelled if the practitioner—
    - (a) becomes a current practitioner; or
    - (b) requests cancellation.
  - (5) Cancellation of registration at the request of a practitioner—
    - (a) takes effect when the request is received by the Board; and
    - (b) does not prevent any disciplinary proceedings being instituted against the practitioner or affect the continuity of any proceedings already instituted.
  - (6) Subject to sub-section (7) and section 63S, cancellation of registration under sub-section (1) takes effect 28 days after the day notice is given to the practitioner.
  - (7) The Board may determine that cancellation take effect immediately notice is given under sub-section (1) if satisfied that immediate cancellation is necessary—
    - (a) for the protection of the practitioner's clients or members of the public generally; or
    - (b) to protect the integrity of the legal profession or the administration of justice.
  - (8) If a practitioner's registration is cancelled, the Board may refund the whole or part of the last fee paid by the practitioner, as determined by the Board.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63S**

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**63S. Application to Full Tribunal**

**S. 63S  
inserted by  
No. 102/1997  
s. 15.**

(1) If the Board—

- (a) refuses to register a foreign practitioner under this Division; or
- (b) cancels the registration of a foreign practitioner under this Division—

the foreign practitioner may apply to the Full Tribunal for a review of the Board's decision.

(2) If the Board or an RPA—

- (a) imposes conditions on a foreign practitioner or varies those conditions under section 63M; or
- (b) suspends a registered foreign practitioner under section 63P—

the foreign practitioner may apply to the Full Tribunal for a review of the Board's decision.

(3) An application—

- (a) under sub-section (1)(a) must be made within 28 days after—
  - (i) the day notice of refusal to register is given to the applicant; or
  - (ii) the expiration of the 45 day period referred to in section 63N(2);
- (b) under sub-section (1)(b) or (2) must be made within 28 days after the day notice of the cancellation, imposition, variation or suspension is given to the practitioner.

(4) For the purposes of a review, the Full Tribunal has all the powers and discretions of the Board and may—

- (a) make an order—
  - (i) confirming the decision under review;



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63T**

- (ii) setting aside the decision and, in the case of a decision to refuse registration, directing the Board to register the practitioner;
  - (iii) imposing any conditions that the Board or an RPA could have imposed on the practitioner under section 63M;
- (b) make any other order it thinks fit;

**S. 63T**  
inserted by  
No. 102/1997  
s. 15.

**63T. Appeal to Court of Appeal**

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 63S.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal<sup>12</sup> runs from the time when the party receives the written reasons.

**Division 4—Practice of foreign law<sup>13</sup>**

**S. 63U**  
inserted by  
No. 102/1997  
s. 15.

**63U. Scope of practice**

- (1) A registered foreign practitioner may only provide any or all of the following—
  - (a) legal services consisting of doing any work, or transacting any business, in Victoria concerning the law of the place in which the practitioner is registered by their home registration authority;
  - (b) legal services (including appearances) in relation to arbitration proceedings in Victoria of a kind prescribed by the regulations;
  - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63V**

- rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;
- (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in Victoria of a kind prescribed by the regulations;
  - (e) legal services consisting of advice on the effect of the law of Victoria or another Australian jurisdiction, if—
    - (i) the giving of the advice is necessarily incidental to the practice of foreign law; and
    - (ii) the advice is expressly based on advice given to the practitioner by a current practitioner or interstate practitioner who is not his or her employee.
- (2) Nothing in this Act authorises a registered foreign practitioner to appear in any court (except on the practitioner's own behalf) or to engage in legal practice.

**63V. Form of practice**

**S. 63V  
inserted by  
No. 102/1997  
s. 15.**

A registered foreign practitioner may engage in the practice of foreign law—

- (a) as a foreign practitioner on the practitioner's own account; or
- (b) in partnership with—
  - (i) other registered foreign practitioners; or
  - (ii) current practitioners; or
  - (iii) interstate practitioners; or
  - (iv) any combination of (i), (ii) and (iii); or
- (c) as an employee of a current practitioner, interstate practitioner or firm.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

s. 63W

S. 63W  
inserted by  
No. 102/1997  
s. 15.

**63W. Letterhead and other identifying documents**

- (1) A registered foreign practitioner may describe themselves and any partnership or body corporate with which they are associated only in one or more of the ways designated in section 63X.
- (2) In addition, a registered foreign practitioner must indicate in each public document distributed by them in connection with their practice of foreign law the fact that they are registered under this Act and that they are restricted to the practice of foreign law.
- (3) Sub-section (2) is satisfied if the practitioner includes in the document the words—
  - (a) "registered foreign practitioner" or "registered foreign lawyer"; and
  - (b) "entitled to practise foreign law only".
- (4) In this section, "**public document**" includes any business letter, statement of account, invoice, business card and promotional and advertising material.

S. 63X  
inserted by  
No. 102/1997  
s. 15.

**63X. Designation**

- (1) A registered foreign practitioner may use the following designations—
  - (a) the practitioner's own name;
  - (b) the title or any business name that the practitioner is authorised or permitted by law to use in the place outside Australia in which the practitioner is registered by their home registration authority;
  - (c) subject to sub-section (2), the name of any partnership or body corporate outside Australia with which the practitioner is affiliated or associated;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63Y**

- (d) if the practitioner is a member of a partnership or body corporate in Australia that includes legal practitioners and registered foreign practitioners, a description of the partnership or body that includes the title used by legal practitioners and registered foreign practitioners.
- (2) A registered foreign practitioner who is a member of a partnership or body corporate outside Australia may use the name of the partnership or body corporate in engaging in the practice of foreign law, or use the name in connection with the practice, only if—
  - (a) the practitioner has provided the Board with a copy of the partnership agreement or other acceptable evidence that the practitioner is a member of the partnership or body; and
  - (b) use of that name complies with any requirements of Victorian law concerning the use of business names and will not lead to any confusion with the name of any firm or incorporated practitioner.
- (3) A registered foreign practitioner who is a member of a partnership or body corporate may use the name of the partnership or body as referred to in this section whether or not other members are registered foreign practitioners.

**63Y. Employment of current and interstate practitioners by foreign practitioners**

**S. 63Y**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

- (1) A registered foreign practitioner may employ one or more current practitioners or interstate practitioners or both.
- (2) Employment of a current practitioner or interstate practitioner does not entitle a registered foreign practitioner to engage in legal practice in Victoria.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63Z**

- (3) Subject to sub-section (4), a current practitioner or interstate practitioner employed by a registered foreign practitioner must not provide advice on the law of Victoria or another Australian jurisdiction to, or for use by, the foreign practitioner or otherwise engage in legal practice in Victoria in the course of that employment.
- (4) Sub-section (3) does not apply to a current practitioner or interstate practitioner employed by a firm a partner of which is a registered foreign practitioner if at least one other partner is a legal practitioner.

**S. 63Z**  
inserted by  
No. 102/1997  
s. 15.

**63Z. Employment of foreign practitioners by current practitioners, interstate practitioners and firms**

- (1) A current practitioner, interstate practitioner or firm may employ one or more registered foreign practitioners.
- (2) Employment by a current practitioner, interstate practitioner or firm does not entitle a registered foreign practitioner to engage in legal practice in Victoria.

**S. 63ZA**  
inserted by  
No. 102/1997  
s. 15,  
amended by  
No. 79/1998  
s. 9.

**63ZA. Professional indemnity insurance**

A registered foreign practitioner who practises foreign law in Victoria must maintain professional indemnity insurance on terms and conditions approved by the Board.

**S. 63ZB**  
inserted by  
No. 102/1997  
s. 15.

**63ZB. Trust money**

Part 6 applies to a registered foreign practitioner who receives trust money as if a reference in that Part to a legal practitioner were a reference to the registered foreign practitioner.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 2B—Practice of Foreign Law

**s. 63ZC**

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**63ZC. Exemption by Board**

- (1) The Board may exempt a registered foreign practitioner or class of registered foreign practitioners from compliance with a specified provision of this Act or the regulations, or from compliance with a specified practice rule or part of a practice rule that would otherwise apply to the practitioner.
  - (2) The Board must give notice of an exemption under sub-section (1) to each RPA as soon as practicable after giving the exemption.
  - (3) Each RPA must publish a copy of the notice in its next available official publication after receiving the notice.
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**S. 63ZC**  
**inserted by**  
**No. 102/1997**  
**s. 15.**

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**PART 3—THE MANNER OF LEGAL PRACTICE**

**Division 1—Principles of legal practice**

**64. General principles of professional conduct**

The general principles of professional conduct, to be reflected in the practice rules, are that a legal practitioner or firm, in the course of engaging in legal practice, should—

- (a) in the service of a client, act—
  - (i) honestly and fairly in the client's best interests; and
  - (ii) so as not to engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law; and
  - (iii) with all due skill and diligence; and
  - (iv) with reasonable promptness; and
- (b) report regularly to a client on the progress of the matter for which the practitioner or firm has been retained to provide legal services; and
- (c) maintain a client's confidences; and
- (d) avoid conflicts of interest—
  - (i) between the practitioner or firm and a client; and
  - (ii) between 2 or more clients; and
- (e) refrain from charging excessive legal costs; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

**s. 65**

- (f) act with honesty and candour in all dealings with courts and tribunals and otherwise discharge all duties owed to courts and tribunals; and
- (g) observe any undertaking given to a court or tribunal, the Legal Ombudsman, the Board, an RPA or another practitioner or firm; and
- (h) act with honesty, fairness and courtesy in all dealings with other practitioners and firms in a manner conducive to advancing the public interest; and
- (i) conduct all dealings with other members of the community and the affairs of clients that affect the interests of others with honesty, fairness and courtesy and in a manner conducive to advancing the public interest.

**65. Co-advocacy**

- (1) In any proceeding, 2 or more current practitioners may appear together as co-advocates.
- (2) The practice rules of an RPA or the Board may reasonably limit the application of sub-section (1).

**66. Client access**

- (1) A legal practitioner or firm may accept instructions in a matter from a client whether or not the client has retained any other legal practitioner or firm in that matter.
- (2) The practice rules of an RPA or the Board may reasonably limit the application of sub-section (1).

**67. Compulsory clerking prohibited**

- (1) An RPA must not require, as a condition of membership or eligibility for membership, that a member of the RPA employ or engage as a clerk any person licensed or approved by the RPA or any other person or body.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

s. 68

- (2) The practice rules of an RPA or the Board must not require a regulated practitioner to employ or engage as a clerk any person licensed or approved by the RPA, the Board or any other person or body.
- (3) Nothing in this section takes away from the requirements of Parts 6 and 12 in relation to the receipt of trust money.
- (4) Nothing in this section applies to the employment or engagement of articulated clerks or managing clerks.

**68. Compulsory chambers prohibited**

- (1) An RPA must not require, as a condition of membership or eligibility for membership, that a member of the RPA engage in legal practice in premises—
  - (a) obtained from a specified person or body or a person or body approved by the RPA or by any other person or body; or
  - (b) situated in a specified location.
- (2) The practice rules of an RPA or the Board must not require a regulated practitioner to engage in legal practice in premises—
  - (a) obtained from a specified person or body or a person or body approved by the RPA, the Board or by any other person or body; or
  - (b) situated in a specified location.
- (3) Nothing in this section allows a legal practitioner or firm to avoid the obligations of any lease or contract of sale.

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**69. Sole practice by barristers**

The practice rules of an RPA may require that a regulated practitioner—

- (a) must practise as a barrister only;
- (b) must not carry on, engage in or practise any business, profession or occupation that is inconsistent with practice as a barrister;
- (c) must not practise as a barrister in partnership with any person or as an employee of any person;
- (d) must not share the income from practice as a barrister with any person—

except to the extent, if any, permitted by the rules.

**70. Compulsory robing abolished**

- (1) Despite any rule of practice or custom to the contrary, it is not necessary for a legal practitioner to robe to appear before any court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (2) An RPA must not require, as a condition of membership or eligibility for membership, that a member of the RPA appear robed before a court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (3) The practice rules of an RPA or the Board must not require a regulated practitioner to appear robed before a court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (4) Nothing in this section prevents a legal practitioner from robing voluntarily in any proceeding in which robes were customarily worn immediately before the commencement of this section.

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**71. Regulation of other businesses carried on by current practitioners**

The Governor in Council, on the recommendation of the Board, may make regulations for or with respect to—

- (a) prohibiting current practitioners from carrying on, engaging in or practising any business, profession or occupation; or
- (b) regulating the manner in which a current practitioner carries on, engages in or practises any business, profession or occupation—

that is inconsistent with legal practice or that may cause a conflict of interest between the practitioner and a client.

**Division 2—Practice rules**

**72. Practice rules of RPAs**

- (1) An RPA must have—
  - (a) rules for the engaging in of legal practice by its regulated practitioners; and
  - (b) if the RPA has any approved clerks, rules for the receipt and handling of trust money by them.
- (2) The rules must include—
  - (a) rules for the professional conduct of regulated practitioners that are consistent with the general principles stated in section 64; and
  - (b) if the regulated practitioners include practitioners authorised to receive trust money, or if the RPA has any approved clerks, rules for the management,

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

s. 73

accounting, auditing and reporting of trust money and trust accounts.

- (3) The rules may include, with or without modification, any model rule issued by the Board under section 80.
- (4) The rules may include any other matter, not inconsistent with this or any other Act or the regulations, that the RPA thinks fit.

**73. Practice rules of the Board**

- (1) The Board must have rules for the engaging in of legal practice by its regulated practitioners.
- (2) The rules must include—
  - (a) rules for the professional conduct of regulated practitioners that are consistent with the general principles stated in section 64; and
  - (b) rules for the management, accounting, auditing and reporting of regulated practitioners' trust accounts.
- (3) The rules may include any other matter, not inconsistent with this or any other Act or the regulations, that the Board thinks fit.

**74. RPA must forward practice rules**

- (1) Within 14 days after accreditation as an RPA, an RPA must forward a copy of its practice rules to the Legal Ombudsman.
- (2) An RPA must forward a copy of any practice rule made after accreditation to—
  - (a) the Board; and
  - (b) the Legal Ombudsman—at least 21 days before the rule is to take effect.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

**s. 75**

**S. 74(3)**  
**substituted by**  
**No. 79/1998**  
**s. 10(1).**

- (3) At least 21 days before a practice rule made by it is to take effect, an RPA must publish a copy of the rule in its official publication.
- (4) An RPA must forward a copy of its practice rules, as in force for the time being, to each regulated practitioner—
  - (a) within 14 days after that regulated practitioner becomes a regulated practitioner; and
  - (b) thereafter, at least once every 3 years.

**S. 74(4)(b)**  
**amended by**  
**No. 79/1998**  
**s. 10(2).**

**75. Board must forward practice rules**

- (1) Within 14 days after making its initial practice rules, the Board must forward a copy of those practice rules to the Legal Ombudsman.
- (2) The Board must forward any subsequent practice rule made by it to—
  - (a) each regulated practitioner; and
  - (b) the Legal Ombudsman—at least 21 days before the rule is to take effect.
- (3) The Board must forward a copy of its practice rules, as in force for the time being, to each regulated practitioner—
  - (a) within 14 days after that regulated practitioner becomes a regulated practitioner; and
  - (b) thereafter, at least once a year.

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**76. Legal Ombudsman may recommend disallowance**

- (1) The Legal Ombudsman may recommend to the Board that the Board disallow a practice rule of an RPA or any part of that rule on the ground that—
  - (a) the rule or part would impose an unreasonable cost on the public or on any sector of the public; or
  - (b) the rule or part would restrict competition in a market for legal services and is not otherwise justified in the public interest.
- (2) The Legal Ombudsman must consult the RPA before making a recommendation under subsection (1).

**77. Disallowance of practice rules**

- (1) The Board, by notice published in the Government Gazette, may disallow a practice rule of an RPA, or part of a rule, if the Legal Ombudsman has recommended disallowance.
- (2) The Board, by notice published in the Government Gazette, may disallow a practice rule made by an RPA after accreditation, or part of a rule, if the Board considers that the rule or part is inconsistent with this or any other Act or the regulations.
- (3) The disallowance takes effect on the publication of the notice.
- (4) The Board must give a copy of the notice to the RPA and the Attorney-General within 28 days after it is published.
- (5) The Attorney-General must cause a copy of the notice to be laid before each House of the Parliament within 7 sitting days of that House after receiving it.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

s. 78

- (6) Sections 3 to 11 of the **Administrative Law Act 1978** apply to the disallowance of a practice rule as if references in those sections—
- (a) to a decision were references to the decision to disallow the practice rule; and
  - (b) to a tribunal were references to the Board; and
  - (c) to a person affected were references to the RPA that made the disallowed rule.

**78. Effect of disallowance**

- (1) Subject to sub-section (2), if a practice rule, or part of a rule, is disallowed, the disallowance has the same effect as a revocation of the practice rule or part.
- (2) If a practice rule, or part of a rule, is disallowed—
  - (a) any practice rule, or part of a rule, that had been revoked by the disallowed practice rule or part is revived as from the beginning of the day on which the practice rule or part was disallowed; and
  - (b) any practice rule, or part of a rule, that had been amended by the disallowed practice rule or part takes effect without that amendment as from the beginning of the day on which the practice rule or part was disallowed in all respects as if the disallowed practice rule or part had not been made.

**79. Inspection and purchase of practice rules**

A person may inspect without charge or purchase practice rules during ordinary office hours—

- (a) in the case of practice rules made by an RPA, at the registered office of the RPA; or
- (b) in the case of practice rules made by the Board, at the office of the Board.

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**80. Guidelines and model rules**

The Board may issue—

- (a) guidelines as to the matters that should be included in practice rules made by RPAs;
- (b) model practice rules.

**81. Interpretation**

- (1) A practice rule is not a statutory rule for the purposes of the **Subordinate Legislation Act 1994**.
- (2) In this Division, "**practice rule**" includes a practice rule that amends or revokes another practice rule.

**Division 3—Competition**

**82. Legal Ombudsman to investigate matters relating to competition**

- (1) The Legal Ombudsman may investigate the effect on competition in a market for legal services and the effect on consumers of those services of—
  - (a) any Act, subordinate instrument or rule of law relating to legal practice;
  - (b) the practice rules of an RPA or the Board;
  - (c) the constitution of an RPA;
  - (d) any agreements, arrangements, understandings or other things made or done by an RPA in relation to its function as an RPA;
  - (e) any agreements, arrangements or understandings made by or involving a legal practitioner or firm in the course of, or in relation to, engaging in legal practice.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

s. 83

S. 82(3)  
amended by  
No. 52/1999  
s. 9(b).

- (2) An investigation under this section may be initiated in response to a dispute or complaint under Part 5 or on the Legal Ombudsman's own initiative.
- (3) The Attorney-General may refer anything referred to in paragraph (a) to (e) of sub-section (1) to the Legal Ombudsman for investigation under this section and if so, the Legal Ombudsman must investigate it.
- (4) A reference under sub-section (3) may specify a period of time within which the Legal Ombudsman must submit a report of the investigation.
- (5) The conduct of an investigation is at the discretion of the Legal Ombudsman.

**83. Practitioner or firm must provide information and documents**

- (1) For the purposes of an investigation under this Division, the Legal Ombudsman may require a legal practitioner or firm, an RPA or the Board to provide any information or documents and to verify the information or documents by statutory declaration or another manner specified by the Legal Ombudsman.
- (2) A requirement under sub-section (1) must be in writing and must allow the legal practitioner, firm, RPA or Board at least 21 days to comply.
- (3) A practitioner or firm may not refuse to comply with sub-section (1)—
  - (a) on the ground of legal professional privilege or any other duty of confidence; or
  - (b) on the ground that the production of the document or giving of the information may tend to incriminate the practitioner or firm.

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- (4) If a practitioner or firm, before producing a document or giving information, objects to the Legal Ombudsman on the ground that the production of the document or giving of the information may tend to incriminate the practitioner or firm, the document or information is inadmissible in evidence in any proceeding against them for an offence, other than—
- (a) an offence in relation to the keeping of trust accounts or the receipt of trust money; or
  - (b) perjury or an offence in relation to the giving of false or misleading information.

**84. Report of investigation**

- (1) The Legal Ombudsman must submit a written report of an investigation under this Division to the Attorney-General.
  - (2) If a period of time for submitting a report is specified under section 82(4), the report must be submitted within that period.
  - (3) The report—
    - (a) must contain reasons for the findings contained in it; and
    - (b) may contain any recommendations the Legal Ombudsman thinks fit.
  - (4) In considering whether to make recommendations, and if so, the content of those recommendations, the Legal Ombudsman must take into account—
    - (a) whether, in his or her opinion, the subject-matter of the investigation has the effect of lessening competition in a market for legal services; and
    - (b) if it does, whether there is any public benefit that outweighs the lessening of competition and, if so, the nature of that benefit.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 3—The Manner of Legal Practice

s. 85

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- (5) At the same time, or as soon as practicable after, a report is given to the Attorney-General under sub-section (1), the Legal Ombudsman must give a copy of the report—
- (a) in the case of an investigation into the practice rules of the Board, to the Board;
  - (b) in the case of an investigation referred to in paragraph (b), (c) or (d) of section 82(1) in relation to an RPA, to the RPA and the Board;
  - (c) in the case of an investigation referred to in paragraph (e) of section 82(1) in relation to a legal practitioner or firm, to the practitioner or firm and to the RPA of which they are regulated practitioners (or the Board, if they are regulated practitioners of the Board).

**85. Tabling in Parliament and government response**

- (1) The Attorney-General must cause the report of an investigation under this Division to be laid before each House of the Parliament within 7 sitting days of that House after receiving the report.
  - (2) If a report contains a recommendation that the government take any action, the Attorney-General, within 6 months after receiving the report, must report to the Parliament as to the action (if any) proposed to be taken by the government with respect to the recommendation.
  - (3) If the government does not propose to implement a recommendation of the Legal Ombudsman, the report under sub-section (2) must contain a full statement of the reasons.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

s. 86

**PART 4—INFORMATION AND LEGAL COSTS**

**Division 1—Information for clients**

**86. What information must be given to a client?**

- (1) Before being retained by a client to provide legal services or as soon as practicable after being retained, a legal practitioner or firm must give the prospective client or client a concise written statement setting out—

S. 86(1)  
amended by  
No. 79/1998  
s. 11(1)(a).

- (a) details of the method of costing the legal services, billing intervals and arrangements;  
and

- (b) the client's right to—

- (i) negotiate a costs agreement with the legal practitioner or firm; and

- (ii) receive a bill of costs from the practitioner or firm; and

- (iii) request an itemised bill within 30 days after receipt of a lump sum bill.

\* \* \* \* \*

S. 86(2)  
repealed by  
No. 79/1998  
s. 11(1)(b).

- (3) Before being retained by a client to provide legal services or as soon as practicable after being retained, a legal practitioner or firm must give the prospective client or client a concise written statement setting out—

S. 86(3)  
amended by  
No. 79/1998  
s. 11(1)(c).

- (a) the name of the legal practitioner who will primarily provide the legal services (except in the case of a sole practitioner who is to provide the legal services personally) and whether that person practises as a principal or an employee;

S. 86(3)(a)  
amended by  
No. 102/1997  
s. 16(1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 87**

- (b) an estimate of the total legal costs, if reasonably practicable;
  - (c) if it is not reasonably practicable to estimate the total legal costs, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs;
  - (d) if the legal services involve or are likely to involve litigation, an estimate of—
    - (i) the range of costs that may be recovered if the client is successful in that litigation; and
    - (ii) the range of costs the client may be ordered to pay if they are unsuccessful;
  - (e) the client's right to progress reports in accordance with section 92;
  - (f) the avenues that are open to the client in the event of a dispute or complaint in relation to legal costs or the provision of the legal services;
  - (g) the name and address of the RPA of which the practitioner or firm is a regulated practitioner (or the address of the Board, if they are regulated practitioners of the Board).
- (4) The statements required by section 86(1) and (3) may be combined into a single statement.

**S. 86(4)**  
**inserted by**  
**No. 79/1998**  
**s. 11(2).**

**87. Information if another legal practitioner is to be retained**

- (1) If a legal practitioner or firm intends to retain another legal practitioner or firm on behalf of a client the first legal practitioner or firm must give the client a statement setting out the details specified in section 86(1)(a) and (3)(b) and (c) in

relation to the other legal practitioner or firm, in addition to any information required to be given to the client under section 86.

- (2) A legal practitioner or firm retained or to be retained on behalf of a client by another legal practitioner or firm is not required to give a statement to the client under section 86, but must disclose to the first legal practitioner or firm on request the information necessary for the first legal practitioner or firm to comply with this section.
- (3) A statement under this section must be given in writing before the other practitioner or firm is retained except in urgent circumstances, in which case it may be given orally before they are retained and confirmed in writing as soon as practicable afterwards.

#### **88. Form of statements**

- (1) Statements under this Division must be expressed in clear plain language and may be in a language other than English if the client is more familiar with that language.
- (2) If the legal practitioner or firm is aware that the client is unable to read, the practitioner or firm must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written statements.

#### **89. Changes must be notified**

A legal practitioner or firm must notify the client of any substantial change to anything included in a statement under section 86, 87 or 90(2) as soon as practicable after the legal practitioner or firm becomes aware of that change.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 90**

**90. Exceptions to requirement for information**

- (1) A statement under section 86, 87 or 89 is not required to be given in any of the following cases—
- (a) if the total legal costs, excluding disbursements, are not likely to exceed \$750;
  - (b) if the client has received one or more statements under section 86(1) and (3) from the legal practitioner or firm in the previous 12 months and agrees in writing to waive the right to a statement;
  - (c) if the client is—
    - (i) a public company, a subsidiary of a public company, a foreign company, a subsidiary of a foreign company or a registered Australian body (within the meaning of the Corporations Act); or
    - (ii) a current practitioner or firm; or
    - (iii) a partnership at least one of the members of which is a member of the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia; or
    - (iv) a financial institution; or
    - (v) a trustee in their capacity as such;
  - (d) if the client is a Minister acting in his or her capacity as such, a government department or a public authority.

S. 90(1)(b)  
amended by  
Nos 102/1997  
s. 16(2)(a)(i),  
79/1998  
s. 11(3)(a)(i)(ii).

S. 90(1)(c)  
amended by  
No. 102/1997  
s. 16(2)(a)(ii),  
substituted by  
No. 79/1998  
s. 11(3)(b).

S. 90(1)(c)(i)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 72.3).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

<b>s. 91</b>
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- (2) Despite sub-section (1)(a), if a legal practitioner or firm becomes aware that the total legal costs are likely to exceed \$750, the practitioner or firm must give the client a statement including the matters in section 86(1) and (3) as soon as practicable.
- (3) Nothing in this section affects or takes away from any client's right—
  - (a) to progress reports in accordance with section 92;
  - (b) to obtain reasonable information from the legal practitioner or firm in relation to any of the matters specified in section 86 or 87;
  - (c) to negotiate a costs agreement with a legal practitioner or firm and to obtain a bill of costs from the practitioner or firm.

**S. 90(2)**  
**amended by**  
**No. 102/1997**  
**s. 16(2)(b).**

**91. Effect of failure to give information**

If a legal practitioner or firm does not give to a client any information required to be given by this Division—

- (a) on an assessment of a bill of costs, the assessed amount of the bill may be reduced by an amount considered by the person conducting the assessment to be proportionate to the seriousness of the failure to give the information;
- (b) in determining a dispute in relation to legal costs, the Tribunal may reduce the amount of the legal costs by an amount considered by it to be proportionate to the seriousness of the failure to give the information.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

s. 92

S. 92  
amended by  
No. 79/1998  
s. 11(4).

**92. Progress reports**

A legal practitioner or firm, if so requested by a client, must give the client a written report of the progress of the matter in relation to which the practitioner or firm is retained.

**Division 2—Legal costs generally**

**93. On what basis are legal costs recoverable?**

Legal costs are recoverable—

- (a) under a costs agreement made in accordance with Division 3; or
- (b) in the absence of a costs agreement, in accordance with an applicable practitioner remuneration order or scale of costs; or
- (c) if neither paragraph (a) or (b) applies, according to the reasonable value of the legal services provided.

S. 93(b)  
amended by  
No. 102/1997  
s. 47.

**94. Security for legal costs**

A legal practitioner or firm may take security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

**95. Interest on unpaid legal costs**

A legal practitioner or firm may charge interest on legal costs, at a rate not exceeding the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**, from the period beginning 30 days after payment is demanded until the legal costs are paid.

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**Division 3—Costs agreements**

**96. Making costs agreements**

- (1) A cost agreement may be made—
  - (a) between a client and a legal practitioner or firm retained by the client; or
  - (b) between a client and a legal practitioner or firm retained on behalf of the client by another legal practitioner or firm; or
  - (c) between a legal practitioner or firm and another legal practitioner or firm that retained that practitioner or firm on behalf of a client.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer that is accepted in writing or by other conduct.

**97. Costs agreements may be conditional on success**

- (1) A costs agreement may provide that the payment of some or all of the legal costs is contingent on the successful outcome of the matter to which those costs relate.
- (2) An agreement referred to in sub-section (1) is called a "conditional costs agreement".
- (3) A conditional costs agreement may relate to proceedings in any court or tribunal, except criminal proceedings or proceedings under the Family Law Act 1975 of the Commonwealth.
- (4) A conditional costs agreement—
  - (a) must set out the circumstances that constitute a successful outcome of the matter; and

- (b) may exclude disbursements from the legal costs that are payable only on the successful outcome of the matter.
- (5) A legal practitioner or firm must not enter into a conditional costs agreement unless the practitioner or a partner of the firm has a reasonable belief that a successful outcome of the matter is reasonably likely.

**98. Uplifted fees are allowed**

- (1) A conditional costs agreement may provide for the payment of a premium on the legal costs otherwise payable under the agreement on the successful outcome of the matter in respect of which the agreement is made.
- (2) The premium must be a specified percentage of the legal costs otherwise payable, and must be separately identified in the agreement.
- (3) A legal practitioner or firm must not enter into a conditional costs agreement under which a premium, other than a specified percentage not exceeding 25% of the costs otherwise payable, is payable on the successful outcome of any matter involving litigation.

Penalty: 100 penalty units.

**99. Contingency fees are prohibited**

- (1) A legal practitioner or firm must not enter into a costs agreement under which the amount payable to the legal practitioner or firm under the agreement, or any part of that amount, is calculated by reference to the amount of the award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

Penalty: 100 penalty units.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

s. 101

- (2) Sub-section (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs of a court or tribunal.

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**S. 100**  
repealed by  
No. 79/1998  
s. 12.

**101. Effect of costs agreement**

- (1) Subject to this Division and Division 4, a costs agreement may be enforced in the same way as any other contract.
- (2) To the extent that it provides for legal costs to be paid according to a practitioner remuneration order or scale of costs of a court or tribunal, a costs agreement is subject to assessment under Division 5.
- (3) The procedure in Division 1 of Part 5 may be used to resolve a dispute over an amount claimed to be payable to a legal practitioner or firm under a costs agreement unless the practitioner or firm has commenced proceedings for recovery of the disputed amount.

**102. Certain costs agreements are void**

- (1) A costs agreement that contravenes any provision of this Division is void.
- (2) Subject to sub-section (3), legal costs under a void costs agreement are recoverable as set out in section 93(b) and (c).
- (3) A legal practitioner or firm that has entered into a costs agreement in contravention of section 97(5), 98(3) or 99 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 103**

- (4) If a legal practitioner or firm does not repay an amount required by sub-section (3) to be repaid, the person entitled to be repaid may recover the amount from the practitioner or firm as a debt in a court of competent jurisdiction.

**103. Cancellation of costs agreement**

**S. 103(1)**  
**amended by**  
**No. 9/1999**  
**s. 17(a).**

- (1) On application by a client, the Tribunal, constituted by the registrar or a deputy registrar, may order that a costs agreement be cancelled if satisfied—
- (a) that the client was induced to enter into the agreement by the fraud or misrepresentation of the legal practitioner or firm; or
  - (b) that the legal practitioner or firm has been guilty of misconduct or unsatisfactory conduct in relation to the provision of legal services to which the agreement relates; or
  - (c) that the agreement is not fair and reasonable.
- (2) The Tribunal may adjourn the hearing of an application under this section pending the completion of any investigation or charge in relation to the conduct of the legal practitioner or firm.
- (3) If the Tribunal orders that a costs agreement be cancelled, it may make such order as it thinks fit in relation to the payment of legal costs the subject of the cancelled agreement, taking into account the seriousness of the conduct of the legal practitioner or firm.
- (4) The Tribunal may order the payment of the costs of and incidental to a hearing under this section and, for that purpose, sections 162 and 164 apply accordingly.

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**104. Appeal to Full Tribunal**

- (1) Any party may appeal to the Full Tribunal from an order of the Tribunal under section 103 by lodging a written notice of appeal with the registrar within 21 days after receiving a copy of the order.
- (2) The Full Tribunal is to hear the appeal by way of a rehearing and may make any order that the Tribunal could have made under section 103 at first instance.
- (3) Sections 165, 168 and 169(2), (3) and (4) apply to an appeal under this section.

**105. Appeal to Court of Appeal**

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under section 104.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal<sup>14</sup> runs from the time when the party receives the written reasons.

**Division 4—Bills of costs**

**106. Legal costs cannot be recovered unless bill of costs has been served**

- (1) A legal practitioner or firm must not commence legal proceedings to recover legal costs from a person until at least 30 days after the practitioner or firm has given a bill of costs to the person in accordance with section 107.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 107**

- (2) A court of competent jurisdiction may make an order authorising a legal practitioner or firm to commence legal proceedings against a person sooner if satisfied that—
  - (a) the practitioner or firm has given a bill of costs to the person in accordance with section 107; and
  - (b) the person is about to leave Victoria.
- (3) A court or tribunal before which any proceedings are brought in contravention of sub-section (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This section applies whether or not the legal costs are the subject of a costs agreement.

**107. Bill of costs**

- (1) A bill of costs may be in the form of a lump sum bill or an itemised bill.
- (2) A bill of costs—
  - (a) must be signed by—
    - (i) the legal practitioner; or
    - (ii) another legal practitioner authorised by the legal practitioner; or
    - (iii) an approved clerk; or
  - (b) in the case of a firm, must be signed by a partner (in the name of the partner or the firm); or
  - (c) in the case of an incorporated practitioner, must—
    - (i) be signed by a director; or
    - (ii) be sealed by the practitioner in accordance with its constitution.

S. 107(2)(a)  
substituted by  
No. 102/1997  
s. 17.

S. 107(2)(c)(ii)  
amended by  
No. 52/2001  
s. 14.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 108**

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- (3) A bill of costs is to be given to a person—
- (a) by delivering it personally to the person or to an agent of the person; or
  - (b) by sending it by post to the person or agent at the usual or last known business or residential address of the person or agent; or
  - (c) by leaving it for the person or agent at the usual or last known business or residential address of the person or agent with a person on the premises who is apparently at least 16 years old and apparently employed or residing there.
- (4) In this section, "**agent**" of a person means an agent, legal practitioner or firm that has authority to accept service of legal process on behalf of the person.

**108. Person may request itemised bill**

- (1) Within 30 days after receipt of a lump sum bill, a person may request the legal practitioner or firm to give them an itemised bill.
- (2) If a person makes a request under sub-section (1), the practitioner or firm must not commence any proceedings to recover those costs until at least 30 days after complying with the request.
- (3) A practitioner or firm must not charge a person for the preparation of an itemised bill requested under this section.
- (4) Section 107(2) and (3) apply to the giving of an itemised bill under this section.

**109. Interim bills**

- (1) A legal practitioner or firm may give a person an interim bill of costs covering part only of the legal services the practitioner or firm was retained to provide.



- (2) An interim bill may be assessed under Division 5.
- (3) An interim bill may be assessed under Division 5 as part of the assessment of the final bill, whether or not the interim bill has previously been assessed or paid.

**110. Defence costs in criminal matters**

- (1) Despite anything to the contrary in this Division, a legal practitioner or firm must not commence proceedings to recover, or apply any trust money towards, any legal costs for the defence of a person tried or committed for trial in the Supreme Court until—
  - (a) the practitioner or firm has—
    - (i) given, in accordance with section 107(3), an itemised bill that complies with section 107(2) to the person liable to pay the legal costs; and
    - (ii) given to an associate of a Judge of the Supreme Court—
      - (A) a copy of that bill; and
      - (B) an affidavit verifying the payment of all disbursements included in the bill; and
  - (b) the bill of costs has been assessed in the manner directed by the Supreme Court; and
  - (c) the Supreme Court has considered the assessment and made an order it thinks fit with respect to the payment of the legal costs.
- (2) For the purpose of making an order under subsection (1)(c), the Supreme Court may summon a person, on reasonable notice, to appear before it to give evidence or to produce any documents that are specified in the summons.

- (3) A court or tribunal before which any proceedings are brought in contravention of sub-section (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This section does not apply to the legal costs of a legal practitioner retained by or on behalf of a person solely as an advocate.

**111. Practitioner remuneration orders**

- (1) The Legal Costs Committee, after consultation with the Board, may make orders with respect to the costs that may be charged by legal practitioners or firms for providing non-litigious legal services.
- (2) An order under this section is called a "practitioner remuneration order".
- (3) A practitioner remuneration order may provide that legal practitioners or firms may charge—
  - (a) according to a scale of rates of commission or percentages; or
  - (b) a specified amount; or
  - (c) a maximum amount; or
  - (d) in any other way or combination of ways.
- (4) A practitioner remuneration order—
  - (a) may differ according to different classes of legal services;
  - (b) may confer a discretionary authority or impose a duty on a specified person or class of persons.

**112. Publication and availability**

- (1) The Legal Costs Committee must give a copy of each practitioner remuneration order to the Attorney-General, the Board and each RPA within 7 days after it is made.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 113**

- (2) Each RPA must publish the contents of a practitioner remuneration order in its next available official publication after it receives a copy of the order.
- (3) The Board must give a copy of a practitioner remuneration order to each of its regulated practitioners as soon as practicable after it receives a copy of the order.
- (4) A person may inspect without charge a copy of a practitioner remuneration order during ordinary office hours at the office of the Board, or purchase a copy from the Board.

**113. Disallowance**

- (1) The Attorney-General must cause a copy of each practitioner remuneration order to be laid before each House of the Parliament on or before the 6th sitting day of that House after the day on which the order is received by him or her.
- (2) A practitioner remuneration order is subject to disallowance by the Parliament and, for that purpose, sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if a practitioner remuneration order were a statutory rule within the meaning of that Act.

**114. Legal Costs Committee**

- (1) The Legal Costs Committee consists of—
  - (a) the Chief Justice of the Supreme Court or another Judge of the Supreme Court nominated by him or her;
  - (b) 2 members nominated by the Attorney-General, at least one of whom is not a legal practitioner;
  - (c) 2 members nominated by the Board;
  - (d) one member nominated by each RPA.

- (2) The Chief Justice or his or her nominee is to be chairperson of the committee.
- (3) A quorum of the committee is a majority of the members of the committee for the time being.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) Subject to this Act, the Committee may regulate its own procedure.

**Division 5—Assessment of legal costs**

**115. Person may apply for assessment of a bill of costs**

- (1) Any of the following may apply to the Taxing Master for the assessment of a bill of costs of a legal practitioner or firm—
  - (a) a person who has been given the bill of costs by the practitioner or firm;
  - (b) a person who has paid the legal costs the subject of the bill of costs;
  - (c) a person (other than the person who was given the bill of costs) who is liable to pay the legal costs the subject of the bill of costs;
  - (d) the executor, administrator or assignee of a person referred to in paragraph (a), (b) or (c);
  - (e) the trustee of the estate of a person referred to in paragraph (a), (b) or (c);
  - (f) a person interested in any property out of which a trustee, executor or administrator who is liable to pay the legal costs the subject of the bill of costs has paid, or is entitled to pay, those costs.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 116**

- (2) An application under sub-section (1) must be made—
  - (a) within 2 months after the bill of costs was given or the costs were paid (whichever is earlier); or
  - (b) if the legal practitioner or firm consents in writing, outside that time.
- (3) If an application is made under sub-section (1)—
  - (a) the assessment must take place without any money being paid into court; and
  - (b) the legal practitioner or firm must not commence any proceedings to recover the legal costs the subject of the bill of costs until the assessment is completed.

**116. Court may order assessment of costs**

- (1) The Supreme Court, on the application of a person referred to in section 115(1) or the legal practitioner or firm, may order—
  - (a) that the bill of costs be assessed by the Taxing Master;
  - (b) that the legal practitioner or firm not commence or continue any proceedings to recover the legal costs the subject of the bill until the assessment is completed;
  - (c) unless the applicant was the person to whom the bill was given, that the legal practitioner or firm give a copy of the bill to the applicant on payment of the costs of the copy.
- (2) If the application is made by a party referred to in section 115(1), the assessment must take place without any money being paid into court.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 117**

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- (3) Except in special circumstances, the Court must not order that a bill of costs be assessed if the application under sub-section (1) was made—
    - (a) after a judgment has been given in favour of the legal practitioner or firm for the recovery of the legal costs the subject of the bill; or
    - (b) more than 12 months after the bill was given or payment was demanded (as the case may be) by the legal practitioner or firm.
  - (4) Except in special circumstances, the Court must not order the assessment of a bill of costs (other than an interim bill) that has already been assessed.
  - (5) If a bill of costs (other than an interim bill) has been paid, the Court may order the assessment of the bill only in special circumstances and in any event no later than 12 months after the payment.

**117. Court may order division of payments**

- (1) If, on the application of a person referred to in section 115(1)(f), the Supreme Court orders that a bill of costs be assessed, it may order that such payments as it thinks fit in respect of the amount found to be due and the costs of the assessment, be made to or by the applicant, the legal practitioner or firm or the trustee, executor or administrator.
- (2) In considering an application referred to in sub-section (1), the Court must have regard to the extent and nature of the applicant's interest.
- (3) If an applicant referred to in sub-section (1) pays any money to the legal practitioner or firm, the applicant has the same right to be paid that money by the trustee, executor or administrator as the legal practitioner or firm had.

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**118. Procedure on assessment**

- (1) If, after proper notice that an assessment will take place, a party to the assessment does not attend, the Taxing Master may proceed with the assessment in the absence of that party.
- (2) If, before giving an itemised bill the legal practitioner or firm had previously given a lump sum bill, on an assessment the legal practitioner or firm is not bound by the amount and matters stated in the lump sum bill.
- (3) In assessing a bill in relation to non-litigious legal services, the Taxing Master must apply the practitioner remuneration order (if any) that applies to those services.
- (4) In assessing a bill for preparing a document, the Taxing Master must have regard to the skill, labour, expense and responsibility involved.

**119. Costs of assessment**

- (1) The Taxing Master must assess the costs of an assessment.
- (2) Unless the Taxing Master otherwise orders and subject to sub-section (3)—
  - (a) if the bill of costs is reduced on assessment by one-sixth or more, the legal practitioner or firm must pay the costs of the assessment; or
  - (b) if not, the other party must pay them.
- (3) The Taxing Master may refer to the Supreme Court any special circumstances relating to a bill or to the assessment of a bill and the Court may make any order it thinks fit concerning the costs of the assessment.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 4—Information and Legal Costs

**s. 120**

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**120. Review of assessment<sup>15</sup>**

A person may apply to the Supreme Court for an order for the review of the assessment of a bill of costs.

**121. Legal costs subject to a costs dispute are not assessable**

Despite anything to the contrary in this Division, legal costs that are or have been the subject of a costs dispute under Division 1 of Part 5 are not assessable under this Division.

