

DRAFT LEGAL PROFESSION RULES – CONSULTATION PROCESS

By section 576 of the *Legal Profession Act, 2008 (WA)* (**Act**), the Legal Practice Board of Western Australia (**Board**) was, for the first time, given power to make legal professional rules concerning, amongst other things, the standards of conduct expected of legal practitioners to whom the Act applies.

By section 583 of the Act, such rules will be subsidiary legislation as defined in the *Interpretation Act, 1984*.

As a result, by section 404 of the Act, a contravention of such rules would therefore be “capable of constituting unsatisfactory conduct or professional misconduct”.

Provided **below** is a discussion draft of proposed Legal Profession Rules (**draft Rules**). The draft Rules have been prepared by a committee chaired by the immediate past Chair of the Board and comprised of representatives of the Board, Legal Professions Complaints Committee, Law Society of Western Australia and the Bar Association of Western Australia.

The Board has authorised the release of the draft Rules at this point so that interested stakeholders are given an opportunity to consider and comment upon them prior to further consideration by the Board. In particular, the Board is seeking comments on the substance, rather than the form, of the draft Rules.

For the avoidance of doubt, the Board notes it is cognisant of the fact that there are presently steps being taken to move towards a single national legal profession. If that occurred, national conduct rules would no doubt be prepared and published which would likely replace any rules which the Board may prescribe under the Act. Notwithstanding, in view of the present uncertainty as to whether that will occur and, if it does, when it will occur, the Board has resolved to proceed with the promulgation of legal professional rules under the Act in the meantime.

The Board will next be meeting on 7 April 2010. Accordingly, any comments you may wish to provide to the Board should be provided no later than 30 March 2010.

The Board looks forward to receiving your comments in due course.

In the meantime, should you have any queries, please contact the Board’s Executive Director, Mr Graeme Geldart, on Tel (08) 6211 3600 or ggeldart@lpbwa.com.

DRAFT PRACTITIONER'S CONDUCT RULES

REVIEW AND DISCUSSION DRAFT

15 FEBRUARY 2010

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NATURE AND PURPOSE OF THE RULES

1. SCOPE AND EFFECT OF THE RULES

- 1.1. These Rules apply to:
 - 1.1.1 all local lawyers;
 - 1.1.2 all locally registered foreign lawyers;
 - 1.1.3 all interstate lawyers whilst practising in Western Australia; and
 - 1.1.4 all interstate – registered foreign lawyers whilst practising in Western Australia.
- 1.2. The object of these Rules is to assist a practitioner to act ethically and in accordance with the generally accepted principles of professional conduct established by the common law and as set out in these Rules.
- 1.3. Failure to comply with any of these Rules is capable of constituting unsatisfactory professional conduct or professional misconduct.
- 1.4. These Rules do not apply to the extent of any inconsistency with statute, common law or equity.
- 1.5. The definitions that apply in these Rules are set out in the glossary at the end of this document.

FUNDAMENTAL DUTIES OF PRACTITIONERS

2. PARAMOUNT DUTY TO THE COURT AND THE ADMINISTRATION OF JUSTICE

- 2.1 A practitioner's duties to the Court and the administration of justice are paramount and prevail to the extent of inconsistency with any other duty, including but not limited to all duties to the practitioner's client.

3. OTHER FUNDAMENTAL ETHICAL OBLIGATIONS

- 3.1 Subject to Rule 2.1, a practitioner must also:
 - 3.1.1 act in the best interests of a client;
 - 3.1.2 be honest, candid, and courteous in all dealings with clients, other legal practitioners and third parties;

- 3.1.3 be competent and diligent in delivering legal services;
 - 3.1.4 avoid any compromise to their integrity and independence;
 - 3.1.5 not attempt to further a client's cause by unfair or dishonest means; and
 - 3.1.6 comply with these Rules and the law.
- 3.2 A practitioner must not engage in conduct, whether in the course of practice or otherwise, which is dishonest or likely to a material degree to:
- 3.2.1 be prejudicial to the administration of justice;
 - 3.2.2 diminish public confidence in the administration of justice;
 - 2.3.3 adversely affect a practitioners ability to comply with these Rules; or
 - 3.2.4 discredit the profession.

RELATIONS WITH CLIENTS

4. COMMUNICATION

- 4.1 A practitioner must communicate effectively and promptly with clients.

5 INSTRUCTIONS

- 5.1 Subject to 2.1, a practitioner must:

- 5.1.1 follow a client's lawful and proper instructions;
- 5.1.2 treat the client fairly and in good faith, giving due regard to the client's position of dependence, the practitioner's special training and experience and the high degree of trust the client is entitled to place in the practitioner;
- 5.1.3 be completely frank and open with the client;
- 5.1.4 always act in the client's best interests;
- 5.1.5 perform the work required on behalf of the client diligently;
- 5.1.6 not accept an instruction which is beyond the practitioner's competence;
- 5.1.7 not accept an instruction if the practitioner is not in a position to carry out and complete the instruction diligently; and
- 5.1.8 not take unnecessary steps or do the work in such a manner as to increase the proper costs to the client.

6. CONFIDENTIALITY

- 6.1 Subject to the exceptions in Rule 6.2, a practitioner must not disclose to any person who is not:
- 6.1.1 a partner, director or practitioner associate of the practitioner's law practice; or
 - 6.1.2 an employee of, or person otherwise engaged by, the practitioner's law practice,
- any information which is confidential to a client and acquired by the practitioner during the client's engagement.
- 6.2 A practitioner may disclose confidential client information if:
- 6.2.1 the client expressly or impliedly authorises the disclosure;
 - 6.2.2 the practitioner is permitted or is compelled by law to make the disclosure;
 - 6.2.3 the practitioner discloses the information in a confidential setting, for the sole purpose of obtaining the advice of another practitioner on the first practitioner's legal or ethical obligations;
 - 6.2.4 the practitioner discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence under the criminal law;
 - 6.2.5 the practitioner discloses the information to prevent imminent serious physical harm to the client or to another person;
 - 6.2.6 the information has lost its confidentiality; or
 - 6.2.7 the practitioner obtains the information from another person who is not bound by the confidentiality owed by the practitioner to the client and who does not give the information confidentially to the practitioner.

7. KEEPING THE CLIENT INFORMED

- 7.1 A practitioner must fully inform the client of the client's rights and possible courses of conduct regarding issues of substantial importance and must keep the client informed about all significant developments and generally about the matter entrusted to the practitioner by the client unless the practitioner has been instructed not to do so.
- 7.2 A practitioner must notify the client promptly if the practitioner receives money or securities on behalf of the client.

