

Examinable excerpts of

***Legal Profession Uniform Law
Application Act 2014***

as at 2 October 2017

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Schedule 1—Legal Profession Uniform Law

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PART 4.3—LEGAL COSTS

Division 1—Introduction

169 Objectives

The objectives of this Part are—

- (a) to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options; and
- (b) to provide that law practices must not charge more than fair and reasonable amounts for legal costs; and
- (c) to provide a framework for assessment of legal costs.

170 Commercial or government clients

- (1) This Part does not apply to—
 - (a) a commercial or government client; or
 - (b) a third party payer who would be a commercial or government client if the third party payer were a client of the law practice concerned—

but this section and sections 181(1), (7) and (8), 182, 183 and 185(3), (4) and (5) do apply to a commercial or government client referred to in paragraph (a) or a third party payer referred to in paragraph (b).

- (2) For the purposes of this Law, a ***commercial or government client*** is a client of a law practice where the client is—
 - (a) a law practice; or

- (b) one of the following entities defined or referred to in the Corporations Act—
 - (i) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body;
 - (ii) a liquidator, administrator or receiver;
 - (iii) a financial services licensee;
 - (iv) a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required;
 - (v) a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company as provided by subsection (3); or
 - (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not any such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
 - (d) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
 - (e) a body or person incorporated in a place outside Australia; or
 - (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
 - (g) a government authority in Australia or in a foreign country; or
 - (h) a person specified in, or of a class specified in, the Uniform Rules.
- (3) For the purposes of subsection (2)(b)(v), the composition of the subsidiary's board is taken to be controlled by the large proprietary company if the large proprietary company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the subsidiary.
- (4) For the purposes of subsection (3), the large proprietary company is taken to have power to make an appointment referred to in that subsection if—
- (a) a person cannot be appointed as a director of the subsidiary without the exercise by the large proprietary company of such a power in the person's favour; or
 - (b) a person's appointment as a director of the subsidiary follows necessarily from the person being a director or other officer of the large proprietary company.

171 Third party payers

- (1) For the purposes of this Law—
 - (a) a person is a *third party payer*, in relation to a client of a law practice, if the person is not the client and—
 - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
 - (ii) has already paid all or a part of those legal costs under such an obligation; and
 - (b) a third party payer is an *associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and
 - (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.
- (4) The Uniform Rules may provide that particular references in this Law to a client include references to an associated third party payer.

Division 2—Legal costs generally

172 Legal costs must be fair and reasonable

- (1) A law practice must, in charging legal costs, charge costs that are no more than fair and reasonable in all the circumstances and that in particular are—
 - (a) proportionately and reasonably incurred; and
 - (b) proportionate and reasonable in amount.
- (2) In considering whether legal costs satisfy subsection (1), regard must be had to whether the legal costs reasonably reflect—
 - (a) the level of skill, experience, specialisation and seniority of the lawyers concerned; and
 - (b) the level of complexity, novelty or difficulty of the issues involved, and the extent to which the matter involved a matter of public interest; and
 - (c) the labour and responsibility involved; and
 - (d) the circumstances in acting on the matter, including (for example) any or all of the following—
 - (i) the urgency of the matter;
 - (ii) the time spent on the matter;
 - (iii) the time when business was transacted in the matter;

- (iv) the place where business was transacted in the matter;
 - (v) the number and importance of any documents involved; and
 - (e) the quality of the work done; and
 - (f) the retainer and the instructions (express or implied) given in the matter.
- (3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the Uniform Rules and any fixed costs legislative provisions.
- (4) A costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if—
- (a) the provisions of Division 3 relating to costs disclosure have been complied with; and
 - (b) the costs agreement does not contravene, and was not entered into in contravention of, any provision of Division 4.

173 Avoidance of increased legal costs

A law practice must not act in a way that unnecessarily results in increased legal costs payable by a client, and in particular must act reasonably to avoid unnecessary delay resulting in increased legal costs.

Division 3—Costs disclosure

174 Disclosure obligations of law practice regarding clients

(1) Main disclosure requirement

A law practice—

- (a) must, when or as soon as practicable after instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs; and
- (b) must, when or as soon as practicable after there is any significant change to anything previously disclosed under this subsection, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client—

together with the information referred to in subsection (2).

