



**LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT ACT  
1998**

**No. 50 of 1998**

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**ELIZABETHAE II REGINAE**

A.D. 1998

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**No. 50 of 1998**

**An Act to amend the Legal Practitioners Act 1981.**

*[Assented to 3 September 1998]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Legal Practitioners (Miscellaneous) Amendment Act 1998*.

(2) The *Legal Practitioners Act 1981* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 5—Interpretation**

3. Section 5 of the principal Act is amended—

(a) by striking out the definition of "banking account" and substituting the following definition:

"bank" means a bank, building society, credit union or other body of a class proclaimed under section 4(2) of the *Acts Interpretation Act 1915* (and its derivatives have corresponding meanings);;

(b) by inserting after the definition of "company" the following definitions:

"conduct" of a legal practitioner includes any act or omission by the legal practitioner;

**"corresponding law"** means a law of another State declared by proclamation under this section to be a corresponding law;;

(c) by striking out from paragraph (a) of the definition of **"fiduciary or professional default"** "in the charge of the legal practitioner or of" and substituting "received in the course of legal practice by the legal practitioner or";

(d) by inserting after the definition of **"the guarantee fund"** the following definitions:

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

- (a) who has been admitted as a legal practitioner in a participating State; and
- (b) who holds an interstate practising certificate issued or given by a regulatory authority in that State or is entitled by admission or otherwise to practise the profession of the law in that State; and
- (c) who is not a local legal practitioner; and
- (d) whose principal place of legal practice is not this State;

**"interstate practising certificate"** means a certificate or other form of authorisation issued by a regulatory authority in a participating State that confers an authority to practise the profession of the law in that State, whether that authority is general or subject to limitations or conditions;;

(e) by inserting after paragraph (a) of the definition of **"legal practitioner"** the following paragraph:

- (aa) an interstate legal practitioner who practises the profession of the law in this State; or;

(f) by inserting after the definition of **"legal practitioner"** the following definition:

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

(g) by inserting after the definition of **"money"** the following definitions:

**"participating State"** means a State in which a corresponding law is in force;

**"practise the profession of the law", "legal practice" or "practise"**, in relation to a legal practitioner—see section 21;;

(h) by inserting after the definition of **"practising certificate"** the following definition:

**"regulatory authority"** means—

- (a) in relation to this State—the Supreme Court, LPEAC, the Society, the Board or the Tribunal;
- (b) in relation to a participating State—a person or body in that State having a function conferred by legislation relating to regulation of legal practice that corresponds to a function exercised under this Act by a regulatory authority of this State;;

(i) by inserting after the definition of "solicitor" the following definition:

"State" includes a Territory;;

(j) by striking out from the definition of "trust account" "a banking account that is maintained" and substituting "an account maintained at a bank";

(k) by striking out the definition of "unprofessional conduct" and substituting the following definition:

"unprofessional conduct", in relation to a legal practitioner, means—

(a) an offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law; or

(b) any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute;;

(l) by inserting after the definition of "unqualified person" the following definition:

"unsatisfactory conduct", in relation to a legal practitioner, means conduct in the course of, or in connection with, practice by the legal practitioner that is less serious than unprofessional conduct but involves a failure to meet the standard of conduct observed by competent legal practitioners of good repute;;

(m) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) If under a corresponding law an interstate legal practitioner's right to practise does not derive from the holding of an interstate practising certificate, then a reference in this Act to an interstate practising certificate, or the endorsement of a condition on an interstate practising certificate, is to be read as a reference to the practitioner's right to engage in legal practice under that law or to the imposition of a condition on that right.

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

(4) A reference in this Act to trust money received by a legal practitioner includes a reference to—

(a) money coming under the direct control of the legal practitioner, whether or not by the exercise of an express power or authority or by operation of law; and

(b) money paid on the advice of the legal practitioner to a person in a prescribed relationship with the legal practitioner, but only if the money comes under the indirect control of the legal practitioner through the prescribed relationship or otherwise; and

- (c) money in relation to which the legal practitioner (whether directly or through a person in a prescribed relationship with the legal practitioner) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of the person.

(5) For the purposes of subsection (4), a person will be taken to be in a prescribed relationship with a legal practitioner if the person is—

- (a) a partner of the legal practitioner (whether or not the person is a legal practitioner); or
- (b) an employee or agent of the legal practitioner, or a director of the legal practitioner (being a body corporate); or
- (c) a body corporate, or a member of a body corporate, partnership, syndicate or joint venture, in which the legal practitioner or a person referred to in paragraph (a), (b) or (f) has a beneficial interest; or
- (d) a co-trustee of the legal practitioner; or
- (e) a related body corporate (within the meaning of the *Corporations Law*) of a person referred to in a preceding paragraph that is a body corporate; or
- (f) the legal practitioner's spouse or putative spouse (within the meaning of the *Family Relationships Act 1975*) or a child, grandchild, sibling, parent or grandparent of the legal practitioner or of the legal practitioner's spouse or putative spouse; or
- (g) a person of a class prescribed by the regulations.

(6) The Governor may, by proclamation, declare a law of another State to be a corresponding law and may, by subsequent proclamation, vary or revoke any such declaration.