8. IMPECUNIOUS CLIENTS

- 8.1 If a practitioner has reason to believe that the client will not be able to raise or borrow sufficient money to pay the practitioner's costs and the client may otherwise be eligible for legal aid, the practitioner must inform the client of the availability of legal aid (and if

required, must make an application on behalf of the client) but the practitioner is not obliged to act for the client on a legal aid basis.

- 8.2 Subject to section 227 of the Act, a practitioner may act for a client who has no financial means and may expend the practitioner's own money in payment of counsel fees and other outgoings even if the practitioner has no prospect of being paid either those fees or outgoings except as a result of a judgment or order against the other party to the proceedings.
- 8.3 Notwithstanding Rule 8.2, a practitioner may not in any case seek or receive from the client an interest in the subject matter of the litigation or, except to the extent permitted by any scale of costs which may be applicable, remuneration varying in accordance with the amount which may be recovered by the client in the proceedings.

CONFLICTS OF INTEREST

9. GENERALLY

- 9.1 Subject to Rule 2.1, a practitioner must protect and preserve the interests of the practitioner's clients unaffected by the interest of any other person, including other clients of the practitioner and the practitioner's own interests and those of the practitioner's firm and associates.

10. CONFLICTS CONCERNING FORMER CLIENTS

- 10.1 A practitioner must not accept an engagement to act for another person where:
- 10.1.1 a practitioner or the practitioner's current or former firm or the former firm of a partner, director or employee of the practitioner or of the practitioner's firm has acted previously for another person ("the former client") and has thereby acquired confidential information of the former client ("confidential information") which is material to the proposed engagement; and
- 10.1.2 there is a real possibility that the practitioner will be required to use the confidential information to the detriment of the former client and/or be obliged to disclose the confidential information to the new client so as to act in the best interests of the new client,
- unless either
- 10.1.3 the former client has given fully informed written consent to the practitioner that the practitioner may accept the engagement; and/or
- 10.1.4 an effective information barrier has been established.
- 10.2 Where a practitioner is in possession of confidential information of the former client which might reasonably be concluded to be material to the another client's current

matter, the practitioner and the practitioner's law practice must not act or agree to act for the current client if this would involve using the confidential information in the current matter UNLESS:

10.2.1 the former client has given fully informed written consent to the practitioner; or

10.2.2 an effective information barrier has been established.

11. CONFLICTS BETWEEN THE INTERESTS OF CLIENTS

11.1 A practitioner must avoid conflicts between the interests of, or duties owed, to two or more clients.

11.2 A practitioner must not represent or continue to represent two or more clients having actual conflicting interests in any matter.

11.3 A practitioner may represent or continue to represent two or more persons having potentially conflicting interests in any matter if to do so is not likely to prejudice the interests of any one client and each client is fully informed of the nature and implications of any conflict of interest, and voluntarily consents to the practitioner so acting or continuing to act.

11.4 A practitioner who acts for multiple clients with potentially conflicting interests where permitted by these Rules, must:

11.4.1 assess on a reasonable basis that each client is receiving legal advice and representation to no lesser degree than if the clients had been independently represented; AND

11.4.2 ensure that each client is aware that the practitioner is also acting for the other client.

12. CONFLICTS WITH PRACTITIONER'S OWN INTERESTS

12.1. A practitioner must avoid conflicts between the interests of a client and the interests of the practitioner, the practitioner's firm, any partners, directors or employees of the practitioner's firm or any associate of the practitioner.

12.2 If the practitioner, the practitioner's firm any partner director or employee of the practitioner's firm or any associate of the practitioner has an interest which may conflict with the interests of a client, the practitioner must decline to represent or cease representing the client (as the case may be) unless the client is fully informed as to the matter, including by the provision of independent written legal advice, and voluntarily assents to the practitioner acting or continuing to act on the client's behalf.

12.3 Subject to the exception at Rule 12.4.3, a practitioner must not borrow any money, nor permit or assist any associate to borrow money from:

- 12.3.1 a client of the practitioner or of the practitioner's firm;
- 12.3.2 a former client of the practitioner or of the practitioner's firm who has indicated a continuing reliance upon the advice of the practitioner or of the practitioner's law practice in relation to the investment of money; or
- 12.3.3 a person who has sought from the practitioner, or the practitioner's law practice, advice in relation to money or the management of the person's financial affairs.

12.4 A practitioner will not have breached this Rule merely by:

- 12.4.1 Drawing a Will appointing the practitioner or an associate of the practitioner as executor, provided the practitioner informs the client in writing before the client signs the Will –
 - (i) of any entitlement of the practitioner, or the practitioner's law practice or associate, to claim commission;
 - (ii) of the inclusion in the Will of any provision entitling the practitioner, or the practitioner's law practice or associate, to charge legal costs in relation to the administration of the estate; and
 - (iii) if the practitioner or the practitioner's law practice or associate has an entitlement to claim commission, that the client could appoint as executor a person who might make no claim for commission;
- 12.4.2 Drawing a Will or other instrument under which the practitioner (or the practitioner's law practice or associate) will or may receive a substantial benefit other than any proper entitlement to executor's commission and proper fees, provided the person instructing the practitioner is either –
 - (i) a member of the practitioner's immediate family; or
 - (ii) a practitioner, or a member of the immediate family of a practitioner, who is a partner, employer, or employee, of the practitioner;
- 12.4.3 Borrowing money from a client which is –
 - (i) a bank or credit union;
 - (ii) a trustee company as defined in the [RELEVANT LEGISLATION];
 - (iii) a society as defined in [RELEVANT LEGISLATION];
 - (iv) the responsible entity of a managed investment scheme registered under chapter 5C of the *Corporations Act* or a custodian for such a scheme;
 - (v) an associate of the practitioner and the practitioner is able to discharge the onus of proving that a full written disclosure was made to the client and that the client's interests were fully

- protected in the circumstances, whether by legal representation or otherwise; or
- (vi) the employer of the practitioner.