(2) Additional information to be provided

Information provided under—

- (a) subsection (1)(a) must include information about the client's rights—
 - (i) to negotiate a costs agreement with the law practice; and
 - (ii) to negotiate the billing method (for example, by reference to timing or task); and

- (iii) to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
 - (iv) to seek the assistance of the designated local regulatory authority in the event of a dispute about legal costs; or
- (b) subsection (1)(b) must include a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter.

(3) Client's consent and understanding

If a disclosure is made under subsection (1), the law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs.

(4) Exception for legal costs below lower threshold

A disclosure is not required to be made under subsection (1) if the total legal costs in the matter (excluding GST and disbursements) are not likely to exceed the amount specified in the Uniform Rules for the purposes of this subsection (the *lower threshold*), but the law practice may nevertheless choose to provide the client with the uniform standard disclosure form referred to in subsection (5).

(5) Alternative disclosure for legal costs below higher threshold

If the total legal costs in a matter (excluding GST and disbursements) are not likely to exceed the amount specified in the Uniform Rules for the purposes of this subsection (the *higher threshold*), the law practice may, instead of making a disclosure under subsection (1), make a disclosure under this subsection by providing the client with the uniform standard disclosure form prescribed by the Uniform Rules for the purposes of this subsection.

- (5A) To avoid doubt, the uniform standard disclosure form prescribed by the Uniform Rules for the purposes of subsection (5) may require the disclosure of GST or disbursements or both.

(6) Disclosure to be written

A disclosure under this section must be made in writing, but the requirement for writing does not affect the law practice's obligations under subsection (3).

(7) Change in amount of total costs—where previously below lower threshold

If the law practice has not made a disclosure, whether under subsection (1) or (5), because the total legal costs in the matter are not likely to exceed the lower threshold, the law practice must, when or as soon as practicable after the law practice becomes aware (or ought reasonably become aware) that the total legal costs (excluding GST and disbursements) are likely to exceed the lower threshold—

- (a) inform the client in writing of that expectation; and
- (b) make the disclosure required by subsection (1) or (if applicable) subsection (5).

(8) Change in amount of total costs—where previously below higher threshold

If the law practice has not made a disclosure under subsection (1) but has made a disclosure under subsection (5) because the total legal costs in the matter are not likely to exceed the higher threshold, the law practice must, when or as soon as practicable after the law practice becomes aware (or ought reasonably become aware) that the total legal costs (excluding GST and disbursements) are likely to exceed the higher threshold—

- (a) inform the client in writing of that expectation; and
- (b) make the disclosure required by subsection (1).

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175 Disclosure obligations if another law practice is to be retained

- (1) If a law practice (the *first law practice*) intends to retain another law practice (the *second law practice*) on behalf of a client, the first law practice must disclose to the client the details specified in section 174(1) in relation to the second law practice, in addition to any information required to be disclosed to the client under section 174.
- (2) If a law practice (the *first law practice*) retains or intends to retain another law practice (the *second law practice*) on behalf of a client, the second law practice is not required to make a disclosure to the client under section 174, but must disclose to the first law practice the information necessary for the first law practice to comply with subsection (1).
- (3) This section does not apply if the first law practice ceases to act for the client in the matter when the second law practice is retained.

176 Disclosure obligations of law practice regarding associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the law practice under section 174 or 175, the law practice must, in accordance with subsection (2), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing—
 - (a) at the time the disclosure to the client is required; or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.

177 Disclosure obligations regarding settlement of litigious matters

- (1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed—
 - (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
 - (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.
- (2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1), if the other law practice makes the disclosure to the client before the settlement is executed.

178 Non-compliance with disclosure obligations

- (1) If a law practice contravenes the disclosure obligations of this Part—
 - (a) the costs agreement concerned (if any) is void; and
 - (b) the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority; and
 - (c) the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority or under jurisdictional legislation; and
 - (d) the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.
- (2) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other, this section—
 - (a) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
 - (b) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.
- (3) The Uniform Rules may provide that subsections (1) and (2)—
 - (a) do not apply; or
 - (b) apply with specified modifications—in specified circumstances or kinds of circumstances.

Division 4—Costs agreements

179 Client's right to costs agreement

A client of a law practice has the right to require and to have a negotiated costs agreement with the law practice.

180 Making costs agreements

- (1) A costs agreement may be made—
 - (a) between a client and a law practice retained by the client; or
 - (b) between a client and a law practice retained on behalf of the client by another law practice; or
 - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
 - (d) between a law practice and an associated third party payer.
- (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 (except in the case of a conditional costs agreement) by other conduct.
- (4) A costs agreement cannot provide that the legal costs to which it relates are not subject to a costs assessment.

