

LEGAL PROFESSION ACT 1993

NB – Section 16(2) not yet commenced

[Consolidated as at 28 January 2014
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Legal Profession Act 1993

An Act relating to the legal profession.

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows —

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Legal Profession Act 1993*.

Aims of Act

2. The aims of this Act are to ensure that —
 - (a) the practice of law is undertaken only by persons who are properly qualified;
 - (b) practitioners are subject to the oversight of a professional body;
 - (c) practitioners are subject to disciplinary arrangements;
 - (d) money held in trust by practitioners is dealt with as required by law, and transactions relating to such money are subject to audit; and
 - (e) a review procedure is available with respect to practitioners' professional fees.

Definitions

3. The following expressions are defined, for the purposes of this Act or of a particular provision of this Act, in the Schedule —

auditor

Australia

Curator of Estates of Deceased Persons

current practising certificate

disciplinary action

disciplinary proceedings

disallowable instrument

financial year

Norfolk Island Government Auditor
Norfolk Island Police Force
Norfolk Island practising certificate
practising certificate
practitioner
professional body
professional indemnity cover
public officer
recognised interstate practising certificate
Registrar
relevant professional body
resident practitioner
Register of Practitioners
solicitor
State or Territory professional body
The Law Society of the Australian Capital Territory
Territory
Territory authority
trust bank account
unqualified person
visiting practitioner.

Interpretation

4. In the interpretation of this Act, a construction that would promote the aims expressed in section 2 is to be preferred to a construction that would not promote those aims.

PART 2 — PRECEDENCE OF PRACTITIONERS

Her Majesty's Counsel

5. (1) A practitioner who has been appointed as Senior Counsel or one of Her Majesty's Counsel for the Commonwealth or for a State or another Territory is to be taken to have been appointed as one of Her Majesty's Counsel for Norfolk Island.

(2) Such a practitioner has, in relation to Norfolk Island, the same status, rights, privileges and responsibilities as the practitioner would have had if the practitioner had been appointed as Senior Counsel or by Her Majesty as one of Her Majesty's Counsel for Norfolk Island.

(3) The Crown in right of Norfolk Island has no power to appoint a practitioner to be one of Her Majesty's Counsel for Norfolk Island.

(4) Subsection (3) does not affect the operation of subsection (1) or (2).

Precedence of practitioners

6. (1) Subject to the rights of precedence of the Attorney-General of the Commonwealth and the Solicitor-General of the Commonwealth, Senior Counsel and Her Majesty's Counsel for Norfolk Island have, in relation to Norfolk Island —

- (a) precedence over other practitioners; and
- (b) precedence amongst themselves according to the respective dates on which each is to be taken to have been appointed under subsection 5(1).

(2) If the date on which one practitioner is to be taken to have been appointed as Senior Counsel or one of Her Majesty's Counsel for Norfolk Island is the same date as the date on which another practitioner is to be taken to have been so appointed, the practitioners have, in relation to Norfolk Island, precedence amongst themselves according to the respective dates of their first admission to practise in Australia.

(3) Practitioners, other than Senior Counsel or Her Majesty's Counsel, have, in relation to Norfolk Island, precedence amongst themselves according to the respective dates of their first admission to practise in Australia.

PART 3 — RIGHT TO PRACTISE

Right to practise - general rule

7. Subject to this Act, a person whose name is on —

- (a) the roll of barristers and solicitors of the High Court referred to in paragraph 55D(1)(a) of the *Judiciary Act 1903* of the Commonwealth; or

- (b) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory,

is entitled to practise as a practitioner —

- (c) in Norfolk Island; and
- (d) in any Court of Norfolk Island, whether the Court is sitting within or outside Norfolk Island.

Right to practise - disentitlement

8. A person is not entitled to practise as a practitioner while —

- (a) the person's entitlement to practise as a barrister and solicitor of the High Court is suspended under the Rules of that Court;
- (b) the person's entitlement to practise as a barrister, solicitor, barrister and solicitor or legal practitioner in a State or Territory is suspended under a law of the State or a law in force in the Territory (including the *Judiciary Act 1903* of the Commonwealth); or
- (c) the person's entitlement to practise as a practitioner is suspended or cancelled under Part 4.

Right to practise - preconditions

9. (1) A person is not entitled to practise as a practitioner unless —

- (a) the person complies with section 7; and
- (b) the person is the holder of a current practising certificate; or
- (c) is exempt from holding a practicing certificate.