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 122**

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**PART 5—DISPUTES WITH CLIENTS AND DISCIPLINE**

**Division 1—Disputes between clients and practitioners or firms**

**122. What is a dispute?**

(1) Any of the following is a "dispute" for the purpose of this Division—

**S. 122(1)(a)**  
**substituted by**  
**No. 79/1998**  
**s. 13(1)(a).**

- (a) a dispute in relation to legal costs not exceeding \$15 000 in respect of any one matter—
  - (i) between a legal practitioner or firm and a person who is charged with those costs or is liable to pay those costs (other than under a court or tribunal order for costs); or
  - (ii) between a legal practitioner or firm and a beneficiary under a will or trust in relation to which the legal practitioner or firm has provided legal services in respect of which those costs are charged;
- (b) a claim that a person has suffered pecuniary losses as a result of an act or omission by a legal practitioner or firm in the provision of legal services to the person, other than loss in respect of which a claim lies against the Fidelity Fund;
- (c) any other genuine dispute between a person and a legal practitioner or firm arising out of, or in relation to, the provision of legal services to the person by the practitioner or firm.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 123**

\* \* \* \* \*

**S. 122(2)**  
**repealed by**  
**No. 79/1998**  
**s. 13(1)(b).**

**123. How is dispute resolution initiated?**

- (1) A client may initiate the dispute resolution process by lodging a written request, in the form (if any) approved by the Legal Ombudsman, setting out the details of the dispute and the name and address of the legal practitioner or firm to whom the dispute relates—
  - (a) with the RPA of which the legal practitioner or firm was a regulated practitioner at the time the matters that gave rise to the dispute arose; or
  - (b) with the Board, if—
    - (i) the RPA referred to in paragraph (a) is no longer accredited; or
    - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the matters that gave rise to the dispute arose.
- (2) Subject to sub-section (3), a request in relation to—
  - (a) a costs dispute must be made within 6 months after the legal costs were payable by the client;
  - (b) a dispute referred to in section 122(1)(b) must be made within 6 years after the alleged act or omission to which the dispute relates;
  - (c) a dispute referred to in section 122(1)(c) must be made within 6 years after the subject-matter of the dispute first arose.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 124**

- (3) An RPA or the Board may accept a request in relation to a costs dispute made outside the period referred to in sub-section (2)(a) if satisfied—
  - (a) that there was a reasonable cause for the delay in making the request; or
  - (b) that it is otherwise in the public interest to do so.
- (4) A request cannot be made if proceedings have been commenced by any person in relation to the subject-matter of the dispute including, in the case of a costs dispute, proceedings for an assessment of costs under Division 5 of Part 4.
- (4A) If a request is made before proceedings referred to in sub-section (4) have been commenced but proceedings are then commenced before the person commencing them has notice of the request, the request lapses on the commencement of the proceedings.
- (5) The RPA or the Board must, and the Legal Ombudsman may, give reasonable assistance to a client in formulating a request.
- (6) The RPA or the Board must give written notice of receipt of a request to—
  - (a) the legal practitioner or firm to whom the dispute relates; and
  - (b) the Legal Ombudsman—as soon as practicable after the request is lodged.

S. 123(4A)  
inserted by  
No. 79/1998  
s. 13(2).

**124. Other proceedings stayed**

- (1) Subject to sub-section (2)—
  - (a) a legal practitioner or firm must not commence proceedings in relation to the subject-matter of a dispute after receiving notice of a request under section 123(6);

S. 124(1)  
amended by  
No. 52/1999  
s. 4.

(b) a client must not commence proceedings in relation to the subject-matter of a dispute after lodging a request under section 123(1)—

until the dispute is determined or dismissed and any appeal rights are exhausted.

- (2) Nothing in sub-section (1) prevents a legal practitioner or firm commencing proceedings (except proceedings against the client) on the lawful instructions of the client or a person other than the client.
- (3) A court or tribunal before which any proceedings are brought in contravention of sub-section (1) must stay those proceedings on the application of a party, or on its own initiative.

**125. Lodgement of disputed legal costs with RPA or Board**

- (1) Subject to sub-section (2), a client who lodges a request in relation to a costs dispute must also lodge the unpaid amount of the legal costs with the RPA or the Board.
- (2) The RPA or the Board may determine in any case that a client need not lodge a disputed amount, or may lodge an amount less than the disputed amount, if the RPA or the Board is satisfied that lodgement would cause the client undue hardship.
- (3) The RPA or the Board must refuse to accept a request in relation to a costs dispute unless the client complies with this section.
- (4) The RPA or the Board must notify the Legal Ombudsman of a refusal to accept a request under this section.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 126**

S. 125(5)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.5(a)).

- (5) The RPA or the Board must cause money lodged under this section to be placed on deposit in an interest-bearing account with an authorised deposit-taking institution in the name of the RPA or the Board.

S. 125(6)  
amended by  
No. 79/1998  
s. 13(3)(a),  
11/2001  
s. 3(Sch.  
item 39.5(b)).

- (6) Money in the account, including interest earned on money deposited in the account, is to be paid (after the deduction of any relevant government duties and authorised deposit-taking institution charges and fees)—
- (a) if the dispute is successfully settled by the RPA or the Board or by conciliation, as agreed by the parties; or
  - (b) if the dispute is not successfully settled by the RPA or the Board or by conciliation and proceeds to the Tribunal, in accordance with the order of the Tribunal under section 133; or
  - (c) if the client withdraws the request or does not refer the dispute to the Tribunal under section 128(2), to the legal practitioner or firm.

**126. What does the RPA or the Board do with the dispute?**

- (1) An RPA or the Board must attempt to settle a dispute and may take any action it considers necessary to assist the parties to reach agreement.
- (2) If the RPA or the Board considers that a dispute raises a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or a firm, the RPA or the Board may—
  - (a) treat the request as a complaint by the client under Division 2; and
  - (b) investigate the matter under Division 3.

- (3) Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in proceedings before the Tribunal or any other proceedings relating to the subject-matter of the dispute.

**127. Settlement agreements**

- (1) If the parties reach agreement in relation to the subject-matter of a dispute—
  - (a) the RPA or the Board must prepare a written record of the agreement; and
  - (b) the record must be signed by or on behalf of each party and certified by the RPA or the Board; and
  - (c) the RPA or the Board must give each party a copy of the signed and certified record; and
  - (d) the RPA or the Board must notify the Legal Ombudsman that the parties have reached agreement.
- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the signed and certified record free of charge in the Magistrates' Court.
- (3) On filing, the record must be taken to be an order of the Magistrates' Court in accordance with its terms, and may be enforced accordingly.
- (4) A record may be filed only once under subsection (2).

**128. What happens if dispute is not settled?**

- (1) If, having made reasonable attempts to settle a dispute, an RPA or the Board is satisfied that the parties cannot reach agreement, it may give written notice to that effect to each party and the Legal Ombudsman.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 129**

**S. 128(2)**  
**amended by**  
**No. 79/1998**  
**s. 13(3)(b).**

- (2) Within 60 days after receiving a notice under sub-section (1), a party may refer the dispute to the Tribunal by lodging with the registrar a written referral and the prescribed fee (if any)<sup>16</sup>.
- (3) The registrar must give written notice of a referral to the other party, the Legal Ombudsman and the RPA or Board (as the case may be) as soon as practicable after lodgement.
- (4) The registrar must refer a dispute to a conciliator as soon as practicable after a referral in relation to the dispute has been lodged under sub-section (2).

**129. Conciliation of disputes**

- (1) A conciliator must attempt to settle a dispute by conciliation and, for that purpose, may arrange and conduct a conference of the parties to the dispute.
- (2) A conciliator must give each party at least 14 days' written notice of the time and place for a conference.
- (3) A party is entitled to attend a conference personally and to be represented at a conference by a legal practitioner or, with the leave of the conciliator, by any other person.
- (4) If a conciliator considers that a dispute raises a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or a firm, the conciliator may refer the dispute—
  - (a) to the RPA of which the legal practitioner or firm was a regulated practitioner at the time the matter occurred; or
  - (b) to the Board, if—
    - (i) the RPA referred to in paragraph (a) is no longer accredited; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 130**

- (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the matter occurred—

for investigation under Division 3.

- (5) A dispute referred under sub-section (4) for investigation is to be treated as a complaint by the client.
- (6) Subject to section 131, evidence of anything said or done in the course of a conciliation is not admissible in proceedings before the Tribunal or any other proceedings relating to the subject-matter of the dispute.

**130. Conciliation agreements**

- (1) If, following conciliation, the parties to the dispute reach agreement with respect to the subject-matter of the dispute—
  - (a) the conciliator must prepare a written record of the agreement; and
  - (b) the record must be signed by or on behalf of each party and certified by the conciliator; and
  - (c) the conciliator must give each party and the registrar a copy of the signed and certified record.
- (2) Subject to sub-section (3), the registrar must register the record of agreement and give a certified copy of the registered record to each party, the Legal Ombudsman and the RPA or Board that originally handled the dispute.
- (3) If the registrar considers that it may not be practicable to enforce, or to supervise compliance with, a conciliation agreement, the registrar may refuse to register the record of agreement and may refer the matter back to the conciliator and the parties for further conciliation.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 131**

- (4) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified registered record free of charge in the Magistrates' Court.
- (5) On filing, the record must be taken to be an order of the Magistrates' Court in accordance with its terms, and may be enforced accordingly.
- (6) A record may be filed only once under subsection (4).

**131. What happens if a party does not attend a conference?**

- (1) If a party does not attend a properly convened conference under section 129, the conciliator, within 7 days after the date of the conference—
  - (a) if the non-attending party is the client, may give written notice to the registrar requesting that the dispute be dismissed and give a copy of the notice to the client;
  - (b) if the non-attending party is the legal practitioner or firm, may give written notice to the registrar requesting the Tribunal to make an order it could make under section 133 and give a copy of the notice to the legal practitioner or firm.
- (2) Unless the non-attending party satisfies the registrar within 7 days after the date of the notice that there was a reasonable excuse for the non-attendance, the Tribunal, constituted by the registrar or a deputy registrar—
  - (a) if that party is the client, must dismiss the dispute;
  - (b) if that party is the legal practitioner or firm, may make an appropriate order.

**S. 131(2)**  
**amended by**  
**No. 9/1999**  
**s. 17(a).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

s. 132

- (3) The Tribunal need not have a hearing before dismissing a dispute or making an order under sub-section (2).

**132. What happens if conciliation is not successful?**

If a conciliation is not successful (other than in the circumstances set out in section 131)—

- (a) the conciliator must give the registrar and the parties written notice that conciliation has been unsuccessful; and
- (b) the Tribunal, constituted by the registrar or a deputy registrar, must hear and determine the dispute.

S. 132(b)  
amended by  
No. 9/1999  
s. 17(b).

**133. What may the Tribunal decide?**

- (1) After hearing the dispute, the Tribunal may make any one or more of the following orders—
- (a) an order that the legal practitioner or firm pay to the client as compensation a specified amount not exceeding \$15 000 within a specified time ("compensation order");
  - (b) in a costs dispute—
    - (i) an order that the client pay the amount of legal costs in dispute or that the legal practitioner or firm reduce the amount of legal costs by a specified amount (not exceeding the amount in dispute);
    - (ii) an order that the client pay interest on the amount of legal costs in dispute at a rate not exceeding the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**;
  - (c) an order that the legal practitioner or firm waive or repay the whole or a specified part of legal costs charged to the client for any specified legal services;

S. 133(1)(b)  
substituted by  
No. 79/1998  
s. 13(3)(c).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 134**

- (d) an order that the legal practitioner or firm provide specified legal services to the client either free of charge or at a specified cost;
  - (e) an order that the legal practitioner or firm waive any lien held over documents belonging to the client and deliver the documents to the client within a specified time;
  - (f) any other order the Tribunal thinks fit.
- (2) A compensation order does not affect the right of a client to recover damages for pecuniary loss, but a court in making an award of damages must take the compensation order into account.
- (3) If a client has lodged an amount with an RPA or the Board under section 125, an order under sub-section (1) must include directions as to the payment of that money.
- (4) If the Tribunal makes an order under sub-section (1)(b)(ii), the interest is payable from the day specified by the Tribunal, being a day on or after the later of—
- (a) the day on which the client initiated the dispute resolution process in respect of the costs dispute; and
  - (b) 30 days after payment of the costs in dispute was demanded.

S. 133(4)  
inserted by  
No. 79/1998  
s. 13(4).

**134. Costs of hearing**

- (1) Subject to this section, each party is to bear their own costs of a hearing of a dispute by the Tribunal.
- (2) If the Tribunal considers that a party to a dispute has behaved unreasonably in relation to the hearing, the Tribunal may make an order that the party pay all or a specified part of the costs of the

hearing of the other party or of the Tribunal, or both.

- (3) If the Tribunal considers that the dispute is frivolous, vexatious, misconceived or lacking in substance, the Tribunal may make an order that the client pay the costs of the hearing of the practitioner or firm and of the Tribunal.
- (4) The Tribunal must not make an order awarding costs against a party under sub-section (2) or (3) without giving that party a reasonable opportunity to be heard.

#### **135. Enforcement of orders**

- (1) The registrar must cause a copy of an order made under this Division, certified by the registrar, to be given to each party to the dispute, the Legal Ombudsman and the RPA or Board that originally handled the dispute.
- (2) Any party, after giving written notice to the other party, may enforce the order by filing a copy of the signed and certified order free of charge in the Magistrates' Court.
- (3) On filing, the order must be taken, for the purpose of enforcement, to be an order of the Magistrates' Court in accordance with its terms.
- (4) An order may be filed only once under sub-section (2).

#### **136. Suspension of order pending appeal**

- (1) On the application of a party intending to appeal against an order of the Tribunal under this Division, the chairperson or a deputy chairperson of the Tribunal may order that the operation of that order be suspended pending the determination of the appeal, or for a period specified in the order.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 136A**

- (2) An order under sub-section (1) may be unconditional or subject to any conditions the person making it thinks fit.

S. 136A  
inserted by  
No. 52/1999  
s. 5.

**136A. More appropriate forum**

- (1) At any time, the Tribunal constituted by the registrar or a deputy registrar or the Full Tribunal may dismiss a dispute if it considers that the subject-matter of the dispute would be more appropriately dealt with by a court.
- (2) A dispute may be dismissed on the application of a party or on the Tribunal's own initiative.
- (3) If the Tribunal dismisses a dispute, it may refer the matter to the relevant court if it considers it appropriate to do so.

**Division 2—Complaints about practitioners' and firms' conduct**

**137. What are misconduct and unsatisfactory conduct?**

In this Part—

**"misconduct"** means—

S. 137 def. of  
"misconduct"  
amended by  
No. 102/1997  
s. 18(1).

- (a) misconduct by a legal practitioner or firm in the course of engaging in legal practice, including—
- (i) wilful or reckless contravention of this Act, the regulations or practice rules that apply to the practitioner or firm or any other Act that relates to legal practice;
- (ii) wilful or reckless failure to comply with a condition or restriction to which a practising certificate held by the legal practitioner is subject;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

s. 137

- (iii) wilful or reckless failure to comply with an undertaking given to a court or tribunal or the Legal Ombudsman, the Board or an RPA;
- (iv) unsatisfactory conduct that amounts to a substantial or consistent failure to reach reasonable standards of competence and diligence;
- (v) the charging of grossly excessive legal costs; or
- (b) conduct by a legal practitioner or firm that is unconnected with legal practice but that would justify a finding that the practitioner or firm is not of good character or is otherwise unsuited to engage in legal practice;

**"unsatisfactory conduct"** means—

- (a) conduct by a legal practitioner or firm in the course of engaging in legal practice that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner or firm; or
- (ab) conduct by a legal practitioner or firm in the course of engaging in legal practice that would be regarded by a legal practitioner or firm in good standing as being unacceptable, including—
  - (i) conduct unbecoming a legal practitioner or firm;
  - (ii) unprofessional conduct; or

S. 137 def. of  
"un-  
satisfactory  
conduct"  
amended by  
No. 79/1998  
s. 14.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 138**

- (b) contravention of this Act, the regulations or practice rules that apply to the practitioner or firm or any other Act that relates to legal practice, not amounting to misconduct; or
- (c) failure to comply with a condition or restriction to which a practising certificate held by the legal practitioner is subject, not amounting to misconduct; or
- (d) failure to pay a premium or an instalment of premium due under a contract of professional indemnity insurance, not amounting to misconduct.

**138. Who may complain?**

- (1) Any person may make a complaint about the conduct of a legal practitioner or firm—
  - (a) to the Legal Ombudsman; or
  - (b) to the RPA of which the legal practitioner or firm was a regulated practitioner at the time the conduct allegedly occurred; or
  - (c) to the Board, if—
    - (i) the RPA referred to in paragraph (b) is no longer accredited; or
    - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the conduct allegedly occurred.
- (2) An RPA or the Board may make a complaint to the Legal Ombudsman about the conduct of a regulated practitioner.
- (3) An RPA or the Board must notify the Legal Ombudsman as soon as practicable after receiving a complaint under sub-section (1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

s. 139

- (4) As soon as practicable after receiving a complaint under sub-section (1), the Legal Ombudsman must notify the RPA or the Board of which the legal practitioner the subject of the complaint is a regulated practitioner.

**139. When may a complaint be made?**

- (1) Subject to sub-section (2), a complaint may not be made more than 6 years after the conduct complained of is alleged to have occurred.
- (2) The Legal Ombudsman, an RPA or the Board may accept a complaint made more than 6 years after the conduct is alleged to have occurred if satisfied—
- (a) that there was a reasonable cause for the delay in making the complaint; or
  - (b) that it is otherwise in the public interest to do so.

**140. Form of complaint**

- (1) A complaint must—
- (a) be in writing in the form (if any) approved by the Legal Ombudsman; and
  - (b) identify the complainant and the legal practitioner or firm about whom the complaint is made; and
  - (c) give details of the alleged conduct of the practitioner or firm; and
  - (d) if compensation is claimed, specify to the best of the complainant's knowledge any pecuniary loss suffered.
- (2) The Legal Ombudsman, an RPA or the Board must give reasonable assistance to a person in formulating a complaint.



- (3) The Legal Ombudsman, an RPA or the Board may require a complainant to give further details of the complaint and may require the complainant to verify any details of the complaint by statutory declaration or in another manner specified by the Legal Ombudsman, RPA or Board.
- (4) A requirement under sub-section (3) must be in writing and must allow the complainant a reasonable time to comply.

**141. Dismissal of unjustified complaints**

- (1) The Legal Ombudsman, an RPA or the Board may dismiss a complaint, by giving written notice to the complainant, if satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance.
- (2) The notice must include the reasons for the dismissal.
- (3) An RPA or the Board must notify the Legal Ombudsman as soon as practicable after dismissing a complaint under this section, including the reasons for the dismissal.
- (4) If an RPA or the Board dismisses a complaint under this section, the complainant may refer the complaint to the Legal Ombudsman in writing within 30 days after receiving notice of the dismissal.

**142. Complaint treated as dispute in some circumstances**

- (1) If the Legal Ombudsman considers that a complaint—
  - (a) does not raise a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or firm; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 142**

- (b) raises matters that could constitute a dispute—

the Legal Ombudsman must refer the complaint—

- (c) to the RPA of which the legal practitioner or firm was a regulated practitioner at the time the matters referred to in the complaint arose; or

- (d) to the Board, if—

- (i) the RPA referred to in paragraph (c) is no longer accredited; or

- (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the matters referred to in the complaint arose.

- (2) If an RPA or the Board considers that a complaint—

- (a) does not raise a matter of conduct that may amount to misconduct or unsatisfactory conduct by a legal practitioner or firm; and

- (b) raises matters that could constitute a dispute—

the RPA or the Board must treat the complaint as a dispute between the complainant and the legal practitioner or firm and the provisions of Division 1, including section 125, apply accordingly.

- (3) A complaint referred to an RPA or the Board under sub-section (1) is to be treated as a dispute between the complainant and the legal practitioner or firm and the provisions of Division 1, including section 125, apply as if the referral to the RPA or the Board were a request by the complainant as a client under section 123(1).

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**143. Legal Ombudsman may refer complaints to RPA or Board**

The Legal Ombudsman may refer a complaint made to him or her for investigation under Division 3—

- (a) to the RPA of which the legal practitioner or firm complained of was a regulated practitioner at the time the conduct allegedly occurred; or
- (b) to the Board, if—
  - (i) the RPA referred to in paragraph (a) is no longer accredited; or
  - (ii) the legal practitioner or firm was a regulated practitioner of the Board at the time the conduct allegedly occurred.

**144. RPA or Board may refer complaints to Legal Ombudsman**

- (1) An RPA or the Board may refer a complaint made to it to the Legal Ombudsman for investigation under Division 3.
- (2) The Legal Ombudsman may decline to investigate a complaint referred to him or her by an RPA under sub-section (1) and refer the complaint back to the RPA for investigation.

**Division 3—Investigation of practitioners' and firms' conduct**

**145. Investigation by Legal Ombudsman**

- (1) The Legal Ombudsman must investigate—
  - (a) a complaint made to him or her, other than a complaint—
    - (i) dismissed by him or her under section 141; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 146**

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- (ii) referred to an RPA or the Board under section 142 or 143;
  - (b) a complaint referred to him or her by the Board under section 144(1);
  - (c) a complaint taken over from an RPA or the Board under section 148(2) or (3);
  - (d) the conduct of a legal practitioner or firm if the Board requests an investigation (whether or not the practitioner or firm is regulated by the Board).
- (2) The Legal Ombudsman may investigate—
- (a) a complaint referred to him or her by an RPA under section 144(1);
  - (b) the conduct of any legal practitioner or firm if he or she has reason to believe that the conduct may amount to misconduct or unsatisfactory conduct, even though no complaint has been made about the conduct.
- (3) An RPA or the Board must provide any reasonable assistance required by the Legal Ombudsman in the conduct of an investigation under this section, including access to, or copies of, any documents held by the RPA or the Board that relate to the matter under investigation.

**146. Investigation by RPA or Board**

- (1) An RPA or the Board must investigate—
- (a) a complaint made to it, other than a complaint—
    - (i) dismissed under section 141; or
    - (ii) to be treated as a dispute in accordance with section 142; or
-

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 147**

- (iii) referred to the Legal Ombudsman under section 144(1) (unless, in the case of an RPA, the complaint is referred back under section 144(2)); or
    - (iv) taken over by the Legal Ombudsman under section 148(2) or (3);
  - (b) a complaint referred to it by the Legal Ombudsman under section 143.
- (2) An RPA or the Board may investigate the conduct of any legal practitioner or firm at a time when that practitioner or firm was a regulated practitioner of that RPA or the Board if it has reason to believe that the conduct may amount to misconduct or unsatisfactory conduct, even though no complaint has been made about the conduct.
- (3) The Legal Ombudsman must provide any reasonable assistance required by an RPA or the Board in the conduct of an investigation under this section, including access to, or copies of, any documents held by the Legal Ombudsman that relate to the matter under investigation.

**147. Legal Ombudsman to monitor RPA and Board investigations**

- (1) The Legal Ombudsman must monitor investigations by RPAs and the Board under section 146.
- (2) An RPA or the Board must report to the Legal Ombudsman on request on the progress of an investigation it is conducting.

**148. Legal Ombudsman may give directions to RPA and Board**

- (1) The Legal Ombudsman may give written directions to an RPA or the Board on the handling of an investigation under section 146.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 149**

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- (2) If an RPA does not comply with the directions, the Legal Ombudsman must—
    - (a) report the non-compliance to the Board; and
    - (b) take over the investigation.
  - (3) If the Board does not comply with the directions, the Legal Ombudsman must take over the investigation.

**149. Practitioner or firm must provide information and documents**

- (1) The Legal Ombudsman, an RPA or the Board may require a legal practitioner or firm subject to an investigation under this Division to provide—
    - (a) a full written explanation of the practitioner's or firm's conduct; and
    - (b) any other information or documents—and to verify the explanation, information or documents by statutory declaration or another manner specified by the Legal Ombudsman, RPA or Board.
  - (2) For the purpose of an investigation under this Division, the Legal Ombudsman, an RPA or the Board may require a legal practitioner or firm that is not under investigation to provide any information or documents and to verify the information or documents by statutory declaration or another manner specified by the Legal Ombudsman, RPA or Board.
  - (3) A requirement under sub-section (1) or (2) must be in writing and must allow the practitioner or firm at least 14 days to comply.
  - (4) A practitioner or firm may not refuse to comply with sub-section (1) or (2)—
    - (a) on the ground of legal professional privilege or any other duty of confidence; or
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 150**

- (b) on the ground that the production of the record or giving of the information may tend to incriminate the practitioner or firm.
- (5) If a practitioner or firm, before producing a document or giving an explanation or information, objects to the Legal Ombudsman, the RPA or the Board on the ground that the production of the document or giving of the explanation or information may tend to incriminate the practitioner or firm, the document, explanation or information is inadmissible in evidence in any proceeding against them for an offence, other than—
  - (a) an offence against this Act; or
  - (b) any other offence in relation to keeping of trust accounts or the receipt of trust money; or
  - (c) an offence against section 314(1) of the **Crimes Act 1958** (perjury).

**150. Investigation to be conducted expeditiously**

- (1) An investigation under this Division must be conducted as expeditiously as possible.
- (2) Until an investigation arising from a complaint is completed and a decision is made under section 151, the body conducting the investigation must report its progress to the complainant and, if that body is an RPA or the Board, to the Legal Ombudsman at 6-monthly intervals.

**151. What happens after an investigation is completed?**

- (1) After completing an investigation under this Division, the Legal Ombudsman, an RPA or the Board must deal with the matter in accordance with this section.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 151**

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- (2) The Legal Ombudsman, an RPA or the Board must bring a charge in the Tribunal against the legal practitioner or firm the subject of the investigation if satisfied that there is a reasonable likelihood that the Tribunal would find the practitioner or firm guilty of misconduct.
  - (3) If the Legal Ombudsman, an RPA or the Board is satisfied that there is a reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of unsatisfactory conduct, the Legal Ombudsman, RPA or Board may—
    - (a) bring a charge in the Tribunal against the practitioner or firm; or
    - (b) with the consent of the practitioner or firm, reprimand or caution the practitioner or firm; or
    - (c) take no further action against the practitioner or firm if satisfied that—
      - (i) the practitioner or firm is generally competent and diligent; and
      - (ii) there has been no substantiated complaint (other than the complaint that led to the investigation) about the conduct of the practitioner or firm within the last 5 years.
  - (4) If the investigation arose from a complaint under which the complainant requested a compensation order, the Legal Ombudsman, an RPA or the Board may require the legal practitioner or firm to pay compensation to the complainant as a condition of deciding under sub-section (3) not to bring a charge against the practitioner or firm.
  - (5) If the Legal Ombudsman, an RPA or the Board is satisfied that there is no reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of misconduct or unsatisfactory
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 152**

conduct, the Legal Ombudsman, RPA or Board must take no further action against the legal practitioner or firm.

**152. Notice of decision**

- (1) If an investigation arose from a complaint—
  - (a) in the case of a Legal Ombudsman investigation, the Legal Ombudsman—
    - (i) must give the complainant and the RPA of which the legal practitioner or firm investigated is a regulated practitioner (or the Board, if the practitioner or firm is a regulated practitioner of the Board) written notice of his or her decision under section 151 as soon as practicable after making it, including the reasons for the decisions; and
    - (ii) if the decision is to take no further action against the practitioner or firm, must dismiss the complaint;
  - (b) in the case of an RPA or a Board investigation, the RPA or Board—
    - (i) must give the complainant and the Legal Ombudsman written notice of its decision under section 151 as soon as practicable after making it, including the reasons for the decision; and
    - (ii) if the decision is to take no further action against the practitioner or firm, must dismiss the complaint.
- (2) A notice under sub-section (1)(b) to a complainant must include a statement outlining the procedure under Division 4 for a review of the decision.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 153**

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- (3) If an investigation did not arise from a complaint—
- (a) in the case of a Legal Ombudsman investigation, the Legal Ombudsman must give the RPA of which the legal practitioner or firm investigated is a regulated practitioner (or the Board, if the practitioner or firm is a regulated practitioner of the Board or the investigation was requested by the Board under section 145(1)(d)) written notice of his or her decision under section 151 as soon as practicable after making it.
  - (b) in the case of an RPA or a Board investigation, the RPA or Board must give the Legal Ombudsman written notice of its decision under section 151 as soon as practicable after making it.
- (4) The Legal Ombudsman, an RPA or the Board must give written notice to a practitioner or firm of a decision under section 151(3)(c) or (5) not to take any further action against them.

**S. 152(4)**  
**inserted by**  
**No. 102/1997**  
**s. 18(2).**

**Division 4—Review of RPA or Board decisions**

**153. Application for review**

- (1) A complainant may apply to the Legal Ombudsman for a review of a decision of an RPA or the Board under section 151 to dismiss a complaint or to reprimand or caution the legal practitioner or firm the subject of the complaint.
- (2) An application for a review must be in writing in the form (if any) approved by the Legal Ombudsman and must be made within 3 months after the RPA or the Board notifies the complainant of the decision.

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**154. Review of decision**

- (1) The Legal Ombudsman must review the decision of an RPA or the Board in response to an application for review under section 153.
- (2) The Legal Ombudsman may review a decision of an RPA or the Board under section 151 to take no action against a practitioner or firm or to reprimand or caution a practitioner or firm on the Legal Ombudsman's own initiative.

**155. Role of RPA and Board in review**

- (1) The Legal Ombudsman must consult the body that made the decision under review as part of the review.
- (2) An RPA or the Board must provide any reasonable assistance required by the Legal Ombudsman in the conduct of a review, including access to, or copies of, any documents held by the RPA or the Board that relate to the matter under review.

**156. What may the Legal Ombudsman decide?**

- (1) After completing a review, the Legal Ombudsman may—
  - (a) confirm the decision of the RPA or the Board under review; or
  - (b) re-investigate the matter that was the subject of the decision or direct the RPA or Board to do so.
- (2) The Legal Ombudsman must notify the body that made the decision under review and, if the decision was in response to a complaint, the complainant of his or her decision on the review.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 157**

- (3) If the Legal Ombudsman decides to re-investigate the matter, the provisions of Division 3 apply as if the Legal Ombudsman had taken over the investigation of the matter.

**Division 5—Disciplinary jurisdiction of Tribunal**

**157. When may the Tribunal hear a disciplinary matter?**

- (1) The Tribunal must hear and determine a charge brought against a legal practitioner or firm by the Legal Ombudsman, an RPA or the Board in accordance with this Act and the Tribunal rules.
- (2) The Tribunal also has the disciplinary jurisdiction given under Division 4 of Part 2.

**158. Constitution of Tribunal to hear charge**

- (1) Subject to this section, a charge against a legal practitioner or firm is to be heard by the Tribunal constituted by the registrar or a deputy registrar.
- (2) A practitioner or firm may require a charge of misconduct against them to be heard by the Full Tribunal.
- (3) A body bringing a charge of misconduct may make a written request to the Tribunal, with a copy to the practitioner or firm charged, that the charge be heard by the Full Tribunal.
- (4) If a request is made under sub-section (3), the chairperson or a deputy chairperson of the Tribunal, having taken into account any objection made by the practitioner or firm, may direct that the charge be heard by the Full Tribunal.
- (5) The registrar, on his or her own initiative, may at any time refer a charge of misconduct to be heard by the Full Tribunal.

**S. 158(1)**  
**amended by**  
**No. 9/1999**  
**s. 17(b).**

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**159. Penalties for unsatisfactory conduct**

- (1) If the Tribunal finds a legal practitioner or firm guilty of unsatisfactory conduct, it may make any one or more of the following orders—
- (a) an order referred to in section 133(1)(a) to (e) as if a reference in that section to the client were a reference to the complainant;
  - (b) an order imposing a fine not exceeding \$1000;
  - (c) an order reprimanding the practitioner or firm;
  - (d) an order that the practitioner or firm receive specified management or accounting advice;
  - (e) an order that the practitioner or a partner of the firm or, if the practitioner is an incorporated practitioner, a director of the incorporated practitioner undertake a specified course of education;
  - (f) an order that the legal practice of the practitioner or firm be subject to supervision as specified in the order;
  - (g) an order that the practitioner or firm report on the legal practice of the practitioner or firm to a specified person at specified intervals;
  - (h) an order that the practitioner or firm not employ, engage or recommend a specified person or class of persons;
  - (i) an order varying the conditions of the practitioner's practising certificate or imposing further conditions or restrictions on the certificate;
  - (j) any other order the Tribunal thinks fit.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

s. 160

- (2) If the Tribunal finds a legal practitioner or firm guilty of unsatisfactory conduct, it may order that no further action be taken against the practitioner or firm.

**160. Penalties for misconduct**

- (1) If the Tribunal finds a legal practitioner or firm guilty of misconduct, it may do any one or more of the following—

- (a) make an order referred to in section 159;
- (b) in the case of the Tribunal constituted by the registrar or a deputy registrar, make an order imposing a fine not exceeding \$5000 on the practitioner or firm;
- (c) in the case of the Full Tribunal—

S. 160(1)(b)  
amended by  
No. 9/1999  
s. 17(c).

- (i) make an order imposing a fine not exceeding \$50 000 on the practitioner or firm;
  - (ii) make an order suspending the practitioner's practising certificate for a period specified in the order;
  - (iii) make an order cancelling the practitioner's practising certificate;
  - (iv) refer the practitioner to the Supreme Court with or without a recommendation that the practitioner's name be struck off the roll of practitioners;
  - (v) in the case of an incorporated practitioner, make an order that the practitioner be de-registered;
  - (vi) in the case of an interstate practitioner, make an order that the practitioner be suspended from engaging in legal practice in Victoria for a period

S. 160(1)(c)(ii)  
substituted by  
No. 102/1997  
s. 18(3)(a).

S. 160(1)(c)(iv)  
substituted by  
No. 52/1999  
s. 6(a)(i).

S. 160(1)(c)(v)  
substituted by  
No. 102/1997  
s. 18(3)(b).

S. 160(1)(c)(vi)  
inserted by  
No. 102/1997  
s. 18(3)(b).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 161**

S. 160(1)  
(c)(vii)  
inserted by  
No. 52/1999  
s. 6(a)(ii).

S. 160(2)  
repealed by  
No. 52/1999  
s. 6(b).

specified in the order or an order that  
the practitioner be prohibited from  
engaging in legal practice in Victoria;

- (vii) specify a period during which the  
practitioner may not apply for a  
practising certificate or for a practising  
certificate with particular conditions;

- (d) make any other order the Tribunal thinks fit.

\* \* \* \* \*

- (3) The Supreme Court must implement a  
recommendation of the Tribunal under sub-section  
(1)(c)(iv) unless satisfied that the Tribunal made  
an error of law in finding the practitioner guilty of  
misconduct.
- (4) An order under sub-section (1)(c)(v) may specify  
a period during which the practitioner may not  
apply to be registered again.

**161. Practitioner or firm may be found guilty of lesser  
offence**

A legal practitioner or firm charged only with  
misconduct may be found guilty instead of  
unsatisfactory conduct.

**162. Orders for costs**

- (1) The Tribunal may order the payment of the costs  
of and incidental to any hearing under this  
Division.
- (2) Subject to this section, the costs are in the  
discretion of the Tribunal.
- (3) The Tribunal must not make an order for costs  
against an RPA, the Board or the Legal  
Ombudsman unless satisfied that special  
circumstances make it appropriate to do so.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 163**

- (4) The Full Tribunal may fix the amount of costs itself or order that bills of costs be assessed or settled by the registrar or a deputy registrar.

**S. 162(4)**  
**amended by**  
**No. 9/1999**  
**s. 17(c).**

**163. Compensation orders**

- (1) A compensation order may not be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation under an order made by a court or tribunal or a payment from the Fidelity Fund.
- (2) A compensation order does not affect the right of a complainant to recover damages for pecuniary loss, but a court in making an award of damages must take the compensation order into account.

**164. Enforcement of orders**

- (1) The registrar must cause a copy of an order made by the Tribunal under this Division certified by the registrar—
- (a) to be given to each party; and
- (b) to be filed in the Magistrates' Court.
- (2) On filing, the order must be taken, for the purpose of enforcement, to be an order of the Magistrates' Court in accordance with its terms.
- (3) No charge or fee is payable for filing an order under this section.

**165. Suspension of order pending appeal**

- (1) On the application of a party intending to appeal against an order of the Tribunal constituted by the registrar or a deputy registrar under this Division, the chairperson or a deputy chairperson of the Tribunal may order that the operation of that order be suspended pending the determination of the appeal, or for a period specified in the order.

**S. 165(1)**  
**amended by**  
**No. 9/1999**  
**s. 17(c).**



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 166**

- (2) An order under sub-section (1) may be unconditional or subject to any conditions the person making it thinks fit.

**166. Publication of orders**

- (1) Subject to any order made under section 413, the details in sub-section (2) in relation to a legal practitioner or firm found guilty of misconduct or unsatisfactory conduct by the Tribunal must be published in the next annual report of the Tribunal, the next annual report of the Board and, if the practitioner or firm is a regulated practitioner of an RPA, the next available official publication of the RPA, after the later of—
- (a) the expiry of the period during which a party may appeal against the order; and
  - (b) the determination of any appeal against the order.
- (2) The details to be published are—
- (a) the name of the practitioner or firm;
  - (b) whether the practitioner or firm was found guilty of misconduct or unsatisfactory conduct and the nature of the offence;
  - (c) the order made by the Tribunal;
  - (d) the result of the appeal (if any).

**Division 6—Appeals**

**S. 167**  
amended by  
**No. 9/1999**  
**s. 17(c).**

**167. Appeal to Full Tribunal**

Any party may appeal to the Full Tribunal from an order of the Tribunal constituted by the registrar or a deputy registrar under Division 1 or Division 5 by lodging a written notice of appeal with the registrar within 21 days after receiving a copy of the order.

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**168. Security for costs of appeal**

The Full Tribunal, in special circumstances, may require an appellant to give security for the costs of an appeal before proceeding to hear the appeal.

**169. Power of Full Tribunal on appeal**

- (1) Subject to this section—
- (a) the Full Tribunal is to hear an appeal by way of a rehearing;
  - (b) in the case of a dispute, the Full Tribunal may—
    - (i) make any order that the Tribunal could have made under Division 1 at first instance (other than an order referred to in section 134); and
    - (ii) make an order for costs under section 169A;
  - (c) in the case of a charge, the Full Tribunal may make any order that the Full Tribunal could have made under Division 5 if it had heard the charge at first instance.
- (2) The Full Tribunal may dismiss an appeal without a rehearing if it is satisfied that the appeal is frivolous, vexatious, misconceived or lacking in substance.
- (3) In a rehearing, the Full Tribunal may—
- (a) have regard to the record of the hearing before the Tribunal at first instance, including the record of any evidence taken in that hearing;
  - (b) receive fresh evidence itself.
- (4) For the avoidance of doubt, it is declared that an appeal to the Full Tribunal is not required to be conducted as a hearing de novo.

**S. 169(1)(b)**  
**substituted by**  
**No. 102/1997**  
**s. 18(4).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 169A**

S. 169A  
inserted by  
No. 102/1997  
s. 19.

**169A. Orders for costs in disputes appeals<sup>17</sup>**

S. 169A(1)  
amended by  
No. 52/1999  
s. 7.

- (1) In an appeal under this Division in the case of a dispute, the Full Tribunal may order the payment of the costs of and incidental to the appeal, including the cost of obtaining a transcript of the hearing before the Tribunal at first instance.
- (2) Subject to this section, the costs are in the discretion of the Full Tribunal.
- (3) The Full Tribunal must not make an order for costs against an RPA, the Board or the Legal Ombudsman unless satisfied that special circumstances make it appropriate to do so.
- (4) The Full Tribunal may fix the amount of costs itself or order that bills of costs be assessed or settled by the registrar or a deputy registrar.

S. 169A(4)  
amended by  
No. 9/1999  
s. 17(c).

**170. Appeal to Court of Appeal**

- (1) Any party may appeal to the Court of Appeal, on a question of law, from an order of the Full Tribunal under Division 1 or 5 or this Division.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and a party then requests it to give written reasons under section 409, the time for instituting the appeal<sup>18</sup> runs from the time when the party receives the written reasons.

**Division 7—General**

**171. Application of Part**

This Part applies to any legal practitioner or firm, including—

- (a) a legal practitioner who is not a current practitioner;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

s. 171A

- (b) an incorporated practitioner;
- (c) an interstate practitioner;

S. 171(c)  
substituted by  
No. 102/1997  
s. 20.

- (d) a person who was a legal practitioner engaged in legal practice when the subject-matter of the dispute or the alleged misconduct or unsatisfactory conduct occurred but who is no longer engaged in legal practice or is no longer a legal practitioner (in which case this Part applies as if the person were still a legal practitioner).

**171A. Application of Part to foreign practitioners**

S. 171A  
inserted by  
No. 102/1997  
s. 21.

- (1) Subject to this section, this Part also applies—
  - (a) to a registered foreign practitioner; and
  - (b) to a person who was a registered foreign practitioner engaged in the practice of foreign law when the subject-matter of the dispute or the alleged misconduct or unsatisfactory conduct occurred but who is no longer such a practitioner (in which case this Part applies as if the person were still a registered foreign practitioner)—

as if a reference in this Part to a legal practitioner were a reference to the registered foreign practitioner and a reference to engaging in legal practice were a reference to engaging in the practice of foreign law.

- (2) Despite anything to the contrary in section 151(2), the Legal Ombudsman, an RPA or the Board is not in any circumstances obliged to bring a charge in the Tribunal against a registered foreign practitioner.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 5—Disputes with Clients and Discipline

**s. 172**

- (3) In determining whether disciplinary action should be taken against a registered foreign practitioner, the body responsible for taking that action may take into account whether the conduct of the practitioner was consistent with the standards of professional conduct of the legal profession in the practitioner's foreign place of registration.
- (4) If the Full Tribunal finds a registered foreign practitioner guilty of misconduct it has, in addition to its other powers under section 160, the power to make an order—
  - (a) imposing any conditions of a kind referred to in section 63M on the practitioner; or
  - (b) suspending the practitioner from engaging in the practice of foreign law for the period specified in the order; or
  - (c) cancelling the practitioner's registration.
- (5) A registered foreign practitioner who is suspended by the Tribunal is deemed not to be registered under Part 2B during the period of suspension.
- (6) An order under sub-section (4)(c) may specify a period during which the practitioner may not apply to be registered again.

**172. Power of Supreme Court to discipline practitioners**

Nothing in this Part affects or takes away from the inherent power of the Supreme Court to discipline legal practitioners.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

s. 173

**PART 6—CLIENTS' MONEY**

**Division 1—How practitioners and firms must handle trust money**

**173. Establishment of trust account**

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|---|---|
| (1) An approved clerk or a legal practitioner or firm that is authorised to receive trust money must establish a trust account in an authorised deposit-taking institution in Victoria before receiving any trust money that is required to be paid to a trust account. | S. 173(1)<br>amended by<br>Nos 102/1997<br>s. 22(1),<br>11/2001<br>s. 3(Sch.<br>item 39.6). |
| (1A) Sub-section (1) does not apply if the Board exempts the approved clerk, legal practitioner or firm from the requirement to establish a trust account.  | S. 173(1A)<br>inserted by<br>No. 102/1997<br>s. 22(2).                                      |
| (2) If one or more arrangements under section 176 are in effect, a trust account must be established and maintained in an authorised deposit-taking institution that is a party to an arrangement with the Board under that section.                                    | S. 173(2)<br>substituted by<br>No. 11/2001<br>s. 3(Sch.<br>item 39.7).                      |
| (3) A trust account may consist of one or more separate authorised deposit-taking institution accounts.   | S. 173(3)<br>amended by<br>No. 11/2001<br>s. 3(Sch.<br>item 39.8).                          |

*	*	*	*	*	S. 173(4) repealed by No. 11/2001 s. 3(Sch. item 39.9).
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 173A**

S. 173A  
inserted by  
No. 79/1998  
s. 15.

**173A. Trust account details to be notified to Board**

S. 173A(1)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.10).

- (1) Within 14 days after opening a trust account an approved clerk or a legal practitioner or firm must notify the Board of the number of the account and the name and address of the branch of the authorised deposit-taking institution at which the account is kept.

Penalty: 50 penalty units.

- (2) An approved clerk or a legal practitioner or firm must notify the Board of any changes to the information notified to the Board under sub-section (1) within 14 days after becoming aware of the change.

Penalty: 50 penalty units.

- (3) Nothing in this section applies to a separate trust account kept by a legal practitioner or firm on the instructions of any single client for the exclusive use of that client.

