



# **LEGAL PROFESSION BILL 2017**

**(NO. 3 OF 2017)**





# **LEGAL PROFESSION BILL 2017**

(NO. 3 OF 2017)

A

BILL

Entitled

**AN ACT TO PROVIDE FOR ADMISSION TO, AND THE REGULATION OF, THE LEGAL PROFESSION, AND FOR ENTITIES RELATING TO THE LEGAL PROFESSION, AND FOR RELATED PURPOSES.**

**ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.**

# LEGAL PROFESSION BILL 2017

## Table of provisions

<b>Part 1</b>	<b>Preliminary matters .....</b>	<b>1</b>
1	Short title	1
2	Commencement	1
3	Objects	1
4	Acts binds Crown	1
5	Definitions	1
6	Fit and proper person test	7
<b>Part 2</b>	<b>Restrictions on legal practice .....</b>	<b>10</b>
7	Prohibition on engaging in legal practice when not entitled	10
8	Prohibition on falsely representing entitlement to engage in legal practice	10
<b>Part 3</b>	<b>Legal Profession Authority.....</b>	<b>11</b>
<b>Division 1</b>	<b>Establishment and functions</b>	<b>11</b>
9	Establishment	11
10	Functions and powers	11
11	Independence	12
<b>Division 2</b>	<b>Membership</b>	<b>12</b>
12	Membership	12
13	Term of office	12
14	Alternate members	13
15	Vacation of office	13
16	Termination of appointment	13
17	Remuneration	14
<b>Division 3</b>	<b>Procedures of Authority</b>	<b>14</b>
18	Procedures	14
19	Meetings	14

20	Quorum at meetings	14
21	Presiding member at meetings	14
22	Voting at meetings	14
23	Records of meetings	15
24	Disclosure of interest	15
25	Effect of personal interest	16
<b>Division 4</b>	<b>Miscellaneous matters</b>	<b>16</b>
26	Committees	16
27	Annual report	16
28	Staff and resources	17
<b>Part 4</b>	<b>Solomon Islands Law Society .....</b>	<b>17</b>
<b>Division 1</b>	<b>Establishment and functions</b>	<b>17</b>
29	Establishment	17
30	Functions	17
<b>Division 2</b>	<b>Composition and governance</b>	<b>18</b>
31	Membership	18
32	Board of SILS	18
33	Term of office	18
34	Constitution of SILS	19
<b>Division 3</b>	<b>Disciplinary Committee</b>	<b>19</b>
35	Establishment	19
36	Functions	19
37	Membership	19
38	Disclosure of interest	19
39	Effect of personal interest	20
<b>Division 4</b>	<b>Miscellaneous matters</b>	<b>20</b>
40	Annual report	20
41	Financial matters	21
<b>Part 5</b>	<b>Admission to legal profession .....</b>	<b>21</b>
42	Eligibility for admission	21
43	Application for admission	21

44	Compliance certificates	22
45	Consideration of applicant's eligibility and suitability	22
46	Decision on application	23
47	Roll of persons admitted to legal profession	23
48	Certificate of admission	23
49	Lawyer is officer of court	24
<b>Part 6</b>	<b>Practising certificates .....</b>	<b>24</b>
<b>Division 1</b>	<b>Grant and renewal of practising certificates</b>	<b>24</b>
50	Categories of practising certificate	24
51	Application for grant or renewal of practising certificate	25
52	Suitability to hold practising certificate	26
53	Grant or renewal of practising certificate	26
54	Duration of practising certificate	27
55	Timing of application for renewal of practising certificate	27
<b>Division 2</b>	<b>Conditions on practising certificates</b>	<b>28</b>
56	Conditions generally	28
57	Statutory conditions	28
58	Conditions imposed by Authority	29
<b>Division 3</b>	<b>Amendment, suspension or cancellation of practising certificates</b>	<b>30</b>
59	Application of Division	30
60	Grounds for amending, suspending or cancelling practising certificate	30
61	Amending, suspending or cancelling practising certificate	31
62	Immediate suspension of practising certificate	32
63	Operation of amendment, suspension or cancellation of practising certificate	33
64	Other ways of amending or cancelling practising certificate	33
<b>Division 4</b>	<b>Miscellaneous matters</b>	<b>34</b>
65	Consideration and investigation of applicants or holders	34
66	Return of practising certificate	34
67	Register of legal practitioners	34

<b>Part 7</b>	<b>Continuing legal education.....</b>	<b>36</b>
68	CLE activity	36
69	CLE points	36
70	CLE obligation	36
71	Starting legal practice during CLE year	36
72	Claiming CLE points for CLE year	37
73	Fraction of CLE point	37
74	Preparing or giving presentation at seminar	37
75	Private study	37
76	Published article	37
77	Undertaking post-graduate studies	37
78	Certificate about compliance with CLE obligation	38
79	Authority may require information about CLE obligation	38
<b>Part 8</b>	<b>Trust money .....</b>	<b>38</b>
<b>Division 1</b>	<b>Preliminary matters</b>	<b>38</b>
80	Determinations about status of money	38
81	When money is received	38
<b>Division 2</b>	<b>Requirements for keeping trust money</b>	<b>39</b>
82	Maintenance of trust account	39
83	Trust money to be deposited in trust account	40
84	Holding, disbursing and accounting for trust money	40
85	Keeping trust records	41
86	Intermixing money	41
87	Reporting irregularities	41
88	Deficiency in trust account	42
89	Protection of trust money	42
90	Dealing with trust money □ legal costs	43
91	Controlled money	43
<b>Division 3</b>	<b>Audits</b>	<b>44</b>
92	Trust records to be audited	44
93	Conduct of audit	45
94	Auditor's report	45
95	Law practice liable for costs of audit	45

<b>Division 4</b>	<b>Trust accounting investigations</b>	<b>45</b>
96	Appointment of investigators	45
97	Conduct of investigation	46
98	Investigator's report	46
99	When costs of investigation are debt	46
<b>Division 5</b>	<b>Unclaimed trust money</b>	<b>47</b>
100	Legal Profession Fidelity Fund	47
101	Unclaimed trust money	47
102	When Authority may pay unclaimed amount	48
<b>Part 9</b>	<b>Costs .....</b>	<b>49</b>
<b>Division 1</b>	<b>Costs disclosure</b>	<b>49</b>
103	Disclosure of costs to clients	49
104	Effect of failure to disclose	50
<b>Division 2</b>	<b>Legal costs generally</b>	<b>51</b>
105	Basis for recovering legal costs	51
106	Itemised bills	51
<b>Division 3</b>	<b>Costs agreements</b>	<b>51</b>
107	Form of costs agreement	51
108	Effect of costs agreement	51
109	Certain costs agreements void	52
110	Setting aside costs agreements	52
<b>Division 4</b>	<b>Costs assessments</b>	<b>53</b>
111	Costs assessors	53
112	Application for costs assessment	53
113	Consequences of application	54
114	Procedure for assessment	54
115	Costs assessment based on complying costs agreements	54
116	Costs based on scale of costs	54
117	Criteria for costs assessment	54
118	Determination of costs assessment	55



<b>Part 10</b>	<b>Complaints .....</b>	<b>56</b>
<b>Division 1</b>	<b>Preliminary matters</b>	<b>56</b>
119	Unsatisfactory professional conduct	56
120	Professional misconduct	56
121	Conduct capable of constituting unsatisfactory professional conduct or professional misconduct	56
122	Practitioners to whom this Part applies	57
123	Conduct to which this Part applies	57
124	Other remedies not affected	58
<b>Division 2</b>	<b>Process for making and receiving complaints</b>	<b>58</b>
125	Making a complaint	58
126	Further information and verification	59
127	Practitioner to be notified of complaint	59
<b>Division 3</b>	<b>Initial action in response to complaint</b>	<b>60</b>
128	How complaint may be dealt with	60
129	Preliminary assessment	60
130	Summary dismissal of complaint	61
131	Withdrawal of complaint	62
<b>Division 4</b>	<b>Complaints referred to Disciplinary Committee</b>	<b>62</b>
132	Application of Division	62
133	Voluntary mediation of complaint	62
134	Compulsory mediation of consumer dispute	62
135	Confidentiality of mediation process	63
136	Determination of complaint	63
137	Referral of complaint to Authority	64
138	Remedial action by Disciplinary Committee	64
139	Record of decision	65
<b>Division 5</b>	<b>Complaints investigated by Authority</b>	<b>65</b>
140	Application of Division	65
141	Conduct of investigation	65
142	Determination of complaint	65
143	Dismissal of complaint	66
144	Starting disciplinary proceedings	66

145	Remedial action by Authority	66
146	Record of decision	67
147	Rules of procedural fairness	67
<b>Division 6</b>	<b>Disciplinary proceedings</b>	<b>68</b>
148	Legal Profession Disciplinary Tribunal	68
149	How disciplinary proceedings are started	68
150	Joinder of applications	68
151	Rules of evidence	68
152	Parties to proceedings	68
153	Manner of deciding application	68
154	Decisions of Disciplinary Tribunal	69
155	Orders of the Disciplinary Tribunal	69
156	Interlocutory and interim orders	71
157	Notice of decision	71
<b>Part 11</b>	<b>Powers of investigation .....</b>	<b>71</b>
158	Authorised officers	71
159	Investigator's powers	72
160	Search warrants	72
161	Powers of investigator while on premises	73
162	Obstructing investigation	74
<b>Part 12</b>	<b>Intervention in legal practice .....</b>	<b>74</b>
<b>Division 1</b>	<b>Preliminary matters</b>	<b>74</b>
163	Application of Part	74
<b>Division 2</b>	<b>Initiation of external intervention</b>	<b>75</b>
164	Circumstances warranting external intervention	75
165	Decision to initiate external intervention	76
<b>Division 3</b>	<b>Supervisors of trust money</b>	<b>77</b>
166	Appointment of supervisor of trust money	77
167	Notice of appointment	78
168	Effect of service of notice of appointment	78
169	Role of supervisor of trust money	79

170	Records of and dealing with trust money of law practice under supervision	79
171	Termination of supervisor's appointment	80
<b>Division 4</b>	<b>Managers</b>	<b>80</b>
172	Appointment of manager	80
173	Notice of appointment	81
174	Effect of service of notice of appointment	81
175	Role of manager	82
176	Records and accounts of law practice under management and dealings with trust money	83
177	Deceased estates	84
178	Termination of manager's appointment	84
<b>Division 5</b>	<b>Receivers</b>	<b>85</b>
179	Appointment of receiver	85
180	Notice of appointment	85
181	Effect of service of notice of appointment	86
182	Role of receiver	87
183	Records and accounts of law practice under receivership and dealings with trust money	88
184	Power of receiver to take possession of regulated property	88
185	Regulated property cannot be attached	89
186	Recovery of regulated property	90
187	Improperly destroying property etc.	90
188	Deceased estates	91
189	Termination of receiver's appointment	91
<b>Division 6</b>	<b>General matters</b>	<b>92</b>
190	Manager and receiver appointed for law practice	92
191	Requirement for financial institution to disclose information	92
192	Fees, legal costs and expenses	93
193	Reports by external intervener	93
<b>Part 13</b>	<b>Appeals .....</b>	<b>94</b>
194	Reviewable decisions	94
195	Right to appeal	94
196	Conduct of appeal	94

<b>Part 14</b>	<b>Miscellaneous provisions .....</b>	<b>95</b>
197	Protection from liability	95
198	Confidentiality of information	95
199	Liability of principals	96
200	Liability of sole practitioners	97
201	Rules	97
202	Regulations	97
<b>Part 15</b>	<b>Repeals, transitional matters and consequential amendments .....</b>	<b>97</b>
203	Definitions	97
204	Repeal of Legal Practitioners Act	97
205	Roll	97
206	Admission	98
207	Practising certificates	98
208	Disciplinary matters under repealed Act	99
209	Initial membership and operation of SILS	99
210	References to SIBA in existing laws	100
211	Public Solicitor Act (Cap. 30) amended	100
<b>Schedule</b>	<b>Appeals</b>	<b>101</b>

# LEGAL PROFESSION BILL 2017

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Legal Profession Act 2017*.

### 2 Commencement

This Act commences on the day appointed by the Minister by Gazette notice.

### 3 Objects

The objects of this Act are as follows:

- (a) to regulate legal practice in Solomon Islands;
- (b) to facilitate the fair and efficient administration of justice;
- (c) to provide for the protection of consumers of legal services and the public generally.

### 4 Acts binds Crown

This Act binds the Crown.

### 5 Definitions

In this Act:

***“admission to the legal profession”*** means admission by the High Court to the legal profession as a lawyer under section 46;

***“alternate”***, in relation to the chairperson or the deputy chairperson, means the alternate appointed under section 14(1) or (2);

***“amend”***, in relation to a practising certificate, includes:

- (a) impose a condition on the certificate; or

(b) amend or revoke a condition already imposed on the certificate;

**“appointed member”**, of the Authority, has the meaning given in section 12(1)(c);

**“associate of a law practice”**, means:

(a) a legal practitioner who is:

(i) a sole practitioner (in the case of a law practice constituted by the practitioner); or

(ii) a partner in the law practice (in the case of a law firm); or

(iii) an employee of, or consultant to, the law practice; or

(b) an agent of the law practice who is not a legal practitioner; or

(c) an employee of the law practice who is not a legal practitioner;

**“authorised officer”** means a person appointed under section 158;

**“Authority”** means the Legal Profession Authority established by section 9;

**“Authority member”** means a member of the Authority mentioned in section 12;

**“Board”** means the Board mentioned in section 32;

**“Board member”** means a member of the Board of SILS mentioned in section 32;

**“chairperson”** means the chairperson of the Authority mentioned in section 12(2);

**“CLE”** means continuing legal education;

**“CLE activity”**, has the meaning given in section 68

**“CLE obligation”** means a legal practitioner's obligation under section 70 to accrue CLE points for a CLE year;

**“CLE points”**, has the meaning given in section 69;

**“CLE year”** means the period starting on 1 February in a year and ending on 31 January in the next year;

**“client”**, of a law practice or legal practitioner, means a person for whom the law practice or legal practitioner is engaged to provide legal services;

**“complaint”** means a complaint about a legal practitioner made under section 125;

**“compliance certificate”** has the meaning given in section 44;

**“conduct”** means an act or omission;

**“consumer dispute”** means a dispute between a person and a legal practitioner about conduct of the practitioner to the extent that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct;

**“controlled money”** means money in respect of which a law practice has a written direction or court order to deposit the money in an account (other than a trust account) over which the practice has or will have exclusive control or joint control with another law practice;

**“controlled money account”** means an account with a licensed financial institution to hold controlled money;

**“corresponding law”** means a law of a country other than Solomon Islands that regulates the legal profession or legal practice in the country;

**“costs agreement”** means an agreement about the payment of legal costs;

**“costs assessment”** means an assessment of legal costs under Part 9, Division 4;

**“costs assessor”** means a person appointed as a costs assessor under section 111;

**“costs dispute”** means a dispute between a client and a law practice concerning a bill, and includes a dispute over an amount claimed to be payable under a costs agreement;

**“deputy chairperson”** means the deputy chairperson of the Authority mentioned in section 12(3);

**“disciplinary application”** has the meaning given in section 149;

**“Disciplinary Committee”** means the SILS Disciplinary Committee established by section 35;

**“Disciplinary Tribunal”** means the Legal Profession Disciplinary Tribunal established by section 148;

**“engage in legal practice”** means to provide legal services;

**“external intervener”** means a supervisor, manager or receiver appointed under Part 12;

**“external intervention”** means the appointment of, and the exercise of the powers and functions of, an external intervener;

**“Fidelity Fund”** means the Legal Profession Fidelity Fund established by section 100;

**“foreign lawyer”** means a lawyer who is admitted to the legal profession in another country;

**“information notice”**, for a decision, means a written notice to a person specifying:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the rights of appeal available to the person in relation to the decision and the period within which, and way in which, the appeal must be made;

