

REPUBLIC OF VANUATU

LEGAL PROFESSION ACT NO 49 OF 2005

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REPUBLIC OF VANUATU

Assent: **30/12/2005**

Commencement:

THE LEGAL PROFESSION ACT NO. 49 OF 2005

An Act to regulate the admission and practice of legal practitioners, and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

In this Act, unless the contrary intention appears:

Admissions Committee means the Admissions Committee established under Part 3.

approved legal office means

- (a) a law firm in Vanuatu consisting of one or more legal practitioners; or
- (b) the State Law Office; or
- (c) the Public Prosecutors Office; or
- (d) the Public Solicitors Office; or
- (e) the Office of the Ombudsman; or
- (f) another office or body in Vanuatu approved by the Admissions Committee.

Discipline Committee means the Discipline Committee established under Part 3.

Law Council means the Law Council established under Part 2.

legal practitioner means a person admitted to legal practice under this Act.

Minister means the Minister responsible for justice.

misconduct has the meaning given by section 2.

police report means:

- (a) in the case of a citizen of Vanuatu, a written statement from the Vanuatu Police Force:
 - (i) indicating whether or not the person has been convicted of a criminal offence in Vanuatu during the past 5 years, other than a traffic offence that did not cause bodily harm to a person; and
 - (ii) if the person has been so convicted, details of the conviction; or
- (b) in the case of a person who is the holder of a permit to reside in Vanuatu, a written statement from the relevant police force or police forces in the country in which the person was usually resident prior to obtaining the permit:
 - (i) indicating whether or not the person has been convicted of a criminal offence in that country during the past 5 years, other than a traffic offence that did not cause bodily harm to a person; and
 - (ii) if the person has been so convicted, details of the conviction.

practising certificate means a temporary practising certificate or an unconditional practising certificate.

Rules means the Rules of Professional Conduct and Practice set out in Schedule 4 as amended from time to time.

temporary practising certificate means a practising certificate issued under section 27.

unconditional practising certificate means a practising certificate issued under section 25.

unsatisfactory conduct has the meaning given by section 3.

2 Misconduct

- (1) Misconduct includes all or any of the following conduct engaged in by a legal practitioner in the course of legal practice:
 - (a) the legal practitioner intentionally or recklessly contravenes a provision of this Act or the Rules;
 - (b) the legal practitioner intentionally or recklessly fails to comply with an undertaking given to a court or other judicial body;
 - (c) the legal practitioner engages in conduct that amounts to a significant and consistent failure to meet reasonable standards of professional competence and diligence.

- (2) Misconduct also includes conduct by a legal practitioner that is not connected with legal practice, but that would justify a finding by a court that the practitioner is not of good character or is otherwise unsuitable to engage in legal practice.

3 Unsatisfactory conduct

Unsatisfactory conduct includes all or any of the following conduct engaged in by a legal practitioner in the course of legal practice:

- (a) conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent and diligent legal practitioner;
- (b) conduct that would be regarded by legal practitioners generally as being unprofessional, unacceptable or unbecoming of a legal practitioner;
- (c) conduct that contravenes a provision of this Act or the Rules, but that does not amount to misconduct.

PART 2 LAW COUNCIL

4 Establishment of the Law Council

- (1) The Law Council is established.
- (2) The Law Council consists of 5 members.
- (3) The members are:
 - (a) the Chief Justice; and
 - (b) the Attorney General; and
 - (c) the President of the National Council of Chiefs; and
 - (d) the Head of the Law School, University of the South Pacific; and
 - (e) the President of the Vanuatu Law Society.
- (4) If a person ceases to hold an office referred to in subsection (3), the person ceases to be a member of the Law Council.
- (5) A lawyer from the public sector nominated by the Attorney General is to be the secretary to the Law Council. The secretary is not a member of the Law Council.
- (6) The Law Council:
 - (a) is a body corporate with perpetual succession; and
 - (b) is to have an official seal; and
 - (c) may sue and be sued.

5 Functions and powers

- (1) The Law Council has the following functions:
 - (a) to have general responsibility for the control and supervision of legal practitioners;
 - (b) to promote good professional legal practice and standards of professional conduct;
 - (c) to promote public confidence in the administration of justice;
 - (d) to assist in the promotion of training programs and the continuing legal education of those involved in the administration of justice;

- (e) to give advice to the Minister on the operation and administration of this Act;
 - (f) to prescribe by Order maximum amounts of fees for different categories of legal services provided by a legal practitioner;
 - (g) such other functions as are conferred on the Council by or under this Act.
- (2) The Law Council has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

6 Financial matters

- (1) The funds of the Law Council consist of:
 - (a) money received by way of fees paid to the Law Council under this Act; and
 - (b) any other money received by the Law Council from any other source.
- (2) The Law Council is to open and maintain such bank accounts as it considers necessary and the funds of the Council are to be paid to the credit of such of its bank accounts as the Council determines.
- (3) The funds of the Law Council are to be applied:
 - (a) in payment of the expenses and charges incurred by the Council in the performance of its functions or the exercise of its powers; and
 - (b) in payment of any travelling or subsistence allowances payable by the Council under this Act.
- (4) The Law Council may invest any money that is not required for the performance of its functions.
- (5) The Law Council must keep proper accounting records in relation to its financial affairs.
- (6) The Law Council's accounts for each financial year must be audited within 3 months after the end of the financial year by the Auditor-General or a person authorised in writing by the Auditor-General.

7 Other matters

Schedule 1 has effect.

PART 3 COMMITTEES OF THE LAW COUNCIL

8 Admissions Committee

- (1) The Admissions Committee of the Law Council is established.
- (2) The Admissions Committee consists of 5 members.
- (3) The members are:
 - (a) two lawyers working in the public sector appointed in writing by the Attorney General; and
 - (b) two lawyers working in the private sector appointed in writing by the President of the Vanuatu Law Society; and
 - (c) a member of the academic staff of the Faculty of Law, University of the South Pacific, appointed in writing by the Dean of the Faculty.
- (4) The Registrar of the Supreme Court is to be the secretary to the Committee. The secretary is not a member of the Committee.

9 Functions and powers of Admissions Committee

- (1) The Admissions Committee has the following functions:
 - (a) to approve the admission of persons to legal practice;
 - (b) to issue and renew practising certificates;
 - (c) such other functions as are conferred on the Committee by the Law Council.
- (2) The Admissions Committee has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

10 Other matters relating to Admissions Committee

Schedule 2 has effect.

11 Discipline Committee

- (1) The Discipline Committee of the Law Council is established.
- (2) The Discipline Committee consists of 5 members.

- (3) The members are:
- (a) a judge of the Supreme Court appointed in writing by the Law Council; and
 - (b) a legal practitioner working in the public sector appointed in writing by the Attorney General; and
 - (c) a legal practitioner working in the private sector appointed in writing by the President of the Vanuatu Law Society; and
 - (d) a person who is not a legal practitioner nominated by the Vanuatu Association of Non-Government Organisations and appointed in writing by the Law Council; and
 - (e) a person who is not a legal practitioner nominated by the Vanuatu Christian Council and appointed in writing by the Law Council.
- (4) A legal practitioner from the public sector nominated by the Attorney General is to be the secretary to the Discipline Committee. The secretary is not a member of the Discipline Committee.
- (5) Within 21 days after the making of an appointment, the secretary to the Discipline Committee is to publish notice of the appointment in the Gazette.

