



A GUIDE TO SETTING UP
OR SELLING A LAW PRACTICE
IN WESTERN AUSTRALIA

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FOREWORD

This Guide has been published by the Law Society of Western Australia (“Law Society”) because of the many enquiries received from legal practitioners planning to:

- practise as sole practitioners or in partnership;
- incorporate a law practice;
- sell a law practice.

DISCLAIMER

The information in this Guide is provided as a service to members of the Law Society. The information in this Guide is not intended to be an exhaustive list of all matters applicable to the setting up and selling of a law practice. The information is provided solely on the basis that readers shall be responsible for making their own assessment and verification of all relevant representations, statements and information.

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INTRODUCTION

Setting up your own business

When self-employed you will have to allocate significant time to financial management, training, supervision, staff issues, the purchase and maintenance of equipment, marketing and compliance with the administrative requirements of the Legal Practice Act 2003 (“Legal Practice Act”) and other relevant legislation, rules and regulations.

This Guide has been prepared to help you to recognise the many issues that need to be considered and addressed and to outline the business structures permitted by the Legal Practice Act (Part 6 – Business structures).

These structures are:

- (1) partnership (limited partnerships, although available in Western Australia, are not addressed in this Guide);
- (2) incorporated legal practice, established as a small proprietary company under the Corporations Act 2001 (Cth);
- (3) sole trader/sole practitioner;
- (4) barrister; and
- (5) multi-disciplinary partnership.

This Guide outlines what each of the structures mean, some of their benefits and shortcomings and brings to the attention of the reader some of the obligations under the Legal Practice Act and associated rules and regulations. There is an A to Z Checklist with general application to each structure. Complex corporate/business structures are not addressed as this Guide is aimed at the small business owner or small proprietary company.

Restriction on acting as a principal of a legal practice

A legal practitioner cannot operate as a principal of a legal practice unless he or she has completed, after being admitted, a term of 12 months as an employed legal practitioner in the office of a legal practitioner authorised under the Legal Practice Act 2003 (“Legal Practice Act”) to take, have and retain an articulated clerk. (Section 33 of the Legal Practice Act).

BUSINESS PLANNING

Costs associated with setting up a legal practice

You should not underestimate the cost of setting up a legal practice.

The following cash flow statement is a guide to the types of expenses that need to be considered both when setting up and operating a legal practice. The pro forma statement monitors the funds available after deducting expenses from income on a month by month basis. It is provided only as a guide and is not an exhaustive list of the type of expenses you could incur in setting up and operating your business.

PRO FORMA CASH FLOW STATEMENT

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
FEE INCOME						
OTHER INCOME						
TOTAL INCOME	\$	\$	\$	\$	\$	\$
EXPENDITURE						
Practising Certificate Fee & any other staffs practice certificates						
Rent						
Office refurbishment						
Wages incl. on-costs						
Personal drawings						
Furniture						
Photocopier/Facsimile						
Computer hardware						
Computer software						
On-line services						
Dictating equipment						
Telephone system						
Answer phone						
Service agreements						
Maintenance						
Practice books						
Donations						
Entertaining						
Precedents						
Manual accounting system						
Law Society membership						
Postage						
Mandatory Legal Education training						
Additional Staff training						
Printing/stationery						
Accountant's fees						
Superannuation						
Professional Indemnity Insurance and general insurance						
Marketing						
Locum						
Travelling						
Electricity						
Bank charges						
Depreciation						
Allowance for debtors						
Interest payments on loans of the firm						
TOTAL EXPENDITURE	\$	\$	\$	\$	\$	\$
SURPLUS/DEFICIT (BEFORE TAX)	\$	\$	\$	\$	\$	\$
CASH OR OVERDRAFT B/F	\$	\$	\$	\$	\$	\$
CASH OR OVERDRAFT MONTH END	\$	\$	\$	\$	\$	\$

PARTNERSHIP

The Partnership Act (WA) 1895 and the Limited Partnership Act 1909 apply in Western Australia. Section 7 of the Partnership Act defines “partnership”:

- (1) *Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.*
- (2) *In deciding whether a partnership does or does not exist in any particular case, the Court shall have regard to the true contract and intention of the partners as appearing from the whole facts of the case.*

A partnership can be created either in writing or orally. Sensibly there should be a written partnership agreement.

Benefits and shortcomings of a partnership

Benefits

- (1) Creating, maintaining and dissolving a partnership does not involve the formalities and in some instances the costs attributable to companies.
- (2) There is no need to publish partnership accounts, nor have them audited (other than to comply with the Legal Practice Act). There is no regulation under the Corporations Act or the Australian Securities and Investments Commission Act (Cth) 2001.
- (3) The partners are not answerable to shareholders and each partner has a prima facie right to take an active part in the conduct of the business and its management.
- (4) Tax losses can be offset against each partner’s individual income from all sources.

Shortcomings

- (1) The absence of a separate legal identity means that each partner of a firm is generally jointly and severally liable for the debts of the partnership. Under section 16 of the Partnership Act, every partner is liable jointly with the other partners for the debts and obligations of the firm incurred while he or she is a partner and after his or her death is also severally liable in the due course of administration for such debts and obligations so far as they remain unsatisfied but subject to the prior payment of his or her separate debts. Under section 19 of the Partnership Act, every partner is liable jointly with his or her partners and also severally liable for everything for which the firm becomes liable while he or she is a partner.
- (2) Under section 18 of the Partnership Act the firm is liable for the misapplication of moneys. Section 17 of the Partnership Act deals with the liability for a wrongful act or omission of any partner acting in the ordinary course of business of the firm or with the authority of co-partners, where the firm is liable.
- (3) The absence of perpetual succession means that with the death, retirement or admission of a partner the partnership dissolves and a new partnership is created, unless the partnership agreement states otherwise.
- (4) As the partnership assets are not owned by the partnership and partnership debts are incurred in the names of partners personally, there should be continual review of the terms of the partnership and the legal relations between the partners, particularly when a partner joins or retires from the partnership.

- (5) Subject to the partnership agreement any partner is permitted to call for the dissolution of the partnership pursuant to sections 37 and 43 of the Partnership Act, however under the regulations made pursuant to Section 1152 of the Corporations Act (Cth), a law firm can have up to 400 partners.
- (6) The number of partners is limited by the Partnership Act which may affect the growth of a business.
- (7) The obtaining of finance may to some degree be dependent on the partners' personal assets.

INCORPORATED LEGAL PRACTICE

This Guide addresses only the basic company structure of a small proprietary company limited by shares. (An incorporated legal practice can be listed on the Australian Stock Exchange and issue and sell shares.)

For a company to have legal recognition it must be registered with the Australian Securities and Investments Commission (ASIC)[Form 201.] An application fee is payable.

“Incorporated legal practice” is defined in section 3 of the Legal Practice Act as a corporation that provides legal services as provided by section 47 of the Legal Practice Act. Section 47(1) states:

- (1) *Subject to subsection (2) and sections 48(3), 69(6) and 70(3), if a corporation provides legal services in this State (whether or not it provides other services) it is an incorporated legal practice.*

The Legal Practice Act (section 72) applies to an incorporated legal practice and prevails, to the extent of any inconsistency, over the constitution or other constituent documents of an incorporated legal practice.

Legal services

“Legal services” are not defined in Section 3 of the Legal Practice Act. Section 4 of the Legal Practice Act defines “engage in legal practice”. Section 48(1) of the Legal Practice Act states:

An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.

Regulation 4 of the Legal Practice Regulations 2005 (“Legal Practice Regulations”) states:

An incorporated legal practice or a related body corporate must not conduct a managed investment scheme within the meaning of the Corporations Act.

Notice of incorporated legal practice

Before a corporation provides legal services it must notify the Board (section 50(1) of the Legal Practice Act.) The notice must be in the form prescribed by regulation 5 of the Legal Practice Regulations.

A notice under section 50(1) of the Legal Practice Act is to be —

- (a) in the form of Form 1; and
 - (b) accompanied by —
 - (i) a copy of the corporation's constitution or other constituent documents; and
 - (ii) documentary evidence, from the Australian Securities and Investments Commission or other authority with whom the corporation is registered, of the directors and officers of the corporation.
- (2) For the purposes of section 50(2) the particulars necessary to complete Form 1 are prescribed.

Refer to **Annexure D** for a copy of Form 1.

Ongoing obligations of an incorporated legal practice

Regulation 5(3) of the *Legal Practice Regulations* states:

While the corporation continues to provide legal services it must notify the Board of any change in any of the information given in or with the notice.

Unique obligations of a legal practitioner director

An incorporated legal practice must have at least one legal practitioner director at all times. If an incorporated legal practice does not have at least one legal practitioner director for a period exceeding 7 days it commits an offence under section 53 of the Legal Practice Act. Each legal practitioner director of an incorporated legal practice is required pursuant to section 51 of the Legal Practice Act to ensure:

the implementation and maintenance of appropriate management systems for the provision of legal services:

- (a) in accordance with professional obligations of legal practitioners; and
- (b) to avoid undue or adverse influence by non-legal practitioner officers or employees on the legal practitioner officers or employees.

Disclosure by all directors and legal practitioners who work for an incorporated legal practice

Under section 58 of the Legal Practice Act, where a client engages an incorporated legal practice to provide legal services, each legal practitioner director and the legal practitioner who provides the legal services must give to the client written notice of the following:

- (a) *the legal services to be provided;*
- (b) *the non-legal services (if any) to be provided in connection with the provision of legal services;*
- (c) *that this Act applies to the provision of legal services but not to the provision of the non-legal services;*
- (d) *whether any financial benefit or commission (other than fees for the provision of the legal services or the non-legal services) has been or is to be received by the incorporated legal practice, any employee or officer of the incorporated legal practice or any related body corporate, as a result of the provision of the legal services or non-legal services or any referral by any such employee, officer or related body corporate related to that provision;*
- (e) *the amount or value of any such financial benefit or commission, if known, or, if not known, the method by which it is to be calculated.*

ASIC and an incorporated legal practice

The Legal Practice Act does not exclude the powers and functions of investigators under the ASIC Act. Therefore, an ASIC officer upon complying with the respective provisions of the ASIC Act can give notice to an incorporated legal practice to:

- (a) examine persons;
- (b) inspect books; and
- (c) hold hearings.