**174. Dealing with trust money**

- (1) Subject to sub-section (2) an approved clerk or a legal practitioner or firm that is authorised to receive trust money must deposit any trust money received by them into their trust account as soon as practicable after receipt.

- (2) Sub-section (1) does not apply—

- (a) in the case of a legal practitioner or firm, if—

- (i) the person for whom, or on whose behalf, the money is received gives the practitioner or firm a written direction, before or at the same time as the practitioner or firm receives the money,

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 174**

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- to pay the money to another person, or in accordance with the direction of another person; and
- (ii) the practitioner or firm complies with that direction;
- (b) in the case of an approved clerk, if—
- (i) the client to whom the legal services are to be provided gives the clerk a written direction, before or at the same time as the clerk receives the money, to pay the money to another person, or in accordance with the direction of another person; and
- (ii) the clerk complies with that direction;
- (c) in any case, if—
- (i) the money is in the form of a cheque payable to a person other than the legal practitioner, firm or approved clerk; or
- (ii) the Board has exempted the legal practitioner, firm or approved clerk from the requirement to establish a trust account.
- (3) A legal practitioner or firm may withdraw trust money from the trust account only—
- (a) for payment to the person for or on behalf of whom the money was received or in accordance with that person's direction; or
- (b) in accordance with this Act and the practice rules, to satisfy a claim that the practitioner or firm has against that person for legal costs; or
- (c) in accordance with a court order against that person; or

**S. 174(2)(c)**  
**inserted by**  
**No. 102/1997**  
**s. 22(3)(a).**



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

s. 174

S. 174(3)(e)  
amended by  
No. 102/1997  
s. 22(3)(b).

- (d) if the money is subject to a specific declaration of trust, for making a payment in accordance with the terms of that declaration; or
  - (e) for payment in accordance with Part 3 of the **Unclaimed Moneys Act 1962**; or
  - (f) for depositing with the Board under Division 2 for payment to the Public Purpose Fund; or
  - (g) as otherwise authorised by law.
- (4) An approved clerk may withdraw trust money from the trust account only—
- (a) in accordance with this Act and the practice rules, to satisfy a claim that a sole practitioner has against a client for legal costs in respect of which the trust money was received; or
  - (b) in accordance with a court order against such a client; or
  - (c) for payment in accordance with Part 3 of the **Unclaimed Moneys Act 1962**; or
  - (d) for depositing with the Board under Division 2 for payment to the Public Purpose Fund; or
  - (e) as otherwise authorised by law.
- (5) A legal practitioner or firm that contravenes sub-section (1) or (3), or an approved clerk who contravenes sub-section (1) or (4)—

S. 174(4)(c)  
amended by  
No. 102/1997  
s. 22(3)(c).

- (a) with intent to defraud any person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years;
- (b) in any other case, without reasonable excuse, is guilty of an offence and liable to a fine not exceeding 100 penalty units.

**175. Protection for authorised deposit-taking institutions**

- (1) Subject to sub-section (2), an authorised deposit-taking institution—
  - (a) is not to be taken to be affected with notice of any specific trust to which money deposited in a trust account is subject; and
  - (b) is not bound to satisfy itself of the due application of that money.
- (2) This section does not relieve an authorised deposit-taking institution of any liability for negligence.

S. 175(1)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.11).

S. 175(2)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.11).

**176. Board may make arrangement with authorised deposit-taking institutions**

- (1) The Board may make an arrangement with an authorised deposit-taking institution for the keeping of trust accounts.
- (2) An arrangement may provide for any one or more of the following—
  - (a) the payment of interest to the Board on the whole or any part of deposits in the trust accounts;
  - (b) the manner in which the Board is informed of amounts held in the trust accounts;

S. 176(1)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.12).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 177**

- (c) the auditing of balances in the trust accounts;
- (d) any other relevant matter.
- (3) Interest received by the Board under an arrangement must be paid to the Public Purpose Fund.
- (4) A legal practitioner, a firm or an approved clerk must comply with an arrangement under this section.

**177. Approved clerks**

- (1) An RPA may approve a natural person to receive trust money on account of the legal costs of its regulated practitioners who are sole practitioners in advance of the provision of the legal services to which those costs relate.
- (2) An approval must be in writing and notified to the Board as soon as practicable after it is given.
- (3) An approved clerk must comply with the practice rules that apply to him or her.  
Penalty: 50 penalty units.
- (4) An approved clerk must pay by the due date a contribution required to be paid under section 202(3) or a levy required to be paid under section 204.

Penalty: 100 penalty units.

**178. Unqualified trust money receipt**

- (1) A legal practitioner (other than an incorporated practitioner) who does not hold a practising certificate authorising the receipt of trust money must not receive trust money.

Penalty: Imprisonment for 2 years.

S. 178  
substituted by  
No. 102/1997  
s. 23.

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- (2) An interstate practitioner must not receive trust money unless the practitioner—
- (a) is authorised to receive trust money in the practitioner's home jurisdiction; and
  - (b) has paid the required contributions (if any) to the Fidelity Fund under section 202.

Penalty: Imprisonment for 2 years in the case of a natural person;  
240 penalty units in the case of a body corporate.

- (3) A firm, a legal practitioner or an interstate practitioner must not permit an employee of the firm or practitioner who does not hold a practising certificate authorising the receipt of trust money to receive trust money.

Penalty: 240 penalty units.

- (4) Sub-sections (1), (2) and (3) do not apply in the case of a receipt of money by a legal practitioner or interstate practitioner if the practitioner as soon as practicable after receipt—

- (a) pays the money into a trust account; or
- (b) gives the money to a legal practitioner or interstate practitioner who is authorised to receive trust money or to an approved clerk and that practitioner or clerk accepts the money.

- (5) Sub-section (3) does not apply in the case of a receipt of trust money—

- (a) by an employee (other than a legal practitioner or interstate practitioner) if the employee as soon as practicable after receipt—
  - (i) pays the money into a trust account; or

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- (ii) gives the money to a legal practitioner or interstate practitioner who is authorised to receive trust money and that practitioner accepts the money;
  - (b) by an employee who is an interstate practitioner, if the employee—
    - (i) is authorised to receive trust money in his or her home jurisdiction; and
    - (ii) has paid the required contributions (if any) to the Fidelity Fund under section 202.
  - (6) A firm must not receive trust money unless each partner of the firm whose principal place of legal practice is in Victoria (other than a partner who is a registered foreign practitioner) holds a practising certificate authorising the receipt of trust money.

Penalty: 240 penalty units.
  - (7) An incorporated practitioner must not receive trust money unless the practitioner and each legal practitioner who is a director of the practitioner hold a practising certificate authorising the receipt of trust money.

Penalty: 240 penalty units.
  - (8) A person who has been an approved clerk must not receive trust money as an approved clerk after ceasing to be an approved clerk.

Penalty: Imprisonment for 2 years.

## **Division 2—Statutory deposit with Board**

### **179. Initial deposit of trust money with the Board**

- (1) A person or firm that is required to maintain a trust account must deposit the prescribed amount with the Board out of the trust money received by the person or firm.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 180**

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- (2) The deposit must be made within 7 days after the end of the first audit year in which the prescribed amount exceeds \$3000.
  - (3) The "prescribed amount" is an amount that is 72% of the lowest daily balance of the trust account at any time during the audit year.
  - (4) The Board must pay money deposited with it under this section to the Public Purpose Fund.
  - (5) Nothing in this section applies to a separate trust account kept by a practitioner or firm on the instructions of any single client, or two or more clients if the Board so approves, for the exclusive use of that client or those clients.

**S. 179(5)**  
**substituted by**  
**No. 79/1998**  
**s. 16.**

**180. Continuing requirement to deposit**

- (1) At all times after making a deposit under section 179, the person or firm must keep deposited with the Board an amount that is not less than 72% of the sum of—
  - (a) the lowest daily balance of the trust account at any time during the current audit year or the preceding audit year; and
  - (b) the amount held on deposit with the Board on the day of the lowest daily balance.
- (2) The Board must pay money deposited with it in compliance with this section to the Public Purpose Fund.
- (3) Nothing in this section applies to a separate trust account kept by a person or firm on the instructions of another person for the exclusive use of the other person.

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**181. Repayment by Board**

- (1) Money deposited with the Board under section 179 or in compliance with section 180—
  - (a) is held on trust for the person or firm that deposited the money; and
  - (b) is repayable on demand.
- (2) Money repaid under this section is to be deposited in the recipient's trust account.

**Division 3—Record keeping, auditing and reporting**

**182. What records must be kept?**

- (1) An approved clerk or a legal practitioner or firm that is authorised to receive trust money must keep accurate records in accordance with subsection (2) of all trust money received by them.  
Penalty: 100 penalty units.
- (2) The records must—
  - (a) in the case of a legal practitioner or firm, disclose the person who paid or gave the money to the practitioner or firm and the person for or on whose behalf the money was received; and
  - (b) in the case of a clerk, disclose the legal practitioner on account of whose legal costs the money was received and the client to whom the legal services are to be provided;
  - (c) show details of each transaction involving trust money, including the date on which, or period during which, the transaction took place; and
  - (d) adequately explain each transaction involving trust money; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 182A**

(e) be kept—

- (i) in accordance with the practice rules that apply to the practitioner, firm or clerk; and
- (ii) in a manner that enables them to be conveniently and properly audited.

**182A. Board may require information about trust account balances**

**S. 182A**  
inserted by  
**No. 79/1998**  
**s. 17.**

- (1) A legal practitioner or firm or an approved clerk must, at the Board's request, inform the Board of the balance of any trust account maintained by the practitioner, firm or clerk.
- (2) Sub-section (1) does not apply to a separate trust account kept by a practitioner or firm on the instructions of any single client for the exclusive use of that client.

**183. Annual audit of trust accounts**

**S. 183**  
substituted by  
**No. 102/1997**  
**s. 24.**

- (1) A person or firm that is required to maintain a trust account must have it audited by an approved auditor in respect of each audit year in accordance with the practice rules that apply to the person or firm.
- (2) For the purposes of an audit under this section, a practitioner, a firm or an approved clerk must—
  - (a) produce for inspection by the auditor any accounting or other records relating to the practitioner's or firm's legal practice or the clerk's business; and
  - (b) give the auditor any other information the auditor reasonably requires.

Penalty: 50 penalty units.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 184**

- (3) For the purposes of an audit under this section, a financial institution, despite any duty of confidence to the contrary, must without charge—
- (a) produce for inspection by the auditor any records held by the financial institution relating to the trust account of, or any trust money deposited with it by, a practitioner, firm or an approved clerk; and
  - (b) provide the auditor with full details of any transactions relating to the trust account or trust money.

Penalty: 50 penalty units.

- (4) An auditor may make copies of, or take extracts from, any records or other documents produced to the auditor in the course of an audit.
- (5) An auditor must not knowingly employ or engage a person to assist them in the conduct of an audit unless the person has satisfactorily completed a course required by the Board under section 187.

Penalty: 20 penalty units.

**184. Annual report of trust account audit or statutory declaration**

**S. 184(1)**  
**amended by**  
**No. 9/1999**  
**s. 12(a)(i)(ii).**

- (1) A legal practitioner or firm that is authorised to receive trust money must lodge with the RPA of which they are regulated practitioners (or with the Board if they are regulated practitioners of the Board) by 28 February each year, a report of the audit of their trust account for the audit year ending on the previous 31 October.

Penalty: 100 penalty units.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 185**

- (2) An approved clerk must lodge with the RPA that approved them, by 28 February each year, a report of the audit of their trust account for the audit year ending on the previous 31 October.

**S. 184(2)**  
**amended by**  
**Nos 9/1999**  
**s. 12(a)(i)(ii).**

Penalty: 100 penalty units.

- (3) If an approved clerk or a legal practitioner or firm that is authorised to receive trust money does not hold any trust money in their trust account in an audit year, they must lodge with the relevant RPA or the Board a statutory declaration to that effect in the prescribed form by 30 November following that audit year.

**S. 184(3)**  
**amended by**  
**Nos 79/1998**  
**s. 18, 9/1999**  
**s. 12(b).**

**185. Final audit of trust account**

- (1) A person or firm that ceases to be authorised to receive trust money must have the records kept by them under section 182 audited by an approved auditor—
- (a) in respect of the period from the end of the preceding audit year until the date of ceasing to be so authorised; and
  - (b) in respect of each completed period of 12 months thereafter during which they continued to hold trust money; and
  - (c) in respect of the period from the end of the last period referred to in paragraph (b) until the date on which they ceased to hold trust money.
- (2) Section 183(2), (3) and (4) applies to an audit under sub-section (1).
- (3) A person or firm must lodge with the RPA of which they were regulated practitioners (or with the Board, if they were regulated practitioners of the Board) at the time of ceasing to be authorised to receive trust money or, in the case of a person

who was an approved clerk, with the RPA that approved them—

- (a) a report of each audit under sub-section (1) within 60 days after the end of the period to which the audit relates; and
- (b) a statutory declaration in the prescribed form within 60 days after ceasing to hold trust money.

Penalty: 100 penalty units.

- (4) If a legal practitioner or clerk dies, their personal representative must comply with this section as if the personal representative were the practitioner or clerk.

#### **186. Board's supervisory role in audits**

- (1) The Board may issue directions and guidelines in relation to the conduct of audits under this Division.
- (2) An auditor must comply with directions issued by the Board under sub-section (1).
- (3) If the Board is satisfied that an auditor has failed to comply with a direction issued under sub-section (1), it may direct that they no longer audit the trust accounts of a legal practitioner, a firm or an approved clerk.
- (4) The Board must give an auditor a reasonable opportunity to make written or oral submissions or both before giving a direction under sub-section (3) in relation to them.
- (5) A direction under sub-section (3) must be published in the Government Gazette and in the next available official publication of each RPA that has approved clerks or regulated practitioners who are authorised to receive trust money, and takes effect on the day it is published in the Government Gazette.

- (6) As soon as practicable after making a direction under sub-section (3), the Board must give a copy of it to the Legal Ombudsman and each RPA that has approved clerks or regulated practitioners who are authorised to receive trust money.

**187. Courses of education for auditors**

- (1) The Board, by notice published in the Government Gazette, may prescribe courses of education required to be completed by a person wishing—
- (a) to audit trust accounts; or
  - (b) to be employed or engaged to assist in the audit of trust accounts.
- (2) The Board must give a copy of a notice under sub-section (1) to the Legal Ombudsman, each RPA, the Australian Society of Certified Practising Accountants, the National Institute of Accountants and the Institute of Chartered Accountants Australia as soon as practicable after it is published.

**Division 4—Deficiencies in trust accounts**

**188. Trust account must not be in deficit**

- (1) A legal practitioner, a firm or an approved clerk must not, without reasonable excuse—
- (a) have a deficiency in their trust account; or
  - (b) fail to account for any trust money or security received from a client.

Penalty: Level 4 imprisonment (15 years maximum).

- (2) An offence against sub-section (1) is an indictable offence.

**S. 188(1)**  
**amended by**  
**No. 48/1997**  
**s. 71(1).**

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**189. Practitioner must inform Board of suspected deficiencies**

- (1) A legal practitioner who believes on reasonable grounds that there is a deficiency in the trust account of another legal practitioner or a firm must report it to the Board as soon as practicable after forming the belief.
- (2) A practitioner may not refuse to comply with sub-section (1)—
  - (a) on the ground of legal professional privilege or any other duty of confidence; or
  - (b) on the ground that making the report may tend to incriminate the practitioner.
- (3) A practitioner is not personally liable to any action for any loss or damage suffered by another person as a result of the practitioner making a report in accordance with sub-section (1).

**190. Approved clerks must inform Board of suspected deficiencies**

- (1) An approved clerk who believes on reasonable grounds that there is a deficiency in the trust account of another approved clerk must report it to the Board as soon as practicable after forming the belief.
- (2) A clerk may not refuse to comply with sub-section (1)—
  - (a) on the ground of any duty of confidence; or
  - (b) on the ground that making the report may tend to incriminate the clerk.
- (3) A clerk is not personally liable to any action for any loss or damage suffered by another person as a result of the clerk making a report in accordance with sub-section (1).

**191. Authorised deposit-taking institutions must report deficiencies in trust accounts**

- (1) Despite any duty of confidence to the contrary, an authorised deposit-taking institution must report a suspected offence in relation to a trust account established in that institution to the Board as soon as practicable after forming the suspicion.

**S. 191(1)**  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.13(a)  
(b)).

Penalty: 50 penalty units.

- (2) An authorised deposit-taking institution or an officer or employee of an authorised deposit-taking institution is not personally liable to any action for any loss or damage suffered by another person as a result of making a report in accordance with sub-section (1).

**S. 191(2)**  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.14(a)  
(b)).

**Division 5—Investigations**

**192. RPA or Board may appoint inspector to investigate**

- (1) An RPA may appoint a person—
- (a) who is an approved auditor; or
  - (b) who—
    - (i) in the opinion of the RPA is an appropriate person to conduct an investigation under this Division; and
    - (ii) meets the requirements of the rules (if any) made by the Board under section 199—

to investigate the trust account of, and the records relating to trust money received by, any of its regulated practitioners or approved clerks.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 193**

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- (2) The Board may appoint a person—
- (a) who is an approved auditor; or
  - (b) who—
    - (i) in the opinion of the Board is an appropriate person to conduct an investigation under this Division; and
    - (ii) meets the requirements of the rules (if any) made by the Board under section 199—

to investigate the trust account of, and the records relating to trust money received by, any legal practitioner or firm (whether or not they are regulated practitioners of the Board) or any approved clerk.

- (3) An investigation under this section may be initiated in response to a complaint under Part 5 or on the initiative of an RPA or the Board.

**193. Legal Ombudsman may appoint auditor to investigate**

- (1) The Legal Ombudsman may appoint a person—
- (a) who is an approved auditor; or
  - (b) who—
    - (i) in the opinion of the Legal Ombudsman is an appropriate person to conduct an investigation under this Division; and
    - (ii) meets the requirements of the rules (if any) made by the Board under section 199—

to investigate the trust account of, and the records relating to trust money received by, any legal practitioner, firm or approved clerk.

- (2) An investigation under this section may be initiated in response to a complaint under Part 5 or on the Legal Ombudsman's own initiative.

**194. Assistance with investigation**

- (1) For the purposes of an investigation under this Division, a legal practitioner, a firm or an approved clerk must—
- (a) produce for inspection or copying by the inspector any accounting or other records relating to the legal practice of the practitioner or firm or the business of the approved clerk; and
  - (b) give the inspector any other information he or she reasonably requires.

Penalty: 50 penalty units.

- (2) A practitioner, a firm or an approved clerk may not refuse to comply with sub-section (1)—
- (a) on the ground of legal professional privilege or any other duty of confidence; or
  - (b) on the ground that the production of the record or giving of the information may tend to incriminate them.
- (3) If a practitioner, a firm or an approved clerk, before producing a record or giving information, objects to the inspector on the ground that the production of the record or giving of the information may tend to incriminate them, the record or information is inadmissible in evidence in any proceeding against them for an offence, other than—
- (a) an offence in relation to the keeping of trust accounts or the receipt of trust money; or
  - (b) an offence in relation to the giving of false or misleading information.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 6—Clients' Money

**s. 195**

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- (4) An inspector may retain for a reasonable period and may make copies of, or take extracts from, any documents produced or given to the inspector in the course of an investigation under this Division.
- (5) A financial institution, despite any duty of confidence to the contrary, must without charge—
- (a) produce for inspection or copying by the inspector any records held by it relating to the trust account of, or trust money deposited with it by, a practitioner, a firm or an approved clerk; and
  - (b) provide the inspector with full details of any transactions relating to the trust account or trust money.

Penalty: 50 penalty units.

- (6) A person must not hinder or obstruct an inspector who is carrying out an investigation under this Division.

Penalty: 50 penalty units.

**195. Power of entry with warrant**

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to any premises, or part of any premises, if the inspector—
- (a) reasonably suspects that a defalcation, or an offence under this Part, has been committed in relation to any trust money; and
  - (b) believes on reasonable grounds that there may be on those premises, or that part, any article, document or thing that may afford evidence as to the commission of that defalcation or offence.

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- (2) If a magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the magistrate may issue a search warrant.
  - (3) A search warrant issued under this section must be directed to the applicant for it and must authorise them, and any assistants they reasonably require, to enter the premises, or the part of the premises, named or described in the warrant to search for any article, document or thing of a kind named or described in the warrant that there is reasonable ground to believe will afford evidence as to a defalcation or the commission of an offence under this Part.
  - (4) In addition to any other requirement, a search warrant issued under this section must state—
    - (a) any conditions to which the warrant is subject; and
    - (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
    - (c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.
  - (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
  - (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
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**196. Inspector must report on investigation**

As soon as practicable after completing an investigation under this Division, an inspector must give a written report on the result of the investigation to the body that appointed the inspector.

**197. Cost of investigation**

If an investigation reveals that a legal practitioner, a firm or an approved clerk has contravened any provision of this Act or the practice rules in relation to the keeping of trust accounts or the receipt of trust money, the RPA, Board or Legal Ombudsman that initiated the investigation may recover the cost of the investigation from the practitioner, firm or clerk as a debt.

**198. Secrecy**

- (1) An inspector must not disclose information acquired in the course of an investigation under this Division except—
- (a) as is necessary for the purpose of conducting the investigation and making the report of the investigation; or
  - (b) as is permitted by sub-section (2); or
  - (c) with the consent of the person to whom the information relates.

Penalty: 100 penalty units.

- (2) An inspector may disclose information acquired in the course of an investigation—
- (a) to a member of the police force, if the inspector reasonably suspects that an offence has been committed;

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- (b) to the RPA, Board or Legal Ombudsman that appointed the inspector, in connection with any proceedings arising out of the investigation or concerning the practitioner, firm or approved clerk the subject of the investigation;
  - (c) to a receiver of the property, or a manager of the legal practice, of the practitioner or firm the subject of the investigation;
  - (d) to the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia, if the information relates to the conduct of a member of that body who audited the trust account the subject of the investigation;
  - (e) to a court or tribunal.
- (3) In addition to any penalty and any civil liability to the legal practitioner, firm or approved clerk, an inspector who contravenes sub-section (1) is liable—
- (a) to a client of the legal practitioner or firm to the same extent (if any) that the legal practitioner or firm would have been liable had they disclosed the information;
  - (b) to a legal practitioner who has employed or engaged the clerk, or to a client of that practitioner, to the same extent (if any) that the clerk would have been liable to the practitioner, or the practitioner would have been liable to the client, had they disclosed the information.
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**199. Rules for qualification of inspectors**

- (1) The Board may make rules for the qualifications necessary for a person to be appointed as an inspector for the purposes of this Division.
  - (2) The Board must give a copy of rules made under this section, and a copy of any amendment or revocation of them, to the Legal Ombudsman and each RPA as soon as practicable after making, amending or revoking them.
  - (3) Rules under this section are not statutory rules for the purposes of the **Subordinate Legislation Act 1994**.
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**PART 7—DEFALCATIONS**

**Division 1—Contributions and Levies**

**200. Determination of classes of practitioners**

- (1) For the purposes of this Division the Board may from time to time determine different classes of holders of practising certificates, interstate practitioners who have established or intend to establish a practice in Victoria or registered foreign practitioners according to any or all of the following factors—

**S. 200(1)**  
**amended by**  
**No. 102/1997**  
**s. 25(1)(a).**

- (a) the type of practising certificate held by members of the class;
- (b) the date on which applications for a practising certificate or for registration as a registered foreign practitioner or, in the case of interstate practitioners, notifications of establishing or intending to establish a practice in Victoria are made by members of the class;
- (c) the number and type of practising certificates (if any) previously held by members of the class;
- (d) whether members of the class received at any time in a specified period money from a client to be lent on the security of a nominee mortgage;
- (e) whether members of the class were at any time in a specified period—
  - (i) a partner of a firm or director of an incorporated practitioner that was authorised to receive trust money; or

**S. 200(1)(b)**  
**amended by**  
**No. 102/1997**  
**s. 25(1)(b).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

**s. 201**

- (ii) an employee of a legal practitioner or firm that was authorised to receive trust money; or
  - (f) the amount of trust money received in a specified period by—
    - (i) a member of the class; or
    - (ii) a legal practitioner or firm of which a member of the class was an employee, a partner or a director;
  - (g) whether the principal place of practice of members of the class is in or outside Victoria;
  - (h) the conditions, limitations or restrictions to which members of the class are subject in their home State in respect of their legal practice.
- (2) For the purposes of this Division the Board may from time to time determine different classes of approved clerks according to the amount of trust money received in a specified period by a member of the class.

S. 200(1)(h)  
amended by  
No. 102/1997  
s. 25(1)(c).

**201. Determination of contributions**

- (1) The Board, on or before the prescribed date in each year, must determine the amount of the contribution to the Fidelity Fund (not exceeding \$1500 per member or, in the case of a member employed by a community legal centre, not exceeding \$100 per member) payable in respect of the immediately following practising certificate year by members of each class determined under section 200.

S. 201(1)  
amended by  
No. 9/1999  
s. 13(1)(a).

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 7—Defalcations

**s. 201**

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- (2) The prescribed date is 30 April or such later date up to 31 May as the Attorney-General may fix by notice published in the Government Gazette before 30 April.
- (3) In determining the amount of the contributions payable the Board must have regard to—
- (a) the advice of an actuary engaged by the Board to advise it on the appropriate provision to be made for all ascertained or contingent liabilities of the Fidelity Fund, including any contingent liability in respect of defalcations that have occurred but have not yet been reported to the Board;
  - (b) the solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 388(6).
- (4) As soon as practicable after making a determination under sub-section (1), the Board must—
- (a) cause notice of the determination to be published in the Government Gazette; and
  - (b) give written notice of the determination to every RPA that has regulated practitioners or approved clerks who are affected by the determination.
- (5) An RPA to which notice is given under sub-section (4)(b) must cause notice of the determination to be published in the next available official publication of the RPA.
- (6) For the purpose of enabling it to make a determination under sub-section (1), the Board may, in writing, require an RPA to give it any information that the Board considers necessary.

**S. 201(2)**  
**amended by**  
**No. 9/1999**  
**s. 13(1)(b)(i)(ii).**



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

s. 202

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**202. Payment of contributions**

S. 202(1)  
amended by  
No. 102/1997  
s. 25(2).

- (1) An applicant for a practising certificate, or for a variation of a condition of a practising certificate, the holding or variation of which, or an applicant for registration as a registered foreign practitioner the granting of which, would make them a member of a class determined by the Board under section 200(1) must pay in respect of the certificate, variation or registration the contribution determined by the Board under section 201(1) as the contribution payable by members of that class.

S. 202(1A)  
inserted by  
No. 102/1997  
s. 25(3).

- (1A) An interstate practitioner—
- (a) who gives notice of establishing or intending to establish a practice in Victoria; and
  - (b) who is a member of a class determined by the Board under section 200(1)—

must pay in respect of the notification the contribution determined by the Board under section 201(1) as the contribution payable by members of that class.

S. 202(2)  
substituted by  
No. 102/1997  
s. 25(4),  
amended by  
No. 9/1999  
s. 13(2).

- (2) An interstate practitioner who is a member of a class determined by the Board under section 200(1) must, in respect of each practising certificate year in which the practitioner engages in legal practice in Victoria after the practising certificate year in which the practitioner gave notice of establishing or intending to establish a practice in Victoria, pay to the Board for payment into the Fidelity Fund the contribution payable in respect of that year by members of that class.

S. 202(2A)  
inserted by  
No. 102/1997  
s. 25(4),  
amended by  
No. 9/1999  
s. 13(2).

- (2A) A registered foreign practitioner who is a member of a class determined by the Board under section 200(1) must, in respect of each practising certificate year after the practising certificate year in which the practitioner was registered, pay to the

Board, for payment into the Fidelity Fund the contribution payable in respect of that year by members of that class.

- (3) An approved clerk who is a member of a class determined by the Board under section 200(2) must, in respect of each practising certificate year, pay to the Board for payment into the Fidelity Fund the contribution determined by the Board under section 201(1) as the contribution payable in respect of that practising certificate year by members of that class.

**S. 202(3)**  
**amended by**  
**No. 9/1999**  
**s. 13(2).**

- (4) A contribution referred to in sub-section (2), (2A) or (3) is payable at the time, and in the manner, fixed by the Board.

**S. 202(4)**  
**amended by**  
**No. 102/1997**  
**s. 25(5).**

- (4A) A contribution referred to in sub-section (1) is payable—

**S. 202(4A)**  
**inserted by**  
**No. 9/1999**  
**s. 13(3).**

- (a) at the time of applying for the practising certificate or variation; or
- (b) if the amount of the contribution has not been determined by that time—at the time fixed by the Board.

- (5) If—

- (a) a person is eligible to be a member of more than one class determined by the Board under section 200 depending on the amount of trust money received by them or by the legal practitioner or firm of which they are an employee, a partner or a director (as the case may be); and
- (b) the amount of contribution payable by members of each of those classes is different; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

**s. 203**

- (c) the person wishes to claim membership of one of those classes other than the one whose members pay the highest contribution—

the person must give the Board a statutory declaration stating that the class of which membership is claimed is the appropriate class.

- (6) Despite anything to the contrary in this Division, if a person required by sub-section (5) to give the Board a statutory declaration does not do so before or at the time of paying the contribution, the contribution payable by that person is the contribution payable by members of the class referred to in sub-section (5)(c) who pay the highest contribution.

**203. Levies**

S. 203(1)  
amended by  
No. 102/1997  
s. 25(6).

- (1) If the Board is at any time of the opinion that the amount standing to the credit of the Fidelity Fund is likely to be insufficient to meet the liabilities to which it is subject, the Board may determine the amount of a levy to be paid to the Fidelity Fund by members of the classes determined under section 200 who are legal practitioners, interstate practitioners or registered foreign practitioners authorised to receive trust money in Victoria or approved clerks.

S. 203(2)  
amended by  
No. 24/2000  
s. 19(a)(i)(ii).

- (2) The amount of the levy may differ for different classes and must not exceed \$1650 per member or, in the case of a member employed by a community legal centre, \$110 per member.
- (3) As soon as practicable after making a determination under sub-section (1), the Board must—
- (a) cause notice of the determination to be published in the Government Gazette; and

- (b) give written notice of the determination to every RPA that has regulated practitioners or approved clerks who are affected by the determination.
- (4) An RPA to which notice is given under sub-section (3)(b) must cause notice of the determination to be published in the next available official publication of the RPA.
- (5) For the purpose of enabling it to make a determination under sub-section (1), the Board may, in writing, require an RPA to give it any information that the Board considers necessary.

**204. Who must pay a levy?**

- (1) A legal practitioner, an interstate practitioner or a registered foreign practitioner authorised to receive trust money in Victoria, or an approved clerk, who is a member of a class determined by the Board under section 200 must contribute to the Fidelity Fund the levy determined by the Board under section 203(1) as the levy payable by a person who is a member of that class.
- (2) If—
  - (a) a person is eligible to be a member of more than one class determined by the Board under section 200 depending on the amount of trust money received by them; and
  - (b) the amount of levy payable by members of each of those classes is different; and
  - (c) the person wishes to claim membership of one of those classes other than the one whose members pay the highest levy—

the person must give to the Board a statutory declaration stating that the class of which membership is claimed is the appropriate class.

**S. 204(1)**  
**amended by**  
**No. 102/1997**  
**s. 25(7)(a).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

**s. 205**

S. 204(4)  
amended by  
Nos 102/1997  
s. 25(7)(b),  
24/2000  
s. 19(b)(i)(ii).

- (3) Despite anything to the contrary in this Division, if a person required by sub-section (2) to give a statutory declaration to the Board does not do so before or at the time of paying the levy, the levy payable by that person is the levy payable by members of the class referred to in sub-section (2)(c) who pay the highest levy.
- (4) A person must not be required to pay by way of levy more than \$1650 in the aggregate in any period of 12 months or more than \$8250 in total.
- (5) A levy payable by a practitioner or clerk under this section is in addition to any contribution paid or payable by them under this Division.

**205. When is a levy payable?**

- (1) A levy is payable at the time, and in the manner, fixed by the Board.
- (2) The Board may, in a special case, allow further time for the payment of a levy or of a part of a levy.

**206. Board may recover contribution or levy**

The amount of a contribution or levy that is not paid by a person in accordance with this Division is recoverable in the Magistrates' Court from that person by the Board as a debt.

**207. Employer must pay contribution or levy or reimburse employee**

- (1) The employer of a person who is required to pay a contribution or levy under this Division may pay the contribution or levy on behalf of the person.

- (2) If the employer does not pay the contribution or levy on behalf of the person, the employer must, at the request of the person, reimburse the person the amount of the contribution or levy paid by the person within 21 days after the request.

Penalty: 100 penalty units.

- (3) If a person who is required to pay a contribution or levy under this Division has more than one employer for the purposes of sub-section (2), the employer to whom that sub-section applies is the employer who employs the person for the most number of hours in any week.

- (4) If—

- (a) membership of a class is determined under section 200 by reference to a specified period; and
- (b) a member of that class has more than one employer during that period—

the employer of the member as at the end of that period is their employer for the purposes of this section.

## **Division 2—Claims**

### **207A. Definitions**

In this Division—

**"contributing foreign practitioner"** means a foreign practitioner who has paid a contribution or levy to the Fidelity Fund under Division 1;

**"contributing interstate practitioner"** means an interstate practitioner who has paid a contribution or levy to the Fidelity Fund under Division 1;

**S. 207A**  
inserted by  
No. 102/1997  
s. 26.

**"practitioner"** includes a contributing foreign practitioner and a contributing interstate practitioner.

**208. Entitlement to claim against the Fidelity Fund**

(1) The Fidelity Fund is held, and is to be applied, by the Board for the purpose of compensating persons who suffer pecuniary loss from a defalcation of, or in relation to, any money or other property to which this section applies committed—

- (a) by a current practitioner (being a natural person) or an employee of such a practitioner; or
- (b) by a firm, a partner or an employee of a firm; or
- (c) by an incorporated practitioner, a director or member, or an employee of an incorporated practitioner; or

S. 208(1)(ca)  
inserted by  
No. 102/1997  
s. 27(1)(a).

(ca) by a contributing interstate practitioner; or

S. 208(1)(cb)  
inserted by  
No. 102/1997  
s. 27(1)(a).

(cb) by a contributing foreign practitioner; or

(d) by an approved clerk or an employee of an approved clerk; or

S. 208(1)(e)  
substituted by  
No. 102/1997  
s. 27(1)(b).

(e) by a current practitioner, contributing interstate practitioner or contributing foreign practitioner with whom a practitioner referred to in paragraph (a), (c), (ca) or (cb), or a firm or any partner of a firm referred to in paragraph (b), shares income from any business.

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 7—Defalcations

**s. 208**

(2) This section applies to trust money or other property that was, in the course of or in connection with the practitioner's or firm's legal practice or the approved clerk's business, given or paid to, or received by, a person or body referred to in sub-section (1)(a), (b), (c), (ca), (cb), (d) or (e)—

**S. 208(2)**  
**amended by**  
**No. 102/1997**  
**s. 27(2)(a).**

(a) for or on behalf of a person or body other than the practitioner, the firm, a partner of the firm or the approved clerk; or

**S. 208(2)(a)**  
**amended by**  
**No. 102/1997**  
**s. 27(2)(b).**

(b) for or on behalf of the practitioner, the firm, a partner of the firm or the approved clerk, as sole or joint trustee of the money or other property.

**S. 208(2)(b)**  
**amended by**  
**No. 102/1997**  
**s. 27(2)(b).**

(2A) Without limiting sub-section (1), a claim lies against the Fidelity Fund—

**S. 208(2A)**  
**inserted by**  
**No. 102/1997**  
**s. 27(3).**

(a) in relation to a loss occurring wholly in Victoria from a defalcation committed (whether or not in Victoria) by a current practitioner, a contributing interstate practitioner or a contributing foreign practitioner; or

(b) in relation to a loss from a defalcation committed (whether or not in Victoria) by a current practitioner, if—

(i) the loss occurred both in Victoria and another State; or

(ii) the loss occurred in Victoria or another State or both, but it cannot be determined precisely where the loss occurred; or

(c) in the circumstances where an agreement or arrangement under section 63C provides that a claim is payable.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

s. 209

(3) A claim does not lie against the Fidelity Fund—

S. 208(3)(a)  
amended by  
No. 102/1997  
s. 27(4).

(a) in respect of a defalcation arising out of anything done or omitted to be done by a practitioner, a firm or a partner of a firm in connection with a nominee mortgage; or

S. 208(3)(b)  
amended by  
Nos 102/1997  
s. 27(4),  
52/1998  
s. 311(Sch. 1  
item 49),  
substituted by  
No. 79/1998  
s. 19(1).

(b) in respect of a defalcation of, or in relation to, any money given to a practitioner, a firm or a partner of a firm for the purpose of investment or re-investment by the practitioner, firm or partner, other than an investment or re-investment that is—

(i) merely incidental to the legal practice of the practitioner, firm or partner; or

(ii) made or to be made in the course of or in connection with the administration of the estate of a deceased person or of a represented person or protected person within the meaning of the  
**Guardianship and Administration Act 1986**; or

S. 208(3)(c)  
amended by  
No. 102/1997  
s. 27(4).

(c) in respect of a defalcation of or in relation to any trust money or other property of which a practitioner, a firm, a partner of a firm or an approved clerk was sole or joint trustee but that before the commission of the defalcation had in the due course of the administration of the trust ceased to be under the sole control of the practitioner, firm, partner or clerk, as the case requires.

## 209. Making a claim

S. 209(1)  
amended by  
No. 102/1997  
s. 27(5).

(1) If the Board has reason to believe that claims may lie against the Fidelity Fund arising out of anything done or omitted to be done by a particular practitioner, firm or approved clerk, it may cause a notice in the prescribed form calling for claims to be published in a newspaper

circulating generally in the area in which the practitioner or firm engaged in legal practice or the clerk carried on business and also in a daily newspaper circulating generally in Victoria.

- (2) A notice under sub-section (1) must fix a date, not being earlier than 3 months after the date of publication of the notice, on or before which claims may be made.
- (3) A claim against the Fidelity Fund is made by writing to the Board in the form approved by the Board—
  - (a) if a notice has been published under sub-section (1), on or before the date fixed by the notice;
  - (b) in any other case, within 6 months after the claimant has become aware of the defalcation.
- (4) A claim is made within the period fixed by sub-section (3) if it is made on or before the date fixed by a notice published under sub-section (1) even if the claimant became aware of the defalcation 6 months or more before making the claim.
- (5) Unless the Board determines to accept it, a claim that is not made within the period fixed by sub-section (3) is barred.
- (6) The Board is not liable for any loss suffered by a practitioner, a firm or an approved clerk because of the publication by the Board in good faith of a notice under sub-section (1).

S. 209(6)  
amended by  
No. 102/1997  
s. 27(5).

## **210. Investigation of claim**

- (1) The Board may refer a claim to the RPA that regulated the practitioner or firm at the time the matters referred to in the claim arose or, in the case of an approved clerk, to the RPA that approved them.

S. 210(1)  
amended by  
No. 102/1997  
s. 27(5).

- (2) An RPA must investigate a claim referred to it under sub-section (1) and recommend to the Board, within the period specified by the Board in referring the claim to it, whether it should allow or disallow the claim.

**211. Determination of claim**

- (1) Subject to section 209, the Board may allow and settle a claim against the Fidelity Fund at any time after the commission of the defalcation in respect of which the claim arose.
- (2) In determining a claim the Board must have regard to any recommendation made by an RPA under section 210(2).
- (3) The Board must disallow a claim against the Fidelity Fund if the claim does not lie under section 208.
- (4) The Board may disallow a claim against the Fidelity Fund if—
- (a) without lawful excuse, the person making the claim used a false name for the purposes of or in connection with any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation; or
  - (b) any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation involved fraud on the part of the person making the claim; or
  - (c) any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation involved the unreceipted payment of more than \$10 000 in cash by the person making the claim to the practitioner, approved clerk or other person who committed the defalcation; or

S. 211(4)(c)  
amended by  
No. 102/1997  
s. 27(5).

*Legal Practice Act 1996*

*Act No. 35/1996*

Part 7—Defalcations

**s. 212**

- (d) any dealing or transaction out of which the defalcation arose or connected with or relevant to the defalcation involved the receipt of money or other property under a joint venture or other profit-sharing arrangement entered into by the person making the claim with the practitioner or other person who committed the defalcation. **S. 211(4)(d) amended by No. 102/1997 s. 27(5).**
- (5) The Board may at any time require the production and delivery of any security, document or statement of evidence necessary or available—
- (a) to support a claim made against the Fidelity Fund; or
- (b) to enable the Board to exercise its rights against any practitioner, firm, approved clerk or other person concerned; or **S. 211(5)(b) amended by No. 102/1997 s. 27(5).**
- (c) to enable the criminal proceeding to be commenced against a person who committed the defalcation—
- and, in default of delivery of any such security, document or statement, may disallow a claim made against the Fidelity Fund.
- (6) The Board, if satisfied that the defalcation was actually committed, may allow a claim despite the fact that the practitioner or other person who committed the defalcation has not been charged with, or found guilty of, the defalcation or that the evidence on which the Board is acting would not be sufficient to establish the guilt of that person in a criminal proceeding for the defalcation. **S. 211(6) amended by No. 102/1997 s. 27(5).**

**212. Assertion of claim in court**

- (1) Subject to this section, a person may commence a proceeding in a court of competent jurisdiction against the Board to assert a claim against the Fidelity Fund.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

**s. 213**

**S. 212(2)**  
substituted by  
No. 79/1998  
s. 19(2).

- (2) A person is not entitled to commence a proceeding referred to in sub-section (1) without the leave of the Board, unless—
- (a) the Board has disallowed the claim wholly or partly; and
  - (b) the person has exhausted all other rights of action and other legal remedies in respect of the loss the subject of the claim.

**S. 212(3)**  
substituted by  
No. 79/1998  
s. 19(2).

- (3) In addition, a person is not entitled without leave of the court to commence a proceeding referred to in sub-section (1) if 3 months or more have elapsed since the person was given written notice by the Board of the disallowance of the claim.

**S. 212(4)**  
inserted by  
No. 79/1998  
s. 19(2).

- (4) In deciding whether or not to give leave under sub-section (3), the court must take into account the reasons for the delay, including whether the delay was necessary to enable the person to comply with sub-section (2)(b).

**213. Court proceedings**

- (1) In any proceeding brought in a court of competent jurisdiction to assert a claim against the Fidelity Fund—

**S. 213(1)(a)**  
amended by  
No. 102/1997  
s. 27(5).

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, the practitioner or other person by whom it is alleged that the defalcation was committed is admissible to prove the commission of the defalcation despite the fact that the practitioner or other person is not the defendant in, or a party to, the proceeding; and

**S. 213(1)(b)**  
amended by  
No. 102/1997  
s. 27(5).

- (b) any defence that would have been available to the practitioner or other person is available to the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*  
Part 7—Defalcations

s. 214

- (2) The court, if satisfied in a proceeding referred to in sub-section (1) that the defalcation was actually committed and that otherwise the claimant has a valid claim, must by order—

**S. 213(2)**  
**amended by**  
**No. 102/1997**  
**s. 27(5).**

- (a) declare the fact and the date of the defalcation and the amount of the claim of the claimant; and
- (b) direct that the Board allow the claim as so declared and deal with it in accordance with this Division—

and may do so despite the fact that the practitioner or other person who committed the defalcation has not been charged with, or found guilty of, the defalcation or that the evidence on which the court is acting would not be sufficient to establish the guilt of that person in a criminal proceeding for the defalcation.

- (3) If any proceeding referred to in sub-section (1) all questions of costs are in the discretion of the court.

