

COAG draft

Legal Profession National Rules
under the
Legal Profession National Law
December 2010

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Legal Profession National Rules

Chapter 1 Preliminary

Part 1.1 Introduction

1.1.1 Citation

These Rules may be cited as the Legal Profession National Rules (General).

1.1.2 Commencement

- (1) Chapters # commence on [tbd].
- (2) The remaining provisions of these Rules commence on [tbd]

1.1.3 Objective

The objective of these Rules is to set out provisions contemplated by the National Law.

1.1.4 Authorising provision

These Rules are made under Part 9.1 of the National Law or under other provisions of the National Law, as specified in the relevant rules.

Part 1.2 Interpretation

1.2.1 Definitions

In these Rules:

National Law means the Legal Profession National Law.

suitability matter—see rule 1.2.2.

1.2.2 Suitability matters

Each of the following is a *suitability matter* in relation to a person:

- (a) whether the person is currently of good reputation and character;
- (b) whether the person is, or has been, an insolvent under administration;
- (c) whether the person has been convicted or found guilty of an offence in Australia or a foreign 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 engaged in legal practice in Australia:
 - (i) when not permitted to do so under a law or previous law of a State or Territory; or
 - (ii) if admitted, in contravention of a condition to which the admission was subject; or
 - (iii) if holding an Australian practising certificate, in contravention of a

- condition to which the certificate was subject or while the certificate was suspended;
- (e) whether the person has engaged in legal practice in a foreign country:
 - (i) when not permitted by or under a law of that country to do so; or
 - (ii) if permitted to do so, in contravention of a condition to which the permission was subject;
 - (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:
 - (i) the National Law, or a previous law of a jurisdiction that corresponds to that Law;
 - (ii) a corresponding foreign law;
 - (g) whether the person is, or has been, the subject of disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country;
 - (h) whether the person's name has been removed from:
 - (i) a roll of Australian lawyers, however described or expressed, in any jurisdiction; or
 - (ii) a foreign roll of practitioners;
 - (i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
 - (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
 - (k) whether, under the National Law, a previous corresponding law or a law of the Commonwealth, 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 the National Law, a previous corresponding law or a law of the Commonwealth, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
 - (m) whether the person is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner.

1.2.3 Government authority

The Australian Government Solicitor is declared to be within the definition of *government authority* in section 1.2.1 of the National Law.

Part 1.3 Vacant

Chapter 2 Threshold requirements regarding legal practice

Part 2.1 Unqualified legal practice

2.1.1 Authorising provision

The rules in this Part are made under Part 2.1 of the National Law.

2.1.2 Entitlement to certain titles

For the purposes of section 2.1.4 of the National Law, a person listed in column 3 of an item in the Table below is entitled to take or use the title specified in column 2 of that item in the circumstances specified in column 4 of that item.

1 Item	2 Title	3 Person	4 Circumstances
1	Legal practitioner	Australian legal practitioner	All circumstances
2	Barrister and solicitor, solicitor and barrister, solicitor, attorney	Australian legal practitioner	When the Australian legal practitioner holds an Australian practising certificate, other than an Australian practising certificate authorising him or her to engage in legal practice as or in the manner of a barrister only
3	Barrister	Australian legal practitioner	When the Australian legal practitioner holds an Australian practising certificate granted in a fused jurisdiction, or an Australian practising certificate granted in a non-fused jurisdiction that authorises him or her to engage in legal practice as or in the manner of a barrister only
4	Counsel	Australian legal practitioner	All circumstances
5	Senior Counsel or SC	Australian lawyer	When the Australian lawyer currently holds the status of Senior Counsel as recognised by the High Court or a Supreme Court of any jurisdiction
6	Queen's Counsel or QC, King's Counsel or KC, Her Majesty's Counsel, His Majesty's Counsel	Australian lawyer	When the Australian lawyer currently holds the appropriate status, as conferred by the Crown in any capacity or as recognised by the High Court or a Supreme Court of any jurisdiction
7	Attorney	Australian-registered foreign lawyer	When entitled to use the name, title or description by or under a law
8	Attorney	Patent attorney	When using the expression "patent attorney"

1 Item	2 Title	3 Person	4 Circumstances
9	Attorney	Donee of power of attorney	When indicating that the donee holds or is acting under a power of attorney
10	Attorney	Attorney-General of any jurisdiction, the Commonwealth or a foreign country	All circumstances
11	Solicitor	Solicitor-General of any jurisdiction, the Commonwealth or a foreign country	All circumstances
12	Lawyer	Australian Lawyer	All circumstances
13	Lawyer	Australian-registered foreign lawyer	All circumstances

2.1.3 Exemption from prohibition on engaging in legal practice

The following persons are exempt from the operation of section 2.1.2 (1) of the National Law:

- (a) a person carrying out conveyancing work in accordance with a licence in force under relevant jurisdictional legislation;
- (b) a land agent performing work in respect of instruments he or she is entitled to draw, fill up or prepare and to charge for, under a law of a jurisdiction or of the Commonwealth;
- (c) an officer or employee of a government authority drawing instruments in the course of his or her duty, otherwise than as parliamentary counsel, legislative counsel or legislative drafter (however described);
- (d) an officer or employee of a government authority undertaking appearance work in courts or tribunals under the authority of a law of a jurisdiction or of the Commonwealth;
- (e) a public trustee (however named) or a company performing trustee work on behalf of the government in the course of preparing a will or carrying out any other activities involving the administration of trusts, the estates of the living or deceased persons, or the affairs of living persons.

Part 2.2 Admission to the Australian legal profession

Division 1 Preliminary

2.2.1 Authorising provision

The rules in this Part are made under Part 2.2 of the National Law.

2.2.2 Definition

In this Chapter, *approved tertiary academic course* means a course of study listed in Schedule 2 or approved under rule 2.2.4.

Division 2 Academic qualifications

2.2.3 Academic qualification

For the purposes of section 2.2.3 of the National Law, the academic qualification for the issue of a compliance certificate is successful completion of an approved tertiary academic course in Australia.

2.2.4 Approval of tertiary academic courses

- (1) An academic institution may apply to the Board for approval of a tertiary academic course provided, or to be provided, by the institution.
- (2) The Board may approve an application under subrule (1) if the tertiary academic course:
 - (a) includes the equivalent of at least 3 years of full time study in law; and
 - (b) requires the student to acquire and demonstrate appropriate understanding of, and competence in, each of the elements of the areas of knowledge set out in Schedule 1.

Division 3 Practical legal training requirements

2.2.5 Practical legal training

- (1) For the purposes of section 2.2.3 of the National Law, the practical legal training requirement for the issue of a compliance certificate is acquiring and demonstrating an appropriate understanding of, and competence in, each element of the skills, values and practice areas set out in Schedule 3.
- (2) A person satisfies the practical legal training requirement by successfully completing either:
 - (a) a practical legal training course listed in Schedule 4 or provided by a provider approved by the Board under rule 2.2.6; or
 - (b) practical legal training, for a period of not less than 12 months under supervision in a workplace, in accordance with a plan approved by the Board.

2.2.6 Approval of providers of practical legal training courses

- (1) A person who provides, or proposes to provide, a practical legal training course, may apply to the Board for approval as a provider for the purposes of these Rules.

- (2) The Board may approve an application by a person under subrule (1) if it is satisfied that the person provides, or will provide, a practical legal training course that includes each element of the skills, values and practice areas set out in Schedule 3.

Division 4 Prerequisites for admission

2.2.7 Board to consider certain matters

For the purposes of section 2.2.3 of the National Law, in determining whether a person is a fit and proper person to be admitted, the Board must have regard to the suitability matters.

2.2.8 Suitability reports

For the purposes of rule 2.2.7, the Board may require an applicant for admission:

- (a) to provide either or both of the following:
- (i) a report from a Commissioner of Police as to whether the applicant has been convicted or found guilty of an offence in Australia;
 - (ii) a report by a registered medical practitioner in Australia as to the health of the applicant; and
- (b) to demonstrate his or her proficiency in English, if it is appropriate to do so and the applicant is:
- (i) a foreign lawyer; or
 - (ii) a person who obtained the whole or part of his or her qualifications, skills or experience overseas.

2.2.9 Compliance certificate

- (1) An application to the Board for a compliance certificate in accordance with section 2.2.5 of the National Law must include:
- (a) details of the applicant's eligibility under Divisions 2 and 3 of this Part; and
 - (b) a response to each suitability matter; and
 - (c) details of all matters that are reasonably relevant to a suitability matter.
- (2) An application for a compliance certificate must be accompanied by a fee of \$795.
- (3) However, the Board may:
- (a) enter into an arrangement with the applicant for payment of the fee by instalments (which may include instalments payable after issue of the compliance certificate), if satisfied that he or she is suffering hardship; and
 - (b) waive the fee in whole or in part, if satisfied that he or she is unable to pay it under an arrangement for instalments and that waiver is appropriate in the circumstances.
- (4) The Board must give the applicant written notice of its decision on the application.

2.2.10 Referral of matters about compliance certificates to local body for advice

A body to which a matter is referred under section 2.2.11 of the National Law is to respond to the referral within 30 days, or (at the Board's discretion) a longer period specified by the Board by providing the Board with written advice about the matter, including reasons.

Chapter 3 Legal practice

Parts 3.1–3.2 Vacant

Part 3.3 Australian legal practitioners

Division 1 Preliminary

3.3.1 Authorising provision

The rules in this Part are made under Part 3.3 of the National Law.

Division 2 Grant and renewal of Australian practising certificates

3.3.2 Application for grant or renewal of Australian practising certificate

- (1) An application by an Australian lawyer for the grant or renewal of an Australian practising certificate:
 - (a) must state the jurisdiction that he or she reasonably intends will be his or her principal place of legal practice in Australia; and
 - (b) if an automatic show cause event has occurred at any time in relation to the applicant and section 3.5.15 of the National Law requires a statement as part of the application—must include such a statement; and
 - (c) must address each of the matters set out in rule 3.3.3 (1); and
 - (d) must address any other matter the Board considers appropriate.
- (2) An application under subrule (1) must be accompanied by the fee applicable to the application.

3.3.3 Grant and renewal of Australian practising certificates

- (1) For the purposes of section 3.3.4 of the National Law, in determining whether an applicant is or is not a fit and proper person to hold an Australian practising certificate, the Board may have regard to the suitability matters and to any of the following matters:
 - (a) whether the applicant has obtained a previous Australian practising certificate under the National Law or a corresponding previous law of a jurisdiction because of incorrect or misleading information;
 - (b) whether the applicant has contravened a condition of a previous Australian practising certificate under the National Law or a corresponding previous law of a jurisdiction;
 - (c) whether the applicant has contravened the National Law or these Rules or a corresponding previous law of a jurisdiction;
 - (d) whether the applicant has contravened an order of a disciplinary body or an order of a court or tribunal relating to an order of a disciplinary body;
 - (e) whether the applicant has failed at any time to pay a required contribution or levy to the fidelity fund of a jurisdiction;

- (f) whether the applicant has failed to comply with a requirement under the National Law or these Rules or a corresponding previous law in relation to professional indemnity insurance;
 - (g) whether the applicant has failed to pay any costs or expenses for which the applicant was liable under the National Law or these Rules or a corresponding previous law of a jurisdiction;
 - (h) any other matter that the Board considers relevant.
- (2) In determining whether an applicant has or will have professional indemnity insurance as required by the National Law, the Board may have regard to:
- (a) evidence in the form of written advice from an insurer or provider or from an insurance broker to the effect that an insurer or other provider has agreed to issue a policy of professional indemnity insurance; or
 - (b) evidence that the premium for a policy of professional indemnity insurance has been received and accepted by the insurer or other provider for the purposes of the issue of the policy.