(2) Subsection (1) does not apply to a visiting practitioner who is the holder of a recognised interstate practicing certificate.

Admission of practitioners

10. (1) A person referred to in section 7 is entitled to apply to the Registrar of the Supreme Court to be registered as a practitioner.

(2) If, on application under subsection (1), the Registrar is satisfied that —

- (a) the applicant is a person referred to in section 7;
- (b) the applicant is of good fame and character; and
- (c) the applicant's entitlement to practise as a barrister and solicitor of the High Court or as a barrister, solicitor, barrister and solicitor, or legal practitioner in Norfolk Island or a State or Territory is not suspended and has not been cancelled,

the Registrar must register the applicant as a person entitled to practise as a practitioner.

(3) Subsection (1) does not apply to a visiting practitioner who is the holder of a recognised interstate practicing certificate but the visiting practitioner must present to the Registrar upon demand, proof of holding such certificate.

Register of Practitioners

11. (1) The Registrar is to ensure that a register is kept, to be known as the Register of Practitioners of the Supreme Court of Norfolk Island, on which is entered —

- (a) the name of each person registered under this Part;
- (b) the date on which the entry is made; and
- (c) such other matters as may be required by this Act or prescribed by regulation.

(2) A person whose name is entered on the Register of Practitioners must, at the time of registration or at a later time, sign the Register.

(3) At the time of signing the Register, the person must take an oath or make an affirmation in accordance with the prescribed form.

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PART 4 — PRACTISING CERTIFICATES AND DISCIPLINE

Types of practising certificate

13. (1) A visiting practitioner may hold —

- (a) a recognised interstate practising certificate; or
- (b) a Norfolk Island practising certificate

(2) A resident practitioner must hold a Norfolk Island practising certificate, whether or not the practitioner also holds a recognised interstate practising certificate.

Recognised interstate practising certificates

14. (1) A recognised interstate practising certificate is a practising certificate issued by a State or Territory professional body.

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(3) Subject to this Act a practitioner who holds a practising certificate issued by a State or Territory professional body is subject, in respect of the practitioner's professional conduct in Norfolk Island, to the same professional duties and obligations as would have applied to the practitioner in that State or Territory.

Norfolk Island practising certificates

15. (1) A person whose name is entered on the Register of Practitioners may apply in writing to the Registrar for the issue to the person of a Norfolk Island practising certificate.

- (2)** An application must be —
 - (a)** in the prescribed form;
 - (b)** accompanied by the prescribed fee.
- (3)** If the Registrar is satisfied that —
 - (a)** an applicant's name is entered on the Register of Practitioners;
 - (b)** the applicant has indicated in the application the capacity in which the applicant practises or proposes to practise; and
 - (c)** if a professional indemnity cover has been prescribed, that the applicant, being a resident practitioner, has, in or in relation to the applicant's practice or proposed practice, such indemnity cover,

the Registrar must issue to the applicant a Norfolk Island practising certificate.

- (4)** A Norfolk Island practising certificate —
 - (a)** is to be in the prescribed form;
 - (b)** is to indicate the capacity in which the practitioner is entitled to practise; and
 - (c)** has effect, subject to this Act, for 1 year from the date on which it was issued.

Professional conduct arrangement

16. (1) The Minister may make a written arrangement, not inconsistent with this Act, with The Law Society of the Australian Capital Territory for or in relation to the professional conduct of practitioners holding Norfolk Island practising certificates and the provision of professional indemnity cover.

(2) Subject to this Act and to the provisions of the arrangement, a practitioner who holds a Norfolk Island practising certificate is subject, in respect of the practitioner's professional conduct in Norfolk Island, or in a Court of Norfolk Island sitting outside Norfolk Island, to the same professional duties and obligations as would have applied to the practitioner in the Australian Capital Territory.

Complaints against practitioners

16A. (1) A complaint concerning the behaviour of a practitioner may be made direct to the Law Society or if made to the Registrar shall be sent forthwith by him or her to the Law Society.

(2) The Law Society shall refer a complaint to the professional conduct board which shall deal with the complaint in accordance with its professional conduct rules and its procedures for dealing with such complaints.