**214. Quantum of claim**

**S. 214**  
**amended by**  
**No. 79/1998**  
**s. 19(3) (ILA**  
**s. 39B(1)).**

- (1) The amount that a person who is entitled to make a claim against the Fidelity Fund may claim as compensation from the Fidelity Fund is the amount of the actual pecuniary loss suffered by the person less the amount or value of all money or other benefits received or receivable by the person in reduction of the loss from any source other than the Fidelity Fund.
- (2) In calculating for the purposes of sub-section (1) the amount of money received by a person in reduction of loss, account must be taken of any money paid to the person by the practitioner or firm (whether as repayment of capital or otherwise) in relation to the money or other property the subject of the claim that is derived

**S. 214(2)**  
**inserted by**  
**No. 79/1998**  
**s. 19(3).**

from trust money or other property held by the practitioner or firm, but not including any income on the money or other property the subject of the claim actually received by the practitioner or firm and paid to the person.

**215. Additional payments out of Fund**

- (1) A person who is entitled to be paid compensation out of the Fidelity Fund is also entitled to be paid out of that Fund—
  - (a) interest on the amount of compensation payable calculated from the day on which the defalcation was committed and continuing until the day on which the claim is satisfied; and
  - (b) the reasonable costs of, and disbursements incidental to, making and proving the claim assessed on a solicitor and client basis as if they were costs and disbursements in a proceeding in a court that would have jurisdiction to hear and determine the claim if the claim were a claim for a debt.
- (2) Interest under sub-section (1)(a) is payable in respect of any day at a rate calculated in accordance with the method determined by the Attorney-General from time to time and published in the Government Gazette.

**216. Payments out of Fund**

- (1) Only money standing to the credit of the Fidelity Fund is available for the payment of any claim made under this Division, whether the claim is allowed by the Board or is made the subject of an order of a court under section 213.

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- (2) If at any time the amount standing to the credit of the Fidelity Fund (including any amount likely to be credited to it within a reasonable period, whether under section 385 or 202 or otherwise) is insufficient to pay the whole amount of all claims that at that time are required to be paid out of that Fund and meet all other ascertained or contingent liabilities of the Fidelity Fund, including any contingent liability in respect of defalcations that have occurred but have not yet been reported to the Board, the Board may—
- (a) apportion the amount available between the claimants in any manner that it thinks equitable; or
  - (b) pay those claims by instalments of such amounts and at such intervals as it may reasonably determine having regard to the state of the Fund.
- (3) If the Board acts under sub-section (2)(a) with respect to any claim, the Board may pay the claim, to the extent that it remains unpaid, out of the Fidelity Fund when money is available to pay it.

#### **217. Subrogation of Board**

- (1) Subject to section 262, on payment out of the Fidelity Fund of any money in satisfaction of a claim for compensation under this Division, the Board is subrogated to the extent of that payment to the rights and remedies of the claimant against any person in relation to the defalcation.
- (2) The Board may exercise its rights and remedies under this section in its own name or in the name of the claimant and must pay into the Fidelity Fund any money paid to it as a result of it doing so.



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- (3) If the Board brings a proceeding under this section in the name of a claimant, the Board must indemnify the claimant against any costs awarded against the claimant in the proceeding.
  - (4) Despite anything to the contrary in the **Limitation of Actions Act 1958**, if, immediately before the subrogation of the Board by virtue of this section to the rights and remedies of a claimant against any person in relation to a defalcation, the period within which the claimant could bring a proceeding in relation to the defalcation had expired or was due to expire within 12 months, the Board may bring a proceeding under this section at any time before the expiration of 2 years after the date of the subrogation.

**218. Immunity for innocent partners etc.**

- (1) Despite anything to the contrary in the **Partnership Act 1958** or any rule of law to the contrary, an action does not lie against a partner of a firm in respect of a defalcation committed by another partner of that firm, or by an employee of that firm, if a claim lies against the Fidelity Fund under section 208 in respect of the defalcation and that partner—
    - (a) was not a party to the defalcation; and
    - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
  - (2) An action does not lie against a director or member of an incorporated practitioner in respect of a defalcation committed by the incorporated practitioner, or by another director or member of the incorporated practitioner, or by an employee of the incorporated practitioner, if a claim lies against the Fidelity Fund under section 208 in respect of the defalcation and that director or member—
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- (a) was not a party to the defalcation; and
- (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (3) An action does not lie against a practitioner or an approved clerk in respect of a defalcation committed by an employee of that practitioner or clerk if a claim lies against the Fidelity Fund under section 208 in respect of the defalcation and that practitioner or clerk—
  - (a) was not a party to the defalcation; and
  - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.

S. 218(3)  
amended by  
No. 102/1997  
s. 27(5).

**219. Subrogation of innocent partners etc.**

- (1) If a person entitled to make a claim under this Division in respect of a defalcation committed by a partner of a firm, or by an employee of a firm, has been paid compensation by another partner of that firm to the fullest extent possible under this Division, the partner who paid the compensation is subrogated to the extent of that payment to the rights and remedies of the claimant against any person, including the Board, in relation to the defalcation if that partner—
  - (a) was not a party to the defalcation; and
  - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (2) If a person entitled to make a claim under this Division in respect of a defalcation committed by an incorporated practitioner, or by a director, a member or an employee of an incorporated practitioner, has been paid compensation by one, or more than one, of the other directors or members of that incorporated practitioner to the fullest extent possible under this Division, the director or member who paid the compensation is

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

**s. 219**

subrogated to the extent of that payment to the rights and remedies of the claimant against any person, including the Board, in relation to the defalcation if that director or member—

- (a) was not a party to the defalcation; and
- (b) acted honestly and reasonably and with due diligence in relation to the defalcation.

**S. 219(3)**  
**amended by**  
**No. 102/1997**  
**s. 27(5).**

- (3) If a person entitled to make a claim under this Division in respect of a defalcation committed by an employee of a practitioner or of an approved clerk has been paid compensation by that practitioner or clerk to the fullest extent possible under this Division, that practitioner or clerk is subrogated to the extent of that payment to the rights and remedies of the claimant against any person, including the Board, in relation to the defalcation if that practitioner or clerk—
  - (a) was not a party to the defalcation; and
  - (b) acted honestly and reasonably and with due diligence in relation to the defalcation.
- (4) A person may exercise their rights and remedies under this section in their own name or in the name of the person who was paid the compensation.
- (5) If a person brings a proceeding under this section in the name of the person who was paid the compensation, the person bringing the proceeding must indemnify the person who was paid the compensation against any costs awarded against that person in the proceeding.

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**220. Disallowance of subrogated claim**

- (1) A person who, in the exercise of rights and remedies under section 219, makes a claim against the Fidelity Fund that is disallowed by the Board on the ground that the person—
  - (a) was a party to the defalcation; or
  - (b) had not acted honestly and reasonably and with due diligence in relation to the defalcation—may appeal to an appropriate court against that disallowance within 28 days after being notified of it by the Board.
- (2) For the purposes of sub-section (1) an appropriate court is any court that would have jurisdiction to hear and determine the claim if the claim were a claim for a debt.
- (3) An appeal under sub-section (1) is to be conducted as a hearing de novo.
- (4) After hearing and determining the appeal, the court may make any order that it thinks appropriate, including an order remitting the claim to the Board for re-consideration with or without any direction in law.

**221. What is due diligence?**

In determining for the purposes of this Division whether a person acted with due diligence in relation to a defalcation, regard must be had to the steps take by the person to prevent the commission of defalcations—

- (a) by the firm of which he or she is a partner or by any of the partners of that firm or by any employee of that firm; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 7—Defalcations

s. 222

(b) by the incorporated practitioner of which he or she is a director or member or by any of the directors or members of that incorporated practitioner; or

(c) by an employee of that person—

as the case requires.

**222. Board may insure against liability**

(1) Despite anything to the contrary in this Division, the Board may enter into a contract with any person or body carrying on fidelity insurance business (whether in or outside Victoria) whereby the Board will be insured or indemnified to the extent and in the manner provided in the contract against liability to pay claims under this Division.

(2) A contract referred to in sub-section (1) may be entered into—

(a) in relation to practitioners, firms and approved clerks generally; or

(b) in relation to any particular practitioner, firm or clerk named in the contract; or

(c) in relation to practitioners, firms and clerks generally with the exclusion of any particular practitioner, firm or clerk named in the contract.

(3) The Board is not liable for any loss suffered by a practitioner, firm or approved clerk because of the publication by the Board in good faith of a statement that a contract entered into under this section does or does not apply with respect to that practitioner, firm or clerk.

S. 222(2)(a)  
amended by  
No. 102/1997  
s. 27(6)(a).

S. 222(3)  
amended by  
No. 102/1997  
s. 27(6)(b).

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**223. Application of insurance money**

- (1) A claimant does not have any right of action against any person or body in respect of a contract of insurance or indemnity entered into with that person or body under section 222 or have any right or claim with respect to any money paid to the Board under that contract.
  - (2) Any money paid to the Board under a contract referred to in sub-section (1) must be paid into the Fidelity Fund and be applied in accordance with the provisions of this Division.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

s. 224

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**PART 8—PROFESSIONAL INDEMNITY INSURANCE**

**Division 1—Professional indemnity insurance**

**224. Firms required to insure**

(1) Before commencing to engage in legal practice in Victoria, a firm must obtain professional indemnity insurance.

S. 224(2)  
amended by  
No. 79/1998  
s. 20(1)(a)(i).

(2) The insurance must be obtained with the Liability Committee.

(3) The insurance must—

S. 224(3)(a)  
amended by  
No. 79/1998  
s. 20(1)(a)(ii).

(a) cover the firm and each partner, former partner, employee and former employee of the firm in connection with its legal practice and administration of trusts in Victoria.

S. 224(3)(b)  
repealed by  
No. 79/1998  
s. 20(1)(a)(iii).

\* \* \* \* \*

S. 224(4)  
inserted by  
No. 102/1997  
s. 28(1).

(4) This section does not apply to the extent that the Board exempts the firm from compliance under section 229A.

**225. Incorporated practitioners required to insure**

(1) Before commencing to engage in legal practice, an incorporated practitioner must obtain professional indemnity insurance.

S. 225(2)  
amended by  
No. 79/1998  
s. 20(1)(b)(i).

(2) The insurance must be obtained with the Liability Committee.

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

s. 226

(3) The insurance must—

- (a) cover the incorporated practitioner and each director, former director, employee and former employee of the incorporated practitioner in connection with its legal practice and administration of trusts in Victoria.

S. 225(3)(a) amended by No. 79/1998 s. 20(1)(b)(ii).

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S. 225(3)(b) repealed by No. 79/1998 s. 20(1)(b)(iii).

- (4) This section does not apply to the extent that the Board exempts the incorporated practitioner from compliance under section 229A.

S. 225(4) inserted by No. 102/1997 s. 28(2).

**226. Sole practitioners required to insure**

- (1) A legal practitioner who intends to engage in legal practice as a sole practitioner, before commencing to practise as such, must obtain professional indemnity insurance.

- (2) Unless the practitioner intends to practise as a barrister only, the insurance must be obtained with the Liability Committee.

S. 226(2) substituted by No. 79/1998 s. 20(2).

(3) The insurance must—

- (a) cover the practitioner and each employee and former employee of the practitioner in connection with the practitioner's legal practice and administration of trusts in Victoria.

S. 226(3)(a) amended by No. 79/1998 s. 20(3)(a).

\* \* \* \* \*

S. 226(3)(b) repealed by No. 79/1998 s. 20(3)(b).

- (4) This section does not apply to the extent that the Board exempts the legal practitioner from compliance under section 229A.

S. 226(4) inserted by No. 102/1997 s. 28(3).



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

**s. 227**

**227. Insurance to be maintained during legal practice**

- (1) At all times whilst a firm or a legal practitioner (other than a corporate practitioner) is engaged in legal practice, the firm or practitioner must maintain professional indemnity insurance.
- (2) The insurance must be—
  - (a) obtained with the Liability Committee, except in the case of a sole practitioner who practises as a barrister only;
  - (b) in the case of a sole practitioner who practises as a barrister only, obtained on terms and conditions approved by the Board.
- (3) A legal practitioner who is an employee of a sole practitioner, a partner or an employee of a firm or a director or employee of an incorporated practitioner maintains professional indemnity insurance if the sole practitioner, firm or incorporated practitioner maintains professional indemnity insurance that covers the legal practitioner.
- (4) This section does not apply to the extent that the Board exempts the firm or legal practitioner from compliance under section 229A.

S. 227(2)  
substituted by  
No. 79/1998  
s. 20(4).

S. 227(4)  
inserted by  
No. 102/1997  
s. 28(4).

S. 227A  
inserted by  
No. 79/1998  
s. 21.

**227A. Trade Practices Act and Competition Code**

For the purposes of the Trade Practices Act 1974 of the Commonwealth and the Competition Code, the entering into and performance of a contract of professional indemnity insurance by a person or firm and the Liability Committee under section 224, 225, 226 or 227 is authorised by this Act.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

s. 228

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**228. Terms and conditions of insurance**

\* \* \* \* \*

S. 228(1)–(3)  
repealed by  
No. 79/1998  
s. 22(1).

- (4) The Liability Committee, with the approval of the Board, may determine the arrangements for, including the terms of contracts of, professional indemnity insurance for persons and firms that insure with it.

S. 228(4)  
substituted by  
No. 79/1998  
s. 22(2).

- (5) In determining premiums and excesses in relation to contracts of professional indemnity insurance, the Liability Committee must take into account the following—

- (a) any significant differences in risk attaching to—
  - (i) the different types of legal practices of practitioners or firms;
  - (ii) the different types of matters handled by practitioners or firms;
- (b) the number of other practitioners employed by practitioners and the number of partners of, and practitioners employed by, firms;
- (c) the need to encourage proper management of risk;
- (d) the past claims records of practitioners or firms;
- (e) the cost and difficulty of differentiating between different classes of legal practitioners and firms;
- (f) whether the amount standing to the credit of the Liability Fund is likely to be sufficient to meet the liabilities to which it is subject.

S. 228(5)(f)  
inserted by  
No. 79/1998  
s. 22(3).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

s. 229

**229. Interstate practitioners**

S. 229(1)  
amended by  
Nos 102/1997  
s. 28(5),  
79/1998  
s. 22(4)(a).

- (1) An interstate practitioner must maintain professional indemnity insurance with respect to the practitioner's legal practice in Victoria on terms and conditions approved by the Board.

S. 229(2)  
repealed by  
No. 79/1998  
s. 22(4)(b).

\* \* \* \* \*

S. 229(3)  
amended by  
Nos 102/1997  
s. 28(5),  
79/1998  
s. 22(4)(c).

- (3) An interstate practitioner must give to the Board a copy of each contract of professional indemnity insurance entered into by the practitioner in fulfilment of their obligation under sub-section (1) as soon as practicable after the contract is entered into.

S. 229(4)  
inserted by  
No. 102/1997  
s. 28(6).

- (4) This section does not apply to the extent that the Board exempts the interstate practitioner from compliance under section 229A.

S. 229A  
inserted by  
No. 102/1997  
s. 29,  
amended by  
No. 79/1998  
s. 22(5).

**229A. Exemption from insurance requirements**

The Board may exempt legal practitioners, firms or interstate practitioners or classes of legal practitioners, firms or interstate practitioners from the requirement to obtain or maintain professional indemnity insurance.

**Division 2—Legal Practitioners' Liability Fund**

**230. Establishment**

- (1) The Liability Committee must establish a fund to be known as the Legal Practitioners' Liability Fund.
- (2) The Liability Fund may be kept in one or more accounts.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

**s. 231**

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**231. Payments into Fund**

There must be paid into the Liability Fund—

- (a) insurance premiums paid by firms, legal practitioners, interstate practitioners and foreign practitioners under contracts of insurance with the Liability Committee;
- (b) any money derived from any investment of the Fund;
- (c) any other money received by the Liability Committee.

**S. 231(a)**  
**amended by**  
**No. 102/1997**  
**s. 30(a).**

**232. Payments out of Fund**

There may be paid out of the Liability Fund—

- (a) premiums, brokerage and commissions payable by the Liability Committee for insurance, re-insurance or any other arrangements for limitation of liability entered into by it;
- (b) amounts payable under contracts of insurance entered into by the Liability Committee with firms, legal practitioners, interstate practitioners or foreign practitioners;
- (c) the cost of the administration of the Fund, including remuneration of staff of the Liability Committee and amounts (if any) payable to consultants engaged by the Committee;
- (d) any other costs and expenses incurred by the Liability Committee under this Part.

**S. 232(b)**  
**amended by**  
**No. 102/1997**  
**s. 30(b).**

### **233. Investment of Fund**

The Liability Committee may invest any money standing to the credit of the Liability Fund that is not immediately required for the purposes of the Fund in the manner in which money may be invested under the **Trustee Act 1958**.

S. 233A  
inserted by  
No. 79/1998  
s. 23.

#### **233A. Levies**

- (1) If the Liability Committee is at any time of the opinion that the amount standing to the credit of the Liability Fund is likely to be insufficient to meet the liabilities to which it is subject, the Liability Committee, with the approval of the Board, may determine the amount of a levy to be paid to the Liability Fund by persons and firms that had a contract of professional indemnity insurance with the Liability Committee at any time within the previous 12 months.
- (2) In determining the amount of the levy, the Liability Committee must take into account the factors set out in section 228(5).
- (3) A person or firm referred to in sub-section (1) must pay the levy to the Liability Committee at the time, and in the manner, fixed by the Liability Committee.
- (4) The Liability Committee may, in a special case, allow further time for the payment of a levy or of a part of a levy.
- (5) The amount of a levy that is not paid by a person or firm in accordance with this section is recoverable in the Magistrates' Court from that person or firm by the Liability Committee as a debt.

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**Division 3—Legal Practitioners' Liability Committee**

**234. Establishment**

- (1) The Legal Practitioners' Liability Committee is established.
- (2) The Liability Committee—
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue and be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all things that a body corporate may, by law, do and suffer and that are necessary or expedient for the purpose of performing functions and exercising powers under this Act.
- (3) The common seal must be kept as directed by the Liability Committee and must not be used except as authorised by the Committee.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the seal was properly affixed.

**235. Liability Committee not to represent the Crown**

The Liability Committee is a public authority but does not represent the Crown.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

**s. 236**

**236. Functions and powers**

(1) The Liability Committee has the following functions—

S. 236(1)(a)  
amended by  
Nos 102/1997  
s. 30(c)(i),  
79/1998  
s. 24(a)(i).

(a) to carry on the business of providing professional indemnity insurance;

S. 236(1)(b)  
amended by  
Nos 102/1997  
s. 30(c)(i),  
79/1998  
s. 24(a)(ii).

(b) to undertake liability under contracts of professional indemnity insurance;

(c) any other functions conferred by this Act.

(2) The Liability Committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(3) Without limiting sub-section (2), the Liability Committee may—

S. 236(3)(b)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.15).

(a) enter into contracts or arrangements in relation to insurance, re-insurance or limitation of any liability undertaken by it under sub-section (1);

(b) with the approval of the Board, borrow money from an authorised deposit-taking institution by way of overdraft or otherwise obtain financial accommodation and give security for that financial accommodation;

(c) require an RPA or the Board to give it, in the form it requires, access to any information held by the RPA or the Board that is necessary for it to perform its functions;

(d) exercise any other powers conferred by this Act.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

s. 237

\* \* \* \* \*

S. 236(4)  
amended by  
No. 102/1997  
s. 30(c)(ii),  
repealed by  
No. 79/1998  
s. 24(b).

### 237. Membership

- (1) The Liability Committee consists of a chairperson and not less than 4 nor more than 6 other members appointed by the Board.
- (2) At least one of the members must be a person who has knowledge of or experience in the insurance industry.
- (3) A member holds office, subject to this Act, for a term specified in his or her instrument of appointment, not exceeding 5 years from the date of appointment, and is eligible for re-appointment.
- (4) A member may be removed from office at any time by the Board.
- (5) A member may resign by writing delivered to the Board.
- (6) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a person appointed under this section.

S. 237(6)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.1).

### 238. Payment of members

- (1) A member of the Liability Committee, other than a member who is a member of the Board or an employee of the public service within the meaning of the **Public Administration Act 2004**, is entitled to receive the fees that are fixed from time to time by the Board.

S. 238(1)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 112.2).



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

**s. 239**

- (2) Each member of the Liability Committee is entitled to receive the allowances that are fixed from time to time by the Board.

**239. Acting members**

- (1) The Board may appoint a person to act in the place of a member who is absent or who, for any other reason, is unable to perform the duties of the office.
- (2) An acting appointment is for the term (not exceeding the balance of the member's term) determined by the Board.
- (3) A person appointed under sub-section (1) is eligible for re-appointment.
- (4) A person appointed under sub-section (1) has all the powers and may perform all the duties of the member for whom he or she is acting.
- (5) The Board may at any time terminate an acting appointment.

**240. Meetings**

- (1) The chairperson of the Liability Committee, or in his or her absence a member elected by the members present, must preside at a meeting of the Committee.
- (2) The quorum of the Liability Committee is a majority of the members for the time being.
- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (4) The Liability Committee must ensure that accurate minutes are kept of its meetings.
- (5) Subject to this Division, the Liability Committee may regulate its own procedure.

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**241. Resolutions without meetings**

(1) If—

- (a) the Liability Committee has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
- (b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Liability Committee held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Liability Committee, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) In this section, "**member**", in relation to a resolution, does not include a member who, because of section 243, is not entitled to vote on the resolution.

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**242. Validity of acts or decisions**

An act or decision of the Liability Committee is not invalid—

- (a) only because—
  - (i) of a defect or irregularity in, or in connection with, the appointment of a member; or
  - (ii) of a vacancy in the office of a member; or
- (b) on the ground that the occasion for an acting member to act had not arisen or had ceased.

**243. Conflicts of interest**

- (1) If—
  - (a) a member has a personal interest (whether pecuniary or otherwise) in a matter being considered or about to be considered by the Liability Committee; and
  - (b) the interest appears to raise a conflict of interest with the proper performance of the member's duties in relation to the consideration of the matter—

the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest at a meeting of the Committee.

Penalty: 5 penalty units.

- (2) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

**s. 244**

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- (3) After becoming aware of the conflict of interest in a matter—
- (a) unless the Liability Committee directs otherwise, the member must not be present during any deliberations on the matter; and
  - (b) the member is not entitled to vote on the matter; and
  - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section and section 241, a member is not to be regarded as having a conflict of interest—
- (a) in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
  - (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body; or
  - (c) in a matter only because the member, or a firm or incorporated practitioner of which the member is a partner, a director or an employee, has, or is required to have, a contract of professional indemnity insurance with the Committee.

**244. Staff and consultants**

The Liability Committee may employ any staff and engage any consultants required for the purpose of carrying out its functions or exercising its powers under this Act.

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**245. Consolidated annual reports**

The Minister may consolidate in the one document the report of operations and financial statements of the Liability Committee and the Board under Part 7 of the **Financial Management Act 1994**.

**246. Secrecy**

- (1) A person who is, or has been, a member or an acting member of the Liability Committee or an employee of or consultant to the Liability Committee must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or exercise of powers under this Act, unless—
- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
  - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent a person—
- (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings, proceedings under this Act or proceedings relating to a contract of professional indemnity insurance; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 8—Professional Indemnity Insurance

<b>s. 247</b>
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- (b) disclosing or communicating to the Board or an RPA the name of a firm, legal practitioner, interstate practitioner or foreign practitioner suspected of breaching a provision of, or failing to maintain, a contract of professional indemnity insurance; or
- (c) reporting a suspected defalcation to an RPA, the Board or the police or assisting any of them in their investigations.

**S. 246(2)(b)**  
**amended by**  
**No. 102/1997**  
**s. 30(d).**

**247. Immunity**

- (1) A member or an acting member of the Liability Committee, or an employee of the Liability Committee, is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
  - (a) in the exercise of a power or the performance of a function or duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty under this Act.
- (2) Any liability resulting from an act or omission that, but for sub-section (1), would attach to a member, an acting member or an employee, attaches instead to the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 248

**PART 9—RECEIVERS AND MANAGERS**

**Division 1—Definitions**

**248. Definitions**

In this Part—

S. 248 def. of  
"legal  
practice"  
inserted by  
No. 102/1997  
s. 31(1)(a).

**"legal practice"**, in relation to a regulated  
practitioner who is a registered foreign  
practitioner, means practice of foreign law;

S. 248 def. of  
"legal  
practitioner"  
repealed by  
No. 102/1997  
s. 31(1)(b).

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S. 248 def. of  
"property"  
amended by  
No. 102/1997  
s. 31(1)(c).

**"property"** includes—

(a) trust money; or

(b) other property that—

(i) in the course of or in connection  
with the legal practice of a  
regulated practitioner, or of a firm  
of which a regulated practitioner  
is or has been a partner, was given  
to or received by the practitioner  
or the firm or by an employee of  
the practitioner or of the firm or  
by a regulated practitioner with  
whom the practitioner or firm  
shares income from any business;  
and

(ii) was so given or received for or on  
behalf of a person or body other  
than the practitioner or the firm;  
or

- (c) a nominee mortgage or a payment or repayment of money secured by a nominee mortgage.

**"regulated practitioner"** includes—

- (a) the executor (original or by representation) or administrator for the time being of a deceased regulated practitioner or of his or her estate;
- (b) the administrator, or receiver, or receiver and manager, or official manager, of the property of a regulated practitioner that is a body corporate;
- (c) the liquidator of a regulated practitioner that is a body corporate that is being or has been wound up.

S. 248 def. of "regulated practitioner" inserted by No. 102/1997 s. 31(1)(d).

## **Division 2—Appointment of receiver**

### **249. Application for appointment of receiver**

- (1) An RPA or the Board may apply to the Supreme Court for the appointment of a receiver in respect of a regulated practitioner—
  - (a) if of the opinion that a defalcation has been, or may have been, committed in relation to any property of the regulated practitioner; or
  - (b) if of the opinion—
    - (i) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, has failed or is unable to attend to the legal practice; or



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 249

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- (ii) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, is unfit to engage in legal practice; or
  - (c) because of—
    - (i) the death of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
    - (ii) the contravention by the regulated practitioner of any provision made by or under this or any other Act in relation to trust money received, or a trust account maintained or required to be maintained, by the regulated practitioner; or
    - (iii) the striking off the roll of practitioners of the Supreme Court of the name of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
    - (iv) the suspension or cancellation of the practising certificate of, or the refusal to issue a practising certificate to, the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 249

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- the regulated practitioner is an incorporated practitioner; or
- (v) the suspension or prohibition from engaging in legal practice in Victoria of a regulated practitioner who is an interstate practitioner or the suspension or cancellation of registration of a regulated practitioner who is a registered foreign practitioner; or
- (vi) the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, being an insolvent under administration; or
- (vii) the regulated practitioner (being an incorporated practitioner)—
- (A) being an externally-administered body corporate within the meaning of the Corporations Act; or
- (B) being a body that, on an application under section 459P of the Corporations Act, the Court would be required under section 459C(2) of that Act to presume to be insolvent.
- (2) The Board may also apply under sub-section (1) with respect to a regulated practitioner of an RPA.
- (3) Unless the Supreme Court for any reason dispenses with service, a copy of an application under sub-section (1) must be served on the regulated practitioner to whom it relates at least 48 hours before it is due to be heard.
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S. 249(1)(c)(v) substituted by No. 102/1997 s. 31(2).

S. 249(1)(c)(vii)(A) amended by No. 44/2001 s. 3(Sch. item 72.4(a)).

S. 249(1)(c)(vii)(B) amended by No. 44/2001 s. 3(Sch. item 72.4(a)(b)).

S. 249(2) substituted by No. 102/1997 s. 31(3).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

**s. 250**

- (4) If an application under sub-section (1) is made by an RPA, the RPA must serve a copy of the application on the Board.
- (5) If an application under sub-section (1) is made by the Board, the Board must serve a copy of the application on the RPA (if any) that regulates the practitioner.
- (6) The Supreme Court may, on the application of a party or on its own initiative, make an order forbidding the publication of any report or account of the evidence or other proceedings on the hearing of an application under sub-section (1).

**250. Order appointing receiver**

- (1) On an application under section 249(1), the Supreme Court if satisfied that the RPA or the Board has reasonable grounds for making the application may appoint a receiver of all or any property—

**S. 250(1)(a)**  
amended by  
No. 102/1997  
s. 31(4).

- (a) that is held by the regulated practitioner or by another person on the practitioner's behalf or, in the case of the death of a practitioner, by his or her personal representative; or

**S. 250(1)(b)**  
amended by  
No. 102/1997  
s. 31(4).

- (b) that, but for the default of the regulated practitioner, would have been held by the practitioner or, in the case of the death of a practitioner, by his or her personal representative; or

**S. 250(1)(c)**  
amended by  
No. 102/1997  
s. 31(4).

- (c) that is recoverable by the regulated practitioner or, in the case of the death of a practitioner, by his or her personal representative.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

**s. 250**

(2) If the receiver appointed is—

- (a) a current practitioner; or
- (b) a current practitioner or registered foreign practitioner (if the regulated practitioner is a registered foreign practitioner)—

**S. 250(2)**  
**substituted by**  
**No. 102/1997**  
**s. 31(5).**

the Supreme Court may, by the order appointing the receiver, authorise the receiver to carry on the legal practice of the regulated practitioner.

(3) If the receiver appointed is not a current practitioner, the Supreme Court may, by the order appointing the receiver—

(a) authorise—

- (i) a current practitioner named in the order; or
- (ii) a current practitioner or registered foreign practitioner (if the regulated practitioner is a registered foreign practitioner) named in the order—

**S. 250(3)(a)**  
**substituted by**  
**No. 102/1997**  
**s. 31(6).**

to carry on the legal practice of the regulated practitioner on behalf of the receiver for such period and so far as it is necessary or desirable in order to wind up the practice properly in the interests of the practitioner's clients; and

- (b) make provision for or with respect to the termination of the authority of the practitioner named in the order to carry on that legal practice.

(4) A copy of the order appointing a receiver must be served within the period specified in the order—

- (a) on the regulated practitioner to whom the order relates; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

**s. 251**

(b) on any other person to whom the Supreme Court directs that notice of the order should be given.

- (5) If the order appointing a receiver is made on the application of an RPA, the RPA must serve a copy of the order on the Board.
- (6) If the order appointing a receiver is made on the application of the Board, the Board must serve a copy of the order on the RPA (if any) that regulates the practitioner.

**251. Trust account dealings**

S. 251(1)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.16).

- (1) The receiver may serve on an authorised deposit-taking institution a written notice forbidding, except by the receiver, any withdrawal of money from or other dealing with, or the completion of any dealing with, a trust account in the name of the regulated practitioner or of a firm of which the regulated practitioner is or has been a partner.

- (2) The receiver must attach to a notice under sub-section (1) a copy of the order under section 250 appointing him or her as receiver.

S. 251(3)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.16).

- (3) Without limiting the power to serve it in any other way, a notice under sub-section (1) may be served on an authorised deposit-taking institution by leaving it with the manager, accountant or other person at the time of service apparently in charge of the branch at which the trust account is kept.

S. 251(4)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.17).

- (4) An authorised deposit-taking institution must not contravene a notice under sub-section (1).

Penalty: 50 penalty units.

- (5) The receiver may withdraw all the money in the trust account to which the notice under subsection (1) relates and pay it into a special account or accounts in the receiver's own name and may withdraw money from or otherwise deal with any such special account in the same manner and to the same extent as the regulated practitioner might have done so in respect of the trust account.

**252. Carrying on of legal practice**

- (1) In addition to any other powers conferred on him or her by or under this Division, a receiver who is authorised by the Supreme Court to carry on a regulated practitioner's legal practice may do all acts or things in relation to the practice that the regulated practitioner might lawfully have done including, but not limited to—
- (a) on behalf of or in the name of the regulated practitioner or in the receiver's own name—
    - (i) charging legal costs for the provision of legal services to clients of the regulated practitioner;
    - (ii) dealing with any property held in connection with the practice in accordance with section 264;
    - (iii) entering into, executing or performing any agreement;
    - (iv) commencing, continuing, defending or settling any proceeding;
    - (v) retaining any property held in connection with the practice for so long as is necessary or desirable in order to carry on the practice properly and efficiently;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 252

- (vi) paying any accounts payable in connection with the practice out of any legal costs receiver;
  - (b) terminating the practice;
  - (c) paying to the RPA or the Board all money lawfully owing to it by the regulated practitioner, including money owed under section 271;
  - (d) doing any other act or thing necessary or expedient to be done in the exercise of those powers or in carrying on the practice with a view properly to wind it up in the interests of the regulated practitioner's clients.
- (2) For the purposes of this Division, money received by the receiver in the course of carrying on under this section the regulated practitioner's practice, including money received in respect of legal costs for the provision of legal services by the regulated practitioner before the appointment of the receiver, must be regarded as property of the receivership.
- (3) Subject to the direction of the receiver, a current practitioner or registered foreign practitioner authorised by the Supreme Court to carry on a legal practice on behalf of a receiver has and may exercise all the powers conferred on the receiver by this section and any property held, or money received, by that practitioner in the course of carrying on or terminating that practice must be taken to have been held or received by the receiver.

S. 252(3)  
amended by  
No. 102/1997  
s. 31(7)(a)(i)(ii).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

**s. 253**

- (4) The receiver must pay a current practitioner or registered foreign practitioner authorised by the Supreme Court to carry on a legal practice on behalf of the receiver such reasonable remuneration for the services provided by the practitioner as is agreed between the receiver, the practitioner and the Board or, failing agreement, as is determined by the Supreme Court on an application made by the receiver, the practitioner or the Board.
- (5) Any amount paid to a current practitioner or registered foreign practitioner under sub-section (4) must be included in the expenses of the receivership.

**S. 252(4)**  
amended by  
No. 102/1997  
s. 31(7)(b).

**S. 252(5)**  
amended by  
No. 102/1997  
s. 31(7)(b).

**253. Receiver may invest money**

- (1) A receiver may invest any money that comes into his or her possession in the course of the receivership in the manner in which money may be invested under the **Trustee Act 1958**.
- (2) Any money derived from an investment under sub-section (1) and any profit arising on the realisation or revaluation of such an investment is added to and forms part of the property of which he or she has been appointed receiver.

**254. Receiver may require delivery of property**

- (1) The receiver may require the regulated practitioner or any other person to deliver to the receiver any property of which he or she has been appointed receiver and to give to the receiver all information concerning the property that may reasonably be required by the receiver.
- (2) A regulated practitioner or other person must not—
  - (a) without lawful excuse, refuse or fail to comply with a requirement under sub-section (1); or



- (b) otherwise hinder, obstruct or delay the receiver in the performance of his or her duties or in the exercise of his or her powers under this Division.

Penalty: 100 penalty units.

- (3) If a regulated practitioner or other person, before delivering property or giving information, objects to the receiver on the ground that the delivering of the property or giving of the information may tend to incriminate them, the property or information is inadmissible in evidence in any proceeding against them for an offence, other than an offence in relation to the keeping of trust accounts or the receipt of trust money or the giving of false or misleading information.

#### **255. Delivery of property to receiver**

- (1) The receiver may acquire or take possession of any property of which he or she has been appointed receiver but must return any document (other than one relating to property of a kind referred to in paragraph (a), (b) or (c) of the definition of "property" in section 248 or to the regulated practitioner's legal practice or former practice) to the person from whom it was obtained as soon as is reasonable.
- (2) The receiver may apply to the Supreme Court for an order for the transfer or delivery to him or her of property if—
  - (a) the regulated practitioner or any other person, on being required by the receiver to transfer or deliver to him or her, or to permit the receiver to take possession of, any property in the possession, at the disposition or under the control of the regulated practitioner or other person, does not fully comply with the requirement; or

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- (b) it appears to the receiver that a person has not fully complied with a requirement under paragraph (a); or
  - (c) it appears to the receiver that he or she is more likely to obtain possession or control of property if the order is made without a requirement under paragraph (a) having been imposed on the regulated practitioner or any other person than if such a requirement had been imposed.
- (3) Unless the Supreme Court for any reason dispenses with service, a copy of an application under sub-section (2) must be served on the person against whom the order is sought at least 48 hours before it is due to be heard.
  - (4) The Supreme Court, on an application under sub-section (2), may make an order for the transfer or delivery of property.
  - (5) An order under sub-section (4) must not require a person to transfer or deliver to the receiver any property acquired by the person in good faith and for value and without notice of any trust attaching to it.

**256. Receiver may seek power of entry**

- (1) The receiver may apply to the Supreme Court for an order authorising the receiver, or another person, together with any member of the police force to enter any premises or other place specified in the order and to search for and seize any property of which the receiver is entitled to take possession and remove that property to any place that the receiver thinks fit.
- (2) The Supreme Court, on an application under sub-section (1), may make any order that it thinks fit.

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**257. Application in relation to accounts**

- (1) An RPA or the Board may apply to the Supreme Court for an order directed to a financial institution at which there is kept an account (not being a trust account) in the name of—
  - (a) the regulated practitioner; or
  - (b) a firm of which the regulated practitioner is or has been a partner; or
  - (c) a family member of the regulated practitioner; or
  - (d) a corporation of or in which the regulated practitioner or a family member of the regulated practitioner—
    - (i) holds the position of director or is otherwise concerned in the management of the corporation; or
    - (ii) holds, whether legally or beneficially, a financial interest that carries with it power to control the making of any management decision.
- (2) An RPA or the Board may apply under subsection (1) if of the opinion—
  - (a) that a defalcation has been, or may have been, committed in relation to a trust account in the name of the regulated practitioner or of a firm of which the regulated practitioner is or has been a partner; and
  - (b) that money from a trust account referred to in paragraph (a) has been, or may have been, transferred to the account in relation to which the application is made or used for the benefit of the holder of that account.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

<b>s. 257</b>
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- (3) An application under sub-section (1) may be made in relation to an account without giving notice to the holder of that account.
  - (4) The Board may also apply under sub-section (1) with respect to a regulated practitioner of an RPA.
  - (5) If an application under sub-section (1) is made by an RPA, the RPA must serve a copy of the application to the Board.
  - (6) If an application under sub-section (1) is made by the Board, the Board must serve a copy of the application on the RPA (if any) that regulates the practitioner.
  - (7) On an application under sub-section (1), the Supreme Court, if satisfied that the RPA or the Board has reasonable grounds for the opinion referred to in sub-section (2), may make an order forbidding any withdrawal of money from or other dealing with, or the completion of any dealing with, the account to which the order relates for a specified period or until the happening of a specified event.
  - (8) The applicant must cause a copy of an order under sub-section (7) to be served on the financial institution at which the account to which the order relates is kept.
  - (9) Without limiting the power to serve it in any other way, an order under sub-section (7) may be served on a financial institution by leaving it with the manager, accountant or other person at the time of service apparently in charge of the branch at which the account is kept.

**S. 257(4)**  
**substituted by**  
**No. 102/1997**  
**s. 31(8).**

S. 258  
amended by  
No. 114/2003  
s. 12.1.3(Sch.  
6 item 8).

**258. Receiver may recover money paid away in bets**

If any money has been stolen or embezzled the receiver must be taken, for the purposes of section 2.6.3 of the **Gambling Regulation Act 2003**, to have been the person from whom the money was stolen or embezzled.

**259. Recovery of property where there has been a breach of trust etc.**

- (1) This sub-section applies where money has been taken by, or paid or transferred to, a person ("the transferee") in breach of trust, improperly or unlawfully and the transferee—
  - (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
  - (b) did not provide to the regulated practitioner or any other person any or any adequate consideration for the taking, payment or transfer; or
  - (c) because of the taking, payment or transfer, became indebted or otherwise liable to the regulated practitioner or to a client of the regulated practitioner in the amount of the payment or in another amount.
- (2) A receiver is entitled to recover from the transferee—
  - (a) if paragraph (a) of sub-section (1) applies, the amount of the payment or the value of the property taken or transferred;
  - (b) if paragraph (b) of that sub-section applies, the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the property taken or transferred;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 259

- (c) if paragraph (c) of that sub-section applies, the amount of the debt or liability—

and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.

- (3) If any money is paid in breach of trust, improperly or unlawfully to a person ("the prospective plaintiff") in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party—

- (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or

- (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.

- (4) If any property has been used in breach of trust, improperly or unlawfully so as to discharge a debt or liability of a person ("the debtor"), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.

- (5) An approved auditor authorised by the RPA or the Board (as the case requires) to do so may give a certificate with respect to all or any of the following facts—

- (a) the receipt of property by the regulated practitioner from any person, the nature and value of the property, the date of receipt and the identity of the person from whom it was received;

- (b) the taking, payment or transfer of property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person by whom it was taken or to whom it was paid or transferred;
  - (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the regulated practitioner and the truth or falsity of those entries;
  - (d) the money and securities held by the regulated practitioner at any stated time.
- (6) If the receiver brings a proceeding under sub-section (2), (3) or (4), a certificate given under sub-section (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it.

**260. Time within which receiver may recover property**

Despite anything to the contrary in the **Limitation of Actions Act 1958**, a receiver may bring an action to recover property at any time before the expiration of 6 years after his or her appointment as receiver.

**261. Requirement to pay compensation for defalcation to receiver**

If a person who has been paid compensation out of the Fidelity Fund in respect of a defalcation subsequently receives from any other person any sum by way of damages, compensation or indemnity in respect of the pecuniary loss arising from the defalcation or any repayment of money in respect of which the defalcation occurred, the person who was paid compensation out of the Fidelity Fund—

- (a) if the compensation out of the Fidelity Fund was for the whole of the loss, must pay to the receiver, the sum subsequently received or the money subsequently repaid; or
- (b) if the compensation out of the Fidelity Fund was for part of the loss, must pay to the receiver, any amount by which the aggregate of the compensation out of the Fund and the sum subsequently received or the money subsequently repaid exceeds the amount of the loss.

**262. Subrogation of receiver**

On payment to a person out of the Fidelity Fund of any money in satisfaction of a claim for compensation under Division 2 of Part 7, the receiver is subrogated to the extent of that payment to the rights and remedies of that person against any other person in relation to the defalcation.

**263. Improperly destroying property etc.**

- (1) A person must not, with intent to defeat the purpose of this Division, and whether before or after the appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any property of which a receiver has been or is likely to be appointed.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) An offence against sub-section (1) is an indictable offence.

S. 263(1)  
amended by  
No. 48/1997  
s. 71(2).



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**264. Receiver may deal with property**

- (1) Subject to this section, the receiver may deal with any property that he or she has acquired or of which he or she has taken possession under this Division in any manner in which the regulated practitioner might lawfully have dealt with it.
- (2) Without limiting his or her powers under sub-section (1), the receiver may—
  - (a) prove, grant, claim and draw a dividend in respect of any debt due to the regulated practitioner in connection with any property of which the receiver has been appointed receiver;
  - (b) give receipts for any money received by the receiver and thereby effectively discharge the person paying the money from all responsibility in respect of its application;
  - (c) employ a current practitioner or other agent to give advice, commence proceedings or otherwise act for the receiver in relation to any property of which the receiver has been appointed receiver.
- (3) The receiver may retain any property belonging to the regulated practitioner of which he or she has taken possession under this Division until all claims against the Fidelity Fund arising out of anything done or omitted to be done by the regulated practitioner have been settled and must, as soon as practicable thereafter, apply to the Supreme Court for an order as to the disposition of the property.
- (4) The Supreme Court may, on an application under sub-section (3), make any order that it thinks fit.

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**265. Claims to property**

- (1) The receiver may give notice to the regulated practitioner or any other person that, if the regulated practitioner or that other person has a claim to any property, the practitioner or other person must, within the period specified in the notice, submit to the receiver full details of the property claimed and the grounds of the claim.
- (2) The period specified in a notice under sub-section (1) must not be less than 30 days from the date on which the notice was given.
- (3) If a notice has been given under sub-section (1), the receiver may disregard any claim made otherwise than in accordance with its terms.
- (4) The regulated practitioner is not entitled to any payment in respect of, or otherwise to enforce, a claim and is not entitled to a lien on any document held by the receiver until the proper claims of all other claimants are fully satisfied.