If a director of an incorporated legal practice is disqualified under section 206E of the Corporations Act from managing corporations and the disqualification is justified, the Supreme Court, upon application by the Board, can disqualify that person from managing an incorporated legal practice for the period that the Court considers appropriate.

General Corporations Act issues to consider and note

Lodgement of annual returns

All companies must lodge an annual return with ASIC for each calendar year no later than 31 January.

Financial statements

A small proprietary company is not required under the Corporations Act to have financial statements prepared unless it is required to do so by the ASIC or shareholders holding 5% or more of the company's shares or, in some cases, if it is controlled by a foreign company.

Taxation

All companies must lodge an income tax return each year. At this time the company tax rate is 30%.

Registered office, principal place of business and common seal

Under the Corporations Act, all companies must have a registered office in Australia. It is not acceptable to have a post office address. If the company's registered office or principal place of business changes, the company must notify ASIC within 14 days and complete a Form 203. All companies are required to have their name displayed prominently at each place where they carry on business and that is open to the public. It is not necessary that the sign be displayed outside the premises; it may be displayed inside. It is now no longer compulsory for companies to have a common seal.

Certificate of Registration

ASIC issues each company with a certificate of registration. Once registration occurs the body corporate comes into existence as a separate legal entity with perpetual succession until deregistration. The company's name is the name specified in the certificate of registration.

Constitution and replaceable rules

A small proprietary company does not need a memorandum and articles of association. A small proprietary company may have a constitution and adopt the replaceable rules under the Corporations Act. Replaceable rules do not apply to a small proprietary company where the same person is its sole director and sole shareholder (refer to section 135 of the Corporations Act).

Shareholders

A small proprietary company must have at least one shareholder. It is possible to be the sole director and shareholder of a small proprietary company.

Directors' guarantees

If a director has actual or ostensible authority to enter into a contract or incur a debt then the company is liable for this debt. Careful consideration should be given to the authority each director has to enter into contracts including to give directors' guarantees.

Duties of a director and liabilities of a director

There are considerable duties and liabilities under the Corporations Act and in particular under sections 180 to 184 inclusive and 588G.

Director personal liability for unremitted taxation

Taxation laws impose personal liability on directors for unremitted PAYG and other withholding taxes owed by a company.

The benefits and shortcoming of a company in general

Benefits

- (1) On incorporation a company has a separate legal entity or personality distinct from its shareholders and directors. If a company is unable to pay its debts, generally the creditors can sue only the company and not the directors. However, this is not always the case and depends on the particular facts and circumstances.
- (2) A company can limit its liability to the amount of its paid up and uncalled capital. However, many commercial entities dealing with a small company will insist on the directors giving personal guarantees.
- (3) Perpetual succession.
- (4) A flat rate of taxation which may be lower than that applicable to individuals.
- (5) Flexibility to give different rights to different classes of shares or to different corporate officers under the company's constitution, but there are limitations on how this can be used to pay preferential dividends.

As a result of the separate personality of a company, money can only be taken out of the company by way of salaries, loans or dividends.

Each has different tax consequences, and these are in some way directed to limiting the capacity to take advantage of the lower rate applicable to companies.

The salary payable to parties associated with the company are limited to amounts that are reasonable, so that salaries cannot be used for income splitting purposes.

There are strong anti avoidance provisions relating to loans in Division 7A of the Income Tax Assessment Act 1936, preventing the lending of money to associated individuals as a way of avoiding income tax on the amounts.

Dividends are paid out of taxed profits, requiring the shareholder to pay the additional tax only on the income up to that individual's tax rate, where tax has been paid on the profits.

The tax consequences of incorporation can be complex, and should be the subject of expert advice.

Shortcomings

- (1) Compliance with the Corporations Act and regulation by ASIC.
- (2) There are filing fees payable in respect of the registration of a company and ongoing filing fees relating to the continuation of a company such as changes in directors, officers and shareholders and registered office.

SOLE TRADER/SOLE PRACTITIONER

A sole practitioner owns the business and operates without partners.

Can sole practitioners trade under their own name?

Yes. For instance, if a sole practitioner's name is "Joe Bloggs" he can trade as "Joe Bloggs Lawyers". However, if a sole practitioner trades under a name other than his/her own, the trading name must be registered under the Business Names Act 1962 (WA).

The benefits and shortcomings of conducting practice as a sole practitioner

Benefits

- (1) It is the simplest form of business ownership.
- (2) It does not involve the formalities of a partnership or an incorporated legal practice. There is no need to audit the business finances (other than as required by the Legal Practice Act).
- (3) A sole practitioner has total control and authority and does not need to ratify decisions with other partners or directors.
- (4) Winding up or cessation of the business is relatively simple at minimal cost.

Shortcomings

- (1) A sole practitioner does not have a separate legal entity or partners to share liabilities. Debts are the sole responsibility of the sole practitioner and are not limited to the practitioner's business assets but extend to personal assets, whether wholly or jointly owned.
- (2) The ability to obtain finance may be limited because a sole practitioner is usually able to provide only personal forms of security.
- (3) A sole practitioner does not have the opportunity to confer with others with a direct financial interest.
- (4) A sole practitioner does not have perpetual succession. The death of the sole practitioner terminates the business.

PRACTICE AS A BARRISTER

Western Australia has a 'fused profession'. In Western Australia, all lawyers are admitted as barristers and solicitors.

The benefits and shortcomings of practising as a barrister

Benefits

- (1) Few management issues.
- (2) No need to keep trust accounts or arrange audit certificates.
- (3) Generally, cheaper professional indemnity insurance.
- (4) Use of Chambers' library, equipment and resources.
- (5) Instructions are taken from lawyers, not their clients.

Shortcomings

- (1) Not being able to take clients "off the street".
- (2) Personal liability for debts.
- (3) Lack of personal control over many of the expenses shared with other members of the Chambers.
- (4) Compliance with the rules of the Chambers.
- (5) Generally, proceedings are not commenced for recovery of outstanding fees. (Pursuant to protocol at this time, the President of the WABA writes to the instructing solicitor for an explanation and new instructions are refused.)

How does one become a barrister?

The practical steps towards commencing practice as a barrister are as follows.

- (1) Contact each Chambers to find out if there is accommodation available and the Chambers' terms, conditions and operating costs.
- (2) Make application to the Western Australian Bar Association ("WABA") on the form at **Annexure E**. Two referees, who are members of the WABA, must support the application.
- (3) When admitted to the WABA, obtain professional indemnity insurance from an approved insurer.
- (4) Give an undertaking to the Supreme Court at a sitting of the Full Court. First, write to the Principal Registrar advising:
 - the date you were admitted to practise;
 - that you intend to practise solely as a barrister in Western Australia; and
 - the date you intend to commence practise as a barrister.

Is membership of the WABA compulsory ?

No, and membership of the WABA is not automatic. The WABA may refuse membership. Applications must disclose any past or current professional conduct complaints made against the applicant. There is no joining fee but there is an annual subscription.

MULTI-DISCIPLINARY PARTNERSHIPS

A multi-disciplinary partnership provides for legal practitioners to supply legal services in partnership with persons who are not legal practitioners.

Section 74 of the Legal Practice Act defines a multi-disciplinary partnership as:

A partnership between one or more legal practitioners and one or more persons who are not legal practitioners, where the partnership business includes the provision of legal services as well as other services.

Under section 123 of the Legal Practice Act, the prohibition on engaging in legal practice except as a certified practitioner extends to legal services provided by a multi-disciplinary partnership.

Part 6 Division 3 of the Legal Practice Act governs the roles and responsibilities of multi-disciplinary partnerships.

Pursuant to section 75(2) of the Legal Practice Act and regulation 8 of the Legal Practice Regulations a legal practitioner must not be in partnership with a person who conducts a managed investment scheme within the meaning of the Corporations Act.

What responsibilities are imposed on a legal practitioner partner in a multi-disciplinary partnership?

The responsibilities of each legal practitioner in a multi-disciplinary partnership include:

- (1) responsibility for the management of the legal services provided in this State by the partnership;
- (2) to ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the partnership in accordance with professional obligations of legal practitioners under the Legal Practice Act and that the professional obligations of legal practitioner partners and employees who are legal practitioners are not adversely affected by other partners and employees of the practice;
- (3) the conduct of every legal practitioner employed by the multi-disciplinary partnership and the legal practitioner partner must take all reasonable action available to deal with unsatisfactory conduct by an employed legal practitioner;
- (4) the conduct of any other partner (not being a legal practitioner) that adversely affects the provision of legal services by the partnership;
- (5) the unsuitability of any other partner (not being a legal practitioner) to be a member of a partnership that provides legal services;

- (6) compliance with all the professional obligations required by law.

Disclosure to clients by all legal practitioner partners and legal practitioner employees

Under section 81(1) of the Legal Practice Act if a client engages the legal services of a multi-disciplinary partnership, each legal practitioner partner and each legal practitioner employee who provides legal services must disclose to the client the matters set out in section 81(2).

Section 81(2) of the Legal Practice Act provides that notice be given to all clients stating:

- (a) *the legal services to be provided;*
- (b) *the non-legal services (if any) to be provided in connection with the provision of legal services;*
- (c) *that this Act applies to the provision of legal services but not to the provision of the non-legal services;*
- (d) *whether any financial benefit or commission (other than fees for the provision of the legal services or the non-legal services) has been or is to be received by the multi-disciplinary partnership or any related body corporate of any partner of the partnership as a result of the provision of the legal services or non-legal services or any referral by any such partner, employee or related body corporate related to that provision;*
- (e) *the amount or value of any such financial benefit or commission, if known, or, if not known, the method by which it is to be calculated.*

Certain persons prohibited from providing legal services

Pursuant to section 86 of the Legal Practice Act a legal practitioner who is a partner in a multi-disciplinary partnership must not knowingly permit a person to be a partner in the multi-disciplinary partnership, share the receipts of the provision of legal services or employ or pay a person in connection with the provision of legal services of the multi-disciplinary partnership when that person is subject to a section 70 order (disqualified from managing incorporated legal practice) or section 87 (prohibition on partnership with certain non-legal partners).

