Legal Practice (Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 states that the main purposes of the Bill are:

(a) to make new provision for interstate practitioners to engage in legal practice in Victoria and to make provision for Victorian practitioners who will be practising interstate;

(b) to regulate the practice of foreign law in Victoria by foreign lawyers;

(c) generally to improve the operation of the Act.

Clause 2 sets out the Act's commencement dates. With the exception of section 47, the Act comes into operation when the Act receives Royal Assent. Section 47 (which corrects an omission of the word "costs" from the term "scale of costs" in section 93(b) of the Principal Act) is deemed to have come into operation on 6 November 1996, the date upon which the Principal Act received Royal Assent.

Clause 3 provides that, in this Act, the **Legal Practice Act 1996** is called the Principal Act.

Clause 4 amends section 3 of the Principal Act, which sets out definitions of terms used in the Act. In particular, various definitions of terms relating to interstate and foreign lawyers are inserted.

Clause 5 inserts a new section 3A into the Principal Act which sets out a definition of when a practitioner establishes a practice. This concept is used in the new Parts 2A and 2B of the Principal Act, which deal with both interstate and foreign lawyers. The definition provides that a practitioner establishes a practice in a place, for instance Victoria, when they first offer and provide legal services to the public in that place. However, providing legal services to one client only or in connection with one transaction (or series of transactions) will not constitute establishing a practice.

Clause 6 amends sections 4 and 5 of the Principal Act. Section 4 contains a definition of when money is received by a lawyer. Clause 6 widens its application to cover both interstate and registered foreign practitioners. Section 5 excludes certain circumstances where income is received by a lawyer who is acting as an agent for another lawyer from constituting income sharing between practitioners.

Clause 7 amends section 9 of the Principal Act to require specified details of interstate and registered foreign lawyers to be included in the Register of Legal Practitioners maintained by the Legal Practice Board. Section 13(1) is amended to remove the reference to a "registered interstate practitioner" being required to notify the Board of changes to information on the Register. The equivalent of this requirement is now contained in section 13A.

Clause 8 inserts a new section 13A into the Principal Act. An interstate lawyer who engages in legal practice in Victoria must notify the Legal Practice Board of changes to the lawyer's details on the Register within 14 days after becoming aware of the change. If the interstate lawyer stops practising in Victoria then they are no longer required to continue to notify of changes. However, if the interstate lawyer subsequently recommences practice in Victoria, the interstate lawyer must update their details on the Register at that time and subsequently. Registered foreign lawyers must notify of any changes to their details within 28 days and this requirement continues for as long as they remain registered. If the regulatory authorities in different States set up their own system of notifying each other of changes relating to lawyers practising in more than one state, so that the Board will receive the necessary notification of changes relating to an interstate lawyer from the lawyer's home regulating authority, then the interstate lawyer will be no longer personally required to provide this information.

Clause 9 amends sections 20, 21, 30 and 33 of the Principal Act in relation to practising certificates. The conditions set out in section 20(2) can result from the issue or variation of a practising certificate. Practising certificates last for the period of a calendar year. Where a lawyer has applied for the renewal of a practising certificate (for the next calendar year) and the application has not been decided at the end of the existing

calendar year, the existing practising certificate will continue until the application has been decided, any time for appeal has run out and any appeals have been decided. This does not prevent cancellation, suspension or variation of the existing practising certificate under other sections of the Principal Act (as amended). When the Full Tribunal has reviewed a decision relating to a variation of or refusal to issue a practising certificate it is allowed to make any order it thinks fit. Where a lawyer has surrendered their practising certificate before its expiry, the Board, whether directly or through an RPA as its agent, may give a refund, on a pro-rata or other basis as it thinks appropriate, to the lawyer.

Clause 10 amends section 34 of the Principal Act to provide for mandatory suspension of a practising certificate, in place of cancellation of the certificate, in cases where the lawyer becomes insolvent. Suspension is more appropriate given that the bankruptcy of an individual, or the appointment of a receiver or provisional liquidator to a body corporate for instance, may be challenged and overturned. Variation of the practising certificate to remove authorisation to receive trust money will remain as an option in cases of insolvency If the insolvency ceases within the period of the practising certificate, the lawyer is entitled to the return or varying back of the practising certificate, as long as there are no other reasons why the certificate should be cancelled, suspended etc. No fee may be charged for the varying back of the conditions of the practising certificate and, if this is done by an RPA, the RPA must notify the Board.

