



Legal Profession Amendment (Documents) Regulation 2002

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 place restrictions on the giving of advice by a legal practitioner to a client to the effect that documents that might be required in anticipated legal proceedings should be destroyed or should be moved, and
- (b) to place restrictions on a legal practitioner aiding or abetting a person to destroy or move such documents, and
- (c) to declare that a contravention of the restrictions referred to in paragraphs (a) and (b) is professional misconduct.

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

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Clause 1 Legal Profession Amendment (Documents) Regulation 2002

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1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Documents) Regulation 2002*.

2 Amendment of Legal Profession Regulation 2002

The *Legal Profession Regulation 2002* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Clause 142A

Insert after clause 142:

142A Advice on and handling of documents

- (1) A legal practitioner must not give advice to a client to the effect that a document should be destroyed, or should be moved from the place at which it is kept or from the person who has possession or control of it, if the legal practitioner is aware that:
 - (a) it is likely that legal proceedings will be commenced in relation to which the document may be required, and
 - (b) following the advice will result in the document being unavailable or unusable for the purposes of those proceedings.
- (2) A legal practitioner must not destroy a document or move it from the place at which it is kept or from the person who has possession or control of it, or aid or abet a person in the destruction of a document or in moving it from the place at which it is kept or from the person who has possession or control of it, if the legal practitioner is aware that:
 - (a) it is likely that legal proceedings will be commenced in relation to which the document may be required, and
 - (b) the destruction or moving of the document will result in the document being unavailable or unusable for the purposes of those proceedings.
- (3) Subclauses (1) and (2) apply even if there has been no indication that a specific person intends to commence proceedings in relation to which the document concerned may be required.
- (4) A contravention of this clause is declared to be professional misconduct.
- (5) Despite the other provisions of this clause, it is not professional misconduct for a legal practitioner merely to move a document in the possession or control of the legal

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Schedule 1 Amendment

practitioner to a person who is lawfully entitled to possession or control of the document if the person requests the practitioner to do so.

(6) In this clause:

destroy a document includes make the document illegible.

legal practitioner includes an interstate legal practitioner.

BY AUTHORITY
