

2006

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

LEGAL PROFESSION REGULATION 2006

SL2006-37

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
Simon Corbell MLA

Legal Profession Regulation 2006

Background

The *Legal Profession Act 2006* (the Act) replaced the *Legal Practitioners Act 1970*. It provides for the regulation of legal practice in the ACT and facilitates the regulation of legal practice on a national basis, in conjunction with the National Legal Profession Model Laws Project. The project involved the development of a model Legal Profession Bill and model Legal Profession Regulations.

National Legal Profession Model Regulations

The model regulations were approved on 28/29 July 2005 for adoption in connection with the model Bill, which had earlier been approved by the Standing Committee of Attorneys-General.

The model provisions are of three types:

- Core Uniform (CU) – core provisions that are to be adopted in each State and Territory, using the same wording as far as practicable.
- Core Non Uniform (CNU) – core provisions that are to be adopted in each State and Territory, but the wording of the model provisions need not be adopted.
- Non Core (NC) – States and Territories can choose the extent to which they will adopt these provisions.

Legal Profession Regulation 2006

The Regulation incorporates, to the greatest extent practicable, the Core Uniform (CU) and Core Non Uniform (CNU) provisions mentioned above. Most of the Non Core (NC) provisions have also been included.

OUTLINE OF PROVISIONS

PART 1 PRELIMINARY

Section 1 – Name of regulation

Specifies the name of the Regulation – the *Legal Profession Regulation 2006* (the Regulation).

Section 2 – Commencement

States that the Regulation commences on 1 July 2006.

Section 3 – Dictionary

Provides that the dictionary at the end of this Regulation is a part of this Regulation.

Section 4 – Notes

A note is explanatory and is not part of this Regulation.

Section 5 – Offences against regulation – application of Criminal Code etc

States that other legislation applies in relation to offences against this Regulation. Notes say that chapter 2 of the Criminal Code applies and that the *Legislation Act 2001* deals with the application of ‘penalty units’ to offences.

PART 2 IMPORTANT TERMS

Section 6 – Definition of *associate* – Australian-registered foreign lawyer – Act, s 9(g)

Provides that an Australian-registered foreign lawyer who has a relationship of employee with a law practice is an associate of that practice.

Section 7 – Default decision of associate’s home jurisdiction – Act, s 10(4)(b)(iii)

If the home jurisdiction of a legal practitioner, being an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, cannot be decided under the Act, s 10(4)(b)(i) or (ii), this regulation sets out the criteria for deciding the associate’s home jurisdiction.

PART 2 RESERVATION OF LEGAL WORK AND LEGAL TITLES

Section 8 – Presumptions about taking or using certain names, titles or descriptions – Act, s 18(2)

This section prescribes the circumstances in which certain legal practitioners and lawyers are entitled to take or use the terms “lawyer”, “legal practitioner”, “barrister and solicitor”, “solicitor and barrister”, “solicitor”, “attorney”, “barrister”, “counsel”, “Queen’s Counsel” or “QC”, “King’s Counsel” or “KC”, Her Majesty’s Counsel”, “His Majesty’s Counsel” or “Senior Counsel” or “SC”.

PART 4 LEGAL PRACTICE – AUSTRALIAN LEGAL PRACTITIONERS

Section 9 – Application of s 50 to certain practitioners – Act, s 33(2)

Prescribes the circumstances in which an in-house lawyer or a government lawyer is not required to be supervised in accordance with section 50 of the Act.

Section 10– Criteria for grant or renewal of a local practising certificate – Act, s 35

Provides that, to be eligible for the grant or renewal of a local practising certificate (an unrestricted practising certificate, a restricted practising certificate or a barrister certificate), a person must meet the criteria set out in Table 10.

Section 11– Procedure for application for barrister’s practising certificate – Act, s 35

This section provides that an application for renewal of a barrister practising certificate must be provided to the bar council (the Bar Association Council), and the bar council will provide a report about the application to the licensing body (the Law Society Council) within 7 days after the day the council receives the application.

Section 12– Period for applying for renewal of local practising certificate – Act, s 43

Specifies that the period for making an application for renewal of a local practising certificate is the period beginning on 1 April before the certificate ends, and ending on 31 May in that year. In exception circumstances, the licensing body may extend the period beyond 31 May, but the period must end before the certificate ends.

Section 13– Period of supervised legal practice – Act, s 50 and s 75

Section 50 of the Act provides that a solicitor must not engage in unsupervised legal practice until the person has been supervised for the prescribed period.

