



New South Wales

# Legal Profession Amendment (Incorporated Legal Practices) Regulation 2001

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, 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 make provision for incorporated legal practices, as a consequence of the commencement of the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*.

The Regulation provides for the following:

- (a) disclosures to be made in respect of legal and non-legal services provided by incorporated legal practices,
- (b) the application of Parts 6 and 11 of the *Legal Profession Act 1987* (relating to trust accounts and legal fees and other costs) to incorporated legal practices,
- (c) the conferral of certain powers of investigation on the Law Society Council and the Legal Services Commissioner in connection with incorporated legal practices,
- (d) information to be provided to the Law Society Council in connection with incorporated legal practices,
- (e) other matters relating to incorporated legal practices.

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This Regulation is made under the *Legal Profession Act 1987*, including sections 47J, 47L, 47O, 47T and 216 (the general regulation-making power).

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## Legal Profession Amendment (Incorporated Legal Practices) Regulation 2001

### 1 Name of Regulation

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

### 2 Commencement

This Regulation commences on 1 July 2001.

### 3 Amendment of Legal Profession Regulation 1994

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

### 4 Notes

The explanatory note does not form part of this Regulation.

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### Schedule 1 Amendments

(Clause 3)

#### [1] Clause 3 Interpretation

Insert in alphabetical order in clause 3 (1):

*associate*, in relation to a solicitor, has the same meaning as it has in Division 1 of Part 6 of the Act.

**Note.** See also clause 27A of this Regulation.

*solicitor director* has the same meaning as it has in Division 2A of Part 3 of the Act.

#### [2] Clause 3 (1B)

Insert after clause 3 (1A):

(1B) A reference in this Regulation to a legal practitioner's or solicitor's firm includes, in relation to a legal practitioner or solicitor who provides legal services in the capacity of an officer or employee of an incorporated legal practice, a reference to the incorporated legal practice.

#### [3] Clause 6 Information in application: section 30

Insert after clause 6 (1) (a):

(a1) particulars of any incorporated legal practice of which the practitioner is an officer or employee, including the name of the incorporated legal practice, its Australian Company Number and the names of the directors of the incorporated legal practice,

#### [4] Clause 6 (1) (b)

Insert "or provides legal services" after "practises".

**[5] Clause 6 (1) (f)**

Insert after clause 6 (1) (e):

- (f) if the practitioner is a solicitor director of an incorporated legal practice and a financial report and director's report is required to be prepared in respect of the incorporated legal practice under section 292 of the *Corporations Law*, a copy of those reports (being the reports most recently lodged with the Australian Securities and Investments Commission).

**[6] Clause 9 Refusal, cancellation or suspension**

Insert after clause 9 (1):

- (1A) If the practitioner is a solicitor director, the appropriate Council must also, within 14 days after its decision, serve written notice of the decision on the incorporated legal practice of which the practitioner is a solicitor director.

**[7] Clause 11 Publication of information**

Insert "or provides legal services" after "practises".

**[8] Clause 12 Notification of change in particulars**

Omit clause 12 (2). Insert instead:

- (2) A legal practitioner must, in accordance with any request from the appropriate Council, also notify the appropriate Council of the following particulars:
  - (a) particulars relating to any change to or dissolution of a partnership, formation of a new partnership, or acquisition of the practice of another legal practitioner, by the legal practitioner,
  - (b) particulars relating to the formation of an incorporated legal practice, or the commencement of the provision of legal services by an incorporated legal practice, or any change to or winding up of an incorporated legal practice, including any change in the directors of the incorporated legal practice.

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### [9] Clause 13B Requirements of written notice

Omit clause 13B (e). Insert instead:

- (e) the firm name, or the name of the employer, of the practitioner including:
  - (i) if the practitioner is a partner, the name of the partnership, and
  - (ii) if the practitioner is a solicitor director or an officer or employee of an incorporated legal practice, the name of the incorporated legal practice,

### [10] Clause 13H Fidelity Fund contributions: sections 48ZAB and 78A

Omit “or firm of domestic lawyers” from clause 13H (1).