The benefits and shortcomings of a multi-disciplinary partnership

Benefits

Multi-disciplinary partnerships may allow legal practitioners to better compete with other service providers by permitting them to create a 'one stop shop'. This includes, but is not limited to services in accounting, tax, financial planning and migration etc.,

Shortcomings

- (1) The sharing of responsibilities and liabilities with partners engaged in different professions.
- (2) The legal practitioner partners may not have control of the partnership if there are fewer legal partners than non-legal partners.
- (3) A diverse and complex insurance arrangement for the legal and non legal partners and staff.

- (4) The need to ensure that tax invoices are separated into legal and non-legal services and that the tax invoices for legal services comply with the Legal Practice Act.
- (5) Disclosure when providing legal services.
- (6) Drawing a distinction between legal and non-legal services, especially for insurance purposes.
- (7) Significantly different standards of professional practice and behaviour generally required of legal practitioners.
- (8) Significantly different culture of legal practice to other occupations.
- (9) Difficulties with conflicts, particularly the differing considerations relating to conflict for legal professional and commercial issues to those relating to most other occupations.

A to Z CHECKLIST

Most of the issues addressed in this checklist apply to all five practice structures discussed in this Guide. This checklist should not be treated as all encompassing.

Accounting advice and employment advice

Before setting up your business it is recommended that you meet with a certified practising accountant to discuss the set-up and operating costs of your intended business. If you intend to engage an accountant on an ongoing basis, it may be useful to find out the accounting package (software) that your accountant uses and purchase compatible software.

If you intend to have employees, it is also recommended that you consult a colleague who works exclusively in the area of industrial relations.

Accounts – books/records

Usual books of account include:

- (a) receipt books
- (b) cheque books – general and trust account
- (c) wage records
- (d) petty cash docketts
- (e) bank deposit books
- (f) cash receipt books
- (g) cash payment books
- (h) petty cash books
- (i) general journal
- (j) costs journal
- (k) general ledger
- (l) subsidiary accounts receivable (debtors) ledger
- (m) subsidiary disbursements ledger
- (n) trial balances for the general ledger; subsidiary accounts receivable and disbursements ledger
- (o) tax invoices
- (p) employment records (required by the Minimum Conditions of Employment Act and the Workplace Relations Act).

Advertising

Before determining an advertising strategy practitioners should read Schedule 3 of the *Professional Conduct Rules, “Guidelines for the Advertising of Legal Services”*. The issues addressed include:

- (1) who can describe themselves as a lawyer in an advertisement;
- (2) the difference between a lawyer and non-lawyer;
- (3) what qualifications can be quoted in an advertisement for legal services;
- (4) can a lawyer or other provider of legal services describe himself or herself as an expert;
- (5) is it plausible to claim expertise in all areas of the law;
- (6) use of the word “specialist”;

- (7) the use of testimonials and comparative advertising;
- (8) the affect of the *Civil Liability Act 2002* on advertising by personal injuries practices;
- (9) misleading and deceptive advertising.

Articled clerks

Articles of Clerkship are registered with the Legal Practice Board. Part 3 of the Legal Practice Act sets out who may be an articled clerk and who may employ an articled clerk.

Each year the Law Society publishes articled clerk recruitment dates in *Friday Facts*. Articled clerks who do not receive or accept offers at that time can register their details with the Law Society. These details can be obtained from the Law Society's Membership Services Manager.

The Law Society publishes a standard form contract of employment for an articled clerk which is published on the Law Society's members only website www.lawsocietywa.asn.au

Audit

Any individual, business or corporation can be audited by the Australian Taxation Office.

There are annual audit requirements under the Legal Practice Act. All legal practices operating a trust account must deliver an accountant's certificate to the Board. (See under the heading, 'Trust Accounts'.)

Australian Business Number

Australian Business Numbers (ABN) were introduced on 1 July 2000 under the A New Tax System (Goods and Services Tax) Act 1999 (Cth). The ABN is a public number which does not replace a person or business entity's tax file number (TFN). When an ABN is issued, selected business details are placed on the Australian Business Register.

An ABN is required if a business or corporation has an annual income in excess of \$50,000.

If a business does not have an ABN and is not registered for GST, clients can withhold 48.5% of monies payable and pay the amount direct to the Australian Taxation Office. Without an ABN an entity cannot claim input tax credits for GST incurred in operating the business.

Application for ABN and TFN numbers and registration for GST may be made in the one application form online at www.abr.business.gov.au. Otherwise a form may be requested from the Small Business Development Corporation ("SBDC") or the Australian Taxation Office.

Australian Company Number

If you are setting up an incorporated legal practice you will need an Australian Company Number (ACN). Every Australian company, when registered with ASIC, is issued with a 9 digit ACN, used for identification purposes.

The ACN must appear on:

- the common seal of the company, if it has one (it is no longer compulsory to have a common seal); and
- every public document and negotiable instrument issued, signed or published by, or on behalf of a company.

If the company's name appears on 2 or more pages of a public document or instrument, then the ACN must appear on the first of those pages.

It is not necessary for the ACN to appear on business cards, envelopes or 'with compliments' slips, or in written advertisements which promote the company and its services generally; written advertising containing a specific offer must include the ACN.

If your company has an ABN which includes the 9 digit ACN, the ABN can be used in place of the ACN on public documents and negotiable instruments.

Bank

A legal business must bank with an authorised deposit-taking institution. Section 3 of the Legal Practice Act defines "bank" as:

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the Banking Act 1959 of the Commonwealth (see **Annexure A**); or
- (b) a bank constituted by a law of a State or the Commonwealth.

Bankruptcy and insolvency

The inability of legal practitioners to manage their own business affairs casts doubts on their ability to look after their clients' affairs. Section 39 of the Legal Practice Act defines "unfit practitioner" and "insolvent practitioner".

If you are operating a legal business and declared bankrupt or your incorporated legal practice is declared insolvent under the Corporations Act, the Board will assess your standing to practise. The Board will take into consideration the facts and circumstances giving rise to your situation and weigh these against the public interest and the integrity of the legal profession. The Board can suspend or cancel practice certificates or impose conditions when issuing a practice certificate.

Business Activity Statement ("BAS")

The BAS must be completed either every month or every three months, depending on the income generated by a business. The BAS can be lodged with the Australian Taxation Office either in hard copy or online. The BAS forms can be collected from your accountant, most newsagencies or the Australian Taxation Office. The Australian Taxation Office encourages lodgement of the BAS online through the Business Portal which is open 24 hours, 7 days a week www.ato.gov.au/onlineservices

The Business Portal also enables you to:

- revise previous activity statements;
- receive instant confirmation that you are successfully lodged;
- access your accounts;
- request transfers and refunds;
- view and update business registration details (including financial details); and
- send and receive secure messages.

Bill of Costs (See also under the heading 'Tax Invoice')

A solicitor/client bill of costs is a tax invoice where appropriately headed. "Bill of costs" has the same meaning as in sections 231 and 232 of the Act.

Billing Systems (See also under heading 'Costs agreements')

You need to consider:

- (1) a process for time recording, if you intend billing on a time basis;
- (2) hourly rates for yourself, partners and employees;
- (3) a monthly billing system;
- (4) software packages to suit your needs.

The Law Society has a Law Office Managers' Committee the objectives of which include:

- interchange of ideas with people who have a common interest within the legal profession;
- to share knowledge, experience and solutions;
- to provide and promote a help facility for the purchase and supply of office requisites and services at competitive prices;
- to assist with general advice to firms seeking assistance in the area of practical management.

Members of the Law Office Managers' Committee are happy to discuss with Law Society members all aspects of law office management including required equipment, software packages and suppliers. To find out how to contact members of the Law Office Manager's Committee, contact the Society's Membership Services Manager. Details of seminars and demonstrations of office equipment arranged by the Law Office Managers Committee are published on the Society's members' only website www.lawsocietywa.asn.au

Business names

In Western Australia names are registered under the Business Names Act 1962 (WA) ("Business Names Act".) The Business Names Act outlines the basis for registering a business name in this State.

It is compulsory to register a business name that does not contain the names of all persons who carry on business under that name and the name must be registered before the business commences operating. If you choose to operate a business under your own name, without any addition, the name does not need to be registered.

If your business is national and you want to use the same business name in each State or Territory in Australia, you must register the name in each State or Territory in which your business operates because each State or Territory administers its own Act.

Whilst a business name registration is compulsory as outlined above, registration does not confer any proprietary rights in relation to the name. Only a trademark can protect a business name. A trade mark registration kit is available from IP Australia either in hard copy or from their website www.ipaustralia.gov.au. It is not generally possible to register a surname as a trademark.

You can search the National Names Index at www.asic.gov.au before you decide on a business or company name. It is an extensive index of Australian company and business names in each State and Territory.

For more information contact the Department of Consumer and Employment Protection (business names) or ASIC (company names).

Cheques – who should sign

It is not compulsory, but advisable that a partnership, incorporated legal practice or multi-disciplinary partnership require at least two or more of its members to be joint signatories of the general account cheque book to reduce the possibility of one partner or legal practitioner director incurring unreasonable or unnecessary expenses.

With respect to the trust account cheque book, see under the heading 'Trust Accounts'.

Costs agreements

Unless a practitioner and client enter into a written costs agreement, the practitioner must charge for his/her services in accordance with any relevant costs determination/scale of costs. Note that there are some areas of legal practice for which there is no scale of costs.