**Amendment of s. 8—Officers and employees of the Society**

4. Section 8 of the principal Act is amended by inserting after paragraph (a) of subsection (1) the following paragraph:

- (ab) the President-Elect; and.

**Amendment of s. 9—Council of Society**

5. Section 9 of the principal Act is amended by inserting after paragraph (b) of subsection (2) the following paragraph:

- (ba) the President-Elect of the Society; and.

**Amendment of s. 12—Minutes of proceedings**

6. Section 12 of the principal Act is amended by inserting in subsection (6) "the President-Elect," after "the President,".

**Amendment of s. 13—Society's right of audience**

7. Section 13 of the principal Act is amended by inserting in subsection (2)(c) "or unsatisfactory" after "unprofessional".

**Amendment of s. 14—Rules of Society**

8. Section 14 of the principal Act is amended by inserting in subsection (1)(b) "the President-Elect," after "the President,".

**Insertion of Division**

9. The following Division is inserted in Part 2 of the principal Act after section 14A:

**DIVISION 3—REPORTING OBLIGATIONS**

**Certain matters to be reported by Society**

14AB. (1) If—

- (a) the Society appoints an inspector under Division 5 of Part 3 or a supervisor or a manager under Division 9 of Part 3; or
- (b) the Society determines that a claim made against the guarantee fund is valid; or
- (c) a matter comes to the attention of the Society such that the Society decides that there are reasonable grounds to suspect that a legal practitioner or former legal practitioner has committed an act or omission that would constitute unprofessional or unsatisfactory conduct,

the Society must, as soon as practicable, provide a report to the Board in relation to the matter.

(2) The Society must comply with any reasonable request of the Board for further information in relation to the subject matter of a report under this section.

**Amendment of s. 16—Issue of practising certificate**

10. Section 16 of the principal Act is amended by inserting in subsection (1) "who has been admitted and enrolled as a barrister and solicitor of the Supreme Court" after "legal practitioner" (first occurring).

**Insertion of s. 20AA**

11. The following section is inserted in Division 2 of Part 3 of the principal Act, after section 20:

**Endorsement of conditions on practising certificates**

20AA. (1) If, in accordance with this Act, a regulatory authority of this or any participating State makes a determination or order—

- (a) imposing conditions on, or requiring the endorsement of conditions on, a legal practitioner's practising certificate; or
- (b) varying or revoking conditions on, or requiring the variation or revocation of conditions on, a legal practitioner's practising certificate,

the Supreme Court may record or give effect to the determination or order by revoking the practising certificate currently held by the legal practitioner and issuing the legal practitioner with a new practising certificate in the appropriate form.



(2) A regulatory authority must notify the Supreme Court of the making of a determination or order referred to in subsection (1).

(3) If a determination or order is made imposing, varying or revoking conditions on a practising certificate, the determination or order will be taken to have effect from the date it is made, or from a subsequent date specified in the determination or order, and not from the date of issue of a new practising certificate under this section.

**Amendment of s. 21—Entitlement to practise**

**12.** Section 21 of the principal Act is amended—

(a) by striking out subparagraphs (i) and (ii) of subsection (1)(a) and substituting the following subparagraphs:

- (i) is a local legal practitioner; or
- (ii) is an interstate legal practitioner; or;

(b) by striking out from subsection (2) "subsection (3)" and substituting "subsections (3) and (3a)";

(c) by inserting after subsection (3) the following subsection:

(3a) A person will not be taken to be practising the profession of the law by reason only of the fact that the person provides legal advice or legal services relating to the law of a place outside Australia.;

(d) by striking out from subsection (4) "For the purposes of this section" and substituting "For the purposes of this Act";

(e) by inserting after paragraph (b) of subsection (4) the following paragraph:

(ba) a person prepares an instrument if the person takes instructions for the preparation of such an instrument;;

(f) by inserting in subsection (4)(c)(ii) "takes instructions from or" before "gives advice to".

**Amendment of s. 22—Practising while under suspension, etc.**

**13.** Section 22 of the principal Act is amended—

(a) by inserting in paragraph (a) ", or holds him or herself out as being entitled to practise the profession of the law," after "law";

(b) by striking out paragraph (b) and substituting the following paragraph:

(b) contravenes or fails to comply with any conditions imposed on the practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) by order of the Tribunal or the Supreme Court,.

**Insertion of Division**

14. The following Division is inserted after section 23 of the principal Act:

**DIVISION 3A—PROVISIONS RELATING TO INTERSTATE LEGAL PRACTICE**

**Interstate legal practitioners to be officers of Court**

23A. An interstate legal practitioner who practises the profession of the law in this State is an officer of the Supreme Court.

**Limitations or conditions on practice under laws of participating States**

23B. (1) An interstate legal practitioner must, in practising the profession of the law in this State—

- (a) observe any limitations in relation to the practitioner's entitlement to practise the profession of the law that apply under the law of a State in which the practitioner is admitted as a legal practitioner; and
- (b) comply with any condition in respect of his or her practice imposed by a regulatory authority in a participating State.

(2) A condition imposed on a person by a regulatory authority in this or any other participating State has no effect for the purposes of subsection (1) to the extent (if any) to which it is inconsistent with a more onerous condition imposed on the person by another regulatory authority.

(3) An interstate legal practitioner practising the profession of the law in this State must give written notice to the Supreme Court of any conditions or limitations imposed on the practitioner's interstate practising certificate.