(3) Without in any way limiting the matters in respect of which complaints may be made, they include —

- (a) failure to account for money held for a person;
- (b) dishonesty;
- (c) unethical behaviour;
- (d) persistent delay or neglect of matters being conducted for a person;
- (e) conflicts of interest between the interests of the practitioner and client;
- (f) acting for two or more persons whose interests conflict;
- (g) gross overcharging;
- (h) failing to act in accordance with a client's instructions.

(4) The professional conduct board has the same powers in relation to a practitioner as in respect of a person holding a practicing certificate in the Australian Capital Territory.

(5) If the professional conduct board considers a matter complained of is of sufficient seriousness it may refer the complaint to the Supreme Court of Norfolk Island under section 18.

(6) A determination by the professional conduct board in respect of a complaint must be notified to the person making the complaint, the practitioner in respect of whom the complaint was made, and the Registrar.

Protection of member of professional conduct board

16B. (1) A member of, or the secretary to, the professional conduct board has, in the performance of his or her duties, the same protection and immunity as a judge of the court.

(2) A practitioner appearing at an inquiry under this division for a person entitled to be heard at the inquiry has the same protection and immunity as a barrister has in appearing for a party in proceedings in the court.

(3) A witness who gives evidence at an inquiry under this division has the same protection as does a witness in proceedings in the court.

Enforcement of a determination

17. (1) A determination under section 16A shall upon being received by the Registrar, be entered in a register to be established and maintained by the Registrar and shall have the same effect as if made as an order of the Court.

(2) The Registrar shall give effect to an order suspending a practising certificate and notice of such suspension shall be published in the Gazette.

(3) If a practitioner is directed to pay a fine, or is required to pay compensation to a person and fails to comply with the order within the time limit for payment, if any, determined by the professional conduct board —

- (a)** a fine may be recovered as a judgment debt due to the Administration; or
- (b)** compensation may be recovered by the persons entitled thereto as a judgment debt.

Referral to the Supreme Court

18. (1) If, on the evidence given at an inquiry before it, the professional conduct board forms the opinion that there are reasonable grounds for believing that the conduct of the practitioner to whom the inquiry relates has been such that the matter should be dealt with by the court, the board shall prepare a report to the court stating —

- (a)** particulars of the conduct; and
- (b)** the evidence on which its opinion is based.

(2) Where the professional conduct board prepares a report under subsection (1), it shall, as soon as practicable —

- (a)** deliver the report to the Registrar, together with a transcript of the evidence given before the committee; and
- (b)** deliver a copy of its report to the solicitor to whom the report relates and to the Law Society.

Disciplinary powers of court

18A. (1) If, on a report under section 18 or otherwise, the court is satisfied that a legal practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the court may, by order, do all or any of the following—

- (a)** direct that his or her name be removed from the Register of Practitioners;
- (b)** suspend for such period as the court considers appropriate his or her right to practise in Norfolk Island as a barrister, as a solicitor or as a barrister and solicitor; or
- (c)** impose on him or her a fine not exceeding 500 penalty units.

(2) In addition to the powers vested in the court under subsection (1), the court may exercise all the powers of the professional conduct board as if —

- (a) each reference in that section to an inquiry were a reference to proceedings on a report under section 18; and
- (b) each reference in that section to the board were a reference to the court.

(3) Where the court makes an order under subsection (1)(b) in respect of a legal practitioner, the court may also order that the legal practitioner may be employed in the practice of a solicitor for such a period and on such conditions as the court considers appropriate.

(4) The Law Society is entitled to be represented in proceedings for an order under this section.

Costs

18B. (1) Where the court makes an order under section 18A(1) or exercises a power under section 18A(2) in respect of a solicitor, the court may, in addition to any order as to costs made in the proceedings, order that the solicitor pay to the Law Society an amount equal to the whole or a specified part of the costs of the relevant inquiry.

(2) For subsection (1) the costs shall be as assessed by the court or, if the court directs that those costs be taxed by the Registrar, as so taxed.

(3) An amount ordered to be paid under subsection (1) is recoverable as a debt due to the Law Society.

Appeal to Supreme Court

19. (1) Where, under an arrangement made in accordance with subsection 16(1), disciplinary action is taken against a practitioner, the practitioner may, within 28 days after the taking of the action, appeal to the Supreme Court against the action taken.

(2) An appeal under this section is to be by way of re-hearing.

(3) The relevant professional body is to be the respondent to the hearing of an appeal under this section.

