



Legal Profession Amendment Regulation 2004

under the

Legal Profession Act 1987

His Excellency the Lieutenant-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 as follows:

- (a) to make further provision with respect to late fees for practising certificates,
- (b) to require legal practitioners to provide further contact information to the appropriate Council in their practising certificate applications,
- (c) to allow the appropriate Council to require a practising certificate to be surrendered by the holder of the certificate if the practitioner ceases to be entitled to practise,
- (d) to allow contact information in relation to legal practitioners to be published by the appropriate Council, even if the practitioner objects to the publication of the information, if the Council considers that the public interest in maintaining public access to the information outweighs any individual interest in the information not being published,
- (e) to make it clear that information relating to offences or acts of bankruptcy committed by legal practitioners may be included on the register kept by the appropriate Council but cannot be published by the appropriate Council (except as authorised under the provisions of the *Legal Profession Act 1987* relating to publication of disciplinary action taken against legal practitioners),

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- (f) to provide that a failure by a legal practitioner to disclose information relating to an offence as currently required under the regulations is capable of constituting professional misconduct or unsatisfactory professional conduct (even if the offence is not an indictable offence),
- (g) to make further provision with respect to the costs payable in contested matters,
- (h) to change the mandatory continuing legal education requirements relating to equal employment opportunity, discrimination and occupational health and safety,
- (i) to make further provision of a savings and transitional nature.

This Regulation is made under the *Legal Profession Act 1987*, including sections 29, 196 and 216 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Legal Profession Amendment Regulation 2004*.

2 Commencement

This Regulation commences on 2 April 2004.

3 Amendment of Legal Profession Regulation 2002

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

Schedule 1 Amendments

(Clause 3)

[1] Clause 6 Late fee: section 29 (3)

Insert at the end of the clause:

- (2) Subject to subclause (1), the appropriate Council may determine a scale of late fees in respect of applications, so that the greater the time that has elapsed since the end of the prescribed period the higher the late fee.

[2] Clause 7 Information in application: section 30

Insert after clause 7 (1) (e):

- (ea) the telephone number and facsimile number (if any) of the practitioner at the office or offices at which the practitioner practises or provides legal services,
- (eb) the number of an exchange box in a document exchange (DX) of Australian Document Exchange Pty. Limited (if any) that is used by the practitioner,

[3] Clause 8 Surrender of certificate

Insert after clause 8 (2):

- (2A) The appropriate Council may, by notice in writing served on the holder of a practising certificate, require the certificate to be surrendered to the Council within a period specified in the notice.
- (2B) A person must not fail to comply with a requirement made under subclause (2A).
Maximum penalty: 10 penalty units.
- (2C) The appropriate Council may require a certificate to be surrendered under subclause (2A) only if satisfied that the holder of the certificate is not entitled to continue practising as a barrister or solicitor.

[4] Clause 10 Information included

Omit clause 10 (2).

[5] Clause 11

Omit the clause. Insert instead:

11 Publication of information

- (1) The appropriate Council may publish, in circumstances which it considers appropriate, all or any of the following information:
 - (a) the name of any legal practitioner on the register,
 - (b) the name of the practitioner's firm (including a firm that is a partnership or an incorporated legal practice) or employer, the address at which the practitioner, or the firm or employer of the practitioner, practises or provides legal services,
 - (c) the telephone number and facsimile number of the practitioner at the office or offices at which the practitioner practises or provides legal services,
 - (d) the number of an exchange box in a document exchange (DX) of Australian Document Exchange Pty. Limited that is used by the practitioner,
 - (e) any other relevant contact information for the legal practitioner at the office or offices at which the practitioner practises or provides legal services.
- (2) A legal practitioner may, by notice in writing to the appropriate Council, request the Council not to publish any information about the legal practitioner that is on the register if special circumstances warrant the information not being published (for example, if the safety or well-being of a person would be affected by publishing the information).
- (3) If the appropriate Council is satisfied that those special circumstances exist, the Council is not to publish the information concerned unless the appropriate Council considers that the public interest in maintaining public access to the information outweighs any individual interest in the information not being published.
- (4) The appropriate Council is not to publish information supplied under clause 7 (1) (g) or (h), 133 or 134, except as authorised under Division 9A of Part 10 of the Act.