181 Conditional costs agreements

- (1) A costs agreement (a *conditional costs agreement*) may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement must—
 - (a) be in writing and in plain language; and
 - (b) set out the circumstances that constitute the successful outcome of the matter to which it relates.
- (3) A conditional costs agreement must—
 - (a) be signed by the client; and
 - (b) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement.
- (4) A conditional costs agreement must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only.
- (5) If a client terminates a conditional costs agreement within the cooling-off period, the law practice—
 - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and

- (b) in particular, may not recover any uplift fee.
- (6) A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter.
- (7) A conditional costs agreement may relate to any matter, except a matter that involves—
 - (a) criminal proceedings; or
 - (b) proceedings under the Family Law Act 1975 of the Commonwealth; or
 - (c) proceedings under legislation specified in the Uniform Rules for the purposes of this section.
- (8) A contravention of provisions of this Law or the Uniform Rules relating to conditional costs agreements by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

182 Conditional costs agreements involving uplift fees

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) If a conditional costs agreement relates to a litigious matter—
 - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (3) A conditional costs agreement that includes an uplift fee—
 - (a) must identify the basis on which the uplift fee is to be calculated; and
 - (b) must include an estimate of the uplift fee or, if that is not reasonably practical—
 - (i) a range of estimates for the uplift fee; and
 - (ii) an explanation of the major variables that may affect the calculation of the uplift fee.
- (4) A law practice must not enter into a costs agreement in contravention of this section or of the Uniform Rules relating to uplift fees.

Civil penalty: 100 penalty units.

183 Contingency fees are prohibited

- (1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the

value of any property that may be recovered in any proceedings to which the agreement relates.

Civil penalty: 100 penalty units.

- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable fixed costs legislative provision.
- (3) A contravention of subsection (1) by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

184 Effect of costs agreement

Subject to this Law, a costs agreement may be enforced in the same way as any other contract.

185 Certain costs agreements are void

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.

Note

If a costs agreement is void due to a failure to comply with the disclosure obligations of this Part, the costs must be assessed before the law practice can seek to recover them (see section 178(1)).

- (2) A law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.
- (3) A law practice that has entered into a costs agreement in contravention of section 182 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (4) A law practice that has entered into a costs agreement in contravention of section 183 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.
- (5) If a law practice does not repay an amount required by subsection (2), (3) or (4) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

Division 5—Billing

186 Form of bills

A bill may be in the form of a lump sum bill or an itemised bill.

187 Request for itemised bills

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable.
- (3) The law practice must comply with the request within 21 days after the date on which the request is made in accordance with subsection (2).
- (4) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.

188 Responsible principal for bill

- (1) A bill given by a law practice, or a letter accompanying the bill, must—
 - (a) be signed by a principal of the law practice designated in the bill or letter as the responsible principal for the bill; or
 - (b) nominate a principal of the law practice as the responsible principal for the bill.
- (2) If a principal does not sign or is not nominated as the responsible principal for a bill given by a law practice, each principal of the law practice is taken to be a responsible principal for the bill.

189 Giving bills

A bill is to be given to a client in accordance with the Uniform Rules.

190 Progress reports

- (1) A law practice must give a client, on reasonable request, without charge and within a reasonable period, a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.
- (3) Subsection (2) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

191 Charging for bills prohibited

A law practice must not make a charge for preparing or giving a bill, and any charge made for that purpose is not recoverable by the law practice.

192 Notification of client's rights

A law practice must ensure that a bill includes or is accompanied by a written statement setting out—

- (a) the avenues that are open to the client in the event of a dispute in relation to legal costs; and

- (b) any time limits that apply to the taking of any action referred to in paragraph (a).

193 Interim bills

- (1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.
- (2) Legal costs that are the subject of an interim bill may be assessed under Division 7, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has previously been assessed or paid.

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PART 5.4—DISCIPLINARY MATTERS

Division 1—Preliminary

295 Application of this Part

This Part applies to disciplinary matters.