**“investigation”** means an investigation or audit to which Part 11 applies;

**“investigator”** means a person carrying out an investigation;

**“law firm”** means a partnership consisting only of legal practitioners;

**“law practice”** means:



- (a) a legal practitioner who is a sole practitioner; or
- (b) a law firm;

**“lawyer”** means a person who is admitted to the legal profession under section 46;

**“legal costs”** includes fees, charges, disbursements, expenses and remuneration incurred or made in the course of providing legal services;

**“legal practitioner”** means a lawyer or a foreign lawyer who holds a current practising certificate;

**“legal practitioner associate”**, of a law practice, means an associate of the practice who is a legal practitioner;

**“legal services”** means work done, or business transacted, in the ordinary course of legal practice, including the following:

- (a) giving legal advice;
- (b) appearing as a legal representative for a person before a court or tribunal;
- (c) settling legal documents;

**“licensed financial institution”** means a financial institution licensed under the *Financial Institutions Act 1998*;

**“practising certificate”** means a certificate granted or renewed under section 53;

**“President”** means the President of SILS elected under section 32;

**“principal of a law practice”** means a legal practitioner who is:

- (a) a sole practitioner; or
- (b) a partner in the law practice;

**“professional misconduct”**, of a legal practitioner, has the meaning given in section 120;

**“regulated property”**, in relation to a law practice, means the following:

- (a) trust money or trust property received, receivable or held by the practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property mentioned in paragraph (a);
- (c) documents or records of any description relating to anything mentioned in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of the practice or an associate of the practice by which any records mentioned in paragraph (c) may be produced or reproduced in visible form;

**“relevant offence”** means a serious offence or an offence that must be disclosed under the rules in relation to an application for admission to the legal profession;

**“roll”** means the roll of persons admitted to the legal profession kept under section 47;

**“rules”** mean rules made by the Authority under section 201;

**“scale of costs”** means a determination, scale, arrangement or other provision fixing the costs or maximum costs of any legal services that is made by or under a written law;

**“seminar”** includes a lecture, workshop, conference and discussion group;

**“serious offence”** means an offence for which the available penalty includes imprisonment for at least 5 years;

**“SILS”** means the Solomon Islands Law Society established by section 29;

**“SILS member”** means a member of SILS mentioned in section 31;

**“supervised legal practice”** means legal practice by a person as a partner in, an employee of, or other person working under

supervision in, a law practice, where:

- (a) at least one partner, legal practitioner director or other employee of the law practice is a legal practitioner who holds an unrestricted practising certificate; and
- (b) the person engages in legal practice under the supervision of the legal practitioner mentioned in subparagraph (i);

***“trust account”*** means an account with a licensed financial institution to hold trust money;

***“trust money”*** means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes:

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person; and
- (c) controlled money;

***“trust record”*** means a record relating to trust money required to be kept under section 85;

***“unsatisfactory professional conduct”***, of a legal practitioner, has the meaning given in section 119.

## **6 Fit and proper person test**

- (1) The High Court or the Authority, in deciding whether a person is a fit and proper person to be admitted to the legal profession or to hold a practising certificate, must consider the following:
  - (a) whether the person is currently of good reputation and character;
  - (b) whether the person is an undischarged bankrupt in Solomon Islands or another country;
  - (c) whether the person has been convicted of an offence in

Solomon Islands or another country, and if so:

- (i) the nature of the offence; and
  - (ii) how long ago the offence was committed; and
  - (iii) the person's age when the offence was committed;
- (d) whether the person has engaged in legal practice:
- (i) in Solomon Islands in contravention of this Act or a previous law of Solomon Islands that corresponds with this Act; or
  - (ii) in another country in contravention of a corresponding law of that country;
- (e) whether the person is currently subject to an unresolved complaint, investigation, charge or order under:
- (i) this Act or a previous law of Solomon Islands that corresponds to this Act; or
  - (ii) a corresponding law of another country;
- (f) whether the person:
- (i) is the subject of current disciplinary action in another profession or occupation in Solomon Islands or another country; or
  - (ii) has been the subject of disciplinary action relating to another profession or occupation that involved a finding of guilt;
- (g) whether the person has been found to have engaged in academic dishonesty (including, for example, plagiarism);
- (h) whether the person's name has been removed from:
- (i) the roll, and has not since been restored to or entered on the roll; or
  - (ii) an official roll of lawyers (whether admitted, practising or otherwise) kept in another country;

- (i) whether the person's right to engage in legal practice has been suspended or cancelled in Solomon Islands or another country;
  - (j) whether the person has contravened, in Solomon Islands or another country, a law about trust money or trust accounts;
  - (k) whether, under this Act or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;
  - (l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, a legal practitioner or from managing a corporation that is an incorporated legal practice;
  - (m) whether the person is unable to satisfactorily carry out the inherent requirements of legal practice;
  - (n) any submissions received in response to an advertisement published under subsection (4).
- (2) Subsection (1) does not apply in relation to the consideration of an application for a visiting practising certificate by a foreign lawyer.
- (3) A person is not a fit and proper person to be admitted to the legal profession or to hold a practising certificate if the person has been sentenced to a term of imprisonment for a serious offence, including a suspended sentence.
- (4) A person who applies for admission to the legal profession must publish an advertisement in a newspaper circulating generally throughout Solomon Islands specifying the following:
- (a) the name of the person and the fact that they have applied to be admitted to the legal profession or to hold a practising certificate;
  - (b) that any person may make a written submission to the Registrar of the High Court or the Authority about whether the person is a fit and proper person to be admitted to the legal profession or to hold a practising certificate;

- (c) that a submission must be made within 14 days after the publication of the advertisement.

## **Part 2                      Restrictions on legal practice**

### **7                      Prohibition on engaging in legal practice when not entitled**

- (1) A person who is not a legal practitioner must not engage in legal practice.

Maximum penalty:        50,000 penalty units or 5 years imprisonment, or both.

- (2) Subsection (1) does not apply to a person authorised by a written law to represent another person before an administrative tribunal (however described) or other decision-making body other than a court.
- (3) A person is not entitled to recover any amount in respect of anything the person did in contravention of subsection (1).
- (4) A person may recover from another person, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of subsection (1).

### **8                      Prohibition on falsely representing entitlement to engage in legal practice**

- (1) A person who is not legal practitioner must not represent or advertise that the person is entitled to engage in legal practice.

Maximum penalty:        50,000 penalty units or 5 years imprisonment, or both.

- (2) Subsection (1) does not apply to a representation or advertisement about being entitled to provide services of a kind mentioned in section 7(2).
- (3) A reference in this section to a person representing or advertising that the person is entitled to engage in legal practice includes a reference to the person doing anything that specifies or implies the person is entitled to engage in legal practice.

## **Part 3                      Legal Profession Authority**

### **Division 1                Establishment and functions**

#### **9                      Establishment**

- (1) The Legal Profession Authority is established.
- (2) The Authority:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property; and
  - (d) is capable, in its corporate name, of suing and being sued.

#### **10                    Functions and powers**

The functions and powers of the Authority are as follows:

- (a) making rules that prescribe standards for admission to the legal profession in addition to the minimum standards set by this Act;
- (b) making rules for regulating legal practice, professional conduct and CLE;
- (c) deciding applications for practising certificates;
- (d) monitoring compliance by legal practitioners with this Act;
- (e) investigating and, if necessary, bringing cases of alleged professional misconduct and unprofessional conduct to the Disciplinary Tribunal;
- (f) overseeing the functions of the Disciplinary Committee;
- (g) any other functions and powers conferred on the Authority by this or any other Act.

## **11 Independence**

- (1) The Authority is not subject to the direction or control of the Minister in the exercise of its powers or the performance of its functions.
- (2) An Authority member is not subject to the direction or control of the Minister in the exercise of the member's powers or the performance of the member's functions.

## **Division 2 Membership**

### **12 Membership**

- (1) The Authority consists of the following members:
  - (a) the Chief Justice or another Judge nominated by the Chief Justice;
  - (b) the President of SILS;
  - (c) the following members appointed by the Minister (each an ***"appointed member"***):
    - (i) 1 legal practitioner nominated by the Board who holds an unrestricted practising certificate;
    - (ii) 1 legal practitioner nominated by the Board who holds a government practising certificate;
    - (iii) 1 legal practitioner nominated by the Board who holds a corporate practising certificate;
    - (iv) 3 legal practitioners who hold practising certificates in any category.
- (2) The member mentioned in subsection (1)(a) is the chairperson of the Authority.
- (3) The President of SILS is the deputy chairperson of the Authority.

### **13 Term of office**

An appointed member holds office for 2 years or the shorter period specified in the instrument of appointment and is eligible for



reappointment.

#### **14 Alternate members**

- (1) The chairperson may appoint another Judge to act as his or her alternate if the chairperson is absent from a meeting of the Authority or unable to participate in a deliberation or decision of the Authority because of section 25.
- (2) The deputy chairperson may appoint the Vice-President of SILS to act as his or her alternate if the deputy chairperson is absent from a meeting of the Authority or unable to participate in a deliberation or decision of the Authority because of section 25.

#### **15 Vacation of office**

A person who is an appointed member ceases to be a member if:

- (a) the person resigns by giving written notice to the Minister; or
- (b) the person's term of office comes to an end and the person is not reappointed; or
- (c) the person is convicted of an offence for which the available penalty includes a term of imprisonment; or
- (d) the person's appointment is terminated under section 16.

#### **16 Termination of appointment**

- (1) The Minister may terminate the appointment of a person who is an appointed member:
  - (a) on the ground of misbehaviour or misconduct; or
  - (b) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or
  - (c) if the Minister is satisfied the person has failed to comply with section 24; or
  - (d) if the person is absent from 3 consecutive meetings of the Authority without leave granted by the chairperson; or

- (e) if the person becomes bankrupt.
- (2) A termination of appointment must be made in writing.

## **17 Remuneration**

An Authority member is entitled to be paid the remuneration prescribed by regulation.

## **Division 3 Procedures of Authority**

### **18 Procedures**

Subject to this Act, the Authority may determine its own procedures.

### **19 Meetings**

- (1) The chairperson may convene a meeting of the Authority at any time.
- (2) However, the chairperson must convene a meeting of the Authority at least 4 times each year.

### **20 Quorum at meetings**

The quorum for a meeting may be determined by the Authority.

### **21 Presiding member at meetings**

A meeting of the Authority must be presided over by:

- (a) the chairperson or the chairperson's alternate; or
- (b) in the absence of the chairperson and the chairperson's alternate, the deputy chairperson or the deputy chairperson's alternate; or
- (c) in the absence of each person mentioned in paragraphs (a) and (b), another Authority member elected by the members present.

### **22 Voting at meetings**

- (1) A decision at a meeting of the Authority must be determined by the majority vote of Authority members present and voting.

- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote.

## **23        Records of meetings**

- (1) The Authority must keep accurate records of each of its meetings.
- (2) The records must be certified by the member presiding over the meeting.

## **24        Disclosure of interest**

- (1) This section applies if an Authority member has a personal interest in a matter being considered, or about to be considered, by the Authority.
- (2) The member must disclose the following to the other members as soon as practicable after the relevant facts come to the member's knowledge:
  - (a) the nature and extent of the interest;
  - (b) how the interest relates to the matter mentioned in subsection (1).
- (3) If the relevant facts come to the member's knowledge at a time when the Authority is not meeting, the member must:
  - (a) make the disclosure mentioned in subsection (2) by written notice to each other member; and
  - (b) table a copy of the notice at the next meeting of the Authority.
- (4) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.
- (5) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.
- (6) For this section, an Authority member has a personal interest in a matter if the member:
  - (a) has a direct or indirect financial interest in the matter; or

- (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

## **25            Effect of personal interest**

- (1) If an Authority member has a personal interest in a matter that is required to be disclosed under section 24, the member must not take part in any deliberation or decision of the Authority about the matter.
- (2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Authority about the matter.

## **Division 4            Miscellaneous matters**

### **26            Committees**

- (1) The Authority may establish committees to carry out functions determined by the Authority.
- (2) Each committee consists of members appointed by the Authority.
- (3) In appointing members of a committee, the Authority must consider any nominations for membership received from SILS, but is not required to appoint a nominee.
- (4) An Authority member is eligible to be a member of a committee.
- (5) The Authority may determine the procedures of a committee.

### **27            Annual report**

- (1) The chairperson must prepare and give to the Minister a report on the performance of the functions and the exercise of the powers of the Authority during each year.
- (2) The report must be given to the Minister by 31 March following the end of the year.
- (3) The Minister must table a copy of the report in Parliament at the first meeting of Parliament after the Minister receives the report.

## **28            Staff and resources**

- (1) The Minister must provide the Authority with the necessary staff and facilities to enable it to properly exercise its powers and perform its functions, including a Registrar and a Secretary to the Authority.
- (2) A staff member provided to the Authority under subsection (1) is subject only to the direction of the chairperson in the performance of his or her duties for the Authority.
- (3) In addition to the staff provided by the Minister, the Authority may engage consultants to assist it in the exercise of its powers and the performance of its functions.

## **Part 4                    Solomon Islands Law Society**

### **Division 1            Establishment and functions**

#### **29            Establishment**

- (1) The Solomon Islands Law Society is established.
- (2) SILS:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property; and
  - (d) is capable, in its corporate name, of suing and being sued.

#### **30            Functions**

The functions of SILS are as follows:

- (a) making recommendations to the High Court regarding applications for admission to the legal profession;
- (b) representing SILS members through the President's membership of the Authority;

- (c) facilitating and approving continuing legal education for SILS members;
- (d) advocating and lobbying on behalf of SILS members;
- (e) providing welfare, social and recreational services to SILS members;
- (f) advising SILS members on professional conduct and trust accounting matters;
- (g) making nominations for membership of committees established by the Authority;
- (h) any other functions conferred on SILS by or under this or any other Act.

## **Division 2          Composition and governance**

### **31          Membership**

All legal practitioners must be members of SILS.

### **32          Board of SILS**

- (1) The Board of SILS is responsible for managing the affairs of SILS.
- (2) The Board consists of the following members elected from among the SILS members in accordance with the Constitution of SILS:
  - (a) a President;
  - (b) a Vice-President;
  - (c) a Treasurer;
  - (d) a Secretary;
  - (e) 3 other members.

### **33          Term of office**

A Board member holds office in accordance with the Constitution of SILS and is eligible for re-election.

### **34 Constitution of SILS**

- (1) The members of SILS must adopt a Constitution.
- (2) Subject to this Act, the operations and procedures of SILS, its Board and the Disciplinary Committee are regulated by the Constitution of SILS.

## **Division 3 Disciplinary Committee**

### **35 Establishment**

The SILS Disciplinary Committee is established.

### **36 Functions**

The function of the Disciplinary Committee is to carry out the disciplinary functions of SILS under Part 10, Division 4.

### **37 Membership**

- (1) The Disciplinary Committee consists of:
  - (a) the Attorney-General; and
  - (b) for each complaint dealt with by the Committee, 2 SILS members drawn from a panel elected by the SILS members.
- (2) The Attorney-General may appoint another person to act as his or her alternate if the Attorney-General is absent from a meeting of the Committee or unable to participate in a deliberation or decision of the Authority because of section 38.

### **38 Disclosure of interest**

- (1) This section applies if a member of the Disciplinary Committee has a personal interest in a matter being considered, or about to be considered, by the Committee.
- (2) The member must disclose the following to the other members as soon as practicable after the relevant facts come to the member's knowledge:
  - (a) the nature and extent of the interest;

- (b) how the interest relates to the matter mentioned in subsection (1).
- (3) If the relevant facts come to the member's knowledge at a time when the Committee is not meeting, the member must:
  - (a) make the disclosure mentioned in subsection (2) by written notice to each other member; and
  - (b) table a copy of the notice at the next meeting of the Committee.
- (4) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.
- (5) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.
- (6) For this section, a member has a personal interest in a matter if the member:
  - (a) has a direct or indirect financial interest in the matter; or
  - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

### **39 Effect of personal interest**

- (1) If member of the Disciplinary Committee has a personal interest in a matter that is required to be disclosed under section 38 the member must not take part in any deliberation or decision of the Committee about the matter.
- (2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Committee about the matter.