**266. Summons for directions**

- (1) The receiver, the regulated practitioner or any person who has submitted a claim to the receiver in respect of any property may apply to the Supreme Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on him or her by this Division, either generally or in respect of a particular matter specified in the application.
  - (2) The Supreme Court may, on an application under sub-section (1), make any order that it thinks fit.
  - (3) Without limiting any other power that it has, the Supreme Court has power to authorise a receiver to do anything that it thinks fit for carrying out the objects of this Division or the administration by the receiver of any property and may give directions accordingly.
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**267. Liens for regulated practitioner's legal costs**

- (1) If the regulated practitioner claims a lien for legal costs of any document or other property held by the receiver, the receiver may, by written notice given to the practitioner, require the practitioner to give to the receiver within the period specified in the notice full details of all documents or other property on which the practitioner claims a lien together with an itemised bill of costs in respect of which each lien is claimed.
- (2) The period specified in a notice under sub-section (1) must not be less than 30 days from the date on which the notice was given.
- (3) The receiver may, by the notice under sub-section (1) or a subsequent written notice given to the regulated practitioner, require the practitioner to have any bill of costs assessed under Division 5 of Part 4 within the reasonable period specified in the notice.
- (4) If the regulated practitioner fails to comply with a requirement under sub-section (1) or (3) in respect of a claimed lien, the receiver may disregard the lien in dealing with the document or other property.
- (5) If the regulated practitioner so requests in writing, the receiver must give to the practitioner or any other person on the practitioner's behalf such access to all relevant documents as is reasonably necessary to enable the preparation of any bill of costs required by the receiver.
- (6) If a request is made under sub-section (5), the period specified in a notice under sub-section (1) does not commence until access is given as requested by the regulated practitioner.

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**268. Examination by receiver**

- (1) The receiver may apply to the Supreme Court for an order that the regulated practitioner or other person specified in the application appear before the Supreme Court to be examined by the receiver about any property of which the receiver has been appointed receiver.
- (2) The Supreme Court may, on an application under sub-section (1), make any order that it thinks fit.
- (3) The receiver and the regulated practitioner or other person may be legally represented on an examination before the Supreme Court in accordance with an order made under sub-section (2).
- (4) The Supreme Court may put, or allow to be put, to a person being examined any question that it thinks fit.
- (5) An oath is to be administered to any person being examined and he or she must answer all questions put to him or her.
- (6) A person being examined may object to a question on the ground that the answer may tend to incriminate him or her but is compellable to answer the question despite the objection.
- (7) No answer given subject to an objection is admissible in evidence in any proceeding for an offence except one for perjury arising out of the examination.

**269. Termination of appointment of receiver**

- (1) The RPA or the Board (as the case requires) or the regulated practitioner may at any time apply to the Supreme Court for an order that the appointment of a receiver be terminated.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

**s. 270**

- (2) The Supreme Court may, on an application under sub-section (1), make an order that it thinks fit including an order appointing another person as receiver.
- (3) If a receiver's appointment is terminated by order of the Supreme Court and another person appointed as receiver in his or her place, the former receiver must, as soon as practicable and subject to any directions given by the Supreme Court under this section, transfer or deliver to the new receiver all documents and other property held by the former receiver by virtue of his or her appointment as receiver.
- (4) Subject to any directions given by the Supreme Court under this section and subject (unless the Board otherwise determines) to the payment by the regulated practitioner to the Board of the expenses of the receivership as defined in section 271, if a receiver's appointment is terminated by order of the Supreme Court and no other person is appointed as receiver in his or her place within 14 days after the termination, the former receiver may, and must as soon as practicable if the regulated practitioner requests in writing that he or she do so, transfer or deliver to the regulated practitioner all documents and other property held by him or her by virtue of his or her appointment as receiver.

**270. Property not dealt with by receiver**

- (1) Any money or other property that comes into the possession of the receiver in the course of the receivership and is not dealt with by the receiver in accordance with section 252, 255(1) or 264 must be paid or delivered by the receiver to the Board.
- (2) Any money paid by the receiver to the Board must be paid into the Public Purpose Fund.

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**271. Remuneration of receiver**

- (1) The expenses of the receivership, that is all money payable to the receiver as remuneration for his or her services and all expenses incurred by the receiver in the course of the receivership and all expenses incurred by a former receiver under section 269, must be paid to the receiver or former receiver by the Board out of the Public Purpose Fund.
- (2) Any amount paid under sub-section (1) is recoverable by the Board from the regulated practitioner as a debt owing by the practitioner to the Board.
- (3) The amount to be paid to the receiver as remuneration for his or her services is as agreed between the receiver and the Board (even if the receiver was appointed on an application by an RPA) or, failing agreement, as is determined by the Supreme Court on an application made by the receiver or the Board.

**272. Receiver may be reimbursed for damages**

The Board may reimburse a receiver out of the Public Purpose Fund for all or any damages and costs recovered against the receiver, or an employee or agent of the receiver, in respect of any act done or omitted to be done by the receiver, or by an employee or agent of the receiver, in good faith in the exercise or discharge, or the purported exercise or discharge, of the powers or duties conferred or imposed on the receiver by or under this Division.

**273. Receiver is not personal representative**

If the regulated practitioner dies, the receiver must not be taken to be the personal representative of the practitioner or of his or her estate.

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**274. Property not to be levied**

Property held by a receiver under this Division must not be levied on or taken or attached under any judgment.

**275. Returns by receivers**

- (1) Subject to any directions given by the Supreme Court, a receiver must at any times determined by the Supreme Court furnish to the Court and to the RPA or the Board (as the case requires) a report of the receivership containing any information required by the Court.
- (2) The RPA or the Board (as the case requires) may require a receiver to furnish to it at any times determined by it a report of the receivership containing any information required by it.
- (3) As soon as practicable after the conclusion of the receivership, the receiver must furnish to the Supreme Court a final report of the receivership.

**276. Surplus to be paid into Fidelity Fund**

If, after all claims and expenses of the receivership have been paid in full out of the Public Purpose Fund in accordance with this Division, there remains a surplus of money paid by the receiver to the Board, the surplus must be paid out of that Fund and into the Fidelity Fund.

**277. Costs**

In any proceeding in the Supreme Court under this Division, the Supreme Court may make any order about the payment of costs of, and incidental to, the proceeding, or of costs incurred in executing an order made by it, that it thinks fit.

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**Division 3—Appointment of manager**

**278. Appointment of manager**

- (1) An RPA or the Board may appoint a manager for the legal practice of a regulated practitioner—
  - (a) if of the opinion that a defalcation has been, or may have been, committed in relation to any property of the regulated practitioner; or
  - (b) if of the opinion—
    - (i) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, has failed or is unable to attend to the legal practice; or
    - (ii) that the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, is unfit to engage in legal practice; or
  - (c) because of—
    - (i) the death of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
    - (ii) the contravention by the regulated practitioner of any provision made by or under this or any other Act in relation to trust money received, or a



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 278

trust account maintained or required to be maintained, by the regulated practitioner; or

- (iii) the striking off the roll of practitioners of the Supreme Court of the name of the regulated practitioner, or of a partner of the regulated practitioner if the regulated practitioner is a firm, or of a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
- (iv) the suspension or cancellation of the practising certificate of, or the refusal to issue a practising certificate to, the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner; or
- (v) the suspension or prohibition from engaging in legal practice in Victoria of a regulated practitioner who is an interstate practitioner or the suspension or cancellation of registration of a regulated practitioner who is a registered foreign practitioner; or
- (vi) the regulated practitioner, or a partner of the regulated practitioner if the regulated practitioner is a firm, or a director of the regulated practitioner if the regulated practitioner is an incorporated practitioner, being an insolvent under administration; or

S. 278(1)(c)(v)  
substituted by  
No. 102/1997  
s. 32(1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 9—Receivers and Managers

s. 278

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- (vii) the regulated practitioner (being an incorporated practitioner)—
- (A) being an externally-administered body corporate within the meaning of the Corporations Act; or
- (B) being a body that, on an application under section 459P of the Corporations Act, the Court would be required under section 459C(2) of that Act to presume to be insolvent.
- (2) The Board, in accordance with sub-section (1), may also appoint a manager for the legal practice of a regulated practitioner of an RPA.
- (3) An RPA or the Board must not appoint a manager for the legal practice of a regulated practitioner without giving the regulated practitioner a reasonable opportunity to object to the appointment.
- (4) A person is not eligible to be appointed as a manager under this section unless he or she is a natural person who holds a practising certificate that authorises him or her to receive trust money.
- (5) A person may not engage in legal practice in a practice for which a manager has been appointed otherwise than as an employee of the manager.
- (6) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the legal practice for which the manager is appointed.
- S. 278(1)(c) (vii)(A) amended by No. 44/2001 s. 3(Sch. item 72.4(a)).
- S. 278(1)(c) (vii)(B) amended by No. 44/2001 s. 3(Sch. item 72.4 (a)(b)).
- S. 278(2) substituted by No. 102/1997 s. 32(2).

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**279. Powers of manager**

The manager of a legal practice may, subject to the terms of his or her appointment, do all acts or things in relation to the practice that the regulated practitioner might lawfully have done including, but not limited to—

- (a) charging legal costs for the provision of legal services to clients of the regulated practitioner;
- (b) dealing with any property held in connection with the practice;
- (c) entering into, executing or performing any agreement;
- (d) commencing, continuing, defending or settling any proceeding;
- (e) retaining any property held in connection with the practice for so long as is necessary or desirable in order to carry on the practice properly and efficiently;
- (f) paying any accounts payable in connection with the practice out of any legal costs received.

**280. Receivership terminates management**

The appointment of a receiver under Division 2 in respect of a legal practice for which a manager has been appointed terminates the appointment of the manager.

**281. Acts of manager to be taken as acts of regulated practitioner**

- (1) An act done or omitted to be done by the manager of a legal practice must, for the purpose of any proceeding or transaction that relies on that act or omission, be taken to have been done or omitted to be done by the regulated practitioner.

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- (2) Nothing in this section subjects a regulated practitioner to any personal liability in relation to any act done or omitted to be done by the manager of the legal practice.

**282. Payment of expenses of management**

- (1) So much of the expenses of the management of a legal practice as have not otherwise been paid to the manager out of the receipts of the practice are to be paid to the manager by the Board out of the Public Purpose Fund.
- (2) The expenses of the management comprise the money payable to the manager as remuneration for his or her services and all expenses incurred by the manager in the course of managing the legal practice.
- (3) Any amount paid under sub-section (1) is recoverable by the Board from the regulated practitioner as a debt owing by the practitioner to the Board.

**283. Manager may be reimbursed for damages**

- (1) The Board may reimburse a manager of a legal practice out of the Public Purpose Fund for all or any damages and costs recovered against the manager, or an employee or agent of the manager, in respect of any act done or omitted to be done by the manager, or by an employee or agent of the manager, in good faith in the exercise or discharge, or the purported exercise or discharge, of the powers or duties conferred or imposed on the manager by or under this Division.
- (2) Neither the manager of a legal practice nor the RPA or the Board are liable for any loss incurred by the regulated practitioner as a consequence of any act done or omitted to be done by the manager or the RPA or the Board in, or in relation to, the conduct of the legal practice if the act was done or

omitted to be done in good faith in the exercise or discharge, or the purported exercise or discharge, of a power or duty conferred or imposed by or under this Division.

**284. Manager to report to RPA or Board**

- (1) The manager of a legal practice must report to the RPA or the Board, as the case requires, on the management of the legal practice—
  - (a) at such times as are fixed by the RPA or the Board; and
  - (b) in accordance with any directions given by the RPA or the Board.
- (2) A report must include any information that the RPA or the Board (as the case requires) directs.

**285. Termination of appointment of manager**

The RPA or the Board (as the case requires) may at any time and for any reason terminate the appointment of a manager.

**286. Termination of management**

- (1) On the termination of the appointment of a manager, the manager must as soon as practicable give to the RPA or the Board, as the case requires, in addition to his or her final report, all documents in his or her possession or under his or her control relating to the management.
- (2) On a legal practice ceasing to be under management, any money or other property held by the manager in connection with the practice, after discharge of any liabilities arising in relation to the practice by virtue of this Act, becomes the property of the regulated practitioner unless section 280 applies, in which case it becomes the property of the receivership.

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**287. Application of Part 6**

- (1) Part 6 applies to a trust account kept by a manager in the same way that it applies to a trust account kept by any other legal practitioner.
- (2) A trust account maintained in relation to a legal practice under management is to be maintained separately from the trust accounts of any other legal practice under management and separately from any trust account kept by the manager in the course of his or her own legal practice.

**288. Office accounts**

The Governor in Council may make regulations in accordance with section 445 for or with respect to—

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a legal practice in connection with the conduct of the practice;
  - (b) the purposes for which money in any such account may be expended.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 10—Incorporated Practitioners

s. 289

**PART 10—INCORPORATED PRACTITIONERS**

**289. Application for registration**

- (1) A company may apply to the Board for registration as an incorporated practitioner.
- (2) The application must be made in the manner determined by the Board and contain—
  - (a) a nomination under section 290; and
  - (b) the name and date of birth of each director of the applicant and each legal practitioner who is an employee of the applicant; and
  - (c) the name of each member of the applicant; and
- (ca) any business name under which the applicant intends to engage in legal practice; and
- (d) the applicant's address for service of notices and other documents; and
- (e) the applicant's constitution; and
- (f) any other information required by the Board.

S. 289(2)(ca)  
inserted by  
No. 79/1998  
s. 25(a).

**290. Nomination of RPA**

- (1) Subject to sub-section (3), an applicant must nominate an RPA of which it is eligible to be a regulated practitioner to regulate it, its directors and its employees who are legal practitioners.
- (2) An incorporated practitioner is eligible to be a regulated practitioner of any RPA of which each director and each employee who is a legal practitioner is a member or is eligible to be a member.
- (3) If there is no such RPA, the applicant must nominate the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 10—Incorporated Practitioners

**s. 291**

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**291. Registration**

- (1) The Board may register an applicant as an incorporated practitioner if satisfied that—
  - (a) the applicant satisfies the criteria for an incorporated practitioner set out in this Part; and
  - (b) the applicant's constitution is appropriate to a company formed for the purpose of engaging in legal practice.
- (2) The Board registers an incorporated practitioner by entering the following details in the Register—
  - (a) the name and A.C.N. of the incorporated practitioner; and
  - (ab) any business name under which the incorporated practitioner intends to engage in legal practice; and
  - (b) the name and date of birth of each director of the incorporated practitioner; and
  - (c) the incorporated practitioner's address for service of notices and other documents; and
  - (d) the RPA to which the incorporated practitioner has been allocated or, if it has been allocated to the Board, that fact.
- (3) The Board must give written notice to the incorporated practitioner and the RPA (if any) to whom the practitioner is allocated as soon as practicable after registering the incorporated practitioner.

**S. 291(2)(ab)**  
**inserted by**  
**No. 79/1998**  
**s. 25(b).**



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 10—Incorporated Practitioners

s. 292

**292. RPA allocation**

- (1) The Board must—
  - (a) allocate an incorporated practitioner to the RPA nominated by it if satisfied that it is eligible to be a regulated practitioner of that RPA; or
  - (b) if not satisfied that the incorporated practitioner is eligible to be a regulated practitioner of the nominated RPA, after consultation with the incorporated practitioner, allocate it to an RPA of which it is eligible to be a regulated practitioner; or
  - (c) if satisfied that the incorporated practitioner is not eligible to be a regulated practitioner of any RPA, allocate it to the Board.
- (2) On the Board registering an applicant as an incorporated practitioner under section 291, the incorporated practitioner and each director and employee who is a legal practitioner become regulated practitioners of the RPA to which the incorporated practitioner is allocated or, if subsection (1)(c) applies, of the Board.

**293. Form and object of incorporated practitioner**

S. 293(1)  
substituted by  
No. 44/2001  
s. 3(Sch.  
item 72.5).

- (1) An incorporated practitioner must be a proprietary company within the meaning of the Corporations Act that is taken to be registered in Victoria.

S. 293(2)  
amended by  
No. 102/1997  
s. 33(a).

- (2) The sole object of an incorporated practitioner must be to engage in legal practice or the practice of foreign law, or both.
- (3) The constitution of an incorporated practitioner may limit the liability of members.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 10—Incorporated Practitioners

**s. 294**

- (4) An alteration to the constitution of an incorporated practitioner is not effective until it has been approved by the Board.

**294. Directors**

Each director of an incorporated practitioner must be a current practitioner.

**295. Shares**

- (1) A share in an incorporated practitioner may be held only—
- (a) by a current practitioner who is a director or an employee of the incorporated practitioner; or
  - (ab) by a registered foreign practitioner who is an employee of the incorporated practitioner; or
  - (b) by another incorporated practitioner, either beneficially or on trust for—
    - (i) a current practitioner who is a director or an employee of that other incorporated practitioner; or
    - (ii) a family member of a practitioner referred to in sub-paragraph (i).
- (2) The shares of a member who is not, or who ceases to be, eligible to hold or own shares in an incorporated practitioner under this section must be transferred to a person who is entitled to hold or own shares in the incorporated practitioner.
- (3) If any shares are not transferred as required by sub-section (2) within 6 months after the member ceases to be eligible to hold or own them, the Supreme Court, on application by the Board, the incorporated practitioner or the member, may vest the shares in a person appointed by the Court on

**S. 295(1)(a)**  
amended by  
**No. 102/1997**  
s. 33(b).

**S. 295(1)(ab)**  
inserted by  
**No. 102/1997**  
s. 33(c).

trust for sale to a person who is eligible to hold or own them.

- (4) A member of the incorporated practitioner must notify it of the name and address of any person who acquires or disposes of an interest registered in the name of the member in the incorporated practitioner's books as soon as practicable after the acquisition or disposal.
- (5) In this section, "**share**" includes a right to participate in a distribution of profits.

#### **296. Powers of incorporated practitioners**

- (1) An incorporated practitioner that holds a practising certificate may do anything that is authorised or required to be done by a legal practitioner by or under any other Act or law, unless in the circumstances it can only be done by a natural person.
- (2) An incorporated practitioner that holds a practising certificate may engage in legal practice for the benefit of a trust—
  - (a) of which the practitioner is sole trustee; and
  - (b) the beneficiaries of which are limited to current practitioners who are directors or employees of the incorporated practitioner or their family members or both.

#### **297. Directors' and members' liability**

- (1) A director or member of an incorporated practitioner is liable for the acts and omissions of the incorporated practitioner in the course of, or in connection with, its engaging in legal practice to the same extent as if they were acts or omissions of the director or member, insofar as those acts or omissions constitute a contravention of this Act, misconduct or unsatisfactory conduct.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 10—Incorporated Practitioners

**s. 297**

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- (2) Subject to section 218(2), a director or member of an incorporated practitioner is liable for a defalcation committed by the incorporated practitioner or another director or member of the incorporated practitioner or an employee of the incorporated practitioner in the course of, or in connection with, engaging in legal practice, to the same extent as if the director or member had committed it.
- (3) This section prevails over section 293(3) to the extent of any inconsistency between them.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

s. 298

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**PART 11—RECOGNISED PROFESSIONAL ASSOCIATIONS**

**Division 1—Accreditation**

**298. Application for accreditation**

- (1) A body corporate may make a written application to the Board for accreditation as a recognised professional association.
- (2) The application must be accompanied by the information required by the Board.

**299. Criteria for accreditation**

- (1) The Board may grant accreditation to an applicant if satisfied that—
  - (a) the applicant's constitution—
    - (i) requires the applicant to regulate firms, legal practitioners, interstate practitioners and registered foreign practitioners allocated to it by the Board; and
    - (ii) prohibits the applicant from discriminating against regulated practitioners who are not members of the applicant in its functions as an RPA under this Act; and
    - (iii) requires the applicant to account separately for its funds relating to its functions as an RPA and its funds relating to any other functions or activities; or
    - (iv) requires the applicant to comply with any non-compliance notice issued by the Board under section 303; and

S. 299(1)(a)(i)  
amended by  
No. 102/1997  
s. 34(a).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

**s. 299**

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- (v) provides that any amendment of it is not effective until approved by the Board; and
  - (b) the applicant—
    - (i) has made practice rules required to be made by this Act; and
    - (ii) does not have any practice rule that is inconsistent with this or any other Act or the regulations; and
  - (c) subject to sub-section (3), the applicant has—
    - (i) at least 200 members who are current practitioners; and
    - (ii) members representing at least 20 different legal practices; and
  - (d) the eligibility criteria for membership of the applicant are not unnecessarily restrictive, having regard to the types of practitioners who may wish to be a member of the applicant; and
  - (e) the applicant has a publication that is suitable to be its official publication; and
  - (f) taking into account the matters in sub-section (2), the applicant can adequately perform the functions of an RPA.
- (2) The matters referred to in sub-section (1)(f) are—
- (a) the organisation and management structure of the applicant;
  - (b) how the applicant makes and alters its practice rules;
  - (c) the adequacy of the applicant's practice rules (including whether they cover all areas of practice of regulated practitioners);
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

**s. 300**

- (d) the adequacy of the applicant's procedures for dealing with client disputes and complaints;
  - (e) the adequacy of the applicant's financial and personnel resources;
  - (f) any other criteria that the Board considers relevant in determining whether the applicant can adequately perform the functions of an RPA under this Act.
- (3) The Board may grant accreditation to an applicant that has fewer than 200 members who are current practitioners or members representing fewer than 20 different legal practices if—
- (a) the Board considers that there are special circumstances such that it is desirable that the applicant be accredited as an RPA; and
  - (b) the Board is satisfied as to the matters in subsection (1) (other than paragraph (c)).
- (4) In this section, "**legal practice**" means—
- (a) a sole practitioner; or
  - (b) a firm; or
  - (c) an incorporated practitioner.

**300. Publication and duration of accreditation**

- (1) The Board must publish notice of the accreditation of an RPA in the Government Gazette in the prescribed form and the accreditation takes effect on the date of publication.
- (2) Subject to suspension, revocation and withdrawal, an accreditation lasts for 10 years and may be renewed.

- (3) The Board may extend an accreditation for a period of up to 12 months if the RPA has applied for renewal of its accreditation in accordance with section 301 and the Board has not determined the application at the expiry of the 10 year period.

**301. Renewal of accreditation**

- (1) An application for renewal of accreditation—
- (a) must be made in writing at least 12 months before the expiry of the accreditation under section 300(2); and
  - (b) must contain the information required by the Board; and
  - (c) is to be treated as an application for accreditation and the provisions of this Part apply accordingly.
- (2) If it thinks fit, the Board may accept an application for renewal made within 12 months before the expiry of the accreditation.
- (3) There is no limit to the number of times an accreditation may be renewed.

**302. Withdrawal from accreditation**

An RPA may withdraw from accreditation on giving not less than 12 months' written notice to the Board.

**303. Board may issue non-compliance notice**

- (1) If the Board—
- (a) reasonably suspects that an RPA has contravened a provision of this Act or the regulations; or
  - (b) is of the opinion that an RPA cannot perform, or is not performing, its functions as an RPA adequately; or



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

**s. 304**

(c) becomes aware of any other matter that, had the Board known of it at the time that an RPA applied for accreditation, would have resulted in the Board not granting the RPA accreditation—

the Board may give a written notice to the RPA requiring it, within 7 days, to provide an explanation to the Board.

- (2) If the Board is not satisfied with the RPA's explanation, or if no explanation is given within the 7 day period, the Board may issue a non-compliance notice to the RPA.
- (3) The non-compliance notice may require the RPA to take the steps specified in the notice to remedy the non-compliance within the time specified in the notice.
- (4) Sub-section (1)(c) applies irrespective of the time at which the matter arose.

**304. Effect of non-compliance notice**

If the Board issues a non-compliance notice to an RPA—

- (a) the RPA must comply with the notice; and
- (b) the RPA is not entitled to any further payment from the Legal Practice Fund, Public Purpose Fund or Fidelity Fund until the Board is satisfied that it has complied with the notice.

**305. Suspension of accreditation**

- (1) If an RPA does not take the steps specified in the non-compliance notice within the time specified in the notice, the Board, by written notice, may suspend the RPA's accreditation.
- (2) A suspension is effective from the time the notice of suspension is given to the RPA.

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- (3) Notice of suspension must—
- (a) set out the reasons for the suspension; and
  - (b) require the RPA, within 14 days, to show cause why the accreditation should not be revoked.
- (4) During the currency of a suspension each regulated practitioner of the suspended RPA is a regulated practitioner of the Board.
- (5) An RPA that is suspended must give to the Board the original or a copy of any documents in its possession or control relating to a regulated practitioner referred to in sub-section (4) within 7 days after the Board requests them.

Penalty: 50 penalty units.

**306. Appointment of administrator**

- (1) If an RPA does not take the steps specified in a non-compliance notice issued under section 303(2) within the time specified in the notice, the Board, instead of suspending the RPA's accreditation, may appoint an administrator to manage the affairs of the RPA.
- (2) If an administrator is appointed under sub-section (1), the RPA must—
- (a) perform its functions and exercise its powers under this Act or the regulations in accordance with the directions of the administrator; or
  - (b) as directed by the administrator, cease to perform its functions or exercise its powers either completely or to the extent specified in the direction.

Penalty: 100 penalty units.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

**s. 307**

- (3) An officer or employee of, or a person engaged by, an RPA must comply with the directions of the administrator.

Penalty: 20 penalty units.

- (4) An administrator has and may exercise all of the functions or powers of the RPA under this Act or the regulations.

- (5) An RPA must give an administrator free and unfettered access at all times, together with any assistants and equipment that the administrator considers necessary—

(a) to the RPA's premises; and

(b) to all documents in the possession of the RPA—

for the purpose of enabling the administrator to carry out his or her powers and functions under this section.

Penalty: 100 penalty units.

**307. Revocation of accreditation**

- (1) After the end of the period specified in section 305(3)(b), and having taken into account any written or oral submission made by or on behalf of the RPA, the Board, by written notice, may revoke the accreditation if the Board is satisfied that the RPA cannot or will not perform the functions of an RPA adequately.
- (2) If an administrator of the affairs of an RPA is appointed under section 306, the Board, not less than 3 months nor more than 6 months after the appointment, may revoke the accreditation by written notice to the RPA, if satisfied that the RPA cannot or will not perform the functions of an RPA adequately.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

**s. 308**

- (3) The Board must not revoke the accreditation of an RPA under sub-section (2) until it has consulted the administrator, the board of directors or other governing body of the RPA and the members of the RPA.
- (4) For the purpose of consulting the members of an RPA, the Board may—
  - (a) require the administrator to convene a general meeting of the RPA; and
  - (b) address the members at that meeting.
- (5) A revocation takes effect 60 days after the day the notice is given to the RPA.
- (6) If the Board does not revoke accreditation under this section it must lift the suspension or terminate the appointment of the administrator.

**308. Re-allocation of regulated practitioners**

- (1) If—
  - (a) the Board gives notice of revocation of accreditation to an RPA; or
  - (b) an RPA gives notice of withdrawal from accreditation to the Board; or
  - (c) an RPA does not apply for renewal of accreditation by the time referred to in section 301(1)(a), unless excused by the Board—

**S. 308(1)**  
**amended by**  
**No. 102/1997**  
**s. 34(b).**

the Board must give written notice to each regulated practitioner of the RPA requesting the regulated practitioner to nominate another RPA of which the regulated practitioner or, in the case of a regulated practitioner that is a firm or an incorporated practitioner, each legal practitioner, interstate practitioner and registered foreign practitioner (if any) who is a partner or director or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 11—Recognised Professional Associations

**s. 308**

an employee of the regulated practitioner is eligible to be a member.

- (2) If a regulated practitioner nominates another RPA within 21 days, the Board, if satisfied that the practitioner is entitled to nominate the RPA, must re-allocate the practitioner to the RPA.

**S. 308(3)**  
amended by  
No. 102/1997  
s. 34(b).

- (3) If—
- (a) a regulated practitioner does not nominate another RPA within 21 days; or
  - (b) the Board is not satisfied that the regulated practitioner is entitled to nominate the nominated RPA—

the Board must re-allocate the practitioner to an RPA of which the practitioner or, in the case of a regulated practitioner that is a firm or an incorporated practitioner, each legal practitioner, interstate practitioner and registered foreign practitioner (if any) who is a partner or director or an employee of the regulated practitioner is eligible to be a member.

**S. 308(4)**  
amended by  
No. 102/1997  
s. 34(b).

- (4) If the Board is satisfied that there is no other RPA of which a regulated practitioner or, in the case of a regulated practitioner that is a firm or an incorporated practitioner, each legal practitioner, interstate practitioner and registered foreign practitioner (if any) who is a partner or director or an employee of the regulated practitioner is eligible to be a member, the Board must re-allocate the practitioner to the Board.
- (5) A re-allocation takes effect when the accreditation of the RPA ceases.

- (6) The Board must give written notice of a re-allocation to the regulated practitioner, the RPA from which the practitioner is re-allocated and the RPA to which the practitioner is re-allocated (if any) as soon as practicable after making the re-allocation.

**309. Application of Administrative Law Act**

Sections 3 to 11 of the **Administrative Law Act 1978** apply to a decision of the Board to grant or refuse accreditation or renewal of accreditation or to revoke accreditation as an RPA or to appoint an administrator of the affairs of an RPA as if references in those sections—

- (a) to a decision were references to the decision to grant or refuse accreditation or renewal of accreditation, to revoke accreditation or to appoint an administrator; and
- (b) to a tribunal were references to the Board; and
- (c) to a person affected were references to the applicant for accreditation or the RPA concerned.

**310. Board may advance money to prospective RPA**

- (1) A body corporate that intends to apply for accreditation as an RPA may apply to the Board for an advance of money for the purposes of establishing its regulatory framework and preparing its application for accreditation.
- (2) The Board may advance an amount it thinks fit from the Public Purpose Fund to a body in response to an application under sub-section (1) on such terms and conditions, including guarantees for the repayment of the advance, as the Board thinks fit.

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**Division 2—RPA administration**

**311. Official publications**

An RPA must have an official publication.

**312. Reports to Board**

- (1) An RPA must report at intervals of no longer than 12 months to the Board on the performance of the RPA's functions as an RPA under this Act.
- (2) The report must contain the information specified by the Board.
- (3) The Board, by written notice, may at any time require an RPA to provide to it information or documents specified by the Board relating to the RPA's functions as an RPA under this Act within the time specified by the Board.

**313. Delegation**

S. 313(1)  
substituted by  
No. 79/1998  
s. 26.

- (1) An RPA may delegate in writing to an officer, an employee or the members of a committee of the RPA any of its powers or functions under—
  - (a) Division 4 of Part 2 (practising certificates);
  - (b) Part 2A (interstate practice);
  - (c) Part 2B (practice of foreign law);
  - (d) Part 5 (disputes and discipline);
  - (e) Part 6 (client's money and trust accounts);
  - (f) Part 9 (receivers and managers).
- (2) An RPA must give written notice to the Board of any delegation under sub-section (1) and of any revocation or variation of any delegation, as soon as practicable after making it.

**PART 12—UNQUALIFIED PRACTICE**

**314. Prohibition on unqualified legal practice**

- (1) A person must not engage in legal practice in Victoria unless the person—
- (a) is a natural person who—
    - (i) is admitted to legal practice; and
    - (ii) holds a practising certificate; or
  - (b) is an incorporated practitioner that holds a practising certificate; or
  - (c) is an interstate practitioner (other than an interstate practitioner who is suspended or prohibited from engaging in legal practice in Victoria).

**S. 314(1)(c)**  
**substituted by**  
**No. 102/1997**  
**s. 35(1)(a).**

Penalty: Imprisonment for 2 years.

- (2) A person must not represent or advertise that they are qualified to engage in legal practice unless the person—
- (a) is a natural person who—
    - (i) is admitted to legal practice; and
    - (ii) holds a practising certificate; or
  - (b) is an incorporated practitioner that holds a practising certificate; or
  - (c) is an interstate practitioner (other than an interstate practitioner who is suspended or prohibited from engaging in legal practice in Victoria).

**S. 314(2)(c)**  
**substituted by**  
**No. 102/1997**  
**s. 35(1)(b).**

Penalty: 240 penalty units.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 12—Unqualified Practice

**s. 315**

- (3) A person who is authorised to engage in legal practice only as an employee of another legal practitioner or firm or as a corporate practitioner must not engage in legal practice as a sole practitioner, a partner of a firm or a director of an incorporated practitioner.

Penalty: Imprisonment for 2 years.

- (4) For the purposes of this section, engaging in legal practice may consist of a single act.
- (5) A person who contravenes sub-section (1), (2) or (3) commits a contempt of the Supreme Court and is liable to be punished for that contempt in addition to, or instead of, being prosecuted for the contravention.
- (6) A person who contravenes sub-section (1) or (3) is not entitled to recover any amount in respect of anything done during the course of that contravention and must repay any amount so received to the person from whom it was received.
- (7) If a person does not repay an amount required by sub-section (6) to be repaid, the person entitled to be repaid may recover the amount from the practitioner or firm as a debt in a court of competent jurisdiction.

**315. Exceptions to prohibition on unqualified legal practice**

- (1) For the purposes of this Part, a person is not to be taken to engage in legal practice in any of the following circumstances—
- (a) a person who prepares an employee agreement within the meaning of the **Employee Relations Act 1992** or an AWA or certified agreement within the meaning of the Workplace Relations Act 1996 of the Commonwealth on behalf of a party or proposed party to the agreement;

S. 315(1)(a)  
amended by  
No. 59/1996  
s. 10(Sch. 2  
item 12).

- (b) in the circumstances described in section 53A of the **Estate Agents Act 1980**;
  - (c) a person (other than a legal practitioner) who represents another person in proceedings before a court or tribunal, or in arbitration proceedings, if the person is so authorised by or under any Act or statutory rule, or has leave of the court or tribunal or the arbitrator or umpire;
  - (d) a person acting in the course of their employment with the Crown or a public authority or in the performance of duties under an appointment by the Governor in Council; S. 315(1)(d) amended by No. 102/1997 s. 35(2).
  - (e) a person registered as a patent attorney under the Patents Act 1990 of the Commonwealth who practises as such in accordance with that Act;
  - (f) a registered foreign practitioner who engages in the practice of foreign law. S. 315(1)(f) inserted by No. 102/1997 s. 35(3).
- (2) For the avoidance of doubt, nothing in sub-section (1)(c) affects the power of a court, a tribunal, an arbitrator or an umpire to give or refuse leave for a person to represent another.

### **316. Injunction restraining unqualified practice**

- (1) On application by an RPA or the Board, the Supreme Court, if it thinks fit, may grant an injunction restraining a person from engaging in legal practice, or representing or advertising that they are qualified to engage in legal practice, in contravention of section 314.
- (2) An injunction under sub-section (1) may be granted or applied for without notice to any person.

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**317. Sharing income with unqualified persons**

- (1) A current practitioner or firm must not enter into an agreement or arrangement with a person who is not a current practitioner under which that person is entitled to share in the income from the practitioner's or firm's legal practice otherwise than as is permitted by this section.

Penalty: 240 penalty units.

- (2) A current practitioner or firm—
- (a) may pay an annuity or other amount out of the income from legal practice to a retired legal practitioner or to the dependants or personal representatives of a deceased practitioner;
  - (b) may share income from legal practice with a community legal centre.
- (3) A current practitioner (being a natural person) may share income from legal practice—
- (a) with a family member; or
  - (b) with a corporation the total beneficial interests in which are held by the practitioner or family members or both; or
  - (c) in the case of a corporate practitioner, with his or her employer.
- (4) A firm or an incorporated practitioner may share income from legal practice—
- (a) with a family member of a partner, of a director or of an employee who is a current practitioner; or
  - (b) with a corporation the total beneficial interests in which are held by that partner, director or employee or their family members or both.

S. 317(4)(b)  
amended by  
No. 79/1998  
s. 34.

- (5) A firm, or a current practitioner who is a partner of a firm, may share income from legal practice with an interstate practitioner or registered foreign practitioner who is a partner of the firm.

**S. 317(5)**  
amended by  
No. 102/1997  
s. 35(4).

**318. Employment or engagement of practitioners without practising certificates**

- (1) A legal practitioner or firm must not knowingly employ or engage a legal practitioner who does not hold a practising certificate (other than an interstate practitioner) in connection with the practitioner's or firm's legal practice.

**S. 318(1)**  
amended by  
No. 102/1997  
s. 35(5).

Penalty: 120 penalty units.

- (2) Sub-section (1) does not apply to a legal practitioner or firm—
- (a) in the case of a newly-admitted legal practitioner who was employed by the practitioner or firm immediately before his or her admission if that person obtains a practising certificate within 30 days after admission; or
  - (b) who employs or engages a legal practitioner in accordance with an authorisation of the Board under sub-section (3).
- (3) The Board, on application by a legal practitioner or firm, may authorise the practitioner or firm to employ or engage a specified legal practitioner who does not hold a practising certificate in connection with specified activities or functions that do not constitute engaging in legal practice.
- (4) A legal practitioner or firm must not permit or assist a legal practitioner (other than an interstate practitioner) to engage in legal practice without holding a practising certificate.

**S. 318(4)**  
amended by  
No. 102/1997  
s. 35(5).

Penalty: 120 penalty units.

**319. Employment or engagement of persons who have been banned from legal practice**

Subject to section 320, a legal practitioner or firm must not knowingly employ or engage in connection with the practitioner's or firm's legal practice—

- (a) a person whose name has been struck off the roll of practitioners of the Supreme Court (unless the person has been re-admitted); or
- (b) a person who is suspended, disqualified or otherwise prohibited from engaging in legal practice in Victoria or in any place outside Victoria (whether in or outside Australia); or
- (c) a person who is subject to an order under section 321.

Penalty: 240 penalty units.

**320. Authorisation of employment or engagement**

- (1) On application by a legal practitioner or firm, the Board may authorise the practitioner or firm to employ or engage a person referred to in paragraph (a), (b) or (c) of section 319 for the period and subject to the conditions (if any) specified by the Board.
- (2) A legal practitioner or firm may appeal to the Supreme Court within 30 days—
  - (a) from a refusal of the Board to give an authorisation; or
  - (b) against any conditions imposed on an authorisation by the Board.
- (3) If the Board has not given or refused to give an authorisation within 60 days after an application for authorisation was made, the Board must be taken to have refused to give the authorisation.

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- (4) After hearing the matter, the Supreme Court—
- (a) may refuse, grant or confirm an authorisation; and
  - (b) if it grants an authorisation, may impose any conditions on the authorisation it thinks fit; and
  - (c) if it confirms an authorisation, may confirm or vary any conditions imposed on that authorisation by the Board and impose any further conditions on the authorisation it thinks fit.
- (5) A legal practitioner or firm must comply with any conditions imposed on an authorisation by the Board or the Supreme Court.

Penalty: 50 penalty units.

**321. Orders prohibiting employment or engagement of certain persons**

- (1) An RPA, the Board or the Legal Ombudsman may apply to the Full Tribunal for an order that a person (other than a legal practitioner) who—
- (a) has been convicted in Australia or elsewhere of an offence involving fraud, dishonesty, drug trafficking or violence; or
  - (b) in the opinion of the RPA, Board or Legal Ombudsman has been a party to an act or omission that, if the person had been a legal practitioner or firm, may have resulted in a charge being brought in the Tribunal—
- not be employed or engaged in connection with legal practice or conveyancing work within the meaning of Part 13.

S. 321(4)  
amended by  
No. 52/1999  
s. 9(c).

- (2) The Full Tribunal may order that the person is not to be employed, for a specified period or indefinitely, in connection with legal practice or conveyancing work within the meaning of Part 13.
- (3) If an order under this section specifies that a person not be employed indefinitely, the person may apply to the Full Tribunal to have the order revoked.
- (4) The Full Tribunal, on application under subsection (3), may revoke an order if it considers it appropriate to do so.

### **322. Appeal to Court of Appeal**

- (1) A person against whom an order is made under section 321 may appeal to the Court of Appeal on a question of law.
- (2) If the Full Tribunal gives oral reasons for making the relevant order and the person then requests it to give written reasons under section 409, the time for instituting the appeal<sup>19</sup> runs from the time when the party receives the written reasons.

### **323. Unqualified persons must inform prospective employers**

A person referred to in paragraph (a), (b) or (c) of section 319 must not seek or accept employment or engagement with a legal practitioner or a firm in connection with the legal practice of the practitioner or firm unless the person has informed them that they are a person to whom that section applies.

Penalty: 50 penalty units.

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**324. Permitting or assisting unqualified persons to practise**

- (1) A legal practitioner or firm must not permit or assist a person who is not admitted to legal practice in Victoria (other than an interstate practitioner) to engage in legal practice in Victoria.
- (2) A practitioner or firm that contravenes sub-section (1) commits a contempt of the Supreme Court.

S. 324(1)  
amended by  
No. 102/1997  
s. 35(5).

**325. Prisoners must not practise**

- (1) A legal practitioner who is a prisoner (within the meaning of the **Corrections Act 1986**) must not, as a legal practitioner, commence or continue to act in any civil or criminal proceeding.
  - (2) A person who contravenes sub-section (1)—
    - (a) commits a contempt of the Supreme Court; and
    - (b) is not entitled to recover any amount in respect of anything done during the course of that contravention; and
    - (c) must repay any amount so received to the person from whom they were received.
  - (3) If a legal practitioner does not repay an amount required by sub-section (2)(c) to be repaid, the person entitled to be repaid may recover the amount from the practitioner as a debt in a court of competent jurisdiction.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 13—Conveyancing Businesses

s. 326

**PART 13—CONVEYANCING BUSINESSES**

**326. Definitions**

In this Part—

S. 326 def.  
of "con-  
veyancer"  
amended by  
No. 102/1997  
s. 35(6).

**"conveyancer"** means a person, other than a current practitioner or interstate practitioner, who carries on a business in the course of which conveyancing work is carried out directly or indirectly for fee or reward;

**"conveyancing work"** means work, other than legal work, carried out in connection with the transfer or conveyance of a freehold or leasehold interest in land;

**"legal work"** means—

- (a) the preparation of any document that creates, varies, transfers or extinguishes an interest in land; or
- (b) the giving of legal advice.

**327. Employment or engagement in conveyancing business**

(1) This section applies to a person—

- (a) whose name has been struck off the roll of practitioners of the Supreme Court (unless he or she has been re-admitted); or
- (b) who is suspended, disqualified or otherwise prohibited from engaging in legal practice in Victoria or in any place outside Victoria (whether in or outside Australia); or
- (c) who is subject to an order under section 321; or
- (d) who is an insolvent under administration; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 13—Conveyancing Businesses

s. 328

- (e) who is prohibited under the Corporations Act from managing a corporation; or

S. 327(1)(e)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 72.6).

- (f) who has been convicted in Victoria or elsewhere within the last 10 years of an offence involving fraud, dishonesty, drug trafficking or violence.

- (2) A person to whom this section applies must not—

- (a) carry on business as a conveyancer; or
- (b) subject to section 328, accept employment or engagement with a conveyancer in connection with the performance of conveyancing work; or
- (c) have any pecuniary interest in the business of a conveyancer.

Penalty: 100 penalty units.

- (3) Subject to section 328, a conveyancer must not knowingly employ or engage a person to whom this section applies in connection with the performance of conveyancing work.

Penalty: 100 penalty units.

**328. Authorisation of employment or engagement**

- (1) On application by a conveyancer, the Board may authorise the conveyancer to employ or engage a person to whom section 327 applies for the period and subject to the conditions (if any) specified by the Board.
- (2) A conveyancer may appeal to the Supreme Court within 30 days—
  - (a) from a refusal of the Board to give an authorisation; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 13—Conveyancing Businesses

**s. 329**

- (b) against any conditions imposed on an authorisation by the Board.
- (3) If the Board has not given or refused to give an authorisation within 60 days after an application for authorisation was made, the Board must be taken to have refused to give the authorisation.
- (4) After hearing the matter, the Supreme Court—
  - (a) may refuse, grant or confirm an authorisation; and
  - (b) if it grants an authorisation, may impose any conditions on the authorisation it thinks fit; and
  - (c) if it confirms an authorisation, may confirm or vary any conditions imposed on that authorisation by the Board and impose any further conditions on the authorisation it thinks fit.
- (5) A conveyancer must comply with any conditions imposed on an authorisation by the Board or the Supreme Court.

Penalty: 50 penalty units.