(4) A contravention of or non-compliance with this section is unprofessional conduct.

**Additional conditions on practice of interstate legal practitioners**

23C. (1) A regulatory authority of this State may, by notice in writing, at any time impose any condition on the practice of the profession of the law by an interstate legal practitioner in this State that it might impose by attaching a condition to the practising certificate of a local legal practitioner, as a result of disciplinary action or otherwise, and may at any time vary or revoke any such condition.

(2) A regulatory authority of this State must not impose a condition that is more onerous than it would attach to the practising certificate of a local legal practitioner in the same or similar circumstances.

**Notification of establishment of office required**

23D. (1) An interstate legal practitioner who establishes an office in this State must, within the period after establishing the office prescribed by the regulations, give written notice to the Supreme Court.

Maximum penalty: \$10 000.

(2) A notice under this section must contain the particulars prescribed by the regulations and be accompanied by the prescribed fee.

(3) A person giving notice to the Supreme Court under this section must furnish to the Supreme Court any evidence or information that the Supreme Court may require in relation to the practitioner's legal practice in this or any other State.

(4) If an interstate legal practitioner fails to give notice, or furnish evidence or information, in accordance with this section, the Supreme Court may, on application by the Board, the Attorney-General or the Society, suspend the practitioner's right to practise the profession of the law in this State until this section is complied with.

(5) The Supreme Court must give notice of a suspension imposed under subsection (4) to any regulatory authority that is authorised to seek or impose a corresponding suspension in a State in which the practitioner is admitted as a legal practitioner.

(6) The Supreme Court must cause a register to be kept of the interstate legal practitioners who have given notice under this section.

(7) A member of the public may inspect the register kept under subsection (6).

**Insertion of s. 30A**

15. The following section is inserted in Division 5 of Part 3 of the principal Act, before section 31:

**Interpretation**

**30A.** (1) Except as otherwise provided, in this Division—

"legal practitioner" means—

- (a) a local legal practitioner; or
- (b) an interstate legal practitioner who has established an office in this State; or
- (c) a person who would be a legal practitioner described in paragraph (a) or (b) but for the person's failure to renew his or her practising certificate or interstate practising certificate.

(2) A reference in this Division to trust money received by a legal practitioner includes, in the case of a local legal practitioner, trust money received outside of the State (other than trust money that the practitioner pays into a trust account or otherwise deals with in accordance with the law of another State).

**Amendment of s. 31—Disposition of trust money**

16. Section 31 of the principal Act is amended—

- (a) by striking out from subsection (3)(g) "or" and substituting "for";
- (b) by striking out from subsection (5) "records" and substituting "accounts".

**Insertion of s. 33A**

17. The following section is inserted after section 33 of the principal Act:

**Compliance with trust money requirements by firms**

33A. The following actions when taken by or on behalf of a firm of legal practitioners in relation to trust money received by the partners in the firm will be effective for the purposes of discharging the corresponding obligations of each of the partners under this Division in relation to that trust money:

- (a) the establishment and maintenance of a trust account for the firm;
- (b) the keeping of combined trust accounts and records for the firm;
- (c) the obtaining of a Supreme Court approval in relation to trust money or a trust account;
- (d) the appointment of an auditor for the firm;
- (e) the auditing of the firm's accounts and records;
- (f) the provision to the firm's auditor of statements required under the regulations;
- (g) the submission to the Supreme Court of the auditor's report on the firm's accounts and records.

**Substitution of ss. 34 and 35**

18. Sections 34 and 35 of the principal act are repealed and the following sections are substituted:

**Appointment of inspector**

34. (1) The Attorney-General or the Society may at any time appoint a competent inspector—

- (a) to examine, either generally or in a particular case, any accounts or records required to be kept under this Division; and
- (b) to examine, either generally or in a particular case, the documents used, prepared or obtained by an auditor in the course of auditing any accounts and records as required by this Division; and
- (c) to confer with any such auditor in relation to the audit of any accounts and records.

(2) An inspector may, if the inspector thinks fit, and must if required by the Attorney-General or the Society to do so, furnish the Attorney-General or the Society with a confidential report as to the state of any accounts, records or other documents the inspector is appointed to examine.

(3) The Attorney-General or the Society must, as soon as practicable after receiving a report under this section as to the state of a person's or firm's accounts, records or other documents, provide a copy of the report to the person or firm.

**Obtaining information for purposes of audit or examination**

35. (1) An approved auditor or an inspector appointed under this Division may require a prescribed person to furnish or produce specified information or documents or information or documents of a specified kind (including authorities and orders to bankers or others) that are reasonably required for the purposes of an audit or examination under this Division.

(2) An inspector appointed under this Division may require an approved auditor to produce to the inspector any documents used, prepared or obtained by the auditor in the course of auditing any accounts and records as required by this Division (but the auditor cannot be required to produce the auditor's own working papers).

(3) A person who, without reasonable excuse, refuses or fails to comply forthwith with a requirement of an approved auditor or inspector under this section is guilty of an offence.

Maximum penalty: \$10 000.