## **Division 4 Miscellaneous matters**

### **40 Annual report**

- (1) The President must prepare and give to the Minister a report on the



performance of the functions and the exercise of the powers of SILS during each year.

- (2) The report must be given to the Minister by 31 March following the end of the year.
- (3) The Minister must table a copy of the report in Parliament at the first meeting of Parliament after the Minister receives the report.

#### **41 Financial matters**

- (1) SILS may manage its financial affairs in the way it considers appropriate.
- (2) SILS may determine and charge fees for services, including membership fees and fees for providing continuing legal education.

### **Part 5 Admission to legal profession**

#### **42 Eligibility for admission**

- (1) A person is eligible for admission to the legal profession only if:
  - (a) the person is a natural person aged 18 years or over; and
  - (b) the person has attained the qualifications approved by the Chief Justice; and
  - (c) the person has satisfactorily completed the practical legal training requirements approved by the Chief Justice.
- (2) The Chief Justice must publish a list of the qualifications and training requirements mentioned in subsection (1)(b) and (c) in the Gazette.

#### **43 Application for admission**

- (1) A person may apply to the High Court for admission to the legal profession.
- (2) The application must be:
  - (a) made in the form approved by the Chief Justice; and
  - (b) accompanied by the information specified in the form; and

- (c) accompanied by the fee prescribed by the Chief Justice.

#### **44 Compliance certificates**

- (1) The role of the Board is to consider applications for admission to the legal profession and advise the High Court whether or not the Board considers that applicants are suitable for admission.
- (2) The Board must file with the Registrar of the High Court a certificate in the form approved by the Chief Justice (a **“compliance certificate”**) for an applicant for admission to the legal profession if the Board considers that:
  - (a) the applicant is:
    - (i) eligible for admission; and
    - (ii) a fit and proper person to be admitted; and
  - (b) the application conforms with the requirements of the rules.
- (3) The Board must give the Authority a copy of the compliance certificate.
- (4) If the Board refuses to issue a compliance certificate for the applicant, the Board must give:
  - (a) the Registrar of the High Court notice of the refusal and the reasons for it; and
  - (b) the applicant an information notice about the refusal.

#### **45 Consideration of applicant's eligibility and suitability**

- (1) To help it decide whether to issue a compliance certificate for an applicant for admission, the Board may, by written notice to the applicant, require the applicant to:
  - (a) give it specified documents or information; and
  - (b) cooperate with any inquiries by SILS that it considers appropriate.
- (2) The applicant's failure to comply with the notice by the date specified in the notice, and in the way required by the notice, is a ground for

refusing to issue a compliance certificate for the applicant.

#### **46 Decision on application**

The Court may, after considering the recommendation of the Board, admit the person if the Court is satisfied that:

- (a) the person is eligible for admission to the legal profession; and
- (b) the person is a fit and proper person to be admitted to the legal profession.

*Note for section 46*

*In deciding whether the person is a fit and proper person to be admitted to the legal profession, the Court must consider the matters mentioned in section 6.*

#### **47 Roll of persons admitted to legal profession**

- (1) The Registrar of the High Court must maintain a roll of persons admitted to the legal profession.
- (2) A person's admission takes effect when the person signs the roll.
- (3) The Registrar must give SILS the name, date of birth and date of admission of each person admitted to the legal profession as soon as practicable after the person has signed the roll.
- (4) The Registrar must ensure the roll:
  - (a) is available for inspection free of charge at the High Court during office hours; and
  - (b) if the High Court maintains a website, is published on the website.
- (5) The roll available for inspection or published under subsection (4) must not include the home address of any person.

#### **48 Certificate of admission**

The Registrar of the High Court must issue a certificate of admission to a person admitted to the legal profession.

**49            Lawyer is officer of court**

- (1) A person becomes an officer of the court on being admitted to the legal profession.
- (2) A person ceases to be an officer of the court if the person's name is removed from the roll.

**Part 6                    Practising certificates**

**Division 1              Grant and renewal of practising certificates**

**50            Categories of practising certificate**

- (1) The categories of practising certificate are as follows:
  - (a) restricted practising certificate;
  - (b) government practising certificate;
  - (c) corporate practising certificate;
  - (d) visiting practising certificate;
  - (e) unrestricted practising certificate.
- (2) A lawyer with less than 2 years of experience in supervised legal practice is only eligible to hold one of the following practising certificates:
  - (a) a restricted practising certificate;
  - (b) if the lawyer is eligible under subsection (3) ☐ a government practising certificate;
  - (c) if the lawyer is eligible under subsection (4) ☐ a corporate practising certificate.
- (3) A lawyer is eligible to hold a government practising certificate if the lawyer will only engage in legal practice under the certificate as the holder of a public office to which section 118 of the Constitution applies.

- (4) A lawyer is eligible to hold a corporate practising certificate if the lawyer will only engage in legal practice under the certificate as an employee of a company as defined in the *Companies Act 2009*.
- (5) A person is eligible to hold a visiting practising certificate if the person:
  - (a) is a foreign lawyer; and
  - (b) engages in legal practice principally in another country; and
  - (c) will only engage in legal practice in Solomon Islands to carry out work approved by the Chief Justice and specified in the certificate under an arrangement that is of a temporary nature.
- (6) A lawyer is eligible to hold an unrestricted practising certificate only if the lawyer:
  - (a) either:
    - (i) has at least 2 years of experience in supervised legal practice; or
    - (ii) has held one or more public offices for which qualification as a legal practitioner is required for a total period of at least 5 years; and
  - (b) satisfies the Authority that the lawyer has achieved the level of competency required for unsupervised legal practice.

## **51 Application for grant or renewal of practising certificate**

- (1) A person may apply to the Authority for the grant or renewal of a practising certificate.
- (2) The application must be:
  - (a) made in the form approved by the Authority; and
  - (b) accompanied by the information specified in the form; and
  - (c) accompanied by the fee prescribed by the Authority by Gazette notice.

**52****Suitability to hold practising certificate**

The Authority may, in considering whether or not a person is a fit and proper person to hold a practising certificate, take into account any of the following in addition to the matters mentioned in section 6:

- (a) whether the person has previously obtained a practising certificate because of incorrect or misleading information;
- (b) whether the person has previously contravened a condition of a practising certificate;
- (c) whether the person has previously contravened this Act or a corresponding law;
- (d) whether the person has previously contravened:
  - (i) an order of the Disciplinary Tribunal or a direction of the Disciplinary Committee; or
  - (ii) an order of a disciplinary nature made under a corresponding law;
- (e) any other matter the Authority considers appropriate.

**53****Grant or renewal of practising certificate**

- (1) The Authority must consider an application for the grant or renewal of a practising certificate and may:
  - (a) grant or refuse to grant the certificate; or
  - (b) renew or refuse to renew the certificate.
- (2) The Authority must not grant or renew a practising certificate unless it is satisfied the applicant:
  - (a) is a lawyer or, if the application is for a visiting practising certificate, is a foreign lawyer; and
  - (b) is eligible for the category of practising certificate applied for; and
  - (c) has paid the required SILS membership fees; and

- (d) is a fit and proper person to hold the certificate; and
  - (e) for a renewal of a practising certificate ☐ has complied with the CLE obligation for the preceding CLE year.
- (3) In granting or renewing the certificate, the Authority may impose conditions as mentioned in section 58.
  - (4) The Authority must give the applicant an information notice for a decision to:
    - (a) refuse to grant or renew a practising certificate; or
    - (b) impose a condition on the certificate under section 58.

#### **54 Duration of practising certificate**

- (1) A practising certificate (other than a visiting practising certificate) granted or renewed under this Act is in force from the date specified to and including the following 31 March, unless the certificate is sooner suspended or cancelled.
- (2) A visiting practising certificate is in force for the period specified in it, which must not be more than the lesser of the following:
  - (a) the duration of the work for which the certificate is granted;
  - (b) 12 months.
- (3) The holder of a visiting practising certificate must inform the Authority as soon as practicable after the work for which the certificate was granted ends.
- (4) If a visiting practising certificate expires before the end of the duration of the work for which the certificate is granted, it may be renewed.

#### **55 Timing of application for renewal of practising certificate**

- (1) This section does not apply to the renewal of a visiting practising certificate.
- (2) An application for the renewal of a practising certificate must be made by 1 March each year.

- (3) The Authority may accept an application made within 6 months after 1 March (even if made after the expiry of the practising certificate sought to be renewed) if satisfied that:
  - (a) the delay was caused by reasons beyond the control of the applicant; or
  - (b) other special circumstances exist warranting acceptance of the application.
- (4) If an application is accepted under subsection (3) after the expiry of the practising certificate, the certificate:
  - (a) is taken to have continued in force until the Authority renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner suspended or cancelled; and
  - (b) if renewed, is taken to have been renewed on and from 1 April.

## **Division 2          Conditions on practising certificates**

### **56          Conditions generally**

- (1) A practising certificate is subject to:
  - (a) any conditions imposed by the Authority; and
  - (b) any statutory conditions imposed by this or any other Act; and
  - (c) any conditions imposed or varied under this Act.
- (2) If a condition (other than a statutory condition) is imposed, varied or revoked under this Act (other than a statutory condition) during the currency of the practising certificate concerned, the certificate must be amended or replaced by the Authority to reflect the imposition, variation or revocation.

### **57          Statutory conditions**

- (1) It is a condition of a practising certificate that the holder of the certificate must give written notice to the Authority if the holder is charged with a relevant offence.



- (2) It is a condition of a practising certificate (other than a visiting practising certificate) that the holder of the certificate must:
  - (a) maintain physical business premises in Solomon Islands; and
  - (b) give written notice to the Authority of a change in that address.
- (3) It is a condition of a visiting practising certificate that the holder of the certificate must:
  - (a) maintain an address for service of documents in Solomon Islands; and
  - (b) give written notice to the Authority of a change to that address.
- (4) A notice mentioned in subsection (1), (2) or (3) must be given within 7 days after the relevant event.
- (5) It is a condition of a practising certificate (other than a visiting practising certificate) that the holder of the certificate must comply with the CLE obligation.

## **58 Conditions imposed by Authority**

- (1) The Authority may impose conditions on a practising certificate or (if appropriate) a class of practising certificates, including conditions:
  - (a) requiring the holder of the practising certificate to undertake:
    - (i) CLE in addition to the CLE obligation; or
    - (ii) specified education or training; or
    - (iii) a period of supervised legal practice; or
  - (b) restricting the areas of law that may be practised under the certificate; or
  - (c) controlling, restricting or prohibiting the operation of a trust account by the holder; or
  - (d) restricting the holder to particular conditions concerning employment or supervision; or
  - (e) requiring the holder to undergo counselling or medical

treatment or to act in accordance with medical advice given to the holder; or

(f) requiring the holder to use the services of an accountant or other financial specialist in connection with the holder's practice; or

(g) agreed to by the holder.

(2) The Authority may impose a condition on a practising certificate:

(a) when it is granted or renewed; or

(b) during its currency, by amending the practising certificate under section 61 or 64.

### **Division 3           Amendment, suspension or cancellation of practising certificates**

#### **59           Application of Division**

(1) This Division applies in relation to a practising certificate whether or not a complaint has been made about the holder of the practising certificate.

(2) Nothing in this Division prevents a complaint being made by the Authority or any other person in relation to a matter for which action has been taken under this Division.

#### **60           Grounds for amending, suspending or cancelling practising certificate**

(1) Each of the following is a ground for amending (including by imposing additional conditions) or suspending a practising certificate:

(a) the holder of the certificate has breached a condition of the certificate or has contravened this Act;

(b) the holder of the certificate has been charged with a relevant offence.

(2) It is a ground for cancelling a practising certificate if a circumstance exists that would have required or permitted the Authority to refuse the application for the grant or renewal of the certificate under

section 53 had the circumstance existed, or had the Authority been aware of the circumstance, at the time the application was decided.

**61 Amending, suspending or cancelling practising certificate**

- (1) If the Authority believes a ground exists to amend, suspend or cancel a practising certificate (the ***“proposed action”***), the Authority must give the holder of the certificate a notice that:
  - (a) specifies the proposed action; and
  - (b) specifies the ground for proposing to take the action; and
  - (c) outlines the facts and circumstances that form the basis for the Authority's belief that the ground exists; and
  - (d) invites the holder to make written representations to the Authority, within a specified time of at least 7 days and not more than 28 days, as to why the proposed action should not be taken.
- (2) If, after considering any written representations made by the holder, the Authority still believes a ground exists to take the proposed action, the Authority may:
  - (a) if the notice specified the proposed action was to amend the practising certificate ☐ amend the certificate in the way specified or in a less onerous way the Authority considers appropriate because of the representations; or
  - (b) if the notice specified the proposed action was to suspend the practising certificate for a specified period:
    - (i) suspend the certificate for a period no longer than the specified period; or
    - (ii) amend the certificate in a less onerous way the Authority considers appropriate because of the representations; or
  - (c) if the notice specified the proposed action was to cancel the practising certificate:
    - (i) cancel the certificate; or

- (ii) suspend the certificate for a period; or
  - (iii) amend the certificate in a less onerous way the Authority considers appropriate because of the representations.
- (3) If the Authority decides to amend, suspend or cancel the practising certificate, the Authority must give the holder an information notice for the decision.
- (4) An amendment or suspension of a practising certificate on the ground that the holder has been charged with a relevant offence is revoked if the holder is acquitted of the offence or the charge is withdrawn.

## **62 Immediate suspension of practising certificate**

- (1) This section applies:
  - (a) if the Authority considers it necessary in the public interest to immediately suspend a practising certificate; and
  - (b) whether or not any action has been taken or started under section 61 in relation to the holder of the certificate.
- (2) The Authority may, by written notice given to the holder, immediately suspend the practising certificate until the earlier of the following:
  - (a) the time at which the Authority informs the holder of the Authority's decision in relation to the certificate under section 61;
  - (b) if the suspension arises from a complaint:
    - (i) the complaint is dismissed; or
    - (ii) the subject matter of the complaint is finally dealt with by the Disciplinary Tribunal;
  - (c) the suspension is revoked;
  - (d) the suspension is successfully appealed.
- (3) The notice must:
  - (a) include an information notice about the suspension; and

- (b) specify that the holder may make written representations to the Authority about the suspension.
- (4) The Authority must consider any representations made by the holder.
- (5) The Authority may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

**63      Operation of amendment, suspension or cancellation of practising certificate**

- (1) The amendment, suspension or cancellation of a practising certificate takes effect on the later of the following:
  - (a) the day notice of the decision is given to the holder;
  - (b) the day specified in the information notice for the decision.
- (2) If the practising certificate is amended, suspended or cancelled because the holder has been convicted of an offence and the conviction is quashed on appeal:
  - (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
  - (b) the cancellation ceases to have effect when the conviction is quashed and the certificate is restored as if it had only been suspended.

**64      Other ways of amending or cancelling practising certificate**

- (1) The Authority may amend or cancel a practising certificate if the holder of the certificate requests the Authority to do so.
- (2) The Authority may amend a practising certificate:
  - (a) for a formal or clerical reason; or
  - (b) in another way that does not adversely affect the holder's interests.
- (3) The Authority must cancel a practising certificate if the holder ceases to be a lawyer.
- (4) The amendment or cancellation of a practising certificate under this

section is effected by written notice given to the holder.

- (5) Section 61 does not apply in a case to which this section applies.

## **Division 4            Miscellaneous matters**

### **65            Consideration and investigation of applicants or holders**

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel a practising certificate, the Authority may, by notice to the applicant or holder, require the applicant or holder:
- (a) to give it specified documents or information; and
  - (b) to cooperate with any inquiries by the Authority that it considers appropriate.
- (2) A contravention of a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the Authority.

### **66            Return of practising certificate**

- (1) This section applies if a practising certificate held by a legal practitioner is:
- (a) amended, suspended or cancelled by the Authority; or
  - (b) replaced by another certificate.
- (2) The Authority may give the practitioner a notice requiring the practitioner to return the certificate to the Authority within a specified period.
- (3) The practitioner must comply with the notice.