**329. Unqualified persons must inform prospective employers**

A person to whom section 327 applies must not seek or accept employment or engagement with a conveyancer in connection with the performance of conveyancing work unless the person has informed the conveyancer that they are a person to whom that section applies.

Penalty: 50 penalty units.

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**330. Conveyancers must disclose insurance etc.**

- (1) A conveyancer must set out a statement, in a form approved by the Board, of whether or not the conveyancer holds insurance that covers them against civil liability in connection with conveyancing work carried on in the course of their business—
- (a) in every public document of the conveyancer; and
  - (b) in a conspicuous place, and in letters easily legible, on the outside of every office and place at which the business is carried on and that is open and accessible to the public.

Penalty: 100 penalty units.

- (2) A conveyancer must give a written notice to a prospective client—
- (a) indicating—
    - (i) whether or not the conveyancer holds insurance that covers the conveyancer against civil liability in connection with conveyancing work carried on in the course of their business; and
    - (ii) if the conveyancer holds insurance, the amount of cover and any relevant exclusions or limitations on the cover; and
  - (b) if the conveyance intends to retain a legal practitioner or firm to perform legal work in connection with the transaction, indicating the name and address of that practitioner or firm; and
  - (c) if not, indicating that the conveyancer is not authorised to perform legal work.

Penalty: 100 penalty units.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 13—Conveyancing Businesses

**s. 330A**

- (3) In this section, "**public document**" includes a business letter, statement of account, invoice, receipt and offer or agreement to supply services.

**S. 330A**  
inserted by  
No. 79/1998  
s. 27.

**330A. Board may require information and documents from conveyancers**

- (1) The Board may, by written notice, require a conveyancer to give the Board any information or documents reasonably required by the Board to determine whether or not the conveyancer has complied with section 330.
- (2) A conveyancer must comply with a notice under sub-section (1).

Penalty: 50 penalty units.

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**PART 14—COUNCIL OF LEGAL EDUCATION AND BOARD  
OF EXAMINERS**

**Division 1—Council of Legal Education**

**331. Council of Legal Education**

- (1) The Council of Legal Education is established.
- (2) The Council consists of—
  - (a) the Chief Justice of the Supreme Court and 6 other Judges of the Supreme Court nominated by the Chief Justice;
  - (b) the President of the Court of Appeal and 2 other Judges of Appeal nominated by the President;
  - (c) the Attorney-General;
  - (d) the Solicitor-General;
  - (e) the Director of Public Prosecutions;
  - (f) the Chief Judge of the County Court and another judge of the County Court nominated by the Chief Judge;
  - (g) the Chief Magistrate and another magistrate nominated by the Chief Magistrate;
  - (h) the Chairperson of the Board and a person nominated by the Board;
  - (i) the Dean of the Faculty of Law of the University of Melbourne and a person nominated by the council of the University of Melbourne;
  - (j) the Dean of the Faculty of Law of Monash University and a person nominated by the council of Monash University;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

**s. 331**

- (k) the Head of the School of Law and Legal Studies of La Trobe University and a person nominated by the council of La Trobe University;
  - (l) the Head of the School of Law of Deakin University and a person nominated by the council of Deakin University;
  - (m) 2 persons nominated by each RPA.
- (3) A nomination by a person or body of a person as a member of the Council must be made for the next 3 calendar years or for the balance of the calendar year in which the nomination is made and the next 2 calendar years, and a nominated member may be re-nominated.
- (4) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member in respect of the office of member.
- (5) A nominated member may resign his or her office in writing delivered to the Chief Justice.
- (6) A member is entitled to receive the fees (if any) that are fixed by the Governor in Council from time to time in respect of him or her or in respect of a class of member that includes him or her.
- (7) The appointment of a judge of the Supreme Court or the County Court as a member does not affect the tenure of office of the judge nor the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of an office as a judge of the Supreme Court or County Court and, for all purposes, service as a member is to be taken to be service as the holder of an office as a judge.

S. 331(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.3).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

**s. 332**

- (8) The appointment of a person who has been a judge of the Supreme Court or the County Court as a member does not affect any pension or other rights or privileges the person has as a former judge.
- (9) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of member is not to be taken to be a judicial office or an office or place of profit under the Crown.

**332. Functions and powers**

- (1) The functions of the Council are—
  - (a) to determine the qualifications required for admission to legal practice;
  - (b) the other functions conferred on it by or under this or any other Act.
- (2) The Council has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting sub-section (2), the Council has the rule-making power conferred on it by section 337.

**333. Meetings**

- (1) The Chief Justice of the Supreme Court must preside at any meeting of the Council at which he or she is present.
- (2) If the Chief Justice is absent, the next most senior Judge of the Supreme Court present must preside or, if there is no Supreme Court Judge present, a member appointed by the members present must preside.
- (3) The quorum of the Council is 7 members.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

**s. 334**

- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The Council must meet at the times and places that are determined by the Chief Justice or the Council.
- (6) The Council must ensure that accurate minutes are kept of its meetings.
- (7) Subject to this Division, the Council may regulate its own procedure.

**334. Deputy for Attorney-General**

- (1) The Attorney-General may appoint a person to be his or her deputy as a member of the Council.
- (2) A deputy member appointed under sub-section (1) may, in the absence of the Attorney-General, attend a meeting of the Council in his or her place and exercise any power and perform any function at that meeting that the Attorney-General could have exercised or performed.

**335. Staff and consultants**

S. 335(1)  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.4).

- (1) A secretary to the Council and any other employees that are necessary for the performance by the Council of its functions may be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Council may engage any consultants required for the purposes of carrying out its functions.
- (3) The Council may engage a person as secretary in an honorary capacity.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

s. 336

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**336. Validity of acts or decisions**

An act or decision of the Council is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member or deputy member.

**337. Rules**

- (1) The Council may at a meeting make rules for or with respect to—

S. 337(1)  
amended by  
No. 52/2001  
s. 13(1)(d).

- (a) the courses of study, examinations, service of articles and other qualifications required for admission to legal practice; or
- (b) approving the courses of study required for appointment as a public notary.

S. 337(1)(a)  
amended by  
No. 52/2001  
s. 13(1)(e).

S. 337(1)(b)  
inserted by  
No. 52/2001  
s. 13(1)(e).

- (2) A power conferred by this section to make rules may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
- (b) so as to make, as respects the cases in relation to which the power is exercised—
  - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

**s. 337**

- (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Rules made under this section may be made—
  - (a) so as to apply at all times or at a specified time; and
  - (b) so as to require a matter affected by the rules to be—
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body; or
    - (iii) as specified in both sub-paragraphs (i) and (ii); and
  - (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
    - (i) wholly or partially or as amended by the rules; or
    - (ii) as in force at a particular time or as in force from time to time; and
  - (d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body; and
  - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the rules, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

s. 338

- (4) For the purposes of the **Subordinate Legislation Act 1994**, rules made under this section are deemed to be statutory rules.

**Division 2—Board of Examiners**

**338. Board of Examiners**

- (1) The Board of Examiners for Legal Practitioners is established.
- (2) The Board of Examiners consists of—
- (a) the Attorney-General;
  - (b) the Solicitor-General;
  - (c) 6 legal practitioners nominated by the Council of Legal Education after consultation with each RPA and the Board.
- (3) A nomination by the Council of Legal Education of a person as a member of the Board of Examiners must be made for the next 3 calendar years or for the balance of the calendar year in which the nomination is made and the next 2 calendar years, and a nominated member may be re-nominated.
- (4) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member in respect of the office of member.
- (5) A nominated member is entitled to receive the fees (if any) that are fixed by the Governor in Council from time to time in respect of him or her or in respect of a class of member that includes him or her.

S. 338(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.5).

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**339. Resignation and removal**

- (1) A nominated member may resign his or her office in writing delivered to the chairperson.
- (2) The Council of Legal Education may at any time remove a nominated member from office on the ground that he or she—
  - (a) is, in the opinion of the Council, incapable of carrying out the duties of the office; or
  - (b) has become an insolvent under administration; or
  - (c) has been found guilty by the Tribunal of misconduct or unsatisfactory conduct.

**340. Chairperson**

- (1) At its first meeting in each calendar year the Board of Examiners must elect one of its members to be chairperson.
- (2) The chairperson may resign his or her office in writing delivered to the Council.

**341. Functions and powers**

- (1) The functions of the Board of Examiners are—
  - (a) to consider applications by persons for admission to legal practice;
  - (b) to certify to the Supreme Court that an applicant for admission meets all the requirements of the admission rules;
  - (c) the other functions conferred on it by or under this or any other Act, including by the admission rules.
- (2) The Board of Examiners has the powers conferred on it by or under this or any other Act, including by the admission rules.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

s. 342

- (3) The Board of Examiners may refer to the Supreme Court for determination any question concerning the eligibility for admission of an applicant.

**342. Appeal to Supreme Court**

- (1) A person may appeal to the Supreme Court against a decision of the Board of Examiners with respect to his or her application for admission to legal practice.
- (2) An appeal under sub-section (1) must be made within 30 days after being notified of the decision.
- (3) An appeal under sub-section (1) is to be conducted as a hearing de novo.

**S. 342(1)**  
amended by  
No. 11/2002  
s. 3(Sch. 1  
item 41).

**343. Meetings**

- (1) The chairperson must preside at any meeting of the Board of Examiners at which he or she is present.
- (2) If the chairperson is absent from a meeting, or there is a vacancy in the office of chairperson, a member appointed by the members present, must preside.
- (3) The quorum of the Board of Examiners is 4 members.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The Board of Examiners must meet at the times and places that are determined by the chairperson or the Board.
- (6) The Board of Examiners must ensure that accurate minutes are kept of its meetings.
- (7) Subject to this Division, the Board of Examiners may regulate its own procedure.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 14—Council of Legal Education and Board of Examiners

**s. 344**

**344. Deputy members**

- (1) The Council may appoint a qualified person to be the deputy of any person nominated by it as a member of the Board of Examiners.
- (2) A deputy member appointed under sub-section (1) may, in the absence of the member, attend a meeting of the Board of Examiners in the place of the member and exercise any power and perform any function at that meeting that the member could have exercised or performed.
- (3) The appointment of a deputy member continues until the member ceases to hold office.

**345. Staff and consultants**

S. 345(1)  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.6).

- (1) A secretary to the Board of Examiners and any other employees that are necessary for the performance by the Board of its functions may be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Board of Examiners may engage any person as a consultant on any terms and conditions that it thinks fit.

**346. Validity of acts or decisions**

An act or decision of the Board of Examiners is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member or deputy member.

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**PART 15—LEGAL PRACTICE BOARD**

**Division 1—The Board**

**347. Establishment**

- (1) The Legal Practice Board is established.
- (2) The Board—
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue and be sued;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of the Board affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Board must be kept in such custody as the Board directs and must not be used except as authorised by the Board.

**348. Board not to represent the Crown**

The Board is a public authority but does not represent the Crown.

**349. Membership**

- (1) The Board consists of—
  - (a) a chairperson appointed under section 350;
  - (b) 3 legal practitioners elected in accordance with section 351 ("practitioner members");



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 15—Legal Practice Board

s. 350

S. 349(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.7).

- (c) 3 persons appointed under section 352 ("non-practitioner members").
- (2) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member of the Board in respect of the office of member.

**350. Chairperson and deputy chairperson**

- (1) The Governor in Council may appoint a person to be chairperson of the Board.
- (2) A person is not eligible for appointment as chairperson unless he or she is, or has been, a judge of the High Court of Australia, the Supreme Court, the County Court or the Federal Court of Australia.
- (3) The appointment of a judge of the Supreme Court or the County Court as the chairperson does not affect the tenure of office of the judge nor the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of an office as a judge of the Supreme Court or County Court and, for all purposes, service as the chairperson is to be taken to be service as the holder of an office as a judge.
- (4) The appointment of a person who has been a judge of the Supreme Court or the County Court as the chairperson or a deputy chairperson does not affect any pension or other rights or privileges the person has as a former judge.
- (5) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of chairperson is not to be taken to be a judicial office or an office or place of profit under the Crown.

- (6) The chairperson holds office, subject to this Act, for a term of 4 years from the date of appointment and is eligible for re-appointment.
- (7) The Governor in Council may appoint a member of the Board (other than the chairperson) to be the deputy chairperson.

**351. Practitioner members<sup>20</sup>**

- (1) 3 persons are to be elected to the Board in accordance with this section, Division 2 and the regulations.
- (2) A person is not eligible for election unless he or she is a legal practitioner of not less than 7 years' standing.
- (3) A practitioner member holds office, subject to this Act, from 1 January immediately following his or her election for a period of 4 years and is eligible for re-election.

**352. Non-practitioner members**

- (1) The Governor in Council may appoint a person to be a non-practitioner member of the Board.
- (2) A person is not eligible to be appointed as a non-practitioner member if he or she—
  - (a) is, or has been, a legal practitioner; or
  - (b) is qualified to be admitted as a legal practitioner.
- (3) At least one of the non-practitioner members must be a person who has experience in risk management or prudential supervision.
- (4) The Governor in Council may not appoint a person as a non-practitioner member unless the Attorney-General has caused notice of the proposed appointment to be given in each House of the Parliament and at least 5 sitting days of that House have elapsed since the giving of the notice.

- (5) A non-practitioner member holds office, subject to this Act, for a term of 4 years from the date of appointment and is eligible for re-appointment.

**353. Payment of members**

- (1) A member of the Board (except the chairperson if he or she is a judge other than a reserve judge) is entitled to receive the remuneration that is fixed from time to time by the Governor in Council.
- (2) Each member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.
- (3) The Governor in Council may fix different remuneration for different classes of members of the Board.

**354. Vacancies, resignations, removal from office**

- (1) The office of a member becomes vacant if the member—
- (a) becomes an insolvent under administration;  
or
- (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A member may resign by writing delivered to the Governor in Council.
- (3) The Governor in Council may suspend a member from office and, subject to this section, may remove a member from office.
- (4) The Attorney-General must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of a member of the Board within 7 sitting days of the House after the suspension.

- (5) The suspended member must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it, declares by resolution that the member ought to be removed from office.
- (6) Unless each House of the Parliament makes a declaration under sub-section (5) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the member to office.

**355. Acting appointments**

- (1) The Governor in Council may appoint a person to act as a member of the Board—
  - (a) during a vacancy in the office of member; or
  - (b) in the place of a member who is absent or who, for any other reason, is unable to perform the duties of the office.
- (2) Before a person is appointed to act in the place of a practitioner member, or during a vacancy in an office of practitioner member, each RPA of which legal practitioners who are on the roll of practitioners that elected the member are regulated practitioners must be consulted about the appointment.
- (3) An acting appointment is for the term (not exceeding 3 months in the case of a person to act in the place of a practitioner member) specified in the instrument of appointment.
- (4) An acting member—
  - (a) has all the powers and must perform all the duties of the member for whom, or the office in which, he or she is acting; and

- (b) is entitled to be paid the remuneration and allowances that the member would have been entitled to for performing those duties; and
  - (c) is eligible for re-appointment.
- (5) Section 350(3), (4) and (5) applies to the appointment of an acting chairperson of the Board.
- (6) The Governor in Council may at any time terminate an acting appointment.

**356. Casual vacancies of practitioner members**

- (1) If the office of a practitioner member becomes vacant (other than within 3 months before the expiry of the term of the member vacating office) an election must be held in accordance with Division 2 to fill the vacancy.
- (2) A member elected to fill a vacancy referred to in sub-section (1) holds office for the remainder of the term of the practitioner member who vacated the office.

**357. Meetings**

- (1) The chairperson of the Board or, in his or her absence, the deputy chairperson of the Board or, in the absence of both of them, a member appointed by the members present, must preside at a meeting of the Board.
- (2) A majority of the members of the Board for the time being, consisting of at least one non-practitioner member and one practitioner member, constitutes a quorum of the Board.
- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.

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- (4) The Board must ensure that accurate minutes are kept of its meetings.
  - (5) For the purpose of making a decision or exercising a power under Part 9, the Board may permit members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication that does not require the physical presence of each member in the same place.
  - (6) Subject to this Division, the Board may regulate its own procedure.

**358. Conflicts of interest**

- (1) If—
  - (a) a member has a personal interest (whether pecuniary or otherwise) in a matter being considered or about to be considered by the Board; and
  - (b) the interest appears to raise a conflict of interest with the proper performance of the member's duties in relation to the consideration of the matter—the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest at a meeting of the Board.

Penalty: 5 penalty units.
- (2) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.
- (3) After becoming aware of the conflict of interest in a matter—
  - (a) unless the Board directs otherwise, the member must not be present during any deliberations on the matter; and

- (b) the member is not entitled to vote on the matter; and
  - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section and section 359, a member is not to be regarded as having a conflict of interest—
- (a) in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
  - (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body.

### **359. Resolutions without meetings**

- (1) If—
- (a) the Board has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
  - (b) a majority of the members, including at least one non-practitioner member and one practitioner member, sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Board, each member must as soon as practicable be advised of the matter and give a copy of the resolution.
- (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) In this section, "**member**", in relation to a resolution, does not include a member who, by reason of section 358, is not entitled to vote on the resolution.

**360. Validity of acts or decisions**

An act or decision of the Board is not invalid—

- (a) only because—
  - (i) of a defect or irregularity in, or in connection with, the appointment of a member or an acting member or the election of a member; or
  - (ii) of a vacancy in the office of a member; or
- (b) on the ground that the occasion for an acting member to act had not risen or had ceased.

**361. Staff, consultants and delegation**

- (1) The Board may employ any staff and engage any consultants required for the purposes of carrying out its functions or exercising its powers under this Act.
- (2) The Board may delegate in writing to a member, an employee or the members of a committee of the Board any of its powers or functions under—
  - (a) section 3(3) (exemption of approved auditors);

**S. 361(2)**  
**substituted by**  
**No. 79/1998**  
**s. 28.**



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 15—Legal Practice Board

**s. 362**

S. 361(2)(f)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 39.18).

- (b) Division 4 of Part 2 (practising certificates);
- (c) Part 2A (interstate practice);
- (d) Part 2B (practice of foreign law);
- (e) Part 5 (disputes and discipline);
- (f) Part 6 (client's money and trust accounts)  
except section 176 (arrangements with  
authorised deposit-taking institutions);
- (g) section 211 (determination of Fidelity Fund  
claims);
- (h) Part 9 (receivers and managers);
- (i) Part 10 (incorporated practitioners).

**362. Secrecy**

- (1) A person who is, or has been, a member or an acting member of the Board or an employee of or a consultant to the Board must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or exercise of powers under this Act, unless—
  - (a) it is necessary to do so for the purpose of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
  - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

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- (2) Sub-section (1) does not prevent a person—
- (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act; or
  - (b) reporting a suspected offence to the police or assisting them in their investigations.

**363. Immunity**

- (1) A member, an acting member or an employee of the Board is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
  - (a) in the exercise of a power or the performance of a function or duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty under this Act.
- (2) Any liability resulting from an act or omission that, but for sub-section (1), would attach to a member, an acting member or an employee attaches instead to the Board.

**Division 2—Election of practitioner members**

**364. Electoral rolls**

- (1) The Board must keep the following rolls of electors for the purpose of elections of practitioner members—
  - (a) a roll of advocates;
  - (b) a roll of non-advocates;
  - (c) a combined roll of advocates and non-advocates.

- (2) Subject to this Act and the regulations, the rolls are to be kept in the manner and form determined by the Board, and may be kept in the Register.

**365. Enrolment**

- (1) A current practitioner (being a natural person) may apply at any time for enrolment on the roll of advocates or the roll of non-advocates by giving a written notice to the Board.
- (2) A current practitioner (being a natural person) may apply at any time to be transferred from the roll of advocates to the roll of non-advocates or vice versa by giving a written notice to the Board.
- (3) Subject to sub-sections (4) and (5), as soon as practicable after receiving a notice under this section or notification under section 22(3) or 23(3), the Board must—
- (a) in the case of a notice under sub-section (1) or notification under section 22(3) or 23(3), enrol the practitioner on the roll nominated by him or her and the combined roll;
  - (b) in the case of a notice under sub-section (2), delete the practitioner from the roll from which he or she has requested a transfer and enrol him or her on the roll to which he or she has requested to be transferred.
- (4) A person may be enrolled on the roll of advocates only if he or she engages in legal practice primarily as an advocate.
- (5) The Board may require a person to provide satisfactory evidence that he or she is entitled to be enrolled on the roll of advocates.
- (6) The Board must remove from the rolls a person who ceases to be a current practitioner.

S. 365(3)  
amended by  
No. 9/1999  
s. 14(a).

S. 365(3)(a)  
substituted by  
No. 9/1999  
s. 14(b).

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**366. Elections**

- (1) The 3 practitioner members are to be elected as follows—
  - (a) one is to be elected by electors on the roll of advocates;
  - (b) one is to be elected by electors on the roll of non-advocates;
  - (c) one is to be elected by electors on the combined roll.
- (2) The first election must be held on or before 30 November 1997 and, despite anything to the contrary in section 351(3), the member elected from the combined roll at that election holds office until 31 December 1999, but is eligible for re-election.
- (3) Subsequent elections are to be held in the last quarter of every second calendar year, alternately for the member to be elected from the combined roll and the members to be elected from the roll of advocates and the roll of non-advocates.
- (4) Subject to sub-section (5) and section 351(2), a person is eligible to be a candidate for election as a practitioner member if the person is enrolled on the roll of electors for that member.
- (5) A regulated practitioner of an RPA is not eligible to be a candidate for election from the combined roll if the continuing members elected from the roll of advocates and the roll of non-advocates are both regulated practitioners of that RPA.

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**367. Preferential voting<sup>21</sup>**

- (1) If there are only 2 candidates for election of a practitioner member the result is to be determined as follows—
  - (a) the candidate who has received the greater number of first preference votes is to be declared elected;
  - (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot.
- (2) If there are more than 2 candidates for election of a practitioner member, the result is to be determined as follows—
  - (a) the candidate who has received the greatest number of first preference votes, if that number constitutes an absolute majority of votes, is to be declared elected;
  - (b) if no candidate has received an absolute majority of votes—
    - (i) the candidate who has received the fewest first preference votes is to be declared a defeated candidate; and
    - (ii) the ballot-papers counted to the defeated candidate are to be distributed amongst the non-defeated candidates next in order of the voters' preference; and
    - (iii) after the distribution, the total number of votes given to each non-defeated candidate is to be ascertained;
  - (c) the candidate who has then received the greatest number of votes, if that number constitutes an absolute majority of votes, is to be declared elected;

- (d) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected;
- (e) if on any count 2 or more candidates have an equal number of votes and one of them has to be declared a defeated candidate the result is to be determined by lot;
- (f) if on the final count 2 candidates have received an equal number of votes the result is to be determined by lot.

**368. Election of advocate and non-advocate members**

- (1) This section applies to elections for the members from the roll of advocates and the roll of non-advocates, if the candidates who would, apart from this section, be declared elected are both regulated practitioners of the same RPA as the continuing member elected from the combined roll.
- (2) If this section applies—
  - (a) the candidate referred to in sub-section (1) who received the higher proportion of first preference votes out of the total number of eligible voters on the relevant roll is to be declared elected; and
  - (b) the other candidate referred to in sub-section (1) and any other candidate in that election who is a regulated practitioner of the same RPA are not eligible to be elected, and their first preference votes are to be distributed

amongst the other eligible candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates.

### **369. Elections to fill casual vacancies**

The provisions of this Division apply, with any necessary modifications, to an election to fill a casual vacancy in the office of a practitioner member.

S. 370  
(Heading)  
inserted by  
No. 23/2002  
s. 196(1).

### **370. Arrangements with Victorian Electoral Commission**

S. 370  
amended by  
No. 23/2002  
s. 196(2).

The Board may enter into arrangements with the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002** in relation to the conduct of elections for the purposes of this Division.

### **371. Regulations**

- (1) For the purposes of this Division, the regulations may make provision for or with respect to—
  - (a) the rolls of electors;
  - (b) nomination of candidates for election;
  - (c) polling places;
  - (d) hours of polling;
  - (e) appointment of scrutineers;
  - (f) ballot-papers;
  - (g) postal voting;
  - (h) any other matter or thing required or permitted by this Division to be prescribed or necessary to be prescribed to give effect to this Division.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 15—Legal Practice Board

**s. 371**

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- (2) The regulations may—
- (a) require a nomination for election—
    - (i) to be supported by a specified number of electors;
    - (ii) to be accompanied by a deposit of a specified amount not exceeding \$500;
  - (b) make provision for the forfeiture and return of deposits.
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**PART 16—ESTABLISHMENT OF FUNDS**

**Division 1—Public Purpose Fund**

**372. Public Purpose Fund**

- (1) The Board must establish and maintain a fund called the Public Purpose Fund.
- (2) Subject to this Part, the amount standing to the credit of the Public Purpose Fund must—
  - (a) be kept separate from any other money held by the Board;
  - (b) be held in trust for the purposes set out in this Part.
- (3) The Board may invest any money standing to the credit of the Public Purpose Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.

**373. Accounts in Public Purpose Fund**

The Board must establish and maintain in the Public Purpose Fund the following accounts separate from each other—

- (a) General Account;
- (b) Statutory Deposit Account;
- (c) Legal Practice Board Account;
- (d) Legal Professional Tribunal Account;
- (e) Trust Accounts Regulation Account;
- (f) Law Reform and Research Account.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 374**

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**374. General Account**

(1) There must be credited to the General Account—

- (a) any fine imposed by an order of the Tribunal;
- (b) any money received by the Board under an arrangement under section 176 (Board arrangements with authorised deposit-taking institutions);
- (c) any money received by the Board under section 270;
- (d) any repayments received by the Board in respect of an advance made by it under section 310;
- (e) any money transferred to the Public Purpose Fund from the Fidelity Fund under section 390;
- (f) any money derived from any investment of the Public Purpose Fund;
- (g) any profit arising on the realisation or revaluation of any investment of the Public Purpose Fund;
- (h) any other money received by the Board that is not by this Part required to be credited to another account in the Public Purpose Fund or to the Fidelity Fund or the Legal Practice Fund.

**S. 374(1)(b)**  
**amended by**  
**No. 11/2001**  
**s. 3(Sch.**  
**item 39.18).**

(2) There must be debited to the General Account—

- (a) first—
  - (i) any amount required to be credited to the Legal Practice Board Account under section 376;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 374**

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- (ii) any amount required to be credited to the Legal Profession Tribunal Account under section 377;
  - (iii) any amount required to be paid to the Legal Ombudsman under section 378;
  - (iv) any amount required to be credited to the Trust Accounts Regulation Account under section 379;
  - (v) any money required to be paid to a receiver or manager or to a regulated practitioner out of the Public Purpose Fund under Part 9;
  - (vi) any loss incurred on the realisation or revaluation of any investment of the Public Purpose Fund;
  - (vii) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Public Purpose Fund;
  - (viii) any amount for which the Board is liable under a judgment or order for the recovery or payment of money given or made by a court in a proceeding;
  - (ix) any amount required to meet the fees, remuneration or allowances of members and employees of the Council and the Board of Examiners;
- (b) secondly—
- (i) any amount required to be transferred to the Fidelity Fund under section 276 or 385;
  - (ii) any amount required to be transferred to the Legal Practice Fund under section 386;
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 375**

- (iii) any advance made by the Board under section 310;
- (c) thirdly—
  - (i) any amount required to be paid out of the Public Purpose Fund under section 380 to the Legal Aid Fund or to the Treasurer;
  - (ii) any amount required to be paid to the Victoria Law Foundation under section 381;
  - (iii) any amount required to be paid to the Leo Cussen Institute under section 382;
  - (iv) any amount required to be credited to the Law Reform and Research Account under section 383;
- (d) fourthly, out of the balance (if any) any payment that the Board determines under section 387 to make to an RPA.

**375. Statutory Deposit Account**

- (1) There must be credited to the Statutory Deposit Account any money paid into the Public Purpose Fund under section 179 (initial deposit of trust money with Board) or in compliance with section 180 (continuing requirement to deposit).
- (2) There must be debited to the Statutory Deposit Account any money required to be repaid to a legal practitioner or firm under section 181 (repayment by Board).

**S. 375(1)**  
**amended by**  
**No. 52/1999**  
**s. 9(d).**

**376. Legal Practice Board Account**

- (1) There must be credited to the Legal Practice Board Account each year such amount as the Board, with the approval of the Attorney-General, directs.

**S. 376(1)**  
**amended by**  
**No. 102/1997**  
**s. 36(a).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 377**

- (2) The money standing to the credit of the Legal Practice Board Account is to be applied by the Board in the payment of the expenses and discharge of the liabilities incurred by it in carrying out its functions, other than—
  - (a) regulating regulated practitioners or their trust accounts; or
  - (b) functions relating to investigations under Division 5 of Part 6; or
  - (c) functions in respect of which it is entitled to payment out of the Fidelity Fund in accordance with section 388(3)(b).

**377. Legal Profession Tribunal Account**

**S. 377(1)**  
amended by  
**No. 102/1997**  
**s. 36(a).**

- (1) There must be credited to the Legal Profession Tribunal Account each year such amount as the Board directs.
- (2) The amount credited under sub-section (1) in any year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.
- (3) The money standing to the credit of the Legal Profession Tribunal Account is to be applied as directed by the Tribunal in the payment of the expenses incurred by it in carrying out its functions.

**378. Legal Ombudsman**

**S. 378(1)**  
amended by  
**No. 102/1997**  
**s. 36(a).**

- (1) There must be paid to the Legal Ombudsman each year such amount as the Board directs.
- (2) The amount paid under sub-section (1) in any year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

s. 379

- (3) The money paid to the Legal Ombudsman is to be applied in the payment of the expenses incurred by the Legal Ombudsman in carrying out his or her functions.

**379. Trust Accounts Regulation Account**

- (1) There must be credited to the Trust Accounts Regulation Account each year such amount as is determined by the Board in respect of that year and published in the Government Gazette.
- (2) In determining an amount for the purposes of this section the Board must have regard to the need to maintain the efficient and effective regulation of the trust accounts of legal practitioners, firms and approved clerks.
- (3) The amount credited under sub-section (1) in any year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.
- (4) The Board must at least once in each quarter pay to an RPA out of the Public Purpose Fund debited to the Trust Accounts Regulation Account an amount determined by the Board in respect of the reasonable costs incurred by the RPA in the preceding quarter in regulating the trust accounts of regulated practitioners and approved clerks and in respect of investigations under Division 5 of Part 6.

S. 379(1)  
amended by  
No. 102/1997  
s. 36(a).

**380. Legal Aid Fund**

- (1) In each year there must be paid out of the Public Purpose Fund and into the Legal Aid Fund established under the **Legal Aid Act 1978** such amount as is determined by the Board.

S. 380(1)  
amended by  
No. 102/1997  
s. 36(b)(i).

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S. 380(2)(3)  
repealed by  
No. 102/1997  
s. 36(b)(ii).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 381**

- (4) The amount determined under sub-section (1) in any year must not be more than 30% of the amount standing to the credit of the General Account on 30 June last past or less than the amount (if any) specified in relation to that year by the Attorney-General by notice served on the Board.
- (5) The Board must, at the direction of the Attorney-General, pay out of the Public Purpose Fund to the Treasurer, by way of advance on account of an amount to which the Legal Aid Fund may become entitled under sub-section (1), such amount as the Attorney-General directs.
- (6) Any amount paid by way of advance under sub-section (5) is repayable to the Board by the Treasurer at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

**381. Victoria Law Foundation**

S. 381(1)  
amended by  
No. 102/1997  
s. 36(c)(i).

- (1) There must be paid to the Victoria Law Foundation each year such amount as the Board directs.

S. 381(2)–(4)  
repealed by  
No. 102/1997  
s. 36(c)(ii).

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- (5) The Board must, at the direction of the Attorney-General, pay out of the Public Purpose Fund to the Victoria Law Foundation, by way of advance on account of an amount to which it may become entitled under sub-section (1), such amount as the Attorney-General directs.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

s. 382

- (6) Any amount paid by way of advance under sub-section (5) is repayable to the Board by the Victoria Law Foundation at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

**382. Leo Cussen Institute**

- (1) There must be paid to the Leo Cussen Institute each year such amount as the Board directs.

**S. 382(1)**  
amended by  
No. 102/1997  
s. 36(d)(i).

\* \* \* \* \*

**S. 382(2)–(4)**  
repealed by  
No. 102/1997  
s. 36(d)(ii).

- (5) The Board must, at the direction of the Attorney-General, pay out of the Public Purpose Fund to the Leo Cussen Institute, by way of advance on account of an amount to which it may become entitled under sub-section (1), such amount as the Attorney-General directs.
- (6) Any amount paid by way of advance under sub-section (5) is repayable to the Board by the Leo Cussen Institute at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

**383. Law Reform and Research Account**

- (1) There must be credited to the Law Reform and Research Account each year such amount as the Board, with the approval of the Attorney-General, directs.

**S. 383(1)**  
amended by  
Nos 102/1997  
s. 36(e)(i),  
44/2000  
s. 23(1).



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 384**

S. 383(2)  
repealed by  
No. 102/1997  
s. 36(e)(ii),  
new s. 383(2)  
inserted by  
No. 44/2000  
s. 23(2).

- (2) There must be paid to the Victorian Law Reform Commission each year out of the Law Reform and Research Account such amount as the Attorney-General directs.

S. 383(3)  
repealed by  
No. 102/1997  
s. 36(e)(ii),  
new s. 383(3)  
inserted by  
No. 44/2000  
s. 23(2).

- (3) The Board must, at the direction of the Attorney-General, pay out of the Law Reform and Research Account to the Victorian Law Reform Commission, by way of advance on account of an amount to which it may become entitled under sub-section (2), such amount as the Attorney-General directs.

S. 383(4)  
repealed by  
No. 102/1997  
s. 36(e)(ii),  
new s. 383(4)  
inserted by  
No. 44/2000  
s. 23(2).

- (4) Any amount paid by way of advance under sub-section (3) is repayable to the Board by the Victorian Law Reform Commission at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

S. 383(4A)  
inserted by  
No. 44/2000  
s. 23(2).

- (4A) Any repayments received by the Board in respect of an advance made by it under sub-section (3) must be credited to the Law Reform and Research Account.

S. 383(5)  
amended by  
No. 44/2000  
s. 23(3).

- (5) The amount standing to the credit of the Law Reform and Research Account, after allowing for any amount required to be paid out of the Account under sub-section (2), is to be applied as directed by the Attorney-General.

**384. Limit on amounts**

The total of the amounts to be paid to the Victoria Law Foundation and the Leo Cussen Institute and credited to the Law Reform and Research Account in any year must not be more than 15% of the amount standing to the credit of the General Account on 30 June last past.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 384A**

**384A. Board may take into account previous funding**

**S. 384A**  
**inserted by**  
**No. 102/1997**  
**s. 37.**

- (1) In determining the amounts to be credited to an account in the Public Purpose Fund or to be paid to another body under this Division, the Board may take into account—
  - (a) in the case of an amount to be credited to an account, the balance of the account before the amount is credited to it;
  - (b) in the case of an amount to be paid to another body, the extent to which any amount previously paid to the body under this Division has not been spent or committed to expenditure.
- (2) Nothing in sub-section (1) limits the factors that the Board may take into account in determining amounts to be credited to an account or paid to a body under this Division.

**384B. Timing of payments and instalments**

**S. 384B**  
**inserted by**  
**No. 102/1997**  
**s. 37.**

Unless another provision of this Division provides to the contrary, the Board may—

- (a) determine the timing of the crediting of an amount to an account or the payment of an amount to another body under this Division; and
- (b) credit or pay the amount in a single sum or by instalments.

**385. Fidelity Fund**

The Board may at any time pay out of the Public Purpose Fund and into the Fidelity Fund such amount as it thinks fit if it is of the opinion—

- (a) that the income of the Fidelity Fund from contributions and levies paid or payable under Division 1 of Part 7 is or is likely to be insufficient to satisfy claims made against

**S. 385(a)**  
**substituted by**  
**No. 102/1997**  
**s. 38(a).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

s. 386

the Fidelity Fund as and when they fall due;  
or

- (b) that the Fidelity Fund is or is likely to become insolvent; or
- (c) that it is appropriate to do so in order to establish the solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 388(6).

**386. Legal Practice Fund**

The Board may at any time pay out of the Public Purpose Fund and into the Legal Practice Fund such amount as it thinks fit if of the opinion—

- (a) that the income of the Legal Practice Fund from practising certificate fees is or is likely to be insufficient to make the payments required to be made to RPAs from that Fund under Division 3 as and when those payments are due to be made; or
- (b) that the Legal Practice Fund is or is likely to become insolvent.

**387. Payments to RPAs for continuing legal education programs etc.**

- (1) The Board may at any time pay an amount out of the Public Purpose Fund to an RPA as a contribution towards the costs incurred by the RPA in providing continuing legal education programs for regulated practitioners or other programs aimed at improving the quality of legal services provided by regulated practitioners or access by the public to legal services provided by regulated practitioners.

- (2) The Board determines the amount to be paid under sub-section (1) and may decide to make the payment of that amount to an RPA subject to a condition or conditions determined by the Board and notified to the RPA.

### **Division 2—Fidelity Fund**

#### **388. Legal Practitioners' Fidelity Fund**

- (1) The Board must establish and maintain a fund called the Legal Practitioners' Fidelity Fund.
- (2) There must be paid into the Fidelity Fund—
  - (a) all contributions and levies paid under Division 1 of Part 7;
  - (b) any money received by or on behalf of the Board as a result of the exercise of any right or remedy conferred on it by Division 2 of Part 7;
  - (c) any money transferred to the Fidelity Fund from the Public Purpose Fund under section 276 or 385;
  - (d) any money derived from any investment of the Fidelity Fund;
  - (e) any profit arising on the realisation or revaluation of any investment of the Fidelity Fund.
- (3) There must be paid out of the Fidelity Fund—
  - (a) any claim (including interest, costs and disbursements) allowed or established against the Fidelity Fund;
  - (b) all legal and other expenses incurred—
    - (i) by RPAs or the Board in investigating or defending claims made against the Fidelity Fund;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

s. 388

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- (ii) in the exercise by the Board of the rights, powers and authorities vested in it by Division 2 of Part 7 in relation to the Fidelity Fund;
  - (c) any amounts required to be paid out of the Fidelity Fund under section 389;
  - (d) any amount required to be transferred to the Public Purpose Fund under section 390;
  - (e) any loss incurred on the realisation or revaluation of any investment of the Fidelity Fund;
  - (f) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Fidelity Fund.
- (4) Subject to this Part, the amount standing to the credit of the Fidelity Fund must—
- (a) be kept separate from any other money held by the Board;
  - (b) be held in trust for the purposes set out in this Part.
- (5) The Board may invest any money standing to the credit of the Fidelity Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.
- (6) The Governor in Council may from time to time, by Order made on the recommendation of the Attorney-General and published in the Government Gazette, fix a solvency level for the Fidelity Fund.
- (7) The Attorney-General may only make a recommendation under sub-section (6) at any time if he or she has had regard to the advice of an actuary engaged by the Attorney-General to
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 389**

advise him or her on the appropriate provision to be made at that time for the solvency level of the Fidelity Fund.

- (8) The Attorney-General may engage an actuary who has been engaged by the Board under section 201(3)(a).

**389. Payments to liquidators etc.**

- (1) This section applies if—

(a) a practitioner (within the meaning of section 207A) who is a natural person who, in the opinion of the Board, has committed a defalcation, becomes an insolvent under administration; or

S. 389(1)(a)  
amended by  
No. 102/1997  
s. 38(b)(i).

(b) a practitioner (within the meaning of section 207A) that is a body corporate that, in the opinion of the Board, has committed a defalcation, becomes an externally-administered body corporate within the meaning of the Corporations Act.

S. 389(1)(b)  
amended by  
Nos 102/1997  
s. 38(b)(ii),  
44/2001  
s. 3(Sch.  
item 72.6).

- (2) The Board may pay out of the Fidelity Fund to the trustee in bankruptcy, trustee or liquidator (as the case requires) any amount or amounts and on any terms and conditions that the Board from time to time thinks fit for the purpose of enabling legal proceedings to be commenced or defended by the trustee in bankruptcy, trustee or liquidator.

**390. Public Purpose Fund**

- (1) The Board may at any time pay out of the Fidelity Fund and into the Public Purpose Fund such amount as it directs if it is of the opinion—

(a) that the income of the Fidelity Fund from contributions and levies paid or payable under Division 1 of Part 7 and the net assets of the Fidelity Fund are or are likely to be

S. 390(1)(a)  
substituted by  
No. 102/1997  
s. 38(c).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 391**

- sufficient to satisfy claims made against the Fidelity Fund as and when they fall due; and
- (b) that the Fidelity Fund is not or is not likely to become insolvent; and
  - (c) that the appropriate solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 388(6) has been established and will be maintained after the payment.
- (2) The amount paid under sub-section (1) at any time must not be of such an amount as, when added to amounts previously paid under sub-section (1), would be more than the cumulative amounts paid up to that time into the Fidelity Fund under section 385.

**Division 3—Legal Practice Fund**

**391. Legal Practice Fund**

- (1) The Board must establish and maintain a fund called the Legal Practice Fund.
- (2) There must be paid into the Legal Practice Fund—
  - (a) all practising certificate fees received by the Board;
  - (b) any money transferred to the Legal Practice Fund from the Public Purpose Fund under section 386;
  - (c) any money derived from any investment of the Legal Practice Fund;
  - (d) any profit arising on the realisation or revaluation of any investment of the Legal Practice Fund.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 391**

- (3) There must be paid out of the Legal Practice Fund—
- (a) any payment that the Board has determined under section 392 to make to an RPA;
  - (b) an amount in respect of the reasonable costs incurred, or to be incurred, in a particular period by the Board in regulating regulated practitioners;
  - (c) any repayment or refund of practising certificate fees under section 23A(2), 29(6), 32(2) or 33(4);
  - (d) any loss incurred on the realisation or revaluation of any investment of the Legal Practice Fund;
  - (e) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Legal Practice Fund.
- (4) Subject to this Part, the amount standing to the credit of the Legal Practice Fund must—
- (a) be kept separate from any other money held by the Board;
  - (b) be held in trust for the purposes set out in this Part.
- (5) The Board may invest any money standing to the credit of the Legal Practice Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.

S. 391(3)(c)  
amended by  
Nos 102/1997  
s. 38(d),  
9/1999 s. 15.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 16—Establishment of Funds

**s. 392**

**392. Payments to RPAs for regulating practitioners**

**S. 392(1)**  
**amended by**  
**No. 102/1997**  
**s. 38(e).**

- (1) The Board must from time to time pay out of the Legal Practice Fund to an RPA an amount in respect of the reasonable costs incurred, or to be incurred, in a particular period by the RPA in regulating the RPA's regulated practitioners.
- (2) The Board determines the amount to be paid under sub-section (1) and may decide to make the payment of that amount to the RPA subject to a condition or conditions determined by the Board and notified to the RPA.
- (3) For the purpose of enabling it to determine the amount to be paid to an RPA under sub-section (1) in respect of a particular period the Board may, in writing, require the RPA to give it any information that the Board considers necessary.
- (4) The Board is not required to pay any amount to an RPA in respect of a particular period until any requirement made by it under sub-section (3) in respect of that period has been complied with by the RPA.
- (5) In determining the amount to be paid under sub-section (1) the Board must take into account any amount paid to the RPA out of the Trust Accounts Regulation Account under section 379(4), or out of the Fidelity Fund under section 388(3)(b)(i), or retained by the RPA out of practising certificate fees under section 32(4), with respect to the relevant period.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

**s. 393**

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**PART 17—LEGAL PROFESSION TRIBUNAL**

**Division 1—Tribunal**

**393. Establishment**

- (1) The Legal Profession Tribunal is established.
- (2) The Tribunal consists of the following members—
  - (a) a chairperson and not more than 3 deputy chairpersons;
  - (b) a registrar and one or more deputy registrars;
  - (c) not more than 40 legal practitioners enrolled on the roll of non-advocates<sup>22</sup> ("non-advocate members");
  - (d) not more than 20 legal practitioners enrolled on the roll of advocates<sup>23</sup> ("advocate members");
  - (e) not more than 40 persons who are not qualified to be admitted to legal practice ("lay members").
- (3) The chairperson, deputy chairpersons, registrar and deputy registrars are to be appointed by the Governor in Council on the recommendation of the Attorney-General.
- (4) The non-advocate members, advocate members and lay members are to be appointed by the Attorney-General.
- (5) Before making an appointment or recommendation under this section, the Attorney-General must consult with each RPA.