(4) In this section—

**"financial institution"** means a bank, insurance company, trustee company, broker or other body or person that carries on a business involving the acceptance of money on deposit or by way of investment;

**"prescribed person"** means—

- (a) the legal practitioner or former legal practitioner whose accounts or records are being audited or examined; or
- (b) a person who is, or was formerly, the partner, employer, employee or agent of the legal practitioner or former legal practitioner; or
- (c) a financial institution with which the legal practitioner or former legal practitioner has deposited or invested money.

**Amendment of s. 37—Confidentiality**

19. Section 37 of the principal Act is amended—

(a) by inserting in subsection (1) "and records" after "accounts";

(b) by striking out from paragraph (a) of subsection (4) "or Territory";

(c) by inserting after paragraph (b) of subsection (4) the following paragraph:

- (ba) to a regulatory authority of a participating State who has requested the information in connection with actual or possible disciplinary action against a legal practitioner; or.

**Amendment of s. 38—Regulations**

20. Section 38 of the principal Act is amended—

(a) by inserting after paragraph (a) the following paragraph:

(ab) prescribing records to be kept by legal practitioners for the purposes of the Division; and;

(b) by striking out from paragraph (b) "trust accounts" and substituting "the accounts and records required to be kept under this Division".

**Amendment of s. 42—Costs**

21. Section 42 of the principal Act is amended by inserting in subsection (4) "and must institute such proceedings if ordered to do so by the Tribunal" after "legal costs" (second occurring).

**Insertion of s. 43A**

22. The following section is inserted in Division 9 of Part 3 of the principal Act before section 44:

**Interpretation**

43A. In this Division—

"legal practitioner" means—

(a) a local legal practitioner; or

(b) an interstate legal practitioner who has established an office in this State.

**Amendment of s. 44—Control over trust accounts of legal practitioners**

23. Section 44 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) A person appointed under subsection (1) has power to—

(a) ascertain and verify entitlements to trust money; and

(b) dispose of trust money to persons entitled to the money or in accordance with the *Unclaimed Moneys Act 1891*; and

(c) execute cheques or other instruments for the purpose.;

(b) by striking out from subsection (3)(a) "practitioner," and substituting "practitioner or";

(c) by striking out from subsection (3)(b) "on";

(d) by striking out paragraphs (c) and (d) of subsection (3) and substituting the following paragraphs:

(c) the auditor (if any) of the trust account maintained by the legal practitioner or former legal practitioner; and

(d) the manager or other principal officer of the office or branch of the bank at which the legal practitioner or former legal practitioner maintained the trust account.;

(e) by striking out subsections (9) and (10).

**Amendment of s. 45—Appointment of manager**

24. Section 45 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (2) the following paragraph:

(ba) any other person authorised to operate the trust account of the legal practitioner; and;

(b) by striking out paragraph (c) of subsection (2) and substituting the following paragraphs:

(c) the auditor (if any) of the trust account maintained by the legal practitioner or former legal practitioner; and

(d) the manager or other principal officer of the office or branch of the bank at which the legal practitioner or former legal practitioner maintained the trust account.;

(c) by inserting after paragraph (a) of subsection (3) the following paragraphs:

(ab) to dispose of trust money to persons entitled to the money, or in accordance with the *Unclaimed Moneys Act 1891*, and to execute cheques or other instruments for the purpose; and

(ac) to pay to the Society any amounts that the Society is entitled to recover from the legal practitioner or former legal practitioner under section 48; and;

(d) by inserting after subsection (4) the following subsection:

(5) The Society may, at any time, revoke an appointment under this section.

**Amendment of s. 48—Remuneration, etc., of persons appointed to exercise powers conferred by this Division**

25. Section 48 of the principal Act is amended by inserting after subsection (5) the following subsection:

(5a) A manager must, in dealing with money in the course of the management of the practice of a legal practitioner or former legal practitioner, give priority to payment of amounts recoverable by the Society under subsections (4) or (5).

**Amendment of s. 51—Right of audience**

26. Section 51 of the principal Act is amended by inserting after paragraph (f) of subsection (1) the following paragraph:

(g) a legal practitioner employed by the Board.

**Insertion of ss. 52AA and 52AAB**

27. The following sections are inserted in Division 13 of Part 3 of the principal Act after section 52:

**Professional indemnity insurance required by interstate practitioner establishing office in this State**

**52AA.** (1) This section applies to an interstate legal practitioner who—

- (a) establishes an office in this State; and
- (b) if he or she were a local legal practitioner, would be covered by a scheme providing professional indemnity insurance.

(2) An interstate legal practitioner to whom this section applies must not practise the profession of the law in this State unless there is in force approved professional indemnity insurance in respect of his or her legal practice in this State.

Maximum penalty:    \$10 000.

(3) If an interstate legal practitioner fails to comply with this section, the Supreme Court may, on application by the Attorney-General or the Society, suspend the practitioner's right to practise the profession of the law in this State until this section is complied with.

(4) The Supreme Court must give notice of a suspension imposed under subsection (3) to any regulatory authority that is authorised to seek or impose a corresponding suspension in a State in which the practitioner is admitted as a legal practitioner.

(5) In this section—

**"approved professional indemnity insurance"** means insurance—

- (a) that has been approved by the Attorney-General; or
- (b) that is of a class or kind that has been approved by the Attorney-General.