Clause 11 inserts a new section 34A into the Principal Act. Where a suspension or variation of a practising certificate for insolvency under section 34 (as amended) has occurred and has then been reversed, the lawyer may apply to the Full Tribunal for an order expunging the suspension or variation from the Register. The Full Tribunal has a discretion whether to make the order.

Clause 12 amends sections 37 and 40 of the Principal Act. Suspension of a practising certificate because of a trust account deficiency will normally take effect 14 days after notice of the suspension is given, unless an RPA or the Legal Practice Board are satisfied that the suspension should take place immediately for the protection of the lawyer's clients, the public, the integrity of the

legal profession or the administration of justice. Where the Full Tribunal hears an application under section 40 for an order lifting a suspension, the Full Tribunal has the power to make any order it thinks fit.

Clause 13 amends sections 42, 43, 44, 46, 49, 50 and 51 of the Principal Act. The provisions of the Principal Act regarding re-allocation of lawyers and firms to another RPA, or the Legal Practice Board, are extended where practicable to apply also to interstate lawyers and registered foreign lawyers, all of whom must be regulated by an RPA or the Board.

Clause 14 inserts a new Part 2A to replace Division 6 of Part 2 of the Principal Act. Division 6 set up a regime whereby interstate lawyers could apply to the Legal Practice Board for and obtain registration to engage in legal practice in Victoria. The new Part 2A modifies this regime. Interstate lawyers will no longer be required to obtain registration prior to engaging in legal practice in Victoria but they will be required to comply with all of the requirements of the new Part, including notification. New South Wales and the Australian Capital Territory have recently introduced complementary legislation.

The new sections to be inserted are as follows.

Division 1—Preliminary

Section 53 states that the main purposes of this Part are—

(a) to allow interstate practitioners to engage in legal practice in Victoria without having to be admitted in Victoria or obtain Victorian practising certificates; and

(b) to recognise disciplinary action taken against current practitioners by interstate authorities.

Division 2—Legal practice by interstate practitioners

Section 54 provides that, in relation to their engaging in legal practice in Victoria, interstate lawyers are officers of the Supreme Court of Victoria and have the same rights, privileges and duties as a

local lawyer does by virtue of being an officer of the Supreme Court.

Section 55 allows an interstate lawyer to engage in practice in Victoria, subject to the requirements of the **Legal Practice Act 1996** (as amended), on the same terms as the lawyer is allowed to practise in their home State. The interstate lawyer is required to comply with any legislation or regulation relating to legal practice in Victoria and with the practice rules of the recognised professional association ("RPA") which the interstate lawyer joins. In practising in Victoria, the interstate lawyer will be subject to any restriction imposed as a result of disciplinary action by any Victorian or interstate regulatory authority. Victorian regulatory authorities are not allowed to discriminate against interstate lawyers by imposing any conditions or restrictions on an interstate lawyer that are harsher than those they would impose on a local lawyer.

Section 56 requires that an interstate lawyer who engages in legal practice in Victoria must notify the Legal Practice Board within 28 days after commencing to engage in legal practice. Failure to notify will not of itself mean that the interstate lawyer is engaging in unqualified legal practice in Victoria. However, in addition to the penalties for failure to notify which are set out in the section, failure to notify will also render the person liable to disciplinary action for misconduct or unsatisfactory conduct, as a result of which the interstate lawyer can be suspended or prohibited from practising in Victoria. The section also sets out the information that must be provided to the Legal Practice Board by the interstate lawyer with the notification and requires both the production of evidence that professional indemnity insurance is held and the payment of any required contribution to the

Fidelity Fund. An interstate lawyer who engages in legal practice in Victoria without establishing or intending to establish a practice in Victoria is not required to contribute to the Fidelity Fund. If the interstate lawyer does not at the time of notification intend to establish a practice in Victoria but subsequently does so, a further notification within 14 days of establishing the practice will be required, together with any required Fidelity Fund contribution.

Section 57 sets out the requirements in relation to the allocation by the Legal Practice Board of an interstate lawyer to an RPA, or the Board, for regulation.

Division 3—Disputes, complaints and discipline

Section 58 provides that disputes or complaints connected with the practice of Victorian lawyers in another State may still be dealt with under the relevant Victorian provisions governing investigations, disputes and complaints. Similarly, a charge may be brought against a Victorian lawyer in the Legal Profession Tribunal in Victoria in respect of the lawyer's practice in another State. It is contemplated that Victorian lawyers who practise in another State will, by doing so, also become subject to the equivalent provisions dealing with disputes and complaints in that other State. Therefore, to avoid duplication or abuse of these procedures, if the investigation, dispute or complaint is dealt with and finally determined in the other State, no further action may be taken in relation to it in Victoria.