296 Unsatisfactory professional conduct

For the purposes of this Law, *unsatisfactory professional conduct* includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

297 Professional misconduct

- (1) For the purposes of this Law, *professional misconduct* includes—
 - (a) unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
 - (b) conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.
- (2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as referred to in subsection (1)(b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

298 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Without limitation, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) conduct consisting of a contravention of this Law, whether or not—

- (i) the contravention is an offence or punishable by way of a pecuniary penalty order; or
 - (ii) the person has been convicted of an offence in relation to the contravention; or
 - (iii) a pecuniary penalty order has been made against the person under Part 9.7 in relation to the contravention;
- (b) conduct consisting of a contravention of the Uniform Rules;
 - (c) conduct involving contravention of the Legal Profession Uniform Law Act of this jurisdiction (other than this Law), whether or not the person has been convicted of an offence in relation to the contravention;
 - (d) charging more than a fair and reasonable amount for legal costs in connection with the practice of law;
 - (e) conduct in respect of which there is a conviction for—
 - (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty;
 - (f) conduct as or in becoming an insolvent under administration;
 - (g) conduct in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
 - (h) conduct consisting of a failure to comply with the requirements of a notice under this Law or the Uniform Rules;
 - (i) conduct in failing to comply with an order of the designated tribunal made under this Law or an order of a corresponding authority made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Law or a corresponding law);
 - (j) conduct in failing to comply with a compensation order made under this Chapter.

Division 2—Determination by local regulatory authority

299 Determination by local regulatory authority—unsatisfactory professional conduct

- (1) The designated local regulatory authority may, in relation to a disciplinary matter, find that the respondent lawyer or a legal practitioner associate of the respondent law practice has engaged in unsatisfactory professional conduct and may determine the disciplinary matter by making any of the following orders—
 - (a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;

- (b) an order reprimanding the respondent or a legal practitioner associate of the respondent law practice;
 - (c) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
 - (d) an order requiring the respondent or a legal practitioner associate of the respondent law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;
 - (e) an order requiring—
 - (i) the respondent lawyer; or
 - (ii) the respondent law practice to arrange for a legal practitioner associate of the law practice—
 - to undertake training, education or counselling or be supervised;
 - (f) an order requiring the respondent or a legal practitioner associate of the respondent law practice to pay a fine of a specified amount (not exceeding \$25 000) to the fund referred to in section 456;
 - (g) an order recommending the imposition of a specified condition on the Australian practising certificate or Australian registration certificate of the respondent lawyer or a legal practitioner associate of the respondent law practice.
- (2) If the designated local regulatory authority proposes to determine a disciplinary matter under this section—
- (a) the designated local regulatory authority must provide the respondent or associate and the complainant with details of the proposed determination and invite them to make written submissions to the designated local regulatory authority within a specified period; and
 - (b) the designated local regulatory authority must take into consideration any written submissions made to the designated local regulatory authority within the specified period, and may, but need not, consider submissions received afterwards; and
 - (c) the designated local regulatory authority is not required to repeat the process if the designated local regulatory authority decides to make a determination in different terms after taking into account any written submissions received during the specified period; and
 - (d) the rules of procedural fairness are not breached merely because no submissions are received within the specified period and the designated local regulatory authority makes a determination in relation to the complaint, even if submissions are received afterwards.
- (3) If the designated local regulatory authority determines a disciplinary matter under this section, no further action is to be taken under this Chapter with respect to the complaint.

- (4) If a complaint contains both a consumer matter and a disciplinary matter and the designated local regulatory authority has already made a determination of the consumer matter under section 290, the designated local regulatory authority may, in subsequently making a determination about the disciplinary matter, take into account the determination already made about the consumer matter, but not so as to make further orders under that section.

Division 3—Role of designated tribunal

300 Initiation and prosecution of proceedings in designated tribunal

- (1) The designated local regulatory authority may initiate and prosecute proceedings against a respondent lawyer in the designated tribunal if the designated local regulatory authority is of the opinion that—
 - (a) the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the designated tribunal; or
 - (b) the alleged conduct may amount to professional misconduct.
- (2) As soon as practicable after deciding to initiate proceedings under this section, the designated local regulatory authority must give the complainant and the respondent to the complaint written notice of the decision.

301 Procedure of designated tribunal

- (1) Proceedings initiated under this Chapter in the designated tribunal are to be dealt with in accordance with the procedures of the designated tribunal.
- (2) Subject to any procedural requirements, the designated tribunal may determine proceedings without conducting a formal hearing, but is bound by the rules of procedural fairness.
- (3) It is intended that jurisdictional legislation may determine whether the designated tribunal is bound by the rules of evidence in conducting a hearing in relation to an allegation of professional misconduct, but the designated tribunal is otherwise not bound by those rules in relation to matters arising under this Chapter.

