



New South Wales

Legal Profession Amendment Regulation 2005

under the

Legal Profession Act 2004

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 2004*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to make the following amendments to the *Legal Profession Regulation 2005*:

- (a) to amend clause 45 to ensure that regulations made with respect to trust money and trust accounts extend to Australian-registered foreign lawyers,
- (b) to amend clauses 63, 77 and 89 to vary the time of commencement of the 7-year period for which trust records are to be kept,
- (c) to insert clause 110A to prescribe the rate of 9% as the rate in excess of which a law practice may not charge interest under section 321 of the *Legal Profession Act 2004* or under a costs agreement (this is the rate applicable under Schedule 5 to the *Uniform Civil Procedure Rules 2005*),
- (d) to amend clause 146 to ensure that the Fidelity Fund is liable for outstanding liabilities relating to the Fidelity Fund under the *Legal Profession Act 1987*,
- (e) to make a number of minor or editorial amendments so as to promote internal consistency and consistency with corresponding regulations of other States and Territories.

This Regulation is made under the *Legal Profession Act 2004*, including sections 300 and 738.

2005 No 602

Clause 1 Legal Profession Amendment Regulation 2005

Legal Profession Amendment Regulation 2005

under the

Legal Profession Act 2004

1 Name of Regulation

This Regulation is the *Legal Profession Amendment Regulation 2005*.

2 Commencement

This Regulation commences on 1 October 2005.

3 Amendment of Legal Profession Regulation 2005

The *Legal Profession Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 6

Omit the clause. Insert instead:

6 Definition of “associate”—Australian-registered foreign lawyer—section 7 of the Act

The relationship of employee of the law practice is prescribed as a class of relationship for the purposes of section 7 (1) (e) of the Act.

[2] Clause 42 Notice of termination of provision of legal services—section 139 of the Act

Omit “section 139 (1)” from clause 42 (1). Insert instead “section 139”.

[3] Clause 42 (1)

Omit “that subsection”. Insert instead “that section”.

[4] Clause 42 (2)

Omit the subclause.

[5] Clause 45 Trust money and trust accounts—section 195 of the Act

Omit “, and so apply”.

[6] Clause 45 (2)

Insert at the end of the clause:

- (2) The provisions of Part 8 of this Regulation accordingly apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice were a reference to an Australian-registered foreign lawyer.

[7] Clause 56 Copies of trust records to be printed

Omit “cause a paper copy of trust records to be printed” from clause 56 (1).

Insert instead “print a paper copy of trust records”.

[8] Clause 61 Receipting of trust money

Omit “cause a receipt to be made out” from clause 61 (2).

Insert instead “make out a receipt”.

2005 No 602

Legal Profession Amendment Regulation 2005

Schedule 1 Amendments

- [9] Clause 62 Deposit records for trust money**
Omit “but is not paid to” from clause 62 (1).
Insert instead “and the money is not paid into”.
- [10] Clause 62 (3) (d) (i) and (ii)**
Omit “and” wherever occurring at the end of the subparagraphs.
- [11] Clause 63 Direction for non-deposit of trust money in general trust account**
Omit “the direction is received by the law practice”.
Insert instead “finalisation of the matter to which the direction relates”.
- [12] Clause 65 Payment by cheque**
Omit clause 65 (8). Insert instead:
 (7A) Subclause (2) (c) does not apply to an account established in this jurisdiction before 1 October 2005.
 (8) Subclause (2) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.
- [13] Clause 66 Payment by electronic funds transfer**
Omit “by or under the direction or with the authority of” from clause 66 (2).
Insert instead “by, under the direction of or with the authority of”.
- [14] Clause 72 Reconciliation of trust records**
Omit “cause the trust records relating to the only or each account to be reconciled” from clause 72 (1).
Insert instead “reconcile the trust records relating to the only or each account”.
- [15] Clause 76 Receipt of controlled money**
Omit “cause a receipt to be made out” from clause 76 (3).
Insert instead “make out a receipt”.
- [16] Clause 76 (8)**
Omit “is” where secondly occurring. Insert instead “was”.

-
- [17] **Clause 77 Deposit of controlled money—section 256 (5) of the Act**
Omit “the direction is received by the law practice”.
Insert instead “finalisation of the matter to which the direction relates”.
- [18] **Clause 78 Withdrawal of controlled money must be authorised**
Omit clause 78 (2). Insert instead:
(2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- [19] **Clause 78 (3)**
Insert “required” before “particulars” where firstly occurring.
- [20] **Clause 78 (4)**
Omit “The following particulars must be recorded in respect of each withdrawal”.
Insert instead “For the purposes of subclauses (2) and (3), the *required particulars* are as follows”.
- [21] **Clause 78 (4) (g)**
Omit the paragraph. Insert instead:
(g) the person or persons effecting, directing or authorising the withdrawal.
- [22] **Clause 80 Register of controlled money**
Omit “(4)” from clause 80 (4) (h). Insert instead “(2)”.
- [23] **Clause 82 Trust account statements**
Omit “and” wherever occurring in clause 82 (6). Insert instead “or”.
- [24] **Clause 84, heading**
Omit “Investment of trust money”.
Insert instead “Register of Investments”.

2005 No 602

Legal Profession Amendment Regulation 2005

Schedule 1 Amendments

[25] Clause 89 Keeping of trust records—section 264 of the Act

Omit clause 89 (2). Insert instead:

- (2) The trust records are to be kept for a period of 7 years after:
 - (a) in the case of a trust record referred to in paragraphs (a)–(m) of the definition of *trust records* in section 243 (1) of the Act—the only or the last transaction entry in the record, or
 - (b) in the case of any other trust record—finalisation of the matter to which the record relates.

[26] Clause 110A

Insert after clause 110:

110A Interest on unpaid legal costs—section 321 (4) (b) of the Act

For the purposes of section 321 (4) (b) of the Act, the rate of 9% is prescribed as the rate in excess of which a law practice may not charge interest under section 321 of the Act or under a costs agreement.

[27] Clause 143 Interstate legal practitioner becoming authorised to withdraw from local trust account: notification—section 427 (1) (a) of the Act

Insert “of” after “period” in clause 143 (5).

[28] Clause 146 Transitional provision: liabilities under former Fidelity Fund

Omit clause 146 (1). Insert instead:

- (1) Money may be paid from the Fidelity Fund to cover:
 - (a) any liability of the Fidelity Fund, or of the Law Society or Law Society Council in relation to the Fidelity Fund, for which, before 1 October 2005, money could have been paid out of the Fidelity Fund under the old Act, or
 - (b) without limiting paragraph (a), any other money payable under section 73 of the old Act before 1 October 2005, to the extent that the money was unpaid immediately before that date.

BY AUTHORITY