12 Functions and powers of Discipline Committee

(1) The Discipline Committee has the following functions:

- (a) to hear and determine complaints against legal practitioners;
 - (b) to make recommendations to the Law Council on amendments to the Rules;
 - (c) such other functions as are conferred on the Committee by the Law Council.
- (2) The Discipline Committee has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

13 Other matters relating to Discipline Committee

Schedule 3 has effect.

14 Other Committees of the Law Council

- (1) In addition to the Admissions Committee and the Disciplinary Committee, the Law Council may form such other committees as are necessary to assist the Council in the performance of its functions.
- (2) The Law Council is to determine the composition of any committee formed under subsection (1).
- (3) A committee formed under subsection (1) is to determine and regulate its own procedures.

PART 4 ADMISSIONS

Division 1 – General admissions

15 Criteria for admission

- (1) A person is not to be admitted to legal practice under this Division unless the person meets the criteria in subsections (2), (3), (4) and (5).
- (2) The person is a citizen of Vanuatu or the holder of a permit to reside in Vanuatu.
- (3) The person has completed:
 - (a) a degree in law from the University of the South Pacific or a degree in law approved by the Admissions Committee; or
 - (b) another course of academic study in law that in the opinion of the Admissions Committee is substantially equivalent to a degree in law.
- (4) The person:
 - (a) has undertaken at least one year of full time supervised legal practice in an approved legal office, or in one or more approved legal offices; or
 - (b) has completed a course of practical legal training approved by the Admissions Committee and undertaken at least 6 months of full time supervised legal practice in an approved legal office, or in one or more approved legal offices; or
 - (c) has undertaken at least 2 years of full time supervised legislative drafting in the State Law Office, or in one or more approved legal offices; or
 - (c) is admitted to legal practice in another jurisdiction that is approved by the Admissions Committee.
- (5) The person is in the opinion of the Admissions Committee a fit and proper person to be admitted to legal practice
- .
- (6) Before being admitted to legal practice, a person must take and subscribe to the oath of admission to legal practice.
- (7) The form of the oath is to be prescribed by the Admissions Committee.

16 Application for admission

- (1) A person is to apply in writing to the Admissions Committee to be admitted to legal practice under this Division.
- (2) The application is to be accompanied by:
- (a) such material that will enable the Admissions Committee to determine if the applicant meets the criteria for admission under subsections 15 (2), (3) and (4); and
 - (b) the documents referred to in section 17 that are applicable to the applicant; and
 - (c) a police report; and
 - (c) an application fee of 10,000 Vatu or such other amount as is prescribed by the regulations; and
 - (d) such other information as is prescribed by the regulations.

(3) The application fee is not refundable.

(4) In addition to the original application and supporting material, the applicant must provide the Admissions Committee with 5 copies of the application and supporting material.

17 Fit and proper test

- (1) If a person who is a citizen of Vanuatu makes an application under section 16, the person must include with the application a copy of the advertisement referred to in subsection (2).
- (2) The advertisement must include:
- (a) the name and address of the applicant; and
 - (b) a statement to the effect that the applicant is applying to be admitted to legal practice under this Division; and
 - (c) an invitation to make written submissions to the Admissions Committee about whether the applicant is a fit and proper person to be admitted to legal practice; and
 - (d) mention of a period, being not less than 10 days after the date of the advertisement, within which persons may make submissions.
- (3) The advertisement must appear in a newspaper that is available throughout Vanuatu and the cost of the advertisement must be paid for by the applicant.

- (4) If a person who is the holder of a permit to reside in Vanuatu makes an application under section 16, the person must include with the application a written statement to the effect that the person is a fit and proper person to be admitted to legal practice.
- (5) The statement referred to in subsection (4) must be provided by the relevant legal professional body in the country in which the person was usually resident prior to obtaining the permit to reside in Vanuatu.

18 Decision by Admissions Committee

- (1) The Admissions Committee is to meet and consider an application for admission within one month after receiving the application.
- (2) If, after considering the application, the Admissions Committee is satisfied that the application contains sufficient information for the Committee to determine the application, the Committee must determine it within one month after considering it.
- (3) If, after considering the application, the Committee is satisfied that the application does not contain sufficient information for the Committee to determine the application, the Committee may request additional information from the applicant or any other person. The Committee must determine the application within one month after receiving the additional information that it requires.
- (4) If the Admissions Committee determines that a person meets the criteria for admission under section 15, the Admissions Committee must within 5 working days after making its decision issue an admission certificate to the person.
- (5) If the Admissions Committee determines that a person does not meet the criteria for admission under section 15, the Admissions Committee must within 5 working days after making its decision advise the person in writing of its decision and the reasons for it.
- (6) The form of an admission certificate is to be prescribed by the Admissions Committee.

Division 2 – Temporary Admissions

19 Application of Division

This Division applies to a person if the person is not admitted to legal practice under Division 1 of this Part.

20 Temporary admission for legal proceedings

- (1) A person is not to be admitted to legal practice on a temporary basis unless:
 - (a) the person is required to appear in a particular legal proceeding or class of legal proceedings; and

- (b) a judge or magistrate has given written approval that it is appropriate for the person to appear in the legal proceeding or class of legal proceedings in respect of which temporary admission is sought; and
 - (c) the person is admitted to legal practice in another jurisdiction approved by the Admissions Committee.
- (2) Before being admitted to legal practice on a temporary basis, a person must take and subscribe to the oath of admission to legal practice.
- (3) The form of the oath is to be prescribed by the Admissions Committee.

21 Temporary admission in public interest

- (1) A person who is admitted to legal practice in another jurisdiction approved by the Admissions Committee is to be admitted to legal practice in Vanuatu on a temporary basis if in the opinion of the Admissions Committee it is in the public interest for the person to be so admitted.
- (2) Before being admitted to legal practice on a temporary basis, a person must take and subscribe to the oath of admission to legal practice.
- (3) The form of the oath is to be prescribed by the Admissions Committee.

22 Application for temporary admission

- (1) A person is to apply in writing to the Admissions Committee to be admitted to legal practice on a temporary basis.
- (2) The application is to be accompanied by:
 - (a) such material that will enable the Admissions Committee to determine if the applicant meets the criteria for admission under section 20 or 21; and
 - (b) an application fee of 10,000 Vatu or such other amount as is prescribed by the regulations.
- (3) The application fee is not refundable.
- (4) In addition to the original application and supporting material, the applicant must provide the Admissions Committee with 5 copies of the application and supporting material.

23 Decision by Admissions Committee

- (1) The Admissions Committee is to meet and consider an application for admission to legal practice on a temporary basis within 14 days after receiving the application.