3.3.4 Discretionary conditions on Australian practising certificates

- (1) For the purposes of section 3.3.13 of the National Law, the discretionary conditions that the Board may impose on an Australian practising certificate are any one or more of the following:
- (a) a condition:
 - (i) as to the type of legal practice in which the holder may engage; or
 - (ii) as to the type of legal practice in which the holder may not engage;
 - (b) subject to subrule (2), a condition that the holder undertake and complete one or more of the following:
 - (i) continuing legal education;
 - (ii) specific legal education or training;
 - (iii) a specified period of supervised legal practice;
 - (c) a condition restricting the holder to particular arrangements concerning employment or supervision;
 - (d) a condition that the holder may not supervise legal practice by others;
 - (e) a condition requiring the holder to undergo counselling or medical treatment or to act in accordance with medical advice given to the holder;
 - (f) a condition requiring the holder to use the services of an accountant or other financial specialist in connection with his or her legal practice;
 - (g) a condition requiring the holder to provide the Board or a specified body with evidence as to:
 - (i) any outstanding tax obligations of the holder; and
 - (ii) provision made by the holder to satisfy any such outstanding obligations;
 - (h) in relation to a holder who is authorised to engage in legal practice only as a barrister, a condition requiring the holder:

- (i) not to engage in legal practice in partnership with another person; or
 - (ii) not to engage in legal practice as an employee of another person; or
 - (iii) not to hold office as a principal or director of a business, whether corporate or unincorporated, otherwise than as a sole practitioner;
- (i) a condition agreed by the holder;
 - (j) without limiting any other paragraph, a condition that would or may enable the holder to fulfil the inherent requirements of an Australian legal practitioner.
- (2) The Board must not impose a condition referred to in subrule (1) (b) unless the Board is satisfied that, having regard to the holder's academic qualifications, legal training or experience in legal practice or conduct, it is reasonable to impose the condition.

3.3.5 Duration of Australian practising certificate

- (1) An Australian practising certificate is in force:
- (a) if granted, from the commencement date specified in it until the following 30 June; or
 - (b) if renewed, from 1 July in the year for which it is renewed until the following 30 June;
- unless earlier suspended, cancelled or surrendered.
- (2) If the holder of an Australian practising certificate makes an application to the Board for a new Australian practising certificate before the expiry of the holder's current certificate, the current certificate continues in force, subject to the National Law, until:
- (a) the Board grants, or refuses to grant, a new Australian practising certificate; or
 - (b) the applicant withdraws the application;
- whichever first occurs.

Part 3.4 Foreign lawyers

Division 1 Preliminary

3.4.1 Authorising provision

The rules in this Part are made under Part 3.4 of the National Law.

Division 2 Registration of foreign lawyers

3.4.2 Application for Australian registration certificate

- (1) An application by a foreign lawyer for the grant or renewal of an Australian registration certificate under Part 3.4 of the National Law:
- (a) must state the jurisdiction that he or she reasonably intends will be his or her principal place of legal practice in Australia; and
 - (b) if an automatic show cause event has occurred at any time in relation to the applicant and section 3.5.15 of the National Law requires a statement as

- part of the application—must include such a statement; and
- (c) must address each of the matters set out in section 3.4.5 (3) of the National Law; and
 - (d) must address any other matter the Board considers appropriate.
- (2) A fee for an application for the grant or renewal of an Australian registration certificate in this jurisdiction must not exceed the maximum fee payable by an Australian lawyer for an Australian practising certificate.
 - (3) The Board may require an applicant for the grant or renewal of an Australian registration certificate to provide evidence that verifies the accuracy of the information set out in the application.
 - (4) The Board may require an applicant for the grant or renewal of an Australian registration certificate to pay the reasonable costs and expenses incurred by the Board in making enquiries relating to the applicant's application.

3.4.3 Discretionary conditions on Australian registration certificate

For the purposes of section 3.4.10 of the National Law, the discretionary conditions that the Board may impose on an Australian registration certificate are any one or more of the following:

- (a) a condition:
 - (i) as to the type of legal practice in which the holder may engage; or
 - (ii) as to the type of legal practice in which the holder may not engage;
- (b) any other condition that may be imposed on an Australian practising certificate under the National Law;
- (c) a condition agreed by the holder.

3.4.4 Duration of Australian registration certificate

- (1) An Australian registration certificate is in force from the commencement date specified in the certificate until the following 30 June, unless earlier suspended or cancelled.
- (2) If an Australian-registered foreign lawyer makes an application to the Board for the renewal of an Australian registration certificate before the expiry of the current certificate, the current certificate continues in force, subject to the National Law, until:
 - (a) the Board renews, or refuses to renew, the Australian registration certificate; or
 - (b) the applicant withdraws the application;whichever first occurs.
- (3) The renewal of an Australian registration certificate under this rule takes effect as from 1 July next after the date on which the application for renewal is made.

Part 3.5 Variation, suspension or cancellation of certificates

3.5.1 Notice by holder of certificate of automatic show cause event

For the purposes of section 3.5.16 of the National Law, the maximum period for

which a longer period may be allowed by the Board is 14 days.

3.5.2 Notice by holder of certificate of designated show cause event

For the purposes of section 3.5.19 of the National Law, the maximum period for which a longer period may be allowed by the Board is 14 days.

Part 3.6 Vacant

Part 3.7 Incorporated and unincorporated legal practices

Division 1 General

3.7.1 Authorising provision

The rules in this Part are made under Part 3.7 of the National Law.

3.7.2 Professional associations

For the purposes of the National Law and these Rules, *incorporated legal practice* does not include a professional association.

3.7.3 Directors of incorporated legal practice and pro bono services

- (1) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided on a pro bono basis by an Australian legal practitioner employed by the incorporated legal practice.
- (2) Subrule (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

Division 2 Incorporated and unincorporated legal practices

3.7.4 Notice of intention to engage in legal practice

For the purposes of section 3.7.3 (1) of the National Law, the notice of intention to engage in legal practice must be given to the Board at least 7 days before starting to engage in legal practice.

3.7.5 Notice of cessation of practice

For the purposes of section 3.7.3 (3) of the National Law, the notice of cessation of legal practice must be given to the Board within 14 days after the cessation of legal practice.

3.7.6 Disclosure obligations

For the purposes of section 3.7.6 of the National Law, the disclosure must be made by giving the person notice in writing:

- (a) setting out the legal services to be provided; and
- (b) stating whether or not all of the services are to be provided by an Australian legal practitioner; and
- (c) if some or all of the services are not to be provided by an Australian legal practitioner, identifying those services and indicating the status or qualifications of the person or persons who are to provide the services; and
- (d) stating that the National Law and these Rules apply to the provision of

legal services but do not apply to the provision of non-legal services.

3.7.7 Commissioner to be advised of notices given under these Rules

The Board must advise the Commissioner of each notice referred to in this Division given to the Board.

Part 3.8–3.9 Vacant

Chapter 4 Business practice and professional conduct

Part 4.1 Vacant

Part 4.2 Trust money and trust accounts

Division 1 Preliminary

4.2.1 Authorising provision

The rules in this Part are made under Part 4.2 of the National Law.

4.2.2 Definition

In this Part, *written direction money* means trust money that is received or held by a law practice, in respect of which the law practice has a written direction to deal with the money otherwise than by depositing it in a general trust account, and that is not controlled money.

4.2.3 Application of these Rules—barristers

For the purposes of section 4.2.8 (2) of the National Law, the applicable requirements relating to money received by a barrister (otherwise than from an Australian legal practitioner acting in the manner of a solicitor) are as follows:

- (a) that the money be deposited, within a reasonable time after receipt, in an account maintained with an ADI in connection with the barrister's law practice;
- (b) that the money remains deposited in such an account until:
 - (i) the barrister gives a bill to the client; or
 - (ii) the money is refunded to the client; or
 - (iii) the money is paid to an Australian legal practitioner engaged by the client in the matter.

Division 2 Trust money and trust accounts

4.2.4 Maintenance of general trust account

A general trust account established in a jurisdiction:

- (a) must be established with an authorised ADI; and
- (b) must include in its name the name of the law practice or the business name under which the law practice engages in legal practice, and the expression "law practice trust account" or "law practice trust a/c"; and
- (c) in the case of a single general trust account under section 4.2.11 (1) of the National Law—must not be an account that the Commissioner has refused authority for the law practice to operate under section 4.2.11 (4) of that Law.

4.2.5 Withdrawal of trust money

- (1) A law practice that has given a client a bill specifying the amount payable by the client for legal costs may withdraw money for legal costs from a general trust account or a controlled money account as soon as:

- (a) the client gives the law practice written authorisation to withdraw that amount; or
 - (b) the end of the period of 7 days after the client was given the bill, if the client does not object to the amount specified in the bill; or
 - (c) the end of the period of 60 days after the client was given the bill, if the client objects to the amount specified in the bill within 7 days of being given the bill but has not referred the matter to the Commissioner or for costs assessment.
- (2) If:
- (a) a law practice has given a client a bill specifying the amount payable by the client for legal costs; and
 - (b) the client gives the law practice written authorisation to the extent of withdrawing a specified part only of that amount;
- the law practice may withdraw money for legal costs from a general trust account to that extent only, and the law practice may do so as soon as the client gives the authorisation.
- (3) In this rule, *client* includes a third party payer.

4.2.6 Receipting of trust money

- (1) A law practice must make out a receipt as soon as practicable:
 - (a) after trust money is received; or
 - (b) in the case of trust money received by direct deposit, after the law practice receives or accesses notice or confirmation of the deposit from the ADI concerned.
- (2) The receipt must contain the following particulars:
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the number of the receipt;
 - (c) the amount of money received;
 - (d) the form in which the money was received;
 - (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the reason for which the money was received;
 - (h) the name of the law practice or the business name under which the law practice engages in legal practice and the expression "trust account" or "trust a/c";
 - (i) the name of the person who made out the receipt.
- (3) The receipt must be made out in duplicate unless, when the receipt is made out the particulars referred to in subrule (2) are recorded by a computerised accounting system in the trust account receipts cash book.
- (4) The original receipt must, on request, be given to the person from whom the trust

money was received.

- (5) Receipts must be consecutively numbered and issued in consecutive sequence.
- (6) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (7) This rule does not apply to controlled money.

4.2.7 Deposit records for trust money

- (1) If a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit, a deposit record must be produced to the ADI at the time the deposit is made.
- (2) The following particulars must be recorded on the deposit record:
 - (a) the date of the deposit;
 - (b) the amount of the deposit;
 - (c) whether the deposit consists of cheques or cash (and the amount of each);
 - (d) for each cheque:
 - (i) the name of the drawer of the cheque;
 - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn;
 - (iii) the amount of the cheque.
- (3) The deposit record must be made out in duplicate.
- (4) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

4.2.8 Application of rules 4.2.9–4.2.12

Rules 4.2.9–4.2.12 apply where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

4.2.9 Computerised accounting systems

- (1) A law practice must print a paper copy of trust records as follows:
 - (a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books is at that time kept in electronic form that is readable or reportable on demand;
 - (b) reconciliation statements are to be printed as at the end of each named month;
 - (c) lists of trust account ledgers and their balances are to be printed monthly as at the end of each named month;
 - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;
 - (e) trust ledger accounts, the register of controlled money and trust account transfer journal are to be printed before they are archived or deleted from the system;
 - (f) trust ledger account and controlled money account details are to be printed

on request by, and provided to, an investigator appointed under Chapter 7 of the National Law.

- (2) The trust records printed monthly as at the end of a named month under subrule (1) (a), (b), (c) or (d) must be printed within 15 working days after the named month.
- (3) The law practice must keep paper copies except where they are printed on request.
- (4) The law practice must keep the electronic copy of the trust account cash books.