Maximum penalty:        50,000 penalty units or 5 years  
   imprisonment, or both.

### **67            Register of legal practitioners**

- (1) The Authority must keep a register of legal practitioners including the following details for each practitioner:

- (a) the name of the practitioner;
  - (b) the category of practising certificate held by the practitioner;
  - (c) the contact details of the office of the practitioner in Solomon Islands;
  - (d) the name of the law practice or other entity at which the practitioner engages in legal practice;
  - (e) the conditions (other than statutory conditions) imposed on the practising certificate;
  - (f) any other details about the practitioner that Authority considers should be included.
- . (2) The Authority must ensure the register:
  - (a) is available for inspection at the offices of the Authority during office hours; and
  - (b) if the Authority maintains a website, is published on the website.
- (3) However, the register available for inspection or published under subsection (2) must not include:
  - (a) the home address of any person; and
  - (b) a condition imposed on a practising certificate relating to the infirmity, injury or mental or physical illness of a person unless:
    - (i) the condition restricts the person's right to engage in legal practice; or
    - (ii) the person consents to the condition being specified on the register.
- (4) The Authority must give SILS a copy of the register and any updates to it.

## **Part 7                      Continuing legal education**

### **68                      CLE activity**

- (1) A **“CLE activity”** is an activity for the professional development of legal practitioners that is approved by SILS in writing.
- (2) SILS must not approve a CLE activity unless it:
  - (a) is of significant intellectual or practical content; and
  - (b) deals primarily with matters related to the practice of law.
- (3) Without limiting the activities that SILS may approve, a CLE activity may be:
  - (a) preparing a presentation; or
  - (b) giving (including by videoconference) a presentation; or
  - (c) attending (including by videoconference) a presentation, seminar, workshop or multimedia or website based program; or
  - (d) private study; or
  - (e) writing an article that is published in a legal publication, or a legal article that is published in a non-legal publication; or
  - (f) attending lectures or writing assignments or a thesis as part of post-graduate studies.

### **69                      CLE points**

A legal practitioner accrues points (**“CLE points”**) for engaging in a CLE activity at the rate approved by SILS for the activity.

### **70                      CLE obligation**

Subject to section 71, for each CLE year a legal practitioner engages in legal practice, the practitioner must accrue 12 CLE points.

### **71                      Starting legal practice during CLE year**

- (1) This clause applies to a legal practitioner who:



- (a) is not engaging in legal practice on 1 February of a CLE year;  
and
  - (b) starts engaging in legal practice later in that CLE year.
- (2) The legal practitioner must accrue 1 CLE point for each full month the legal practitioner engages in legal practice during the CLE year.

**72 Claiming CLE points for CLE year**

- (1) A legal practitioner who accrues CLE points for engaging in a CLE activity within 3 months before the start of a CLE year may claim the points for that CLE year.
- (2) However, the legal practitioner may claim CLE points accrued for the activity for only one CLE year.

**73 Fraction of CLE point**

The only fraction of a CLE point that may be claimed is 0.5 point.

**74 Preparing or giving presentation at seminar**

- (1) No more than 5 CLE points may be claimed for preparing and giving a presentation.
- (2) In addition, if the presentation is repeated in the same CLE year, CLE points may be claimed only once.

**75 Private study**

No more than 5 CLE points in a CLE year may be claimed for private study.

**76 Published article**

No more than 5 CLE points in a CLE year may be claimed for writing published articles.

**77 Undertaking post-graduate studies**

- (1) No more than 5 CLE points in a CLE year may be claimed for attending lectures as part of post-graduate studies.
- (2) No more than 5 CLE points in a CLE year may be claimed for writing

assignments and theses as part of post-graduate studies.

**78 Certificate about compliance with CLE obligation**

A legal practitioner must, before the end of each CLE year, give the Authority a certificate in the form approved by the Authority about the practitioner's compliance with the practitioner's CLE obligation for the CLE year.

**79 Authority may require information about CLE obligation**

- (1) The Authority may, by written notice, require a legal practitioner to give it information about the practitioner's compliance with the practitioner's CLE obligation.
- (2) The legal practitioner must comply with the notice within 14 days after it is given.

**Part 8 Trust money**

**Division 1 Preliminary matters**

**80 Determinations about status of money**

- (1) This section applies to money received by a law practice if the Authority considers there is doubt or a dispute as to whether the money is trust money.
- (2) The Authority may determine that the money is or is not trust money.
- (3) This section has effect subject to a decision of a court made in relation to the money concerned.

**81 When money is received**

For this Act, a law practice receives money when:

- (a) the practice obtains possession or control of it directly; or
- (b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
- (c) the practice, or an associate of the practice (otherwise than in

a private and personal capacity), is given a power to deal with the money for or on behalf of another person; or

- (d) the money is available to the practice, or associate of the practice (otherwise than in a private and personal capacity), by means of an instrument or another way of authorising a financial institution to credit or debit an amount to an account with the financial institution, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

## **Division 2            Requirements for keeping trust money**

### **82            Maintenance of trust account**

- (1) A law practice that receives trust money must maintain a trust account.

Maximum penalty:        50,000 penalty units or 5 years imprisonment, or both.

- (2) A law practice must, within 7 days after establishing a new trust account, notify the Authority in writing of the following details:

- (a) the financial institution with which the account is held;
- (b) the account number;
- (c) the name of each person authorised to withdraw money from the account;
- (d) any other details prescribed by the rules.

Maximum penalty:        50,000 penalty units or 5 years imprisonment, or both.

- (3) A law practice must, within 7 days after a change in any of the details mentioned in subsection (1), notify the Authority in writing of the change.

Maximum penalty:        50,000 penalty units or 5 years imprisonment, or both.

- (4) Within 7 days after a ceasing to hold trust money, a law practice must

notify the Authority of that fact.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

**83 Trust money to be deposited in trust account**

As soon as practicable after receiving trust money, a law practice must deposit the money into a trust account of the practice.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

**84 Holding, disbursing and accounting for trust money**

(1) A law practice must:

- (a) hold trust money exclusively for the person on whose behalf it is received; and
- (b) disburse the trust money only in accordance with a direction given by the person.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

(2) Subsection (1) applies subject to an order of a court or as authorised by law.

(3) A law practice must disburse trust money by cheque, unless the practice has been authorised in writing to disburse the money by electronic funds transfer by:

- (a) the Authority; or
- (b) the person on whose behalf the money is received.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

(4) The law practice must account for the trust money as required by the rules.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

**85 Keeping trust records**

- (1) A law practice must keep the records in relation to trust money received by the practice that are required by the rules.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) The law practice must keep the trust records:

- (a) in accordance with the rules; and
- (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
- (c) in a way that enables the trust records to be conveniently and properly investigated; and
- (d) for 7 years from the date of completion of the matter to which they relate.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (3) The Authority may approve in writing an electronic accounting system for keeping trust records.

**86 Intermixing money**

A law practice must not mix trust money with other money.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

**87 Reporting irregularities**

- (1) A legal practitioner commits an offence if:

- (a) the practitioner is an associate of a law practice; and
- (b) the practitioner believes on reasonable grounds that there is an irregularity:
  - (i) in any of the practice's trust accounts; or

- (ii) in relation to the receipt, recording or disbursement of any trust money received by the practice; and
- (c) the practitioner fails, as soon as practicable after forming the belief, to give written notice of it to the Authority.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) A legal practitioner is not excused from giving the notice mentioned in subsection (1)(c) on the ground that giving the notice may tend to incriminate the practitioner.
- (3) A legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner giving the notice mentioned in subsection (1)(c).

## **88 Deficiency in trust account**

- (1) A legal practitioner commits an offence if the practitioner causes a deficiency in any trust account or in any ledger in a trust account.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the practitioner has a reasonable excuse, including that the deficiency was caused by an unintentional overdraw.
- (3) A court that finds a legal practitioner guilty of committing an offence against subsection (1) may, in addition to imposing a penalty for the offence, order that the practitioner remedy the deficiency in the trust account.

## **89 Protection of trust money**

Money standing to the credit of a trust account maintained by a law practice is not:

- (a) available for the payment of debts of the practice or any of its associates; or
- (b) liable to be attached or taken in execution of a judgment against the practice or any of its associates.

## **90 Dealing with trust money – legal costs**

A law practice may do any of the following in relation to trust money held in a trust account for a person:

- (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;
- (b) withdraw money for payment to the practice's account for legal costs owing to the practice by the person if the relevant procedures or requirements prescribed by the rules are complied with.

## **91 Controlled money**

- (1) As soon as practicable after receiving controlled money, a law practice must deposit the money into the account specified in the direction of the client or the court that requires the practice to keep the money.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) The law practice must:
  - (a) hold the controlled money exclusively for the person on whose behalf it is received; and
  - (b) disburse the controlled money only in accordance with the direction specified in subsection (1).

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (3) Subsection (2) applies subject to an order of a court or as authorised by law.
- (4) The law practice must disburse controlled money by cheque, unless the practice has been authorised in writing to disburse the money by electronic funds transfer by:
  - (a) the Authority; or

(b) the person on whose behalf the money is received.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (5) The law practice must maintain a controlled money account, and account for the controlled money, as required by the rules.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

## **Division 3      Audits**

### **92      Trust records to be audited**

- (1) A law practice must, at least once in each financial year, have its trust records audited:

(a) by a suitably qualified person; and

(b) as required under this Division.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) The Authority may appoint suitably qualified person to audit a law practice's trust records if the Authority is not satisfied that the practice has complied with subsection (1).

- (3) In this section:

***“suitably qualified person”*** means a person who:

(a) is either:

(i) a registered certified practicing accountant as defined in section 2 of the *Accountants Act 2010*; or

(ii) a certified practising accountant registered under a law of another country for the regulation of accounting practice; and

(b) is qualified to audit accounts.



### **93 Conduct of audit**

- (1) Part 11 applies to an audit of trust records.
- (2) An audit of a law practice's trust records:
  - (a) must examine the records to determine whether the practice has complied with its obligations in relation to trust money under this Act; and
  - (b) must be conducted in accordance with:
    - (i) any rules relating to conducting audits made by the Council of the Institute of Solomon Islands Accountants under the *Accountants Act 2010*; or
    - (ii) if the auditor is a certified practising accountant registered under a law of another country, any rules or standards relating to conducting audits applicable in that country.

### **94 Auditor's report**

As soon as practicable after it receives a written report of an audit of its trust records, a law practice must give the report to the Authority.

### **95 Law practice liable for costs of audit**

- (1) A law practice whose trust accounts have been audited is responsible for paying the costs of the audit.
- (2) If the Authority appointed the auditor to carry out the audit, the Authority may specify the amount payable as the costs of the audit and the specified amount is a debt payable to it by the law practice.
- (3) The Authority must, before seeking to recover the amount payable, give the law practice an information notice for the Authority's decision and the amount specified as being payable.

## **Division 4 Trust accounting investigations**

### **96 Appointment of investigators**

- (1) The Authority may appoint a suitably qualified person to investigate a law practice's compliance with this Part.

- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment.
- (3) The appointment may authorise the investigator to conduct either or both of the following:
  - (a) routine investigations on a regular or other basis;
  - (b) investigations in relation to particular allegations or suspicions;  
or
  - (c) investigations following a law practice's failure to submit an auditor's report to the Authority under section 94.

**97 Conduct of investigation**

Part 11 applies to an investigation under this Division.

**98 Investigator's report**

- (1) As soon as practicable after completing the investigation, the investigator must give a written report of the investigation to the Authority.
- (2) The Authority must give a copy of the report to the law practice, but may withhold information from the copy given to the practice if the Authority believes that including the information may compromise any further investigation or any further action taken in response to the report.

**99 When costs of investigation are debt**

- (1) This section applies if:
  - (a) an investigator specifies in a report of an investigation under this Division that:
    - (i) there is evidence that a law practice has breached a provision of this Part; or
    - (ii) there has been a fraud or misappropriation in relation to trust money; and
  - (b) in the case of a breach of a provision of this Part, the Authority is satisfied the breach is intentional or of a substantial nature.

- (2) The Authority may decide that the whole or part of the costs of carrying out the investigation is payable to the Authority and may specify the amount payable.
- (3) The amount specified is a debt due and payable to the Authority by the law practice.
- (4) The Authority must, before seeking to recover the amount, give the law practice an information notice for the Authority's decision and the amount specified as being payable.

## **Division 5          Unclaimed trust money**

### **100          Legal Profession Fidelity Fund**

- (1) The Legal Profession Fidelity Fund is established as a Special Fund under section 100(2) of the Constitution.
- (2) The Fund consists of:
  - (a) unclaimed trust money paid into the Fund under section 101; and
  - (b) any interest paid on the money by the financial institution with which the money is held.
- (3) The purpose of the Fund is to hold unclaimed trust money until it is:
  - (a) paid to a person who is entitled to it under section 102(2); or
  - (b) paid into the Consolidated Fund under section 102(5).
- (4) If the financial institution with which the money of the Fund is held charges fees that exceed the amount of any interest paid on the money, the Authority is responsible for paying the outstanding amount.

### **101          Unclaimed trust money**

- (1) An amount of trust money held by a law practice is an unclaimed amount if:
  - (a) the amount has been held by the practice for a period of at least 2 years and during that period the practice has had no

knowledge of the existence or the address of the person on whose behalf the amount is held; or

- (b) the person has refused to accept payment of the amount when tendered.
- (2) Within one month after an amount of trust money held by a law practice becomes an unclaimed amount, the practice must:
- (a) pay the amount to the Authority; and
  - (b) give the Authority the information the Authority requires in relation to the amount and the person on whose behalf the amount was held by the practice.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (3) On payment of the amount to the Authority, the practice is relieved from any further liability in relation to the unclaimed amount.
- (4) The Authority must pay the amount into the Fidelity Fund.

## **102 When Authority may pay unclaimed amount**

- (1) A person who claims to be entitled to an amount paid into the Fidelity Fund under section 101(4) may apply to the Authority for payment of the amount.
- (2) The Authority may pay the amount to the person if the Authority is satisfied that the amount was trust money kept on behalf of the person by the law practice that paid the amount to the Authority.
- (3) Payment of the amount to the person:
- (a) discharges the Crown and the Authority from any liability in relation to the amount; and
  - (b) does not discharge the person from any liability to another person who establishes a right to the amount.
- (4) If the Authority refuses an application made under subsection (1), the Authority must give the applicant an information notice for the decision.

- (5) The Authority must pay an unclaimed amount into the Consolidated Fund if the amount:
  - (a) has been held in the Fidelity Fund for 7 years; and
  - (b) there are no pending applications for payment of the amount under subsection (1); and
  - (c) if the Authority has refused an application for payment of the amount ☐ there is no pending appeal against the refusal and the time for appealing has expired.
- (6) Payment of the amount to the Consolidated Fund discharges the Crown and the Authority from any liability in relation to the amount.

## **Part 9                      Costs**

### **Division 1                Costs disclosure**

#### **103                      Disclosure of costs to clients**

- (1) A law practice must disclose to the client:
  - (a) the basis on which legal costs will be calculated; and
  - (b) the client's right to request an itemised bill of legal costs from the law practice; and
  - (c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable:
    - (i) a range of estimates of the total legal costs; and
    - (ii) an explanation of the major variables that will affect the calculation of those costs; and
  - (d) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
    - (i) applying for costs assessment; and
    - (ii) making a complaint under section 125.

- (2) The disclosure must be made:
  - (a) before providing legal services to the client; or
  - (b) if it is not reasonably practicable to make the disclosure before providing the legal services due to a situation of urgency ☐ may be made as soon as practicable after the law practice starts to provide the legal services.
- (3) A law practice must, in writing, disclose to a client any substantial change to anything included in a disclosure already made under subsection (1) as soon as is reasonably practicable after the law practice becomes aware of that change.
- (4) Disclosure under subsection (1) is not required to be made if the client:
  - (a) has received one or more disclosures under subsection (1) from the law practice in the previous 12 months; or
  - (b) is itself a law practice.