Section 59 allows a Victorian regulatory authority to refer a dispute or complaint that comes before it, in relation to either a Victorian or interstate lawyer, to an interstate regulatory authority to be dealt with under the law of that other State.

This gives Victorian authorities the option of referring matters involving an interstate lawyer practising in Victoria back to the interstate regulatory authority of that lawyer and referring matters involving Victorian lawyers practising in another State to the relevant authority in that State. A Victorian regulatory authority may similarly request a regulatory authority in another State to investigate and deal with, under the law of that State, the conduct of a Victorian or interstate lawyer. This is not, however, intended to restrict the conduct of any investigations in more than one State for the purposes of co-operation and exchange of information between regulatory authorities. Once the referral or request has been made, no further action may be taken in Victoria in relation to the subject matter, except action to enforce or comply with a penalty imposed in the other State, unless the authority in the other State refuses to deal with the matter. In that case, Victorian regulatory authorities may resume conduct of the matter.

Section 60 complements section 59. It allows a Victorian regulatory authority to deal with a dispute, complaint or investigation, relating to either a Victorian or interstate lawyer, referred to it by a regulatory authority from another state. It does not matter if the subject-matter of the dispute, complaint or investigation occurred in Victoria or elsewhere.

Section 61 requires a Victorian regulatory authority to provide any information reasonably required by a regulatory authority in another State in connection with either actual or possible disciplinary action against a Victorian or interstate lawyer. A Victorian regulatory authority also has the discretion to notify regulatory authorities in other States of any conditions or restrictions it has imposed on the

legal practice of a Victorian or interstate lawyer as a result of disciplinary action. The above information may be provided despite any law of secrecy or confidentiality to the contrary.

Division 4—Further provisions for current practitioners in relation to interstate practice

Section 62 provides that Victorian lawyers, when practising in Victoria, must comply with any conditions or restrictions imposed on them by a regulatory authority of another State as a result of disciplinary action. An interstate regulatory authority that has the power in its own State to impose conditions on or suspend or cancel the practising certificates of lawyers in that State and which has jurisdiction over a Victorian lawyer because the lawyer is practising in that State is empowered by this section to impose conditions on or suspend or cancel a Victorian lawyer's Victorian practising certificate. Victorian regulatory authorities must comply with any such order. Bodies which are the equivalent of the Supreme Court of Victoria are empowered to order that a Victorian lawyer be struck off the roll of practitioners maintained by the Supreme Court. The Supreme Court of Victoria must comply with that order.

Section 63 requires a Victorian lawyer practising in another State to deal with any trust money received in the course of practice in that State in accordance with Victorian trust money requirements. The lawyer does not have to do so if the trust money is required to be dealt with differently by the law of that other State.

Section 63A requires a Victorian lawyer who practises in another State to maintain professional indemnity insurance to cover the provision of legal services by the lawyer in that other State to a Victorian

client where the instructions were also given to the lawyer in Victoria.

Division 5—General

Section 63B confirms that any Victorian regulatory authority may exercise any functions or powers relating to a Victorian or interstate lawyer that are conferred on the authority by the law of another State. This would include functions and powers conferred by the legislation of another State similar to those set out in section 62 above.

Section 63C allows Victorian regulatory authorities to enter into agreements with their counterparts in other States about investigation of complaints, professional indemnity insurance, Fidelity Fund contributions and payments, trust account inspections, the appointment of managers and receivers, and the exchange of information under section 61.

Section 63D provides that the operation of the **Mutual Recognition (Victoria) Act 1993** is not affected by this Act.

Section 63E provides that an existing registered interstate practitioner is deemed to have complied with the notification requirement contained in section 56(1) of the Principal Act (as amended).

Clause 15 inserts a new Part 2B into the Principal Act. It contains provisions regulating the practice of foreign law in Victoria by foreign lawyers. Foreign lawyers who are engaging in the practice of foreign law on other than a temporary basis will be required to obtain registration from the Legal Practice Board.

The new sections to be inserted are as follows:

Division 1—Preliminary

Section 63F states that the purpose of this Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by

providing a framework for the regulation of the practice of foreign law in Victoria by foreign-qualified lawyers as a recognised aspect of legal practice.

Section 63G sets out definitions of terms used in this Part.

Section 63H defines what is meant by the practice of foreign law.