**Professional indemnity insurance where no office established in this State**

**52AAB.** If the professional indemnity insurance in force in respect of an interstate legal practitioner who engages in legal practice in this State but has not established an office in this State is not approved professional indemnity insurance (within the meaning of section 52AA), the interstate legal practitioner must disclose that fact to a client before he or she is retained by the client.

Maximum penalty:    \$10 000.

**Amendment of s. 53—Duty to deposit trust money in combined trust account**

28. Section 53 of the principal Act is amended by striking out from subsection (6) "personally or by post".



**Amendment of s. 57—Guarantee fund**

29. Section 57 of the principal Act is amended—

(a) by inserting after paragraph (c) of subsection (3) the following paragraph:

(ca) a prescribed proportion of the fees paid by interstate practitioners on giving notice of the establishment of an office in this State; and;

(b) by inserting before paragraph (a) of subsection (4) the following paragraph:

(aab) the costs incurred by the Society in appointing a legal practitioner to appear in proceedings in which a person seeks admission as a legal practitioner; and;

(c) by inserting after paragraph (a) of subsection (4) the following paragraph:

(ab) the costs of proceedings instituted by the Board for the taxation of legal costs; and.

**Amendment of s. 60—Claims**

30. Section 60 of the principal Act is amended—

(a) by striking out from subsection (1) "personally or by post";

(b) by striking out from subsection (4)(ab)(i) "given" and substituting "taken";

(c) by inserting after subsection (4) the following subsection:

(5) Despite the other provisions of this section—

(a) a claim can only be made in relation to a fiduciary or professional default by an interstate legal practitioner in circumstances provided for by an agreement or arrangement made by the Society with the approval of the Attorney-General under section 95AA; and

(b) an agreement or arrangement so made under section 95AA may prescribe limitations or conditions in respect of any such claim.

**Insertion of s. 60A**

31. The following section is inserted after section 60 of the principal Act:

**Personal representative may make claim**

60A. The personal representative of a person (including a deceased person) is entitled to make a claim under this Part on behalf of the person or the person's estate.

**Amendment of s. 62—Power to require evidence**

32. Section 62 of the principal Act is amended by striking out from subsection (1) "personally or by post".

**Amendment of s. 63—Establishment of validity of claims**

33. Section 63 of the principal Act is amended by striking out from subsection (3)(a) "personally or by post".

**Amendment of s. 73—Confidentiality**

**34.** Section 73 of the principal Act is amended—

- (a) by striking out from subsection (1) "Subject to subsection (2)" and substituting "Subject to this section";
- (b) by inserting after paragraph (b) of subsection (1) the following paragraph:
  - (ba) as may be authorised by or under an agreement or arrangement that has been approved by the Attorney-General under section 73A; or;
- (c) by striking out from subsection (2)(ac) "or Territory";
- (d) by striking out from subsection (2)(ac) "; or" and substituting "; and";
- (e) by inserting after paragraph (ac) of subsection (2) the following paragraph:
  - (ad) a regulatory authority of a participating State who has requested the information in connection with actual or possible disciplinary action against a legal practitioner; and;
- (f) by inserting after subsection (2) the following subsection:

(3) Nothing in this section prevents the disclosure of information relating to a complaint to the complainant or a person acting on behalf of the complainant.

**Insertion of s. 73A**

**35.** The following section is inserted in Division 1 of Part 6 of the principal Act after section 73:

**Exchange of information between Board and Council**

**73A.** (1) The Board and the Council may enter into an agreement or arrangement providing for the exchange of information relating to legal practitioners.

(2) An agreement or arrangement must be reduced to writing and be approved by the Attorney-General.

**Insertion of heading**

**36.** The following heading is inserted after the heading to Division 2 of Part 6 of the principal Act:

**SUBDIVISION 1—PRELIMINARY**

**Amendment of s. 74—Functions of Board**

**37.** Section 74 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:
  - (1) The functions of the Board are as follows:
    - (a) to investigate suspected unprofessional or unsatisfactory conduct by legal practitioners in accordance with Subdivision 2;

- (b) following an investigation, to take action authorised under Subdivision 3 or to lay charges before the Tribunal;
- (c) to receive and deal with complaints of overcharging in accordance with Subdivision 4;
- (d) to arrange for the conciliation of complaints in accordance with Subdivision 5;
- (e) to commence disciplinary proceedings against legal practitioners in the Supreme Court on the recommendation of the Tribunal.;

(b) by inserting after subsection (2) the following subsection:

(3) The Board may exercise any of its functions or powers in relation to a person who is a former legal practitioner if, at the time of the alleged unprofessional or unsatisfactory conduct or overcharging, the person was a legal practitioner.

**Amendment of s. 75—Power of delegation**

38. Section 75 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

- (2) The Board cannot delegate the making of a determination as to—
  - (a) whether evidence exists of unprofessional or unsatisfactory conduct by a legal practitioner; or
  - (b) whether misconduct by a legal practitioner is relatively minor and should be dealt with under section 77AB; or
  - (c) whether to recommend that a legal practitioner reduce or refund an amount charged by the practitioner; or
  - (d) whether to lay charges before the Tribunal.