Insert instead “, firm of domestic lawyers or incorporated legal practice”.

### [11] Part 3C

Insert after Part 3B:

## Part 3C Incorporated legal practices

### Division 1 Preliminary

#### 13I Definitions

In this Part:

*ASIC* means the Australian Securities and Investments Commission.

*ASIC Act* means the *Australian Securities and Investments Commission Act 1989* of the Commonwealth or, after the commencement of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, that later Act.

*controlled money* has the same meaning as it has in section 61 (9) of the Act.

*non-legal services* means services provided by an incorporated legal practice that are not legal services, but does not include clerical or administrative services (such as typing, filing and photocopying) that are provided in connection with legal services.

### **13J Exempt corporations**

For the purposes of section 47C (3) (c) of the Act, the following corporations are exempt and are not incorporated legal practices:

- (a) the Law Society,
- (b) the Bar Association,
- (c) a community legal centre that complies with section 48H of the Act.

## **Division 2 Disclosures to be made with respect to legal services**

### **13K Disclosures to be made in respect of legal services**

- (1) If a client engages an incorporated legal practice to provide legal services, each solicitor director of the incorporated legal practice, and any solicitor who provides the legal services, must ensure that a disclosure is made to the client in connection with the provision of legal services.
- (2) The disclosure is to be made by giving the client a notice in writing setting out the following:
  - (a) a description of the legal services to be provided to the client,
  - (b) advice that the provision of legal services by the incorporated legal practice, including by any officer or employee of the corporation who is a solicitor, is regulated by the *Legal Profession Act 1987*,
  - (c) a description of the non-legal services (if any) to be provided to the client,
  - (d) advice that the *Legal Profession Act 1987* does not regulate the provision of those non-legal services.

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- (3) The disclosure is to be made before any legal services are provided to the client, or as soon as practicable afterwards.
- (4) The disclosure is to be made on every occasion that the client retains the incorporated legal practice to provide legal services.
- (5) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.

### **Division 3 Application of Part 6 of the Act**

**Note.** Section 47L of the Act provides that Part 6 of the Act applies to incorporated legal practices and, for that purpose, authorises the regulations to modify the application of Part 6.

#### **13L Money received by incorporated legal practice for non-legal services**

- (1) This clause applies to money received by an incorporated legal practice, including by an officer or employee of an incorporated legal practice, in connection with or in the course of providing non-legal services.
- (2) Each solicitor director of an incorporated legal practice must ensure that any money to which this clause applies:
  - (a) is not deposited in a general trust account that is kept for the purposes of section 61 of the Act, and
  - (b) is not kept in the same account as any controlled money.
- (3) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.

#### **13M Keeping of accounts (section 62)**

- (1) Each solicitor director of an incorporated legal practice must ensure that section 62 of the Act, and the regulations under that section, are complied with:
  - (a) in respect of any money received by the incorporated legal practice on behalf of another person in connection with legal services provided by the practice, and



- (b) in respect of any money received by an officer or employee of the incorporated legal practice on behalf of another person in the course of providing legal services.
- (2) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.
- (3) This clause does not affect the liability of any other solicitor, who provides legal services in the capacity of officer or employee of an incorporated legal practice, for a failure to comply with section 62 of the Act, or the regulations under that section.

**13N Audits**

- (1) Section 63 of the Act, and the regulations under that section, apply to the records of an incorporated legal practice in the same way as it applies to a solicitor's records or the records relating to a solicitor's practice.
- (2) A reference in section 63 (2) of the Act to a solicitor is, in relation to an incorporated legal practice, a reference to each solicitor director of the incorporated legal practice and to any solicitor who is an officer or employee of the incorporated legal practice.

**Note.** The effect of subclause (2) is that the obligation under section 63 (2) of the Act to co-operate with an auditor falls on both the solicitor director of an incorporated legal practice and any solicitors who are officers or employees of the incorporated legal practice.