Division 2—Unqualified foreign law practice

Section 63I prohibits a person from engaging in the practice of foreign law in Victoria unless they are a Victorian lawyer with a practising certificate or an interstate lawyer with an interstate practising certificate or a foreign lawyer who is either registered with the Legal Practice Board or who is only practising in Victoria on the basis that they are not offering and providing their services to the public and that their practice is temporary. Failure to register will constitute unqualified foreign law practice with a potential penalty of imprisonment for 2 years. Failure to register when required will also result in the foreign lawyer being prohibited from recovering any fees and being required to refund any fees already paid.

Division 3—Registration of foreign practitioners

Section 63J allows a foreign lawyer to apply to the Legal Practice Board for registration. The section sets out the information and documents that must be provided with the application.

Section 63K requires an applicant for registration as a foreign lawyer to pay an application fee, registration fee and Fidelity Fund contribution as required by the Legal Practice Board. The total of the application fee and registration fee cannot exceed the maximum amount payable at that time for a practising certificate in Victoria.

Only the registration fee and Fidelity Fund contribution are refundable if the application for registration is refused.

Section 63L requires the Legal Practice Board to grant registration if the requirements for registration set out in this section are satisfied. The foreign lawyer is not required to reside in Victoria in order to obtain registration. The Board is not required to carry out any independent investigations of its own in order to reach its decision whether to grant registration. However, it is entitled to take into account any investigations which it does carry out, including investigations previously undertaken in relation to other applicants for registration or registered foreign lawyers. The Board must not register an applicant who is subject to an order of the Legal Profession Tribunal prohibiting the foreign lawyer from applying for registration. Once the Board registers a foreign lawyer, the Board must allocate the foreign lawyer to an RPA, where possible, or to the Board for regulation. The section also sets out the information about the foreign lawyer which is to be entered on the Register once registration is granted.

Section 63M allows the Legal Practice Board and the RPA to which the foreign lawyer is allocated to impose conditions on the practice of a foreign lawyer in Victoria. The conditions may reflect conditions imposed on the foreign lawyer in their own country or may be conditions that reflect Victorian practice or requirements. However, the Board or RPA must not impose a condition that is harsher than one it would impose on a Victorian or interstate lawyer in circumstances which the Board considers to be sufficiently analogous to those of the foreign lawyer. An RPA must notify the Board of any condition it imposes.

Section 63N requires the Board to give to the applicant written notice of its decision in relation to registration. For the purposes of any appeal, where no notice is given within 45 days of lodgement of the application the application is taken to have been refused.

Section 63O states that a registered foreign lawyer is entitled to engage in the practice of foreign law in Victoria. The registered foreign lawyer must pay an annual fee by a date to be notified by the Legal Practice Board. The annual fee is determined by the Board but is not to exceed the maximum amount payable for a practising certificate. A contribution to the Fidelity Fund may also be payable (see section 202(2A)).

Section 63P gives the body (RPA or the Board) which has responsibility for day to day regulation of the foreign lawyer the discretion to suspend the foreign lawyer from engaging in the practice of foreign law. A list of some of the grounds which may be taken into account is set out. Although one of the listed grounds is that the foreign lawyer's registration to practise as a lawyer in their own country has lapsed, this is not to result in suspension if the foreign lawyer satisfies the Board that the lapse resulted from circumstances beyond the foreign lawyer's control and did not result from proceedings brought against the foreign lawyer. If an RPA suspends a registered foreign lawyer then it must inform the Legal Practice Board. The suspension will not take place until 28 days after notice has been given. However, suspension may be immediate if an RPA or the Board is satisfied that this is necessary to protect the foreign lawyer's clients, the public, the integrity of the legal profession or the administration of justice.

Section 63Q states that a suspended registered foreign lawyer is deemed not to be registered during the period of suspension. If the grounds leading to the suspension cease, the suspension must be lifted immediately. An RPA must notify the Legal Practice Board if it lifts a suspension.

Section 63R gives the Legal Practice Board the discretion to cancel the registration of any registered foreign lawyer, whether or not the foreign lawyer is directly regulated by an RPA or the Board. The list of grounds which may be taken into account is the same as for suspension under section 63P. As with suspension under section 63P, cancellation does not take effect until 28 days after notice has been given. However, cancellation may be immediate if an RPA or the Board is satisfied that this is necessary to protect the foreign lawyer's clients, the public, the integrity of the legal profession or the administration of justice. In addition, registration is cancelled automatically and immediately if the registered foreign lawyer is either admitted to legal practice in Victoria and obtains a Victorian practising certificate or if the foreign lawyer requests cancellation. Cancellation does not prevent existing disciplinary proceedings against the foreign lawyer being continued or fresh disciplinary proceedings being issued, as long as they relate to a period before the cancellation. If it thinks it appropriate, following cancellation the Board may refund part or all of the most recent annual fee paid by the foreign lawyer.