#### **104 Effect of failure to disclose**

- (1) If a law practice does not disclose to a client anything required to be disclosed under section 103:
  - (a) the client is not required to pay the relevant legal costs unless they have been assessed under Division 4; and
  - (b) the law practice may not take proceedings against the client for the recovery of legal costs unless the costs have been assessed under Division 4; and
  - (c) if the client has entered into a costs agreement with the law practice, the client may apply under section 110 for the costs agreement to be set aside; and
  - (d) on an assessment of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the costs assessor to be proportionate to the seriousness of the failure to disclose.
- (2) Failure by a law practice to comply with section 103 is capable of

constituting unsatisfactory professional conduct or professional misconduct on the part of any legal practitioner wholly or partly responsible for the failure.

## **Division 2          Legal costs generally**

### **105          Basis for recovering legal costs**

Subject to Division 1, legal costs are recoverable:

- (a) in accordance with a scale of costs; or
- (b) if paragraph (a) does not apply, under a costs agreement made under Division 3; or
- (c) if paragraphs (a) and (b) do not apply, according to the fair and reasonable value of the legal services provided.

### **106          Itemised bills**

- (1) If a bill is given to a client by a law practice in the form of a lump sum bill, the client may request the law practice to give the person an itemised bill.
- (2) The client is not required to pay the bill until the law practice provides the itemised bill.
- (3) The law practice must not start proceedings to recover the legal costs from the client until at least 30 days after complying with the request.
- (4) The law practice is not entitled to charge for the preparation of an itemised bill.

## **Division 3          Costs agreements**

### **107          Form of costs agreement**

A costs agreement between a client and a law practice must be in writing.

### **108          Effect of costs agreement**

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

**109        Certain costs agreements void**

- (1) A costs agreement that contravenes any provision of this Division is void.
- (2) Subject to this section and Division 4, legal costs under a void costs agreement are recoverable as set out in section 105(c).
- (3) However:
  - (a) 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
  - (b) any excess amount received by the law practice is a debt due and payable to the person who paid the excess amount.

**110        Setting aside costs agreements**

- (1) On application by a client of a law practice, a costs assessor may order that a costs agreement be set aside if satisfied the agreement is not fair or reasonable.
- (2) In determining whether a costs agreement is fair or reasonable, and without limiting the matters the assessor may consider, the assessor may consider any of the following matters:
  - (a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice;
  - (b) whether any legal practitioner acting on behalf of the law practice has been found to have engaged in unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;
  - (c) whether the law practice failed to disclose anything required to be disclosed under section 103.
- (3) If the assessor orders that a costs agreement be set aside, the assessor may order the payment of a specified amount by the client for fair and reasonable legal costs for work done by the law practice, with reference to the criteria specified in section 117.
- (4) In making an order under subsection (3), the assessor may not order



the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.

- (5) The assessor may order the payment of the costs of and incidental to determining an application under this section.
- (6) A costs assessor must:
  - (a) give the client and the law practice written reasons for an order under this section; and
  - (b) if the assessor orders that a costs agreement be set aside, give the law practice an information notice for the decision.

## **Division 4        Costs assessments**

### **111        Costs assessors**

- (1) The Chief Justice may appoint persons to be costs assessors for this Act.
- (2) A person is not eligible to be appointed as a costs assessor unless the person is a lawyer of at least 5 years' standing.
- (3) A costs assessor is entitled to be paid the remuneration prescribed by regulation.

### **112        Application for costs assessment**

- (1) A client of a law practice may apply to the High Court for an assessment of the whole or any part of legal costs, even if the legal costs have been wholly or partly paid.
- (2) The application must be:
  - (a) made within 12 months after the bill for the costs was received by the client; and
  - (b) made in the form approved by the Chief Justice; and
  - (c) accompanied by the fee prescribed by the Chief Justice.

**113 Consequences of application**

If an application for a costs assessment is made, the law practice must not start or continue any proceedings to recover the relevant legal costs until the assessment has been completed.

**114 Procedure for assessment**

- (1) A costs assessment must be undertaken by a costs assessor.
- (2) The costs assessor must give the client and the law practice reasonable notice of the time, date and place of the assessment.
- (3) If a party to the assessment does not attend the assessment, the costs assessor may proceed with the assessment in the absence of the party.

**115 Costs assessment based on complying costs agreements**

A costs assessor must assess any costs that are subject to a costs agreement with reference to the provisions of the costs agreement if:

- (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and
- (b) the agreement has not been set aside under section 110.

**116 Costs based on scale of costs**

A costs assessor must assess costs that are based on a scale of costs with reference to that scale.

**117 Criteria for costs assessment**

- (1) In conducting an assessment of legal costs, the costs assessor must consider:
  - (a) whether or not it was reasonable to carry out the work to which the legal costs relate; and
  - (b) whether or not the work was carried out in a reasonable way; and
  - (c) the fairness and reasonableness of the amount of legal costs,

except to the extent that section 115 or 116 applies.

- (2) In considering what is a fair and reasonable amount of legal costs, the assessor may have regard to any of the following matters:
  - (a) whether the law practice has complied with this Act in its dealing with the client;
  - (b) any disclosures made by the law practice under section 103;
  - (c) the skill, labour and responsibility displayed on the part of the legal practitioner responsible for the matter;
  - (d) the complexity, novelty or difficulty of the matter;
  - (e) the quality of the work done;
  - (f) the time within which the work was required to be done;
  - (g) any other relevant matter.

#### **118 Determination of costs assessment**

- (1) A costs assessor must determine an application for a costs assessment by:
  - (a) confirming the disputed costs; or
  - (b) if the assessor is satisfied the disputed costs are unfair or unreasonable ☐ by substituting for the amount of the costs an amount that, in the assessor's opinion, is a fair and reasonable amount.
- (2) On making a determination of costs, a costs assessor must issue to each party:
  - (a) a certificate that specifies the determination; and
  - (b) an information notice for the determination.
- (3) If the amount of costs has been paid, the amount (if any) by which the amount paid exceeds the amount specified in the certificate is a debt due and payable by the law practice to the client.

## **Part 10                      Complaints**

### **Division 1                Preliminary matters**

#### **119                      Unsatisfactory professional conduct**

In this Act, “***unsatisfactory professional conduct***”, of a legal practitioner, includes:

- (a) conduct of the legal practitioner 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 legal practitioner; and
- (b) breach of a condition of the legal practitioner’s practising certificate.

#### **120                      Professional misconduct**

- (1) In this Act, “***professional misconduct***”, of a legal practitioner, includes:

- (a) unsatisfactory professional conduct of the legal practitioner that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of the legal practitioner, whether or not occurring in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

- (2) In determining for subsection (1)(b) whether a legal practitioner is a fit and proper person to engage in legal practice, regard may be had to the matters that would be considered if the practitioner were an applicant:

- (a) for admission to the legal profession; or
- (b) for the grant or renewal of a practising certificate.

#### **121                      Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limiting section 119 or 120, any of the following conduct is

capable of constituting unsatisfactory professional conduct or professional misconduct:

- (a) a contravention of this Act or the rules;
- (b) charging excessive legal costs in connection with the practice of law;
- (c) 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;
- (d) failing to perform work, including failing to attend court or appointments, failing to respond to correspondence and failing to file and serve court documents.

## **122 Practitioners to whom this Part applies**

- (1) This Part applies (with the necessary modifications) to former legal practitioners in relation to conduct occurring while they were legal practitioners in the same way as it applies to persons who are legal practitioners.
- (2) This Part does not apply to:
  - (a) a Judge; or
  - (b) a Magistrate.
- (3) A provision of this Act or any other Act that protects a person from any action, liability, claim or demand in relation to any conduct of the person does not affect the application of this Part to the person in relation to the conduct.

## **123 Conduct to which this Part applies**

- (1) Subject to subsection (3), this Part applies to conduct of a legal practitioner occurring wholly or partly in Solomon Islands.
- (2) This Part does not apply to conduct occurring wholly or partly in Solomon Islands if:

- (a) the Authority consents to it being dealt with under a corresponding law; or
  - (b) the complainant and the legal practitioner consent to it being dealt with under a corresponding law.
- (3) Subsection (2) does not apply if the conduct is not capable of being dealt with under the corresponding law.

**124 Other remedies not affected**

Nothing in this Part affects any other remedy available to a complainant.

**Division 2 Process for making and receiving complaints**

**125 Making a complaint**

- (1) A complaint against a legal practitioner may be made by any person, including the following:
- (a) a client of the legal practitioner;
  - (b) a Judge, a Magistrate or a Justice of a local court;
  - (c) another legal practitioner;
  - (d) the Authority;
  - (e) SILS.
- (2) The complaint must:
- (a) be made to the Authority; and
  - (b) be in writing; and
  - (c) identify the complainant; and
  - (d) if possible, identify the legal practitioner about whom the complaint is made; and
  - (e) describe in detail the alleged conduct the subject of the complaint.

- (3) This section does not affect any other right of a person to complain about the conduct of a legal practitioner.

**126 Further information and verification**

The Authority may require a complainant to:

- (a) give further information about the complaint; or
- (b) verify the complaint, or any further information, by affidavit.

**127 Practitioner to be notified of complaint**

- (1) The Authority must, as soon as practicable after a complaint is made, give the legal practitioner about whom the complaint is made:
  - (a) a copy of the complaint; and
  - (b) a written notice inviting the practitioner to make submissions to the Authority in response to the complaint within a specified period.
- (2) Subsection (1) does not apply if the complaint is dismissed under section 130.
- (3) Also, subsection (1) does not apply if the Authority is of the opinion that giving the practitioner a copy of the complaint is likely to:
  - (a) prejudice the investigation of the complaint; or
  - (b) prejudice an investigation by the police or other investigatory body of any matter with which the complaint is concerned; or
  - (c) place the complainant or another person at risk of intimidation or harassment; or
  - (d) prejudice pending court proceedings.
- (4) If subsection (3) applies, the Authority:
  - (a) may postpone giving the practitioner a copy of the complaint and notice about making submissions, until it is satisfied it is appropriate to do so; or

- (b) may inform the practitioner of:
  - (i) the general nature of the complaint; and
  - (ii) the practitioner's right to make submissions to the Authority, specifying the period within which submissions must be made, if satisfied the practitioner has sufficient information to make submissions.
- (5) A notice given under subsection (4) must also inform the practitioner of any action already taken by the Authority in relation to the complaint.

### **Division 3          Initial action in response to complaint**

#### **128          How complaint may be dealt with**

Having received a complaint, the Authority must decide to do one of the following:

- (a) dismiss the complaint under section 130; or
- (b) refer the complaint to the Disciplinary Committee for further action if the Authority considers that the complaint relates to:
  - (i) unsatisfactory professional conduct of a minor nature; or
  - (ii) a consumer dispute; or
  - (iii) a costs dispute involving costs up to \$20,000;
- (c) investigate the complaint if the Authority considers that the complaint relates to:
  - (i) unsatisfactory professional conduct of a serious nature; or
  - (ii) professional misconduct; or
  - (iii) a costs dispute involving costs over \$20,000.

#### **129          Preliminary assessment**

- (1) The Authority may make a preliminary assessment of the complaint



before deciding what action to take in relation to it.

- (2) In making the preliminary assessment, the Authority:
  - (a) must consider any submissions made by the legal practitioner to whom the complaint relates under section 127; and
  - (b) may, if the Authority considers it necessary to do so, refer the matter to an authorised officer to conduct the preliminary assessment.
- (3) Any evidence or information obtained in the course of conducting the preliminary assessment may be used by the Authority in relation to any later investigation or consideration of the complaint.

### **130 Summary dismissal of complaint**

The Authority may dismiss a complaint without referring it to the Disciplinary Committee or conducting a full investigation into the complaint if:

- (a) further information is not given, or the complaint or further information is not verified, as required by the Authority under section 126; or
- (b) the complaint is vexatious, misconceived, frivolous or lacking in substance; or
- (c) for a complaint about costs □ the complaint was made more than 3 months after the complainant received an itemised bill for the costs concerned, unless the complainant applied within that time for a costs assessment; or
- (d) for a complaint other than a complaint about costs □ the complaint was made more than 5 years after the conduct complained of is alleged to have occurred; or
- (e) the conduct complained of has been the subject of a previous complaint that has been dismissed; or
- (f) the conduct complained of is the subject of another complaint; or
- (g) the complaint cannot be dealt with under this Act.

### **131        Withdrawal of complaint**

- (1) A complainant may withdraw a complaint in whole or in part at any time before proceedings in relation to the complaint have been started in the Disciplinary Tribunal.
- (2) Withdrawal of all or part of the complaint does not prevent:
  - (a) the Authority investigating the complaint; or
  - (b) the Authority making a complaint or further complaint about the matter that is the subject of the withdrawn complaint; or
  - (c) action being taken on any other complaint made in relation to that matter.

## **Division 4        Complaints referred to Disciplinary Committee**

### **132        Application of Division**

This Division applies to a complaint referred to the Disciplinary Committee under section 128(b).

### **133        Voluntary mediation of complaint**

- (1) Having received the complaint, the Disciplinary Committee must invite the complainant and the legal practitioner to whom the complaint relates to enter into mediation in relation to all or part of the complaint.
- (2) If the complainant and the practitioner agree to enter into mediation:
  - (a) the Committee may refer all or part of the complaint to mediation by a mediator approved by the Committee; and
  - (b) no further action is required on the complaint to the extent to which it is referred to mediation.

### **134        Compulsory mediation of consumer dispute**

- (1) The Disciplinary Committee may, by written notice, require the complainant and the legal practitioner to enter into mediation in relation to a consumer dispute that comprises all or part of a complaint.

(2) After the notice is given:

- (a) the Committee may refer the consumer dispute to mediation by a mediator approved by the Committee; and
- (b) so far as it involves an issue that is not a consumer dispute, the Committee must continue to deal with the complaint under this Division after or during the mediation or attempt at mediation; and
- (c) the Committee is not required to take any further action in relation to the consumer dispute, except so far as it is relevant to determining any other part of the complaint.

### **135 Confidentiality of mediation process**

- (1) The following are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence:
  - (a) evidence of anything said or admitted during a mediation or attempted mediation under this Division;
  - (b) a document prepared for the mediation or attempted mediation.
- (2) Subsection (1) does not apply to an agreement reached during mediation.

### **136 Determination of complaint**

- (1) The Disciplinary Committee may investigate and determine a complaint if it considers it necessary or desirable to do so, whether or not:
  - (a) all or part of the complaint has been referred to mediation; or
  - (b) the complainant and the legal practitioner have reached an agreement through mediation.
- (2) After investigating the complaint, the Committee may:
  - (a) dismiss the complaint; or
  - (b) refer the complaint back to the Authority for further investigation; or

- (c) if section 138 applies, take remedial action under that section.
- (4) The Committee must give the complainant an information notice for a decision to dismiss the complaint.
- (3) Part 11 applies to an investigation of a complaint by the Committee.

**137 Referral of complaint to Authority**

The Disciplinary Committee must refer a complaint back to the Authority for further investigation if the Committee considers that the complaint relates to:

- (a) unsatisfactory professional conduct of a serious nature; or
- (b) professional misconduct; or

**138 Remedial action by Disciplinary Committee**

- (1) This section applies if the Disciplinary Committee:
  - (a) completes an investigation into a complaint against a legal practitioner; and
  - (b) believes on reasonable grounds that, if the complaint were referred to the Disciplinary Tribunal, there is a reasonable likelihood that the practitioner would be found to have engaged in unsatisfactory professional conduct of a minor nature; and
  - (c) is satisfied the practitioner is generally competent and diligent.
- (2) The Committee may take any of the following remedial action:
  - (a) direct the practitioner to undertake specified work;
  - (b) direct the practitioner to rectify an error in work done;
  - (c) direct the practitioner to refund an amount to a client;
  - (d) direct the practitioner to apologise for the practitioner's conduct in writing to a specified person;
  - (e) direct the practitioner to compensate a specified person for monetary loss caused by the practitioner's conduct;

- (f) caution the practitioner in writing;
  - (g) publicly reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner;
  - (h) direct the practitioner to undergo specified supervision;
  - (i) direct the practitioner to undertake specified training;
  - (j) direct the practitioner to pay the costs of the investigation into the complaint.
- (3) The Committee must give the practitioner an information notice for a decision to take action under subsection (2).