GENERAL CONDUCT OF PRACTICE

13. MAINTAINING PROFESSIONAL INTEGRITY

- 13.1 A practitioner must not attempt to further a client's case by unfair or dishonest means.
- 13.2 A practitioner must not intentionally assist or induce another practitioner to breach these Rules.
- 13.3 A practitioner must take reasonable care to ensure that any partner, associate or employee of the practitioner does not breach these Rules.
- 13.4 A practitioner must properly supervise all professional work carried out for or on behalf of the practitioner by a non-practitioner.
- 13.5 If a practitioner becomes aware of a breach of Part 9 of the Act and the person in breach is a client, the practitioner must treat the information as confidential but must point out the breach to the client and recommend that the client should avoid future breaches.
- 13.6 If a practitioner becomes aware of a breach of Part 9 of the Act and the person in breach is not a client of the practitioner:
- 13.6.1 if the knowledge is received in the course of the practitioner's professional duties for someone who is a client of the practitioner, the practitioner must point out the breach to the client and recommend that the matter be brought to the attention of the Complaints Committee while making it clear that it is the client's prerogative to determine whether this course is to be followed; but
- 13.6.2 if the knowledge is received other than in the course of professional duties for a client, the practitioner must, in accordance with the practitioner's duty to the public and to the legal profession, report the matter to the Complaints Committee.

14. CONDUCT OF PRACTICE

- 14.1 A practitioner who carries on a legal practice must ensure that the practice is efficiently and properly administered and must take all reasonable and practicable steps to ensure that professional engagements are fulfilled or that early notice is given if they cannot be fulfilled.
- 14.2 A practitioner who carries on a legal practice must ensure a practitioner is supervising that legal practice at its main place of business whenever that practice is open for business.

- 14.3 The practitioner must also ensure that a practitioner is supervising at any branch of the practice whenever the branch office is open for business.
- 14.4 Without limiting Rules 14.2 and 14.3, a practitioner must ensure that adequate and regular supervision is provided for all professional business conducted at any office of the practice.
- 14.5 A practitioner must not, in the course of legal practice:
- 14.5.1 discriminate against any person by reason of the colour, race, ethnic or national origins, gender, sexual orientation, marital status, physical impairment or religious beliefs of that other person or any other ground providing for by State or Commonwealth legislation;
 - 14.5.2 sexually harass any person, including making an unwelcome sexual advance or an unwelcome request for sexual favours or engaging in other unwelcome conduct of a sexual nature where the other person has a reasonable basis for believing that by rejecting the advance, refusing the request or taking objection to the conduct, the other person will be disadvantaged in some way; or
 - 14.5.3 engage in conduct which is not directed towards a specific person, but is offensive or is likely to offend a reasonable person because of its sexual nature.

15. FEES AND TRUST ACCOUNTS

- 15.1 A practitioner must not claim costs in a letter of demand for debt written on behalf of the client unless the client has a right to recover those costs.
- 15.2 A practitioner must not, in the course of the practitioner's practice, give or agree to give an allowance in the nature of an introduction fee or spotter's fee to any person for introducing professional business to the practitioner and must not receive or agree to receive a similar allowance from any person for introducing or recommending clients to that person.
- 15.3 A practitioner must, within a reasonable time after receiving a request from the client, render an invoice for the work to which the request relates.
- 15.4 A practitioner may only charge costs which are no more than is reasonable for the practitioner's services having regard to the complexity of the matter, the time and skill involved, any scale of costs that might be applicable and any agreement as to costs between the practitioner and the client.
- 15.5 Subject to any order made under the Act, a practitioner must not charge a client or former client any costs for answering a complaint regarding the practitioner which is made to the practitioner, the practitioner's firm, the Society or the Complaints Committee.

16. FIRMS

- 16.1 A practitioner must not falsely represent that a person is or was the practitioner's partner or former partner (as the case may be).
- 16.2 A practitioner must not allow the name of any person to appear on any sign in relation to the practitioner's practice or on the practitioner's stationery unless the name forms part of the firm under which the practitioner practices or the name is that of a practitioner who is:
- 16.2.1 a partner; or
 - 16.2.2 employed by the practitioner or the practitioner's firm and the person's title or position within the firm is stated.

17. CONDUCT OF OTHER BUSINESS

- 17.1 A practitioner who carries on a legal practice may not carry on another business unless:
- 17.1.1 the other business does not detract from the dignity of the legal profession;
 - 17.1.2 the practitioner keeps the conduct of that other business entirely separate from the legal practice insofar as correspondence, accounts and presentation to the public are concerned; and
 - 17.1.3 the carrying on of the other business is not calculated to attract professional business to the practitioner or likely to lead to any other infringement of the Act or these Rules.
- 17.2 For the purpose of Rule 17.1, a practitioner is taken to be carrying on another business if that business is conducted by a company but is substantially under the practitioner's direction or control.

18. PRACTITIONER EMPLOYED BY A PERSON OTHER THAN A LAW PRACTICE

- 18.1 In this Rule 18, a reference to an employed practitioner means a practitioner who is employed other than by a law practice.
- 18.2 Notwithstanding that a practitioner is employed other than by a law practice the practitioner must comply with these Rules as modified by this Rule 18.
- 18.3 Employed practitioners may perform their legal functions in their own name and may also, with the consent of the employer, use the letterhead of the employer in appropriate cases including while performing legal functions.
- 18.4 An employed practitioner may appear on the record before a court for their employer.

19. UNDERTAKINGS

- 19.1 A practitioner must honour an undertaking that is given to another practitioner, where the other practitioner would reasonably be expected to rely on the undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a Court of competent jurisdiction.
- 19.2 A practitioner must honour an undertaking given to a third party in the course of providing legal services to a client and for the purposes of the client's business, where it might reasonably be expected that the third party will rely on the undertaking, strictly in accordance with its terms, and within the time promised (if any) or within reasonable time.

20. ANOTHER PRACTITIONER'S ERROR

- 20.1 A practitioner who observes that another practitioner is making or is likely to make a mistake or oversight which may involve the other practitioner's client in unnecessary expense or delay must not do or say anything to induce or foster that mistake or oversight but must draw the attention of the other practitioner to that mistake or oversight unless doing so might prejudice the practitioner's own client.

21. INADVERTENT DISCLOSURE

- 21.1 A practitioner to whom material is known or reasonably suspected to be privileged is disclosed by another practitioner, and who is aware that the disclosure was inadvertent:
- 21.1.1 must not disclose the material or its substance to the practitioner's client or use the material in any way;
 - 21.1.2 must immediately advise in writing the practitioner's client and the other practitioner as to what has occurred and of the practitioner's professional obligation to return, destroy or delete the material (as appropriate) and indicating when the practitioner will so act (being not less than 2 clear business days and not more than 4 clear business days from the date of such notice);
 - 21.1.3 must return, destroy or delete (as appropriate) the material in accordance with the practitioner's notification to the client and the other practitioner; and
 - 21.1.4 is to notify in writing the practitioner's client and the other practitioner that the practitioner has returned, destroyed or deleted (as appropriate) the material as soon as the practitioner has done so.