4.2.10 Chronological record of information to be made

A law practice must maintain and keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to each of the following:

- (a) client name;
- (b) client address;
- (c) matter reference;
- (d) matter description;
- (e) ledger account number or other descriptor.

4.2.11 Requirements regarding computerised accounting systems

A law practice must ensure that:

- (a) its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debt balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind; and
- (b) the system is not capable of deleting a trust ledger unless:
 - (i) the balance of the account is zero and all outstanding cheques have been presented; and
 - (ii) when the account is deleted, a copy of the account is kept in a permanent form; and
- (c) any entry in a record produced in a permanent form appears in chronological sequence; and
- (d) each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted; and
- (e) its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment; and
- (f) its computerised accounting system requires input in every field of a data entry screen intended to receive information required by these Rules to be included in trust records.

4.2.12 Back-ups

For the purposes of section 4.2.23 of the National Law, a law practice must ensure that:

- (a) a back-up copy of all records required under the National Law and these Rules is made at least once each month; and
- (b) each back-up copy is kept by the law practice; and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

4.2.13 Method of payment

- (1) If a withdrawal of trust money from a general trust account of a law practice is made by cheque, the cheque:
 - (a) must be made payable to or to the order of a specified person or persons and must not be made payable to bearer or to cash; and
 - (b) must be crossed "not negotiable"; and
 - (c) must include:
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression "law practice trust account" or "law practice trust a/c".
- (2) A cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:
 - (a) an authorised principal of the law practice; or
 - (b) if such a principal is not available:
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) by two or more authorised associates jointly.
- (3) A written record of the required particulars must be kept of each payment made by cheque or electronic funds transfer, unless those particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the cheque is issued or the transfer is effected. A written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.
- (4) For the purposes of subrule (3), the **required particulars** are as follows:
 - (a) the date and number of the cheque or electronic funds transfer;
 - (b) the amount ordered to be paid by the cheque or electronic funds transfer;
 - (c) in the case of a cheque, the name of the person to whom the payment is to be made or, if the cheque is made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) in the case of an electronic funds transfer, the name and number of the account to which the amount was transferred and relevant BSB number;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, or in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person

- receiving the benefit of the payment;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the reason for the payment.
- (5) Written records relating to payments by cheque or electronic funds transfer (including cheque or transfer requisitions) must be kept in the order in which the cheques or transfers were issued or effected.

4.2.14 Trust account receipts cash books

- (1) A law practice that maintains a general trust account must keep a trust account receipts cash book in which the following particulars must be recorded in respect of each receipt of trust money:
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the form in which the money was received;
 - (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the reason for which the money was received;
 - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out and must be recorded within 5 working days of the receipt being made out.

4.2.15 Trust account payments cash book

- (1) A law practice that maintains a general trust account must keep a trust account payments cash book in which the following particulars are recorded in respect of each payment of trust money:
- (a) the date and number of the cheque or electronic funds transfer;
 - (b) the amount ordered to be paid by the cheque or the amount transferred;
 - (c) in the case of a cheque—the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) in the case of an electronic funds transfer:
 - (i) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (ii) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

- (e) details clearly identifying the name of the person on whose behalf the payment was made, the matter description and the appropriate ledger reference;
 - (f) particulars sufficient to identify the reason for payment.
- (2) The particulars in respect of payments must be recorded:
- (a) in the order in which the payments are made; and
 - (b) within 5 working days of the day the payment was made.

4.2.16 Journal transfers

- (1) Trust money may be transferred by journal entry from one trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if:
- (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
 - (b) the transfer is authorised in writing by an authorised principal of the law practice or if such a principal is not available:
 - (i) an authorised legal practitioner associate of the law practice; or
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) two or more authorised associates jointly; and
 - (c) the transfer is authorised in writing by an external intervener for the law practice; and
 - (d) the transfer is authorised in writing by the client.
- (2) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (3) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry:
- (a) the date of the transfer;
 - (b) the trust ledger account from which the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description);
 - (c) the trust ledger account to which the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description);
 - (d) the amount transferred;
 - (e) particulars sufficient to identify the reason for the transfer.
- (4) Journal pages or entries must be consecutively numbered.
- (5) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

4.2.17 Recording transactions in trust ledger accounts

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each person in each

matter for which trust money has been received by the practice.

- (2) The following particulars must be recorded, and kept up to date, in the title of a trust ledger account:
 - (a) the name of the person for or on behalf of whom the trust money was paid;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) The following particulars must be recorded for each transaction in the trust ledger account:
 - (a) the date of the transaction;
 - (b) the appropriate reference number and transaction type;
 - (c) particulars sufficient to identify the reason for the transaction;
 - (d) the amount of money in the transaction;
 - (e) if the transaction type is:
 - (i) a receipt—the provider of the amount and the date the amount was received if that date is different from the date of receipt;
 - (ii) a payment by cheque—the payee or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (iii) a payment by electronic funds transfer—the account name and number and the relevant BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (iv) a journal entry—the appropriate ledger reference number, the name of the person on whose behalf the transfer was made and the matter description.
- (4) Transactions relating to trust money must be recorded in the trust ledger account:
 - (a) in the order in which the transactions occur; and
 - (b) within 5 working days of the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (5) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

4.2.18 Reconciliation of trust records

- (1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing:
 - (a) a statement:
 - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
 - (ii) showing the date the statement was prepared; and

- (b) a statement:
 - (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
 - (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
 - (iii) showing the date the statement was prepared.
- (3) The statements must be prepared within 15 working days after the end of the month concerned.
- (4) The statements must be kept by the law practice.

4.2.19 Trust ledger account in name of law practice or legal practitioner associate

- (1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this rule.
- (2) A law practice may maintain in its trust ledger:
 - (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and
 - (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subrule (2) (a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.
- (4) In a case to which subrule (2) (b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

4.2.20 Notification requirements regarding general trust accounts

- (1) Within 14 days after establishing a general trust account, a law practice must give the Commissioner written notice of that fact.
- (2) A law practice:
 - (a) either before, or within 14 days after, authorising or terminating the authority of an associate of the practice or an Australian legal practitioner:
 - (i) to sign cheques drawn on a general trust account of the practice; or
 - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice;must give the Commissioner written notice of that fact (including the name and address of the associate or practitioner and indicating, in the case of an associate, whether the associate is an employee of the practice); and
 - (b) during July in each year, must give the Commissioner written notice of the

associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July in that year:

- (i) to sign cheques drawn on a general trust account of the practice; or
 - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (3) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the Commissioner written notice of that fact.
- (4) A notice under this rule given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this rule, *law practice* includes a former law practice and the persons who were principals of a law practice immediately before the practice ceased to exist as a law practice or to engage in legal practice

4.2.21 Notification requirement regarding each trust account

A law practice must notify the Commissioner of the following details in respect of each account that is maintained at an ADI by the law practice (or by any legal practitioner associate of the practice) and in which money entrusted to the law practice (or to any legal practitioner associate of the practice) is held:

- (a) the name of the ADI, together with its BSB number;
- (b) the name of the account, together with its account number;
- (c) the name of each person who is authorised to operate on the account;
- (d) for each amount of money so entrusted:
 - (i) the name of the person for whom the money is entrusted;
 - (ii) the reason for which the money is entrusted;
 - (iii) the date on which the money is deposited in the account, together with the manner in which it is deposited;
 - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn;
- (e) the date on which the account was opened.

4.2.22 Law practice closing down, closing office or ceasing to receive or hold trust money

- (1) A law practice that ceases to hold trust money because it ceases to exist as a law practice, to engage in legal practice or to practise in such a way as to receive trust money must, within 14 days of so ceasing to hold trust money, give the Commissioner:
- (a) written notice of such of those facts as are applicable and the dates of their occurrence; and
 - (b) particulars sufficient to identify the law practice's general trust accounts.
- (2) In this rule, *law practice* includes a former law practice and the persons who were principals of the law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice.

4.2.23 Trust account statements

- (1) A law practice must give a trust account statement to each person for whom or on

whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the practice.

- (2) Where relevant, the law practice must give the person a separate statement for:
 - (a) each trust ledger account; and
 - (b) each record of controlled money movements; and
 - (c) each record of dealings with the money that is the subject of a power to which the law practice or an associate of the law practice is a party.
- (3) A trust account statement is to contain particulars of:
 - (a) all the information required to be kept under the National Law or these Rules in relation to the trust money included in the relevant ledger account or record; and
 - (b) the remaining balance (if any) of the money.
- (4) A trust account statement is to be given:
 - (a) as soon as practicable after completion of the matter to which the ledger account or record relates; and
 - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; and
 - (c) except as provided by subrule (5), as soon as practicable after 30 June in each year.
- (5) The law practice is not required to give a trust account statement under subrule (4) (c) in respect of a ledger account or record if at 30 June:
 - (a) the ledger account or record has been open for less than 6 months; or
 - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
 - (c) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (6) The law practice must keep a copy of a trust account statement given under this rule.

4.2.24 Trust account statements for commercial or government clients

- (1) Rule 4.2.23 does not apply to a commercial or government client to the extent to which the client directs the law practice not to provide trust account statements under that rule.
- (2) If the commercial or government client directs the law practice to provide trust account statements on a basis different from that prescribed by rule 4.2.23, the law practice must provide those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (3) The law practice must keep a copy of a trust account statement given under this rule.

4.2.25 Statements regarding receipt or holding of trust money

- (1) The Commissioner may, by written notice, require a law practice to give the Commissioner a statement within a specified period:

- (a) specifying whether or not the practice has, during a period specified by the Commissioner, received or held trust money; and
- (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs:
 - (i) general trust money;
 - (ii) controlled money;
 - (iii) transit money;
 - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise) and may be withdrawn or varied by a further notice.

4.2.26 Trust money subject to specific powers

- (1) This rule has effect for the purposes of section 4.2.17 of the National Law.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the law practice must keep:
 - (a) a record of all dealings with the money to which the law practice or associate is a party; and
 - (b) all supporting information in relation to the dealings;in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

4.2.27 Unclaimed money

- (1) This rule applies to a law practice holding money in a trust account:
 - (a) if:
 - (i) the law practice cannot find the person on whose behalf the money is held or a person authorised to receive it; or
 - (ii) a person referred to in subparagraph (i) refuses to accept payment of the money; or
 - (b) if, on 1 April in a year:
 - (i) the law practice cannot, and could not for 2 years immediately before that day, determine who is legally entitled to receive the money; and
 - (ii) the law practice considers legal proceedings are necessary to resolve who is legally entitled to receive the money; and
 - (iii) the persons who may be, or claim to be, entitled to receive the money have not started legal proceedings to resolve the matter.
- (2) The law practice may:
 - (a) pay the money to the Treasurer for credit to the Consolidated Fund or another fund nominated in applicable jurisdictional legislation; and
 - (b) give the Treasurer such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the law

practice.

- (3) If a law practice pays money to the Treasurer under subrule (2), the practice is relieved from any further liability in relation to the money.
- (4) The Treasurer must pay money deposited under this rule to a person who satisfies the Treasurer as to his or her entitlement to the money.
- (5) Payment of money to a person under subrule (4):
 - (a) discharges the Crown and the Treasurer from any liability in relation to the money; and
 - (b) does not discharge the person from any liability to another person who establishes a right to the money.
- (6) The Treasurer may require any person to give information that the person has, or can obtain, about the entitlement of a person to money paid to the Treasurer under this rule and attempts made to locate the person.
- (7) A person to whom a requirement is made under this rule must comply with the requirement and must not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.
- (8) In this rule, *Treasurer* means the Treasurer for this jurisdiction.