**139 Record of decision**

The Disciplinary Committee must keep a record of its decision, together with reasons for the decision, for each complaint it deals with.

**Division 5 Complaints investigated by Authority**

**140 Application of Division**

This Division applies to a complaint if:

- (a) the Authority decides to investigate it under section 128(c); or
- (b) it is referred to the Authority by the Disciplinary Committee under section 136(2)(b).

**141 Conduct of investigation**

Part 11 applies to an investigation of a complaint by the Authority.

**142 Determination of complaint**

After investigating a complaint, the Authority may:

- (a) dismiss the complaint; or
- (b) start proceedings in the Disciplinary Tribunal under section 144; or

- (c) if section 145 applies, take remedial action under that section.

#### **143 Dismissal of complaint**

- (1) After completing an investigation of a complaint against a legal practitioner, the Authority may dismiss the complaint if satisfied:
  - (a) it is frivolous or vexatious; or
  - (b) there is no reasonable likelihood that the practitioner would be found by the Disciplinary Tribunal to have engaged in either unsatisfactory professional conduct or professional misconduct; or
  - (c) it is in the public interest to do so.
- (2) The Authority must give the complainant an information notice for the decision.

#### **144 Starting disciplinary proceedings**

Unless section 145 applies, the Authority must start proceedings in the Disciplinary Tribunal in relation to a complaint against a legal practitioner if satisfied there is a reasonable likelihood the practitioner will be found by the Tribunal to have engaged in unsatisfactory professional conduct or professional misconduct.

#### **145 Remedial action by Authority**

- (1) This section applies if the Authority:
  - (a) completes an investigation into a complaint against a legal practitioner; and
  - (b) believes on reasonable grounds that, if proceedings were started in the Disciplinary Tribunal, there is a reasonable likelihood that the practitioner would be found to have engaged in unsatisfactory professional conduct (but not professional misconduct); and
  - (c) is satisfied the practitioner is generally competent and diligent.
- (2) The Authority may do any of the following:
  - (a) direct the practitioner to undertake specified work;

- (b) direct the practitioner to rectify an error in work done;
  - (c) direct the practitioner to refund an amount to a client;
  - (d) direct the practitioner to apologise in writing for the practitioner's behaviour to the complainant;
  - (e) direct the practitioner to compensate a specified person for monetary loss caused by the practitioner's conduct;
  - (f) caution the practitioner in writing;
  - (g) publicly reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner;
  - (h) direct the practitioner to undergo specified supervision;
  - (i) direct the practitioner to undertake specified training;
  - (j) direct the practitioner to pay the costs of the investigation into the complaint;
  - (k) impose a fine on the practitioner of a up to 20,000 penalty units.
- (3) If action is taken under subsection (2), no further action can be taken under this Part in relation to the complaint.
- (4) The Authority must give the practitioner an information notice for a decision to take action under subsection (2).

#### **146 Record of decision**

The Authority must keep a record of its decision, together with reasons for the decision, for each complaint it deals with.

#### **147 Rules of procedural fairness**

The rules of procedural fairness, to the extent they are not inconsistent with the provisions of this Act, apply in relation to the investigation of complaints and the Authority's procedures under this Division.

## **Division 6          Disciplinary proceedings**

### **148          Legal Profession Disciplinary Tribunal**

- (1) The Legal Profession Disciplinary Tribunal is established.
- (2) The Tribunal consists of a Judge appointed to the Tribunal by the Chief Justice.

### **149          How disciplinary proceedings are started**

- (1) Proceedings may be started in the Disciplinary Tribunal in relation to the whole or part of a complaint against a legal practitioner by an application (a ***“disciplinary application”***) made by the Authority.
- (2) The application may contain one or more allegations of unsatisfactory professional conduct or professional misconduct.

### **150          Joinder of applications**

The Disciplinary Tribunal may, subject to its rules and the rules of procedural fairness, order that more than one disciplinary application against the same or different legal practitioners be heard together.

### **151          Rules of evidence**

- (1) The Disciplinary Tribunal is bound by the rules of evidence in conducting a hearing under this Division.
- (2) The Tribunal must decide questions of fact on the balance of probabilities.

### **152          Parties to proceedings**

The parties to proceedings in the Disciplinary Tribunal in relation to a complaint are:

- (a) the legal practitioner against whom the complaint has been made; and
- (b) the Authority.

### **153          Manner of deciding application**

- (1) The Disciplinary Tribunal may decide a disciplinary application on the



basis of one or more hearings.

- (2) A hearing must be open to the public, unless the Tribunal directs that the hearing or a part of the hearing be closed to the public because of:
  - (a) the subject matter of the hearing; or
  - (b) the nature of the evidence to be given.
- (3) The following persons are entitled to appear at a hearing or make written submissions to the Tribunal in relation to the application:
  - (a) the parties to the proceedings;
  - (b) with the leave of the Tribunal, the complainant.
- (4) A person appearing at a hearing may appear personally or be represented by a legal practitioner or (with the leave of the Tribunal) by any other person.

#### **154 Decisions of Disciplinary Tribunal**

The Disciplinary Tribunal may:

- (a) dismiss the application; or
- (b) find that the legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct (or both).

#### **155 Orders of the Disciplinary Tribunal**

- (1) This section applies if the Disciplinary Tribunal finds a practitioner has engaged in unsatisfactory professional conduct or professional misconduct.
- (2) The Tribunal may make the order it considers appropriate, including any one or more of the following orders:
  - (a) an order that the practitioner undertake specified work;
  - (b) an order that the practitioner rectify an error in work done;
  - (c) an order that the practitioner refund an amount to a client;

- (d) an order that the practitioner apologise for the practitioner's conduct in writing to a specified person;
- (e) an order that the practitioner compensate a specified person for monetary loss caused by the practitioner's conduct;
- (f) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;
- (g) an order that the practitioner undergo specified supervision;
- (h) an order that the practitioner undertake specified training;
- (i) an order recommending that the name of the practitioner be removed from the roll;
- (j) an order that the practitioner's practising certificate be suspended for a specified period or cancelled;
- (k) an order that specified conditions be imposed on the practitioner's practising certificate;
- (l) an order that the practitioner pay a fine of a specified amount, not exceeding:
  - (i) for unsatisfactory professional conduct ≤ 50,000 penalty units; or
  - (ii) for professional misconduct ≤ 100,000 penalty units;
- (m) an order that the practitioner do or refrain from doing something in connection with the practice of law;
- (n) an order that the Authority appoint an external intervener for a specified period for a specified purpose;
- (o) an order that the practitioner's practice be subject to periodic inspection by a specified person for a specified period;
- (p) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person.

(3) The Tribunal may make ancillary or other orders, including:

- (a) an order for payment by the practitioner of expenses associated with orders under subsection (2); and
- (b) an order for costs, including the costs of any investigation conducted in relation to the complaint against the practitioner.

**156 Interlocutory and interim orders**

- (1) The Disciplinary Tribunal may make interlocutory or interim orders as it considers appropriate before making its final decision about a complaint against a legal practitioner.
- (2) Without limiting subsection (1), orders of the kinds mentioned in section 154 may be made as interlocutory or interim orders.

**157 Notice of decision**

The Disciplinary Tribunal must give an information notice for its decision to:

- (a) the parties to the proceedings; and
- (b) the complainant.

**Part 11 Powers of investigation**

**158 Authorised officers**

- (1) The Authority may, in writing, appoint a person to be an authorised officer to conduct an investigation under:
  - (a) Part 8, Division 4; or
  - (b) section 129; or
  - (c) Part 10, Division 5.
- (2) The appointment may be made generally (to apply for all investigations or for all investigations of a specified class) or for a specified investigation.
- (3) The Authority must give the authorised officer an identity document specifying the extent of the authorised officer's authority to carry out investigations.

## **159 Investigator's powers**

- (1) For the purposes of an investigation, an investigator may direct a legal practitioner or another person who has or has had control of documents relating to the affairs of a law practice to do any one or more of the following:
  - (a) produce a specified document;
  - (b) provide written information;
  - (c) otherwise assist in, or cooperate with, the investigation in a specified manner.
- (2) The direction must be made in writing and must specify a reasonable time for compliance.
- (3) The legal practitioner or other person must comply with the direction.

Maximum penalty: 10,000 penalty units or imprisonment for 12 months or both.
- (4) Subsection (3) does not apply if:
  - (a) the legal practitioner or other person asks the investigator to produce evidence of the investigator's authority to carry out the investigation; and
  - (b) the investigator does not produce such evidence.
- (5) An investigator may enter premises to carry out an investigation:
  - (a) with the consent of the occupier; or
  - (b) under the authority of a search warrant issued under section 160.

## **160 Search warrants**

- (1) For carrying out an investigation, an investigator may apply to a Magistrate for a search warrant.
- (2) The Magistrate may issue a search warrant to an investigator only if satisfied there are reasonable grounds to suspect that relevant material relevant to the investigation is located at the premises.

- (3) A search warrant authorises an investigator:
  - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
  - (b) to exercise the powers in section 161.
- (4) A search warrant may be executed by the investigator to whom it is issued or by another investigator.

**161 Powers of investigator while on premises**

- (1) For the purposes of an investigation, an investigator who enters premises under this Part may exercise any of the following powers:
  - (a) search the premises and examine anything on the premises;
  - (b) search for any information, document or other relevant material;
  - (c) open or access any area or thing on the premises which is locked;
  - (d) operate equipment or facilities on the premises;
  - (e) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
  - (f) make copies of any relevant material or any part of any relevant material;
  - (g) seize and take away any relevant material or any part of any relevant material, including equipment on which the material is stored;
  - (h) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;
  - (i) direct a person who is on the premises to do any of the following:
    - (i) state the person's full name, date of birth and address;
    - (ii) answer (orally or in writing) questions asked by the investigator relevant to the investigation;

- (iii) produce relevant material;
  - (iv) give any assistance the investigator reasonably requires to carry out the investigation;
  - (j) do anything else reasonably necessary to obtain information or evidence for the investigation.
- (2) Any documents, information or anything else obtained by the investigator may be used for the investigation.
  - (3) If the investigator takes anything from the premises, the investigator must issue a receipt in a form approved by the Authority to the occupier of the premises.
  - (4) An investigator may be accompanied by any assistants the investigator requires, including persons with accounting expertise and persons to assist in finding and gaining access to electronically stored information.
  - (5) A person must comply with a direction of an investigator under subsection (1)(i).

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

## **162 Obstructing investigation**

A person must not obstruct, hinder or resist the conduct of an investigation.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

# **Part 12 Intervention in legal practice**

## **Division 1 Preliminary matters**

### **163 Application of Part**

- (1) This Part applies, with any necessary modifications, to:
  - (a) a former law practice or former legal practitioner; and

- (b) the executor or administrator of a deceased legal practitioner's estate.
- (2) In this Part, a reference to a decision of the Authority to appoint an external intervener includes a reference to a decision of the Disciplinary Tribunal under section 155 to order the Authority to appoint an external intervener.

## **Division 2            Initiation of external intervention**

### **164            Circumstances warranting external intervention**

External intervention may take place in relation to a law practice in any of the following circumstances:

- (a) if a legal practitioner associate of the practice:
  - (i) has died; or
  - (ii) ceases to be a legal practitioner; or
  - (iii) has become insolvent; or
  - (iv) is incarcerated in a correctional centre;
- (b) in the case of a firm □ if the partnership has been wound up or dissolved;
- (c) in any case □ if the Authority forms a belief on reasonable grounds that the practice or an associate of the practice:
  - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice; or
  - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice; or
  - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the practice for or on behalf of that person; or
  - (iv) has failed properly to make a payment of trust money or

a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or

- (v) has breached Part 8, Division 2; or
  - (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
  - (vii) is the subject of a complaint relating to trust money or trust property; or
  - (viii) has failed to comply with any requirement of an investigator; or
  - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding-up the affairs of the practice; or
  - (x) is unable to satisfy the inherent requirements of legal practice.
- (d) if the Disciplinary Tribunal orders the Authority to appoint an external intervener under section 155.

## **165 Decision to initiate external intervention**

- (1) This section applies when the Authority becomes aware that one or more of the circumstances mentioned in section 164 exist in relation to a law practice and decides that, having regard to the interests of the clients of the practice, external intervention is warranted.
- (2) The Authority may decide:
  - (a) to appoint a supervisor of trust money of the law practice, if the Authority is of the opinion:
    - (i) that external intervention is required because of issues relating to the practice's trust accounts; and
    - (ii) that it is not appropriate that the provision of legal services by the practice be wound up and terminated because of those issues; or



- (b) to appoint a manager for the law practice, if the Authority is of the opinion:
    - (i) that external intervention is required because of issues relating to the practice's trust records; or
    - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
    - (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or
  - (c) to appoint a receiver for the law practice, if the Authority is of the opinion:
    - (i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
    - (ii) that it may be appropriate that the provision of legal services by the practice be wound up and terminated.
- (3) The Authority must give the law practice an information notice for a decision to appoint an external intervener under subsection (2).

### **Division 3      Supervisors of trust money**

#### **166      Appointment of supervisor of trust money**

- (1) This section applies if the Authority decides to appoint a supervisor of trust money of a law practice.
- (2) The Authority may, by instrument in writing, appoint a person as supervisor of trust money.
- (3) The appointee must be either:
  - (a) a legal practitioner who holds an unrestricted practising certificate; or
  - (b) a person holding accounting qualifications with experience in legal trust accounting.

**167 Notice of appointment**

As soon as possible after an appointment of a supervisor of trust money of a law practice is made, the Authority must give notice of the appointment to:

- (a) the practice; and
- (b) any other person authorised to operate any trust account of the practice; and
- (c) any auditor appointed to audit the practice's trust records; and
- (d) each financial institution with which the practice maintains a trust account.

**168 Effect of service of notice of appointment**

- (1) A financial institution given notice of the appointment of a supervisor of trust money of a law practice must ensure no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made by the supervisor or a nominee of the supervisor.
- (2) A person is guilty of an offence if:
  - (a) the person is given notice of the appointment of a supervisor of trust money of a law practice; and
  - (b) while the appointment is in force, the person does any of the following:
    - (i) deals with any of the practice's trust money;
    - (ii) signs any cheque or other instrument drawn on a trust account of the practice;
    - (iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (3) Subsection (2) does not apply to the supervisor or a financial institution with which the practice holds a trust account.

**169            Role of supervisor of trust money**

- (1) A supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money, including powers:
  - (a) to receive trust money entrusted to the practice; and
  - (b) to open and close trust accounts.
- (2) For subsection (1), the supervisor may do any of the following:
  - (a) enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) require the practice or an associate or former associate of the practice or any other person who has or had control of documents relating to trust money received by the practice to give the supervisor:
    - (i) access to the files and documents the supervisor reasonably requires; and
    - (ii) information relating to the trust money the supervisor reasonably requires;
  - (c) operate equipment or facilities on the premises, or require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;
  - (d) take possession of any relevant material and retain it for as long as may be necessary;
  - (e) secure any relevant material found on the premises against interference;
  - (f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.

**170            Records of and dealing with trust money of law practice under supervision**

- (1) A supervisor of trust money of a law practice must maintain the

records of the supervisor's dealings with the trust money:

- (a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and
  - (b) separately from the affairs of any other law practice for which he or she is supervisor; and
  - (c) in the way prescribed by the rules.
- (2) Subject to subsection (1), the supervisor must deal with trust money of the practice in the same way as a law practice must deal with trust money.

#### **171 Termination of supervisor's appointment**

- (1) The appointment of a supervisor of trust money of a law practice terminates in any of the following circumstances:
- (a) the term of the appointment comes to an end;
  - (b) the appointment is set aside on appeal;
  - (c) a manager for the practice is appointed under section 173;
  - (d) a receiver for the practice is appointed under section 180;
  - (e) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;
  - (f) the Authority terminates the appointment.
- (2) The Authority must give written notice of the termination to each person originally given notice of the appointment.