22. AGENT'S AND COUNSEL'S FEES

- 22.1 If not otherwise agreed, a practitioner who instructs another practitioner to advise on or to assist in a matter is responsible for the payment of the other practitioner's fees.

22.2 A practitioner who directs the client to another practitioner is not responsible for the payment of the other practitioner's fees.

23. CONTRACTING WITH THIRD PARTIES

23.1 Subject to Rule 22, if a practitioner instructs or retains a third party on behalf of the client, and the practitioner is not intending to accept personal liability for payment of the third party's fees, the practitioner must advise the third party, in writing and in advance.

24. TERMINATION OF ENGAGEMENT

24.1 Subject to Rules 24.2 and 24.3, a practitioner may terminate a retainer and cease to act for a client only if:

24.1.1 the client commits a material breach of a written costs agreement;

24.1.2 it is pursuant to an express right to terminate a retainer contained in a written costs agreement with the client;

24.1.3 required to do so by these Rules or in order to avoid breaching these Rules;

24.1.4 the client materially misrepresents any material facts relating to the subject matter of the retainer;

24.1.5 the practitioner reasonably believes that continuing to act for the client would be likely to have a serious adverse effect on the practitioner's health;

24.1.6 the mutual trust and confidence between the practitioner and the client has irretrievably broken down; or

24.1.7 it is for any other reason permitted by law.

24.2 Where a practitioner is retained to represent a person charged with a serious criminal offence, then notwithstanding the terms of any written costs agreement to the contrary, the practitioner shall not terminate the retainer or otherwise cease to act for the client other than in the most exceptional circumstances and then only if sufficient time remains for another practitioner to be retained by the client and for that practitioner to master the case.

24.3 Where a practitioner is retained to represent a person charged with a serious criminal offence, then notwithstanding any provision of a written costs agreement to the contrary, the client's failure to make satisfactory arrangements for the payment of costs will not normally justify the practitioner terminating the retainer or otherwise ceasing to act for the client UNLESS:

- 24.3.1 the terms of a written costs agreement between the practitioner and the client entitle the practitioner to terminate the retainer in such circumstances;
 - 24.3.2 the client has been served with written notice of the practitioner's intention a reasonable time before the date appointed for commencement of the trial or the commencement of the sittings of the court in which the trial is listed;
 - 24.3.3 the client is unable to make other arrangements for payment of the practitioner's fees satisfactory to the practitioner within a reasonable period of time after such notice (not being less than 7 days); and
 - 24.3.4 there remains sufficient time for another practitioner to be retained by the client and to master the case.
- 24.4 Where a practitioner is legally assisted and the grant of aid is withdrawn or otherwise terminated if the client is unable to make any other arrangement for payment of the practitioner's fees satisfactory to the practitioner, a practitioner may terminate the retainer by giving reasonable notice in writing to the client.

25. CLIENT DOCUMENTS

- 25.1. A practitioner must ensure that upon completion or termination of the practitioner's retainer, the practitioner gives or causes to give to:
- 25.1.1 the client or former client; or
 - 25.1.1 another person authorised by the client or former client,
- any client documents held by the practitioner or the practitioner's firm and related to the engagement, when requested to do so by the client, unless there is an effective lien.
- 25.2. Subject to Rule 25.3, a practitioner and the practitioner's firm may destroy or dispose of documents held by the practitioner or the practitioner's firm relating to a matter after a period of 7 years has elapsed except where there are client instructions to the contrary, and PROVIDED that the practitioner or the practitioner's firm has made reasonable efforts to obtain instructions from the client to whom the documents relate as to the destruction of the documents.
- 25.3 A practitioner shall not deal with or destroy any title deed, will, original executed agreement or any document or thing held by the practitioner for safe keeping other than in accordance with the instructions of the client or former client or another person authorised to do so or in accordance with any orders of a court.

26. LIEN OVER ESSENTIAL DOCUMENTS

26.1 Notwithstanding Rule 25, when a practitioner lawfully claims to exercise a lien for unpaid costs over a client's documents which are essential to the conduct of the client's defence or prosecution of current proceedings:

26.1.1 if another practitioner is acting for the client:

- (i) the first practitioner must surrender the documents to the second practitioner, on the understanding that that second practitioner should agree to hold the documents subject to the lien and with reasonable security for unpaid costs; or
- (ii) the second practitioner should enter into an agreement with the client and the first practitioner to procure payment of the first practitioner's costs upon completion of the relevant proceedings.

26.1.2 Alternatively, the first practitioner, upon receiving reasonable security for the unpaid costs, must deliver the documents to the client.

27. CHARGING FOR DOCUMENT STORAGE

27.1 A practitioner must not charge or attempt to charge –

27.1.1 for the storage of documents, files or other property on behalf of clients or former clients; or

27.1.2 for retrieval from storage of those documents, files or other property,

UNLESS the client or former client has agreed in writing to such charge being made.

28. TRANSFER OF PRACTICE

28.1 The principals of a law practice which is to be (partially or fully) transferred to another practice (including continuing clients), must give reasonable notice to each client of the intended transfer and inform each client that there is no obligation to continue instructions to the other law practice.

ADVOCACY AND LITIGATION

29. INDEPENDENCE

29.1 A practitioner representing a client in a matter that is before the court must exercise forensic judgments called for during the case independently, after giving full and proper consideration to the client's and instructing practitioner's wishes.

- 29.2 A practitioner must:
- 29.2.1 confine any hearing to those issues which the practitioner believes to be the real issues;
 - 29.2.2 present the client's case as quickly and simply as may be consistent with its robust advancement; and
 - 29.2.3 inform the court of any persuasive authority against the client's case.
- 29.3 A practitioner must not make submissions or express views to a Court on any material evidence or material issue in the case, in terms which convey, or appear to convey, the practitioner's personal opinion on the merits of that evidence or issue, except where otherwise required by law or a Court.
- 29.4 A practitioner must not become a surety or guarantor for the client.

30. FORMALITY BEFORE THE COURT

- 30.1 A practitioner must not, in the presence of any of the parties or practitioners, deal with a court, or deal with any practitioner appearing before the practitioner when the practitioner is a referee, arbitrator or mediator, on terms of informal personal familiarity which may reasonably give the appearance that the practitioner has special favour with the Court, referee, arbitrator or mediator.
- 30.2 A practitioner must not act as counsel if by reason of the practitioner's connection with the client it would be difficult for the practitioner to maintain professional independence (examples are contained in Schedule 1) or if by reason of the practitioner's connection with the court or a member of the court the impartial administration of justice might be prejudiced or appear to be prejudiced (examples are contained in Schedule 2).