Section 221 of the Legal Practice Act states that:

- (1) *A legal practitioner may make a written agreement (a “costs agreement”) with any client of the legal practitioner in respect of the amount and manner of payment for the whole or any part or parts of any past or future services, fees, charges or disbursements in respect of business done or to be done by the legal practitioner, either by a gross sum or otherwise.*
- (2) *A costs agreement excludes any future claim of the legal practitioner in respect of any services, fees, charges or disbursements in relation to the conduct and completion of the business in reference to which the costs agreement is made, except services, fees, charges or disbursements excepted by the costs agreement.*

- (3) *A client who enters into a costs agreement is not entitled to recover from any other person, under any order, judgment, or agreement for the payment of costs, any costs which are the subject of that agreement beyond the amount payable by the client to the legal practitioner under that agreement.*
- (4) *A costs agreement must not exempt a legal practitioner from liability for negligence.*
- (5) *Nothing in this section affects the operation of sections 230, 231, 232 or 234.*

A costs agreement can be reviewed pursuant to section 222 of the Legal Practice Act as follows:

- (1) *A costs agreement may be reviewed by the Supreme Court upon application by summons or on a reference under section 235(2).*
- (2) *If, in the opinion of the Supreme Court, the costs agreement is unreasonable —*
 - (a) *the Supreme Court may reduce the amount payable or cancel the costs agreement; and*
 - (b) *the costs may be taxed in the ordinary way.*
- (3) *The Supreme Court may make such order as to the costs of and relating to the review, and the proceedings on the review, as the Court thinks fit.*

A costs agreement kit is available from the Law Society either in hard copy or on CD ROM. The kit comprises a standard form solicitor/client costs agreement and information for practitioners and clients. Details of the costs agreement kit and its purchase price can be obtained from the Law Society's receptionist. The kit is available to both members and non-members.

The Society's agreement should not be used for Family Court matters (an agreement and fee structure are prescribed by the Family Law Act), for workers' compensation claims or actions arising out of the use of a motor vehicle.

A costs agreement can only be used by a multi-disciplinary partnership in relation to legal services. To use a costs agreement in part for non-legal services could render the agreement void.

Costs Disclosure

Costs disclosure requires a lawyer to provide to a client, before entering into a retainer with the client, a brief written statement regarding the lawyer's charges and the client's rights in relation to those charges. Rule 18(1) of the *Professional Conduct Rules* reads:

- (1) *Before entering into a retainer with a client, a practitioner must provide his or her client with a brief written statement setting out:*
 - (a) *the basis of calculating professional fees;*
 - (b) *the basis of calculating disbursement charges (for example, search fees, facsimile transmissions, photocopying, counsel's fees and telephone calls);*
 - (c) *the client's rights to receive a bill of costs;*
 - (d) *the billing arrangements;*

- (e) *the provisions of section 59 of the Legal Practitioner's Act (if applicable)¹;*
- (f) *the client's rights to a review of costs by taxation; and*
- (g) *any other matter required by law to be disclosed to a client.*

The disclosure may be contained in a printed brochure or leaflet.

Under Rule 18(3), as soon as practicable after entering into a retainer, the practitioner must provide a written disclosure setting out:

- (a) *the total costs if known, or an estimate of costs or a range of estimates if it is not reasonably practicable to provide an estimate;*
- (b) *an estimate of likely disbursements; and*
- (c) *the name of the practitioner who will have primary conduct of the matter and whether that person is a principal or employee.*

Exceptions to compliance are set out in Rule 18(6). They include urgency, the estimate of fees does not exceed \$1,500 and disclosure has been made previously.

The obligations under Rules 18 (1) to (7) are applicable to barristers.

A practitioner who accepts instructions from another practitioner is taken to have complied with Rule 18 if the practitioner provides the hourly and daily rates to the second practitioner before accepting the instructions or complies with any costs disclosure rule in the Conduct Rules of the Western Australian Bar Association Inc. (Rule 18.8).

To assist practitioners to comply with Rule 18, sample documents are available on the Law Society's members' only website www.lawsocietywa.asn.au under *Rules and Regulations, Costs Disclosure Rule*.

These sample documents are intended as a guide only. The first of the two documents, "Costs Statement" is intended to be provided to the client prior to or at the initial consultation. The second, a letter with the reference "Costs Disclosure", is intended to be provided to the client after receipt of instructions as it contains an estimate of costs.

Disclosure requirements may be combined in one document provided to the client before the commencement of the retainer (Rule 18(2)). Acceptance by the client may be signified in writing or by other conduct (Rule 18(5)).

Complaints

A complaint is defined in section 3 of the Legal Practice Act to mean a complaint to the Legal Practitioners Complaints Committee ("Complaints Committee") made under section 175 of the Legal Practice Act. A complaint is usually in writing detailing the grounds of the complaint.

If you receive notice of a complaint you should respond promptly to the Complaints Committee and address the allegations in the complaint clearly, concisely and individually.

There is no legislative time frame within which to respond. However, if you are unable to respond within 14 days you should notify the Complaints Committee as to when you will be able to respond. If you fail to respond within a reasonable time, your failure to respond may be found to be unsatisfactory conduct within the definition in the Legal Practice Act.

Your response should be courteous. It may be useful to have a colleague or a fellow legal practitioner within your firm, who is not involved in the matter, review your response. You may wish to engage a lawyer from the outset until the complaint is resolved.

If the client contacts you after a complaint has been made you should advise the client in a polite way that any concerns the client has should be made in writing to the Complaints Committee and you will address them in writing. If possible, depending on the nature of the complaint, the Complaints Committee will try to conciliate the matter.

If the client does not make a complaint to the Complaints Committee but complains to you direct, attempt to resolve the problem amicably. You must not make it a condition of any proposal to resolve the matter that the client will not complain to the Complaints Committee.

Conduct

The conduct of legal practitioners in Western Australia is regulated by the Legal Practice Act, *Legal Practice Rules and Legal Practice Regulations*.

The *Law Society of Western Australia Professional Conduct Rules* do not have statutory force but have been recognised by the Full Court of the Supreme Court of Western Australia as a guide to the conduct to be expected of legal practitioners. (*Quigley v The Legal Practitioners Complaints Committee* [2003] WASCA 228).

Provisions of the Fair Trading Act 1987 (WA), Corporations Act and Trade Practices Act 1974 (Cth) apply to the conduct of any business.

Conflict of interest

A conflict of interest is a situation where a legal practitioner's duty to a client conflicts with his or her duty to another client or former client and it restricts a lawyer from acting for parties with potentially adverse interests.

It is useful that a system is in place, before you open your practice, to try to eliminate conflicts.

When a client rings up to make an appointment your receptionist should check your computer records. There is software available. Contact the Law Society Membership Services Manager for contact with the Law Office Managers Committee. See under the heading 'Billing systems' for details of the Law Office Managers' Committee.

In Western Australia, practitioners are permitted to act for both parties to a commercial transaction but in doing so there should be full and clear disclosure to both parties, the consent of both parties and there not being a conflict of such a nature that to act would in any event be unprofessional conduct.

Debt recovery – when to sue (see also under the heading ‘Tax Invoices’)

Pursuant to section 230 of the Legal Practice Act a legal practitioner cannot sue for the recovery of any services, fee, charges or disbursements until a bill for the services, fee, charges or disbursements has been served upon the party charged.

A bill of costs may be a bill containing detailed items or a bill for a lump sum. At any time within 30 days from the date of service of the bill for a lump sum the party charged may require a bill containing detailed items. Within further 30 days of receiving this bill the client may require the practitioner to submit the bill to a taxing officer of the Supreme Court. (Sections 231 and 232 Legal Practice Act.)

Follow up by way of reminders for non-payment can and should be made in accordance with the terms of your retainer. Before instituting proceedings for recovery, you should consider sections 231 and 232 of the Legal Practice Act.

Electronic and Information Technology

It is essential that you have a secure email system, virus protection and an ongoing service provider to provide timely assistance when your system is down. Most publishers who produce legal journals or articles have software packages to assist in locating matters quickly as well as reducing the space to house hard copy services. Further, the Courts are in the process of accepting the filing of documents by way of electronic transmission.

For information on these and associated matters contact the Law Society Membership Services Manager to make contact with a member of the Law Society Law Office Managers Committee. See under the heading ‘Billing systems’ for Committee details.

Employment

In so far as workplace relations and employment are concerned, information is not provided at this time due to current legislative changes. Provisions concerning employment will be added to this Guide following proclamation of the Workplace Relations Amendment (WorkChoices) Act 2005 and Regulations.

Practitioners setting up a law practice should consult colleagues who work extensively in the area of industrial relations.

Equal Opportunity

Commonwealth anti-discrimination laws

Commonwealth anti-discrimination laws, including the:

- *Racial Discrimination Act*
- *Sex Discrimination Act*
- *Disability Discrimination Act*

- *Age Discrimination Act*

prohibit discrimination because of an employee's:

- race - including colour, descent, national or ethnic origin
- sex - including pregnancy, family responsibilities and sexual harassment
- disability or medical condition - including past, present or future disability; whether it is permanent or temporary, physical, intellectual, psychiatric, neurological, sensory, whether it is work related or not, and includes a person's association with a person with a disability such as a child, partner or parent
- age.

Under these laws an employee may make a complaint to the Human Rights and Equal Opportunity Commission ("HREOC") if the employee thinks they have been:

- refused employment
- dismissed
- denied promotion, transfer or other benefits associated with employment
- given less favourable terms or conditions of employment
- denied equal access to training opportunities

These laws apply to all types of employers and employment relationships including small business, Commonwealth employees, state government employees (except under the *Sex Discrimination Act*), private sector, contract workers and commission agents and recruitment and application processes arranged through recruitment and employment agencies.

If an employee makes a complaint under these laws which cannot be resolved through conciliation the employee may choose to pursue the matter in court.

HREOC also investigates and conciliates complaints of discrimination lodged under the *Human Rights and Equal Opportunity Commission Act*. Under this law an employee can make a complaint if the employee thinks they have been discriminated against in employment (refused employment or promotion, given less favourable conditions of employment or being dismissed) because of:

- sexual preference
- religion
- criminal record
- political opinion
- trade union activity.

This law does not have the same enforcement rights as the other laws. If a complaint cannot be conciliated there is no option of going to court. HREOC can report the matter to the federal Attorney-General who must table the report in the Parliament.

Commonwealth Workplace Relations Law

The *Workplace Relations Act* makes it unlawful to terminate an employee on the basis of:

- temporary absence from work because of illness or injury
- trade union membership or non-membership, participation in trade union activities and acting as an employee representative
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- absence from work during maternity or other parental leave

and provides for an employee, or a trade union on an employee's behalf, to make application to a court for orders including reinstatement, compensation or monetary penalty.