Section 63S gives foreign lawyers a right to a review of decisions in relation to registration similar to that enjoyed by Victorian lawyers in relation to their practising certificates. An application to the Full Tribunal to review a decision by the Legal Practice Board must be brought within 28 days of the notice of the decision being given to

the foreign lawyer or, if the decision is a deemed refusal under section 63N(2), at the expiration of the 45 day period.

Section 63T gives a right of appeal to the Court of Appeal on a question of law against an order of the Full Tribunal under section 63S. Where the Full Tribunal does not initially give written reasons and they are then requested, the time for bringing the appeal does not commence until the written reasons are received.

Division 4—Practice of foreign law

Section 63U restricts the legal services that may be provided in practising foreign law by a registered foreign lawyer. Legal services that may be provided are those that consist of doing work or transacting business concerning the relevant foreign law, those that relate to arbitration proceedings, conciliations, mediations or other form of alternative dispute resolution by consent (where prescribed in regulations) and those that relate to proceedings before non-judicial bodies which are not required to apply the rules of evidence (where knowledge of the relevant foreign law is essential). While a registered foreign lawyer may appear at an arbitration or before a non-judicial body, the foreign lawyer is not entitled to appear before a court (except on their own behalf) or to engage in legal practice. However, there will be occasions when foreign law and Australian law will interact. Accordingly, a registered foreign lawyer may advise on the law of Victoria or another Australian jurisdiction if the advice is specifically based on advice provided by a practising Victorian or interstate lawyer, who is not employed by the foreign lawyer, and the advice is necessary in order for the foreign lawyer to engage in the practice of foreign law in Victoria.

Section 63V allows a registered foreign lawyer to practise as a sole practitioner or in partnership or as an employee of a Victorian or interstate lawyer or a firm. The partnership may be with any combination of Victorian lawyers, interstate lawyers or other registered foreign lawyers.

Section 63W restricts the ways in which registered foreign lawyers may describe themselves, and any partnership or body corporate with which they are associated, to those set out in section 63X. In addition, registered foreign lawyers must disclose their registration and the fact that they are restricted to practising only foreign law in each public document they distribute, including business letters, accounts, invoices, business cards and advertising material. These requirements can be satisfied by using the words "registered foreign practitioner" or "registered foreign lawyer" and "entitled to practise foreign law only".

Section 63X sets out the designations that registered foreign lawyers may use to describe themselves. Apart from the foreign lawyer's own name, the foreign lawyer may use the title or business name they use in their own country. They may also use the name of any foreign partnership or body corporate with which the foreign lawyer is associated as long as, if the foreign lawyer is a member of the partnership or body corporate, they have provided proof of that membership to the Legal Practice Board and the use of that name complies with Victorian business names law and will not lead to any confusion with a local firm or incorporated practitioner. The other members of the partnership or body corporate do not also have to be registered foreign lawyers. The Principal Act does not require lawyers in the course of engaging in legal practice to use the term "legal practitioners" to describe themselves nor does it

remove the entitlement of lawyers to use the traditional or distinguishing titles previously used in relation to their profession. Titles such as "lawyers", "barristers" and "solicitors" may continue to be used. Foreign lawyers may similarly include in the description of any Australian partnership or body corporate of which they are a member, and which contains both Australian lawyers and registered foreign lawyers, a combination of the distinguishing titles that the local and foreign lawyers are each entitled to use in their respective home jurisdictions, for instance "Solicitors and US Attorneys".

Section 63Y allows a registered foreign lawyer to employ Victorian or interstate lawyers. This does not entitle the foreign lawyer to engage in legal practice in Victoria, as against engage in the practice of foreign law. Generally, a Victorian or interstate lawyer employed by a foreign lawyer may not engage in legal practice or provide advice on the law of Victoria or another Australian jurisdiction to or for the use of the foreign lawyer. However, this restriction does not apply to an employee lawyer who is employed by a firm of which at least one partner is a Victorian or interstate lawyer. This is to provide for situations where the employee will be required to perform work on behalf of the Australian partner(s) as well as the foreign partner.

Section 63Z allows Victorian and interstate lawyers in various combinations to employ registered foreign lawyers. This employment does not entitle the foreign lawyer to engage in legal practice.

Section 63ZA requires a registered foreign lawyer practising foreign law in Victoria to have the same level of

professional indemnity insurance as a Victorian lawyer.