- (2) If, after considering the application, the Admissions Committee is satisfied that the application contains sufficient information for the Committee to determine the application, the Committee must determine it within 14 days after considering it.
- (3) If, after considering the application, the Committee is satisfied that the application does not contain sufficient information for the Committee to determine the application, the Committee may request additional information from the applicant or any other person. The Committee must determine the application within 14 days after receiving the additional information that it requires.
- (4) If the Admissions Committee determines that a person meets the criteria for admission, the Admissions Committee must within 5 working days after making its decision issue a temporary admission certificate to the person.
- (5) If the Admissions Committee determines that a person does not meet the criteria for admission, the Admissions Committee must within 5 working days after making its decision advise the person in writing of its decision and the reasons for it.
- (6) The form of a temporary admission certificate is to be prescribed by the Admissions Committee.

24 Period of admission and conditions

- (1) A person's admission under this Division:

- (a) is valid for the period determined by the Admissions Committee and specified in the person's temporary admission certificate; and
 - (b) is subject to such conditions as are specified in the person's temporary admission certificate.
- (2) A person cannot apply for a renewal of the person's admission under this Division.

Division 3 – Practising certificates

25 Unconditional practising certificates

- (1) A person is not to be issued with an unconditional practising certificate unless the person is admitted to legal practice under Division 1 of this Part.
- (2) A person who wishes to be issued with an unconditional practising certificate must apply in writing to the Admissions Committee.
- (3) The application must be accompanied by an application fee of 5,000 Vatu or such other amount as is prescribed by the regulations. The application fee is not refundable.

- (4) If an applicant satisfies the criteria in subsection (1) and has paid the application fee, the Admissions Committee is to issue the applicant with an unconditional practising certificate within 5 working days after receiving the application.
- (5) A person's unconditional practising certificate is valid for the period starting on the date the practising certificate is issued by the Admissions Committee and ending on 31 December of that year.
- (6) The form of an unconditional practising certificate is to be prescribed by the Admissions Committee.

26 Renewal of unconditional practising certificates

- (1) A person's unconditional practising certificate must not be renewed unless the person has:
 - (a) completed the continuing legal education requirements under subsection 42 (3); and
 - (b) complied with any order made against the person by the Discipline Committee under Part 6.
- (2) To avoid doubt, if the Discipline Committee has suspended a person's unconditional practising certificate under Part 6, the person's unconditional practising certificate cannot be renewed while the suspension is in force.
- (3) A person who wishes to have his or her unconditional practising certificate renewed must apply in writing to the Admissions Committee before 15 December of each year.
- (4) A person's application must be accompanied by an application fee of 10,000 Vatu or such other amount as is prescribed by the regulations. The application fee is not refundable.
- (5) If an applicant satisfies the criteria in subsection (1) and has paid the application fee, the Admissions Committee is to renew the applicant's unconditional practising certificate within 10 working days after receiving the application.
- (6) An unconditional practising certificate is renewable for the period starting on 1 January of a year and ending on 31 December of that year.

- (7) If a person:
- (a) does not apply before 15 December of a particular year for the renewal of the person's unconditional practising certificate; and
 - (b) wishes his or her unconditional practising certificate to be renewed;
- the person may apply under this section, but must pay to the Admissions Committee a late fee of 10,000 Vatu or such other amount as is prescribed by the regulations.
- (8) The late fee referred to in subsection (7) is in addition to the application fee referred to in subsection (4) and is not refundable.

27 Temporary practising certificates

- (1) A person who is admitted to legal practice on a temporary basis under Division 2 of this Part is to be issued with a temporary practising certificate by the Admissions Committee when it approves the person's admission.
- (2) The person's temporary practising certificate is valid for so long as the person is admitted to legal practice on a temporary basis under Division 2 of this Part.

Division 4 – Appeals

28 Appeals

- (1) If:
- (a) a person has applied to the Admissions Committee:
 - (i) for admission as a legal practitioner; or
 - (ii) for the issue or renewal of his or her practicing certificate; and
 - (b) the person believes the decision of the Committee was wrong on a point of law or a question of fact;
- the person may appeal the decision to the Supreme Court.
- (2) An appeal must be made not later than 30 days after the date of issue of the advice by the Committee of its decision.
- (3) An appeal is to proceed by way of a rehearing, unless the appellant and respondent agree otherwise.

29 Powers of Supreme Court on appeal

(1) On an appeal, the Supreme Court may do any one or more of the following:

- (a) confirm or revoke the decision to which the appeal relates;
 - (b) make a decision in place of the decision to which the appeal relates;
 - (c) remit the matter to the Admissions Committee for determination in accordance with the Court's finding or decision.
- (2) On an appeal, the appellant has the onus of proving the appellant's case.

Division 5 – Other matters

30 Transitional arrangements

- (1) This section applies to a person if immediately before the commencement of this Act:
- (a) the person's unconditional registration as a legal practitioner under the Legal Practitioners (Qualifications) Regulations No. 22 of 1996 was in force; or
 - (b) the person's registration as a legal practitioner under Part VI of the Legal Practitioners Act [CAP 119] was in force.
- (2) To avoid doubt, this section does not apply to any other person.
- (3) Subject to subsections (4) and (5), a person to whom this section applies is deemed:
- (a) to be admitted to legal practice under Division 1 of this Part on and from the commencement of this Act; and
 - (b) to be issued with an unconditional practising certificate for the period starting on the commencement of this Act and ending on 31 December 2006.
- (4) The person must pay to the Admissions Committee a transitional fee of 5,000 Vatu before 31 March 2006.
- (5) If a person does not pay the transitional fee in accordance with subsection (4), the person's unconditional practising certificate referred to in paragraph (3)(b) is cancelled by force of this subsection on 31 March 2006.
- (6) To avoid doubt, nothing in this section prevents a person whose unconditional practising certificate is cancelled by force of subsection (5) from applying under section 25 for an unconditional practising certificate.

31 Offences

- (1) A person must not practise law in Vanuatu unless the person is admitted to legal practice under Division 1 or 2 of this Part and is the holder of a practising certificate.

Penalty: a fine not exceeding VT 1million or a term of imprisonment of not more than 2 years, or both.

- (2) A person who is not admitted to legal practice under Division 1 or 2 of this Part must not do anything, or permit anything to be done, that holds out, advertises or represents that the person is admitted under that Division.

Penalty: a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both.

- (3) A person who is not the holder of a practising certificate must not do anything, or permit anything to be done, that holds out, advertises or represents that the person is the holder of such a certificate.

Penalty: a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both.

32 Register of admitted practitioners

- (1) The Admissions Committee must establish and maintain a register of legal practitioners who are admitted to legal practice under Division 1 or 2 of this Part, including which legal practitioners hold practising certificates.

- (2) The register is to be kept in such a form as the Admissions Committee determines and is to be readily accessible to the public.

PART 5 RULES OF PROFESSIONAL CONDUCT AND PRACTICE

33 Rules of Professional Conduct and Practice

- (1) The Rules of Professional Conduct and Practice are set out in Schedule 4.
- (2) After consultation with the Law Council, the Minister may by order amend the Rules of Professional Conduct and Practice.