Note. Division 9A of Part 10 of the Act authorises the publication of disciplinary action taken against legal practitioners.

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[6] **Clause 47 Prescribed costs for recovery of certain debts and enforcement of certain judgments: section 196 (1) (b) and (b1)**

Insert after clause 47 (2):

- (3) For avoidance of doubt, this clause does not fix the costs payable for obtaining a judgment in contested matters. In such a case, only the costs payable for the enforcement of the judgment by the judgment creditor are fixed.

[7] **Clause 137 Failures to notify—professional misconduct and unsatisfactory professional conduct**

Insert at the end of clause 137:

- (2) The following are capable of constituting professional misconduct or unsatisfactory professional conduct:
 - (a) a failure to notify, without reasonable cause, information in relation to a finding of guilt of the commission of an offence (not being an indictable offence or a tax offence) as required by clause 7 (1) (g),
 - (b) a failure to notify, without reasonable cause, a finding of guilt of the commission of an offence (not being an indictable offence or a tax offence) as required by clause 133 in the time and manner specified in that clause.

Note. Clauses 7 (1) (g) and 133 require the disclosure to the appropriate Council of all offences other than excluded offences.

[8] **Clause 142**

Omit the clause. Insert instead:

142 Mandatory continuing legal education—special requirement

- (1) If the holder of a practising certificate is required to undertake continuing legal education, that continuing legal education must include a component relating to the management of the practice of law that deals predominantly with the following issues:
 - (a) the principles of equal employment opportunity,
 - (b) the law relating to discrimination and harassment,
 - (c) occupational health and safety law,
 - (d) employment law,

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- (e) the management of legal practice consistent with paragraphs (a)–(d).
- (2) That component is to be undertaken at least once in every compliance period, or such shorter period as may be determined by the appropriate Council, and is to comprise at least one unit in the units of continuing legal education that the holder of the practising certificate is required to undertake.
- (3) In this clause:

continuing legal education means continuing legal education that the holder of a practising certificate is required to undertake under the conditions attached to the certificate.

compliance period means:

- (a) in relation to a person who is the holder of a practising certificate at 2 April 2004—the period starting on 2 April 2004 and ending on 31 March 2007, and each further period of 3 years ending on the third anniversary of the expiration of the previous period, or
- (b) in relation to a person who becomes the holder of a practising certificate after 2 April 2004—the period starting on the date the person becomes the holder of a practising certificate and ending on 31 March in the year that is 3 years after the start of the period, and each further period of 3 years ending on the third anniversary of the expiration of the previous period.

[9] Schedule 5 Savings and transitional provisions

Insert after clause 16:

17 Changes to MCLE requirements made by Legal Profession Amendment Regulation 2004

- (1) Former clause 142 continues to apply to a person who, at any time during the period from 1 September 2002 to 2 April 2004, was the holder of a practising certificate required to undertake continuing legal education. However, former clause 142 continues to apply to such a person only until the end of the relevant period, in relation to the person, that started before 2 April 2004.

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- (2) Accordingly, any such person continues to be required to comply with former clause 142 by the end of that relevant period.
- (3) If the person has not already complied with former clause 142 by 2 April 2004, then he or she has the option of either:
 - (a) complying with former clause 142 by the end of the relevant period in relation to the person, or
 - (b) complying with new clause 142 by the end of the relevant period in relation to the person (as if the compliance period for new clause 142 were that relevant period).
- (4) In either case, the person is then taken to have complied with former clause 142.
- (5) This clause does not affect the obligation of any person to whom this clause applies to comply with new clause 142 by the end of the compliance period referred to in that clause.
- (6) In this clause:

former clause 142 means clause 142, as in force immediately before its substitution by the *Legal Profession Amendment Regulation 2004*.

new clause 142 means clause 142, as substituted by the *Legal Profession Amendment Regulation 2004*.

relevant period has the meaning given by former clause 142.

Note. Former clause 142 imposed specific continuing legal education obligations on practitioners. New clause 142 changed those obligations. This clause gives existing practitioners who have not (as at 2 April 2004) complied with former clause 142 the option of fulfilling those obligations by complying with either the new continuing legal education requirements or the former requirements by the end of the relevant period under former clause 142. Practitioners will still be required to comply with the new requirements before the end of the compliance period referred to in new clause 142.

BY AUTHORITY