**Substitution of heading**

39. The heading appearing above section 76 of the principal Act is repealed and the following heading is substituted:

**SUBDIVISION 2—INVESTIGATION OF UNPROFESSIONAL OR  
UNSATISFACTORY CONDUCT**

**Amendment of s. 76—Investigations by Board**

40. Section 76 of the principal Act is amended—

- (a) by inserting in subsection (1) "or former legal practitioner" after "legal practitioner";
- (b) by inserting in subsection (1) "or unsatisfactory" after "unprofessional";
- (c) by inserting in subsection (1a) "or former legal practitioner" after "legal practitioner" (twice occurring);
- (d) by inserting in subsection (2) "or former legal practitioner" after "legal practitioner";

- (e) by inserting in subsection (2) "or unsatisfactory" after "unprofessional";
- (f) by inserting in subsection (4a) "or former legal practitioner" after "legal practitioner";
- (g) by inserting in subsection (4b) "or former legal practitioner" after "legal practitioner";
- (h) by striking out the definition of "**financial institution**" in subsection (5) and substituting the following definition:

**"financial institution"** means a bank, insurance company, trustee company, broker or other body or person that carries on a business involving the acceptance of money on deposit or by way of investment;;
- (i) by inserting in paragraphs (a) and (b) of the definition of "**prescribed person**" in subsection (5) "or former legal practitioner" after "legal practitioner" (wherever occurring);
- (j) by inserting in paragraph (c) of the definition of "**prescribed person**" in subsection (5) "or former legal practitioner" after "legal practitioner" (second and third occurring);
- (k) by inserting in paragraphs (d) and (e) of the definition of "**prescribed person**" in subsection (5) "or former legal practitioner" after "legal practitioner" (wherever occurring).

**Insertion of heading**

41. The following heading is inserted after section 76 of the principal Act:

**SUBDIVISION 3—ACTION FOLLOWING INVESTIGATION**

**Amendment of s. 77—Report on investigation**

42. Section 77 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) If, in the course or in consequence of an investigation under this Division, the Board is satisfied that there is evidence of unprofessional conduct by a legal practitioner or former legal practitioner, the Board must make a report on the matter to the Attorney-General and the Society.;

(b) by striking out subsection (2);

(c) by striking out subsection (4) and substituting the following subsection:

(4) The Board must, in addition, report any suspected unprofessional conduct that would constitute an offence to all relevant law enforcement and prosecution authorities.

**Insertion of ss. 77AA and 77AB**

43. The following sections are inserted immediately after section 77 of the principal Act:

**Board to notify persons of suspected loss**

77AA. If, in the course or in consequence of an investigation under this Division, the Board has reason to believe that a person has suffered loss as a result of unprofessional or unsatisfactory conduct by a legal practitioner, the Board may notify the person.

**Powers of Board in relation to minor misconduct**

**77AB.** (1) If, after conducting an investigation into conduct by a legal practitioner under this Division, the Board is satisfied that—

- (a) there is evidence of unprofessional or unsatisfactory conduct by the legal practitioner; but
- (b) the misconduct in question was relatively minor and can be adequately dealt with under this subsection,

the Board may, if the legal practitioner consents to such a course of action, determine not to lay charges before the Tribunal and instead—

- (c) reprimand the legal practitioner; or
- (d) make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
  - (i) relating to the practitioner's legal practice; or
  - (ii) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a type specified by the Board; or
- (e) make an order requiring that the legal practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with legal practice.

(2) The Board may, in determining whether to exercise a power under this section in relation to a legal practitioner, take into account any previous action under this section or finding by the Tribunal or the Supreme Court of unprofessional or unsatisfactory conduct relating to the practitioner.

(3) An order under this section must be reduced to writing and be signed—

- (a) by the legal practitioner to whom it relates; and
- (b) on behalf of the Board.

(4) A condition imposed on a practising certificate or interstate practising certificate by an order under this section may be varied or revoked at any time on application by the legal practitioner to the Tribunal.

(5) An apparently genuine document purporting to be a copy of an order under this section and providing for the payment of a monetary sum by a legal practitioner, will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.

(6) A contravention of or non-compliance with an order under this section is unprofessional conduct.

**Substitution of heading**

44. The heading appearing above section 77A of the principal Act is repealed and the following heading is substituted:

**SUBDIVISION 4—COMPLAINTS OF OVERCHARGING**

**Insertion of Subdivision**

45. The following Subdivision is inserted immediately after section 77A of the principal Act:

**SUBDIVISION 5—CONCILIATION**

**Board may conciliate complaints**

77B. (1) The Board may, at any time, arrange for a conciliation to be conducted in relation to a matter the subject of a complaint received by the Board.

(2) Nothing said or done in the course of a conciliation under this section can subsequently be given in evidence in any proceedings (other than proceedings for a criminal offence).

(3) A person who has been involved in a conciliation under this section is disqualified from investigating or further investigating conduct to which the complaint relates and from otherwise dealing with the complaint.

(4) If agreement is reached through a conciliation under this section—

- (a) the agreement must be recorded in writing and signed by the parties to the agreement and on behalf of the Board by a person authorised by the Board for the purpose; and
- (b) a copy of the agreement must be given to each of the parties.

(5) An apparently genuine document purporting to be an agreement signed in accordance with this section and providing for the payment of a monetary sum by a party to the agreement, will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.

(6) If a legal practitioner contravenes or fails to comply with the terms of an agreement reached following conciliation under this section, the contravention or non-compliance is unprofessional conduct.