Removal from Register of Practitioners

20. Where the Supreme Court makes an order directing that the name of a practitioner be removed from the Register of Practitioners, the Registrar is to make such entries in the Register as are necessary to give effect to the order.

Other powers of Supreme Court not affected

21. The provisions of this Part are in addition to, and do not restrict or bind, the jurisdiction and power that the Supreme Court has, apart from this Act, in relation to the control and discipline of practitioners.

PART 5 — TRUST MONEY AND TRUST ACCOUNTS

Money received by solicitor to be held in trust

22. (1) All money received by a solicitor, in connection with the solicitor's practice in Norfolk Island, from, or on behalf of, a client of the solicitor is, for all purposes, to be taken to be held in trust for that client to be disbursed, or otherwise dealt with, by the solicitor in accordance with the instructions of the client.

(2) Where a solicitor receives, in the course of the solicitor's practice in Norfolk Island, money from a person who is not a client of the solicitor on the condition that the money is to be held by the solicitor and is subsequently to be disbursed or otherwise dealt with by the solicitor in accordance with the directions of that person or another person, the money is to be taken for the purposes of this Act to be held by the solicitor in trust for that person as if that person were a client of the solicitor, and this Part applies to and in relation to such money as if that person were a client of the solicitor.

(3) Subsection (1) does not apply —

- (a)** to money received by a solicitor for or on account of the solicitor's professional costs, whether already due or to become due; or
- (b)** to or in relation to a cheque, bank cheque, bank draft or money order made payable or to the order of a specified person, or to a specified person or bearer (not being a cheque, bank cheque, bank draft or money order in which the payee is the solicitor, a partner of the solicitor, or the firm of the solicitor) received from or on behalf of a client with express or implied instructions that the cheque, bank cheque, bank draft or money order is to be delivered to the person to whom it is payable.

(4) This Part does not affect a lien that a solicitor would, apart from the provisions of this Part, have over money held by the solicitor.

Trust accounts

23. (1) A solicitor must, for the purposes of the solicitor's practice, open and maintain a trust bank account at a bank in Norfolk Island under a title which includes the name or style under which the solicitor practises and words that indicate that it is the general trust bank account of the solicitor.

(2) Where 2 or more solicitors practise in partnership in Norfolk Island, it is sufficient compliance with subsection (1) if a trust bank account is opened and maintained on behalf of the partnership under a title that includes —

- (a)** the name or style of the partnership;
- (b)** the full name of each partner in the partnership; and
- (c)** words that indicate that it is the general trust bank account of the partnership.

(3) This section does not prevent a solicitor from opening and maintaining, in accordance with the Regulations, one or more special trust bank accounts in addition to a general trust bank account.

Conduct of trust accounts

24. (1) A solicitor must maintain and conduct the solicitor's general trust bank account, and any special trust bank accounts, in accordance with the Regulations.

(2) A solicitor must keep such accounting or other records as are prescribed in relation to trust money received or paid by the solicitor.

(3) Where 2 or more solicitors practise in partnership in Norfolk Island, it is sufficient compliance with subsection (2) if the records are kept on behalf of the partnership.

Audit of trust accounts

25. (1) The only persons who may audit a practitioner's trust account for the purposes of this Act are —

- (a) the Norfolk Island Government Auditor; or
- (b) a registered company auditor within the meaning of the *Companies Act 1985*.

(1A) No firm may be engaged to audit a trust account if a member of the firm is —

- (a) an employee of the practitioner by whom the records are kept; or
- (b) the domestic partner of the practitioner by whom the records are kept; or
- (c) an employee of another practitioner.

(2) The function of the auditor is to audit the records of each solicitor in practice in Norfolk Island in respect of trust money held by the solicitor.

(3) The auditor is to conduct such an audit in respect of —

- (a) the period between the commencement of this section and 30 June following; and
- (b) each subsequent financial year.

Audit reports

26. (1) The auditor must prepare a written report of an audit and must state in the report —

- (a) whether, in the auditor's opinion, the solicitor has kept accounting and other records of the kind that the solicitor is required by this Part to keep;
- (b) whether the solicitor has complied, within a reasonable time, with all requirements made by the auditor, being requirements that the auditor is authorised by this Part to make; and

- (c) anything in relation to the accounting and other records of which the solicitor, or the relevant professional body, should, in the opinion of the auditor, be informed.

(2) The auditor must, as soon as practicable after the preparation of the report, provide the report to the solicitor to whom the report relates.