31. FRANKNESS IN COURT

- 31.1 A practitioner must not knowingly make a misleading statement to a court.
- 31.2 A practitioner must correct a misleading statement as soon as possible after the practitioner becomes aware that the statement was misleading.
- 31.3 A practitioner will not have made a misleading statement to a court simply by failing to correct an error in a statement made to the court by the opponent or any other person.
- 31.4 A practitioner seeking any interlocutory relief in an *ex parte* application must disclose to the court all factual and legal matters which:
- 31.4.1 are within the practitioner's knowledge;
 - 31.4.2 are not protected by legal professional privilege; and

- 31.4.3 the practitioner has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.
- 31.5. A practitioner who has knowledge of matters which are within Rule 31.4.3 must:
- 31.5.1 seek instructions for the waiver of legal professional privilege, if the matters are protected by that privilege, so as to permit the practitioner to disclose those matters under Rule 31.4; and
- 31.5.2 if the client does not waive the privilege as sought by the practitioner:
- (i) inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and
- (ii) inform the court that the practitioner cannot assure the court that all matters which should be disclosed have been disclosed to the court.
- 31.6. A practitioner must, at the appropriate time in the hearing of the case and if the court has not yet been so informed, inform the court of:
- 31.6.1 any binding authority;
- 31.6.2 any authority decided by the Full Court of the Federal Court of Australia, a Court of Appeal of a Supreme Court or a Full Court of a Supreme Court or the Full Court of the Family Court of Australia;
- 31.6.3 any authority on the same or materially similar legislation as that in question in the case, including any authority decided at first instance in the Federal Court or a Supreme Court, which has not been disapproved; or
- 31.6.4 any applicable legislation, which the practitioner has reasonable grounds to believe to be directly in point, against the client's case.
- 31.7 A practitioner need not inform the court of matters within Rule 31.6 at a time when the opponent tells the court that the opponent's whole case will be withdrawn or the opponent will consent to final judgment in favour of the client, unless the appropriate time for the practitioner to have informed the court of such matters in the ordinary course has already arrived or passed.
- 31.8. A practitioner who becomes aware of matters within Rule 31.6 after judgment or decision has been reserved and while it remains pending, whether the authority or legislation came into existence before or after argument, must inform the court of that matter by:
- 31.8.1 a letter to the court, copied to the opponent, and limited to the relevant reference unless the opponent has consented beforehand to further material in the letter; or

- 31.8.2 requesting the court to relist the case for further argument on a convenient date, after first notifying the opponent of the intended request and consulting the opponent as to the convenient date for further argument.
- 31.9. A practitioner need not inform the court of any matter otherwise within Rule 31.6 which would have rendered admissible any evidence tendered by the prosecution which the court has ruled inadmissible without calling on the defence.
- 31.10. A practitioner will not have made a misleading statement to a court simply by failing to disclose facts known to the practitioner concerning the client's character or past, when the practitioner makes other statements concerning those matters to the court, and those statements are not themselves misleading.
- 31.11 A practitioner must inform the court in civil proceedings of any misapprehension by the court as to the effect of an order which the court is making, as soon as the practitioner becomes aware of the misapprehension.

32. DELINQUENT OR GUILTY CLIENTS

- 32.1 A practitioner whose client informs the practitioner, before judgment or decision that the client has lied in a material particular to the court or has procured another person to lie to the court or has falsified or procured another person to falsify in any way a document which has been tendered must:
- 32.1.1 advise the client that the court should be informed of the lie or falsification and request authority so to inform the court;
 - 32.1.2 refuse to take any further part in the case unless the client authorises the practitioner to inform the court of the lie or falsification; and
 - 32.1.3 promptly inform the court of the lie or falsification upon the client authorising the practitioner to do so; but
 - 32.1.4 not otherwise inform the court of the lie or falsification.
- 32.2. A practitioner whose client in criminal proceedings confesses guilt to the practitioner but maintains a plea of not guilty:
- 32.2.1 may cease to act, if there is enough time for another practitioner to take over the case properly before the hearing, and the client does not insist on the practitioner continuing to appear for the client;
 - 32.2.2 in cases where the practitioner continues to act for the client:
 - (i) must not falsely suggest that some other person committed the offence charged;
 - (ii) must not set up an affirmative case inconsistent with the confession;

- (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged;
 - (iv) may argue that for some reason of law the client is not guilty of the offence charged; or
 - (v) may argue that for any other reason not prohibited by (i) and (ii) the client should not be convicted of the offence charged.
- 32.3. A practitioner whose client informs the practitioner that the client intends to disobey a court's order must:
- 32.3.1 advise the client against that course and warn the client of its dangers;
 - 32.3.2 not advise the client how to carry out or conceal that course;
 - 32.3.3 not inform the court or the opponent of the client's intention unless:
 - (i) the client has authorised the practitioner to do so beforehand; or
 - (ii) the practitioner believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety.

33. RESPONSIBLE USE OF COURT PROCESS AND PRIVILEGE

- 33.1 A practitioner must, when exercising the forensic judgments called for throughout a case, take care to ensure that decisions by the practitioner (or on the practitioner's advice) to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:
- 33.1.1 are reasonably justified by the material then available to the practitioner;
 - 33.1.2 are appropriate for the robust advancement of the client's case on its merits;
 - 33.1.3 are not made principally in order to harass or embarrass the person; and
 - 33.1.4 are not made principally in order to gain some collateral advantage for the client or the practitioner or the instructing practitioner out of court.
- 33.2 A practitioner must not draw or settle any court document alleging criminality, fraud or other serious misconduct unless the practitioner believes on reasonable grounds that:
- 33.2.1. factual material already available to the practitioner provides a proper basis for the allegation ;
 - 33.2.2. the evidence by which the allegation is made, if the evidence is in written form, will be admissible in the case; and,