State Equal Opportunity Law

The State *Equal Opportunity Act* ("*EO Act*") sets out a number of types or grounds of discrimination which are also unlawful. They are:

- age – being regarded as too young or too old
- family responsibility – having a caring role
- family status – being a relative of a particular person or having the status of being a particular relative
- gender history – having a reassigned gender as certified under the *Gender Reassignment Act*
- impairment – having a physical, intellectual or mental disability that is current, past or imputed
- marital status – being single, married, a de facto partner, separated, divorced or widowed
- political conviction – including a lack of conviction
- pregnancy
- race – including colour, ethnicity or national origin or descent
- racial harassment – including offensive or insulting comments or other behaviour about a person's colour, ethnic background or origin
- religious conviction – including a lack of conviction
- sex – being a man or woman
- sexual harassment – including unwelcome requests for sexual favours, touching and comments about a person's private relationships

- sexual orientation – including heterosexuality, homosexuality, lesbianism, bisexuality or assumed sexual orientation.
- spent conviction (under the *Spent Convictions Act*).

A person who causes, instructs, induces, aids or permits another person to do something that is unlawful under the *EO Act* is considered to have done the act themselves.

When an employee, or agent, in connection with their employment, does something which is unlawful under the *EO Act*, their organisation, employer or principal will be liable for that act.

Victimisation is also against the law. Victimisation includes threatening, harassing or punishing a person in any way because they have objected about the discriminatory manner in which they have been treated. It also applies to anyone who has made a complaint, or intends making a complaint, under the *EO Act* or anyone giving evidence about a complaint.

Professional Conduct Rules

Rule 20.5 of the *Professional Conduct Rules* (“*PCR*”) adopts in principle the objects of the *EO Act*. Schedule 5 of the *PCR* “Equality of Opportunity Model Briefing Policy” sets out matters to be considered when choosing a barrister.

Financial Transactions

Under the Financial Transaction Reports Act 1988 any receipt or payment by a solicitor of more than \$10,000 in cash must be reported to the Director of Austrac (Section 15A) in the form of Schedule 3A to that Act.

Approval from Austrac is required for receipt from abroad or payment to any person abroad of more than \$10,000 in currency. If not obtained, the person who makes the transfer or receives the currency commits an offence. Strict liability applies (Section 15(1A)).

Fringe Benefits Tax

A fringe benefit is a benefit provided to an employee or an employee’s associate by an employer, or an associate of the employer in respect of the employment of the employee. For the purpose of determining an employee’s fringe benefits’ tax liability, a fringe benefit excludes such payments as salary and wages, exempt benefits, employee share acquisition schemes, superannuation support, an eligible termination payment and certain other benefits. For a more comprehensive definition refer to section 136 of the Fringe Benefits Tax Assessment Act 1986 (Cth). An employer may have to pay tax on a fringe benefit provided under the Fringe Benefits Tax Act 1986 (Cth).

This is a complex area of tax law and it is advisable that before you offer or agree to provide fringe benefits to your employees or associates you obtain advice from an accountant as to what can be a fringe benefit and how much it will ultimately cost you as the employer.

Fidelity Fund – Legal Contribution Trust

The lawyers' fidelity fund in Western Australia is the Legal Contribution Trust established to compensate persons who suffer pecuniary loss through misappropriation by legal practitioners.

The Legal Contribution Trust is established by section 5 of the Legal Contribution Trust Act 1967 (WA). The Law Society is Trustee.

The interest earned on the trust accounts of Western Australia legal practices is remitted to the Legal Contribution Trust by the bank holding the trust account. A legal business is not responsible for personally remitting these monies. However, it is the responsibility of each practitioner who opens a trust account to direct the bank to make the appropriate arrangements.

Files – closing, storage and destruction

A Guide to the *Closing and Storage and Destruction of Files* is published on the Law Society's members' only website at www.lawsocietywa.asn.au under Rules and Regulations.

General account

The general account is your working capital account and should be used to pay all business expenses. It is not compulsory that a law practice's general account and trust account be held at the same bank.

Goods and Services Tax (GST) (See also under heading 'Tax Invoices')

If you are carrying on a business (enterprise) and your annual turnover is \$50,000 or more, you must register for GST. If you are registered for GST you must remit to the Tax Office 1/11th of the price of most goods or services you sell.

You can claim a credit for the GST included in the price of goods and services you purchase for your business. You account for your GST and claim GST credits on your Business Activity Statement ("BAS") every month or quarter.

Professional fees charged to clients are subject to GST. If you charge \$100 per hour as your professional fee you need to add on 10%. The total fee charged to and payable by your client will be \$110.00 inclusive of GST. The GST component needs to be remitted to the Australian Taxation Office every month or quarter depending on how often you lodge your BAS.

You need to prepare "tax invoices" which must be kept for five years. A tax invoice is a document that records the sale of goods or services and complies with the GST law. You must have a tax invoice to claim a credit for the GST included in the price of any goods and services you buy for your business that cost more than \$50 (excluding GST). The Australian Taxation Office has a booklet titled "Record Keeping for Small Business" which will assist in understanding the requirements for tax invoices.

If goods or services are sold at a price inclusive of GST, the customer or client is entitled to ask for a tax invoice, which must be provided within 28 days after the request.

Tax invoices for amounts less than \$1,000 must include:

- (1) the words "tax invoice"
- (2) practitioner's name (or name of business or incorporated legal practice name);
- (3) ABN of legal business;
- (4) date of issue;
- (5) description of each thing supplied;
- (6) total price, including GST;
- (7) statement that total price includes GST (or GST shown separately).

Tax invoices for amounts that are \$1,000 or more must also include the following:

- (8) purchaser's name (or client);
- (9) purchaser's ABN or address of client; and
- (10) quantity of things supplied (or the amount of legal services rendered).

If your legal business or company is not registered for GST then you will be unable to claim the GST tax input credits. The tax input credits are the amounts that you can claim back from the Australian Taxation Office when you remit your BAS. The Australian Taxation Office booklet states that if you receive an invoice from someone who is not registered or required to be registered for GST, it is not a tax invoice and you can't claim a GST credit for the goods or services supplied. Businesses that are not registered for GST can claim the full cost of their purchases, including any GST, as a tax deduction, on their income tax return. GST-registered businesses cannot include GST when claiming income tax deductions if they are entitled to claim credits through their BAS.

Insurance – general

At the very least you should have building (if applicable) and contents insurance, public liability insurance, worker's compensation insurance, income protection insurance and any insurance under your premises lease. Professional Indemnity insurance is addressed under a separate heading.

Lease of premises

The Commercial Tenancy (Retail Shops) Agreements Act 1985 does not apply to legal practices.

If you do not practice in the areas of property or commercial law, it is recommended that you obtain legal advice before entering into a lease or an agreement to lease.

Legal Practice Board

The Board regulates the admission and practice of the legal profession in Western Australia. The Board must be informed of the setting up of or changes to a legal business and the employment of professional staff.

Occupational Safety and Health

The Occupational Safety and Health Act 1984 provides for the administration and enforcement of occupational safety and health in Western Australia.

The Act imposes duties on employers, employees, self-employed people, manufacturers, importers and suppliers with an emphasis on the prevention of accidents and injury.

In addition to the Act, duties and responsibilities are also set out in the Occupational Safety and Health Regulations 1996, Australian Standards and Codes of Practice, which, together with the Act can be accessed through the WorkSafe website at www.worksafe.wa.gov.au

Payroll Tax

Pay-roll tax is a State based levy calculated on the total amount of wages paid to employees. In Western Australia pay-roll tax is self-assessed and the employer has the responsibility of calculating the appropriate amount of pay-roll tax. Pay-roll tax is generally payable monthly to the Office of State Revenue and an employer is assessable for pay-roll tax if it pays in excess of \$62,500.00 in any month.

“Wages” is defined in the Glossary of the Pay-roll Tax Assessment Act 2002 as salary, wages, commissions, bonuses, directors’ fees, superannuation contributions, fringe benefits and prescribed benefits. Exemptions from pay-roll tax are as follows:

- (1) reasonable motor vehicle expenses;
- (2) reasonable accommodation allowances;
- (3) payments to employees under the provisions of the Workers Compensation and Rehabilitation Act 1981;
- (4) payments to employees who are absent in the defence forces;
- (5) (generally) on any component of wages that is directly attributed to the GST; and
- (6) after 6 months, wages paid in respect of services performed by an employee working wholly in another country, for a continuous period exceeding six months.

Applications to register for payroll tax can be obtained from the Office of State Revenue or from the Department’s website www.osr.wa.gov.au. At this time the rate of pay-roll tax in Western Australia is 5.50%. Following registration, pay-roll tax return forms will be sent to you automatically each month. The monthly return declaring wages paid must be lodged, together with the tax payable, within seven days of the end of the month to which the return relates. You must keep proper records and books relating to pay-roll tax for a minimum of 5 years.

You can pay pay-roll tax online by contacting the electronic services area on (08) 9262 1113 or you can email queries as follows: onlinestamping@dtf.wa.gov.au. You will be issued with a pay-roll tax client ID. All data is encrypted so that it cannot be intercepted, or understood without the decryption code.

See ‘Contacts list’ for contact details for Office of State Revenue.

Practice certificate

You cannot practise as a legal practitioner in Western Australia without a practice certificate (unless employed by the State or Federal Government.)

Pursuant to section 37(2) of the Legal Practice Act to make application for a practice certificate you must make a signed application in the approved form by the Board accompanied by the prescribed application fee. A practice certificate will not be issued unless the applicant has complied with professional indemnity insurance and trust account audit requirements. Practice certificates must be renewed annually. Renewal notices are automatically issued by the Board to a practitioner's last known business address.

Professional Indemnity Insurance

Professional Indemnity Insurance is compulsory for all legal practitioners in private practice in Western Australia. The Law Society pursuant to Regulation 4 of the Legal Practitioners (Professional Indemnity) Regulations 1993 ("Regulations") is required to make arrangements for Professional Indemnity Insurance for legal practitioners in Western Australia. As part of these arrangements the Society presently operates a mutual fund trading as Law Mutual (WA).