(3) The solicitor must, within 14 days after a report is so provided to the solicitor, provide a copy of the report to the relevant professional body.

Interim audits and reports

27. (1) The auditor may at any time conduct an interim audit in respect of trust money held by a solicitor.

(2) If the auditor considers that the accounting and other records of the solicitor of the kind that the solicitor is required by this Part to keep have not been kept in such a manner as to enable the auditor properly to audit them, or the auditor has reason to believe —

- (a) that there is any loss or deficiency of trust money;
- (b) that there has been any failure to pay or account for trust money; or
- (c) that there has been a failure to comply with any provision of this Part,

the auditor must, as soon as practicable, report in writing accordingly to the solicitor and provide a copy of the report to the relevant professional body.

Powers of auditor

28. (1) The auditor may, for the purposes of an audit or interim audit under this Part, require a solicitor —

- (a) to produce forthwith to the auditor the books, papers, accounts, registers of receipts, securities and documents in the solicitor's possession that relate to trust money received or paid by the solicitor during the period to which the audit or interim audit relates;
- (b) to provide to the auditor such information as the auditor requires, and to answer all questions put to the solicitor by the auditor, in relation to —
 - (i) the books and other documents referred to in paragraph (a); and
 - (ii) all transactions by the solicitor in the course of the solicitor's practice in the period to which the audit or interim audit relates; and

- (c) to provide to the auditor such authorities as are necessary to enable the auditor to inspect and make copies of documents or records kept at the bank at which the solicitor maintains a trust bank account in accordance with this Part and relating to that trust bank account.
- (2) A solicitor must comply with a requirement under this section.

Secrecy of audit

29. The auditor must not communicate to a person any matter that comes to the auditor's knowledge in the course of an audit or interim audit unless the communication is made —

- (a) in accordance with this Act;
- (b) in or for the purpose of proceedings in a Court;
- (c) to a relevant professional body;
- (d) for the purposes of disciplinary proceedings conducted by virtue of an arrangement under subsection 16(1); or
- (e) to a member of the Norfolk Island Police Force, where the member is acting in the course of the member's duties as a member.

Penalty: 50 penalty units.

Application of Part

30. (1) This Part does not apply to a solicitor in respect of a financial year if the solicitor did not, at any time during the year, receive or hold any trust money and the solicitor, within 14 days after the end of the financial year, makes and provides to the auditor a statutory declaration to that effect.

(2) A practitioner who is not a solicitor must not, in connection with the practitioner's practice in Norfolk Island, receive money from a client of the practitioner or other person if, under section 22, the money would have been trust money had the practitioner been a solicitor.

Audit fee

31. Where an audit or interim audit has been conducted under this Part, the solicitor to whom the audit relates must pay to the Administration, upon demand, the prescribed fee.

Professional indemnity claims

32. Where, under an arrangement made in accordance with subsection 16(1), a resident practitioner is required to hold professional indemnity cover a person claiming against the practitioner has, subject to the terms of the arrangement, the same rights under the cover, in the same circumstances, and subject to the same conditions, as would have applied if the person had suffered the loss in the Australian Capital Territory.

PART 6 — COSTS

Action for costs

33. (1) Subject to subsection (2), a solicitor is not entitled to institute proceedings in a Court for the recovery of costs or disbursements for, or in respect of, work of a professional nature until the end of a period of one month after the solicitor delivers to the person from whom the costs or disbursements are claimed an itemised statement of the costs or disbursements.

(2) If the Court of Petty Sessions is satisfied that there are reasonable grounds for believing that a person to whom such a statement has been delivered is about to leave Norfolk Island, the Court of Petty Sessions may grant leave to the solicitor by whom the statement was delivered to institute proceedings for the recovery of the costs or disbursements even though a period of one month has not elapsed since the delivery of the statement.

Application for taxation

34. (1) A person to whom a statement is delivered under section 33 may —

- (a) within one month after the delivery of the statement; or
- (b) within such further time as the Registrar allows,

give notice to the Registrar and to the solicitor by whom the statement was delivered that the person applies to have the amount payable by the person to be determined by taxation.

(2) The matters to be considered and the procedures to be followed in, or in connection with, the determination of an application under subsection (1) are to be as specified in the Regulations.

(3) A person is not entitled to give notice under subsection (1) after judgment has been entered in proceedings for the recovery of all or part of the costs or disbursements specified in a statement delivered under this Part.