(7) The fact that a conciliation is conducted or an agreement is reached in relation to a matter the subject of a complaint does not prevent investigation or further investigation or the laying of a charge in relation to conduct to which the complaint relates.

**Amendment of s. 80—Constitution and proceedings of Tribunal**

46. Section 80 of the principal Act is amended—

- (a) by inserting in subsection (1) "alleging unprofessional conduct by a legal practitioner" after "Tribunal" (first occurring);

(b) by inserting after subsection (1) the following subsection:

(1a) In relation to any proceedings instituted before the Tribunal alleging only unsatisfactory conduct by a legal practitioner, the Tribunal consists of one of its members chosen by the presiding member to constitute the Tribunal for the purposes of those proceedings (and that member may be the presiding member).;

(c) by striking out from subsection (4a) "Subject to subsection (4b), the Tribunal" and substituting "The Tribunal, when constituted of a panel of three,".

**Amendment of s. 82—Inquiries**

47. Section 82 of the principal Act is amended—

(a) by inserting in subsection (1) "or unsatisfactory" after "unprofessional" (twice occurring);

(b) by inserting in subsection (2)(d) "or unsatisfactory" after "unprofessional";

(c) by inserting after subsection (2) the following subsections:

(2a) A charge relating to conduct by a legal practitioner must be laid before the Tribunal within five years of the conduct unless the charge is laid by, or with the written consent of, the Attorney-General.

(2b) In any proceedings, an apparently genuine document purporting to be the written consent of the Attorney-General given under subsection (2a) will be accepted, in the absence of proof to the contrary, as proof of such consent.

(2c) A charge may be laid before the Tribunal despite the fact that criminal proceedings have been or are to be commenced in relation to a matter to which the charge relates.

(d) by striking out from subsection (6)(a) "conduct it may" and substituting "or unsatisfactory conduct it may, subject to subsection (6a),";

(e) by striking out subparagraph (ia) of subsection (6)(a);

(f) by striking out subparagraphs (iii) and (iv) of subsection (6)(a) and substituting the following subparagraphs:

(iii) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—

(A) relating to the practitioner's legal practice (provided that, in the case of an order made without the consent of the practitioner, such conditions must not operate for a period exceeding 12 months); or

(B) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;

- (iv) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order (not exceeding three months);;

(g) by inserting after paragraph (b) of subsection (6) the following paragraph:

- (c) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of unsatisfactory conduct, it may order the former legal practitioner to pay a fine not exceeding \$5 000.;

(h) by striking out subsections (6a) and (6b) and substituting the following subsections:

(6a) If a legal practitioner is found guilty only of unsatisfactory conduct, the Tribunal may not impose a fine or suspension on the practitioner or recommend that disciplinary proceedings be commenced against the practitioner in the Supreme Court.

(6b) A condition imposed on a practising certificate or interstate practising certificate pursuant to an order under this section may be varied or revoked at any time on application by the legal practitioner.;

(i) by striking out from subsection (7) ", where the charge was laid by the Board, to";

(j) by inserting after subsection (7) the following subsection:

(8) If, after conducting an inquiry into a charge alleging unprofessional conduct by a person who is a legal practitioner or former legal practitioner, the Tribunal—

- (a) is not satisfied that the person is guilty of unprofessional conduct; but

- (b) is satisfied that the person is guilty of unsatisfactory conduct,

the Tribunal must find the person not guilty of unprofessional conduct, but may find the person guilty of unsatisfactory conduct.

#### **Amendment of s. 84—Powers of Tribunal**

48. Section 84 of the principal Act is amended by striking out from subsection (7)(a) "or Territory of the Commonwealth" and substituting "(and any exhibits referred to in such a transcript)".

#### **Amendment of s. 89—Proceedings before Supreme Court**

49. Section 89 of the principal Act is amended—

- (a) by inserting in subsection (1) "the Board," before "the Attorney-General";

- (b) by striking out paragraphs (b) and (c) of subsection (2) and substituting the following paragraphs:

- (b) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—

- (i) relating to the practitioner's legal practice; or



- (ii) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;
- (c) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order or until further order;;
- (c) by inserting in subsection (2)(d) "maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act" after "practitioners";
- (d) by striking out from subsection (5)(b)(i) "or Territory of the Commonwealth";
- (e) by inserting in subsection (6) "the Board," before "the Attorney-General";
- (f) by striking out from subsection (6) "or a Territory of the Commonwealth" and substituting "(whether or not that State is a participating State)";
- (g) by striking out subsection (7).

**Insertion of s. 89A**

50. The following section is inserted in Division 5 of Part 6 of the principal Act after section 89:

**Court may order interim suspension of legal practitioner or impose interim conditions**

89A. If—

- (a) disciplinary proceedings have been instituted against a legal practitioner before the Tribunal or the Supreme Court or a legal practitioner has been charged with or convicted of a criminal offence; and
- (b) the Supreme Court is satisfied that the circumstances are such as to justify invoking the provisions of this section,

the Supreme Court may, of its own motion or on the application of the Board, the Attorney-General or the Society, make an interim order—

- (c) imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) relating to the practitioner's legal practice; or
- (d) suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate),

until disciplinary proceedings against the practitioner have been finalised or until further order.