PART 6 COMPLAINTS AGAINST LEGAL PRACTITIONERS

34 Making a complaint

- (1) A person may make a complaint to the Discipline Committee against a legal practitioner for misconduct or unsatisfactory conduct.
- (2) A complaint is to be made by sending or delivering the complaint to the Discipline Committee.
- (3) A complaint must:
 - (a) be in writing and be signed by the complainant; and
 - (b) contain specific allegations of misconduct or unsatisfactory conduct against a specified legal practitioner and such allegations may consist of acts or omissions; and
 - (c) contain the name and address of the complainant and the legal practitioner against whom the complaint is made; and
 - (d) contain such other information as is prescribed by the regulations.

- (4) The Committee must deliver or send a copy of the complaint to the legal practitioner concerned within 7 days after receiving the complaint.
- (5) To avoid doubt, a complaint may be made in relation to circumstances that occurred before the commencement of this Act.

35 Time for hearing and determining complaints

- (1) The Committee is to meet and consider a complaint within one month after receiving the complaint.
- (2) If, after considering the complaint, the Committee is satisfied that the complaint contains sufficient information for the Committee to hear and determine the complaint, the Committee must hear and determine the complaint within 2 months after considering it.
- (3) If, after considering the complaint, the Committee is satisfied that the complaint does not contain sufficient information for the Committee to hear and determine the complaint, the Committee may request additional information from the complainant, the respondent or any other person.
- (4) The Committee must hear and determine the complaint within 2 months after receiving the additional information that it has requested.

36 Procedure for hearing of complaint

- (1) Subject to this section, the Discipline Committee is to decide the procedure for the hearing of a complaint.

- (2) The Discipline Committee is not bound by the rules of evidence, but must ensure the hearing is conducted in such a way that the complainant and respondent are accorded natural justice.
- (3) The complainant and respondent may be represented by a legal practitioner.
- (4) The complainant has the onus of proving the complaint.
- (5) The Discipline Committee must give the complainant and the respondent at least 7 days written notice of the hearing date of the complaint.
- (6) To avoid doubt, the Discipline Committee:
 - (a) may hear and determine a complaint in the absence of the respondent; or
 - (b) dismiss a complaint if the complainant does not appear at the hearing and the Committee is satisfied that the complainant does not have a reasonable excuse for not appearing.

37 Powers of Discipline Committee

- (1) The Discipline Committee has power to do all or any of the following in relation to the hearing of a complaint:
 - (a) to require the complainant to provide more specific allegations;
 - (b) to summon and examine the complainant, the respondent and witnesses;
 - (c) to require the production of documents and other evidence;
 - (d) to make orders for costs, but not against the complainant unless the complaint is frivolous or vexatious;
 - (e) to dismiss the complaint if the Committee considers it frivolous or vexatious.
- (2) For the purposes of paragraphs (1)(b) and (c), the Discipline Committee has the same powers as a judge of the Supreme Court.

38 Conflict of interest

- (1) A member of the Discipline Committee who has a conflict of interest in relation to a complaint being heard, or about to be heard, by the Committee must disclose the matters giving rise to that conflict to the Committee as soon as possible after becoming aware of the conflict.
- (2) The member must not take part in the making of a decision by the Discipline Committee in relation to the complaint.

(3) For the purposes of this section, a member has a conflict of interest in relation to a complaint being heard, or about to be heard, by the Discipline Committee if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to the complaint.

39 Decisions of Discipline Committee

(1) If the Discipline Committee is satisfied on the balance of probabilities that the respondent has engaged in conduct that amounts to misconduct or unsatisfactory conduct, the Committee may do all or any of the following:

- (a) cancel the respondent's practising certificate;
- (b) suspend the respondent's practising certificate for a specified period;
- (c) impose a fine on the respondent;
- (d) order the respondent to pay a specified amount of compensation to the complainant;
- (e) reprimand the respondent;
- (f) order the respondent to do specified legal training;
- (g) recommend, if applicable, that a customary reconciliation ceremony be held between the complainant and the respondent;
- (h) make an order for costs against the respondent;
- (i) make such other orders as the Committee considers necessary.

(2) If the Discipline Committee is satisfied on the balance of probabilities that the respondent has not engaged in conduct that amounts to misconduct or unsatisfactory conduct, the Committee must dismiss the complaint.

(3) The Discipline Committee must advise the complainant and respondent of its decision and the reasons for it as soon as practicable after making the decision. The advice must be in writing.

40 Appeals

(1) If the complainant or respondent believes that:

- (a) the decision of the Discipline Committee was wrong on a point of law; or
- (b) the severity of the decision of the Discipline Committee was not appropriate having regard to the circumstances of the complaint;

the complainant or the respondent may appeal the decision to the Supreme Court.

- (2) An appeal must be made not later than 30 days after the date of issue of the advice by the Discipline Committee of its decision.
- (3) On an appeal, the Supreme Court may do any one or more of the following:
 - (a) confirm or revoke the decision to which the appeal relates;
 - (b) make a decision in place of the decision to which the appeal relates;
 - (c) remit the matter to the Discipline Committee for determination in accordance with the Court's finding or decision.
- (4) On an appeal, the appellant has the onus of proving the appellant's case.

41 Fresh evidence

- (1) At any time after a complaint has been heard and determined by the Discipline Committee, the complainant or the respondent may apply in writing to the Committee for a review of the Committee's decision on the ground that the applicant has fresh evidence of material significance that was not available at the time the complaint was heard and determined.
- (2) The Discipline Committee must consider the application within one month after receiving it and must advise the applicant of its decision and the reasons for it. The advice must be in writing.
- (3) The Discipline Committee is to determine the procedure for any review of a complaint.

PART 7 CONTINUING LEGAL EDUCATION

42 Continuing Legal Education Program

- (1) The Law Council must establish a continuing legal education program.
- (2) The Law Council is responsible for the administration of the continuing legal education program.
- (3) A legal practitioner who is the holder of an unconditional practising certificate must undertake:
 - (a) at least 10 hours of approved continuing legal education in each calendar year if the person's unconditional practising certificate came into force before 1 July of that year; or
 - (b) at least 5 hours of approved continuing legal education in each calendar year if the person's unconditional practising certificate came into force on or after 1 July of that year.

PART 8 MISCELLANEOUS

43 Regulations

The Minister may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

44 Repeals

The following are repealed:

- (a) the Legal Practitioners Act [CAP 119];
- (b) the Legal Practitioners Regulation (Amendment) Act No. 39 of 1989;
- (c) any regulations, orders or other instruments made under Legal Practitioners Act [CAP 119] or the Legal Practitioners Regulation (Amendment) Act No. 39 of 1989.