Law Mutual (WA) collects insurance contributions for the Fund and for payment to Underwriters. It also manages claims for the Fund and on behalf of Underwriters and arranges the compulsory Risk Management programme.

Before setting up a legal business and regardless of structure and prior to selling a legal business it is essential you discuss your proposed arrangements with Law Mutual (WA) so that appropriate insurance cover is taken out.

See 'Contacts list' for contact details for Law Mutual (WA).

Annual Insurance Contribution/Cover

The Certificate of Insurance indemnifies legal practitioners for any kind of civil liability incurred in connection with their practice as a legal practitioner whether in a firm or as an incorporated practice. This includes acting as a migration agent, a trustee of an estate and as an arbitrator/mediator.

The annual contribution payable will depend on the amount as determined by actuarial advice required for the Fund and the amount payable to the Underwriters. Discounts are available if 90% or more of the practitioner's practice is derived from criminal law work, if the practitioner is a low fee earner, is eligible for a no claim bonus or if the practice has quality practice standards (QPS) certification. When setting up a legal practice low fee earner insurance may be appropriate and details can be obtained from Law Mutual (WA).

The contribution payable by all firms and incorporated practices at present is determined by the number of principals, employed solicitors, general employees, directors and shareholders who hold practice certificates.

Multi disciplinary practices are assessed individually based on the risk. Non legal practitioner partners are not covered through the West Australian Professional Indemnity arrangements for non legal services and it will be necessary to take out separate insurance for those services.

Presently each firm is insured for \$1.5 million for each and every claim with no limit as to the number of claims in each year. This includes the costs of defending and investigating the claim.

If firms or incorporated legal practices wish to have higher level of cover there are a number of insurers that offer top up cover and details can be obtained from any broker.

In March of each year Law Mutual (WA) sends to each legal practice an insurance assessment form to be completed and returned to Law Mutual (WA).

In April of each year Law Mutual (WA) sends to each firm an application for insurance form, a tax invoice assessing the firm's contribution based on the information provided on the assessment form and a renewal package which sets out details of the insurance arrangements, the means of payment and details in relation to the cover and refunds.

Under the Regulations payment of the tax invoice is to be made by 15 May in each year, failing which a 10% penalty is incurred.

If a firm or incorporated practice commences operations during the financial year the insurance contribution is assessed on the pro-rata basis.

Law Mutual (WA) will advise the Legal Practice Board of the firm's compliance once the insurance has been paid in full so practice certificates can be issued.

Payment by Instalments

If a practitioner chooses to pay the annual contribution by instalments, premium funding is available from various premium funders. Details will be provided in the renewal package. Practitioners should check the date any application for premium funding must be lodged in order to comply with the 15 May deadline for payment.

Change of Details/Employing New Solicitors

It is imperative all firms notify Law Mutual (WA) of any change of address, movement of practitioners and any change in status of practitioners. If a practice employs solicitors during the year they should ensure the solicitor is covered under the WA Professional Indemnity Arrangements. If not, an additional contribution may need to be paid.

Risk Management

All practitioners insured through the West Australian arrangements are required to attend one, two hour risk management seminar each year. Each practitioner is advised as to the time and place of all seminars on an annual basis and is required to complete a registration form.

Barristers

Barristers who are members of The Western Australian Bar Association Inc. ("WABA") are exempt from the insurance arrangements arranged by the Law Society but they still must have in place a policy of indemnity insurance approved by the Council of the WABA for at least \$1.5 million inclusive of costs or \$1.1 million exclusive of costs for each and every claim.

The WABA advises Law Mutual (WA) of all members' compliance with the appropriate insurance and Law Mutual once having received this information, advises the Legal Practice Board of the barrister's compliance so a practice certificate can be issued.

Barristers who are not members of the WABA are at present not entitled to an exemption from the West Australian Insurance Arrangements and need to take out insurance under the West Australian Insurance Arrangements.

Law Mutual (WA) has a website which can be accessed from the Law Society's website www.lawsociety.wa.asn.au.

Simplified Tax System (STS)

If you qualify as a simplified tax system ("STS") taxpayer you will be entitled to immediate deduction (rather than depreciation) for assets costing less than \$1,000. You should be eligible if your STS average turnover is less than \$1 million and you have depreciating assets that have been written down to less than \$3 million at the end of the income year.

At the time of publication, if turnover is less than \$1 million, you can choose to pay on income or accruals (over \$1 million accruals only) and obtain other concessions. This is a matter that should be discussed with your accountant.

Information is available from the ATO:

- in an interactive electronic product, *STS – is it for you?* available in the business section of the ATO website www.ato.gov.au;
- by phoning 1300 139 051 to order a free CD (ask for Nat 3043)
- by email to BTRadvice@ato.gov.au;
- by mail to ATO at BTR Advice, Locked Bag 9000, Albury NSW 2640.

Solicitors Guarantee Fund (See also under the heading 'Fidelity Fund/Legal Contribution Trust')

The Solicitor's Guarantee Fund was established under the Legal Contribution Trust Act 1967 (WA). Each lawyer, for a period of 5 years after admission, pays an annual fee to this Fund as part of the fee for a practice certificate.

Superannuation

Superannuation contributions must be made for all employees to the fund of their choice. The current rate of contributions is 9% of each employee's gross income. At this time, superannuation contributions are required to be made at least quarterly. Employees who are paid less than \$450 in a calendar month or employees aged 70 years and over are exempt from superannuation contributions.

For more information see the ATO Superannuation website www.ato.gov.au/super.

- visit the ATO Superannuation website at www.ato.gov.au/super;
- phone the Superannuation Infoline on 13 10 20 for the cost of a local call;
- You can write to:
Superannuation Business Line
Australian Taxation Office
PO Box 277
WTC VIC 8005
- obtain A Fax from Tax on 13 28 60.

For information on **Super Choice** go to www.superchoice.gov.au or phone 13 28 64.

Tax Invoices (See also under the headings 'Bills of Costs' and 'Goods and Services Tax')

A tax invoice issued by a legal business should contain:

- (1) the name and ABN (and if applicable, Australian Company Number) of the person or entity issuing the tax invoice;
- (2) the date of issue of the tax invoice;
- (3) the words "tax invoice";
- (4) the invoice number alongside the words "tax invoice";
- (5) the name and address of the person charged; and
- (6) a description, either lump sum or itemised, of the legal services performed. and
- (7) the GST exclusive price, the GST amount and the GST inclusive price for each item, together with the totals for these, vertically in the bottom right hand corner.

Under the Legal Practice Act practitioners are required to include specific notices in their invoices or bills of costs.

If you are providing a lump sum invoice or bill of costs to your client you must include the following notice pursuant to section 231(1) of the Legal Practice Act:

"Within 30 days of receipt of this account you may require me by notice in writing to provide to you an itemised bill of costs the subject of this account. Within 30 days of receiving an itemised bill of costs, you may require me by notice in writing to submit the bill of costs to a taxing officer of the Supreme Court for review of the amount of costs charged to you, the subject of this account".

Alternatively, if you produce an invoice or bill of costs which contains detailed items, you must, according to section 232(1) of the Legal Practice Act, include the following notice to the person charged:

"Within 30 days of receiving this account you may require me by notice in writing to submit the bill of cost to a taxing officer of the Supreme Court for review of the amount of costs charged to you, the subject of this bill of costs".

Both notices must appear on the face page of each bill of costs in at least 10 point type size.

Refer to **Annexure B1** for an example of a lump sum tax invoice/bill of costs and **Annexure B2** for an example of an itemised tax invoice/bill of costs.

Trust account and trust moneys

A “trust account” is defined in section 3 of the Legal Practice Act to mean a bank account maintained in this State, for the purpose of setting apart, and dealing with, trust moneys under Part 10 of the Legal Practice Act.

“Trust moneys” are defined in section 3 of the Legal Practice Act.

Part 6 of the Legal Practice Board Rules 2004 (“Legal Practice Board Rules”) prescribes the requirements for dealing with trust accounts.

Rule 51 outlines the importance of maintaining books of account that distinguish between trust moneys and other moneys received by a legal practitioner. Incorporated legal practices and multi-disciplinary partnerships must distinguish moneys received in relation to legal services provided by the practice or partnership and moneys received in relation to other services (non-legal). If a legal practice expands so that there is more than one place of practice the Board may require separate trust accounts to be kept for each location.

Required books of account and their retention

See Rules 51 and 62 of the Legal Practice Board Rules.

Transfer of moneys from the trust account to the general account

Requirements to transfer trust moneys from the trust account to your general account are set out in sections 137 and 138 of the Legal Practice Act and Rule 54 of the Legal Practice Board Rules.

Trust account cheques and who can sign

Cheques drawn on a trust account must be marked “not negotiable”.

A practitioner must not draw a cheque on a trust account that is made payable to cash. See Rule 55 of the Legal Practice Board Rules.

Under Rule 55(3) “a legal practitioner must not authorise a bank to pay cheques drawn in a trust account which are not signed by –

- (a) the legal practitioner;
- (b) a partner of the legal practitioner who is also a legal practitioner;
- (c) in the case of a legal practitioner director, another legal practitioner director of the incorporated legal practice; or
- (d) at least 2 people authorised in writing by the legal practitioner to sign cheques drawn on the account. “

Electronic transfers of trust moneys

It is permissible to electronically transfer trust moneys from the trust account to the general account. For the requirements for electronic transfers of funds see section 56 of the Legal Practice Board Rules.

Balancing of trust books

Under Rule 57 of the Legal Practice Board Rules reconciliation statements must be prepared at least once a month and at intervals of not more than 6 weeks. The reconciliation statements are to be in an approved form and contain information required by an accountant.

Accountant's certificate

Rule 58 of the Legal Practice Board Rules sets out the form and test for an accountant to give a certificate for the purposes of section 147 of the Legal Practice Act. An accountant's certificate is required annually and must be submitted no later than 30 June in each year. The accountant's certificate covers the period 1 April to 31 March of every year. See **Annexure "C"** for the prescribed form of certificate, Form 20.

Does every legal practice have to have a trust account?