Section 63ZB applies the provisions of the Principal Act (as amended) regarding trust money and trust accounts to registered foreign lawyers, as if they were Victorian lawyers.

Section 63ZC gives the Legal Practice Board a power to exempt registered foreign lawyers, whether singly or in classes, from having to comply with specified provisions of the Principal Act (as amended), or the regulations or from any specified practice rule. This is to allow the Board to deal promptly with any anomalies which may arise out of the nature of the practice of foreign law in Victoria or from the fact that each foreign lawyer is the subject of two potentially inconsistent regulatory regimes. Any exemption must be notified to each RPA and published in the next available official publication of each RPA.

Clause 16 amends sections 86 and 90 of the Principal Act. The Principal Act does not seek to alter the existing common law governing those tasks associated with legal practice which can be performed by law clerks and other para-legal staff. To remove any uncertainty, the requirement that a client be informed of the name of the lawyer who will primarily perform the work becomes a requirement that the client be provided with the name of the lawyer who will primarily provide the legal services. Subsidiaries of foreign companies are added to the categories of clients set out in section 90 who are not required to be given the statements of information about costs required by sections 86, 87 and 89. The references in section 90 to statements under section 86(2) are changed to statements under section 86(3), so that the exemption under section 90 applies to the statements otherwise required to be given to a client both before and after retaining a lawyer.

Clause 17 amends section 107 of the Principal Act to allow barristers' clerks to sign bills of costs.

Clause 18 makes various amendments to the disciplinary provisions of the Principal Act. It amends section 137 to provide that a breach of an undertaking to a court or other specified body by a lawyer is not misconduct if, for example, it is inadvertent or brought about by circumstances beyond the lawyer's control but is misconduct only if it is wilful or reckless.

Section 152 is amended to require the Legal Ombudsman, an RPA or the Legal Practice Board, where they have conducted an investigation into a lawyer and decide not to take any further action against the lawyer, to notify the lawyer of that decision. Sections 160 and 169 are amended to widen the powers of the Full Tribunal. Now that interstate lawyers no longer have to be registered in order to practice in Victoria, it is no longer possible for the Full Tribunal to order the suspension of registration or de-registration of the interstate lawyer. Instead, the Full Tribunal is given the power to suspend or prohibit the interstate lawyer from engaging in legal practice in Victoria. This is in addition to any power that may be conferred on the Full Tribunal by legislation in the interstate lawyer's home State which may empower the Full Tribunal to make orders in relation to the interstate lawyer's practising certificate. The powers of the Full Tribunal when hearing an appeal dealing with a dispute are also widened to allow costs orders to be made under the new section 169A.

Clause 19 inserts a new section 169A into the Principal Act. The Full Tribunal now has the same powers to deal with costs when hearing an appeal arising out of a dispute as it does under section 162 when hearing a matter arising out of a complaint.

Clause 20 amends section 171 of the Principal Act as a consequence of removing the requirement that interstate practitioners be registered to practice in Victoria.

Clause 21 inserts a new section 171A into the Principal Act. It is intended that, where practicable, the dispute and complaint procedures under the Act which apply to Australian lawyers should also apply to registered foreign lawyers. However, in recognition of the special circumstances of foreign lawyers, and taking into account the different cultural and regulatory regime from which foreign lawyers may come, a regulatory body considering taking disciplinary action against a registered foreign lawyer is given a

discretion to take into account whether the foreign lawyer's conduct was consistent with the professional standards of their own country. The regulatory body is also given a discretion as to whether or not to bring a charge in cases of misconduct or unsatisfactory conduct. The Full Tribunal has the usual powers under these provisions, as well as powers to suspend the registered foreign lawyer, cancel their registration and make an order fixing a period during which the foreign lawyer may not apply for new registration.

Clause 22 amends sections 173 and 174 of the Principal Act. Lawyers who receive "trust money" in the form of a third party cheque, that is a cheque made out to someone other than the lawyer, will no longer be required to bank it into a trust account or to maintain a trust account if that is the only form of trust money that the lawyer ever receives. It is expected that requirements covering the handling of third party cheques and the delivery of the cheques to the persons entitled to them will continue to be contained in practice rules. The Legal Practice Board also now has the discretion to exempt lawyers from the requirement to maintain a trust account in Victoria. This will allow the Board to deal with situations where clients' money is being adequately protected by some other method, for instance being paid into a properly regulated trust account in another State, and some hardship is being caused by requiring the lawyer concerned to maintain and use a trust account in Victoria.