**13O Application of section 64 of the Act to incorporated legal practices**

Section 64 of the Act applies to each solicitor who is an officer or employee of an incorporated legal practice, and to money paid to a trust account kept by the incorporated legal practice, in the same way as it applies to a solicitor and a trust account kept by a solicitor.

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### Division 4 Application of Part 11 of the Act

**Note.** Section 47J of the Act provides that Part 11 of the Act applies to legal services provided by an incorporated legal practice and, for that purpose, authorises the regulations to modify the application of Part 11.

#### **13P Solicitor directors must ensure cost disclosure requirements are complied with**

- (1) Each solicitor director of an incorporated legal practice must ensure that Division 2 of Part 11 of the Act is complied with in respect of any legal services provided to a client by the incorporated legal practice (including by an officer or employee of the incorporated legal practice).
- (2) A failure by a solicitor director of an incorporated legal practice to ensure that Division 2 of Part 11 of the Act is complied with, in respect of such legal services, is capable of being unsatisfactory professional conduct or professional misconduct.
- (3) This clause does not affect the liability of any other solicitor, who provides legal services in the capacity of an officer or employee of an incorporated legal practice, for a failure to comply with Division 2 of Part 11 of the Act.

#### **13Q Costs assessment**

- (1) Sections 200 and 201 of the Act apply in respect of an incorporated legal practice.
- (2) However, an application:
  - (a) under section 200 of the Act for an assessment of a bill of costs given to an incorporated legal practice by a barrister or solicitor retained by the incorporated legal practice, or
  - (b) under section 201 of the Act for an assessment of a bill of costs given by the incorporated legal practice,may be made only by a solicitor director of the incorporated legal practice, on behalf of the incorporated legal practice, and not by the incorporated legal practice itself.

- (3) Section 203 of the Act applies in respect of the application, but references to documents of or held by the applicant are taken to include references to documents of or held by the incorporated legal practice.
- (4) An application for a review of such an assessment under section 208KA of the Act may be made only by a solicitor director of the incorporated legal practice, on behalf of the incorporated legal practice, and not by the incorporated legal practice itself.
- (5) Despite anything to the contrary in this clause, any certificate issued under Subdivision 4 or 4A of Division 6 of Part 11 of the Act in respect of an assessment or a review applied for by a solicitor director on behalf of an incorporated legal practice is enforceable against the incorporated legal practice and not the solicitor director.

**13R Liability for overcharging and misrepresentations as to costs**

- (1) Section 208Q of the Act applies in respect of any conduct of an incorporated legal practice.
- (2) For that purpose, the deliberate charging of grossly excessive amounts of costs or a deliberate misrepresentation as to costs by an incorporated legal practice (including by an officer or employee of the incorporated legal practice) constitutes professional misconduct by:
  - (a) each solicitor director of the incorporated legal practice, and
  - (b) the solicitor (if any) involved in the conduct.

**Division 5 Investigation and review of incorporated legal practices**

**13S Purposes for which powers may be exercised**

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred by this Division for the following purposes:

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- (a) an investigation referred to in section 55 or 152 of the Act (as applied by section 47O of the Act),
- (b) a review conducted under section 47P of the Act.
- (2) The Law Society Council and the Legal Services Commissioner are not required to jointly exercise the powers conferred by this Division.
- (3) This Division does not limit any powers the Law Society Council and the Legal Services Commissioner have under the Act.

### **13T Examination of persons**

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred on ASIC by Division 2 of Part 3 of the ASIC Act.
- (2) Division 2 of Part 3 of the ASIC Act applies to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
  - (b) a reference to a matter that is being or is to be investigated under Division 1 of Part 3 of that Act is taken to be a reference to a matter that is being or is to be investigated or reviewed by the Law Society Council or the Legal Services Commissioner as referred to in clause 13S,
  - (c) a reference in section 19 to a person is taken to be a reference to a solicitor or an incorporated legal practice,
  - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society Council or the Legal Services Commissioner.
- (3) Sections 22 (2), 25 (2), 26 and 27 of the ASIC Act do not apply in respect of the exercise of the powers conferred on the Law Society Council and the Legal Services Commissioner by this clause.