Not if it does not receive moneys on trust at any time. If you operate a legal practice that is funded through referrals from Legal Aid, Government departments, Aboriginal Legal Service or you do leases or wills for a set fee and you do not require moneys in trust then you may not need a trust account. Invariably barristers will not operate a trust account as they contract directly with their instructing solicitor.

Worker's Compensation insurance

Workers' compensation is compulsory insurance by an employer for every employee in Western Australia under the Workers Compensation and Rehabilitation Act 1981 (WA).

Information on workers' compensation can be obtained from the WorkCover Infoline 1300 794 744 or from the website www.workcover.wa.gov.au.

Selling or closing a legal practice (non-barristers)

This part of the Guide is a very basic outline of matters to be considered when selling or closing a legal practice 'as a whole'.

Prospective buyers and preparation for sale

Prospective buyers of a legal practice include:

- legal practitioners in your employ;
- another legal practice; and
- legal practitioners looking to have their own practice.

Other options are to merge with another legal practice or to sell your files, with work in progress, to another legal practice.

Partners who choose to cease to practice usually have 'ready buyers' among their own partners, co-directors, or associates.

If you do not have a 'ready buyer' for your practice you can market its sale through:

- newspaper advertisements;
- advertisement in *Brief* magazine;
- on your website; and
- informing/making approaches to colleagues and other legal practices.

Any seller must act in good faith and present all information to a prospective buyer in a clear and accurate manner. Documents that should be made available for inspection by prospective buyers include:

- (1) profit and loss and balance sheet;
- (2) leases of premises, including any assignments or renewals, and leases of any office equipment or motor vehicle;
- (3) an inventory of furniture and equipment and any warranties;
- (4) service agreements for office equipment, computer hardware and software;
- (5) agreement, if any, for storage of closed files off site.

Determining the sale price

The value of a practice will depend on a number of factors, including:

- (1) Goodwill. The value of goodwill will generally be higher for practices of long standing, but this will not always be the case. (See under "Stamp Duty in A-Z).
In a small practice and in the case of a sole practitioner, goodwill is usually 'tied up' in one person's name and reputation.
- (2) Work-in-progress (WIP). Prior to sale all files should be costed and, if appropriate, accounts rendered. Doing so will assist in determining WIP and accounts payable.
- (3) The practice's area(s) of the law.
- (4) Regular clientele.
- (5) The practice's premises and term of the lease.

- (6) The practice's equipment, furniture and fittings (if to be sold with the practice).
- (7) The ability and experience of staff and if they intend to stay.
- (8) The net income of the practice, particularly in the 3 years prior to sale.

Unless you have accounting or business skills and experience, you should consult an accounting professional to calculate the value of your practice.

Advising clients of closure or sale and conflict issues

Clients must be informed. Clients may choose to stay with the practice's successor or may choose to transfer their file to another practice.

Other than for the purposes for which the solicitor is instructed, solicitors should not disclose the names of their clients without the clients' consent. You should obtain your client's consent to pass on their names to the practice's successor. Your successor should then conduct a conflicts check.

If there is a conflict, with the client's authority, the conflicted file must be transferred to another practice.

If you are an Executor/holding Wills/solicitor on the record

During the course of practice, solicitors will often be appointed executor of their clients' wills or asked to hold their clients' original wills.

On the sale or closing of a practice you should contact all persons for whom you hold wills and by whom you have been appointed executor.

If any testator/testatrix cannot be located and your practice is to be sold, your successor should continue to hold the will in safe custody.

If your practice is to close, you should inform the Legal Practice Board of any wills that you are holding and make arrangements for their safe keeping.

If you have been appointed executor/executrix, whether or not your practice is to be sold or closed, and you no longer wish to act as executor, you should advise the testator/testatrix to give them the opportunity to appoint another executor/executrix.

If you cannot locate the testator/testatrix you could sign a Renunciation of Probate to be kept with the will; as an indication of your intention. However, the Court may require that another Renunciation be signed after the death of the testator/testatrix.

If you are an executor to whom Probate has been granted and are or will be a trustee for minor beneficiaries, you should discuss with another practitioner the making of all necessary arrangements for the office of trustee to be assigned to the other practitioner.

If you are the 'solicitor on the record', ensure that Notices of Change of Solicitor are filed.

Registered office of a company

All companies of which your office is registered office should be informed of the sale or closure of your practice so that they may choose to retain the address or register an alternative address.

Staffing issues

If you are closing your practice or your staff are not to be employed by your successor, see under the heading 'Employment' in the A to Z Guide for leave entitlements.

Costs agreements

Should your business be sold, costs agreements between you and your clients will not apply to work done by your successor who should enter into new agreements. Before sale, accounts should be rendered and proper arrangements should be made with respect to any irrevocable authorities.

Intellectual Property

The intellectual property in your precedents is potentially a saleable item.

Stamp duty, CGT and GST

Stamp duty is payable by the buyer. At this time the Office of State Revenue has determined to assess stamp duty on the goodwill of legal practices when sold or restructured. A complicated formula is applied. The assessment of stamp duty could be considerable and should be taken into account by all prospective buyers and practices intending to restructure (either by incorporation or partnership changes.) Stamp duty is also payable on the transfer of plant and equipment and intellectual property.

A seller should obtain professional advice on capital gains tax and GST. GST will generally not be payable on the selling price of the business if it is sold as a going concern. For more information contact the ATO on 13 28 66 or visit the ATO website on www.ato.gov.au.

Trust Accounts

If you operate a trust account and you are selling your practice (or incorporate your practice) a final audit of the trust account must be completed. The accountant's audit certificate must state either:

- that the trust account has been closed, or
- that the trust moneys are in order and written authorisation has been provided by all clients for their trust moneys to be transferred to a new trust account.

The final audit certificate must be provided to the Board.

Restraint of trade

If you are selling your practice you should consider very carefully any restraint of trade clause that the buyer may wish to impose as a term of the sale agreement. Although you may be intending to leave the practise of law, many practitioners have returned to practise earlier than initially intended.

Notifications

The following is a list of organisations you may need to contact when selling or closing your practice:

- Legal Practice Board;
- Law Society of Western Australia;
- Law Mutual (WA);
- your other insurers;
- your banker;
- Australian Taxation Office to cancel your GST and BAS;
- WorkCover;
- Department of Consumer and Employment Protection to change business name details;
- IP Australia re patents and trade marks to be assigned to the new owner;
- Office of State Revenue;
- ASIC - if you are selling an incorporated legal practice there are obligations to file documents where there is a change of directors, secretary, shareholders etc.,
- superannuation companies for yourself and your staff;
- companies with whom you have lease and service agreements.

De-registration of a company

If you are closing an incorporated practice, under the Corporations Act a company cannot be de-registered unless:

- (i) all members of the company agree to deregister;
- (ii) the company is not carrying on business;
- (iii) the company's assets are worth less than \$1,000;
- (iv) the company has paid all fees and penalties payable under the Corporations Act;
- (v) the company has no outstanding liabilities; and
- (vi) the company is not a party to any legal proceedings.

Application to de-register is made to ASIC using a form 6010. ASIC will reject the application if any fees are outstanding and all charges against the company must be satisfied.

If you are selling an incorporated legal practice, all three 484 Forms (A, B and C) must be lodged with ASIC.

Ceasing to practise as a barrister

A barrister cannot sell his or her practice.

When a barrister chooses to cease to practice as a barrister, he or she should:

- (1) Give notice to the barrister's Chambers in accordance with the lease of the barrister's premises.
- (2) Inform the President of the WABA of the barrister's intention to cease to practice as a barrister.
- (3) Notify the barrister's professional indemnity insurer of the barrister's last day of practice and discuss "run-off" cover.
- (4) Terminate equipment lease and service agreements.
- (5) Sell office furniture and equipment.
- (6) Notify the Supreme Court, the Board and the Law Society, in writing, of the barrister's change of details.
- (7) Pay outstanding accounts.
- (8) Bill all files.
- (9) Notify instructing solicitors and arrange transfer of uncompleted matters, if any, to another barrister.

Annexure A

Section 5 of the Banking Act 1959 - What is an ADI?

Section 5(1) of the Banking Act 1959 states:

In this Act, unless the contrary intention appears:

"ADI" is short for authorised deposit-taking institution.

"ADI statutory manager" has the meaning given by subsection 13A(2).

"administrator of an ADI's business" means an administrator appointed under subsection 13A(1) to take control of an ADI's business.

"advance" includes loan;

ANNEXURE B1**TAX INVOICE - LUMP SUM BILL OF COSTS**

Legal Eagles Pty Ltd

ABN: xx xxx xxx xxx

Date of Issue: 15/05/2005

To: Mr James Smith
 100 Morley Drive
 MOUNT LAWLEY WA 6050

TAX INVOICE No: 100

Description	Amount	Sub Total	GST Amount	Amount Payable
Meeting with you, Perusal of Correspondence and Letter to you	100.00	100.00	10.00	110.00
TOTAL	100.00	100.00	10.00	110.00
			TOTAL (excl GST)	100.00
			TOTAL GST AMOUNT PAYABLE	10.00
			TOTAL AMOUNT PAYABLE (incl GST)	110.00

"Within 30 days of receipt of this account you may require me by notice in writing to provide to you an itemised bill of costs the subject of this account. Within 30 days of receiving an itemised bill of costs, you may require me by notice in writing to submit the bill of costs to a taxing officer of the Supreme Court for review of the amount of costs charged to you, the subject of this account".