Division 3 Controlled money

4.2.28 Receipt of controlled money

- (1) If a law practice receives controlled money, it must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (2) A law practice must make out a receipt as soon as possible after receiving controlled money or, in relation to a direct deposit, after receiving notice or confirmation of the deposit from the relevant ADI.
- (3) On request from the person from whom controlled money is received, the law practice must give that person a copy of the receipt.
- (4) The receipt must be made out in duplicate, unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the register of controlled money, and must contain the following particulars:
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the reason for which the money was received;
 - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;

- (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "controlled money receipt";
 - (i) the name of the person who made out the receipt;
 - (j) the number of the receipt.
- (5) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (6) Receipts must be consecutively numbered and issued in consecutive sequence.
- (7) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (8) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

4.2.29 Withdrawal of controlled money from controlled money account

- (1) Despite any directions to the contrary, a law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of:
- (a) an authorised principal of the law practice; or
 - (b) if a principal referred to in paragraph (a) is not available:
 - (i) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose; or
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
 - (iii) two or more associates of the law practice jointly.
- (3) A written record of the required particulars must be kept of each withdrawal.
- (4) If at the time the withdrawal is made the required particulars are recorded by a computerised accounting system, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.
- (5) For the purposes of this rule, the *required particulars* are as follows:
- (a) the date and number of the transaction;
 - (b) the amount withdrawn;
 - (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

- (f) particulars sufficient to identify the reason for which the payment was made;
 - (g) the person or persons effecting, directing or authorising the withdrawal.
- (6) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.

4.2.30 Register of controlled money

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information:
 - (a) the name of the person on whose behalf the controlled money is held;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter;
 - (d) any changes to the information referred to in paragraphs (a)–(c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account:
 - (a) the date the controlled money was received;
 - (b) the number of the receipt;
 - (c) the date the money was deposited in the controlled money account;
 - (d) the name of and other details clearly identifying the controlled money account;
 - (e) the amount of controlled money deposited;
 - (f) details of the deposit sufficient to identify the deposit;
 - (g) interest received;
 - (h) details of any payments from the controlled money account, including the particulars required to be recorded under these Rules.
- (5) Subject to subrule (6), particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must keep as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 working days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month:
 - (a) containing a list of the practice's controlled money accounts showing:

- (i) the name, number and balance of each account in the register; and
 - (ii) the name of the person on whose behalf the controlled money in each account was held; and
 - (iii) a short description of the matter to which each account relates; and
- (b) showing the date the statement was prepared.
- (9) The statement required to be prepared each month under subrule (8) must be reviewed by a principal of the law practice who is authorised to receive trust money and that review must be evidenced on the statement.

Division 4 External examinations

4.2.31 External examiners

- (1) For the purposes of Part 4.2 of the National Law, the Commissioner may, in writing, designate persons (including persons employed or engaged by the Commissioner) as eligible to be appointed as external examiners.
- (2) A person who is not designated under subrule (1) is not eligible to be appointed as an external examiner.
- (3) The Commissioner may, in writing, revoke the designation of a person under subrule (1).
- (4) In this Part, other than this rule, *external examiner* means a person eligible under this rule to hold appointment as an external examiner.

4.2.32 Appointment of external examiner

A law practice must give to the Commissioner:

- (a) within 30 days after first receiving trust money (other than transit money) in this jurisdiction—written notice of the external examiner appointed by the practice as its external examiner; and
- (b) within 7 days after an external examiner ceases to be the external examiner of the law practice—written notice of that fact; and
- (c) within 30 days after an external examiner ceases to be the external examiner appointed by the practice—written notice of the successor external examiner appointed by the practice as its external examiner.

4.2.33 Standard form reports by external examiners

- (1) If the Commissioner publishes a standard form for an external examiner's report, each external examiner must report in accordance with that form.
- (2) The Commissioner may, in writing given to an external examiner, exempt the examiner from the requirement to report in accordance with the standard form.

4.2.34 Final external examination

- (1) If a law practice:
 - (a) ceases to be authorised to receive trust money or ceases to engage in legal practice; and
 - (b) has held a trust account;

the law practice must appoint an external examiner to examine and report on the trust records of the practice:

(c) in respect of the period since an external examination was last conducted;
and

(d) in respect of each period of 12 months after that period; and

(e) in respect of any remaining period thereafter;

during which, or any part of which, the practice held trust money.

(2) The law practice must give the Commissioner a copy of each report undertaken by its external examiner in accordance with this rule within 60 days after the end of the period to which the report relates.

Part 4.3 Legal costs

Division 1 Preliminary

4.3.1 Authorising provision

The rules in this Part are made under Part 4.3 of the National Law.

Division 2 Disclosure

4.3.2 Exception for disclosure obligations

For the purposes of section 4.3.6 (6) of the National Law, the specified amount is \$750 (excluding GST and disbursements).

Division 3 Vacant

Division 4 Bills for costs

4.3.3 How a bill for costs is to be given

- (1) For the purposes of section 4.3.20 of the National Law, a bill for costs given by a law practice to a client must be given:
 - (a) by personal delivery to the client or an agent of the client; or
 - (b) by sending it by post to the client or an agent of the client:
 - (i) at the usual or last known business or residential address of the client or an agent of the client; or
 - (ii) at the address nominated to the law practice for that purpose by the client or an agent of the client; or
 - (c) by delivery to a person:
 - (i) at the usual or last known business or residential address of the client or an agent of the client; or
 - (ii) at the address nominated to the law practice for that purpose by the client or an agent of the client;
being a person who appears to be at least 16 years of age and to be employed at, or to reside at, that address; or
 - (d) electronically to an electronic address given to the law practice by the client or an agent of the client for that purpose.
- (2) In this rule, *agent*, in relation to a person, includes a law practice that or an Australian legal practitioner who has authority to accept service of legal process on behalf of the person.

4.3.4 Interest on unpaid legal costs

- (1) For the purposes of section 4.3.25 of the National Law, the rate of interest is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.

(2) In this rule:

Cash Rate Target means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target.

relevant date means the date the bill was issued by the law practice concerned.

Part 4.4 Professional indemnity insurance

Division 1 Preliminary

4.4.1 Authorising provision

The rules in this Part are made under Part 4.4 of the National Law.

Division 2 Professional indemnity insurance

4.4.2 Minimum standards for professional indemnity insurance

- (1) This rule sets out the minimum standards for professional indemnity insurance for the purposes of section 4.4.2 of the National Law.
- (2) Professional indemnity insurance may be underwritten on the basis of:
 - (a) coverage of a law practice, including all the legal practitioner associates of the law practice; or
 - (b) coverage of an individual Australian legal practitioner.
- (3) Professional indemnity insurance must provide indemnity for the private legal practice of the insured in relation to the provision of legal services within Australia.
- (4) Professional indemnity insurance must extend to civil liability incurred in connection with the legal services of the insured and persons engaged by the insured in the provision of legal services.
- (5) Professional indemnity insurance must provide indemnity for claims actually made during the period of insurance that arise from the insured's law practice and for claims made in respect of circumstances notified during the period of insurance.
- (6) Professional indemnity insurance must provide minimum coverage of \$1.5 million for each and every claim, or each and every loss, inclusive of the claimant's costs and defence costs.
- (7) Professional indemnity insurance must provide indemnity for any former principals of, or those formerly engaged by, the insured and by any prior law practice of the insured.
- (8) Professional indemnity insurance must provide indemnity for a minimum of seven years for run-off liabilities in the event that the insured dies or ceases to exist or to provide legal services for any reason.
- (9) In the case of a claim arising from dishonesty or fraud, professional indemnity insurance must not exclude indemnity of a principal of, or person engaged by, the insured who was not knowingly connected with any dishonesty or fraud related to the claim.
- (10) Professional indemnity insurance need not but may provide indemnity to the extent that the subject matter of the claim entitles a claimant to claim and receive compensation from a fidelity fund, guarantee fund or similar cover provided under jurisdictional legislation.
- (11) Professional indemnity insurance must not provide the insurer with a right to

avoid or cancel cover because of any innocent or non-fraudulent non-disclosure or misrepresentation by the insured.

- (12) Professional indemnity insurance must provide retroactive cover except for claims arising out of fraud or dishonesty.

4.4.3 Notice to be given where certain legal services not covered by insurance

- (1) A law practice which, or an Australian legal practitioner who, provides legal services outside Australia to a client based in Australia when those services are not covered by professional indemnity insurance in accordance with the National Law and these Rules must give written notice to the client of that fact.
- (2) A notice under subrule (1) must be given before the legal services are provided.

4.4.4 Board may inspect policies

The Board may request a law practice or an Australian legal practitioner to submit a legal professional indemnity insurance policy, other than a policy approved by the Board, to the Board for assessment as to whether the policy is a complying policy of professional indemnity insurance.

4.4.5 Exemptions

- (1) For the purposes of section 4.4.7 of the National Law, the following categories of persons are exempt from the requirement to have professional indemnity insurance:
- (a) a corporate legal practitioner or government legal practitioner who:
 - (i) provides legal services only as an employee to his or her employer in the course of employment; and
 - (ii) does not receive a fee, gain or reward other than his or her ordinary remuneration as an employee;
 - (b) a holder of a statutory office of the Commonwealth or of a jurisdiction;
 - (c) a person holding an office or position, or acting as, parliamentary counsel, legislative counsel or legislative drafter (however described) under a contract of service, or contract for services, with the Crown.
- (2) Subrule (1) does not affect the requirement for an Australian legal practitioner to have professional indemnity insurance when engaging in legal practice as a volunteer at a community legal service or otherwise on a pro bono basis.

Part 4.5 Fidelity cover

Division 1 Preliminary

4.5.1 Authorising provision

The rules in this Part are made under Part 4.5 of the National Law.

Division 2 Defaults and claims

4.5.2 Time of default

- (1) A default is taken to have occurred when the act or omission giving rise to or constituting the default occurred.
- (2) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed.

4.5.3 Defaults to which National Law does not apply

Part 4.5 of the National Law does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the law practice for or in connection with:

- (a) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate is required to hold an Australian financial services licence covering the provision of the financial service; or
- (b) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate provides the service as an authorised representative of another person who carries on a financial services business; or
- (c) investment purposes, whether on its own account or as an agent, unless:
 - (i) the money or property was entrusted to or held by the law practice in the ordinary course of legal practice and primarily in connection with the provision of legal services to or at the direction of the client; and
 - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

4.5.4 Making a claim

- (1) For the purposes of section 4.5.16 of the National Law, a claim against a fidelity fund is to be given to a fidelity authority.
- (2) Where necessary, a fidelity authority must give a claim received by it to the relevant fidelity authority.

4.5.5 Claims

- (1) The fidelity authority may require a person who makes a claim:

- (a) to give further information about the claim or any dispute to which the claim relates; or
 - (b) to verify the claim or any further information by statutory declaration.
- (2) A claim about a default of a law practice:
- (a) may be made despite a change in status of the law practice or the associate concerned after the occurrence of the default; and
 - (b) is not affected by the change in status.
- (3) In this rule, ***change in status*** includes:
- (a) in relation to a law practice:
 - (i) a change in the directorship, membership or staffing of the law practice; or
 - (ii) the dissolution or winding up of the law practice; or
 - (b) in relation to an associate who is an Australian legal practitioner, the fact that the associate has ceased to practise or to hold an Australian practising certificate or has died.

4.5.6 Advertisements

- (1) A notice under section 4.5.17 of the National Law must be published:
- (a) in a newspaper circulating generally throughout Australia; and
 - (b) in a newspaper circulating generally in each jurisdiction in which the law practice has, or at any relevant time, had, an office; and
 - (c) if the fidelity authority has an internet site, on that site.
- (2) Apart from extending the period during which claims can be made, publication of a notice under this rule does not confer any entitlement in relation to a claim or the default to which it relates or provide any grounds affecting the determination of a claim.