### **Division 4 Managers**

#### **172 Appointment of manager**

- (1) This section applies if the Authority decides to appoint a manager for a law practice.
- (2) The Authority may, by instrument in writing, appoint a person as manager.

- (3) The appointee must be a legal practitioner who holds an unrestricted practising certificate.

**173 Notice of appointment**

As soon as possible after an appointment of a manager for a law practice is made, the Authority must give notice of the appointment to:

- (a) the practice; and
- (b) any other person authorised to operate any trust account of the practice; and
- (c) any auditor appointed to audit the practice's trust records; and
- (d) each financial institution with which the practice maintains a trust account.

**174 Effect of service of notice of appointment**

- (1) A person is guilty of an offence if:
- (a) the person is given notice of the appointment of a manager for a law practice; and
  - (b) the person participates in the affairs of the practice except under the supervision of the manager.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) A financial institution given notice of the appointment of a manager of a law practice must ensure no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made by:
- (a) the manager; or
  - (b) a receiver appointed for the practice; or
  - (c) a nominee of the manager or receiver.

(3) A person is guilty of an offence if:-

- (a) the person is given notice of the appointment of a manager for a law practice; and
- (b) while the appointment is in force, the person does any of the following:
  - (i) deals with any of the practice's trust money;
  - (ii) signs any cheque or other instrument drawn on a trust account of the practice;
  - (iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (4) Subsection (3) does not apply to the manager, a receiver for the practice or a financial institution with which the practice holds a trust account.

## **175 Role of manager**

- (1) A manager for a law practice may carry on the practice and may do all things that the practice or a legal practitioner associate of the practice might lawfully have done before the appointment of the manager, including the following:
  - (a) transacting any urgent business of the practice;
  - (b) transacting, with the approval of an existing client of the practice, any business on their behalf, including:
    - (i) commencing, continuing, defending or settling any proceedings; and
    - (ii) receiving, retaining and disposing of property;
  - (c) accepting instructions from new clients and transacting any business on their behalf, including:
    - (i) commencing, continuing, defending or settling any proceedings; and

- (ii) receiving, retaining and disposing of regulated property;
  - (d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;
  - (e) entering into, executing or performing any agreement;
  - (f) dealing with trust money under this Act;
  - (g) winding-up the affairs of the practice.
- (2) For subsection (1), the manager may do any of the following:
- (a) enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the manager:
    - (i) access to the files and documents the manager reasonably requires; and
    - (ii) information relating to client matters the manager reasonably requires;
  - (c) operate equipment or facilities on the premises, or require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the manager's appointment;
  - (d) take possession of any relevant material and retain it for as long as may be necessary;
  - (e) secure any relevant material found on the premises against interference;
  - (f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the manager's appointment.

**176      Records and accounts of law practice under management and dealings with trust money**

- (1) The manager for a law practice must maintain the records and

accounts of the practice that he or she manages:

- (a) separately from the management of the affairs of the practice before his or her appointment as manager; and
  - (b) separately from the affairs of any other law practice for which he or she is manager; and
  - (c) in the way prescribed by the rules.
- (2) Subject to subsection (1), the manager must deal with trust money of the practice in the same way as a law practice must deal with trust money.

**177 Deceased estates**

- (1) It is the duty of the manager for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.
- (2) The manager is not, in the exercise or performance of powers and duties as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.

**178 Termination of manager's appointment**

- (1) The appointment of a manager for a law practice terminates in the following circumstances:
  - (a) the term of the appointment comes to an end;
  - (b) the appointment is set aside on appeal;
  - (c) a receiver for the practice is appointed under section 180, where the terms of the appointment indicate that the receiver is authorised to exercise the powers and duties of a manager;
  - (d) the manager has wound up the affairs of the practice;
  - (e) the Authority terminates the appointment.



- (2) The former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to:
  - (a) another external intervener appointed for the practice; or
  - (b) the practice, if another external intervener is not appointed for the practice.
- (3) The Authority must give written notice of the termination to each person originally served with notice of the appointment.

## **Division 5          Receivers**

### **179          Appointment of receiver**

- (1) This section applies if the Authority decides to appoint a receiver for a law practice.
- (2) The Authority may, by instrument in writing, appoint a person as receiver.
- (3) The appointee must be:
  - (a) a legal practitioner who holds an unrestricted practising certificate; or
  - (b) a person holding accounting qualifications with experience in legal trust accounting.

### **180          Notice of appointment**

As soon as possible after an appointment of a receiver for a law practice is made, the Authority must give notice of the appointment to:

- (a) the practice; and
- (b) any person authorised to operate any trust account of the practice; and
- (c) any auditor appointed to audit the practice's trust records; and
- (d) each financial institution with which the practice maintains a

trust account.

**181 Effect of service of notice of appointment**

- (1) A person is guilty of an offence if:
- (a) the person is given notice of the appointment of a receiver for a law practice; and
  - (b) the person participates in the affairs of the practice.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) A financial institution given notice of the appointment of a receiver for a law practice must ensure no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made by:
- (a) the receiver; or
  - (b) a manager appointed for the practice; or
  - (c) a nominee of the receiver or manager.

- (3) A person is guilty of an offence if:
- (a) the person is given notice of the appointment of a receiver for a law practice; and
  - (b) while the appointment is in force, the person does any of the following:
    - (i) deals with any of the practice's trust money;
    - (ii) signs any cheque or other instrument drawn on a trust account of the practice;
    - (iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (4) Subsection (3) does not apply to the receiver, a manager for the

practice or a financial institution with which the practice holds a trust account.

## **182      Role of receiver**

- (1) The role of a receiver for a law practice is:
  - (a) to be the receiver of regulated property of the practice; and
  - (b) to wind up and terminate the affairs of the practice.
- (2) For winding-up the affairs of the law practice and in the interests of the practice's clients, the Authority may, in writing, authorise:
  - (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is a legal practitioner who holds an unrestricted practising certificate; or
  - (b) a legal practitioner who holds an unrestricted practising certificate, or a law practice whose principals are or include one or more legal practitioners who hold unrestricted practising certificates, to carry on the legal practice on behalf of the receiver.
- (3) Subject to any directions given by the Authority in writing, a person authorised to carry on the legal practice engaged in by a law practice has all the powers of a manager under Division 4 and is taken have been appointed as manager for the law practice under section 172.
- (4) For subsection (1), the receiver may do any of the following:
  - (a) enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the receiver:
    - (i) access to the files and documents the receiver reasonably requires; and
    - (ii) information relating to client matters the receiver reasonably requires;

- (c) operate equipment or facilities on the premises, or require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the receiver's appointment;
- (d) take possession of any relevant material and retain it for as long as may be necessary;
- (e) secure any relevant material found on the premises against interference;
- (f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the receiver's appointment.

**183      Records and accounts of law practice under receivership and dealings with trust money**

- (1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages:
  - (a) separately from the management of the affairs of the practice before his or her appointment as receiver; and
  - (b) separately from the affairs of any other law practice that the receiver is managing; and
  - (c) in the way prescribed by the rules.
- (2) Subject to subsection (1), the receiver must deal with trust money of the practice in the same way as a law practice must deal with trust money.

**184      Power of receiver to take possession of regulated property**

- (1) A receiver for a law practice may take possession of regulated property of the practice.
- (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
- (3) If a person contravenes subsection (2), the High Court may, on application by the receiver, order the person to deliver the regulated property to the receiver.

- (4) If, on application made by the receiver, the Court is satisfied an order made under subsection (3) has not been complied with, the Court may order the seizure of any regulated property of the law practice that is located on the premises specified in the order and make the further orders it considers appropriate.
- (5) An order under subsection (4) operates to authorise:
  - (a) any police officer; or
  - (b) the receiver or a person authorised by the receiver, together with any police officer;to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.
- (6) The receiver may deal with the regulated property in any way in which the law practice might lawfully have dealt with the property.

**185 Regulated property cannot be attached**

Regulated property of a law practice for which a receiver has been appointed (including regulated property held by the receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

## **186 Recovery of regulated property**

- (1) This section applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been transferred to a person (the **“transferee”**) in breach of trust, improperly or unlawfully.
- (2) If the transferee knew or believed at the time of transfer that it was done in breach of trust, improperly or unlawfully, the receiver is entitled to recover the property from the transferee.
- (3) If the transferee did not give adequate consideration for the transfer, the receiver is entitled to recover the amount of the inadequacy of the consideration from the transferee.
- (4) If, because of the transfer, the transferee became indebted or otherwise liable to the practice or to a client of the practice, the receiver is entitled to recover the amount of the debt or liability from the transferee.
- (5) If the transferee received the property in respect of a cause of action that the transferee had, or claimed to have, against a third party:
  - (a) the receiver may prosecute the cause of action against the third party in the name of the transferee; or
  - (b) if the transferee did not in fact have a cause of action against the third party, the receiver may recover the property from the transferee.
- (6) If the transferee received the property so as to discharge a debt or liability of a person (the **“debtor”**), the receiver may recover from the debtor the amount of the debt or liability.

## **187 Improperly destroying property etc.**

A person is guilty of an offence if:

- (a) the person does any of the following (the **“action”**) in relation to regulated property of a law practice:
  - (i) destroys it;
  - (ii) conceals it;

- (iii) moves it from one place to another;
- (iv) delivers it into the possession, or places under the control, of another person; and
- (b) a receiver has been appointed, or is likely to be appointed, for the practice; and
- (c) the person does the action with intent to defeat the operation of this Part.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

## **188 Deceased estates**

- (1) It is the duty of the receiver for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.
- (2) The receiver is not, in the exercise or performance of powers and duties as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.

## **189 Termination of receiver's appointment**

- (1) The appointment by the Authority of a receiver for a law practice terminates in the following circumstances:
  - (a) the term (if any) of the appointment comes to an end;
  - (b) the appointment is set aside on appeal;
  - (c) the Authority terminates the appointment.
- (2) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to:
  - (a) another external intervener appointed for the practice within the period of 14 days beginning with the day after the date of the termination; or
  - (b) the practice, if another external intervener is not appointed for

the practice within that period and if paragraph (c) does not apply; or

- (c) another person in accordance with arrangements approved by the Authority, if it is not practicable to transfer and deliver the regulated property to the practice.
- (3) The Authority must give a written notice of the termination to each person originally served with notice of the appointment.

## **Division 6            General matters**

### **190            Manager and receiver appointed for law practice**

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

### **191            Requirement for financial institution to disclose information**

- (1) A financial institution is guilty of an offence if:
- (a) an external intervener for a law practice requests the financial institution to disclose to the intervener:
    - (i) whether or not the practice, or a specified associate of the practice, maintains or has maintained an account at the financial institution during a specified period; or
    - (ii) details identifying every account so maintained; and
  - (b) the financial institution fails to comply with the request.

Maximum penalty:        100,000 penalty units.

- (2) A financial institution is guilty of an offence if:
- (a) a law practice or associate of a law practice keeps a trust account with the financial institution; and



- (b) an external intervener for the practice requests the financial institution:
  - (i) to produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such accounts or money deposited in any such account; or
  - (ii) to give the intervener full details of any transactions relating to any such account or money; and
- (c) the financial institution fails to comply with the request.

Maximum penalty: 100,000 penalty units.

- (3) However, an obligation imposed by this section on a financial institution does not apply unless the external intervener produces to the financial institution evidence of the appointment of the intervener in relation to the law practice concerned.
- (4) This section applies despite any written law relating to privacy or any duty of confidence to the contrary.
- (5) A financial institution or an officer or employee of a financial institution is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details under this section.

## **192 Fees, legal costs and expenses**

- (1) An external intervener is entitled to be paid the following, in accordance with the intervener's instrument of appointment:
  - (a) fees by way of remuneration; and
  - (b) the legal costs and the expenses incurred in relation to the external intervention;
- (2) The fees, costs and expenses are payable by and recoverable from the law practice.

## **193 Reports by external intervener**

An external intervener must provide:

- (a) written reports as required from time to time by the Authority; and
- (b) a written report to the Authority at the termination of the intervener's appointment.

## **Part 13                      Appeals**

### **194                      Reviewable decisions**

A ***“reviewable decision”*** is a decision stated in the Schedule.

### **195                      Right to appeal**

- (1) A person who is entitled under this Act to receive an information notice for a reviewable decision may appeal against the decision to the court or tribunal specified in the Schedule opposite the decision.
- (2) The appeal must be started by filing a notice of appeal with the court or tribunal within 28 days after receiving the information notice.
- (3) The notice of appeal must state fully the grounds of appeal.

### **196                      Conduct of appeal**

- (1) An appeal against a reviewable decision may be heard by way of rehearing or on a question of law only, as specified in the Schedule opposite the decision.
- (2) On hearing the appeal, the court or tribunal may make the order it considers appropriate.
- (3) Except to the extent (if any) that may be ordered by the court or tribunal, the filing of an appeal does not stay the effect of the decision appealed against.
- (4) If an appeal is heard by the Disciplinary Tribunal, the Tribunal must give each party to the appeal an information notice for its decision on the appeal.

## **Part 14                      Miscellaneous provisions**

### **197                      Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) an Authority member;
  - (b) a Board member;
  - (c) a member of a committee of the Authority;
  - (d) a member of the Disciplinary Committee;
  - (e) a costs assessor;
  - (f) an external intervener;
  - (g) a person carrying out an investigation to which Part 11 applies.
- (2) A person is not civilly or criminally liable for making a complaint about a legal practitioner in good faith.
- (3) In this section:

“**exercise**”, of a power, includes the purported exercise of the power.

“**performance**”, of a function, includes the purported performance of the function.

### **198                      Confidentiality of information**

- (1) A person commits an offence if:
  - (a) the person obtains information in the course of carrying out functions as any of the following:
    - (i) an Authority member;
    - (ii) a Board member;
    - (iii) a member of a committee of the Authority;

- (iv) a member of the Disciplinary Committee;
  - (v) a costs assessor;
  - (vi) an external intervener;
  - (vii) a person carrying out an investigation to which Part 11 applies; and
- (b) the person engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) Subsection (1) does not apply to a person disclosing information:
- (a) for the administration of this Act; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) for legal proceedings arising out of the operation of this Act.

## **199 Liability of principals**

- (1) If a law practice that is a law firm contravenes any provision of this Act imposing an obligation on the practice, each principal of the firm is taken to have contravened the same provision, unless the principal establishes that:
- (a) the practice contravened the provision without the knowledge, actual, imputed or constructive, of the principal; or
  - (b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or
  - (c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.
- (2) Subsection (1) does not affect the liability of the law practice for the contravention.
- (3) A contravention of a requirement imposed on a law practice by this

Act is capable of constituting unsatisfactory professional conduct or professional misconduct by a principal of the practice.

**200      Liability of sole practitioners**

If a law practice that is a sole practitioner contravenes any provision of this Act imposing an obligation on the practice, the sole practitioner is taken to have contravened the same provision.

**201      Rules**

The Authority may make rules:

- (a) that prescribe standards for admission to the legal profession in addition to the minimum standards set by this Act; and
- (b) for regulating legal practice, professional conduct and CLE.

**202      Regulations**

The Minister may make regulations that are necessary or convenient for giving effect to this Act.

**Part 15                      Repeals, transitional matters and consequential amendments**

**203      Definitions**

In this Part:

**“repealed Act”** means the *Legal Practitioners Act* (Cap. 16) as in force immediately before the repeal date;

**“repeal date”** means the date section 204 commences.

**204      Repeal of Legal Practitioners Act**

The *Legal Practitioners Act* (Cap. 16) is repealed.

**205      Roll**

The roll of legal practitioners kept under section 6 of repealed Act immediately before the repeal date is taken to form part of the roll of persons admitted to the legal profession kept under section 47 of this

Act.