**S. 393(2)(b)**  
**amended by**  
**No. 9/1999**  
**s. 17(d)(i).**

**S. 393(3)**  
**amended by**  
**No. 9/1999**  
**s. 17(d)(ii).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

s. 394

S. 393(6)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.8).

- (6) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member of the Tribunal.

**394. Chairperson and deputy chairpersons**

- (1) A person is not eligible for appointment as chairperson unless he or she—
- (a) has been a judge of the High Court of Australia, the Supreme Court, the County Court or the Federal Court of Australia; or
  - (b) is a reserve judge of the Supreme Court or the County Court.
- (2) A person is not eligible for appointment as a deputy chairperson unless he or she—
- (a) has been a judge of the High Court of Australia, the Supreme Court, the County Court or the Federal Court of Australia; or
  - (b) is a reserve judge of the Supreme Court or the County Court; or
  - (c) has engaged in legal practice for a period of at least 7 years.
- (3) The appointment of a person who has been a judge of the Supreme Court or the County Court as the chairperson or a deputy chairperson does not affect any pension or other rights or privileges the person has as a former judge.
- (4) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of chairperson or deputy chairperson is not to be taken to be a judicial

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office or an office or place of profit under the Crown.

**395. Registrar and deputy registrar**

A person is not eligible for appointment as registrar or deputy registrar unless he or she is a legal practitioner of not less than 7 years' standing.

**396. Term of office and payment**

- (1) A member of the Tribunal holds office, subject to this Act, for a term of 5 years and is eligible for re-appointment.
- (2) A member of the Tribunal is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (3) The Governor in Council may fix different remuneration for different classes of members of the Tribunal.

**397. Vacancies, resignation and removal from office**

- (1) The office of a member becomes vacant if the member—
  - (a) becomes an insolvent under administration;  
or
  - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A member may resign by writing delivered to the Governor in Council.
- (3) The Governor in Council may suspend a member from office and, subject to this section, may remove a member from office.
- (4) The Attorney-General must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of a member of the

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

**s. 398**

Tribunal within 7 sitting days of the House after the suspension.

- (5) The suspended member must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it, declares by resolution that the member ought to be removed from office.
- (6) Unless each House of the Parliament makes a declaration under sub-section (5) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the member to office.

**398. Acting chairperson**

- (1) The Governor in Council may appoint a person who is eligible to be appointed as chairperson of the Tribunal to act as chairperson—
  - (a) during a vacancy in the office of chairperson; or
  - (b) if the chairperson is absent or, for any other reason, is unable to perform the duties of office.
- (2) An acting appointment is for the term, not exceeding 6 months, specified in the instrument of appointment.
- (3) A person appointed under sub-section (1)—
  - (a) has all the powers and must perform all the duties of the chairperson; and
  - (b) is entitled to be paid the remuneration and allowances that the chairperson would have been entitled to for performing those duties; and
  - (c) is eligible for re-appointment.

- (4) Section 394(3) and (4) applies to the appointment of an acting chairperson.
- (5) The Governor in Council may at any time terminate an acting appointment.

**399. Acting registrar and deputy registrar**

- (1) The Governor in Council may appoint a person who is eligible to be appointed as registrar or deputy registrar of the Tribunal to act as registrar or deputy registrar—
  - (a) during a vacancy in the office of registrar or deputy registrar; or
  - (b) if the registrar or deputy registrar is absent or, for any other reason, is unable to perform the duties of office; or
  - (c) if it would be improper, because of a personal interest in a matter before the Tribunal constituted by the registrar or deputy registrar, for the registrar or deputy registrar to perform the duties of the office.
- (2) An acting appointment is for the term, not exceeding 6 months, specified in the instrument of appointment.
- (3) A person appointed under sub-section (1)—
  - (a) has all the powers and must perform all the duties of the registrar or deputy registrar; and
  - (b) is entitled to be paid the remuneration and allowances that the registrar or deputy registrar would have been entitled to for performing those duties; and
  - (c) is eligible for re-appointment.
- (4) The Governor in Council may at any time terminate an acting appointment.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

**s. 400**

**400. Composition of Tribunal for proceedings**

**S. 400(1)**  
**amended by**  
**No. 9/1999**  
**s. 17(e).**

- (1) If this Act requires or permits a matter to be heard by the Tribunal constituted by the registrar or a deputy registrar, the Tribunal is to be so constituted at the direction of the registrar.
- (2) Subject to sub-section (3), if this Act requires or permits a matter to be heard by the Full Tribunal, the Tribunal is to be constituted by—
  - (a) the chairperson or a deputy chairperson; and
  - (b) one, or 2, non-advocate members or advocate members and the same number of lay members.

**S. 400(3)**  
**substituted by**  
**No. 102/1997**  
**s. 39.**

- (3) Unless a party objects, in a matter before the Full Tribunal the chairperson or a deputy chairperson may sit alone for the purpose of making an interim order, giving directions or adjourning proceedings.
- (4) The members who are to constitute the Full Tribunal for a hearing are to be nominated by the chairperson or, in the absence of the chairperson, by a deputy chairperson, having regard, in relation to the non-advocate or advocate members, to the expertise or experience relevant to the particular hearing.
- (5) The chairperson or a deputy chairperson must preside at a Full Tribunal hearing.
- (6) The Tribunal may operate concurrently in more than one division.

**401. Validity of proceedings**

A decision of the Tribunal is not invalid only because—

- (a) of a vacancy in the office of a member;

- (b) of a defect or irregularity in, or in connection with, the appointment of a member or acting member;
- (c) in the case of a person appointed to act as chairperson, registrar or deputy registrar, that the occasion for so acting had not arisen or had ceased.

**402. Majority decisions**

A question before the Full Tribunal must be decided according to the opinion of a majority of the members constituting that Tribunal.

**403. Change in composition**

- (1) If one of the members of the Tribunal (other than the presiding member) constituting the Full Tribunal for the purpose of a hearing vacates office or becomes incapable of sitting—
  - (a) before the Tribunal has completed the hearing; or
  - (b) before the Tribunal has made a determination in respect of a hearing—if the remaining members of that Full Tribunal agree, the hearing may be continued, or a determination may be made, by those remaining members and, if they are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member prevails.
- (2) If the presiding member or more than one other member vacates office or becomes incapable of sitting before the Full Tribunal has completed the hearing or made a determination in respect of a hearing, the hearing is terminated and a new hearing may be commenced before the Full Tribunal constituted in accordance with this Part.



*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

**s. 404**

- (3) In a new hearing the Full Tribunal may have regard to the record of the proceeding before the Tribunal as previously constituted, including the record of any evidence taken in the proceeding.

**404. Disclosure of interests**

S. 404(1)  
amended by  
No. 9/1999  
s. 17(f).

- (1) If the registrar or a deputy registrar or an acting registrar or deputy registrar has a personal interest in a matter referred to the Tribunal that would make it improper for him or her to perform the duties of office, he or she must declare the interest to the registrar or, in the case of the registrar or acting registrar, to the chairperson or acting chairperson, and must not constitute, or continue to constitute, the Tribunal for the purposes of a hearing of the matter.
- (2) A member or acting member of the Tribunal (other than the registrar or deputy registrar or an acting registrar or deputy registrar) who has a personal interest in a matter referred to the Full Tribunal must declare the interest to the chairperson or acting chairperson or, in the case of the chairperson or acting chairperson, to a deputy chairperson, and must not be, or continue as, a member of the Full Tribunal as constituted for the purposes of a hearing of the matter.

S. 405  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.9).

**405. Staff**

Any employees that are necessary for the purposes of this Part may be employed under Part 3 of the **Public Administration Act 2004**.

**406. Protection of members, advocates and witnesses**

- (1) A member or acting member of the Tribunal has, in the exercise of powers or performance of duties as a member or acting member, the same protection and immunity as a judge of the Supreme Court.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

s. 407

- (2) A legal practitioner assisting the Tribunal or a legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

**S. 406(2)**  
**amended by**  
**No. 79/1998**  
**s. 29.**

**Division 2—Procedure of Tribunal**

**407. Duty to act fairly**

The Tribunal must act fairly and according to the substantial merits of the case in all matters before it.

**408. Evidence**

- (1) Except to the extent determined by it, the Tribunal is not bound by the rules of evidence or by practices and procedures applicable to courts of record.
- (2) The Tribunal may take evidence on oath or affirmation and, for that purpose, a member of the Tribunal may administer an oath or affirmation.
- (3) The Tribunal, on the application of a party or on its own initiative, may summon a person, on reasonable notice, to appear before the Tribunal to give evidence and to produce any documents that are specified in the summons.
- (4) The Tribunal may retain for a reasonable period and may make copies of, or take extracts from, any document produced to the Tribunal in the course of a hearing before it.

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**409. Reasons**

- (1) The Tribunal must give reasons for any order made in relation to a matter before it.
- (2) If the Tribunal gives oral reasons, a party, within 28 days, may request the Tribunal to give written reasons.
- (3) The Tribunal must comply with a request under sub-section (2) within 28 days after the request is made.
- (4) The reasons for an order, whether oral or written, form part of the record of the hearing in which the order was made.

**410. Who is entitled to appear?**

- (1) Subject to this section, any party to a matter before the Tribunal is entitled to appear in the hearing of that matter.
- (2) A party may appear personally or by a legal practitioner or, with the leave of the Tribunal, by any other representative.
- (3) A party that is a body corporate may appear by an officer of the body authorised in writing to appear on the body's behalf.
- (4) A party that is a firm may appear by a partner of the firm or by an employee of the firm authorised in writing to appear on the firm's behalf.
- (5) Unless the Tribunal gives leave, a complainant is entitled to appear only if the Tribunal is considering making an order referred to in section 133(1)(a) to (e) (whether at the request of the complainant or otherwise).

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**411. Tribunal may join parties and grant leave to intervene**

If the Tribunal considers that a person ought to be bound by, or have the benefit of, an order of the Tribunal, or is otherwise legitimately interested in a matter before the Tribunal, it may—

- (a) direct that the person be joined as a party; or
- (b) grant the person leave to intervene.

**412. Tribunal must give notice of hearings and allow witnesses**

- (1) The Tribunal must give a party to a matter before it—
  - (a) reasonable notice of the time and place of the hearing; and
  - (b) a reasonable opportunity to—
    - (i) call or give evidence;
    - (ii) examine, cross-examine or re-examine witnesses;
    - (iii) make submissions to the Tribunal.
- (2) If a person to whom notice has been given under sub-section (1) does not attend at the time and place specified in the notice, the Tribunal may hear the matter in the person's absence.

**413. Hearings are open to public unless otherwise ordered**

- (1) Subject to this section, all hearings of the Tribunal must be held in public.
- (2) The Tribunal may direct that a hearing or any part of it be held in private.

- (3) The Tribunal may order—
- (a) that any evidence given at a hearing;
  - (b) that the content of any documents produced to the Tribunal;
  - (c) that any information that might enable a party or another person who has appeared at a hearing to be identified—
- must not be published except in the manner and to the persons specified in the order.
- (4) A direction or order under this section may be given or made on the application of a party or on the Tribunal's own initiative.

**S. 413A**  
inserted by  
No. 102/1997  
s. 40.

**413A. Interim orders**

The Tribunal may make any interim orders it thinks fit in any proceedings before it.

**414. Directions**

- (1) The Tribunal may give directions as to any matter or thing not provided for by this Act, the regulations or the rules in relation to any proceeding before the Tribunal.
- (2) Directions may be given on the motion of any party or on the initiative of the Tribunal.

**415. Rules<sup>24</sup>**

A committee comprising the chairperson and deputy chairpersons of the Tribunal and the registrar may make rules, not inconsistent with this Act, for the practice and procedure with respect to applications to, and hearings by, the Tribunal and appeals from the Tribunal constituted by the registrar or deputy registrar to the Full Tribunal.

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**Division 3—Conciliators**

**416. Panel of conciliators**

- (1) The registrar is to appoint a panel of conciliators for the purposes of Part 5.
- (2) Each conciliator must be, or have been within 10 years before their appointment, a current practitioner.
- (3) Each conciliator holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment and is eligible for re-appointment.
- (4) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a conciliator in respect of the office of conciliator.

S. 416(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.10).

- (5) The registrar may at any time remove a conciliator from office.
- (6) A conciliator may resign by writing delivered to the registrar.

**417. Payment of conciliators**

A conciliator is entitled to receive the remuneration and allowances that are fixed from time to time by the registrar.

**418. Secrecy**

- (1) A person who is or has been a conciliator must not, directly or indirectly, make a record of, disclose or communicate to any person information about the affairs of any person acquired in that capacity unless—

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 17—Legal Profession Tribunal

**s. 419**

**S. 418(1)(b)**  
**amended by**  
**No. 52/1999**  
**s. 9(e).**

(a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or the exercise of a power under this Act; or

(b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

(2) Sub-section (1) does not prevent a person from producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act.

**419. Immunity**

A conciliator is not personally liable for anything done or omitted to be done in good faith—

(a) in the capacity of conciliator under this Act; or

(b) in the reasonable belief that the thing was done or omitted to be done in the capacity of conciliator under this Act.

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**PART 18—LEGAL OMBUDSMAN**

**420. Appointment**

- (1) The Governor in Council, on the recommendation of the Attorney-General, may appoint a person to be Legal Ombudsman.
- (2) A person is not eligible to be appointed as Legal Ombudsman if, at any time during the preceding 7 years, the person has engaged in legal practice.
- (3) The Legal Ombudsman holds office, subject to this Act, for a term of 7 years from the date of appointment and is eligible for re-appointment.
- (4) The **Public Administration Act 2004** does not apply to the Legal Ombudsman, except as provided in section 16 of that Act.

S. 420(4)  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.9).

**421. Payment**

The Legal Ombudsman is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.

**422. Resignation, suspension and removal**

- (1) The Legal Ombudsman ceases to hold office if he or she—
  - (a) becomes an insolvent under administration;  
or
  - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) The Legal Ombudsman may resign in writing delivered to the Attorney-General.



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- (3) The Governor in Council may suspend the Legal Ombudsman from office and, subject to this section, may remove the Legal Ombudsman from office.
  - (4) The Attorney-General must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of the Legal Ombudsman within 7 sitting days of the House after the suspension.
  - (5) The Legal Ombudsman must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it, declares by resolution that the Legal Ombudsman ought to be removed from office.
  - (6) Unless each House of the Parliament makes a declaration under sub-section (5) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the Legal Ombudsman to office.

**423. Acting appointment**

- (1) The Attorney-General may appoint a person to act in the office of Legal Ombudsman—
  - (a) during a vacancy in that office; or
  - (b) during a period or all periods, when the person holding that office is absent from duty or is, for any reason, unable to perform the duties of the office.
- (2) An appointment under sub-section (1) is for such period, not exceeding 6 months, as is specified in the instrument of appointment and, subject to sub-section (3), a person appointed to act is eligible for re-appointment.

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- (3) A person is not eligible to be appointed under subsection (1)—
- (a) if, at any time during the preceding 7 years, the person has engaged in legal practice; or
  - (b) if, at any time during the preceding 6 months, the person has held the office of acting Legal Ombudsman.
- (4) The Attorney-General may at any time remove the acting Legal Ombudsman from office.
- (5) While a person is acting in the office of the Legal Ombudsman in accordance with this section, the person—
- (a) has, and may exercise, all the powers and must perform all the duties of that office under this Act; and
  - (b) is entitled to be paid the remuneration and allowances that the Legal Ombudsman would have been entitled to for performing those duties.

**424. Validity of acts and decisions**

An act or decision of the Legal Ombudsman or acting Legal Ombudsman is not invalid only because—

- (a) of a defect or irregularity in or in connection with their appointment;
- (b) in the case of the acting Legal Ombudsman, that the occasion for so acting had not arisen or had ceased.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 18—Legal Ombudsman

s. 425

**425. Staff and consultants**

S. 425(1)  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 112.9).

- (1) Any employees that are necessary for the purposes of this Part may be employed under Part 3 of the **Public Administration Act 2004**.

- (2) The Legal Ombudsman may engage any consultants required for the purposes of carrying out the functions of the office.

S. 425A  
inserted by  
No. 79/1998  
s. 30.

**425A. Delegation**

- (1) Subject to sub-section (2), the Legal Ombudsman may delegate in writing to an employee referred to in section 425(1) any power or function of the Legal Ombudsman under Part 5 (disputes and discipline).
- (2) A delegation under sub-section (1) cannot be made to an employee who is not eligible to be appointed as Legal Ombudsman.

**426. Annual reports**

- (1) The Legal Ombudsman must include the following information in the report of operations of the office under Part 7 of the **Financial Management Act 1994** each year—
  - (a) the number and type of complaints made under Part 5 during the preceding financial year—
    - (i) to the Legal Ombudsman;
    - (ii) to each RPA;
    - (iii) to the Board—and the time intervals involved in the investigation of those complaints;

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- (b) the number and type of complaints dismissed during the preceding financial year—
    - (i) by the Legal Ombudsman;
    - (ii) by each RPA;
    - (iii) by the Board;
  - (c) the number and type of charges brought in the Tribunal during the preceding financial year—
    - (i) by the Legal Ombudsman;
    - (ii) by each RPA;
    - (iii) by the Board—and the results of those charges;
  - (d) the number and type of complaints outstanding as at the end of the preceding financial year and the date on which each was made—
    - (i) to the Legal Ombudsman;
    - (ii) to an RPA;
    - (iii) to the Board;
  - (e) the number and type of complaints made to an RPA or the Board and reviewed by the Legal Ombudsman during the preceding financial year at the request of the complainant and the outcome of those reviews;
  - (f) the types of subject-matter of complaints made during the preceding financial year;
  - (g) the number and type of disputes lodged with RPAs and the Board during the preceding financial year and the outcome of those disputes;
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- (h) a list of any reports of investigations made under Division 3 of Part 3 during the preceding financial year;
    - (i) any other information that the Attorney-General directs to be included.
  - (2) The Legal Ombudsman may include in a report of operations—
    - (a) recommendations as to prudent practices to be adopted by legal practitioners and firms in relation to legal practice;
    - (b) any other information that the Legal Ombudsman considers appropriate to be included.
  - (3) Matters included in a report of operations must not identify individual complainants, clients, legal practitioners or firms, unless their names have already lawfully been made public in connection with the complaint or dispute concerned.

#### **427. Other reports**

- (1) In addition to the report of operations under the **Financial Management Act 1994**, and any report under Division 3 of Part 3, the Legal Ombudsman may make such reports to the Attorney-General as the Legal Ombudsman considers necessary or desirable.
- (2) The Legal Ombudsman must specify in a report under sub-section (1) whether he or she requires the report to be laid before the Parliament and, if he or she does so require, the Attorney-General must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the Attorney-General receives the report.

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**428. Secrecy**

- (1) A person who is or has been the Legal Ombudsman, an acting Legal Ombudsman, an officer or employee of the office of the Legal Ombudsman or a consultant engaged by the Legal Ombudsman must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or the exercise of powers under this Act, unless—
- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
  - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent a person—
- (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act; or
  - (b) reporting a suspected offence to the police or assisting them in their investigations.

**429. Immunity**

The Legal Ombudsman, an acting Legal Ombudsman or an officer or employee of the office of the Legal Ombudsman is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—

- (a) in the exercise of a power or the performance of a function or duty under this Act; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 18—Legal Ombudsman

**s. 430**

- (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty under this Act.

**430. Ex gratia payments**

**S. 430(1)**  
**amended by**  
**No. 102/1997**  
**s. 41(a).**

- (1) Subject to this section, the Legal Ombudsman, after consultation with the chairperson of the Board, may pay a complainant under Part 5 an amount determined by the Legal Ombudsman as compensation for pecuniary loss suffered as a result of an act or omission by a legal practitioner, an interstate practitioner, a registered foreign practitioner or a firm if the Legal Ombudsman considers it fair to do so.
- (2) Receipt of a payment under sub-section (1) does not affect the right of a complainant to recover damages for pecuniary loss, but a court in making an award of damages must take the payment into account.
- (3) In deciding whether or not to make a payment under sub-section (1) to a complainant, and the amount of any such payment, the Legal Ombudsman may take into account—

**S. 430(3)(a)**  
**amended by**  
**No. 102/1997**  
**s. 41(b).**

- (a) whether or not the practitioner or firm the subject of the complaint has ceased engaging in legal practice; and
- (b) the financial position of the practitioner or firm.
- (4) Nothing in sub-section (3) limits the matters the Legal Ombudsman may take into account in making a decision under sub-section (1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 18—Legal Ombudsman

**s. 430**

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- (5) The Board, by written notice to the Legal Ombudsman before the beginning of a financial year, may set a maximum amount that may be paid to complainants (whether individually or in total or both) in that year and may, in special circumstances, vary that amount at any time during the year.
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 19—General

s. 431

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**PART 19—GENERAL**

**Division 1—Notices and evidentiary matters**

**431. Service of notices on practitioners and firms**

S. 431(1)  
amended by  
No. 102/1997  
s. 42(a).

- (1) For the purposes of this Act, a notice or other document may be served on, or given to, a legal practitioner (being a natural person) or a registered foreign practitioner—
- (a) by delivering it personally to the practitioner; or
  - (b) by sending it by post to the practitioner at the address for service appearing on the Register.

S. 431(3)  
amended by  
No. 102/1997  
s. 42(b)(i).

- (2) For the purposes of this Act, a notice or other document may be served on, or given to, a firm—
- (a) by delivering it personally to a partner of the firm; or
  - (b) by sending it by post to the firm at the address for service appearing on the Register.

S. 431(3)(a)  
amended by  
No. 102/1997  
s. 42(b)(ii).

- (3) For the purposes of this Act, a notice or other document may be served on, or given to, a legal practitioner (being a body corporate)—
- (a) by delivering it personally to a director of the practitioner; or

S. 431(3)(b)  
amended by  
No. 102/1997  
s. 42(b)(ii).

- (b) by sending it by post to the practitioner at the address for service appearing on the Register; or
- (c) in any other way that service of documents may be effected on a body corporate.

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**432. Service on the Board and RPAs**

- (1) For the purposes of this Act, a notice or other document may be served on, lodged with or given to the Board—
  - (a) by delivering it personally to the office of the Board; or
  - (b) by sending it by post to the office of the Board.
- (2) For the purposes of this Act, a notice or other document may be served on, lodged with or given to, an RPA—
  - (a) if the RPA is a company within the meaning of the Corporations Act—
    - (i) by delivering it personally to the registered office of the RPA; or
    - (ii) by sending it by post to the registered office of the RPA; or
  - (b) if the RPA is an incorporated association within the meaning of the **Associations Incorporation Act 1981**, in accordance with section 48 of that Act; or
  - (c) in any other way that service of documents may be effected on a body corporate.

S. 432(2)(a)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 72.7).

**433. Service of notices on other persons**

For the purposes of this Act, a notice or other document may be served on, or given to, a person (other than a person referred to in section 431 or 432)—

- (a) if the person is a natural person—
  - (i) by delivering it personally to the person; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 19—General

s. 434

S. 433(b)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 72.7).

- (ii) by sending it by post to the person at his or her usual or last known residential or business address; or
- (iii) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- (b) if the person is a company within the meaning of the Corporations Act—
  - (i) by delivering it personally to the registered office of the company; or
  - (ii) by sending it by post to the registered office of the company; or
  - (iii) in any other way that service of documents may be effected on a body corporate; or
- (c) if the person is an incorporated association within the meaning of the **Associations Incorporation Act 1981**, in accordance with section 48 of that Act.

**434. When is service effective?**

- (1) For the purposes of this Act, a notice or other document must be taken to have been served on, or given to, a person or firm—
  - (a) in the case of delivery in person, at the time the document is delivered;
  - (b) in the case of posting, 2 business days after the day on which the document was posted.
- (2) In this section, "**business day**" means a day other than a Saturday, Sunday, public holiday or public half-holiday.

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**435. Evidentiary matters**

- (1) A certificate sealed by, or signed on behalf of, the Board specifying that a legal practitioner, registered foreign practitioner or firm is, or was at any time specified in the certificate, a regulated practitioner of the RPA specified in the certificate, or of the Board, is, in the absence of proof to the contrary, proof of the matters stated in it.
- (2) A certificate sealed by, or signed on behalf of, the Board specifying that a matter specified in the certificate is, or was at any time specified in the certificate, on the Register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on the Register.
- (3) A certificate sealed by, or signed on behalf of, an RPA or the Board, specifying that, on a date or during a period specified in the certificate—
  - (a) a regulated practitioner held or did not hold a practising certificate;
  - (b) the practising certificate of a regulated practitioner was subject to a specified condition or restriction—is, in the absence of proof to the contrary, proof of the matters stated in it.
- (4) A document purporting to be a copy of the practice rules of an RPA or the Board and certified as such by the RPA or the Board is, in the absence of proof to the contrary, proof of the due making, existence and content of the practice rules of the RPA or the Board.
- (5) A certificate sealed by, or signed on behalf of, the Board specifying that a body corporate is, or was at any time specified in the certificate, an RPA is, in the absence of proof to the contrary, proof that the body is, or was at the specified time, an RPA.

**S. 435(1)**  
**amended by**  
**No. 102/1997**  
**s. 42(c).**

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**Division 2—Offences**

**436. Compliance with Tribunal orders etc.**

A person or firm must comply with—

- (a) an order of the Tribunal;
- (b) a record of agreement filed in the Magistrates' Court under section 127 or 130.

Penalty: 50 penalty units and 5 penalty units for each day the non-compliance continues after the making of the order or the filing of the record of agreement.

**437. Failing to appear or produce documents**

- (1) A person who is properly served with a summons to appear as a witness before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons;
- (b) fail to appear and report from day to day unless excused or released from attendance by the Tribunal.

Penalty: 50 penalty units.

- (2) A person appearing as a witness before the Tribunal must not, without reasonable excuse—

- (a) refuse to be sworn or make an affirmation;
- (b) refuse to answer a question that the person is required by the person presiding to answer;
- (c) refuse to produce a document that the person was required by the summons to produce.

Penalty: 50 penalty units.

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**438. Contempt of Tribunal**

A person must not—

- (a) hinder or obstruct a member of the Tribunal in the exercise of the powers or the performance of the functions of the member under this Act;
- (b) interrupt any proceedings of the Tribunal;
- (c) use insulting language towards a member of the Tribunal when the member is exercising powers or performing functions under this Act;
- (d) create a disturbance or take part in creating a disturbance in or near a place where the Tribunal is sitting;
- (e) do any other thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 50 penalty units.

**439. False or misleading information**

A person must not give any information or make any statement to any person exercising powers or performing functions under this Act if the person knows that the information or statement is false or misleading in any material particular.

Penalty: 50 penalty units.

**440. Offences by firms**

Where this Act provides that a firm is guilty of an offence, that reference must be read as a reference to each partner of the firm.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 19—General

**s. 441**

**S. 441**  
amended by  
No. 44/1997  
s. 26,  
substituted by  
No. 102/1997  
s. 43.

**441. Who may prosecute offences?**

- (1) A charge against a person for an offence under this Act (other than section 438(e)) or the regulations may only be filed—
  - (a) by the Board; or
  - (b) by a member of the police force; or
  - (c) by the Director of Public Prosecutions; or
  - (d) if, at the time of the alleged offence, the person was a regulated practitioner of an RPA, by—
    - (i) that RPA; or
    - (ii) a person referred to in paragraph (a), (b) or (c).
- (2) A charge against a person for an offence under section 438(e) may only be filed by the Board.
- (3) The Board, on behalf of the Attorney-General, may apply to the Supreme Court for punishment of a person for a contravention of a provision of this Act that, by force of this Act, constitutes a contempt of the Supreme Court.

**Pt 19 Div. 2A**  
(Heading and  
ss 441A–  
441E)  
inserted by  
No. 79/1998  
s. 31.

**Division 2A—Investigation of offences**

**S. 441A**  
inserted by  
No. 79/1998  
s. 31.

**441A. Board may appoint person to investigate**

If the Board reasonably suspects that an offence has been committed under this Act (other than an offence under Part 6), the Board may appoint a person—

- (a) who is an employee of the Board; or

(b) who in the opinion of the Board is an appropriate person to conduct an investigation under this Division—

to investigate the offence.

**441B. Assistance with investigation**

**S. 441B  
inserted by  
No. 79/1998  
s. 31.**

- (1) For the purposes of an investigation under this Division, a person must—
- (a) produce for inspection or copying by the inspector any records reasonably required by the inspector; and
  - (b) give the inspector any other information he or she reasonably requires.
- Penalty: 50 penalty units.
- (2) A person may not refuse to comply with subsection (1)—
- (a) on the ground of legal professional privilege or any other duty of confidence; or
  - (b) on the ground that the production of the record or giving of the information may tend to incriminate them.
- (3) If a person, before producing a record or giving information, objects to the inspector on the ground that the production of the record or giving of the information may tend to incriminate them, the record or information is inadmissible in evidence in any proceeding against them for an offence, other than an offence in relation to the giving of false or misleading information.
- (4) An inspector may retain for a reasonable period and may make copies of, or take extracts from, any documents produced or given to the inspector in the course of an investigation under this Division.



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- (5) A financial institution, despite any duty of confidence to the contrary, must without charge—
- (a) produce for inspection or copying by the inspector any records held by it that are reasonably required by the inspector for the purposes of an investigation under this Division; and
  - (b) give the inspector any other information he or she reasonably requires for the purposes of the investigation.

Penalty: 50 penalty units.

**S. 441C**  
inserted by  
No. 79/1998  
s. 31.

**441C. Power of entry with warrant**

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to any premises, or part of any premises, if the inspector—
  - (a) reasonably suspects that an offence under this Act (other than an offence under Part 6) has been committed; and
  - (b) believes on reasonable grounds that there may be on those premises, or that part, any article, document or thing that may afford evidence as to the commission of that offence.
- (2) If the magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the magistrate may issue a search warrant.
- (3) A search warrant issued under this section must be directed to the applicant for it and must authorise them, and any assistants they reasonably require, to enter the premises, or the part of the premises, named or described in the warrant to search for any article, document or thing of a kind named or

described in the warrant that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act (other than an offence under Part 6).

- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) any conditions to which the warrant is subject; and
  - (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

**441D. Inspector must report on investigation**

As soon as practicable after completing an investigation under this Division, an inspector must give a written report on the result of the investigation to the Board.

**S. 441D**  
inserted by  
No. 79/1998  
s. 31.

**441E. Secrecy**

- (1) An inspector must not disclose information acquired in the course of an investigation under this Division except—
- (a) as is necessary for the purpose of conducting the investigation and making the report of the investigation; or
  - (b) as is permitted by sub-section (2); or

**S. 441E**  
inserted by  
No. 79/1998  
s. 31.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 19—General

s. 442

- (c) with the consent of the person to whom the information relates.

Penalty: 100 penalty units.

- (2) An inspector may disclose information acquired in the course of an investigation—
  - (a) to a member of the police force, if the inspector reasonably suspects that an offence has been committed;
  - (b) to the Board, in connection with any proceedings arising out of the investigation or concerning the person the subject of the investigation;
  - (c) to a court—
    - (i) in connection with any prosecution for an offence under this Act; or
    - (ii) if required by the court to do so, in connection with a prosecution for an offence under any other Act;
  - (d) to the Tribunal in connection with any proceeding in the Tribunal under this Act.

**Division 3—Miscellaneous**

**442. Liability for negligence etc.**

- (1) Nothing in this Act abrogates any immunity from liability for negligence enjoyed by legal practitioners before the commencement of this section.
- (2) A legal practitioner, registered foreign practitioner or firm must not make any agreement or arrangement with a client to the effect that the practitioner or firm will not be liable to the client for any loss or damage caused to the client in connection with legal services to be provided on or after the date of the agreement or arrangement

S. 442(2)  
substituted by  
No. 102/1997  
s. 44.

to the client for which, but for the agreement or arrangement, the practitioner or firm would be liable.

- (3) Any agreement or arrangement that contravenes sub-section (2) is void.

#### **443. Destruction of documents**

- (1) A legal practitioner or firm may destroy or dispose of any documents held by them relating to a matter after a period of 7 years has elapsed since the completion of the matter if the practitioner or firm has been unable, despite making reasonable efforts, to obtain instructions from the client to whom the documents relate as to the destruction or disposal of the documents.
- (2) The Board may destroy or dispose of any documents received from a receiver under section 270(1) after a period of 7 years has elapsed since the documents were so received.

#### **444. Supreme Court—limitation of jurisdiction**

- (1) It is the intention of sections 102(3), 106, 110, 115(3)(b), 116(3), 116(4), 121, 124, 189(3), 190(3), 191(2), 209(6) (as amended by section 27(5) of the **Legal Practice (Amendment) Act 1997**), 218 (as amended by section 27(5) of the **Legal Practice (Amendment) Act 1997**), 222(3) (as amended by section 27(6)(b) of the **Legal Practice (Amendment) Act 1997**), 419 and 429 to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 212(2) as substituted by section 19(2) of the **Legal Practice (Amendment) Act 1998** to alter or vary section 85 of the **Constitution Act 1975**.

S. 444  
amended by  
Nos 102/1997  
s. 45, 79/1998  
s. 32 (ILA  
s. 39B(1)).

S. 444(2)  
inserted by  
No. 79/1998  
s. 32.

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**Division 4—Regulations**

**445. Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting the generality of sub-section (1), the Governor in Council may make regulations for or with respect to—
  - (a) prescribing a fee, not exceeding \$55, for lodging a dispute with the registrar;
  - (b) prescribing a general fee and a library fee to be paid before admission to legal practice;
  - (c) prescribing fees to be paid for practising certificates;
  - (d) prescribing persons or classes of persons as financial institutions<sup>25</sup>;
  - (e) prescribing persons for the purposes of paragraph (a)(ii) of the definition of "nominee mortgage" in section 3(1);
  - (f) penalties, not exceeding 20 penalty units, for breaches of the regulations.
- (3) Regulations under sub-section (2)(c) are to be made on the recommendation of the Board.
- (4) In making a recommendation, the Board must take into account—
  - (a) the costs of regulating different classes of legal practitioners; and

S. 445(2)(a)  
amended by  
No. 24/2000  
s. 19(c).

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- (b) the desirability of the income of the Legal Practice Fund from those fees being sufficient to meet the costs incurred by RPAs and the Board under Division 4 of Part 2 and under Part 5; and
    - (c) any representations made to the Board by an RPA regarding appropriate levels for fees for classes of regulated practitioners of the RPA.
  - (5) A power conferred by this Act to make regulations may be exercised—
    - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
    - (b) so as to make, as respects the cases in relation to which the power is exercised—
      - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
      - (ii) any such provision either unconditionally or subject to any specified condition.
  - (6) Regulations under this Act may be made—
    - (a) so as to apply at all times or at a specified time; and
    - (b) so as to require matters affected by the regulations to be—
      - (i) in accordance with specified standards or specified requirements; or
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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 19—General

**s. 445**

- (ii) approved by or to the satisfaction of specified persons or bodies or specified classes of persons or bodies; or
  - (iii) as specified in both sub-paragraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
  - (i) wholly or partially or as amended by the regulations; or
  - (ii) as in force at a particular time or as in force from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
- (e) so as to provide in specified cases or classes of case for the exemption of persons or things or classes of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

Pt 20  
(Heading and  
ss 446–451)  
repealed by  
No. 102/1997  
s. 48.

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Part 21—Repeals, Consequential Amendments and Transitionals

**s. 454**

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**PART 21—REPEALS, CONSEQUENTIAL AMENDMENTS  
AND TRANSITIONALS**

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**Ss 452, 453  
repealed by  
No. 102/1997  
s. 48.**

**454. Savings, transitional and other provisions**

Schedule 2 has effect.

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 1
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**SCHEDULES**

Sch. 1  
repealed by  
No. 102/1997  
s. 48.

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**SCHEDULE 2**

Section 454

**SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

**PART 1—GENERAL**

**1. Definitions**

In this Schedule—

**"Bar"** means "The Victorian Bar Incorporated", a body incorporated under the **Associations Incorporation Act 1981**;

**"barristers' rules"** means—

- (a) the bar rules (within the meaning of section 14A of the old Act) as in force immediately before the commencement day; and
- (b) any ruling made and published by the Victorian Bar Council (within the meaning of section 14A of the old Act) on a matter of professional conduct or practice in force immediately before the commencement day;

**"commencement day"** means 1 January 1997;

**"existing firm"** means a firm of existing practitioners that, immediately before the commencement day, was engaged in legal practice;

**"existing incorporated practitioner"** means a person that was an incorporated practitioner, within the meaning of the old Act, immediately before the commencement day;

**"existing practitioner"** means a person who immediately before the commencement day was a barrister and solicitor of the Supreme Court;

**"Institute"** means the Institute within the meaning of section 2A of the old Act;

**"old Act"** means the **Legal Profession Practice Act 1958** as in force immediately before its repeal;

**"Society"** means Victorian Lawyers RPA Limited  
A.C.N. 075 475 731.

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

**2. General transitional provision**

- (1) Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a provision of the old Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—
  - (a) any other provision of the old Act necessary to give effect to that continued provision; and
  - (b) any regulation made under the old Act for the purposes of that continued provision.

**3. Savings and transitional regulations**

The regulations may contain provisions of a savings and transitional nature consequent on the repeal of the old Act.

**PART 2—LEGAL PRACTITIONERS AND FIRMS**

**4. Admission**

- (1) On the commencement day, an existing practitioner becomes a legal practitioner as if he or she had been admitted to legal practice under this Act.
- (2) Despite anything to the contrary in sub-clause (1), the day of admission of an existing practitioner is the day he or she was admitted by the Supreme Court to practise as a barrister and solicitor.
- (3) Until the regulations provide otherwise, the prescribed general fee for admission is \$100 and the prescribed library fee for admission is \$560.

Sch. 2 cls 5, 6  
repealed by  
No. 9/1999  
s. 18.

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**7. Prothonotary to notify Board**

The Prothonotary of the Supreme Court must provide the Board with access, in the form requested by the Board, to the roll of practitioners kept by the Court.

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

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**8. Existing incorporated practitioners**

- (1) On the commencement day, each existing incorporated practitioner is deemed to be registered as an incorporated practitioner under this Act.
- (2) Despite anything to the contrary in Part 10, section 87B(1)(a)(ii) and (vii) of the old Act continue to apply to an existing incorporated practitioner that has 2 directors.

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**Sch. 2**  
**cls 9, 10**  
**repealed by**  
**No. 9/1999**  
**s. 18.**

**11. RPA allocation**

- (1) Each existing practitioner who holds a practising certificate becomes a regulated practitioner of the Society on the commencement day.
- (2) Each existing practitioner who, immediately before the commencement day, was a barrister within the meaning of Part IIA of the old Act and practising as a barrister immediately before that day becomes a regulated practitioner of the Bar on that day.
- (3) Each existing firm and incorporated practitioner becomes a regulated practitioner of the Society on the commencement day.

**12. Unqualified practice**

- (1) An order made under section 90(7) of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an injunction under section 316 of this Act.
- (2) An order made under section 95A of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an order under section 321 of this Act.
- (3) A permission given under section 95 of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an authorisation under section 320 of this Act.

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (4) Despite anything in Part 13, if a person to whom section 327 applies is employed by a conveyancer in connection with the performance of conveyancing work immediately before the commencement day, that person may remain so employed for a period not exceeding 12 months after the commencement day.

**PART 3—THE BAR AND THE SOCIETY**

**13. Society succeeds Institute**

- (1) On the commencement day—
- (a) the Institute is abolished;
  - (b) the council of the Institute is abolished and its members go out of office as members;
  - (c) all rights, property and assets that, immediately before the commencement day, were vested in the Institute (other than the Solicitors' Guarantee Fund and any rights attaching to the Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money and any rights in connection with arrangements under section 53A of the old Act) are, by force of this sub-clause, vested in the Society;
  - (d) all debts, liabilities and obligations of the Institute existing immediately before that day (other than debts, liabilities or obligations relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act) become, by force of this sub-clause, debts, liabilities and obligations of the Society;
  - (e) the Society is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the Institute was a party immediately before that day, other than a proceeding relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act;

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

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- (f) the Society is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the Institute as a party and in force immediately before that day, other than an arrangement or contract relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money or an arrangement under section 53A of the old Act;
  - (g) any reference to the Institute in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever (other than a document relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money or relating to an arrangement under section 53A of the old Act) must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Society.
- (2) On the commencement day—
- (a) the property in and rights attaching to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act that, immediately before the commencement day, were vested in the Institute are, by force of this sub-clause, vested in the Board;
  - (b) all debts, liabilities and obligations of the Institute relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the Board;
  - (c) the Board is, by force of this sub-clause, substituted as a party to any proceeding relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act pending in any court or tribunal to which the Institute was a party immediately before that day;
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*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (d) the Board is, by force of this sub-clause, substituted as a party to any arrangement or contract relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act and investments of that money and any arrangement under section 53A of the old Act entered into by or on behalf of the Institute as a party and in force immediately before that day;
  - (e) any reference to the Institute in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever relating to the Solicitors' Guarantee Fund, money deposited with the Institute under section 40(2A) of the old Act, investments of that money and arrangements under section 53A of the old Act must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Board.
- (3) Without prejudice to the generality of this clause and despite anything to the contrary in any other Act or law, if, immediately before the commencement day, the Institute is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that day—
- (a) the Society is to be taken to be the registered proprietor of that interest in land; and
  - (b) the Society has the same rights and remedies in respect of that interest as the Institute had.
- (4) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title, must make any amendments in the Register that are necessary because of the operation of this clause.

**14. References to the Bar**

From the commencement day, any reference to the Victorian Bar Council in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Bar.

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Sch. 2  
cls 15, 16  
repealed by  
No. 9/1999  
s. 18.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2

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**17. Practice rules**

- (1) The barristers' rules are deemed to be practice rules made by the Bar under section 72 and are subject to disallowance under Division 2 of Part 3.
- (2) The rules made under section 88 of the old Act as in force immediately before the commencement day are deemed to be practice rules made by the Society under section 72 and are subject to disallowance under Division 2 of Part 3.

**17A. Delegation of transitional powers and functions**

**Sch. 2 cl. 17A**  
**inserted by**  
**No. 42/2003**  
**s. 3.**

- (1) The Bar may delegate in writing to an officer, an employee or the members of a committee of the Bar any of its powers or functions under Part IIA of the old Act, as that Part applies in accordance with clause 21(1).
- (2) The Society may delegate in writing to an officer, an employee or the members of a committee of the Society any of its powers or functions under—
  - (a) Division 2, 4 or 5 of Part IIIA of the old Act, as those Divisions apply in accordance with clause 20(1);
  - (b) Division 3, 4 or 5 of Part IIIA of the old Act, as those Divisions apply in accordance with clause 21(3).

**17B. Validation of delegations of transitional powers and functions by the Bar**

**Sch. 2 cl. 17B**  
**inserted by**  
**No. 42/2003**  
**s. 4.**

The resolution of the Victorian Bar Council on 20 December 1996 purporting to delegate powers under clause 21 to members of the Ethics Committee of the Bar is deemed to have been, during the period commencing on and including 1 January 1997 and ending on 6 February 2003, a delegation in writing made on 1 January 1997 by the Bar under clause 17A(1) delegating to members of the Ethics Committee of the Bar all the powers and functions of the Bar under Part IIA of the old Act, as that Part applies in accordance with clause 21(1).

**17C. Bar officers etc. acting without valid delegations**

**Sch. 2 cl. 17C**  
**inserted by**  
**No. 42/2003**  
**s. 4.**

The purported exercise of a power or performance of a function of the Bar under section 29 (Issue or refusal of practising certificates or variation of conditions) on behalf of the Bar by an officer or employee of the Bar on or after 1 January 1997 and before the day on which the **Legal Practice (Validations) Act 2003** received the Royal Assent is not, and never was, invalid only because the Bar did not



*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

delegate the power or function to the officer or employee under this Act.

