



New South Wales

Legal Profession Amendment (Disciplinary Provisions) 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 objects of this Regulation are:

- (a) to prescribe periods within which notifications are to be provided to the Bar Council or the Law Society Council by legal practitioners who commit certain acts of bankruptcy or offences, and
- (b) to prescribe periods within which show cause statements are to be provided to the Bar Council or the Law Society Council by legal practitioners who commit certain acts of bankruptcy or indictable or tax offences or who fail to notify certain matters, and
- (c) to prescribe as professional misconduct failures to comply with notification requirements of the *Legal Profession Regulation 1994* relating to the commission of acts of bankruptcy or indictable or tax offences.

This Regulation is made under the *Legal Profession Act 1987*, including sections 38FB, 127 and 216 (the general regulation-making power).

This Regulation is made as a consequence of the enactment of the *Legal Profession Amendment (Disciplinary Provisions) Act 2001*.

2001 No 598

Clause 1 Legal Profession Amendment (Disciplinary Provisions) Regulation 2001

Legal Profession Amendment (Disciplinary Provisions) Regulation 2001

1 Name of Regulation

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

2 Commencement

This Regulation commences on 27 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.

Schedule 1 Amendments

(Clause 3)

[1] Clause 6 Information in application: section 30

Omit clause 6 (1) (e). Insert instead:

- (e) if the practitioner has committed an act of bankruptcy (within the meaning of section 3 (3) of the Act)—details of the act of bankruptcy,

[2] Clause 6 (1C)

Omit “incidents”. Insert instead “acts of bankruptcy”.

[3] Clause 6 (3)

Omit the subclause. Insert instead:

- (3) In this clause, *offence* includes a tax offence.

[4] Clause 69D Duty to report offences

Omit clause 69D (3). Insert instead:

- (3) A notification under subclause (1) must be made:
 - (a) in relation to a finding of guilt that was made before 27 July 2001 in respect of a person who was a barrister or solicitor at 27 July 2001—within 7 days after 27 July 2001, or
 - (b) in relation to a finding of guilt that was made on or after 27 July 2001 in respect of a person who was a barrister or solicitor when the finding was made—within 7 days after the finding was made.
- (4) Subclause (1) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under this clause.
- (5) In this clause, *offence* includes a tax offence.

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Schedule 1 Amendments

[5] Clauses 69E–69H

Omit clause 69E. Insert instead:

69E Duty to report bankruptcy

- (1) A barrister or solicitor who commits an act of bankruptcy (within the meaning of section 3 (3) of the Act) must notify the appropriate Council in writing of the details of the act of bankruptcy.
- (2) A notification under subclause (1) must be made:
 - (a) in relation to an act of bankruptcy that was committed before 27 July 2001 by a person who was a barrister or solicitor at 27 July 2001—within 7 days after 27 July 2001, or
 - (b) in relation to an act of bankruptcy that was committed on or after 27 July 2001 by a person who was a barrister or solicitor when the act of bankruptcy was committed—within 7 days after the act of bankruptcy was committed.
- (3) Subclause (1) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under this clause.

69F Show cause statements relating to bankruptcy and indictable and tax offences

- (1) For the purposes of section 38FB (1) of the Act, the written statement required to be provided by an applicant for a practising certificate must be provided to the appropriate Council within 14 days after the application is made.
- (2) For the purposes of section 38FB (3) of the Act, the written statement required to be provided by a barrister or solicitor must be provided to the appropriate Council within 14 days after the appropriate date.
- (3) In this clause:

appropriate date means:

 - (a) for a statement that relates to an act of bankruptcy committed before 27 July 2001 by a person who was a barrister or solicitor at 27 July 2001—27 July 2001, or

- (b) for a statement that relates to an act of bankruptcy committed on or after 27 July 2001 by a person who was a barrister or solicitor when the act of bankruptcy was committed—the first date on which the act of bankruptcy was committed, or
- (c) for a statement that relates to a finding of guilt made before 27 July 2001 in respect of a person who was a barrister or solicitor at 27 July 2001—27 July 2001, or
- (d) for a statement that relates to a finding of guilt made on or after 27 July 2001 in respect of a person who was a barrister or solicitor when the finding of guilt was made—the date on which the finding of guilt was made.

69G Show cause statements relating to failures to notify

- (1) For the purposes of section 38FB (2) and (4) of the Act, the written statement required to be provided by an applicant for a practising certificate, or a barrister or solicitor, who has failed to notify a matter as required by this Regulation must be provided to the appropriate Council within 7 days after the appropriate date.
- (2) In this clause:
 - appropriate date* means:
 - (a) if the applicant, barrister or solicitor notifies the matter after the period in which the notification was required to be made by this Regulation and the last day of that period occurred before 27 July 2001—27 July 2001, or
 - (b) if the applicant, barrister or solicitor notifies the matter after the period in which the notification was required to be made by this Regulation and the last day of that period occurs on or after 27 July 2001—the date on which the notification was made, or
 - (c) if the Council has given notice in writing under section 38FC (2) to the applicant, barrister or solicitor in relation to the act of bankruptcy or finding of guilt that should have been notified—the date on which the notice was given.

69H Failures to notify—professional misconduct

Each of the following failures to notify is declared to be professional misconduct:

- (a) a failure to notify, without reasonable cause, information in relation to a finding of guilt of the commission of an indictable offence or a tax offence as required by clause 6 (1) (d),
- (b) a failure to notify, without reasonable cause, information in relation to an act of bankruptcy as required by clause 6 (1) (e),
- (c) a failure to notify, without reasonable cause, a finding of guilt of the commission of an indictable offence or a tax offence as required by clause 69D in the time and manner specified in that clause,
- (d) a failure to notify, without reasonable cause, an act of bankruptcy as required by clause 69E in the time and manner specified in that clause.