- 33.2.3. the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the case if it is not made out.
- 33.3. A practitioner must not open as a fact any allegation which the practitioner does not then believe on reasonable grounds will be capable of support by the evidence which will be available to support the client's case.
- 33.4. A practitioner must not cross-examine so as to suggest criminality, fraud or other serious misconduct on the part of any person unless:
 - 33.4.1 the practitioner believes on reasonable grounds that the material already available to the practitioner provides a proper basis for the suggestion; and
 - 33.4.2 in cross-examination going to credit alone, the practitioner believes on reasonable grounds that affirmative answers to the suggestion would diminish the witness's credibility.
- 33.5. A practitioner may regard the opinion of an instructing practitioner that material exists which appears to support a suggestion or allegation to which Rules 33.1, 33.2, 33.3 and 34.4 applies as a reasonable ground for holding the belief required by those Rules, except in the case of a closing address or submission on the evidence.
- 33.6. A practitioner must make reasonable enquiries to the extent which is practicable before the practitioner can have reasonable grounds for holding the belief required by Rules 33.1, 33.2, 33.3 and 33.4, unless the practitioner has received and accepted an opinion from the instructing practitioner within Rule 33.5.
- 33.7. A practitioner must not suggest criminality, fraud or other serious misconduct against any person in the course of the practitioner's address on the evidence unless the practitioner believes on reasonable grounds that the evidence in the case provides a proper basis for the suggestion.
- 33.8. A practitioner who has instructions which justify submissions for the client in mitigation of the client's criminality and which involve allegations of serious misconduct against any other person not able to answer the allegations in the case must seek to avoid disclosing the other person's identity directly or indirectly unless the practitioner believes on reasonable grounds that such disclosure is necessary for the robust defence of the client.

34. COMMUNICATION WITH OPPONENTS

- 34.1 A practitioner must not knowingly make a false statement to the opponent in relation to the case (including its compromise).
- 34.2 A practitioner must take all necessary steps to correct any false statement unknowingly made by the practitioner to the opponent as soon as possible after the practitioner becomes aware that the statement was false.

- 34.3 A practitioner does not make a false statement to the opponent simply by failing to correct an error on any matter stated to the practitioner by the opponent.
- 34.4 A practitioner must not deal directly with the opponent's client in relation to the case for which the opponent is instructed unless:
- 34.4.1 the opponent has previously consented;
 - 34.4.2 the practitioner believes on reasonable grounds that:
 - (i) the circumstances are so urgent as to require the practitioner to do so; and
 - (ii) the dealing would not be unfair to the opponent's client;
 - 34.4.3 the substance of the dealing is solely to enquire whether the person is represented and, if so, by whom; or
 - 34.4.4 there is notice of the practitioner's intention to communicate with the other party, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with contact.
- 34.5 A practitioner must not confer or deal directly with the party opposed to the practitioner's client in relation to the case for which the practitioner is instructed, where that party is not represented by a practitioner for the case, unless:
- 34.5.1 the party is not being indemnified by an insurance company which is actively engaged in contesting the proceedings;
 - 34.5.2 the party is being indemnified by an insurance company which is actively engaged in contesting the proceedings and the practitioner:
 - (i) has no reasonable grounds to believe that any statements made by the party to the practitioner may harm the party's interests under the insurance policy; or
 - (ii) has reasonable grounds for the belief referred to in (a) but has clearly informed the party beforehand of that possibility;
- OR
- 34.5.3 the party, being indemnified by an insurance company which is actively engaged in contesting the proceedings, is personally represented but not in the case and the practitioner:
 - (i) has notified the party's representative of the practitioner's intention to do so; and
 - (ii) has allowed enough time for the party to be advised by the party's representative.

- 34.6. A practitioner must not, outside an *ex parte* application or a hearing of which the opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless:
- 34.6.1 the court has first communicated with the practitioner in such a way as to require the practitioner to respond to the court; or
 - 34.6.2 the opponent has consented beforehand to the practitioner communicating with the court in a specific manner notified to the opponent by the practitioner.
- 34.7. A practitioner must promptly tell the opponent what passes between the practitioner and a court in a communication referred to in Rule 34.6.
- 34.8. A practitioner must not raise any matter with a court in connection with current proceedings on any occasion to which the opponent has consented under Rule 34.6.2, other than the matters specifically notified by the practitioner to the opponent when seeking the opponent's consent.

35. OPPOSITION ACCESS TO WITNESSES

- 35.1 A practitioner must not take any step to prevent or discourage a prospective witness or a witness from conferring with the opponent or being interviewed by or on behalf of any person involved in the proceedings.
- 35.2 A practitioner will not have breached Rule 35.1 simply by telling a prospective witness or a witness that the witness need not agree to confer or to be interviewed or by advising about relevant obligations of confidentiality.

36. INTEGRITY OF EVIDENCE – INFLUENCING EVIDENCE

- 36.1. A practitioner must not advise or suggest to a witness that false evidence should be given.
- 36.2. A practitioner must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.
- 36.3 A practitioner will not have breached Rules 36.1 or 36.2 by:
- 36.3.1 expressing a general admonition to tell the truth;
 - 36.3.2 questioning and testing in conference the version of evidence to be given by a prospective witness; or
 - 36.3.3 drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.

37. INTEGRITY OF EVIDENCE – TWO WITNESSES TOGETHER

- 37.1. A practitioner must not confer with, or condone another practitioner conferring with, more than one lay witness (including a party or client) at the same time, about any issue:
- 37.1.1 as to which there are reasonable grounds for the practitioner to believe it may be contentious at a hearing; or
 - 37.1.2 which could be affected by, or may affect, evidence to be given by any of those witnesses, unless the practitioner believes on reasonable grounds that special circumstances require such a conference.
- 37.2. A practitioner will not have breached Rule 37.1 by conferring with, or condoning another practitioner conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.

38. COMMUNICATION WITH WITNESSES UNDER CROSS-EXAMINATION

- 38.1 A practitioner must not confer with any witness (including a party or client) called by the practitioner on any matter related to the proceedings while that witness remains under cross-examination, unless:
- 38.1.1 the cross-examiner has consented beforehand to the practitioner doing so; or
 - 38.1.2 the practitioner:
 - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference;
 - (ii) has, if possible, informed the cross-examiner beforehand of the practitioner's intention to do so; and
 - (iii) otherwise does inform the cross-examiner as soon as possible of the practitioner having done so.

39. PRACTITIONER AS MATERIAL WITNESS IN CLIENT'S CASE

- 39.1 In a case in which it is known, or becomes apparent, that the practitioner or the practitioner's professional associate, will be required to give evidence centrally material to the determination of contested issues before the court or tribunal involving a client for whom the practitioner has acted or provided professional legal services:
- 39.1.1 A practitioner must not, unless exceptional circumstances warrant otherwise in the practitioner's reasonable opinion, appear for the client in any hearing.

- 39.1.2 The practitioner, or practitioner associate, or a law firm of which the practitioner is a member or the practitioner associate an employee, may only continue to act for the client:

PROVIDED

- (i) exceptional circumstances apply in the practitioner's reasonable opinion;

OR

- (ii) the client, having been given an opportunity to obtain independent legal advice concerning the issue, consents.