45 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE 1 - Law Council

1 Chairperson and Deputy Chairperson

- (1) The members of the Council must elect a member to be the Chairperson and another member to be the Deputy Chairperson.
- (2) Subject to subclauses (3) and (4), the Chairperson and Deputy Chairperson each hold office until such time as the Council otherwise specifies.
- (3) The Chairperson or Deputy Chairperson ceases to be the Chairperson or Deputy Chairperson if he or she ceases to be a member of the Council.
- (4) The Chairperson or Deputy Chairperson may resign as Chairperson or Deputy Chairperson by giving a written resignation to the Council.

2 Vacancies

If a vacancy occurs on the Council, the Council is to ensure that the vacancy is filled as soon as possible.

3 Allowances for members

- (1) The members of the Council are not entitled to any sitting allowances for any meeting of the Council.
- (2) A member is entitled to be paid such travelling and subsistence allowances as the Council may determine in writing.
- (3) A member is not entitled to any remuneration or benefits, or other allowances, in his or her capacity as a member of the Council, including as the Chairperson or Deputy Chairperson.

4 Meetings of the Council

- (1) The Council must meet at least once every 3 months and hold such other meetings as are necessary for the proper performance of its functions.
- (2) The Chairperson is to chair meetings of the Council. In the absence of the Chairperson, the Deputy Chairperson is to chair the meetings of the Council.
- (3) If the absence of the Chairperson and the Deputy Chairperson, the members present at a meeting are to elect a member to chair the meeting.
- (4) At a meeting of the Council a quorum consists of 3 members. The Council may meet despite any vacancies in its membership so long as a quorum is present.
- (5) Each member present at a meeting has one vote and questions arising at a meeting are to be decided by a majority of votes. If the voting at a meeting is equal, the member chairing the meeting has a casting vote.
- (6) The Council may otherwise determine and regulate its own procedures.

5 Annual report

The Law Council must, within 3 months after the end of each year, prepare and give to the Minister a report with respect to its operations during that year.

SCHEDULE 2 - Admissions Committee

1 Terms of office of members

- (1) A member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment.
- (2) Subject to subclause (3), a person is eligible for re-appointment as a member.
- (3) A person who has been removed as a member under clause 3 cannot be reappointed as a member.

2 Chairperson and Deputy Chairperson

- (1) The members of the Committee must elect a member to be the Chairperson and another member to be the Deputy Chairperson.
- (2) Subject to subclauses (3) and (4), the Chairperson and Deputy Chairperson each hold office until such time as the Committee otherwise specifies.
- (3) The Chairperson or Deputy Chairperson ceases to be the Chairperson or Deputy Chairperson if he or she ceases to be a member of the Committee.
- (4) The Chairperson or Deputy Chairperson may resign as Chairperson or Deputy Chairperson by giving a written resignation to the Committee.

3 Removal and resignation of members

- (1) The person who appoints a member to the Committee must remove that member (including a member who is the Chairperson or Deputy Chairperson) if he or she:
 - (a) fails to attend 3 consecutive meetings without the permission of the Committee; or
 - (b) becomes bankrupt; or
 - (c) is convicted of an offence against a law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months.
- (2) A member may resign at any time by giving his or her written resignation to the Committee.

4 Acting members

- (1) The person who has appointed a person to be a member of the Committee may appoint another person to act for that member if he or she is absent from Vanuatu or is for any reason unable to perform his or her duties.
- (2) A person must not be appointed to act for more than 3 months.

- (3) A person who is appointed to act for a member who is the Chairperson or the Deputy Chairperson does not become the Chairperson or Deputy Chairperson by reason of the acting appointment. In such a case, subclause 6(4) or (5) applies.

5 Allowances for members

- (1) The members of the Committee are not entitled to any sitting allowances for any meeting of the Committee.
- (2) A member is entitled to be paid such travelling and subsistence allowances as the Committee may determine in writing.
- (3) A member is not entitled to any remuneration or benefits, or other allowances, in his or her capacity as a member of the Committee, including as the Chairperson or Deputy Chairperson.

6 Meetings of the Committee

- (1) The Committee must meet at such times as are necessary for the proper performance of its functions.
- (2) A member of the Committee may call a meeting of the Committee at any time by giving one day's notice of the meeting to the other members. The notice may be given orally or in writing.
- (3) The Chairperson is to chair meetings of the Committee. In the absence of the Chairperson, the Deputy Chairperson is to chair the meetings of the Committee.
- (4) If the absence of the Chairperson and the Deputy Chairperson, the members present at a meeting are to elect a member to chair the meeting.
- (5) At a meeting of the Committee a quorum consists of 3 members. The Committee may meet despite any vacancies in its membership so long as a quorum is present.
- (6) Each member present at a meeting has one vote and questions arising at a meeting are to be decided by a majority of votes. If the voting at a meeting is equal, the member chairing the meeting has a casting vote.
- (7) The Committee may otherwise determine and regulate its own procedures.

7 Annual report

The Committee must, within 3 months after the end of each year, prepare and give to the Law Council a report with respect to its operations during that year.

SCHEDULE 3 - Discipline Committee

1 Terms of office of members

- (1) A member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment.
- (2) Subject to subclause (3), a person is eligible for re-appointment as a member.
- (3) A person who has been removed as a member under clause 3 cannot be reappointed as a member.

2 Chairperson and Deputy Chairperson

- (1) The member of the Committee who is a judge of the Supreme Court is to be the Chairperson of the Committee.
- (2) The members of the Committee must elect a member to be the Deputy Chairperson and, subject to subclauses (3) and (4), he or she holds office as the Deputy Chairperson until such time as the Committee otherwise specifies.
- (3) The Chairperson or Deputy Chairperson ceases to be the Chairperson or Deputy Chairperson if he or she ceases to be a member of the Committee.
- (4) The Deputy Chairperson may resign as Deputy Chairperson by giving a written resignation to the Committee.

3 Removal and resignation of members

- (1) The person who appoints a member to the Committee may remove that member (including a member who is the Chairperson and Deputy Chairperson) if he or she:
 - (a) fails to attend 3 consecutive meetings without the permission of the Committee; or
 - (b) becomes bankrupt; or
 - (c) is convicted of an offence against a law of Vanuatu for which the maximum penalty is a period of imprisonment.
- (2) A member may resign at any time by giving his or her written resignation to the Committee.

4 Acting members

- (1) The person who has appointed a person to be a member of the Committee may appoint another person to act for that member if he or she is absent from Vanuatu or is for any reason unable to perform his or her duties.
- (2) A person must not be appointed to act for more than 3 months.

- (3) A person who is appointed to act for the member who is the Chairperson becomes the Chairperson by reason of the acting appointment.
- (4) A person who is appointed to act for the member who is the Deputy Chairperson does not become the Deputy Chairperson by reason of the acting appointment. In such a case, subclause 6(4) applies.
- (5) If:
 - (a) a member or members are unable to take part in the making of a decision by the Committee in relation to a complaint because of a conflict of interest; and
 - (b) the Committee does not have a quorum as a result;

the person who appointed that member or those members must appoint another person or persons to act for that member or those members in order to hear and determine the complaint.