4.5.7 Notification of delay in making decision

If the fidelity authority considers that a claim is not likely to be determined within 12 months after the claim was made, the fidelity authority must notify the claimant in writing to that effect and provide a brief statement of the reasons for the delay.

4.5.8 Recommendations by the fidelity authority to other fidelity authorities

If the fidelity authority is acting as agent of another fidelity authority in relation to a claim:

- (a) the fidelity authority acting as agent may make recommendations about the decision that the other authority might make about the claim; and
- (b) the fidelity authority acting as agent cannot make a decision about the claim; and
- (c) the other fidelity authority:
 - (i) may make a decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or

- (ii) may disregard the recommendations.

Part 4.6 Business management and control

4.6.1 Authorising provision

The rules in this Part are made under Part 4.6 of the National Law.

4.6.2 Register of investments

- (1) If a law practice invests trust money for or on behalf of a client, the law practice must maintain a register of investments of trust money that records the following information in relation to each investment:
- (a) the name in which the investment is held;
 - (b) the name of the person on whose behalf the investment is made;
 - (c) the person's address;
 - (d) particulars sufficient to identify the investment;
 - (e) the amount invested;
 - (f) the date the investment was made;
 - (g) particulars sufficient to identify the source of the investment;
 - (h) details of any documents evidencing the investment;
 - (i) details of any interest received from the investment or credited directly to the investment;
 - (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (2) This rule does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another rule.

4.2.3 Other registers

- (1) A law practice must maintain the following registers:
- (a) a register of files opened;
 - (b) a register of safe custody documents;
 - (c) a register of powers;
 - (d) a register of estates.
- (2) The register of powers must record particulars sufficient to identify each power in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including the name and address of the donor and date of each power.
- (3) The register of estates must record particulars sufficient to identify each estate in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

Chapter 5 Vacant

Chapter 6 External intervention

Part 6.1 Introduction

6.1.1 Authorising provision

The rules in this Chapter are made under Chapter 6 of the National Law.

Part 6.2 Vacant

Part 6.3 Supervisors of trust money

6.3.1 Appointment of supervisor of trust money

- (1) The instrument of appointment under section 6.3.1 of the National Law of a supervisor of trust money of a law practice must:
 - (a) identify the law practice and the supervisor of trust money of the law practice; and
 - (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice; and
 - (c) specify the term of the appointment; and
 - (d) specify any conditions imposed by the Commissioner when the appointment is made; and
 - (e) specify any fees payable by way of remuneration to the supervisor of trust money of the law practice specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the Commissioner.

 - (f) provide for the legal costs and the expenses that may be incurred by the supervisor of trust money of the law practice in relation to the external intervention.
- (2) The instrument of appointment may specify any reporting requirements to be observed by the supervisor of trust money of a law practice.

6.3.2 Notice of appointment

- (1) As soon as possible after an appointment under section 6.3.1 of the National Law of a supervisor of trust money of a law practice is made, the Commissioner must serve a notice of the appointment on:
 - (a) the law practice; and
 - (b) any other person authorised to operate any trust account of the law practice; and
 - (c) any external examiner appointed to examine the law practice's trust records; and
 - (d) the ADI with which any trust account of the law practice is maintained; and
 - (e) any person whom the Commissioner reasonably believes should be served

with the notice.

- (2) The notice must:
 - (a) identify the law practice and the supervisor of trust money of the law practice; and
 - (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice; and
 - (c) specify the term of the appointment; and
 - (d) specify any reporting requirements to be observed by the supervisor of trust money of the law practice; and
 - (e) specify any conditions imposed by the Commissioner when the appointment is made; and
 - (f) include a statement that the law practice may appeal against the appointment of the supervisor of trust money of the law practice under the National Law.

Part 6.4 Managers

6.4.1 Appointment of manager

- (1) The instrument of appointment under section 6.4.1 of the National Law of a manager of a law practice must:
 - (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and
 - (d) specify any conditions imposed by the Commissioner when the appointment is made; and
 - (e) specify any fees payable by way of remuneration to the manager specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the Commissioner.
 - (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.
- (2) The instrument of appointment may specify any reporting requirements to be observed by the manager.

6.4.2 Notice of appointment

- (1) As soon as possible after an appointment under section 6.4.1 of the National Law of a manager for a law practice is made, the Commissioner must serve a notice of the appointment on:
 - (a) the law practice; and
 - (b) any other person authorised to operate any trust account of the law practice; and
 - (c) any external examiner appointed to examine the law practice's trust

- records; and
 - (d) the ADI with which any trust account of the law practice is maintained; and
 - (e) any person whom the Commissioner reasonably believes should be served with the notice.
- (2) The notice must:
- (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and
 - (d) specify any reporting requirements to be observed by the manager; and
 - (e) specify any conditions imposed by the Commissioner when the appointment is made; and
 - (f) include a statement that the law practice may appeal against the appointment of the manager under the National Law.

Part 6.5 Receivers

6.5.1 Appointment of receiver

- (1) The instrument of appointment under section 6.5.1 of the National Law of a person as a receiver for a law practice must:
- (a) identify the law practice and the receiver; and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify any conditions imposed by the Supreme Court when the appointment is made; and
 - (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out his or her duties in relation to the external intervention; and
- Note. Paragraph (d) is intended to exclude remuneration payable generally, eg as an employee of the Commissioner.
- (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (2) The instrument of appointment may:
- (a) specify the term (if any) of the appointment; and
 - (b) specify any reporting requirements to be observed by the receiver.

6.5.2 Notice of appointment

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the Commissioner must serve a notice of the appointment on:
- (a) the law practice; and
 - (b) any other person authorised to operate any trust account of the law practice; and

- (c) any external examiner appointed to examine the law practice's trust records; and
 - (d) the ADI with which any trust account of the practice is maintained; and
 - (e) any person whom the designated tribunal directs should be served with the notice; and
 - (f) any person whom the Commissioner reasonably believes should be served with the notice.
- (2) The notice must:
- (a) identify the law practice and the receiver; and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify the term (if any) of the appointment; and
 - (d) indicate the extent to which the receiver has the powers of a manager for the law practice; and
 - (e) specify any reporting requirements to be observed by the receiver; and
 - (f) specify any conditions imposed by the designated tribunal when the appointment is made; and
 - (g) include a statement that the law practice may appeal against the appointment of the receiver under the National Law.

Part 6.6 General

6.6.1 Fees, legal costs and expenses

- (1) An external intervener is entitled to be paid, in accordance with the 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) An account of the external intervener for fees, costs and expenses may, on the application of the Commissioner, be taxed or assessed.

6.6.2 Reports by external intervener

- (1) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment.
- (2) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide:
 - (a) written reports as required from time to time by the Commissioner; and
 - (b) a written report to the Commissioner at the termination of the appointment.
- (3) An external intervener must also keep the Commissioner informed of the progress of the external intervention, including providing reports about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.

- (4) Nothing in this rule affects any other reporting obligations that may exist in respect of the law practice concerned.

6.6.3 Report to Commissioner on disciplinary matters

- (1) This rule applies where an external intervener becomes aware of any matter in the course of an external intervention that the external intervener thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.
- (2) If this rule applies, the external intervener must (unless the matter is or has already been the subject of a complaint) refer the matter to the Commissioner to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

Chapters 7–8 Vacant

Chapter 9 Miscellaneous

Part 9.1 Vacant

Part 9.2 Australian Legal Profession Register

Division 1 Preliminary

9.2.1 Authorising provision

The rules in this Part are made under Part 9.2 of the National Law.

9.2.2 Definition

In this Chapter, *Register* means the Australian Legal Profession Register.

Division 2 Details to be included in Register

9.2.3 Provision of information by local representatives

- (1) Local representatives of the Board and of the Commissioner are required to furnish the Board with information that is required to be included in the Register.
- (2) Information required under subrule (1) is to be provided in accordance with any guidelines issued by the Board or Commissioner, as the case requires.
- (3) Without limitation:
 - (a) the Board may request a local representative of the Board to furnish the Board with information of a specified kind; and
 - (b) the Commissioner may request a local representative of the Commissioner to furnish the Board with information of a specified kind.
- (4) Information requested under subrule (3) is to be information of a kind required under subrule (1) and is to be provided within the time specified in the request.

Division 3 Exclusion or removal of details from Register

9.2.4 Certain details must not be included in Register

For the purposes of section 9.2.2 (2) of the National Law, the following details relating to a person must not be included in the Register:

- (a) contact details of the person so far as they relate to the residential address of the person, unless the person requests their inclusion and the person has not rescinded the request;
- (b) any information that may indicate that the person has a mental or physical illness or an infirmity or injury.

9.2.5 Certain details must be removed from Register

- (1) For the purposes of section 9.2.2 (3) of the National Law, if a determination or order made under section 2.2.9, 5.4.5 or 5.4.8 of that Law is quashed on appeal or review, any reference to that determination or order must be removed from the Register.
- (2) If the determination or order is quashed on appeal or review after the determination or order became publicly available, the result of the appeal or

review must be publicised with equal prominence by the Board.

9.2.6 Certain details may be removed from Register

For the purposes of section 9.2.2 (4) of the National Law:

- (a) details of a determination or order made under section 5.4.5 of that Law may be removed from the Register after a period determined by the Board; and
- (b) details relating to deceased persons may be removed from the Register at any time.

Parts 9.3–9.7 Vacant

Schedule 1 Synopsis of areas of knowledge

Set out below is the synopsis of areas of knowledge referred to in National Rule 2.2.5 (2) (b).

Although the topics below are grouped for convenience under the headings of particular areas of knowledge, there is no implication that a topic needs to be taught in a subject covering the area of knowledge in the heading rather than in another suitable subject.

1. CRIMINAL LAW AND PROCEDURE

- 1 The definition of crime.
- 2 Elements of crime.
- 3 Aims of the criminal law.
- 4 Homicide and defences.
- 5 Non-fatal offences against the person and defences.
- 6 Offences against property.
- 7 General doctrines.
- 8 Selected topics chosen from:
 - attempts
 - participation in crime
 - drunkenness
 - mistake
 - strict responsibility.
- 9 Elements of criminal procedure. Selected topics chosen from:
 - classification of offences
 - process to compel appearance
 - bail
 - preliminary examination
 - trial of indictable offences.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the general doctrines of the criminal law and in particular examination of both offences against the person and against property. Selective treatment should also be given to various defences and to elements of criminal procedure.

2. TORTS

- 1 Negligence, including defences.
- 2 A representative range of torts (other than negligence) and their defences.
- 3 Damages.
- 4 Concurrent liability.
- 5 Compensation schemes.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The potential compass of this area is so large that considerable variation might be anticipated. At the very least, there should be a study of negligence and of a representative range of torts, with some consideration of defences and damages, and of alternative methods of providing compensation for accidental injury. Examples of these topics are: concurrent liability, defamation, economic torts, nuisance, breach of statutory duty and compensation schemes.

3. CONTRACTS

- 1 Formation, including capacity, formalities, privity and consideration.
- 2 Content and construction of contract.
- 3 Vitiating factors.
- 4 Discharge.
- 5 Remedies.
- 6 Assignment.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

Some variation may be expected in the breadth and detail of the topics. In general, however, knowledge of the formal requirements for concluding contracts, capacity, the content and interpretation of contracts, their performance and discharge, available remedies, together with an understanding of the broad theoretical basis of contract would be expected.

4. PROPERTY

- 1 Meaning and purposes of the concept of property.
- 2 Possession, seisin, and title.
- 3 Nature and type (i.e. fragmentation) of property interests.
- 4 Creation and enforceability of proprietary interests.
- 5 Legal and equitable remedies.
- 6 Statutory schemes of registration.
- 7 Acquisition and disposal of proprietary interests.
- 8 Concurrent ownership.
- 9 Proprietary interests in land owned by another.
- 10 Mortgages.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the nature and type of various proprietary interests in chattels and land, and their creation and relative enforceability at law and in equity. Statutory schemes or registration for both general law land Torrens land should be included. A variety of other topics might be included e.g. fixtures, concurrent interests and more

detailed treatment of such matters as sale of land, leases, mortgages, easements, restrictive covenants, etc.