Sch. 2 cl. 17D  
inserted by  
No. 42/2003  
s. 4.

**17D. Society officers etc. acting without valid delegations**

- (1) Sub-clause (2) applies to the purported exercise of a power or performance of a function of the Society under—
  - (a) Division 2, 4 or 5 of Part IIIA of the old Act, as those Divisions apply in accordance with clause 20(1); or
  - (b) Division 3, 4 or 5 of Part IIIA of the old Act, as those Divisions apply in accordance with clause 21(3); or
  - (c) section 29 (Issue or refusal of practising certificates or variation of conditions); or
  - (d) section 138 (Who may complain?); or
  - (e) section 144 (RPA or Board may refer complaints to Legal Ombudsman); or
  - (f) section 316 (Injunction restraining unqualified practice); or
  - (g) section 321 (Orders prohibiting employment or engagement of certain persons)—on behalf of the Society by an officer, employee or the members of a committee of the Society on or after 1 January 1997 and before the day on which the **Legal Practice (Validations) Act 2003** received the Royal Assent.
- (2) The purported exercise of a power or performance of a function referred to in sub-clause (1) is not, and never was, invalid only because—
  - (a) the Society did not delegate the power or function to the officer, employee or members of the committee under this Act; or
  - (b) the Society did not have power to delegate the power or function to the officer, employee or members of the committee under this Act.
- (3) The purported exercise or performance, on or after 1 January 1997 and before 21 January 1999, of a power or function of an inspector under Division 5 of Part 6 by a person purporting to be an inspector appointed by the Society under section 192 is not, and never was, invalid only because—
  - (a) the Society did not have power to delegate the power to appoint the person as an inspector to the person who purported to appoint them as such; or

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (b) the appointment of the person as an inspector was not in writing.
- (4) The purported exercise or performance, on or after 21 January 1999 and before 20 January 2003, of a power or function of an inspector under Division 5 of Part 6 by a person purporting to be an inspector appointed by the Society under section 192 is not, and never was, invalid only because the appointment of the person as an inspector was not in writing.

**17E. Validation of delegations by Bar resolution**

**Sch. 2 cl. 17E  
inserted by  
No. 42/2003  
s. 4.**

- (1) Except as provided by sub-clause (2), any resolution of the Victorian Bar Council before 1 January 1997 purporting or resolving to delegate under section 313 powers or functions to an officer, employee or the members of a committee of the Victorian Bar Council or Bar is deemed to be, and since 1 January 1997 always to have been, a delegation in writing made on 1 January 1997 by the Bar under section 313(1).
- (2) Sub-clause (1) does not apply to the resolution by the Victorian Bar Council on 20 December 1996 to the extent that it purported to delegate powers under clause 21 to members of the Ethics Committee of the Bar.
- (3) Any resolution of the Council of the Bar on or after 1 January 1997 and before 7 February 2003 purporting or resolving to delegate under section 313 powers or functions to an officer, employee or the members of a committee of the Bar is deemed to be, and always to have been, a delegation in writing to the officer, employee or members of the committee by the Bar under section 313(1) made on the date of the resolution.
- (4) The Bar is deemed to have given written notice to the Board of any delegation made under section 313(1) before the day on which the **Legal Practice (Validations) Act 2003** received the Royal Assent, including any delegation deemed by this clause to have been made under section 313(1), and of any revocation or variation of any delegation before that day, as soon as practicable after making the delegation, revocation or variation.

**17F. Validation of delegations by Society resolution**

**Sch. 2 cl. 17F  
inserted by  
No. 42/2003  
s. 4.**

- (1) Any resolution of the Executive of the Institute before 1 January 1997 purporting or resolving to delegate under section 313 powers to an officer, employee or the members of a committee of the Institute or Society is deemed to be, and since 1 January 1997 always to have been, a delegation

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2
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in writing made on 1 January 1997 by the Society under section 313(1).

- (2) Except as provided in sub-clause (3), any resolution of the Council of the Society on or after 1 January 1997 and before 3 June 2002 purporting or resolving to delegate under section 313 powers or functions to an officer, employee or the members of a committee of the Society is deemed to be a delegation in writing to the officer, employee or members of the committee by the Society under section 313(1) made on the date of the resolution.
- (3) Nothing in sub-clause (2) affects the rights of the parties in the proceedings in the Supreme Court known as "*B" a solicitor and "G" a solicitor v Victorian Lawyers RPA Limited and Legal Profession Tribunal* (No. 8739 of 2001 and No. 8763 of 2001).
- (4) The Society is deemed to have given written notice to the Board of any delegation made under section 313(1) before the day on which the **Legal Practice (Validations) Act 2003** received the Royal Assent, including any delegation deemed by this clause to have been made under section 313(1), and of any revocation or variation of any delegation before that day, as soon as practicable after making the delegation, revocation or variation.

#### PART 4—RELATIONS WITH CLIENTS

##### 18. Client information and legal costs

- (1) Division 1 of Part 4 of this Act applies where a legal practitioner or firm is retained on or after the commencement day to provide legal services.
- (2) Despite anything to the contrary in section 87, Division 1 of Part 4 does not apply in respect of a legal practitioner who is retained by another legal practitioner on behalf of a client on or after the commencement day in relation to a matter in which the other legal practitioner was retained by the client before the commencement day.
- (3) Division 3 of Part 4 of this Act applies to costs agreements made after the commencement day.
- (4) Despite the repeal of section 62 of the **Supreme Court Act 1986**, any order made under that section that was in force immediately before the commencement day continues in force until 31 December 1997 as if it were a practitioner remuneration order made under section 111 of this Act,

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

unless revoked earlier and applies to all legal practitioners and firms.

- (5) Despite the repeal of the old Act, section 104 of that Act continues to apply in relation to an action, matter, proceeding or arbitration commenced before the commencement day to which it applied immediately before the commencement day.

**19. Taxation of costs**

- (1) Any taxation commenced under Division 2 of Part 6 of the **Supreme Court Act 1986** before the commencement day but not completed by that day may be completed under that Division as if it had not been repealed.
- (2) Any bill awaiting taxation as a result of an application under section 71 of the **Supreme Court Act 1986** as in force immediately before the commencement day or the subject of an order for taxation under section 72 of that Act may be assessed under Division 5 of Part 4 of this Act as if the application were an application for assessment under section 115 or the order were an order for assessment under section 116.

**20. Disputes**

- (1) Divisions 2, 4 and 5 of Part IIIA of the old Act apply to a dispute in respect of which a request was made under section 38O of the old Act before the commencement day as if—
- (a) references to the secretary and the council were references to the Society;
  - (b) a reference to a conciliator were a reference to a conciliator appointed under this Act;
  - (c) a reference to the registrar were a reference to the registrar of the Tribunal;
  - (d) a reference to a registrar's hearing were a reference to a hearing by the Tribunal constituted by the registrar or a deputy registrar;
  - (e) a reference to the Board were a reference to the Full Tribunal.

**Sch. 2**  
**cl. 20(1)(d)**  
**amended by**  
**No. 9/1999**  
**s. 17(g).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2
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- (2) For the purpose of a hearing arising out of a dispute referred to in sub-clause (1), the Full Tribunal is to be constituted by the chairperson or a deputy chairperson and either one or two non-advocate members and the same number of lay members.
- (3) A dispute may be lodged under Division 1 of Part 5 of this Act whether the events giving rise to the dispute occurred before, on or after the commencement day, unless a dispute was lodged under section 38O of the old Act in relation to those events before the commencement day.
- (4) This clause applies despite anything to the contrary in the **Interpretation of Legislation Act 1984**.

Sch. 2 cl. 20A  
inserted by  
No. 79/1998  
s. 33(1).

**20A. Time for bringing disputes**

- (1) Section 123(4A) of this Act applies to requests made in relation to disputes arising on or after the commencement of section 13(2) of the **Legal Practice (Amendment) Act 1998**.
- (2) Section 128(2) of this Act as amended by section 13(3)(b) of the **Legal Practice (Amendment) Act 1998** applies to any dispute in relation to which a notice was received under section 128(1) of this Act—
  - (a) on or after the commencement of section 13(3)(b) of the **Legal Practice (Amendment) Act 1998**; or
  - (b) within 30 days before that commencement.

**21. Complaints and investigations already on foot**

- (1) Part IIA of the old Act (other than section 14Q) applies to a complaint made or a preliminary investigation commenced under section 14D of the old Act before the commencement day as if—
  - (a) a reference to the Chairman of the Victorian Bar Council, the Victorian Bar Council or the Committee were a reference to the Bar;
  - (b) a reference to the Bar Tribunal were a reference to the Full Tribunal;
  - (c) a reference to the Chairman of the Bar Tribunal were a reference to the chairperson or a deputy chairperson of the Tribunal;
  - (d) a reference to the Treasurer were a reference to the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

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- (2) For the purpose of a hearing arising out of a complaint or investigation referred to in sub-clause (1), the Full Tribunal is to be constituted by the chairperson or a deputy chairperson and either one or two advocate members and the same number of lay members.
- (3) Divisions 3, 4 and 5 of Part IIIA of the old Act apply to a complaint made or an investigation commenced under section 38Q of the old Act before the commencement day as if—
- (a) references to the secretary and the council were references to the Society;
  - (b) references in section 38Q to a member of the council were references to a member of the governing body of the Society;
  - (c) a reference in section 38ZB(1)(b) or (c)(i) of the old Act to the Institute were a reference to the Board;
  - (d) a reference to the registrar were a reference to the registrar of the Tribunal;
  - (e) a reference to a registrar's hearing were a reference to a hearing by the Tribunal constituted by the registrar or a deputy registrar;
  - (f) a reference to the Board were a reference to the Full Tribunal;
  - (g) a reference to the lay observer were a reference to the Legal Ombudsman.
- (4) For the purpose of a hearing arising out of a complaint or investigation referred to in sub-clause (3), the Tribunal is to be constituted by the chairperson or a deputy chairperson and either one or two non-advocate members and the same number of lay members.
- (5) Despite anything to the contrary in Division 3 of Part 16, any money received by the Board under an order of the Tribunal under this clause is to be paid to the Legal Practice Fund.

**Sch. 2**  
**cl. 21(3)(e)**  
**amended by**  
**No. 9/1999**  
**s. 17(g).**

*Legal Practice Act 1996*  
*Act No. 35/1996*

<b>Sch. 2</b>
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**22. New complaints and investigations**

- (1) Subject to sub-clause (2), a complaint may be made under Division 2 of Part 5 of this Act and an investigation may be undertaken under Division 3 of Part 5 of this Act whether the alleged conduct giving rise to the complaint or investigation occurred before, on or after the commencement day, unless a complaint was made or an investigation was undertaken under the old Act in relation to that conduct before the commencement day.
- (2) If—
  - (a) a complaint was made under section 14D of the old Act on or after 1 January 1995 and the Committee had resolved under section 14E(a) of the old Act to take no further action in the matter; or
  - (b) a complaint was made under section 38Q of the old Act on or after 1 January 1995 and—
    - (i) the secretary of the Institute had decided not to investigate the matter under section 38Q(2) of the old Act; or
    - (ii) the secretary had investigated the matter but had not taken any action under section 38Q(5) of the old Act—

the complainant may, no later than 31 December 1997, lodge a complaint with the Legal Ombudsman under Division 2 of Part 5 of this Act in relation to the same subject-matter, unless a complaint was made to the lay observer under section 14Q(4) of the old Act, or an allegation was made to the lay observer under section 32F(1) of the old Act, in relation to that subject-matter.
- (3) Despite anything to the contrary in this clause or in Part 5—
  - (a) a legal practitioner who is the subject of a complaint or investigation under this Act in relation to conduct allegedly occurring before the commencement day is not subject to any penalty that he or she could not have been subject to had this Act not been enacted; and
  - (b) Part 5 applies to such a practitioner as if a reference in that Part—
    - (i) to misconduct were a reference to misconduct within the meaning of the old Act; and

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (ii) to unsatisfactory conduct were a reference to standards breach within the meaning of the old Act.

**23. Tribunal may make orders of a transitional nature**

- (1) If any difficulty arises in any proceeding or matter because of the operation of this Part, the Tribunal may make any order it considers appropriate to resolve the difficulty.
- (2) The Tribunal may make such an order on the application of any party to the proceeding or matter or on its own initiative.

**23A. Application of Tribunal's new powers to existing disputes and prior conduct**

**Sch. 2 cl. 23A  
inserted by  
No. 52/1999  
s. 8.**

- (1) Section 169A as amended by section 7 of the **Legal Practice (Amendment) Act 1999** and section 136A apply in respect of disputes referred to the Tribunal after the commencement of that Act.
- (2) Section 160 as amended by section 6 of the **Legal Practice (Amendment) Act 1999** applies in respect of charges brought in the Tribunal after the commencement of that Act.

**PART 5—CLIENTS' MONEY**

**24. Statutory deposit**

- (1) On the commencement day, money deposited with the Institute under section 40(2A) of the old Act that is not currently invested under section 40(2CA) of that Act must be paid to the Board.
- (2) All such money is deemed to have been deposited with the Board under Division 2 of Part 6 of this Act and must be credited to the Statutory Deposit Account.

**25. Arrangements with banks**

Section 176 of this Act applies to any arrangement under section 53A of the old Act that is in force immediately before the commencement day as if it were an arrangement under that section.

**26. Attorney-General may require information from banks**

- (1) The Attorney-General, by written notice, may require a bank to provide to the Attorney-General any information specified in the notice in respect of a trust account held by that bank under section 40 of the old Act.



*Legal Practice Act 1996*  
*Act No. 35/1996*

<b>Sch. 2</b>
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- (2) A bank must comply with a notice under sub-section (1), despite any duty of confidence, within 7 days after receiving it.

Penalty: 100 penalty units.

**27. Approved auditors**

Sch. 2  
cl. 27(1)(2)  
repealed by  
No. 9/1999  
s. 18.

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- (3) Despite anything to the contrary in section 3(1), a person who was a member of the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accounts Australia immediately before the commencement day need not comply with paragraph (c) of the definition of "approved auditor" to be an approved auditor for the purposes of this Act.

**28. Deficiencies in trust accounts**

Division 4 of Part 6 of this Act applies to a deficiency in a trust account or a failure to account for trust money or security whether the deficiency or failure to account relates to money or security received before, on or after the commencement day.

**29. Investigations**

- (1) Part IV of the old Act continues to apply to any examination or audit in respect of which an inspector has been appointed under section 44, 73 or 74 of the old Act before the commencement day.
- (2) An investigation may be undertaken under Division 5 of Part 6 of this Act in relation to a trust account or trust money received by a regulated practitioner whether that account was established, or that money was received, before, on or after the commencement day.

Sch. 2 cl. 30  
repealed by  
No. 9/1999  
s. 18.

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2

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**30A. Expungement of records of suspensions**

Sch. 2 cl. 30A  
inserted by  
No. 102/1997  
s. 46(1).

- (1) The Society may expunge its records of the suspension of the practising certificate of a person by force of section 61C of the old Act if the Society is satisfied that—
  - (a) the person's failure to pay the contribution required under section 61A of the old Act by 31 March 1996 was inadvertent or due to circumstances beyond the person's control; and
  - (b) the person paid that contribution by 31 December 1996.
- (2) The Society must notify the Board of an expungement under sub-clause (1) and, upon notification, the Board must expunge the record of the suspension in the Register.

**31. Levies**

In calculating the aggregate amount by way of levy paid by a legal practitioner for the purposes of section 204(4), account must be taken of any levy paid by the practitioner under section 61 of the old Act.

**32. Defalcations**

- (1) Division 2 of Part 7 of this Act applies to defalcations committed after the commencement day.
- (2) For the purposes of this clause a defalcation is not committed after the commencement day if it is committed between two days, one before and one after the commencement day.
- (3) Division 2 of Part V of the old Act continues to apply to a claim for compensation from the Solicitors' Guarantee Fund made before the commencement day in relation to which, before that day, no decision to allow or disallow had been made by the council of the Institute or the committee of management as its delegate but that Division applies to that claim as if—
  - (a) a reference to the Institute or the council of the Institute or the committee of management were a reference to the Board;
  - (b) a reference to the Solicitors' Guarantee Fund were a reference to the Fidelity Fund.

*Legal Practice Act 1996*  
*Act No. 35/1996*

<b>Sch. 2</b>
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- (4) Division 2 of Part V of the old Act applies to a claim for compensation from the Solicitors' Guarantee Fund that could have been but was not made before the commencement day but that Division applies to that claim as if—
- (a) a reference to the Institute or the council of the Institute or the committee of management were a reference to the Board;
  - (b) a reference to the Solicitors' Guarantee Fund were a reference to the Fidelity Fund.
- (5) Division 2 of Part V of the old Act continues to apply to a claim for compensation from the Solicitors' Guarantee Fund made before the commencement day in relation to which, before that day, a decision to allow or disallow the claim had been made by the council of the Institute or the committee of management as its delegate but that Division applies to that claim as if—
- (a) a reference to the Institute or the council of the Institute or the committee of management were a reference to the Board;
  - (b) a reference to the Solicitors' Guarantee Fund were a reference to the Fidelity Fund.

Sch. 2 cl. 32A  
inserted by  
No. 79/1998  
s. 33(2).

**32A. Fidelity Fund claims**

Sections 208(3)(b) and 212(2) of this Act as substituted by section 19 of the **Legal Practice (Amendment) Act 1998** apply to defalcations that occur on or after the day on which section 19 of the **Legal Practice (Amendment) Act 1998** comes into operation and sections 208(3)(b) and 212(2) as in force immediately before that day continue to apply in respect of defalcations that occurred before that day.

**33. Mortgages**

Section 208(3)(a), in excluding claims against the Fidelity Fund in respect of a defalcation arising out of anything done or omitted to be done in connection with a nominee mortgage, applies only to nominee mortgages for which the principal sum of money, or any part of it, was lent on or after 1 April 1996 or, having been lent before that day, is re-lent on or after that day without having been repaid to the client who lent it.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2

**PART 6—PROFESSIONAL INDEMNITY INSURANCE**

*	*	*	*	*	Sch. 2 cl. 34 repealed by No. 79/1998 s. 33(3).
*	*	*	*	*	Sch. 2 cl. 35 amended by No. 102/1997 s. 46(2)(a) (b)(3), repealed by No. 79/1998 s. 33(3).

**36. Liability Committee**

(1) In this clause—

**"former body"** means the Solicitors' Liability Committee established by section 88B of the old Act;

**"new body"** means the Liability Committee established by section 234 of this Act.

(2) On the commencement day—

- (a) the former body is abolished and its members go out of office as members;
- (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-clause, vested in the new body;
- (c) all debts, liabilities and obligations of the former body existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the new body;
- (d) the new body is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the former body was a party immediately before that day;
- (e) the new body is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day;

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (f) any reference to the former body in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.
- (3) A person who, immediately before the commencement day, was employed by the Institute exclusively in connection with the functions of the former body becomes, on that day, an employee of the new body on the same terms and conditions and with the same rights and accrued and accruing entitlements as he or she had before that day.
- (4) Despite anything to the contrary in section 237, the members of the former body who were in office immediately before the commencement day become the first members of the new body, hold office until 31 December 1997 and, subject to this Act, are eligible for re-appointment.
- (5) The new body must give to the Board and the Minister, by 31 March 1997, the report and financial statements that would have been required under section 88E of the old Act, had that Act not been repealed, for the year ending on 31 December 1996.

**37. Liability Fund**

All money forming part of the Solicitors' Liability Fund established under section 88I of the old Act immediately before the commencement day, on and from that day forms part of the Liability Fund established under section 230 of this Act and may be dealt with in accordance with this Act.

Sch. 2 cl. 38  
repealed by  
No. 79/1998  
s. 33(3).

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**PART 7—RECEIVERS**

**39. Receivers**

- (1) Division 8 of Part V of the old Act continues to apply to an application for the appointment of a receiver made under that Division before the commencement day but which had not been determined before that day.

- (2) Part 9 of this Act applies in relation to the receivership after the commencement day of a receiver appointed under Division 8 of Part V of the old Act before that day or, in accordance with sub-clause (1), after that day as if the receiver had been appointed under that Part.

#### **40. Destruction of old receivership documents**

The Society may destroy or dispose of any documents received from a receiver (either by the Institute under the old Act or under section 270(1)) after a period of 7 years has elapsed since the documents were so received.

### **PART 8—STATUTORY BODIES**

#### **41. Council of Legal Education**

- (1) In this clause—

**"former body"** means the Council of Legal Education established under Part II of the old Act;

**"new body"** means the Council of Legal Education established by section 331(1) of this Act.

- (2) On the commencement day—

- (a) the former body is abolished and its members go out of office as members;
- (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-clause, vested in the new body;
- (c) all debts, liabilities and obligations of the former body existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the new body;
- (d) the new body is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the former body was a party immediately before that day;
- (e) the new body is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day;

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2

Sch. 2 cl. 41(4)  
amended by  
No. 102/1997  
s. 46(4).

- (f) any reference to the former body in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.
- (3) The person who immediately before the commencement day held office as secretary of the former body holds office, subject to this Act, on and after that day as secretary of the new body for the balance of his or her period of appointment and on the same terms and conditions as applied with respect to that appointment.
- (4) Despite the repeal of the old Act, the Rules of the Council of Legal Education 1993 continue in force until 31 December 1999, unless revoked sooner, as if they were rules made by the new body under section 337.

**42. Board of Examiners**

- (1) In this clause—
  - "former body"** means the Board of Examiners established under Part II of the Rules of the Council of Legal Education 1993;
  - "new body"** means the Board of Examiners established by section 338(1).
- (2) On the commencement day—
  - (a) the former body is abolished and its members go out of office as members;
  - (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-clause, vested in the new body;
  - (c) all debts, liabilities and obligations of the former body existing immediately before that day become, by force of this sub-clause, debts, liabilities and obligations of the new body;
  - (d) the new body is, by force of this sub-clause, substituted as a party to any proceeding pending in any court or tribunal to which the former body was a party immediately before that day;

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (e) the new body is, by force of this sub-clause, substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day;
  - (f) any reference to the former body in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.
- (3) The person who immediately before the commencement day held office as secretary of the former body holds office on and after that day as secretary of the new body for the balance of his or her period of appointment and on the same terms and conditions as applied with respect to that appointment.
- (4) Despite anything to the contrary in section 338, the first nominated members of the Board of Examiners hold office until 31 December 1997 and may be nominated without prior consultation with RPAs or the Board. Subject to this Act, they are eligible for re-nomination.

**43. Legal Practice Board**

- (1) Despite anything to the contrary in Part 15, the first practitioner members of the Board are to be appointed by the Governor in Council as follows—
- (a) 1 is to be a current practitioner nominated by the Society;
  - (b) 1 is to be a current practitioner nominated by the Bar;
  - (c) 1 is to be a current practitioner nominated jointly by the Society and the Bar or, failing agreement between them, nominated by the Attorney-General after consultation with them.
- (2) The first practitioner members of the Board hold office until 31 December 1997 and, subject to this Act, are eligible for election under Part 15.
- (3) Despite anything to the contrary in section 350(6) or 352(4), the first chairperson and non-practitioner members of the Board hold office until 31 December 2001, and, subject to this Act, are eligible for re-appointment.



*Legal Practice Act 1996*  
*Act No. 35/1996*

<b>Sch. 2</b>
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- (4) Section 352(3) does not apply to the appointment of the first members of the Board, but the Attorney-General must cause notice of the appointments to be given in each House of the Parliament within 3 sitting days after the commencement day.
  - (5) In the first election of practitioner members of the Board—
    - (a) the counting and distribution of votes in the election of the practitioner members from the roll of advocates and roll of non-advocates must occur before the counting and distribution of votes in the election of the practitioner member from the combined roll;
    - (b) if a candidate for election from the combined roll is declared elected from the roll of advocates or the roll of non-advocates, he or she is ineligible to be elected from the combined roll and his or her first preference votes (if any) in that election are to be distributed amongst the other candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates;
    - (c) if the candidates declared elected from the roll of advocates or roll of non-advocates are regulated practitioners of the same RPA, any candidate for election from the combined roll who is a regulated practitioner of that RPA is ineligible to be elected from that roll and his or her first preference votes (if any) in that election are to be distributed amongst the other eligible candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates.

**44. First advocate and non-advocate members of the Tribunal**

- (1) Despite anything to the contrary in Part 17—
  - (a) the first advocate members of the Tribunal are to be appointed by the Attorney-General after consultation with the Bar;
  - (b) the first non-advocate members of the Tribunal are to be appointed by the Attorney-General after consultation with the Society.
- (2) The members appointed under this clause hold office until 31 December 1997 and, subject to Part 17, are eligible to be re-appointed under that Part.

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**45. First chairperson, deputies and lay members of the Tribunal**

Despite anything to the contrary in section 397(1), the first chairperson, deputy chairpersons, deputy registrar and lay members of the Tribunal hold office until 31 December 2002 and, subject to this Act, are eligible for re-appointment.

**46. Transfer of Solicitors' Board staff**

- (1) A person who, immediately before the commencement day, was employed by the Institute exclusively in connection with the functions of the Solicitors' Board within the meaning of the old Act becomes, on that day, an officer under the **Public Sector Management Act 1992** on terms and conditions with respect to ordinary pay no less favourable than those of the former employment and with the same rights and accrued and accruing entitlements in respect of the former employment.
- (2) The person who was, immediately before the commencement day, the registrar of the Solicitors' Board, becomes on that day the registrar of the Tribunal, holds office, subject to this Act, until 31 December 2001 and, subject to this Act, is eligible for re-appointment.

**47. Transitional arrangements for Board staff and premises**

- (1) A person who, immediately before the commencement day, was employed under the **Public Sector Management Act 1992** exclusively in connection with the establishment and functions of the Board, becomes on that day an employee of the Board on terms and conditions with respect to ordinary pay no less favourable than those of the former employment and with the same rights and accrued and accruing entitlements as applied to that person in respect of the former employment immediately before the commencement day.
- (2) On the commencement day, the Board, by force of this sub-clause, is substituted for the Minister administering Part 7B of the **Financial Management Act 1994** as a party to any lease, contract or other arrangement entered into by that Minister before that day in connection with land or premises to be used for the purposes of the Board.

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

**48. Transitional arrangements for Legal Ombudsman premises**

On the commencement day, the Legal Ombudsman, by force of this clause, is substituted for the Minister administering Part 7B of the **Financial Management Act 1994** as a party to any lease, contract or other arrangement entered into by that Minister before that day in connection with land or premises to be used for the purposes of the Legal Ombudsman.

**PART 9—FUNDS**

**49. Solicitors' Guarantee Fund**

- (1) All money forming part of the Income Suspense Account of the Solicitors' Guarantee Fund immediately before the commencement day on and from that day forms part of the General Account of the Public Purpose Fund and may be dealt with in accordance with this Act.
- (2) All money forming part of the Fidelity Account of the Solicitors' Guarantee Fund immediately before the commencement day on and from that day forms part of the Legal Practitioners' Fidelity Fund and may be dealt with in accordance with this Act.
- (3) All money forming part of the Victoria Law Foundation Account of the Solicitors' Guarantee Fund immediately before the commencement day must, on that day, be paid to the Victoria Law Foundation or be otherwise dealt with as directed by that Foundation. The money to which this sub-clause applies must not, for the purposes of section 381(4) or 384, be taken to be paid under section 381(1).
- (4) All money forming part of the Leo Cussen Institute Account of the Solicitors' Guarantee Fund immediately before the commencement day must, on that day, be paid to the Leo Cussen Institute or be otherwise dealt with as directed by that Institute. The money to which this sub-clause applies must not, for the purposes of section 382(4) or 384, be taken to be paid under section 382(1).
- (5) All money forming part of the Law Reform Account of the Solicitors' Guarantee Fund immediately before the commencement day on and from that day forms part of the Law Reform and Research Account of the Public Purpose Fund and may be dealt with in accordance with this Act. The money to which this sub-clause applies must not, for the purposes of section 383(4) or 384, be taken to be credited under section 383(1).

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (6) All money standing immediately before the commencement day to the credit of the Solicitors' Guarantee Fund Capital Investment Account must, on that day, be credited to the Fidelity Fund and may be dealt with in accordance with this Act.
- (7) Subject to this clause, all property in and rights attaching to the Solicitors' Guarantee Fund that are, by force of clause 12(2), vested in the Board must be applied by the Board for the purposes of the Fidelity Fund.

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**Sch. 2 cl. 50  
repealed by  
No. 9/1999  
s. 18.**

**51. Law Institute Discretionary Fund**

All money standing immediately before the commencement day to the credit of the Law Institute Discretionary Fund must, on that day, be paid to the Legal Ombudsman. Section 378 applies to that money as if it were paid under that section.

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**Sch. 2  
cls 52, 53  
repealed by  
No. 9/1999  
s. 18.**

**PART 10—LEGAL OMBUDSMAN**

**54. Current investigations by lay observers**

- (1) Any complaint made to the lay observer under section 14Q of the old Act that has not finally been disposed of before the commencement day is to be dealt with in accordance with the old Act as if a reference to the lay observer were a reference to the Legal Ombudsman.
- (2) Any allegation made to the lay observer under section 32F of the old Act that has not finally been disposed of before the commencement day is to be dealt with in accordance with the old Act as if a reference to the lay observer were a reference to the Legal Ombudsman.

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**Sch. 2 cl. 55  
repealed by  
No. 9/1999  
s. 18.**

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2

**PART 11—COMPETITION**

Sch. 2 cl. 56  
repealed by  
No. 9/1999  
s. 18.

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Sch. 2 Pt 12  
(Heading and  
cl. 57)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 9/1999  
s. 16.

**PART 12—TRANSITIONAL ARRANGEMENTS FOR CHANGE OF  
PRACTISING CERTIFICATE AND AUDIT YEARS**

Sch. 2 cl. 57  
substituted by  
No. 9/1999  
s. 16.

**57. Application of Part**

This Part applies despite anything to the contrary in Division 4 of Part 2, Division 2 or 3 of Part 6 or Division 1 of Part 7 of this Act or in the Legal Practice (Fees) Regulations 1997.

Sch. 2 cl. 58  
inserted by  
No. 9/1999  
s. 16.

**58. 1999 practising certificates**

- (1) A practising certificate in force immediately before 15 August 1999 is valid until 31 December 1999 unless suspended or cancelled sooner.
- (2) A practising certificate issued on an application under section 22 on or after 15 August 1999 but before 31 December 1999 is valid until 31 December 1999 unless suspended or cancelled sooner.

Sch. 2 cl. 59  
inserted by  
No. 9/1999  
s. 16.

**59. Practising certificate for 2000–2001 (renewing practitioners)**

- (1) This clause applies to an application under section 23 for a new practising certificate by a person who is a current practitioner in 1999.
- (2) The application must be made on or before 31 October 1999.
- (3) The evidence required by section 23(3A) must be given to the RPA or the Board by 30 November 1999.
- (4) A current practitioner who is a regulated practitioner of the Bar complies with section 23(3A) if he or she gives the Bar satisfactory evidence of professional indemnity insurance, as required by this Act, in respect of the period from and including 1 January 2000 to 30 June 2000.

*Legal Practice Act 1996*  
*Act No. 35/1996*

**Sch. 2**

- (5) A current practitioner who is a regulated practitioner of the Bar must, on or before 31 May 2000, give the Bar satisfactory evidence, in a form approved by the Board, that the practitioner has professional indemnity insurance as required by this Act in respect of the period from and including 1 July 2000 to 30 June 2001.
- (6) Section 23(3B) applies as if a reference in that section—
  - (a) to 31 May were a reference to 30 November; and
  - (b) to 15 June were a reference to 15 December.
- (7) Section 23A applies to the application as if a reference in that section—
  - (a) to 30 April were a reference to 31 October; and
  - (b) to 31 May were a reference to 30 November.
- (8) The prescribed fee payable for the practising certificate is 150% of the fee otherwise payable for the certificate.
- (9) A practising certificate issued in response to the application—
  - (a) subject to section 23(3C), takes effect on 1 January 2000 or the time of issue, whichever is the later; and
  - (b) subject to section 21(3), is valid until 30 June 2001 unless suspended or cancelled sooner.

**60. Practising certificate for 2000–2001 (new or former practitioners)**

**Sch. 2 cl. 60  
inserted by  
No. 9/1999  
s. 16.**

- (1) This clause applies to an application under section 22 for a practising certificate that is issued on or after 1 January 2000 but before 30 June 2000.
- (2) The prescribed fee payable for the practising certificate is to be determined in accordance with the formula—

$$F = 1.5A \times \frac{B}{547}$$

where—

F is the fee;

A is the fee otherwise payable for the certificate if it were valid for a 12 month period;

B is the number of days for which the certificate is valid.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2
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- (3) A practising certificate issued in response to the application is valid until 30 June 2001 unless suspended or cancelled sooner.

Sch. 2 cl. 61  
inserted by  
No. 9/1999  
s. 16.

**61. Variation of practising certificate conditions**

- (1) This clause applies to an application under section 29 for variation of the conditions of a practising certificate that is valid until 30 June 2001.
- (2) Section 29 applies to an application referred to in sub-clause (1) as if—
- (a) a reference in sub-section (6) of that section to a practising certificate year were a reference to the period from and including 1 January 2000 to 30 June 2001; and
  - (b) for the formula in sub-section (6) of that section there were substituted—

$$"A = (B - C) \times \frac{D}{547}."$$

Sch. 2 cl. 62  
inserted by  
No. 9/1999  
s. 16.

**62. Statutory deposit and audit requirements**

For the purposes of Divisions 2 and 3 of Part 6 of this Act, the period from and including 1 April 1999 to 31 October 2000, is deemed to be an audit year.

Sch. 2 cl. 63  
inserted by  
No. 9/1999  
s. 16.

**63. Fidelity Fund contributions for 2000–2001**

For the purpose of determining contributions to the Fidelity Fund, section 201 applies as if a reference in that section—

- (a) to the prescribed date in 1999 were a reference to 30 September 1999 or such later date up to 30 November 1999 as the Attorney-General may fix by notice published in the Government Gazette before 30 September 1999; and
- (b) to the immediately following practising certificate year in respect of 1999 were a reference to the period from and including 1 January 2000 to 30 June 2001.

*Legal Practice Act 1996*  
*Act No. 35/1996*

Sch. 2

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**PART 13—TRANSITIONAL PROVISIONS ON ENACTMENT OF  
LEGAL PROFESSION ACT 2004**

Sch. 2 Pt 13  
(Heading and  
cls 64, 65)  
inserted by  
No. 99/2004  
s. 8.1.1(1).

**64. Barristers' professional indemnity insurance**

Sch. 2 cl. 64  
inserted by  
No. 99/2004  
s. 8.1.1(1).

- (1) Despite anything to the contrary in Part 8, if the Victorian Bar Council passes a resolution under section 3.5.2(7) of the **Legal Profession Act 2004**, a sole practitioner who practises as a barrister must obtain and maintain insurance with the Liability Committee at all times on and after 1 July 2005.
- (2) In this clause, "**Victorian Bar Council**" has the same meaning as in section 3.5.2(9) of the **Legal Profession Act 2004**.

**65. Funding for new regulatory arrangements**

Sch. 2 cl. 65  
inserted by  
No. 99/2004  
s. 8.1.1(1).

Despite anything to the contrary in Part 16, and in addition to any other amounts payable from the Public Purpose Fund under this Act, there are to be paid out of that fund, and debited to the General Account, any amounts determined by the Attorney-General for the costs incurred in establishing the Legal Services Board, the Legal Services Commissioner and the office of the Commissioner and transferring functions from the Tribunal to the Victorian Civil and Administrative Tribunal under the **Legal Profession Act 2004**.

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Endnotes
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**ENDNOTES**

**1. General Information**

*Minister's second reading speech—*

*Legislative Assembly: 20 June 1996*

*Legislative Council: 8 October 1996*

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 20 June 1996*

*Legislative Council: 8 October 1996*

*Absolute majorities:*

*Legislative Assembly: 12 September 1996 and 17 October 1996*

*Legislative Council: 15 October 1996*

The long title for the Bill for this Act was "to improve the regulation of legal practice in Victoria, to amend and repeal the **Legal Profession Practice Act 1958**, to amend the **Partnership Act 1958**, to make consequential amendments to other Acts and for other purposes."

The **Legal Practice Act 1996** was assented to on 6 November 1996 and came into operation as follows:

Part 1 (sections 1–5), sections 448, 454, Schedule 2 on 6 November 1996:  
section 2(1); section 447 on 8 March 1988: section 2(2); rest of Act (*except*  
section 67) on 1 January 1997: section 2(3); section 67 on 1 July 1997:  
section 2(4).

*Legal Practice Act 1996*  
*Act No. 35/1996*

Endnotes

## 2. Table of Amendments

This Version incorporates amendments made to the **Legal Practice Act 1996** by Acts and subordinate instruments.

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### **Commonwealth Powers (Industrial Relations) Act 1996, No. 59/1996**

*Assent Date:* 12.12.96  
*Commencement Date:* S. 10(Sch. 2 item 12) on 1.1.97: Special Gazette (No. 146) 23.12.96 p. 15  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

### **Law and Justice Legislation (Amendment) Act 1997, No. 44/1997**

*Assent Date:* 11.6.97  
*Commencement Date:* S. 26 on 11.6.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

### **Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997**

*Assent Date:* 11.6.97  
*Commencement Date:* S. 71 on 1.9.97: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

### **Legal Practice (Amendment) Act 1997, No. 102/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* S. 47 on 6.11.96: s. 2(2); rest of Act on 16.12.97: s. 2(1)  
*Current State:* All of Act in operation

### **Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

### **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 49) on 1.7.98: Government Gazette 18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

### **Mutual Recognition (Victoria) Act 1998, No. 62/1998**

*Assent Date:* 27.10.98  
*Commencement Date:* S. 8(2) on 27.10.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

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*Legal Practice Act 1996*  
*Act No. 35/1996*

<b>Endnotes</b>
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**Legal Practice (Amendment) Act 1998, No. 79/1998**

*Assent Date:* 10.11.98  
*Commencement Date:* 15.12.98: s. 2  
*Current State:* All of Act in operation

**Legal Practice (Practising Certificates) Act 1999, No. 9/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* All of Act (*except* Pt 2) on 11.5.99: s. 2(1); Pt 2 on 15.8.99: s. 2(2)  
*Current State:* All of Act in operation

**Legal Practice (Amendment) Act 1999, No. 52/1999**

*Assent Date:* 7.12.99  
*Commencement Date:* 8.12.99: s. 2  
*Current State:* All of Act in operation

**National Taxation Reform (Further Consequential Provisions) Act 2000, No. 24/2000**

*Assent Date:* 16.5.00  
*Commencement Date:* S. 19 on 1.7.00: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Victorian Law Reform Commission Act 2000, No. 44/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* S. 23 on 6.4.01: Government Gazette 29.3.01 p. 523  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Courts and Tribunals Legislation (Further Amendment) Act 2000, No. 51/2000**

*Assent Date:* 5.9.00  
*Commencement Date:* S. 3 on 6.9.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 39) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 72) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Public Notaries Act 2001, No. 52/2001**

*Assent Date:* 25.9.01  
*Commencement Date:* Ss 13(1), 14 on 6.6.02: Government Gazette 30.5.02 p. 1118  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

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*Legal Practice Act 1996*  
*Act No. 35/1996*

<b>Endnotes</b>
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**Statute Law Further Amendment (Relationships) Act 2001, No. 72/2001**

*Assent Date:* 7.11.01  
*Commencement Date:* S. 3(Sch. item 9) on 20.12.01: Government Gazette 20.12.01 p. 3127  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Corporations (Financial Services Reform Amendment) Act 2002, No. 9/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. item 10) on 23.4.02: s. 2  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 41) on 24.4.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Electoral Act 2002, No. 23/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* S. 196 on 1.9.02: Government Gazette 29.8.02 p. 2333  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Legal Practice (Validations) Act 2003, No. 42/2003**

*Assent Date:* 11.6.03  
*Commencement Date:* S. 3 on 1.1.97: s. 2(2); s. 4 on 11.6.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Gambling Regulation Act 2003, No. 114/2003**

*Assent Date:* 16.12.03  
*Commencement Date:* S. 12.1.3(Sch. 6 item 8) on 1.7.04: Government Gazette 1.7.04 p. 1843  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Legal Profession Act 2004, No. 99/2004**

*Assent Date:* 14.12.04  
*Commencement Date:* S. 8.1.1(1) on 15.12.04: s. 1.1.2(2)  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 112) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Legal Practice Act 1996**

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*Legal Practice Act 1996*  
*Act No. 35/1996*

Endnotes
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### 3. Explanatory Details

<sup>1</sup> S. 7(1): Clause 4(3) of Schedule 2 provides that, until the regulations provide otherwise, the prescribed general fee is \$100 and the prescribed library fee is \$560.

<sup>2</sup> S. 22(2)(b)(i): The prescribed practising certificate fees are set out in the Legal Practice (Fees) Regulations 1997, S.R. No. 88/1997.

<sup>3</sup> S. 22(2)(b)(v): Section 365(4) provides that a person may be enrolled on the roll of advocates only if he or she engages in legal practice primarily as an advocate.

<sup>4</sup> S. 23(2)(c)(i): See note 2.

<sup>5</sup> S. 23(2)(c)(iii): See note 3.

<sup>6</sup> S. 24(2)(b): See note 2.

<sup>7</sup> S. 31(2): The time for appealing is within 28 days after the day of the order of the tribunal or, if leave to appeal is necessary, within 14 days of leave being granted (Order 4.15(b) of Chapter 2 of the Rules of the Supreme Court (S.R. No. 110/1998)).

<sup>8</sup> S. 34(6): Section 39(2) provides similarly to this sub-section in a case of suspension of the practising certificate.

<sup>9</sup> S. 41(2): See note 7.

<sup>10</sup> Division 2: Other Parts of this Act impose requirements on interstate practitioners in relation to their legal practice in Victoria. For example, Part 6 requires interstate practitioners who establish a practice in Victoria to deal with trust money in accordance with that Part, Part 7 requires certain interstate practitioners to contribute to the Fidelity Fund and Part 8 requires interstate practitioners to have professional indemnity insurance.

<sup>11</sup> Division 3: The provisions of Part 5, which deals with disputes and discipline, apply generally to interstate practitioners practising in Victoria.

<sup>12</sup> S. 63T(2): See note 7.

<sup>13</sup> Division 4: Section 171A provides that Part 5 (disputes and discipline) applies to registered foreign practitioners engaged in the practice of foreign law.

<sup>14</sup> S. 105(2): See note 7.

<sup>15</sup> S. 120: This provision re-enacts section 75 of the **Supreme Court Act 1986**.

<sup>16</sup> S. 128(2): Section 445(2)(a) provides that this fee is not to exceed \$55.

*Legal Practice Act 1996*  
*Act No. 35/1996*

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<sup>17</sup> S. 169A: The Full Tribunal has a similar power to order costs in relation to appeals in disciplinary matters (see section 162).

<sup>18</sup> S. 170(2): See note 7.

<sup>19</sup> S. 322(2): See note 7.

<sup>20</sup> S. 351: Schedule 2 provides for the appointment of practitioner members of the Board who will hold office until the first election has taken place—see clause 43.

<sup>21</sup> S. 367: Schedule 2 prevents the first election of the practitioner members of the Board resulting in each member being a regulated practitioner of the same RPA—see clause 43.

<sup>22</sup> S. 393(2)(c): Schedule 2 provides for the appointment of advocate and non-advocate members of the Tribunal to hold office until the first election for practitioner members of the Board has taken place—see clause 44.

<sup>23</sup> S. 393(2)(d): See note 22.

<sup>24</sup> S. 415: Rules made under this section are statutory rules for the purposes of the **Subordinate Legislation Act 1994** (see paragraph (b) of the definition of "statutory rule" in section 3 of that Act).

<sup>25</sup> S. 445(2)(d): See paragraph (d) of the definition of "financial institution" in section 3.