Certificate of taxation

35. (1) After the taxation of a statement under this Part, the Registrar must certify in writing the amount (if any) that, having regard to the result of the taxation, is, in the Registrar's opinion, due to the solicitor who delivered the statement or, if the solicitor has received payment of the amount specified in the statement, the amount (if any) due from the solicitor.

(2) The Registrar must deliver a copy of the certificate to each of the persons who appeared, or was represented, on the taxation.

(3) In an action by a solicitor for the recovery of an amount of costs or disbursements, the certificate is conclusive with respect to the amount due to the solicitor.

(4) A reference in subsection (2) or (3) to a certificate includes a reference to such a certificate as amended under section 36.

Review of taxation

36. (1) A person aggrieved by a decision of the Registrar as to any item in a statement delivered under this Part may, within 14 days after the date on which a copy of the Registrar's certificate is delivered to the person, or within such further time as the Supreme Court allows, apply to the Supreme Court for review of the decision of the Registrar.

(2) The Supreme Court may affirm or vary the decision of the Registrar, and may give such directions as it thinks necessary in respect of the amendment of the certificate given by the Registrar.

(3) The Registrar must comply with any such directions, and must deliver a copy of the amended certificate to each of the persons to whom the certificate was delivered in accordance with subsection 35(2).

Costs of taxation

37. (1) Where the amount claimed in a statement delivered under this Part is reduced on taxation by 25% or more, the solicitor who delivered the statement is liable to pay to the person to whom the statement was delivered the person's costs of the taxation.

(2) Where the amount claimed in a statement delivered under this Part is not reduced on taxation, or is reduced by less than 25%, the person to whom the statement was delivered is liable to pay to the solicitor who delivered the statement the solicitor's costs of the taxation.

(3) The amount to be paid under subsection (1) or (2) must be assessed by the Registrar immediately after the completion of the taxation and is recoverable as if it were included in the certificate of taxation.

Recovery proceedings

38. (1) Subject to subsection (3), where notice is given under section 34 in respect of a statement delivered under this Part, any proceedings commenced by a solicitor in relation to costs or disbursements claimed in the statement are, by force of this section, stayed until the end of 14 days after the date of delivery of the certificate of the Registrar under section 35.

(2) Subject to subsection (3), where a certificate of the Registrar under section 35 specifies an amount to be due from a solicitor to the person to whom was delivered the statement that is the subject of the certificate, the amount so specified is recoverable by the person as a debt due to the person by the solicitor.

(3) If, under section 36, application is made for review of a decision of the Registrar, proceedings of a kind referred to in subsection (1) or (2) are, by force of this subsection, stayed until the determination of the application.

Costs agreements

39. (1) This Part (other than this section and section 40) does not apply in respect of costs to be paid to a solicitor for work to which an agreement under this section relates.

(2) A solicitor may make an agreement with a person that the amount of costs (not including disbursements) payable, or to be payable, by the person to the solicitor for work of a professional nature already undertaken, or to be undertaken, for the person by the solicitor is to be the amount specified in, or ascertainable under, the agreement.

(3) Such an agreement is not enforceable unless it is in writing and is signed by the person liable to pay the costs to which the agreement relates.

(4) A solicitor who is a party to such an agreement is not entitled, in respect of the work to which the agreement relates, to receive an amount for the solicitor's costs (not including disbursements) greater than the amount specified in, or ascertainable under, the agreement.

Unfair costs agreements

40. (1) Where, on application by a person who has made an agreement with a solicitor under section 39, the Supreme Court is satisfied that the agreement is not fair and reasonable, the Court may, by order —

- (a)** direct that the amount payable under the agreement be reduced to an amount specified in the order; or
- (b)** declare that the agreement is not binding on the parties to the agreement.

(2) Where, under subsection (1), the Supreme Court directs that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order of the Court were specified in the agreement as the amount payable under the agreement.

(3) Where, under subsection (1), the Supreme Court declares that an agreement is not binding on the parties to the agreement —

- (a)** the Court may make such further orders as it thinks necessary to restore the parties to the position in which they would have been if the agreement had not been made; and
- (b)** this Part (other than section 39) applies as if the agreement had not been made.