5 Allowances for members

- (1) The members of the Committee are not entitled to any sitting allowances for any meeting of the Committee.
- (2) A member is entitled to be paid such travelling and subsistence allowances as the Committee may determine in writing.
- (3) A member is not entitled to any remuneration or benefits, or other allowances, in his or her capacity as a member of the Committee, including as the Chairperson or Deputy Chairperson.

6 Meetings of the Committee

- (1) The Committee must meet such times as are necessary to determine complaints and for the proper performance of its other functions.
- (2) A member of the Committee may call a meeting of the Committee at any time by giving one day's notice of the meeting to the other members. The notice may be given orally or in writing.
- (3) The Chairperson is to chair meetings of the Committee. In the absence of the Chairperson, the Deputy Chairperson is to chair the meetings of the Committee.
- (4) If the absence of the Chairperson and the Deputy Chairperson, the members present at a meeting are to elect a member to chair the meeting.
- (5) At a meeting of the Committee a quorum consists of 3 members. The Committee may meet despite any vacancies in its membership so long as a quorum is present.

- (6) Each member present at a meeting has one vote and questions arising at a meeting are to be decided by a majority of votes. If the voting at a meeting is equal, the member chairing the meeting has a casting vote.
- (7) The Committee is to otherwise determine and regulate its own meeting procedures.

7 Annual report

- (1) The Committee must, within 3 months after the end of each year, prepare and give to the Law Council a report with respect to its operations during that year.
- (2) The report must include a copy of each decision in relation to a complaint made by the Committee during the relevant year.

SCHEDULE 4 - RULES OF PROFESSIONAL CONDUCT AND PRACTICE

PART 1 - PRELIMINARY

1 Interpretation

(1) In these Rules, unless the contrary intention appears:

client means a person to whom a legal practitioner or a legal firm provides legal services.

legal firm means a firm of legal practitioners and includes the State Law Office, the Public Prosecutors Office and the Public Solicitors Office.

member of a legal firm includes a partner, associate, employee or officer of the legal firm.

prosecutor means:

- (a) the Public Prosecutor; or
 - (b) the Deputy Public Prosecutor, an Assistant Public Prosecutor or a State Prosecutor within the meaning of the Public Prosecutors Act No. 7 of 2003; or
 - (c) any other legal practitioner prosecuting a criminal offence.
- (2) The other terms used in these Rules have the same meaning as in the Legal Profession Act No. 49 of 2005.

2 Compliance

A legal practitioner in the course of legal practice must regulate his or her conduct to comply with these Rules.

PART 2 – DEALINGS BETWEEN LEGAL PRACTITIONERS

3 Professionalism, courtesy and fairness

A legal practitioner must:

- (a) promote and maintain proper standards of professionalism with other legal practitioners; and
- (b) treat other legal practitioners with courtesy and fairness.

4 Honour undertakings

- (1) A legal practitioner has a professional duty to honour an undertaking given in the course of legal proceedings or in the course of legal practice.
- (2) Subclause (1) applies to a legal practitioner whether the undertaking is given by the legal practitioner personally or another member of the legal firm of which legal practitioner is a member.
- (3) Subclause (1) applies to a legal practitioner whether the undertaking is given orally or in writing.

5 Clients of others

A legal practitioner must not communicate directly or indirectly with another practitioner's client in the same matter, unless the other legal practitioner has given his or her express approval.

PART 3 – DEALINGS BETWEEN LEGAL PRACTITIONER AND CLIENT

6 Client interest

- (1) A legal practitioner must use all reasonably available legal means to advance his or her client's interests.
- (2) However, in the interests of the administration of justice, the overriding duty of a legal practitioner acting in litigation is to the court or other relevant decision making body.

7 Diligence

- (1) A legal practitioner must use his or her reasonable endeavours to complete any work on behalf of his or her client as soon as is reasonably possible.
- (2) If a legal practitioner receives instructions from a client and it is or becomes apparent to the practitioner that the practitioner cannot perform the work within a reasonable time, the practitioner must inform the client as soon as possible.
- (3) A legal practitioner must not take steps to perform work in such a way as to unnecessarily increase costs to his or her client.
- (4) A legal practitioner must not accept instructions which are beyond the practitioner's level of competence.

8 Disclosure

- (1) Subject to subclause (2), a legal practitioner must not disclose to any other person any information obtained in the course of handling any matter for a client.
- (2) A legal practitioner may make a disclosure if:
 - (a) it is authorised by or under any law; or
 - (b) it is incidental to the normal conduct of the matter; or
 - (c) the client expressly authorises it; or
 - (d) the practitioner believes on reasonable grounds that a failure to make the disclosure would result in a person's safety being threatened.

9 Keeping client informed

A legal practitioner must keep a client apprised of all significant developments in any matter entrusted by the client unless the client has instructed the legal practitioner to do otherwise.

10 Illegal purposes

A legal practitioner must not tender advice to a client when the legal practitioner knows or ought reasonably be expected to know that the client is requesting the advice to advance an illegal purpose.

11 Instructions

If a client's instructions are such as to prevent the proper performance by a legal practitioner of his or her duties, the legal practitioner must decline to act further and must advise the client accordingly.

12 Changing adviser

- (1) A legal practitioner must not place any fetter upon or otherwise attempt to discourage a client from changing legal advisers at any time.
- (2) A legal practitioner must offer all such assistance and give all such advice or information as may be necessary to enable any other legal practitioner instructed to take over a matter and with the least duplication of costs.
- (3) Subclause (2) does not affect any lien a legal practitioner has on any documents held for or on behalf of a former client.

13 Costs

- (1) It is a legal practitioner's duty to communicate effectively and promptly with his or her client about the costs and disbursements the client may incur by pursuing the legal activity requested by the client.
- (2) Without limiting subclause (1), a legal practitioner must:
 - (a) as soon as practicable after taking instructions from a client, give the client written advice setting out:
 - (i) an estimate of the costs and disbursements the client may incur by pursuing the legal activity; and
 - (ii) the method of calculation of those costs and disbursements; and
 - (b) give the client as and when reasonably requested, written advice reviewing the estimated costs and disbursements; and
 - (c) in the case of a proposed settlement of a litigious matter – give the client advice as to the likely minimum net amount the client will receive from the proposed settlement.
- (3) A client may request a legal practitioner to enter into a written agreement in relation to costs and disbursements. Such an agreement may specify that all work done by the legal practitioner for the client or all work of a particular kind is to be charged at a specified rate.

14 Interests that conflict

- (1) A legal practitioner must at all times make a full and frank disclosure to a client of any interest he or she may have in any transaction in which the legal practitioner is acting for that client. If such an interest is adverse to that of the client, the legal practitioner must cease to act.
- (2) A legal practitioner must at all times make a full and frank disclosure to a client of any matter or thing which could reasonably be regarded by the client as raising a conflict of interest on the part of the practitioner.