Clause 23 substitutes a new section 178 in the Principal Act as a consequence of the removal of the requirement for interstate practitioners to be registered and the introduction of the registered foreign lawyer provisions. The substance of the prohibition against unqualified trust money receipt remains the same as in the previous section 178.

Clause 24 substitutes a new section 183 in the Principal Act. Although there are some changes in the way the section is set out, the substance of the provision, which deals with the annual audit of trust accounts, is the same as the previous section 183.

Clause 25 amends sections 200, 202, 203 and 204 of the Principal Act. The provisions relating to the payment of contributions to and levies for the Fidelity Fund are widened to include interstate lawyers and registered foreign lawyers. The Legal Practice

Board may fix different rates for interstate lawyers and registered foreign lawyers if it wishes.

Clause 26 inserts a new section 207A into the Principal Act, containing definitions of "contributing foreign practitioner", "contributing interstate practitioner" and "practitioner" for use in Division 2 of Part 7, which deals with claims against the Fidelity Fund.

Clause 27 amends sections 208, 209, 210, 211, 213, 218, 219 and 222 of the Principal Act. In addition to claims against Victorian lawyers, claims can also be made against the Fidelity Fund in relation to defalcations by interstate lawyers and registered foreign lawyers, as long as they have been contributing to the Fidelity Fund. In addition to interstate or foreign lawyers who do not come within any of the classes determined by the Legal Practice Board as being required to make contributions, interstate lawyers who have not "established a practice" (see the definition contained in the new section 3A) in Victoria and do not intend to do so, and who are therefore practising in Victoria on a more casual basis, are not required to contribute to the Fidelity Fund (see new section 56(3)(b) & (4)). Claims can be made against contributing interstate and foreign lawyers where the loss occurs wholly in Victoria, whether or not the defalcation was committed in Victoria. Where a Victorian lawyer has been practising interstate and the loss occurs both in Victoria and in another State, or where it is not possible to determine how much of the loss occurred in another State, then a claim can be brought against the Fidelity Fund, whether or not the defalcation occurred in Victoria. To encourage co-operation between the States, local and interstate regulatory authorities also have the power under section 63C to make their own arrangements as to when they will each pay Fidelity Fund claims.

Clause 28 amends sections 224, 225, 226, 227 and 229 of the Principal Act, which require lawyers to maintain professional indemnity insurance, to allow for circumstances where the Legal Practice Board exempts a lawyer from having to comply.

Clause 29 inserts a new section 229A into the Principal Act. The Board may exempt Victorian, interstate or foreign lawyers, whether individually or as a class, from the requirement to maintain professional indemnity insurance in the form required by the Act. It is contemplated that this power will only be exercised

where the Board has been satisfied that to require the lawyer or class to maintain insurance in the form required by the Act would be oppressive and that it is not required to give proper protection to the lawyer's clients.

Clause 30 amends sections 231, 232, 236 and 246 of the Principal Act. The provisions relating to the Liability Committee and the Legal Practitioners' Liability Fund are widened to allow for both interstate lawyers and registered foreign lawyers to insure with the Liability Committee.

Clause 31 amends section 248, 249, 250, 252 and 257 of the Principal Act. A definition of "legal practice", covering the practices of both Australian and foreign lawyers, is inserted for use in Part 9. The provisions relating to the appointment of a receiver to a legal practice are widened to cover the practices of both interstate and foreign lawyers.

Clause 32 amends section 278 of the Principal Act. The provisions relating to the appointment of a manager to a legal practice also now apply to the practices of both interstate and foreign lawyers.

Clause 33 amends sections 293 and 295. Victorian incorporated practitioners may have the practice of foreign law as an object. An employee may only hold shares in an incorporated practitioner if the person is the holder of a Victorian practising certificate or is a registered foreign lawyer.

Clause 34 amends sections 299 and 308 of the Principal Act. The constitution of each RPA must provide for regulation by the RPA of interstate and foreign lawyers, as well as Victorian lawyers. The provisions relating to the re-allocation of lawyers from one RPA to another are widened to apply also to interstate and foreign lawyers.

Clause 35 amends sections 314, 315, 317, 318, 324 and 326 of the Principal Act. An interstate lawyer who is the holder of an interstate practising certificate, and who is not otherwise suspended or prohibited from practice in Victoria, is entitled to engage in legal practice in Victoria. A registered foreign lawyer who engages in the practice of foreign law in Victoria is not, by doing so, engaging in unqualified legal practice. Income may be shared by a firm or partner of a firm with a registered

foreign lawyer who is a partner of the firm. The definition of "conveyancer" is clarified with respect to interstate practitioners.