PART 7 — OFFENCES BY UNQUALIFIED PERSONS**Unqualified persons not to hold themselves out as qualified**

- 41.** An unqualified person must not —
- (a) hold himself or herself out to be, or to be qualified to perform, any of the functions of a practitioner; or
 - (b) permit his or her name to be used so as to suggest that the person is, or is qualified to perform, any of the functions of a practitioner.

Penalty: 50 penalty units.

Unqualified persons not to prepare certain documents

- 42. (1)** Subject to subsection (2), an unqualified person must not, for reward —
- (a) draw, or cause to be drawn by an employee of the person, a will or other testamentary instrument; or
 - (b) draw, or cause to be drawn by an employee of the person, an instrument creating or regulating rights between persons, or relating to real or personal property or to a legal proceeding.

Penalty: 50 penalty units.

- (2)** It is not an offence under subsection (1) —
- (a) for a public officer to draw an instrument in the course of the officer's employment;
 - (b) for a person to engross an instrument in the course of the person's employment;
 - (c) for a person, employed to draw an instrument of a kind referred to in subsection (1) as part of the person's ordinary duties, to draw such an instrument if the employer of the person is a practitioner and the person does not receive, in respect of the drawing of the instrument, a fee or reward other than the person's wage or salary; or
 - (d) if the drawing of the instrument occurs in circumstances prescribed in the Regulations.

Unqualified persons not to act in probate matters

- 43. (1)** An unqualified person must not, for reward —
- (a) take instructions, either on the person's own behalf or as agent for another person, for the preparation of papers to be used in support of, or in opposition to, an application for a grant of probate or letters of administration; or

- (b) draw or prepare such papers.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply to —
 - (a) the Curator of Estates of Deceased Persons; or
 - (b) a person employed in the office of the Curator of Estates of Deceased Persons.

PART 8 — MISCELLANEOUS

Act to bind Crown, Administration and Territory authorities

- 44. (1)** Subject to this section, this Act binds —
- (a) the Crown in right of Norfolk Island and the Administration; and
 - (b) each Territory authority.
- (2)** The Regulations may provide that the application of this Act to the Crown or Administration is to be modified as set out in the Regulations.
- (3)** Nothing in this Act makes the Crown in right of Norfolk Island or the Administration liable to be prosecuted for an offence.

Commencement

- 45. (1)** This Act comes into operation on a date, or dates, fixed by the Administrator by notice published in the Gazette.
- (2)** The Administrator may fix different dates for the commencement of different provisions of this Act.

Regulations

- 46. (1)** The Administrator may make regulations prescribing matters —
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2)** Without limiting subsection (1), the regulations may prescribe penalties not exceeding 50 penalty units for a contravention or breach of the regulations.

Amendment of Judicature Act 1960

47. The *Judicature Act 1960* is amended by omitting section 14 and substituting —

Rights of audience

“14. (1) The parties to any suit or matter before the Supreme Court or Court of Petty Sessions may appear personally, by a practitioner, or, with the leave of the Supreme Court or Court of Petty Sessions, as the case may be, by any other person.

(2) In this section, ‘practitioner’ means the same as in the *Legal Profession Act 1993*.”.

SCHEDULE

Section 3

DEFINITIONS**Item**

1. In this Schedule, a defined expression is shown in bold type.

2. In this Act, unless the contrary intention appears -

“**auditor**” means the auditor of **solicitors’** trust money referred to in subsection 25(1);

“**Australia**” does not include the external Territories;

“**Curator of Estates of Deceased Persons**” means the Curator of Deceased Estates under the *Administration and Probate Act 2006*;

“**current practising certificate**” means a **practising certificate**;

“**disciplinary action**” includes —

- (a) a reprimand;
- (b) the imposition of a pecuniary penalty, or the imposition of a requirement to pay or refund money to a person;
- (c) the imposition of restrictions on the ability of a **practitioner** to practise; and
- (d) the suspension or cancellation of a **practitioner’s** right to practise;

“**disciplinary proceedings**” means proceedings (whether or not undertaken in a Court) in relation to, or in contemplation of, **disciplinary action**;

“**financial year**” means each period of 12 months beginning on 1 July;

“Norfolk Island Government Auditor” means the person or firm holding office as Norfolk Island Government Auditor under section 51 of the *Norfolk Island Act 1979* of the Commonwealth;

“Norfolk Island Police Force” means the Police Force referred to in the *Police Act 1931*;

“Norfolk Island practising certificate” means a **practising certificate** of the kind referred to in section 15;