5. Equity

- 1 (a) The nature of equity
- (b) Equitable rights, titles and interests
- (c) Equitable assignments
- (d) Estoppel in equity
- (e) Fiduciary obligations
- (f) Unconscionable transactions
- (g) Equitable remedies.

2 Trusts, with particular reference to the various types of trusts and the manner and form of their creation and variation. The duties, rights and powers of trustees should be included, as should the consequences of breach of trust and the remedies available to, and respective rights of, beneficiaries. (It is expected that about half the course will be devoted to trusts.)

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should cover the elements of trust law, equitable doctrines apart from those relating to trusts, and equitable remedies. The following aspects of trusts law should be dealt with: various kinds of trusts, the rights, duties, powers of trustees, the consequences of breach of trust. Apart from trusts, the following equitable doctrines might be covered, for example, fiduciary obligations, equitable assignments, unconscionability and confidential information. The remedies of specific performance, injunction, declaration and damages in equity should be included. (It is expected that about half the course will be devoted to trusts.)

6. Company Law

- 1 Corporate personality
- 2 The incorporation process
- 3 The corporate constitution
- 4 Company contracts
- 5 Administration of companies and management of the business of companies
- 6 Duties and liabilities of directors and officers
- 7 Share capital and membership
- 8 Members' remedies
- 9 Company credit and security arrangements
- 10 Winding up of companies.

OR

Topics of such breadth and depth as to satisfy the following guidelines:

The topics should include an analysis of incorporation and its effects, management and control of a company, the various methods of financing—by the issue of shares and by debt, and the processes of winding up a company.

7. Administrative Law

- 1 Organisation and structure of the administration.
- 2 Administrative law theory.
- 3 Common law and statutory avenues of judicial review at Commonwealth and State level.
- 4 Grounds of judicial review.
- 5 Remedies.
- 6 Crown immunity.
- 7 Administrative Appeals Tribunal.
- 8 Statutory review
- 9 Freedom of information.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should not only embrace traditional common law remedies concerning judicial review of administrative action, but should also cover the range of Commonwealth and State statutory regimes.

8. Federal and State Constitutional Law

- 1 State constitutions and constitutional systems.
- 2 The Commonwealth Constitution and constitutional system.
- 3 The constitution and operation of the legislature, executive and judiciary.
- 4 The relationship between the different institutions of government and the separation of powers.
- 5 The relationship between the different levels of government.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include knowledge of the manor principles of both the relevant State or Territory Constitution and the Commonwealth Constitution, including the relations between the different Commonwealth and State or Territory Laws. A general knowledge of the scope of both State and Territory and Commonwealth Constitutions is required, although the topics will differ in the depth of treatment of specific heads of power, particularly in the Commonwealth sphere.

9 Civil Procedure

- 1 Court adjudication under an adversary system.
- 2 The cost of litigation and the use of costs to control litigation.

- 3 Service of originating process—as foundation of jurisdiction, including service out of the relevant State or Territory and choice of forum.
- 4 Joinder of claims and parties, including group proceedings and the defence of prior adjudication as instances of the public interest in avoiding a multiplicity of proceedings and inconsistent verdicts.
- 5 Defining the questions for trial—pleadings, notices to admit and other devices.
- 6 Obtaining evidence—discovery of documents, interrogatories, subpoena and other devices.
- 7 Disposition without trial, including the compromise of litigation.
- 8 Extra judicial determination of issues arising in the course of litigation.
- 9 Judgement.
- 10 Appeal.
- 11 Enforcement.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should embrace the general study of rules of civil procedure relevant in the State or Territory. Rules concerning jurisdiction, the initiation and service of process, the definition of issues through pleading and judgment and enforcement should all be included.

10 Evidence

- 1 Introduction.
- 2 Competence and compellability.
- 3 Privilege.
- 4 The examination of witnesses.
- 5 Disposition and character.
- 6 Similar fact evidence.
- 7 The accused as a witness.
- 8 Burden and standard of proof.
- 9 Documentary evidence.
- 10 Opinion evidence and prior determination.
- 11 Hearsay:
 - the exclusionary rule
 - the common law and statutory exceptions.
- 12 Admissions and confessions in criminal cases.
- 13 Illegally obtained evidence and confirmation by subsequent fact.
- 14 Res gestae.
- 15 Corroboration.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include examination of both the sources and acceptability of evidence, including rules concerning the burden and

standard of proof and technical rules concerning such matters as hearsay, admissions and confessions, illegally obtained evidence and res gestae.

11 Ethics and Professional Responsibility

Professional and personal conduct in respect of practitioner's duty:

- (a) to the law,
- (b) to the Courts,
- (c) to clients, including a basic knowledge of the principles relating to the holding of money on trust; and
- (d) to fellow practitioners.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should include knowledge of the various pertinent rules concerning a practitioner's duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles relating to the holding of money on trust.

**Schedule 2 List of tertiary academic courses recognised
by the Board**

[To reflect existing recognised academic courses]

Schedule 3 Competency standards for entry level lawyers

For the purposes of National Rule 2.2.6 (1) an applicant for a compliance certificate is required to acquire and demonstrate an appropriate understanding of, and competence in, each element of the following skills, values and practice areas set out in this Schedule

PART 1 – SKILLS, VALUES AND PRACTICE AREAS

Practice Areas	Skills	Values
Civil litigation	Legal practitioner's skills	Ethics and professional responsibility
Commercial and corporate	Problem solving	
Property law	Work management and business skills	
one of:	Trust and office accounting	
Administrative law		
Criminal law		
Family law		
and one of:		
Consumer law		
Employment and industrial relations		
Planning and environmental law		
Wills and estates		

PART 2 - COMPETENCY STANDARDS

PRACTICE AREAS

CIVIL LITIGATION

Descriptor

An entry level legal practitioner must be able to conduct civil litigation in first instance matters in courts of general jurisdiction in a timely and cost-effective manner.

Element

Performance criteria

The applicant has competently:

1. Assessing the merits of a case and identifying the dispute resolution alternatives

assessed the strengths and weaknesses of both the client's and the opponent's case

identified the facts and evidence required to support the client's case

identified all means of resolving the case, having regard to the client's circumstances

advised the client of relevant rights and remedies in a way the client can easily understand

if possible, confirmed in writing any instructions given by the client in response to initial advice

identified and complied with the relevant limitation period

2. Initiating and responding to claims

identified an appropriate claim or defence

identified a court of appropriate jurisdiction

identified the elements of the claim or defence according to law

followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner

drafted all necessary documents in accordance with those procedures

3. Taking and responding to interlocutory and default proceedings

identified any need for interlocutory steps or default proceedings according to the court's rules

followed procedures for taking those steps or proceedings in

- accordance with the court's rules and in a timely manner
- drafted all necessary documents in accordance with those procedures
- 4. Gathering and presenting evidence**
- identified issues likely to arise at the hearing
- identified evidence needed to prove the client's case or disprove the opponent's case according to the rules of evidence
- gathered the necessary evidence
- presented that evidence according to law and the court's rules
- 5. Negotiating settlements**
- conducted settlement negotiations in accordance with specified principles
- identified any revenue and statutory refund implications
- properly documented any settlement reached
- 6. Taking action to enforce orders and settlement agreements**
- identified procedures for enforcing the order or settlement according to law and the court's rules
- followed those procedures in a timely manner

Explanatory Notes

This competency standard applies to first instance civil litigation in a State or Territory local lower or local higher court having general jurisdiction, and in the Federal Court.

Means by which a dispute might be resolved include, but are not limited to:

- negotiation
- mediation
- arbitration
- litigation
- expert appraisal.

Means by which evidence might be gathered include:

- statements from witnesses
- notices to admit
- discovery
- subpoena
- expert reports

- certified official records, banker's books etc.
- Means by which evidence might be presented include:
- orally on oath
- affidavits
- video or telephone link.

Means of enforcement include:

- execution process, including attachment of debts
- taxation or assessment of costs
- oral examination.

COMMERCIAL AND CORPORATE

Descriptor

An entry level legal practitioner must be able to conduct commercial transactions such as the sale or purchase of a small business. The legal practitioner must be able to: set up standard business structures using entities such as companies, trusts and partnerships; provide basic advice on finance and securities and the obligations of companies and their officers; appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Element

Performance criteria

The applicant has competently:

1. Conducting commercial transactions

properly identified the nature of the transaction

undertaken sufficient searches and inquiries to investigate any relevant issues of title to real or personal property

drafted documents, had them executed, and (if necessary) certified, stamped and registered them according to law and good practice

obtained or given any necessary consents to or notifications of the transaction required by law

2. Setting up commercial structures

selected a structure that will achieve the client's objectives

drafted all documents required to set up the structure (including establishing any discrete entities that will form part of the structure), had them executed and (if necessary) certified, stamped and registered them according to law and good practice

informed the client of any continuing obligations in relation

- to the structure and, where the structure involves a corporation, the continuing obligations of the corporation and its officers
- 3. Dealing with loans and securities** identified the various appropriate types of financial arrangements and securities available to the borrower and lender
- informed the borrower and lender of their immediate, continuing, and potential liabilities under any proposed financing and security arrangements
- drafted loan or security documents that reflect the agreement between the lender and borrower
- had the loan or security documents executed and (if necessary) stamped and registered them according to law
- 4. Advising on revenue law and practice** identified the possible general revenue implications of the client's proposed commercial venture or arrangement
- if appropriate, referred the client to experts for more comprehensive or detailed advice

Explanatory Notes

This competency standard applies to commercial and corporate practice. It includes:

- some common commercial transactions such as the sale or purchase of a small business
- setting up standard business structures and entities, including companies
- advising on the legal obligations of corporations and their officers
- advising on due diligence investigations
- identifying in a general way the possible revenue implications of standard commercial dealings and structures
- drafting standard loan agreements and securities.

Business structures include:

- trusts
- private companies
- partnerships
- joint ventures
- franchise arrangements.

Securities include:

- bills of sale
- chattel leases
- loans agreements

- guarantees, including guarantees from spouses.

Revenue implications include:

- stamp duties
- income tax
- capital gains tax
- GST
- fringe benefits tax
- land and property taxes.

PROPERTY LAW

Descriptor

An entry level legal practitioner must be able to convey, lease and mortgage real property. The legal practitioner must also be able to provide general advice on standard matters arising under legislation relating to land use in the particular State or Territory.

Element

Performance criteria

The applicant has competently:

1. Transferring title

properly identified the nature of the interest being dealt with, having regard to the applicable title system

prepared, commented on and advised on an appropriate contract of sale or other type of agreement and had it executed according to law and good practice

undertaken sufficient searches and inquiries to investigate title, any issues about land use and responsibility for outgoings

drafted an appropriate instrument of transfer or conveyance and had it executed and (if necessary) stamped and registered according to law

obtained or given any consents to or notifications of the transfer or conveyance according to law

2. Creating leases

made and obtained all searches and consents required by law and good practice

drafted, commented on and advised on a lease, in a form allowed by law, reflecting the agreement between lessor and lessee and protecting their respective interests

arranged for the lease to be executed and (if necessary) stamped and registered according to law

- | | |
|---|--|
| 3. Creating and releasing securities | made and obtained all searches and consents required by law and good practice

drafted, commented on and advised on an effective instrument to create or release the security, reflecting the agreement between the grantor and grantee and protecting their respective interests

arranged for the instrument to be executed and (if necessary) stamped and registered as required by law |
| 4. Advising on land use | identified any legislative scheme regulating the relevant use

advised the client generally about processes to be followed to obtain permission for or to object to the use, as the case requires |
| 5. Advising on revenue implications | identified the revenue implications of any transaction and advised the client accordingly |

Explanatory Notes

This competency standard applies to dealings with interests in real and leasehold property, land use and securities. It must include:

- contracts for sale of land, including special conditions
- transferring title (or equivalent interest under the scheme of land title that exists in the particular State or Territory)
- creating standard commercial leases
- creating standard residential tenancies or leases
- creating and releasing of mortgages
- some aspect of land use.