15 Acting for more than one party

- (1) A legal practitioner may act for more than one party in a non-litigious matter if:
 - (a) the practitioner informs all parties that he or she is acting; and
 - (b) the practitioner advises all the parties that each should seek independent legal advice; and
 - (c) the practitioner advises the parties of the consequences of acting for both parties as set out in subclause (2); and
 - (d) all the parties consent in writing to the practitioner acting.
- (2) The practitioner must cease to act for all parties if:
 - (a) a conflict of interest arises amongst two or more of the parties; or
 - (b) the matter becomes litigious between two or more of the parties.
- (3) A reference to a legal practitioner in this clause includes a reference to the legal firm of which the legal practitioner is a member.

16 Acting for former clients

A legal practitioner must not act for a client in a matter against a former client of the practitioner if:

- (a) the legal practitioner has prior knowledge of the former client or of his or her affairs; and
- (b) the legal practitioner's prior knowledge:
 - (i) would be, or would have the potential to be, to the detriment of the former client; or
 - (ii) could reasonably be expected to be objectionable to the former client.

PART 4 –ADVERTISING, PLACE OF BUSINESS AND CONDUCT OF OTHER BUSINESSES

17 Advertising

A legal practitioner may advertise in connection with his or her practice if the advertising is not:

- (a) false; or
- (b) misleading or deceptive, or likely to mislead or deceive; or
- (c) defamatory of another legal practitioner; or
- (d) done in such a way so as to bring discredit to the legal profession.

18 Letterhead etc

A legal firm must not mislead the public or other legal practitioners about the structure of the firm or the status of any person named on the firm's letterhead or in any other publication or literature issued by the firm.

19 Place of business

For the purpose of ensuring that the confidentiality of a client's affairs is maintained, a legal practitioner must not share, occupy or use premises jointly with any person unless appropriate arrangements have been made to ensure that confidentiality.

20 Management of practices

A legal practitioner must ensure that each place of business of the legal practitioner is at all times under effective and competent management by a practitioner who has an unconditional practicing certificate.

21 Conduct of other businesses

A legal practitioner must not carry on another business apart from a legal practice unless:

- (a) the conduct of the other business is kept entirely separate from the legal practice particularly with respect to correspondence, accounts and dealings with the public; and
- (b) the other business is not of such a character that the practitioner's interest and the duty to clients are likely to conflict; and
- (c) the other business is not done in such a way so as to bring discredit to the legal profession.

PART 5 – TRUST ACCOUNTS AND AUDITS

22 Money received by a legal practitioner on behalf of another

- (1) If a legal practitioner, in the course of practising as a legal practitioner, receives money on behalf of another person, the legal practitioner must:
- (a) hold the money exclusively for the other person; and
 - (b) ensure that subclause (2) is complied with in relation to the money.
- (2) The legal practitioner must:
- (a) pay the money (“trust money”) to the credit of a general trust account at a bank licensed under the Financial Institutions Act No.2 of 1999, except where the person on whose behalf the money is received otherwise directs; and
 - (b) not mix office or general funds of the legal practitioner with the trust money; and
 - (c) disburse the trust money in accordance with the directions of the person on whose behalf it is held.
- (3) Subject to subclause (4) or (5) (whichever applies), this clause does not operate to prevent a legal practitioner from withdrawing money in a trust account for:
- (a) payment of costs for services provided by the legal practitioner; or
 - (b) payment of disbursements to be paid by the legal practitioner; or
 - (c) reimbursement for disbursements paid by the legal practitioner.
- (4) If the legal practitioner has received a retainer from the client concerned, the withdrawal of the money must be made in accordance with the terms and conditions of the agreement entered into in relation to the retainer.
- (5) If the legal practitioner has not received a retainer, the legal practitioner must not make the withdrawal unless the legal practitioner:
- (a) has rendered an account for the costs or disbursements to the client; and
 - (b) received instructions from the client to make the withdrawal.
- (6) This clause does not operate to prevent a legal practitioner:
- (a) from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account; or

- (b) from holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the legal practitioner does so on behalf of a client and in accordance with directions given by the client.
- (7) Money received by a legal practitioner on behalf of another person is not available for payment to a creditor of the legal practitioner.
- 23 Keeping of accounts**
- (1) A legal practitioner must keep accounting records that disclose at all times the true position in relation to all money received by the legal practitioner on behalf of other persons.
- (2) The accounting records must be kept in a manner that enables them to be conveniently and properly audited.
- 24 Law council can require a spot audit**
- (1) The Law Council may at any time, by notice in writing to a legal practitioner, require the practitioner or the legal firm of which the legal practitioner is a member to provide the Law Council with an auditor's report.
- (2) The report must be prepared by an auditor qualified for appointment in accordance with section 166 of the Companies Act [CAP 191] and the cost of the report is to be paid for by the Law Council.
- (3) The report must be provided by the auditor within 3 months after the date of the notice referred to in subclause (1).
- (4) A legal practitioner must:
- (a) allow the auditor entry to the legal practitioner's premises; and
 - (b) give the auditor such assistance as is required.
- (5) Without limiting paragraph (4)(b), a legal practitioner must, if required to do so by an auditor carrying out an audit, and despite any legal professional privilege:
- (a) produce for inspection by the auditor any accounting or other records relating to the legal practitioner's practice; and
 - (b) give the auditor such other information as is reasonably necessary for the purposes of the audit.
- (6) The production of a record or statement, or the giving of information, under this clause does not subsequently affect any legal professional privilege to which the record, statement or information is subject.
- (7) It is a sufficient compliance with this clause by a legal practitioner in partnership if a single auditor's report is lodged for the partnership.

25 Disclosure

A legal practitioner must promptly disclose to the Law Council the occurrence of any conduct by another legal practitioner which the first mentioned legal practitioner believes on reasonable grounds is contrary to this Part.

PART 6 – LITIGATION PRACTICE

26 Naming persons

- (1) A legal practitioner must exercise care in court about naming a person not involved in the proceeding.
- (2) A legal practitioner must refrain in court from doing all of the following:
 - (a) making scandalous or unnecessary allegations against a person;
 - (b) making allegations against a person that do not have any evidentiary or legal basis;
 - (c) attacking the reputation of a person without good cause.

27 Court not to be misled

- (1) A legal practitioner must not in the course of making submissions or cross examining a witness say or lead a witness to say anything that might mislead the court.
- (2) A legal practitioner must not make any statement to the court or put any proposition to a witness that is not supported by reasonable instructions or that lacks factual foundation by reference to the information available to the court.
- (3) A legal practitioner must refer the court to all relevant legislation, case law and other legal authorities relevant to the proceedings that are known to the legal practitioner.

28 Legal practitioner as witness

A legal practitioner must not act as counsel and appear as a witness in the same proceeding.

29 Expert and other witnesses

- (1) If:
 - (a) an expert witness has been retained by a party (“the first mentioned party”) in a proceeding; and
 - (b) the legal practitioner for another party in the proceeding is aware of it;

the practitioner must not approach the expert witness without first obtaining the written consent of the practitioner acting for the first mentioned party.

- (2) Subject to subclause (1), a legal practitioner acting for one party may interview a witness or prospective witness with his or her consent at any stage prior to the hearing whether or not the witness has been:
- (a) interviewed by a legal practitioner acting for the other party; or
 - (b) called as a witness.