Clause 36 amends sections 376, 377, 378, 379, 380, 381, 382 and 383 of the Principal Act. The Legal Practice Board no longer has to make payments from the Public Purpose Fund to the Legal Ombudsman, Victoria Legal Aid, the Victoria Law Foundation and the Leo Cussen Institute by 30 September of each year. That deadline is also removed in relation to the timing of payments from the Public Purpose Fund to the various accounts from which the Board, the Legal Profession Tribunal, Trust Accounts Regulation and Law Reform and Research are funded. The individual caps on annual payments to the Victorian Law Foundation, the Leo Cussen Institute and the Law Reform and Research Account are removed, although the cumulative cap of 15% on the annual total of those payments, contained in section 384, remains.

Clause 37 inserts new sections 384A and 384B into the Principal Act. In determining how much should be paid to the bodies and accounts referred to in clause 36 above, the Legal Practice Board is entitled to take into account how much remains unspent from previous payments to that body or account. The Board is also given a general discretion as to the timing of credits and payments and may decide to do so in a single sum or by instalments.

Clause 38 amends sections 385, 389, 390, 391 and 392 of the Principal Act. The provisions relating to payments out of the Public Purpose Fund to liquidators and trustees in bankruptcy (where lawyers have become insolvent), to payments out of the Fidelity Fund into the Public Purpose Fund and vice versa and to refunds of fees and payments of regulation costs to RPAs from the Legal Practice Fund are widened to apply also to interstate and foreign lawyers

Clause 39 amends section 400 of the Principal Act. Unless a party objects, the Full Tribunal may be constituted by the chairperson or a deputy chairperson sitting alone for the purpose of making interim orders, giving directions or adjourning proceedings.

Clause 40 inserts a new section 413A into the Principal Act. The Legal Profession Tribunal is empowered in any proceedings to make any interim orders that it thinks fit.

Clause 41 amends section 430 of the Principal Act. The Legal Ombudsman's power to make ex-gratia payments is extended to cover interstate and registered foreign lawyers.

Clause 42 amends sections 431 and 435 of the Principal Act. Documents may be served under the Act on registered foreign lawyers either personally or by post to their address for service according to the Register. The methods for service on Victorian incorporated practitioners also apply to interstate practitioners that are bodies corporate. Certification that a practitioner was at a particular time regulated by a particular RPA or the Board can be provided in relation to Victorian, interstate and foreign lawyers.

Clause 43 substitutes a new section 441 into the Principal Act. Offences under the Act, other than under section 438(e), may only be prosecuted by the Legal Practice Board, a member of the police or the Director of Public Prosecutions. If the defendant at the time of the alleged offence was a regulated practitioner, then the practitioner's RPA may also prosecute. Charges under section 438(e) may only be brought by the Board. The provision relating to contempt of the Supreme Court remains unchanged.

Clause 44 amends section 442 of the Principal Act. Victorian, interstate and foreign lawyers are all prohibited from making agreements with clients that exempt the lawyer from liability for future legal services not yet provided to the client. Where a lawyer and a client have been in dispute and they then settle that dispute, nothing prevents the lawyer from obtaining a release of liability as part of the settlement.

Clause 45 amends section 444 of the Principal Act which states that certain provisions of the Act are intended to amend section 85 of the **Constitution Act 1975** by limiting the jurisdiction of the Supreme Court.

Clause 46 inserts a new clause 30A into Schedule 2 to the Principal Act and amends clauses 35 and 41 of Schedule 2. The treatment of suspensions which occurred under section 61C of the **Legal Profession Practice Act 1958** is brought into line with the

treatment of equivalent suspensions under the provisions in the Principal Act. Where the correct amount of contribution required under section 61A of the previous Act was not paid on behalf of a lawyer by the initial deadline of 31 March 1996 but a corrected payment was then made and the Law Institute's successor for these purposes (Victorian Lawyers RPA Limited) is satisfied that the mistake was inadvertent or due to circumstances beyond the person's control, Victorian Lawyers RPA may expunge the record of the suspension and the Legal Practice Board will do likewise. The relevant dates set by clauses 35(1) and 41(4) are respectively altered to 31 December 1998 and 31 December 1999.

Clause 47 amends section 93(b) to rectify an inadvertent omission in the Principal Act as printed. (See also clause 2.)

Clause 48 repeals Part 20, sections 452 and 453, and Schedule 1 of the Principal Act.

Clause 49 in combination with the Schedule, amends other Acts as a consequence of the removal of the requirement for interstate practitioners to be registered.