“practising certificate” means a **Norfolk Island practising certificate** or a **recognised interstate practising certificate**;

“practitioner” means a person who, in accordance with sections 7, 8 and 9, practices, or is entitled to practise, or intends to practise, as a **practitioner**, whether as a barrister, **solicitor**, barrister and **solicitor**, attorney or proctor, in the Norfolk Island jurisdiction;

“professional body” means a Law Society, Law Institute or Bar Association, by whatever name called, that has the function of regulating the professional conduct of its members;

“professional conduct board” means the Professional Conduct Board of The Law Society of the Australian Capital Territory established by the *Legal Practitioners Act 1970* (A.C.T.);

“professional indemnity cover”, in relation to a **practitioner**, means a contract of insurance to which the **practitioner** is a party, whether personally or under a master policy scheme administered by a **professional body**, by which the **practitioner** is indemnified against all or part of the **practitioner’s** liability to other persons in respect of the **practitioner’s** negligence in the course of the **practitioner’s** professional practice;

“public officer” means a person holding office or employed under an enactment;

“recognised interstate practising certificate” means a **practising certificate** of the kind referred to in section 14;

“Registrar” means the same as in the *Supreme Court Act 1960*;

“relevant professional body” means —

- (a) in relation to a **practitioner** who holds only a **recognised interstate practising certificate** - the **professional body** which issued the certificate;
- (b) in relation to a **practitioner** who holds a **Norfolk Island practising certificate** - The Law Society of the Australian Capital Territory;
or
- (c) in relation to a **practitioner** who holds both a **recognised interstate practising certificate** and a **Norfolk Island practising certificate** - The Law Society of the Australian Capital Territory;

“resident practitioner” means a **practitioner** who is a resident within the meaning of the *Immigration Act 1980*, or who holds a general or temporary entry permit issued under that Act;

“Register of Practitioners” means the Register of Practitioners of the Supreme Court of Norfolk Island referred to in subsection 11(1);

“solicitor” means a **practitioner** who does not practise solely as a barrister;

“State or Territory professional body” means a **professional body** constituted or incorporated in a State or **Territory**;

“the Law Society” means The Law Society of the Australian Capital Territory;

“The Law Society of the Australian Capital Territory” means the body of that name constituted under the *Legal Practitioners Act 1970* of the Australian Capital Territory;

“Territory” does not (except in the definition of **“Territory authority”**) include Norfolk Island;

“Territory authority” means a body corporate established by an enactment;

“trust bank account” includes a general trust bank account and a special trust bank account;

“unqualified person” means a person who is not a **practitioner**;

“visiting practitioner” means a **practitioner** who is not a **resident practitioner**.

3. Where, in this Act, an instrument is expressed to be a **disallowable instrument**, section 41 of the *Interpretation Act 1979* applies to the instrument as if the instrument were Regulations made by the Administrator under an enactment.

NOTES

The *Legal Profession Act 1993* as shown in this consolidation comprises Act No. 6 of 1993 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Legal Profession Act 1993</i>	6, 1993	Part 1 and sections 45 & 46 comm 13.5.1993 Remainder of Act except 16(2) comm 27.6.2008	
<i>Legal Profession (Amendment) Act 2005</i>	23, 2005	30.9.2005	

[Previously consolidated as at 23 September 2006]

<i>Legal Profession (Amendment) Act 2008</i>	12, 2008	27.6.2008
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[Previously consolidated as at 28 June 2008 and re-issued 11 April 2011]

<i>Interpretation (Amendment) Act 2012</i> [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12
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Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and substituted
inserted

Provisions affected	How affected
3	am 12, 2008
5	am 23, 2005
6	am 23, 2005
8	am 12, 2008
9	am 12, 2008
10	am 12, 2008
11	am 12, 2008
12	rep 12, 2008
14	am 12, 2008

ad = added or am = amended rep = repealed rs = repealed and
 inserted substituted

Provisions affected	How affected	
15	am	12, 2008; 23, 2005
16	am	12, 2008; 14, 2012
16(A)	ad	23, 2005
16(B)	ad	23, 2005
17	rs	23, 2005
18	rs	23, 2005
18	am	12, 2008
18A	ad	23, 2005
18B	ad	23, 2005
19	am	12, 2008
20	am	12, 2008
25	am	23, 2005; 12, 2008
29	am	12, 2008
32	rs	12, 2008
Schedule	am	23, 2005; 12, 2008

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