40. PUBLIC COMMENT

- 40.1 A practitioner must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or otherwise subvert or undermine the administration of justice.

- 40.2 Subject to Rules 40.1, 40.3 and 40.4, a practitioner may participate in:

40.2.1 any lecture, talk, or public appearance;

40.2.2 any radio, television or other transmission; or

40.2.3 any written or printed publication.

- 40.3 If the subject matter of anything referred to in Rule 40.2.1 or 40.2.3 or any part of it concerns a matter in relation to which the practitioner is or has been professionally engaged, a practitioner must not participate unless:

40.3.1 participation is not contrary to the interests of the client; and

40.3.2 the practitioner gives an objective account of the matter in a restrained manner consistent with the maintenance of the good reputation and standing of the legal profession.

- 40.4 If the subject matter of anything referred to in Rule 40.2(2) or any part of it concerns a matter in relation to which the practitioner is or has been professionally engaged, the practitioner must not participate unless:

40.4.1 the client has given an informed consent;

40.4.2 participation is not contrary to the interests of the client; and

40.4.3 the practitioner gives an objective account of the matter in a restrained manner consistent with the maintenance of the good reputation and standing of the legal profession.

41. PROSECUTOR'S DUTIES

- 41.1. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
- 41.2. A prosecutor must not press the prosecution's case for a conviction beyond a full, firm and impartial presentation of that case.
- 41.3. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 41.4. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 41.5. A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:
 - 41.5.1 inform the opponent if the prosecutor intends to use the material;
 - 41.5.2 make available to the opponent a copy of the material if it is in documentary form; and
 - 41.5.3 inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.
- 41.6. A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
- 41.7. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- 41.8. A prosecutor who has informed the court of matters within Rule 41.7, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
- 41.9. A prosecutor must:
 - 41.9.1 correct any error made by the opponent;
 - 41.9.2 inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
 - 41.9.3 must assist the court to avoid appealable error.
- 41.10. If the opponent is unrepresented, a prosecutor must inform the Court of any mitigating circumstances of which the prosecutor is aware.

MISCELLANEOUS

42. ADVERTISING

- 42.1. A practitioner must not describe or authorise a description of the practitioner, the practitioner's firm or the services offered by the practitioner or the practitioner's firm in a manner which is misleading or deceptive or is likely to mislead or deceive.
- 42.2 Without limiting the generality of Rule 42.1, a practitioner must not convey a false impression of specialist expertise and must not describe or authorise a description of the practitioner, the practitioner's firm or the services offered by the practitioner or the practitioner's firm in a manner that uses the words:
- (a) "specialist" or a derivative of that word (including post – nominals), unless the practitioner is a specialist accredited by a relevant professional body; or
 - (b) "accredited specialist" or a derivative of those words (including post-nominals), unless the practitioner is a specialist accredited by a relevant professional body.

43. SHARING PREMISES

- 43.1 Where a law practice shares an office with any other entity or business engaged in another calling and the client is receiving services concurrently from both the law practice and the other entity, the practitioner must take all reasonable steps to ensure that the client is clearly informed about the nature and the terms of the services being provided to the client by the legal practice, including that the services provided by the other entity are not operated by the law practice.

44. SHARING RECEIPTS

- 44.1 A solicitor must not, in relation to the conduct of the solicitor's practice, or the delivery of legal services, share, or enter into any arrangement for the sharing of, the receipts arising from the provision of legal services by the solicitor, with:
- 44.1.1 any disqualified person;
 - 44.1.2 any person convicted of an indictable offence that involved dishonest conduct, whether or not a conviction was recorded; or
 - 44.1.3 any other person which limits or restricts the exercise by the solicitor of authority or responsibility for the management of the practice or the discharge of the practitioner's professional obligations.

45. TAX AVOIDANCE

- 45.1 A practitioner must not promote or market a tax scheme or arrangement which has the predominant purpose of avoidance of tax by the exploitation of revenue law.
- 45.2 A practitioner must not have a financial interest in a business organisation (whether incorporated or otherwise) which promotes or markets any tax scheme or arrangement described in Rule 45.1.

46. RETURNING JUDICIAL OFFICERS

- 46.1 A practitioner who has formerly held a judicial, or quasi judicial office in a court or tribunal involving the hearing and determination of issues affecting rights between parties, shall not, for a period of two years after ceasing to hold that office, appear in any proceedings before the court or tribunal in which the practitioner held office, unless excused by the relevant regulatory body.

SCHEDULE 1

Independence – connection with client

The following are examples of the application of the first limb of Rule 30.2 of these Rules:

(1) **Membership of or connection with various bodies**

(a) Members of Parliament

A practitioner who is a Member of Parliament shall not appear as counsel before a Committee of Parliament, in the practitioner's professional capacity.

(b) Local Authorities

A practitioner who is a member of a local authority shall not appear as counsel in any case where the affairs of the local authority are likely to arise.

(c) Companies

A practitioner who is a director or the secretary of any public company shall not appear as counsel for or against the company.

A practitioner who has been but has ceased to be a director or the secretary of any public company shall not appear as counsel, whether for the company or any other person, in any matter connected with or arising out of affairs relating to a company which were current while the practitioner was a director or the secretary of that company.

(2) **Deputations**

Counsel who accept a brief to speak for a deputation shall make it clear at the outset of proceedings that he or she is appearing as counsel and not as a member of the deputation and the counsel shall abide by the decision of the authority receiving the deputation as to whether or not he or she can be heard as counsel.

(3) **Legal Aid scheme**

Counsel shall not appear against an assisted person to whom legal aid has been granted or denied by a Legal Aid Committee of which the counsel is a participating member.

SCHEDULE 2

Independence – connection with court

The following are examples of the application of the second limb of Rule 30.2 of these Rules.

(1) **Justice of the Peace**

Counsel who is a Justice of the Peace shall avoid any risk of a clash between their duties as a Justice and duties as Counsel. Counsel shall refrain from any professional activities which might create in the minds of members of the public confusion between their position as Counsel and their position as a Justice or suspicion that influence or favour in their practice may be derived from their official position.

(2) **Arbitration**

Counsel who has acted in an arbitration for the Arbitrator either in advising the arbitrator on points of law arising during the arbitration or on the form of the award, shall not advise or appear for one of the parties in the arbitration in any proceedings relating to the arbitration or the award.

(3) **Appearance before relatives**

Counsel shall not habitually practice in any Court of which one or their parents or a near relative is the sole judicial officer; but there is no objection to Counsel participating in a court where a parent or near relative is one of several judicial officers.