This competency standard includes dealings under the main system of land title operating in the jurisdiction in which the legal practitioner practises. Aspects of land use might involve issues arising out of:

- town planning schemes
- local government by-laws
- environment and heritage legislation
- revenue and tax legislation.

This competency standard is limited to:

- the main system of land title operating in a State or Territory
- transactions an entry level legal practitioner would be expected to perform.

ADMINISTRATIVE LAW

Descriptor

An entry level legal practitioner who practises in administrative law must be able to: obtain information for clients under freedom of information legislation and otherwise; seek review of administrative decisions; represent parties before courts and administrative tribunals.

Element	Performance criteria
1. Obtaining information	The applicant has competently:
	identified whether freedom of information legislation applies to the situation
	identified the specific legislation under which the information may be obtained
	taken the steps required under that legislation
2. Obtaining review of administrative decisions	identified and taken any other practical steps required to obtain the information
	concluded correctly that the decision may be reviewed
	identified and discussed with the client alternative means of obtaining a review
	completed all preparation required by law, good practice and the circumstances of the matter
3. Representing a client	represented the client effectively at any mediation, hearing or other review forum if this is appropriate and permitted
	identified all alternative means of obtaining redress and discussed them with the client
	completed all preparation required by law, good practice and the circumstances of the matter
	represented the client effectively at any mediation, hearing or other forum

Explanatory Notes

This competency standard applies to State, Territory and Commonwealth administrative law and practice and to proceedings before both State or Territory and Federal courts and tribunals.

For an entry level legal practitioner, administrative law practice may be either an area of specialised practice or an ancillary part of general practice.

Preparing to represent a client in a court or tribunal may include drafting written submissions.

CRIMINAL LAW

Descriptor

An entry level legal practitioner who practises in criminal law must be able to: advise clients before arrest; seek bail; make pleas; participate in minor contested hearings; assist in preparing cases for trial.

Element

Performance criteria

The applicant has competently:

1. Providing advice

identified the client's legal rights and the legal powers of the police or other prosecutors or investigators in the situation

informed the client of those rights and powers in a way which the client can easily understand

identified the legal elements of any offence with which the client is charged

if possible, confirmed in writing any instructions given by the client in response to initial advice

implemented the client's instructions when it is appropriate in the circumstances to do so

2. Applying for bail

identified the client's options and communicated them to the client in a way the client can easily understand

helped the client to make an informed decision about the option to select

made an application for bail or taken other action effectively in the circumstances

fully advised the client of any bail conditions

3. Making pleas

identified the client's options and communicated them to the client in a way the client can easily understand

identified and gathered all material useful to the plea according to law and good practice

presented the plea in an effective and persuasive way,

- having regard to the circumstances of the case
- advised the client fully of the outcome in a way the client can easily understand
- 4. Representing a client in minor matters** completed all preparation required by law, good practice and the circumstances of the case
- represented the client effectively at a contested and an uncontested hearing
- 5. Assisting to prepare cases for trial** identified and gathered the evidence needed to support the client's case
- identified and briefed appropriate experts (including counsel), having regard to good practice and the requirements of the case

Explanatory Notes

This competency standard applies to criminal law practice. It includes:

- advising clients before and after arrest
- making a simple bail application on behalf of an accused person
- making a plea in mitigation of penalty in a simple matter
- some aspect of preparing a matter for hearing, such as briefing counsel
- participating in a minor contested hearing.

Criminal matters include:

- traffic offences
- domestic violence and apprehended violence orders
- drink driving
- drug offences.

FAMILY LAW

Descriptor

An entry level legal practitioner who practises in family law must be able to: apply for dissolution of marriage; advise and take action in relation to parenting matters, property settlements, spouse maintenance and child support problems.

Element

Performance criteria

The applicant has competently:

- 1. Applying for dissolution of marriage**
- obtained instructions reflecting the client's informed wishes
- prepared an application complying with the relevant court rules
- filed and served the application in accordance with those

- rules
- proved service in accordance with those rules
- presented the client's application to the court effectively
- 2. Acting in relation to ancillary matters**
- informed the client of all options, having regard to the circumstances of the case, in a way which the client can easily understand
- fully prepared the client's case having regard to the client's circumstances, the dispute resolution process the client has decided to pursue and good practice
- pursued the case in accordance with good practice for the chosen dispute resolution process
- identified and explained to the client the revenue implications of any proposed settlement
- documented and acted on any results of the chosen dispute resolution process as required by law and good practice

Explanatory Notes

This competency standard applies to dissolution of marriage and ancillary matters arising from the breakdown of marriages or other domestic relationships. It includes:

- applying for dissolution of marriage
- managing an ancillary matter in a family court up to the first directions hearing.

Ancillary matters include:

- parenting matters
- property settlements
- spouse maintenance
- child support
- domestic violence orders
- injunctions and sole use orders
- de facto relationship proceedings.

Acting includes:

- participating in primary dispute resolution processes
- informal negotiation
- initiating or responding to court proceedings for urgent, interim or final relief.

CONSUMER LAW

Descriptor

An entry level legal practitioner who practises in consumer law must be able to: advise clients on the procedures and remedies available in relation to consumer complaints; represent the client in any related negotiations or proceedings.

Element	Performance criteria
	The applicant has competently:
1. Obtaining information	identified the situation as one to which consumer protection legislation applies identified the relevant legislation and any applicable case law identified any possible common law remedies
2. Drafting documents	drafted any documents required, in accordance with the client's instructions and the relevant legislation
3. Initiating and responding to claims	identified the appropriate forum for initiating or responding to a claim initiated a claim or taken action to oppose a claim in accordance with the rules and procedures of the relevant court or tribunal and in a timely manner obtained all necessary evidence and drafted all necessary documents in accordance with those rules and procedures
4. Representing the client	identified all possible means of resolving the dispute to the satisfaction of the client and discussed them with the client completed all necessary preparation in accordance with the law, good practice and the circumstances of the matter represented the client effectively at any negotiation, mediation, hearing or other forum
5. Taking action to implement outcomes	properly documented any order or settlement and explained it to the client in a way the client can easily understand identified any procedures necessary to enforce the order or settlement and carried them out in a timely manner

Explanatory Notes

This competency standard applies to the practice of consumer law. It includes both State or Territory and Commonwealth consumer protection legislation and codes.

Consumer protection legislation includes State, Territory and Commonwealth legislation and codes dealing with:

- trade practices

- misleading and deceptive conduct
- motor car traders
- domestic building contracts
- consumer credit
- residential tenancies.

A consumer protection dispute includes disputes relating to:

- trade practices
- misleading and deceptive conduct
- motor car traders
- domestic building contracts
- consumer credit
- guarantees
- residential tenancies.

A court or tribunal includes:

- Federal courts
- State and Territory courts
- statutory tribunals
- industry complaint panels
- industry Ombudsmen.

EMPLOYMENT AND INDUSTRIAL RELATIONS

Descriptor

An entry level legal practitioner who practises in the area of employment and industrial relations must be able to: advise clients on the relevant law and procedures; represent clients in negotiations; initiate and respond to applications in relevant State or Territory and Federal courts and tribunals.

Element	Performance criteria
	The applicant has competently:
1. Assessing the merits of the dispute and identifying the dispute resolution alternatives	identified the relevant facts assessed the strengths and weaknesses of the dispute according to the relevant law identified all means of resolving the dispute, having regard to the client's circumstances
2. Advising client on procedures	if appropriate, advised the client of means to avoid a dispute advised the client of available steps to strengthen the client's position
3. Commencing negotiations	explored all opportunities for a negotiated settlement,

- subject to the client's instructions
- represented the client effectively at any negotiations
- 4. Initiating and responding to proceedings**
- identified the appropriate jurisdiction
- initiated or opposed a claim in accordance with the rules and procedures of the relevant court or tribunal and in a timely manner
- obtained all necessary evidence and drafted all necessary documents in accordance with those rules and procedures
- 5. Representing the client**
- completed all preparation required by law, good practice and the circumstances
- represented the client effectively at any mediation, hearing or other forum
- 6. Taking action to implement outcomes**
- properly documented any order or settlement and explained it to the client in a way the client can understand
- identified and carried out any procedures required to enforce the order or settlement

Explanatory Notes

This competency standard applies to the practice of employment and industrial relations law at both State or Territory and Federal levels.

A dispute may involve:

- award negotiations
- an industrial dispute relating to an individual employee or to a workplace or industry
- an equal employment opportunity or anti-discrimination claim
- a claim for unfair dismissal.

The means by which a dispute might be resolved include, but are not limited to:

- negotiation
- mediation
- conciliation
- arbitration
- litigation.

Steps available to a client to avoid a dispute or to strengthen the client's position include:

- altering internal employment practices and procedures
- drafting and revising employment contracts
- entering or revising enterprise bargaining agreements
- altering individual employment contracts

- taking disciplinary proceedings
- allowing industrial representation.

PLANNING AND ENVIRONMENTAL LAW

Descriptor

An entry level legal practitioner who practises in planning and environmental law must be able to: advise clients on the relevant law; generally assist clients in the planning process; initiate or oppose applications in, and obtain and present relevant evidence before, appropriate courts or tribunals; represent clients in various forums.

Element

Performance criteria

The applicant has competently:

- | | |
|--|---|
| 1. Assessing the merits of the matter and advising the client | obtained full instructions from the client

analysed the facts in accordance with the relevant law

obtained and clarified any relevant technical information

advised the client of any rights and obligations of the client and potential penalties if obligations are not observed

identified all options and developed a plan of action in accordance with the client's instructions

examined the commercial, political and public relations implications of any proposed action and explained them to the client |
| 2. Preparing applications | identified and analysed the relevant provisions of the relevant planning scheme

prepared an application for development approval and submitted it with the necessary plans

identified potential grounds of objection |
| 3. Initiating and responding to claims | identified the appropriate forum for initiating or responding to a claim

initiated or opposed a claim in accordance with the rules and procedures of the relevant court, tribunal or other statutory body and in a timely manner

obtained all necessary evidence and drafted all necessary documents in accordance with those rules and procedures |
| 4. Representing the | identified all available means of resolving the matter to the |

client	satisfaction of the client and discussed them with the client completed all preparation required by law, good practice and the circumstances represented the client effectively in any negotiation, mediation, hearing or other forum
5. Implementing outcomes	properly documented any order or settlement and explained it to the client in a way the client can easily understand identified and carried out in a timely manner any procedures to enforce the order or settlement

Explanatory Notes

This competency standard applies to the practice of planning and environmental law under both State or Territory and Commonwealth legislation.

The client's rights and obligations include rights and obligations under statute and at common law.

A claim or dispute may include:

- an application for or exemption from a permit, licence, approval or other authority
- an objection, appeal or application for review in relation to such an application
- a prosecution for breach of relevant legislation
- civil action relating to planning or environmental issues, or both.

Preparation for providing representation in a court, tribunal or other statutory body may include:

- drafting written submissions
- briefing counsel.

WILLS AND ESTATES

Descriptor

An entry level legal practitioner who practises in wills and estates must be able to: draft wills; administer deceased estates; take action to solve problems in relation to wills and estates.