In this section, subsection (1) prescribes the period of:

- a) 18 months of practical legal training principally under the supervision of an Australian lawyer, calculated from the date of grant of the person's first practising certificate; and
- b) 2 years of other practical legal training to qualify the practitioner for admission to the legal profession in the ACT or another jurisdiction, calculated from the date of grant of the person's first practising certificate.

Subsection (2) applies the same requirements to interstate legal practitioners for the purposes of subsection (1) and section 75 of the Act (which contains special provisions about interstate legal practitioners engaging in unsupervised legal practice in the ACT).

Subsections (3) and (4) assist in working out the period of a person's supervision for the purposes of subsections (1) and (2).

Section 14– Suspending or cancelling local practising certificate – additional grounds – Act, s 55(2)

Section 55 of the Act sets out the principal grounds for amending, suspending or cancelling a local practising certificate. This section provides additional grounds for subsection 55(2) of the Act.

In this section, subsection (1) provides a number of additional grounds for suspending a local practising certificate.

Subsection (2) sets out the additional grounds for cancelling a local practising certificate.

Section 15– Particulars for register of local practising certificates – Act, s 79(2)

Section 79(1) of the Act requires the licensing body to keep a register of the names of Australian lawyers to whom it grants local practising certificates. Subsection 79(2) of the Act provides for this Regulation to set out particulars to be contained in the register.

In this section, subsections (2) and (3) set out in detail the particulars to be included in the register.

Subsections (4), (5) and (6) set out the circumstances in which the licensing body is required not to include in the register certain particulars relating to a barrister or solicitor. If the barrister or solicitor asks that particulars not be included, they are not to be included unless the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

Section 16– Determination of service fee, barrister practising certificate applications – Act, s 84(1)(b)

Section 84(1)(b) of the Act permits the licensing body to determine fees for the services that it provides as the licensing body in relation to an application for the grant or renewal of barrister practising certificates.

This section states that, in determining such a fee, the licensing body must have regard to any representation made to the licensing body by the bar council about the fee and (if asked by the bar council) any representation made by the Minister about the fee.

Section 17– Corporations that are not incorporated legal practices – Act, s 101(2)(f)

Section 101(2)(f) provides for regulations to state that a corporation is not an incorporated legal practice for the purposes of the Act.

This section states that the Law Society of the ACT and the ACT Bar Association are not incorporated legal practices.

Section 18– Period of notice of ceasing to practice – Act, s 106(1)(b)

Under section 106(1) of the Act, a corporation commits an offence if it ceases to practice in the ACT as an incorporated legal practice and it fails to give the law society notice within the period prescribed by regulation.

This section prescribes that period to be not later than 14 days after the day on which the corporation ceases to practice in the ACT as an incorporated legal practice.

Section 19– Disqualifications and prohibitions – Act, s 122(10), 123(5) and 148(5)

This section makes provision in relation to the following kinds of orders:

- a) An order under section 122 of the Act, disqualifying a corporation from providing legal services in the Act.
- b) An order under section 123 of the Act, disqualifying a person from managing an incorporated legal practice.
- c) An order under section 148 of the Act, prohibiting any Australian legal practitioner from being a partner, in a business that includes the provision of legal services, of a stated person (who is not an Australian legal practitioner and is or was the partner of an Australian legal practitioner).

This section sets out a number of formal requirements in relation to the publication of notices of orders made under sections 122, 123 and 148.

In this section, subsection (7) protects certain officials [see “protected person”, defined in subsection (8)] from liability in relation to anything done or, omitted to be done, honestly for the purpose of this section.

PART 5 ADIs

Section 20 – Conditions on approval of ADIs – Act, s 250(2)

This section sets out the kind of conditions that may be imposed on the approval of an ADI. The conditions that provide for, or require negotiations to be negotiated between the ADI and the licensing body to provide for, one or more of the matters set out in paragraphs (a) to (e).

PART 6 STATUTORY DEPOSITS

Section 21 – Interpretation – div 6.9

This section contains a number of provisions to assist the interpretation of other regulations relating to statutory deposits.

Section 22 – Statutory interest account – Act, s 253(2)(a)

Section 253(2)(a) of the Act states that a regulation may make provision relating to the type of statutory account to be held by the law society.

This section requires the law society to open an account under the title of the ‘statutory interest trust account’. The law society must deposit in the account:

- a) money deposited with the law society by a law practice under this division; and
- b) any other money required by law to be deposited in the account.