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**13U Inspection of books**

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred on ASIC by sections 30 (1), 34 and 37–39 of the ASIC Act.
- (2) Those provisions apply to an in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
  - (b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice,
  - (c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice,
  - (d) a reference to a member or staff member is taken to be a reference to the Law Society Council, the Legal Services Commissioner or a person authorised by the Council or the Commissioner who is an officer or employee of the Council or the Commissioner,
  - (e) a reference in section 37 to a proceeding is taken to be a reference to an investigation or review referred to in clause 13S, or any proceedings under the Act that arise as a result of that investigation or review.

**13V Power to hold hearings**

- (1) The Law Society Council and the Legal Services Commissioner may hold hearings for the purpose of an investigation or review referred to in clause 13S.

**Note.** Compare section 51 of the ASIC Act.

- (2) Sections 52, 56 (1), 58, 59 (1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the ASIC Act apply to and in respect of any such hearing, with the following modifications (and any other necessary modifications):

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- (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
- (b) a reference to a member or staff member is taken to be a reference to the Law Society Council, the Legal Services Commissioner or a person authorised by the Council or the Commissioner who is an officer or employee of the Council or the Commissioner,
- (c) a reference to a person in section 58 is taken to be a reference to a solicitor or an incorporated legal practice,
- (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society Council or the Legal Services Commissioner.

### **13W Failure to comply with investigation or review**

The following acts or omissions are capable of being unsatisfactory professional conduct or professional misconduct:

- (a) a failure by a solicitor to comply with any requirement made by the Law Society Council or the Legal Services Commissioner, or a person authorised by the Council or the Commissioner, in the exercise of the powers conferred by this Division,
- (b) a contravention by a solicitor of any condition imposed by the Law Society Council or Legal Services Commissioner in the exercise of the powers conferred by this Division,
- (c) a failure by a solicitor director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:
  - (i) any requirement made by the Law Society Council or the Legal Services Commissioner, or a person authorised by the Council or the Commissioner, in the exercise of the powers conferred by this Division,

- (ii) any condition imposed by the Law Society Council or Legal Services Commissioner in the exercise of the powers conferred by this Division.

## **Division 6      Miscellaneous**

### **13X    Appointment of new solicitor director**

For the purposes of section 48D (3) of the Act, the prescribed time (being the time in which a new solicitor director must be appointed for the purposes of that section) is the period of 7 days commencing when the incorporated legal practice ceases to have a solicitor director.

### **[12]    Clause 15 Insurable solicitors**

Insert after clause 15 (2):

- (2A) Subclause (2) (a) does not apply in respect of a solicitor who is employed by an incorporated legal practice.

### **[13]    Clause 16 Provision of information relating to insurance**

Insert “(including, in relation to a solicitor director, the conduct of an incorporated legal practice of which the solicitor is a solicitor director)” after “solicitor’s practice” in clause 16 (1).

### **[14]    Clause 17 Definition**

Omit clause 17 (2). Insert instead:

- (2) However, in relation to a solicitor, firm of solicitors or incorporated legal practice that commences practice or providing legal services after 1 April in any year, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending on 31 March next following.

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**[15] Clause 18 Amount of deposit: section 64**

Omit “the solicitor or the firm of solicitors” from clause 18 (1) (a).  
Insert instead “the solicitor, firm of solicitors or incorporated legal practice”.

**[16] Clause 18 (1) (b), (1A), (2), (4) and (4A)**

Omit “solicitor or firm” wherever occurring.  
Insert instead “solicitor, firm or incorporated legal practice”.

**[17] Clause 19 Time for deposit**

Omit “solicitor or firm of solicitors” wherever occurring in clause 19 (1) and (2).  
Insert instead “solicitor, firm of solicitors or incorporated legal practice”.

**[18] Clause 19 (3)**

Omit “The solicitor or firm of solicitors”.  
Insert instead “The solicitor, firm of solicitors or incorporated legal practice”.