Element

Performance criteria

The applicant has competently:

1. Drafting wills

advised the client of issues, options, and potential problems that might arise in respect of the client's testamentary intentions

obtained instructions reflecting the client's informed and

- independent wishes that can be effectively implemented
- drafted a will reflecting the client's instructions
- identified any issues of testamentary capacity and resolved them in accordance with law and good practice
- ensured the client executed the will in accordance with law
- given any necessary follow up advice to the client
- 2. Administering deceased estates**
- obtained a grant of probate or letters of administration if required
- identified the debts and assets of the estate
- gathered in the estate or transferred or transmitted assets directly to beneficiaries, as appropriate, having regard to the law, good practice and the circumstances
- discharged the estate's debts, distributed specific gifts and the residue and ensured the executors have been released of their obligations in a timely manner
- 3. Taking action to resolve wills and estates problems**
- properly identified the nature of the problem, having regard to the law of the jurisdiction
- identified the client's options for dealing with the problem, having regard to the law of the particular jurisdiction and the client's circumstances
- explained the options to the client in a way the client can easily understand
- taken action to resolve the problem in accordance with the client's instructions

Explanatory Notes

This competency standard applies to wills and deceased estate practice. It must include:

- drafting and advising on standard wills
- obtaining an uncontested grant of letters of administration on an intestacy or probate if a will exists
- administering a standard deceased estate
- helping solve at least one common type of will or estate problem.

Wills and estates problems include:

- testamentary capacity

- construction
- validity of the will
- validity of gifts
- assets outside the jurisdiction
- revenue issues
- family provision
- mutual wills
- trusts
- informal wills
- testamentary directions.

Follow up advice required may include:

- the effects of marriage on a will
- the effects of divorce on a will
- storage options
- revocation
- modification
- availability of associated documents such as enduring powers of attorney.

SKILLS

LEGAL PRACTITIONER'S SKILLS

Descriptor

An entry level legal practitioner must be able to demonstrate skills in the following: oral communication; legal interviewing; advocacy; negotiation and dispute resolution; letter writing; legal drafting.

Element

Performance criteria

The applicant has competently:

1. Communicating effectively

identified the purpose of a proposed communication, the most effective way of making it, an appropriate communication strategy, and the content of the proposed communication

presented thoughts, advice and submissions in a logical, clear, succinct and persuasive manner, having regard to the circumstances and the person or forum to whom the communication is made

identified and appropriately dealt with verbal, non-verbal and cross-cultural aspects of the proposed communication

taken any follow-up action in accordance with good practice

2. Interviewing clients

prepared properly for the interview, having regard to relevant information available before the interview and the

circumstance.

conducted the interview using communication techniques appropriate to both the client and the context

ensured that the client and applicant have both obtained all the information they wanted from the interview in a timely, effective and efficient manner, having regard to the circumstances

ensured that the applicant and client left the interview with a common understanding of the applicant's instructions (if any) and any future action the applicant or client is to take

made a record of the interview that satisfies the requirements of law and good practice

taken any follow-up action in a timely manner

3. Writing letters

identified the need for and purpose of the letter

written the letter in simple, straightforward English that conveys its purpose clearly and can be easily understood by the person to whom it is sent

4. Drafting other documents

identified the need for and purpose of the document

devised an effective form and structure for the document having regard to the parties, the circumstances, good practice, principles of writing simple, straightforward English, and the relevant law

drafted the document effectively, having regard to the parties, the circumstances, good practice, principles of writing simple, straightforward English, and the relevant law

considered whether the document should be settled by counsel

taken every action required to make the document effective and enforceable in a timely manner and according to law (such as execution by the parties, stamping, delivery and registration)

5. Negotiating settlements and agreements

prepared the client's case properly having regard to the circumstances and good practice

identified the strategy and tactics to be used in negotiations

- and discussed them with and obtained approval from the client
- carried out the negotiation and any resolution as required by law or good practice and explained it to the client in a way the client can easily understand
- 6. Facilitating early resolution of disputes** identified the advantages and disadvantages of available dispute resolution options and explained them to the client
- performed in the dispute resolution process effectively, having regard to the circumstances
- documented any resolution as required by law or good practice and explained it to the client in a way the client can easily understand
- 7. Representing a client in court** observed the etiquette and procedures of the forum
- organised and presented in an effective, strategic way factual material, analysis of relevant legal issues and relevant decided cases
- presented and tested evidence in accordance with the law and good practice
- made submissions effectively and coherently in accordance with law and good practice

Explanatory Notes

This competency standard applies to "composite" skills that require a legal practitioner to synthesise several generic skills and apply them in a specific legal context. Legal practitioners must be able to exercise such skills effectively.

Representation refers to advocacy on behalf of a client in court, tribunal or other forum. It includes:

- an aspect of preliminary or pre-trial civil or criminal proceedings
- an aspect of first instance trial advocacy in a simple matter
- leading evidence-in-chief, cross-examination, re-examination and making submissions.

Dispute resolution options include:

- negotiation
- mediation
- arbitration
- litigation
- expert appraisal.

PROBLEM SOLVING

Descriptor

An entry level legal practitioner must be able to: investigate and analyse facts and law; provide legal advice; solve legal problems.

Element	Performance criteria
1. Analysing facts and identifying issues	The applicant has competently: identified and collected all relevant facts as far as is practicable
	analysed the facts to identify any existing or potential legal and other issues
	distinguished facts that might be used to prove a claim from other facts, if the matter so requires
2. Analysing law	identified any questions of law raised by the matter
	researched those questions of law properly, having regard to the circumstances
	identified and interpreted any relevant statutory provisions and applied them appropriately to the facts
3. Providing legal advice	applied the law to the facts of the matter in an appropriate and defensible way
	given the client advice in a way the client can easily understand
	kept up with any developments that might affect the accuracy of previous advice and told the client about the effect of those developments
4. Generating solutions and strategies	identified the problem of the client's goals as fully as is practicable
	investigated the facts and legal and other issues as fully as is practicable
	developed creative options and strategies to meet the client's objectives
	identified the advantages and disadvantages of pursuing each option or strategy including costs and time factors
	assisted the client to choose between those options in a way consistent with good practice

developed a plan to implement the client's preferred option

acted to resolve the problem in accordance with the client's instructions and the plan

remained open to new information and ideas and updated advice to the client as necessary

Explanatory Notes

This competency standard applies to:

- analysing facts
- analysing legal and practical issues
- analysing law
- interpreting statutes
- giving advice
- solving problems in the context of legal practice.

Analysing law includes:

(a) researching legal issues using:

- law libraries
- on-line searches
- electronic data bases
- legal citators and digests; and

(b) applying principles of precedent.

Other issues include:

- risk management
- public relations
- financial implications.

WORK MANAGEMENT AND BUSINESS SKILLS

Descriptor

An entry level legal practitioner must be able to manage workload, work habits and work practices in a way that ensures clients' matters are dealt with in a timely and cost-effective manner.

Element	Performance criteria
	The applicant has competently:
1. Managing personal time	<p>used a diary or other system to record time limits or deadlines and to assist in planning work</p> <p>identified conflicting priorities as they arise and managed the conflict effectively</p> <p>used available time effectively, to the benefit of the client and employer</p>
2. Managing risk	<p>conducted each matter in a way that minimises any risk to the client, applicant or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body</p> <p>recognised the limits of the applicant's expertise and experience and referred the client or matter to a legal practitioner, counsel or another professional, as the circumstances require</p>
3. Managing files	<p>used a file management system to ensure work priorities are identified and managed, clients' documents are stored in an orderly and secure manner, and to alert the legal practitioner to any need to follow up a matter or give it other attention</p> <p>rendered timely bills, in accordance with law and any agreement, which set out the basis for calculating fees</p> <p>accurately recorded all communications and attendances, with details of dates and times</p>
4. Keeping the client informed	<p>communicated with the client during the course of the matter as frequently as circumstances and good practice require</p> <p>confirmed oral communications in writing when requested by the client or required by good practice</p> <p>dealt promptly with the client's requests for information</p> <p>informed the client fully of all important developments in the matter in a way the client can easily understand</p>
5. Working co-operatively	<p>worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner</p>

Explanatory Notes

This competency standard applies to the exercise of good work habits in a legal practice to ensure:

- clients do not suffer loss or damage because of missed deadlines or neglect of a matter
- clients are kept informed regularly and fully of the progress of their matter
- clients' matters are dealt with in a cost-effective manner.

TRUST AND OFFICE ACCOUNTING

Descriptor

An entry level legal practitioner must have a sound general knowledge of the significance of and the principles governing trust and general accounting in legal practice, and sufficient knowledge, skills and values to maintain trust and general account records according to law and good practice to the extent usually permitted and expected of an employed legal practitioner.

Element

Performance criteria

The applicant has competently:

1. Receiving money

dealt with money received from or on behalf of a client as required by law and good practice

if the law and good practice requires money to be deposited in a trust account, controlled or general account, recorded the deposit as required by law and good practice

issued any receipt required by law and good practice

2. Making outlays

made an outlay from the correct account according to law and good practice

recorded the outlay as required by law and good practice

3. Rendering costs

calculated the costs in accordance with law, good practice and any costs agreement

added to the bill all outlays made by the firm for which the client is responsible

accounted to the client for any money received from the client on account of costs and outlays, as required by law and good practice

drafted the bill and delivered it in accordance with law and good practice

4. Maintaining Trust

maintained any trust account in accordance with specific

account statutory requirements, including any requirements relating to common fund deposits and auditing

Explanatory Notes

This competency standard applies to trust and general accounting. It requires a general knowledge of bookkeeping and knowledge of legal practitioners' trust account law and practice and auditing requirements in the legal practitioner's jurisdiction.

VALUES

ETHICS AND PROFESSIONAL RESPONSIBILITY

Descriptor

An entry level legal practitioner must act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community and other legal practitioners.

Element	Performance criteria
	The applicant has competently:
1. Acting ethically	identified any relevant ethical dimension of a particular situation taken action that complies with professional ethical standards in that situation
2. Discharging the legal duties and obligations of legal practitioners	identified any duty or obligation imposed by law on the applicant in a particular situation discharged that duty or obligation according to law and good practice
3. Complying with professional conduct rules	identified any applicable rules of professional conduct taken action which complies with those rules
4. Complying with fiduciary duties	recognised any fiduciary duty and complied with it according to law and good practice
5. Avoiding conflicts of interest	identified any potential or actual conflict as soon as is reasonable in the circumstances taken effective action to avoid a potential conflict or, if a conflict has already arisen, dealt with it in accordance with law and good practice taken appropriate action, if applicable, to prevent such a conflict arising in the future

- 6. Acting courteously** demonstrated professional courtesy in all dealings with others
- 7. Complying with rules relating to the charging of fees** identified any rules applying to charging professional fees
complied with those rules where they are relevant
maintained records and accounts in accordance with law and good practice
- 8. Reflecting on wider issues** reflected on the applicant's professional performance in particular situations
brought to the attention of an employer or professional association any matters that require consideration or clarification
recognised the importance of pro bono contributions to legal practice
demonstrated an awareness that mismanagement of living and work practices can impair a legal practitioner's skills, productivity, health and family life

Explanatory Notes

This competency standard applies to:

- ethics
- statutes and general law relating to the duties and obligations of legal practitioners
- written and unwritten rules of professional conduct
- written and unwritten rules of professional courtesy.

The duties and obligation imposed by law on legal practitioners include duties:

- of confidentiality
- to act competently and to maintain competence
- to act honestly
- not to mislead the court
- not to pervert the course of justice or the due administration of justice.

Conflicts of interest commonly arise between:

- joint venture partners
- directors and shareholders of a company
- trustees and beneficiaries in a family trust
- parties to any transaction where their interests potentially differ.

Schedule 4 List of courses of study recognised by the Board

[To reflect existing recognised practical legal training courses]

End of document