302 Determination by designated tribunal—disciplinary matters

- (1) If, after it has completed a hearing under this Part into the conduct of a respondent lawyer, the designated tribunal finds that the lawyer is guilty of unsatisfactory professional conduct or professional misconduct, the designated tribunal may make any orders that it thinks fit, including any of the orders that a local regulatory authority can make under section 299 in relation to a lawyer and any one or more of the following—
 - (a) an order that the lawyer do or refrain from doing something in connection with the practice of law;
 - (b) an order that the lawyer cease to accept instructions as a public notary in relation to notarial services;

- (c) an order that the lawyer's practice be managed for a specified period in a specified way or subject to specified conditions;
 - (d) an order that the lawyer's practice be subject to periodic inspection by a specified person for a specified period;
 - (e) an order that the lawyer seek advice in relation to the management of the lawyer's practice from a specified person;
 - (f) an order recommending that the name of the lawyer be removed from a roll kept by a Supreme Court, a register of lawyers kept under jurisdictional legislation or the Australian Legal Profession Register;
 - (g) an order directing that a specified condition be imposed on the Australian practising certificate or Australian registration certificate of the lawyer;
 - (h) an order directing that the lawyer's Australian practising certificate or Australian registration certificate be suspended for a specified period or cancelled;
 - (i) an order directing that an Australian practising certificate or Australian registration certificate not be granted to the lawyer before the end of a specified period;
 - (j) an order that the lawyer not apply for an Australian practising certificate or Australian registration certificate before the end of a specified period;
 - (k) a compensation order against the lawyer in accordance with Part 5.5;
 - (l) an order that the lawyer pay a fine of a specified amount not exceeding \$100 000 if the lawyer is found guilty of professional misconduct.
- (2) Subject to section 303, the designated tribunal may make ancillary or other orders, including—
- (a) an order for payment by the lawyer of expenses associated with orders under this section, as assessed or reviewed in or in accordance with the order or as agreed; and
 - (b) an interlocutory or interim order, including an order of the kind referred to in subsection (1).
- (3) The designated tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.
- (4) If the designated tribunal makes an order that a lawyer pay a fine, a copy of the order may be filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount of the fine and the order may be enforced as if it were an order of the court.
- (5) To avoid doubt, the power of the designated tribunal under subsection (1) to make any of the orders that the designated local regulatory

authority can make under section 299 extends to making orders of that kind in relation to a lawyer whom the tribunal finds is guilty of professional misconduct.

- (6) It is intended that jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

303 Costs

- (1) The designated tribunal must make orders requiring a lawyer whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the designated local regulatory authority and the complainant), unless the designated tribunal is satisfied that exceptional circumstances exist.
- (2) The designated tribunal may make orders requiring a lawyer whom it has not found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the designated local regulatory authority and the complainant), if satisfied that—
- (a) the sole or principal reason why the proceedings were instituted in the designated tribunal was a failure of the lawyer to cooperate with the designated local regulatory authority; or
 - (b) there is some other reason warranting the making of an order in the particular circumstances.
- (3) The designated tribunal may make orders requiring—
- (a) a local regulatory authority; or
 - (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section—
- to pay costs, but may do so only if satisfied that the lawyer concerned is not guilty of unsatisfactory professional conduct or professional misconduct and the designated tribunal considers that special circumstances warrant the making of the orders.
- (4) The designated tribunal may make orders requiring—
- (a) a lawyer in respect of whom proceedings are pending before the designated tribunal; or
 - (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section—
- to pay costs on an interlocutory or interim basis.
- (5) An order for costs—
- (a) may be for a specified amount; or
 - (b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.
- (6) An order for costs may specify the terms on which costs must be paid.
- (7) It is intended that jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

304 Compliance with orders of designated tribunal

Persons and bodies (other than the Supreme Court) having relevant functions under this Law must give effect to the orders of the designated tribunal under this Law.

Note

Sections 23 and 461 provide that the Supreme Court may order the removal of the name of a lawyer from the Supreme Court roll on its own motion or on the recommendation of the designated local regulatory authority, the designated tribunal or a corresponding disciplinary body.

305 Power to disregard procedural lapses

- (1) The designated tribunal may order that a failure by the designated local regulatory authority to observe a procedural requirement in relation to a complaint is to be disregarded, if satisfied that the parties to the proceedings have not been prejudiced by the failure.
- (2) This section applies to a failure occurring before proceedings were instituted in the designated tribunal in relation to the complaint as well as to a failure occurring afterwards.