**[19] Clause 19 (3)**

Omit “the solicitor or firm”.  
Insert instead “the solicitor, firm or incorporated legal practice”.

**[20] Clause 27 Definitions**

Omit the definition of *associate*.

**[21] Clause 27A**

Insert after clause 27:

**27A “Associate”—extended meaning**

For the purposes of paragraph (g) of the definition of *associate* in section 60 of the Act, an incorporated legal practice is an associate of a solicitor who is a solicitor director of the incorporated legal practice or an officer or employee of the incorporated legal practice.



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**[22] Clause 35 Payment of trust money by cheque or electronic funds transfer**

Omit clause 35 (2) (e).

**[23] Clause 35 (2A)**

Insert after clause 35 (2):

(2A) A cheque must be signed by:

- (a) except as provided by paragraph (b)—the solicitor, a partner of the solicitor who is a solicitor or 2 persons authorised under clause 40 (1) to sign the cheque, or
- (b) in the case of a trust bank account maintained by an incorporated legal practice—a solicitor director of the incorporated legal practice or 2 persons authorised under clause 40 (1) to sign the cheque.

**[24] Clause 35 (5)**

Omit clause 35 (5) (a), (b) and (c). Insert instead:

- (a) except as provided by paragraph (b)—the solicitor, a partner of the solicitor who is a solicitor, or 2 persons authorised under clause 40 to effect an electronic funds transfer from the trust account concerned, or
- (b) in the case of a trust bank account maintained by an incorporated legal practice—a solicitor director of the incorporated legal practice or 2 persons authorised under clause 40 to effect an electronic funds transfer from the trust account concerned.

**[25] Clause 40 Delegation**

Omit “the trust bank account maintained by the solicitor or his or her firm” from clause 40 (1).

Insert instead “a trust bank account maintained”.

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### **[26] Clause 40 (1) (c)**

Insert at the end of clause 40 (1) (b):

, or

- (c) if the solicitor is a solicitor director of an incorporated legal practice and neither the solicitor nor any other solicitor director is able to sign the cheque or effect the transfer with due expedition because of the illness, injury or absence for good reason of the solicitor or any other solicitor director.

### **[27] Clause 48 Accountant's report to be lodged with Law Society**

Insert at the end of clause 48 (1) (b):

, and

- (c) each incorporated legal practice of which the solicitor was a solicitor director, at any time during that year.

### **[28] Clause 48 (6)**

Insert after clause 48 (5):

- (6) It is a sufficient compliance with this clause by a solicitor practising as a solicitor director of an incorporated legal practice if one accountant's report is lodged for the incorporated legal practice.

### **[29] Clause 52 Cessation of practice or change in practice arrangements**

Insert at the end of clause 52 (1) (c):

, or

- (d) ceases to be a solicitor director of an incorporated legal practice, or
- (e) becomes a solicitor director of another incorporated legal practice, or
- (f) is a party to a dissolution of an incorporated legal practice.

**[30] Clause 52 (2)**

Insert at the end of clause 52 (2) (b):

, or

- (c) ceases to hold or control controlled money and the controlled money is not held or controlled by a person or persons who were solicitor directors of the incorporated legal practice of which the solicitor was a solicitor director and who are continuing to practise in that role,

**[31] Clause 69 Duty to report irregularities**

Insert “or an associate of the solicitor” after “practitioner” in clause 69 (1).

**[32] Clause 69 (1)**

Insert “or associate” after “the solicitor”.

**[33] Clause 77A**

Insert after clause 77:

**77A Disclosures by incorporated legal practices**

Clauses 13K and 13P do not apply in respect of legal services provided to a client by an incorporated legal practice if the solicitor who provides those services (in the capacity of an officer or employee of the incorporated legal practice) was retained by the client to provide those services before 1 July 2001 and made any disclosure required by Division 2 of Part 11 of the Act.

**[34] Schedule 1 Forms**

Omit “carried on practice solely or in partnership under the above name” from Form 5.

Insert instead “carried on practice solely or in partnership under the above name or as solicitor director(s) of the above incorporated legal practice”.