GLOSSARY OF TERMS

[THE CONTENTS OF THESE DEFINITIONS ARE TO BE REVIEWED AS THE LAST DRAFTING STEP TO BE SURE THAT ALL TERMS THAT NEED TO BE DEFINED ARE IN FACT DEFINED, AND TO ENSURE THAT THE DEFINITIONS APPROPRIATELY REFLECT THE DEFINITIONS IN RELEVANT LEGISLATION]

“**Act**” means the *Legal Profession Act 2008 (WA)* as amended from time to time.

“**associate**” in reference to a practitioner means

- (a) a partner, employee, or agent of the practitioner or of the practitioner's firm;
- (b) a corporation or partnership in which the practitioner has a material beneficial interest;
- (c) in the case of a practitioner corporation, a director of the corporation or of a subsidiary of the corporation;
- (d) a member of the practitioner's immediate family; or
- (e) a member of the immediate family of a partner of the practitioner's firm or of the immediate family of a director of a practitioner corporation or of any subsidiary of the corporation.

“**case**” means

- (a) the court proceedings for which the practitioner is engaged; or
- (b) the dispute in which the practitioner is advising.

“**client**” with respect to the practitioner or the practitioner's firm means a person (not an instructing practitioner) for whom the practitioner is engaged to provide legal services for a matter.

“**client documents**” means documents to which a client is entitled as a matter of law. Documents to which the client is entitled may vary from case to case as a matter of law, but will generally include –

- (a) documents received by the practitioner or the practitioner's firm from the client;
- (b) documents prepared by a practitioner or the practitioner's firm for the client, or predominantly for the purposes of the client or the client's matter; and
- (c) documents received by a practitioner or the practitioner's firm from a third party for or on behalf of the client or intended for the use or information of the client, for the purposes of the client's matter.

“**compromise**” includes any form of settlement of a case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

“**Corporations Act**” means the *Corporations Act 2001 (Cth)*.

"costs" includes disbursements.

"court" means

- (a) any body described as such;
- (b) any tribunal exercising judicial, or quasi-judicial, functions;
- (c) a professional disciplinary tribunal;
- (d) an industrial tribunal;
- (e) an administrative tribunal;
- (f) an investigation or inquiry established or conducted under statute or by a Parliament;
- (g) a Royal Commission; or
- (h) an arbitration or mediation or any other form of dispute resolution.

"current proceedings" means proceedings which have not been determined, including proceedings in which there is still the real possibility of an appeal or other challenge to a decision being filed, heard or decided.

"document" has the same meaning as provided for in the *Interpretation Act* (Cth).

"engagement" means the appointment of the practitioner or of the practitioner's firm to provide legal services for a matter.

"employee", of an entity, means a person who is employed or under a contract of service or contract for services in or by the entity whether or not—

- (a) the person works full-time, part-time, or on a temporary or casual basis; or
- (b) the person is a law clerk or articled clerk.

"employer" In relation to a corporate practitioner means a person or body (not being another practitioner or a law practice) who or which employs the practitioner whether or not the person or body pays or contributes to the practitioner's salary.

"firm" in relation to a practitioner means:

- (a) a partnership of which the practitioner is a partner; or
- (b) a practitioner, partnership or corporation which employs the practitioner.

"forensic judgments" means a decision of the practitioner made in the course of a case, but does not include a decision as to:

- (a) the commencement of proceedings;
- (b) the joinder of parties;

- (c) admissions or concessions of fact;
- (d) amendments of pleadings;
- (e) undertakings to a court; or
- (f) a plea in criminal proceedings, but does include advice given to assist the client or the instructing practitioner to make such decisions.

“former client” for the purposes of Rule 11.1, may include a person or entity that:

- (a) has previously instructed:
 - (i) the practitioner;
 - (ii) the practitioner’s current law practice;
 - (iii) the practitioner’s former law practice, while the practitioner was at the former law practice; or
 - (iv) the former law practice of a partner, director or employee of the practitioner, while the partner, director or employee was at the former law practice; or
- (b) has provided confidential information to a practitioner, notwithstanding that the practitioner was not formally retained and did not render an account.

“immediate family” means the spouse (which expression may include a de facto spouse or partner of the same sex), or a child, grandchild, sibling, parent or grandparent of a practitioner.

“instructing practitioner” means a practitioner or firm who engages another practitioner to provide legal services for a client for a matter.

“insurance company” includes any entity, whether statutory or otherwise, which indemnifies persons against civil claims.

“interstate lawyer” has the same meaning as the term is given by section 4(c) of the Act.

“interstate – registered foreign lawyer” has the same meaning as the term is given by section 3 of the Act.

“law practise” means:

- (a) an Australian legal practitioner who is a sole practitioner;
- (b) a law firm;
- (c) a multi-disciplinary partnership;
- (d) an incorporated legal practice.

“legal costs” means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including disbursements but not including interest.

“legal profession legislation” means the legal profession statutes applying in any jurisdiction.

“legal services” means work done, or business transacted, in the ordinary course of legal practice.

“local lawyer” has the same meaning as the term is given by section 4(b) of the Act.

“locally registered foreign lawyer” has the same meaning as the term is given by section 3 of the Act.

“matter” means any legal service the subject of an engagement or required to be provided by the practitioner or the practitioner's firm to fulfil an engagement and includes services provided for:

- (a) a case;
- (b) a dealing between parties that may affect, create or be related to a right, entitlement or interest in property of any kind; or
- (c) advice on the law.

“multi-disciplinary partnership” has the meaning given in the legal profession legislation.

“opponent” means:

- (a) the practitioner appearing for a party opposed to the client of the practitioner in question;
or
- (b) that party, if the party is unrepresented.

“order” includes a judgment, decision or determination.

“party” includes each one of the persons or corporations who or which is jointly a party to any matter.

“practitioner” means a person to whom these Rules apply by virtue of Rule 1.1.

“principal” means a practitioner who is the holder of a principal practising certificate, within the meaning of the Act.

“professional misconduct” includes:

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice

"prosecutor" means a practitioner who appears for the complainant or Crown in criminal proceedings.

"relevant regulatory authority" means an entity identified in a legal profession statute which has responsibility for regulating the activities of practitioners in that jurisdiction.

"retainer" means the appointment of a practitioner or of a practitioner's law practice to provide legal services in a matter.

"sole practitioner" means an Australian practitioner who engages in legal practice on his or her own account

"substantial benefit" means a benefit which has a substantial value relative to the financial resources and assets of the person intending to bestow the benefit.

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

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

"unsatisfactory professional conduct" includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.