ANNEXURE C**Form 20 – Accountant’s certificate**

Accountant’s certificate		<i>Legal Practice Act 2003 s.147 Legal Practice Board Rules 2004 r. 58 Form 20</i>
Legal Practitioner	Name	
	Firm	
	Address	
Accountant	Name	
	Firm	
	Address	
	Telephone	Fax
	Mobile	
	Email	
	I am – <input type="checkbox"/> registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act <input type="checkbox"/> approved for the purposes of the <i>Real Estate and Business Agents Act 1978 s.72(2)</i>	
Previous certificate	Given by <i>(name and firm)</i>	
	Date	/ /20
Examination of books of accounts	Date of examination / /20 to / /20	
	The Legal Practitioner did/did not make available all documents and information necessary to enable me to give this certificate. If not, give details of what was not made available, the reasons given and the effect of the non-availability on this certificate	
	I have examined the Legal Practitioner’s accounting systems and am of the opinion that they – are / are not suitable to enable compliance with the <i>Legal Practice Board Rules 2004, Part 6</i> are / are not appropriate for the Legal Practitioner’s practice If not, give details	

	<p>I have examined the Legal Practitioner's books of account for the period since the previous accountant's certificate was given and am of the opinion that the Legal Practitioner – has / has not complied with the <i>Legal Practice Board Rules 2004</i>, Part 6</p> <p>If not – the non-compliance consisted of –</p> <p><input type="checkbox"/> trivial breaches due to clerical errors or mistakes all of which were rectified on discovery</p> <p><input type="checkbox"/> other breaches (<i>give details</i>)</p>
<p>Examinations conducted</p>	<p>I have conducted the following examinations to enable me to give this certificate:</p>
<p>I certify that the information given in this certificate is true and correct and that I honestly hold the opinions stated in it.</p>	
<p>Signature</p>	
<p>Date / /20</p>	

**ANNEXURE D– FORM 1 NOTIFICATION TO THE BOARD BY AN
INCORPORATED LEGAL PRACTICE**

Schedule 1 — Forms

[r. 2]

Form 1 Notice of corporation's intention to provide legal services

**Notice of corporation's intention
to provide legal services**

Legal Practice Act 2003 s. 50
Legal Practice Regulations 2005
r. 5
Form 1

Corporation Name

ACN/ARBN

Registered office _____

Telephone Fax

Email

Date of incorporation / /

Incorporated Name under which legal services will be provided
Legal Practice _____

Address _____

Postal address (*if different*)

Telephone _____ Fax _____

Email

Intended commencement date / /20

The Incorporated Legal Practice is —
? replacing an existing practice (name)

? a new practice

Corporation's trust account
Bank

Branch

Name of account

BSB no. Account no.

The Corporation ? will ? will not provide non-legal
services. If yes, give details

Directors and Officers of Corporation

Name _____
 Residential address _____

(Give details for all directors and officers.)

Telephone (h) _____ (w) _____

Fax (h) _____ (w) _____

(Add extra pages if required.)

Mobile _____

Email (h) _____ (w) _____

Office —
 Legal practitioner director —
 Admitted in WA
 Current practice certificate Yes No
 Interstate practitioner (home State) _____
 Other director
 Officer (office)

Shares in Corporation (number) _____

Name _____
 Residential address _____

Telephone (h) _____ (w) _____

Fax (h) _____ (w) _____

Mobile _____

Email (h) _____ (w) _____

Office —
 Legal practitioner director —
 Admitted in WA
 Current practice certificate Yes No
 Interstate practitioner (home State) _____
 Other director
 Officer (office)

Shares in Corporation (number) _____

Employed legal practitioners

Name _____
 Residential address _____

(Give details for all legal practitioners

employed by the

Corporation or who

will be employed when

the Corporation

commences practice.

Add extra pages if required.)

Legal status —

Admitted in WA

Current practice certificate Yes No

Interstate practitioner (home State) _____

Registered foreign lawyer (home country)

Shareholder in Corporation ? No ? Yes (number)

Name

Residential address

Legal status —

Admitted in WA

Current practice certificate Yes No

Interstate practitioner (home State) _____

Registered foreign lawyer (home country)

Shareholder in Corporation ? No ? Yes (number)

Other shareholders

(Give details for all shareholders of the Corporation, other than directors, officers and employed legal practitioners.

Add extra pages if required.)

Name

Address

Name

Address

Name

Address

Execution by Corporation

Date / /20

Annexure E – WABA APPLICATION FORM

WABA

WESTERN AUSTRALIAN BAR ASSOCIATION (Inc)

APPLICATION FOR MEMBERSHIP (LOCAL)

The Secretary
17th Floor, Allendale Square
77 St George's Terrace
Perth WA 6000

Telephone: (08) 9220 0444
Facsimile: (08) 9325 9111

1. Surname:

Given Names:

2. Business Address:

Tel. No (Bus)

.....(Pvt).....(Fax)

Private Address:

.....

...

.....

.

3. Date of Admission: In WA:

Elsewhere (if applicable):

4. Save as set out on the schedule hereto,

(a) I am not aware of any complaint or any illegal or unprofessional conduct or of any complaint of neglect or undue delay which has been made against me to any body which considers complaints against legal practitioners.

- (b) No finding of unprofessional or other similar conduct has been made against me.
 - (c) There are no facts or matters which may tend to show that I am not a person suitable for membership to the Association.
5. References from two full-time practising members of the Association are attached.
6. I undertake if elected to membership of the Association to make application for professional indemnity insurance cover of at least \$1.1 million, and accept that any election to membership of the Association is conditional upon such insurance cover being granted in that amount or more. I further undertake to produce to the

Executive Officer of the Association a certificate of such insurance within fourteen days of my election to membership.

7. I propose to take Chambers at and subject to *election as a member of the Association and acceptance into those Chambers, I* intend to commence practice there on

8. I hereby undertake, if elected, to
- (a) abide by the Constitution and Rules of the Association,
 - (b) practice as a barrister,
 - (c) I have given the usual undertaking to appear before the first ordinary sitting of the Full Court of the Supreme Court of Western Australia held after my election and there to announce myself and give an undertaking to practice only as a barrister.

DATED the day of

SIGNED

THE WESTERN AUSTRALIAN BAR ASSOCIATION (INC)

APPLICATION FOR MEMBERSHIP (LOCAL)

SCHEDULE

Full details are set out hereunder of any matters falling within the following descriptions -

- (a) Any finding of unprofessional or other similar conduct made against me.
- (b) Any complaints of illegal or unprofessional conduct or of neglect or undue delay made against me to any body which considers complaints against legal practitioners.
- (c) Facts or matters which may tend to show that I am not a person suitable for membership of the Association.

Dated theday of

Signed (Applicant)
.....

Signed (Referee).....

THE WESTERN AUSTRALIAN BAR ASSOCIATION (INC)

APPLICATION FOR MEMBERSHIP (LOCAL)

SCHEDULE

Full details are set out hereunder of any matters falling within the following descriptions -

- (d) Any finding of unprofessional or other similar conduct made against me.
- (e) Any complaints of illegal or unprofessional conduct or of neglect or undue delay made against me to any body which considers complaints against legal practitioners.
- (f) Facts or matters which may tend to show that I am not a person suitable for membership of the Association.

Dated the day of.....2005

Signed (Applicant)

Signed (Referee).....

Contacts List

Barristers Chambers

Albert Wolff Chambers
Levels 2, 4, 5 & 7
33 Barrack Street
PERTH WA 6000
Tel: (08) 9218 9200

Francis Burt Chambers
Allendale Square
77 St Georges Terrace
PERTH WA 6000
Tel: 9220 0444

Howard Chambers
19 Howard Street
PERTH WA 6000
Tel: (08) 9486 9411

Sir Ronald Wilson Chambers
Level 1
89 St Georges Terrace
PERTH WA 6000
Tel: (08) 9322 7655

Irwin Chambers
Level 1
16 Irwin Street
PERTH WA 6000
Tel: (08) 9325 1433
Fax: (08) 9325 3275
Email: sljcchambers@bigpond.com

John Toohey Chambers
Level 3, Council House
St Georges Terrace
PERTH WA 6000
Tel: (08) 9323 7788

Sir Lawrence Jackson Chambers
Level 2
16 Irwin Street
PERTH WA 6000
Tel: (08) 9221 7700
Fax: (08) 9221 7701
Email: sljc@sljc.com

Wickham Chambers
Level 11, BGC Centre
28 The Esplanade
PERTH WA 6000
Tel: (08) 9322 3933
Fax: (08) 9322 3932
Email: law@wickhamchambers.com.au
www.wickhamchambers.com.au

Contacts List

General

Australian Prudential Regulation Authority (APRA)
 Level 9, QV1 Building
 250 St Georges Terrace
 PERTH WA 6000
 Tel: (08) 9481 8266
 Fax: (08) 9481 8142
 1300 131 600
www.apra.gov.au

Law Mutual WA
 Level 4
 89 St Georges Terrace
 PERTH WA 6000
 Tel: (08) 9481 3111
 Fax: (08) 9481 3166
 Email: info@lawmutualwa.com.au

Australian Securities and Investments Commission
 Level 3
 66 St Georges Terrace
 PERTH WA 6000
 Tel: (08) 9261 4200
www.asic.gov.au

The Law Society of WA
 Level 4
 89 St Georges Terrace
 PERTH WA 6000
 Tel: (08) 9322 7877
 Email: info@lawsocietywa.asn.au

Australian Taxation Office
 45 Francis Street
 NORTHBRIDGE WA 6005
 Tel: 13 28 66
www.ato.gov.au

Legal Practice Board
 5th Floor, Kings Building
 533 Hay Street
 PERTH WA 6000
 Tel: (08) 9325 1311
 Fax: (08) 9325 2743
 Email: lpblaw@bigpond.com
www.lpbwa.org.au

Department of Consumer and Employment
 Protection
 The Forrest Centre
 219 St Georges Terrace
 PERTH WA 6000
 Tel: 1300 304 014
www.docep.wa.gov.au

Office of State Revenue
 Plaza Level
 Mount Newman House
 200 St Georges Terrace
 PERTH WA 6000
 Tel: (08) 9262 1400
 Fax: (08) 9262 1179
 Email: stampduty@srd.wa.gov.au
www.osr.wa.gov.au

Principal Registrar
 Supreme Court of Western Australia
 Stirling Gardens
 PERTH WA 6000
 Tel: (08) 9421 5333

Small Business Development Corporation
 553 Hay Street (Cnr Pier Street)
 PERTH WA 6000
 Tel: (08) 9220 0222
 Fax: (08) 9221 1132
 Country callers: 1800 199 125
 Email: info@sfdc.com.au
www.sfdc.com.au

WorkSafe WA
 PO Box 294
 WEST PERTH WA 6872
 Tel: 1800 429 273 (the hazard line)
 Fax: (08) 9321 2148
www.safetyline.wa.gov.au