30 Consent orders

A legal practitioner appearing for a party must not seek or agree to a consent order without the client's instructions. So far as practicable, the instructions are to be in writing.

31 Client disobeys court order

- (1) This clause applies to a legal practitioner whose client informs the practitioner that the client intends to disobey a court's order.
- (2) The legal practitioner must:
- (a) advise the client against that course and warn the client of its dangers; and
 - (b) not advise the client how to carry out or conceal that course; and
 - (c) 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.

PART 7 – ACTING FOR THE ACCUSED IN CRIMINAL PROCEEDINGS

32 Not guilty plea

- (1) On a plea of not guilty, a legal practitioner acting for an accused has a duty to:
 - (a) place before the court any proper defence in accordance with his or her client's instructions; and
 - (b) require the prosecution to discharge the appropriate onus to prove the guilt of the accused.
- (2) A legal practitioner for an accused must not recklessly attribute to another person the crime or offence with which the accused is charged.
- (3) However, if the facts or circumstances arising out of the evidence or reasonable inferences drawn from it, raise a reasonable suspicion that the offence may have been committed by another person, such a defence may be properly raised.

33 Guilty clients

- (1) This clause applies to a legal practitioner's client who informs the practitioner, before judgment or decision, that he or she:
 - (a) has lied in a material particular to the court; or
 - (b) has procured another person to lie to the court; or
 - (c) has falsified or procured another person to falsify in any way a document which has been tendered.
- (2) The legal practitioner must:
 - (a) advise the client that the court should be informed of the lie or falsification; and
 - (b) request authority from the client to inform the court of the lie or falsification; and
 - (c) promptly inform the court of the lie or falsification upon the client authorising the practitioner to do so.
- (3) The legal practitioner must not take any further part in the proceeding if the client does not authorise the practitioner to inform the court of the lie or falsification.
- (4) The legal practitioner must not inform the court of the lie or falsification without authority from the client to do so.

34 Guilty plea

- (1) This clause applies if a legal practitioner's client in criminal proceedings confesses guilt to the practitioner but maintains a plea of not guilty.

- (2) The legal practitioner may cease to act if:
- (a) there is enough time for another practitioner to take over the case properly before the hearing; and
 - (b) the client does not insist on the practitioner continuing to appear for the client.
- (3) If the legal practitioner continues to act for the client, the legal practitioner must not:
- (a) falsely suggest that some other person committed the offence charged; or
 - (b) set up an affirmative case inconsistent with the confession.
- (4) If the legal practitioner continues to act for the client, the legal practitioner may argue that:
- (a) the evidence as a whole does not prove that the client is guilty of the offence charged; or
 - (b) for some reason of law the client is not guilty of the offence charged; or
 - (c) for any other reason not prohibited by paragraph (3)(a) or (b) that the client should not be convicted of the offence charged.

35 Advice on plea

A legal practitioner must in advising his or her client:

- (a) on a plea; or
- (b) as to whether or not to give evidence;

discuss all relevant aspects of the case with the client and seek to ensure that the client makes an informed decision.

36 Innocent client

(1) This clause applies if a legal practitioner:

- (a) is told by his or her client that he or she did not commit the offence; or
- (b) believes that on the facts that his or her client should be acquitted;

but for a particular reason the client wishes to plead guilty.

- (2) The legal practitioner may continue to represent the client if the practitioner:
- (a) has warned the client in writing of the consequences of his or her plea; and
 - (b) has advised the client that he or she can act after entry of the plea only on the basis that the offence has been admitted; and
 - (c) has advised the client that he or she can put forward only factors in mitigation.

37 Previous convictions

A legal practitioner must not disclose his or her client's previous convictions without the client's authority.

PART 8 – ACTING FOR THE PROSECUTION

38 Prosecutor’s duties

- (1) A prosecutor’s primary interest is that the right person is convicted, the truth is revealed and justice is done.
- (2) A prosecutor must:
 - (a) fairly assist a court to arrive at the truth; and
 - (b) seek impartially to have the whole of the relevant evidence placed intelligibly before the court; and
 - (c) seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
- (3) A prosecutor must not press the prosecution’s case for a conviction beyond a full and firm presentation of that case.
- (4) A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- (5) A prosecutor must not argue any proposition of act 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.

39 Disclosure

- (1) Subject to subclause (2), a prosecutor must disclose to the opponent as soon as practicable:
 - (a) all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor which could constitute evidence relevant to the guilt or innocence of the accused; or
 - (b) any such material of which the prosecutor becomes aware during the course of a proceeding which could constitute evidence relevant to the guilt or innocence of the accused.

- (2) Disclosure under paragraph (1)(a) or (b) is not required if the prosecutor believes on reasonable grounds that:
- (a) the disclosure would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
 - (b) such a threat could not be avoided by limiting the disclosure to the legal practitioner representing the accused on appropriate conditions (for example, an undertaking by the legal practitioner representing the accused not to disclose certain material to the accused or any other person).

40 Witnesses

- (1) Subject to subclause (2), a prosecutor must call as part of the prosecution's case a witness if:
- (a) the testimony of the witness is admissible and necessary for the presentation of the whole picture; or
 - (b) the testimony of the witness provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue; or
 - (c) the testimony or statements of the witness were used in the course of any preliminary hearings; or
 - (d) a statement from the witness has been obtained in the preparation or conduct of the prosecution's case.
- (2) The prosecutor is not obliged to call a witness if:
- (a) the opponent consents to the prosecutor not calling the witness; or
 - (b) the only matter with respect to which the witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
 - (c) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling the witness to establish a particular point already adequately established by another witness; or
 - (d) the prosecutor believes on reasonable grounds that the testimony of the witness is unreliable.

- (3) In deciding whether the testimony of a witness is unreliable, the prosecutor must use appropriate techniques such as conferring with the witness and satisfying himself or herself of the capability of the witness to give relevant and truthful evidence.
- (4) The prosecutor must inform the opponent as soon as practicable of the identity of a witness if the prosecutor intends not to call the witness on any ground referred to in subclause (2) together with the grounds on which the prosecutor has reached that decision.
- (5) Despite subclause (2), the prosecutor must call a witness if the opponent requests the prosecutor to do so for the purpose of permitting the opponent to cross-examine that witness.

41 Unlawfully or improperly maintained material

A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

- (a) inform the opponent if the prosecutor intends to use the material; and
- (b) make available to the opponent a copy of the material if it is in documentary form; and
- (c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.

42 Contact with accused

A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.

43 Informing court of supporting evidence

- (1) 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.
- (2) A prosecutor who has informed the court of matters within subclause (1), 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.

44 Sentencing

- (1) A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude.

- (2) However, a prosecutor must:
 - (a) correct any error made by the opponent in address on sentence; and
 - (b) inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
 - (c) assist the court to avoid appealable error on the issue of sentence.
- (3) A prosecutor may:
 - (a) submit that a custodial or non-custodial sentence is appropriate; and
 - (b) inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.