**206 Admission**

- (1) If a person's name was on the roll kept under section 6 of the repealed Act immediately before the repeal date, the person is taken to have been admitted to the legal profession under this Act from the day the person's name was entered on the roll under the repealed Act.
- (2) If a person was exempt under section 4 of the repealed Act from the requirement to be admitted immediately before the repeal date, the person is not required to be admitted to the legal profession under this Act until 1 April 2019.
- (3) An application for admission to the legal profession under the repealed Act that was pending immediately before the repeal date is taken to be an application for admission to the legal profession under this Act.

**207 Practising certificates**

- (1) If a practising certificate issued under the repealed Act was in force immediately before the repeal date:
  - (a) the certificate continues in force until 31 March 2019; and
  - (b) Part 6, Division 3 of this Act applies in relation to the certificate as if the certificate had been issued under this Act; and
  - (c) the holder of the certificate is taken to be a legal practitioner within the meaning of section 5 while the certificate remains in force.
- (2) If a person was exempt under section 4 of the repealed Act from the requirement to be admitted immediately before the repeal date, the person is not required to hold a practising certificate under this Act until 1 April 2019.
- (3) An application for a practising certificate under the repealed Act that was pending immediately before the repeal date is taken to be an application for a practising certificate under this Act.

## **208        Disciplinary matters under repealed Act**

- (1) This section applies if:
  - (a) a complaint about the conduct of a legal practitioner has been referred to the Chairman of the disciplinary committee for investigation under section 8A(1) or 8B(2) of the repealed Act; and
  - (b) immediately before the repeal date, the investigation has not been concluded.
- (2) If a disciplinary committee has been appointed under section 8A(2) of the repealed Act to conduct the investigation, the investigation continues under the repealed Act as if Part III of the repealed Act remained in force.
- (3) If a disciplinary committee has not been appointed under section 8A(2) of the repealed Act to conduct the investigation, the investigation must be conducted by the Authority under Part 10, Division 5 of this Act.
- (4) An appeal under section 12 of the repealed Act can only be commenced within 28 days after the repeal date.

## **209        Initial membership and operation of SILS**

- (1) In this section:

**“SIBA”** means the organisation known as the Solomon Islands Bar Association.
- (2) If a person is a member of SIBA immediately before the repeal date, the person is taken to be a member of SILS until 31 March 2019, regardless of the person’s term or category of membership of SIBA.
- (3) If a person is a member of the Executive Committee of SIBA immediately before the repeal date, the person is taken to hold the corresponding position on the SILS Board until the first Board of SILS is constituted under section 32.
- (4) The Constitution of SIBA that is in force immediately before the repeal date is taken to be the Constitution of SILS until SILS adopts a Constitution under section 34.

- (5) The assets of SIBA immediately before the repeal date vest in SILS on and from the repeal date.

**210 References to SIBA in existing laws**

- (1) Each reference in any written law to "the Solomon Islands Bar Association", "SIBA" or "the Bar Association" is deleted and replaced with "the Solomon Islands Law Society".
- (2) The reference to the Bar Association in section 117 of the Constitution is taken to be a reference to the Solomon Islands Law Society.

**211 Public Solicitor Act (Cap. 30) amended**

The definition of "legal practitioner" in section 2 of the *Public Solicitor Act* (Cap. 30) is amended by deleting "section 2 of the Legal Practitioners Act Cap. 16" and substituting "section 5 of the *Legal Profession Act 2017*".



## Schedule      Appeals

sections 194, 195 and 196

<b>Reviewable decision</b>	<b>Court or tribunal</b>	<b>Manner of appeal</b>
Refusal to give compliance certificate (section 44)	High Court	Rehearing
Refusal to grant or renew practising certificate (section 53)	High Court	Rehearing
Imposition of condition on practising certificate (section 53)	High Court	Question of law
Amendment, suspension or cancellation of practising certificate (section 61)	High Court	Question of law
Immediate suspension of practising certificate (section 62)	High Court	Question of law
Costs of audit (section 95)	High Court	Question of law
Costs of trust accounting investigation (section 99)	High Court	Question of law
Refusal to pay unclaimed amount (section 102)	High Court	Question of law
Setting aside costs agreement (section 110)	High Court	Question of law
Determination of costs assessment (section 118)	High Court	Question of law
Dismissal of complaint (section 136)	Disciplinary Tribunal	Rehearing
Remedial action by Disciplinary Committee	Disciplinary Tribunal	Rehearing

(section 138)

Dismissal of complaint  
(section 143)

Disciplinary Tribunal

Rehearing

Remedial action by  
Authority (section 145)

Disciplinary Tribunal

Rehearing

Decision of Disciplinary  
Tribunal on disciplinary  
application (section 154)

Court of Appeal

Rehearing

Appointment of external  
intervener (section 165)

Court of Appeal

Question of law

Decision of Disciplinary  
Tribunal on appeal  
(section 196)

High Court

Question of law

## **LEGAL PROFESSION BILL 2017**

### **OBJECTS AND REASONS**

The objects of this Bill are to regulate the legal profession, to facilitate the fair and efficient administration of justice and to provide for the protection of consumers of legal services and the public. It establishes two new legal entities to jointly regulate the profession, the Legal Profession Authority (LPA) and the Solomon Islands Law Society (SILS).

It sets out the requirements for admission to legal practice and the minimum standard of professional conduct expected from legal practitioners. It creates a Disciplinary Committee of SILS and a Disciplinary Tribunal to effectively deal with complaints about unsatisfactory professional conduct and professional misconduct. Both disciplinary bodies are presided over by a High Court Judge. The Bill also provides sufficient investigatory powers to ensure the disciplinary bodies can effectively investigate complaints.

It provides for the issue and annual renewal of practising certificates dependent upon compliance with the Act and Rules and compliance with the requirements to undertake continuing legal education. It introduces categories of practising certificates to properly reflect the knowledge and expertise of the practitioner.

The Bill sets out strict requirements for dealing with trust money for the protection of clients. It provides for separate trust accounts and for proper record keeping and auditing of trust accounts.

The Bill also has strict requirements in relation to the costs legal professionals can charge their clients. It requires the disclosure of costs and costs agreements. It provides for costs assessment by the courts if there is a dispute.

The Bill further provides for the appointment of supervisors of trust accounts, managers and receivers in certain specified circumstances where such intervention is necessary.

**HON. WILLIAM BRADFORD MARAU  
MINISTER FOR JUSTICE AND LEGAL AFFAIRS**

## **LEGAL PROFESSION BILL 2016**

### **EXPLANATORY MEMORANDUM**

**Part 1** provides for the short title of the Act. It provides for the commencement date of the Act. The commencement date is the day appointed by the Minister for Justice and Legal Affairs. It sets out the objects of the Act. It provides a dictionary of the specialist terms that are used in the Bill. It describes the requirements of the fit and proper person test for determining eligibility for admission to the legal profession.

**Part 2** provides a prohibitions and offences for persons who are not legal practitioners to engage in legal practice or to falsely advertise that they an entitlement to engage in legal practice.

**Part 3** relates to the Legal Profession Authority.

Division 1 establishes the Legal Profession Authority and sets out the functions and powers of the Authority.

Division 2 provides for membership of the Board, term of office alternate members, vacancies, remuneration and termination of appointments.

Division 3 sets out the requirements for the procedures and meetings of the Authority. It requires records of meetings and disclosure of interest.

Division 4 contains provisions relating to establishment of committees, preparation and presentation of the annual report and staff and resources allocated to the Authority.

**Part 4** relates to the Solomon Islands Law Society (SILS).

Division1 establishes the Solomon Islands Law Society and sets out its functions.

Division 2 provides for the membership of the Society and sets out the composition and functions of the Board of SILS. It requires SILS to adopt a Constitution to regulate its operations and procedures.

Division 3 establishes the Disciplinary Committee of SILS and sets out the functions and membership. It provides guidance for disclosure of personal interest.

Division 4 provides for the preparation and presentation of an annual report. It allows SILS to manage its own financial affairs and to charge fees for membership, services provided to members and continuing legal education.

**Part 5** relates to admission to the legal profession. It sets out the criteria for eligibility for admission. It describes the procedures for applying for admission. It requires the Board to advise the High Court about the suitability of applicants by providing a compliance certificate or a notice of refusal. It allows the Board to request information or documents from applicants to assist with making the decision. It provides that the Court consider the recommendation of the Board and decide whether or not the applicant should be admitted to the legal profession. It requires the Registrar of the High Court to maintain a roll of admitted legal practitioners. It requires the Registrar to issue a certificate to persons who are admitted.

**Part 6** relates to practising certificates.

Division 1 sets out the 5 categories of practising certificates and the eligibility requirements for each category. It provides that the Legal Profession Authority shall grant practicing certificates. It requires practitioners to renew practising certificates annually. It provides that the Authority may grant or refuse to issue a practising certificate after considering the listed criteria.

Division 2 sets out the conditions that apply to practicing certificates. These include conditions imposed by the Authority and statutory conditions imposed by the Act.

Division 3 provides for the amendment, suspension or cancellation of practising certificates. It allows immediate suspension if the Authority considers it is necessary in the public interest.

Division 4 allows the Authority to request documents or information to assist in making a decision whether or not to grant, renew, amend, suspend or cancel a practising certificate. It provides that the Authority may request a practitioner to return a practising certificate. It requires the Authority to maintain a register of legal practitioners with details of their practice location and any conditions imposed. It requires the register to be available for public inspection during business hours.

**Part 7** deals with the requirements for continuing legal education (CLE). It requires all legal practitioners to undertake CLE for professional development each year. It provides that SILS must approve and rate CLE

activities including attending or presenting seminars and workshops, private study, writing articles or engaging in post-graduate studies. It provides that the practitioner must give a certificate and information to the Authority each year about the practitioner's compliance with CLE obligations.

**Part 8** deals with the requirements relating to trust money.

Division 1 provides that the Authority or the Court may determine whether or not money is trust money if there is doubt or dispute. It sets out the circumstances by which when money is received by the law practice.

Division 2 sets out the requirements for keeping trust money. It provides that trust money must be deposited in a trust account, held and disbursed in accordance with the directions given by the person on whose behalf it is received and not mixed with other money. It requires the law practice to keep trust records in accordance with the rules made by the Authority. It requires legal practitioners to report irregularities in the practice's trust account. It creates an offence for causing a deficiency in a trust account. It provides for the payment of legal costs out of trust money if done in accordance with the rules. It sets out the requirements for dealing with controlled money.

Division 3 requires trust records to be audited by a certified practising accountant each financial year and requires the auditor's report to be given to the Authority. It provides that the law practice is responsible for paying the costs of the audit.

Division 4 provides for investigations into compliance with trust account requirements. It provides for the appointment of investigators by the Authority and the preparation and delivery of a report. It allows the Authority to recover the costs of the investigation from the law practice where there is evidence of a substantial or intentional breach of the provisions.

Division 5 sets out the requirements for dealing with unclaimed trust money. It provides for the money to be paid into a Legal Profession Fidelity fund administered by the Authority as a Special Fund if it is unclaimed for more than two years or the person who is entitled to the money refuses to accept payment. It provides that the Authority may pay the money to a claimant who is entitled to receive it. It provides that unclaimed Fidelity Fund money must be paid into consolidated revenue after 7 years.

**Part 9** deals with the subject of legal costs.

Division 1 provides that a law practice must provide a disclosure about costs to the client. It provides that a client is not required to pay any costs not disclosed until an assessment has been made. It provides that failure to disclose costs may be unsatisfactory professional conduct or professional misconduct.

Division 2 sets out the basis for recovering legal costs. It provides that they must be charged according to a scale of costs, under a costs agreement or on the basis of fair and reasonable value for the services. It provides that a client may request an itemised bill of costs and is not required to pay until this is provided.

Division 3 provides for the form and effect of a costs agreement. It provides that costs agreements can be set aside by a costs assessor on the application of a client.

Division 4 allows the Chief Justice to appoint costs assessors to assess legal fees on the application of a client to the High Court. It provides that the law practice is not entitled to recover any fees until after the assessment. It sets out the procedure and criteria for making a costs assessment determination.

**Part 10** deals with the procedures for investigating and determining complaints about the conduct of legal practitioners.

Division 1 defines the terms "unsatisfactory professional conduct" and "professional misconduct". It provides examples of conduct that would fit the definitions. It provides that the part applies to current and former legal practitioners but not to judges or magistrates.

Division 2 sets out the process for making and receiving complaints. It provides for the form of the complaint, the collection of further information and notification to the practitioner.

Division 3 provides for the initial response to the receipt of a complaint. It provides for preliminary assessment and summary dismissal in certain limited circumstances. It also allows the complainant to withdraw the complaint. Withdrawal by the complainant does not prevent the Authority from undertaking its own investigation or making a complaint in relation to the conduct.

Division 4 provides for the procedures to be undertaken when a complaint is referred to the Disciplinary committee by the Authority. It provides for

voluntary mediation of complaints and requires compulsory mediation of consumer disputes. It provides that the mediation process is confidential. It allows the Disciplinary Committee to determine the dispute and order remedial action including a caution, rectification, compensation or training and supervision. It provides that the Disciplinary Committee may refer a complaint to the Tribunal if it is serious or relates to professional misconduct.

Division 5 sets out the procedures for dealing with complaints that are investigated by the Authority. It provides that after an investigation, the Authority may dismiss the complaint, refer it to the Tribunal for determination or order remedial action.

Division 6 sets out the procedures for determining complaints referred to the Tribunal. It provides that the Authority must start the proceedings by way of application. It provides that hearings must be conducted according to the rules of evidence and are to be decided on the civil standard of the balance of probabilities. It sets out the parties to the proceedings and who is entitled to appear. It provides that the Tribunal may dismiss an application or make a finding of unsatisfactory professional conduct, professional misconduct or both. If a finding is made, the Tribunal may make appropriate orders to rectify or punish the conduct.

**Part 11** deals with the powers of investigation vested in the Authority. It provides for authorised officers to conduct investigations and provides them with the necessary powers to gather information. It provides a criminal offence and penalty for failing to comply with directions or obstructing an investigation.

**Part 12** deals with interventions in legal practice.

Division 1 sets out the circumstances which require an intervention to take place. It provides that the Authority may determine whether external intervention is warranted. It provides that the Authority may appoint a supervisor of trust money, a manager or a receiver in certain circumstances.

Division 3 deals with the appointment of trust account supervisors. It sets out the appointment method and the role and duties of the supervisor. It provides for the keeping of records and the termination of the appointment.

Division 4 deals with the appointment of a manager to a law practice. It sets out the role and duties of the manager. It requires the keeping of records and provides for the winding up of deceased estates. It provides for the termination of the manager.



Division 5 deals with the appointment of a receiver to a law practice. It sets out the role and duties of the receiver. It provides the necessary powers for a receiver to deal with trust money and regulated property. It provides for the keeping of records and the procedure for termination.

Division 6 contains miscellaneous provisions necessary for intervention. It requires financial institutions to disclose information and allows for the recovery of the costs of intervention from the law practice. It provides for the intervener to prepare and provide reports for the Authority.

**Part 13** deal with appeals against various decisions made under the Act. It provides the right of appeal and sets out the procedures for conducting the appeal proceedings.

**Part 14** contains miscellaneous provisions providing protection from liability for persons acting in good faith. It provides for the confidentiality of information and creates an offence for disclosure. It provides that all principals of a law practice may be liable for a contravention of the Act by the practice. It provides that a sole practitioner is liable for any contravention by the law practice. It provides for the making of rules by the Authority for admission, regulation of legal practice, professional conduct and continuing legal education.

**Part 15** provides for repeals, transitional provisions and consequential amendments. It repeals the Legal Practitioners Act (Cap.16). It allows for the smooth transition from the current regulatory regime to the new system. It provides for the continuation of current admissions, practising certificates, disciplinary matters and the transition of the Solomon Islands Bar Association to the Solomon Islands Law Society.

**The Schedule** to the Act sets out the decisions under the Act that are able to be appealed and the forum and manner of appeal for each decision.

Honiara, Solomon Islands  
Printed under the authority of the  
Solomon Islands Government

---

**Printed by Pacific Printers Limited**