**Insertion of Division**

51. The following Division is inserted after section 90 of the principal Act:

**DIVISION 6A—PROVISIONS RELATING TO INTERSTATE LEGAL PRACTICE**

**Conduct of local legal practitioners outside State**

**90AA.** The provisions of this Part extend in their operation to conduct by a local legal practitioner in a participating State or elsewhere outside this State.

**Conduct not to be the subject of separate proceedings**

**90AB.** If conduct by a legal practitioner has been the subject of disciplinary proceedings in a participating State that have been finally determined, no proceedings are to be commenced or continued under this Part in relation to that conduct (other than proceedings authorised under section 89(6)).

**Referral or request for investigation of matter to regulatory authority in participating State**

**90AC.** (1) If it considers it appropriate to do so, a regulatory authority in this State may refer a complaint made to it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.

(2) If it considers it appropriate to do so, a regulatory authority in this State may request a regulatory authority in a participating State to investigate the conduct of a local legal practitioner or an interstate legal practitioner (whether or not the subject of a complaint), in accordance with the law of that State.

(3) After a referral under subsection (1) has been made, no further action (other than action required to comply with section 90AE) may be taken by any regulatory authority in this State in relation to the subject-matter of the referral.

**Dealing with matter following referral or request by regulatory authority in participating State**

**90AD.** If a regulatory authority in a participating State—

- (a) refers a complaint against a local legal practitioner or an interstate legal practitioner to a regulatory authority in this State; or
- (b) requests a regulatory authority in this State to investigate the conduct of a local legal practitioner or an interstate legal practitioner,

the conduct of the practitioner may be investigated by the regulatory authority in this State and, following such investigation, a charge may be laid and disciplinary proceedings may be brought against the practitioner, whether or not the conduct investigated allegedly occurred in or outside this State.

**Furnishing information**

**90AE.** (1) A regulatory authority in this State must furnish without delay any information about a local legal practitioner or interstate legal practitioner reasonably required by a regulatory authority in a participating State in connection with actual or possible disciplinary action against the practitioner.

(2) A regulatory authority may provide the information despite any law relating to secrecy or confidentiality.

(3) Nothing in this section affects any obligation or power to provide information apart from this section.

**Local legal practitioners are subject to interstate regulatory authorities**

**90AF.** (1) A local legal practitioner practising in this State must comply with any condition in respect of his or her legal practice imposed by a regulatory authority in a participating State as a result of disciplinary action against the practitioner.

(2) A contravention of or non-compliance with this section is unprofessional conduct.

(3) A regulatory authority in a participating State that has the appropriate jurisdiction under the corresponding law of that State may suspend, cancel, vary the conditions of, or impose conditions or further conditions on, a local legal practitioner's practising certificate as a result of disciplinary action against the practitioner in that State, or may make an order for such suspension, cancellation, variation or imposition.

(4) A regulatory authority in this State must comply with an order of a regulatory authority in a participating State under subsection (3).

(5) A regulatory authority in a participating State that has jurisdiction to order the removal of the name of a person from the roll kept in that State that corresponds to the roll of practitioners in the Supreme Court in this State may order that the name of the local legal practitioner be removed from the roll in this State.

(6) If an order is made in relation to a local legal practitioner under subsection (5), the Supreme Court will remove the local legal practitioner's name from the roll in this State.

**Amendment of s. 95—Application of certain revenues**

**52.** Section 95 of the principal Act is amended by inserting in subsection (1) "and the fees paid by interstate practitioners on giving notice of the establishment of an office in this State" after "fees".

**Insertion of s. 95AA**

**53.** The following section is inserted after section 95 of the principal Act:

**Agreements and arrangements with other regulatory authorities**

**95AA.** A regulatory authority of this State may, with the approval of the Attorney-General, make agreements or arrangements with a regulatory authority of a participating State for or with respect to matters arising under this Act, including—

- (a) the investigation of complaints;
- (b) professional indemnity insurance;
- (c) contributions to and claims against the guarantee fund or a similar fund maintained in the participating State;
- (d) trust account inspections;
- (e) the appointment of managers and receivers;
- (f) the exchange of information.

**Amendment of s. 95C—Self-incrimination and legal professional privilege**

54. Section 95C of the principal Act is amended by striking out from subsection (3) "subsection" and substituting "section".

**Insertion of s. 95D**

55. The following section is inserted after section 95C of the principal Act:

**Service of notices and documents**

95D. A notice or document required or authorised by this Act to be served on or given to a person may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known address; or
- (c) be left for the person at his or her place of residence or business with someone apparently of or over 16 years of age or in a letterbox to which it would have been delivered if sent by post; or
- (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

**Transitional**

56. A condition applying to a legal practitioner immediately before the commencement of this section by virtue of—

- (a) an undertaking entered into by the practitioner and accepted by the Tribunal under section 82 of the principal Act or an order of the Tribunal under that section; or
- (b) an order of the Supreme Court under section 89 of the principal Act,

will, on and after the commencement of this section, be taken to be a condition imposed on the legal practitioner's practising certificate by order of the Tribunal under section 82 of the principal Act as amended by this Act or by order of the Supreme Court under section 89 of the principal Act as amended by this Act, as the case requires (and will be taken to be so imposed for the period specified in the undertaking or order as the period for which the condition was to apply).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor