



New South Wales

Legal Profession Amendment (Notification) Regulation 2001

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, and on the recommendation of the Attorney General, has made the following Regulation under the *Legal Profession Act 1987*.

BOB DEBUS, M.P.,

Attorney General

Explanatory note

The object of this Regulation is to require a barrister to notify the Bar Council and a solicitor to notify the Law Society Council if:

- (a) he or she becomes bankrupt, is the subject of a bankruptcy petition or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his or her remuneration for their benefit, or
- (b) he or she is found guilty of an offence (other than certain specified traffic and parking offences).

Similar disclosures are required to be made in any application for a practising certificate as a barrister or solicitor if the disclosures have not already been made. Within 28 days after the commencement of this Regulation, similar disclosures are also required to be made in respect of incidents referred to in paragraph (a) occurring at any time before the commencement of this Regulation and offences referred to in paragraph (b) committed at any time before that commencement (in the case of indictable offences) or committed within the period of 10 years immediately before that commencement (in any other case).

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In the case of disclosures relating to an incident referred to in paragraph (a), the barrister or solicitor concerned is, in addition, to provide a statement as to why, despite the incident, he or she is a fit and proper person to hold a practising certificate.

The Bar Council or Law Society Council (as appropriate) may require further information relating to disclosures.

This Regulation is made under the *Legal Profession Act 1987*, including sections 30 and 216 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Notification) Regulation 2001*.

2 Amendment of Legal Profession Regulation 1994

The *Legal Profession Regulation 1994* is amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

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(Clause 2)

[1] Clause 3 Interpretation

Insert in alphabetical order in clause 3 (1):

excluded offence means:

- (a) any offence under the road transport legislation (within the meaning of the *Road Transport (General) Act 1999*) other than the following:
 - (i) an offence under section 42 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle negligently on a road or road related area if the barrister or solicitor concerned is, by way of penalty, sentenced to imprisonment or fined a sum of not less than \$200,
 - (ii) an offence under section 42 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle on a road or road related area furiously, recklessly or at a speed or in a manner dangerous to the public,
 - (iii) any offence under section 19 (2) of the *Road Transport (General) Act 1999* (which relates to refusing to comply with a requirement to produce a driver licence, or to state name and home address, or stating a false name and home address),
 - (iv) any offence under section 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to driving etc while under the influence of alcohol or any other drug),
 - (v) any offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998* (which relates to driving while unlicensed and other relevant matters),

- (vi) any offence under section 70 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to failing to stop and give assistance after an accident),
 - (vii) any offence under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to presence of prescribed concentration of alcohol in person's blood),
 - (viii) an offence under section 43 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to menacing driving),
 - (ix) any other offence under the road transport legislation if the court orders the disqualification of the barrister or solicitor concerned from holding a driver licence, or
- (b) any offence relating to the parking of motor vehicles.

[2] Clause 3 (1A)

Insert after clause 3 (1):

- (1A) A reference in the definition of *excluded offence* in subclause (1):
- (a) to an offence under the road transport legislation includes a reference to an offence under the *Traffic Act 1909*, or the regulations under that Act, as previously in force, and
 - (b) a reference to an offence under a provision of an Act specified in paragraph (a) of that definition includes a reference to an offence under a corresponding provision of the *Traffic Act 1909*, or the regulations under that Act, as previously in force.

[3] Clause 6 Information in application: section 30

Omit "any indictable offence" from clause 6 (1) (d).

Insert instead "any offence (other than an excluded offence)".

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[4] Clause 6 (1) (e)

Insert after clause 6 (1) (d):

- (e) if the practitioner:
 - (i) is, or has at any time been, bankrupt or the subject of a creditor's petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth, or
 - (ii) has at any time presented (as a debtor) a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor's petition or presented (as a debtor) such a petition under section 55 of that Act,
 - (iii) has at any time applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of his or her remuneration for their benefit,

details of each such incident and a statement as to why the practitioner considers that, despite the incident, the practitioner is a fit and proper person to hold a practising certificate.

[5] Clause 6 (1A) (a)

Omit "any indictable". Insert instead "an".

[6] Clause 6 (1A) (b)

Omit "indictable".

[7] Clause 6 (1A) (c)

Omit "indictable" where firstly occurring.

[8] Clause 6 (1A) (c)

Omit "an indictable offence" where secondly occurring.

Insert instead "an offence, other than an excluded offence,".

[9] Clause 6 (1A) (e)–(g)

Omit clause 6 (1A) (e) and (f). Insert instead:

- (e) extends to an indictable offence committed before the commencement of the *Legal Profession Amendment (Notification) Regulation 2001* (and so extends whether the finding of guilt was made before or after that commencement), and
- (f) extends to an offence (other than an indictable offence) committed within the period of 10 years occurring immediately before the commencement of the *Legal Profession Amendment (Notification) Regulation 2001* (and so extends whether the finding of guilt was made before or after that commencement), and
- (g) does not apply to a finding of guilt previously disclosed in an application for a practising certificate or under clause 69D.

[10] Clause 6 (1B) and (1C)

Insert after clause 6 (1A):

- (1B) Subclause (1) (e) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under clause 69E.
- (1C) Subclause (1) (e) applies to incidents whether occurring before or after the commencement of that paragraph.

[11] Clause 6 (3)

Insert after clause 6 (2):

- (3) Without limiting the generality of subclause (2), the appropriate Council may require the legal practitioner to furnish such further information relating to the cause of or circumstances surrounding an incident referred to in subclause (1) (e) as it considers relevant to its determination of the application within such time as it specifies.

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[12] Clause 10 Publication of information

Omit “clause 6 (1) (d)” from clause 10 (2).

Insert instead “clauses 6 (1) (d) or (e), 69D or 69E”.

[13] Clauses 69D and 69E

Insert after clause 69C:

69D Duty to report offences

- (1) If a barrister or solicitor is found guilty of an offence (other than an excluded offence), the barrister or solicitor must:
 - (a) notify the appropriate Council in writing of the finding and the nature of the offence, and
 - (b) furnish to the appropriate Council, within the time specified by the appropriate Council, such further information as it requires relating to the finding or the commission of the offence.
- (2) Subclause (1):
 - (a) applies to an offence whether or not committed in the course of practice as a legal practitioner, and
 - (b) applies to a finding of guilt of an offence whether or not the court proceeded to a conviction for the offence, and
 - (c) applies to an offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an offence, other than an excluded offence, if committed in New South Wales), and
 - (d) applies to a finding of guilt even if other persons are prohibited from disclosing the identity of the offender, and
 - (e) extends to an indictable offence committed before the commencement of this clause (and so extends whether the finding of guilt was made before or after that commencement), and

- (f) extends to an offence (other than an indictable offence) committed within the period of 10 years occurring immediately before the commencement of this clause (and so extends whether the finding of guilt was made before or after that commencement).
- (3) A notification under subclause (2) must be made:
 - (a) in relation to a finding of guilt that was made before the commencement of this clause—within 28 days after that commencement, or
 - (b) in relation to a finding of guilt that was made on or after the commencement of this clause—within 7 days after the finding was made.

69E Duty to report bankruptcy

- (1) For the purposes of this clause, the following are *notifiable incidents* in respect of a barrister or solicitor:
 - (a) the barrister or solicitor becomes a bankrupt or is the subject of a creditor's petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth,
 - (b) the barrister or solicitor presents (as a debtor) a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor's petition or presents (as a debtor) such a petition under section 55 of that Act,
 - (c) the barrister or solicitor applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his or her remuneration for their benefit.
- (2) A barrister or solicitor must:
 - (a) notify the appropriate Council in writing of any notifiable incident giving details of the incident and a statement as to why the practitioner considers that, despite the incident, the practitioner is a fit and proper person to hold a practising certificate, and

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- (b) furnish to the appropriate Council, within the time specified by the appropriate Council, such further information as it requires relating to the cause of or circumstances surrounding the incident.
- (3) A notification under subclause (2) must be made:
 - (a) in relation to notifiable incidents that occurred before the commencement of this clause—within 28 days after that commencement, or
 - (b) in relation to notifiable incidents that occurred on or after the commencement of this clause—within 7 days after the incident occurred or, in the case of an incident referred to in subclause (1) (a), the barrister or solicitor concerned became aware of the incident.

BY AUTHORITY