Section 23 – Law practice to deposit portion of trust money with law society

Set out the obligation of a law practice to pay to the law society a portion of amounts standing to the credit of the general trust account held by the practice, and the manner in which the amount is to be calculated. The “notional amount” is determined by reference to section 21 (Interpretation – div 6.9).

Section 24 – Repayment of deposits

Money on deposit with the law society in a statutory interest account are repayable on demand to the law practice that deposited them. However, the law practice must not demand repayment unless the money is required to enable payments to be made from the general trust account of the law practice, and the practice believes the payment is to be made within 7 days of the demand.

Subsection (3) provides for the repayment of excess funds to law practices.

Subsection (4) provides that a law practice is entitled to have money on deposit with the law society repaid if, on the last day of a year, the notional amount in the general trust account of the practice is less than \$3000.

Section 25 – Obligation to deposit subject to availability of trust funds

If a law practice has not, before the end of a period within which it is required to make a deposit with the law society, made that deposit; and on the last day of the period, the money standing to the credit of the law practice's general trust account are not sufficient to enable the deposit to be made, the period for making payment is extended until the next "quarter day" on which the practice has sufficient funds in its general trust account to make the payment.

Section 26 – Variation of notional amount by law society

This section empowers the law society, upon application by a law practice, to reduce the notional amount in the general trust account of the practice. The decision to reduce the amount stands until the end of the year in which the decision is made.

If a decision to reduce the notional amount for a practice means that the practice has deposit an excess amount with the law society, the practice is entitled to a refund of that excess amount.

Section 27 – Arrangements relating to statutory interest account

This section enables the law society to enter into an arrangement with an ADI in the ACT for payments by the ADI, into a statutory interest account held by the law society, of amounts held in a trust account held by a law practice with the ADI.

Section 28 – Use of money in statutory interest account – Act, s253(2)(c)

Section 253(2)(c) of the Act states that a regulation may make provision in relation to the use of money in a statutory interest account held by the law society.

This section obligates the law society, upon a request by the bar council, to ask the Attorney General to consent to the use of money in the statutory interest account for a purpose stated by the bar council.

Section 29 – Audit of deposits etc

Subsection (1) sets out the kinds of records the law society must keep in relation to statutory interest account.

Subsections (2) and (3) require the law society to have the records audited annually, and to provide a copy of each audit to the Attorney General.

PART 7 PROFESSIONAL INDEMNITY INSURANCE**Section 30 – professional indemnity insurance for insurable legal practitioners – Act, s 311(2)(c)**

Section 311 (2) of the Act provides that the licensing body may accept a number of things as evidence that there is, or will be, an approved indemnity insurance policy in

force in relation to an insurable legal practitioner, including evidence prescribed by regulation.

This section prescribes, in relation to an insurable barrister, a report from the bar council in relation to the barrister.

PART 8 FIDELITY COVER

Section 31 – Caps on payments from fidelity fund – Act, s 348

Section 348(1) of the Act provides that a regulation may fix the maximum amount (or the method of working out that amount) that may be paid from the fidelity fund in relation to claims.

This section prescribes the amount of \$50 000 for a claim by an associate of a law practice in relation to a default of the law practice arising from an act or omission of another associate of the practice.

For any other claim, the amount is \$200 000.

Section 32 – Protocols – Act, s 354

This section makes it clear that the law society council may enter into a protocol with a corresponding authority that provides that the law society is taken to have:

- a) requested the corresponding authority to act as agent of the council under part 3.4 of the Act and corresponding laws, in stated cases; or
- b) agreed to act as agent of the corresponding authority in stated cases.

Section 33 – Notice of authority for interstate legal practitioner to withdraw from local trust account – Act, s 364(2)

If an interstate legal practitioner becomes authorised to withdraw money from a local trust account, the practitioner must give notice to the law society no later than 7 days after the practitioner becomes authorised.

Subsection (3) sets out the kind of information to be contained in the notice, and subsection (4) requires the practitioner to give the law society notice of any change to that information.

Section 34 Contribution by interstate legal practitioner to fidelity fund – Act, s 364(2)

When an interstate legal practitioner gives notice under section 34, the law society may require the authorised legal practitioner to pay a contribution to the fidelity fund.

The amount payable by the interstate legal practitioner must not exceed the amount that would be payable by a local practitioner holding an unrestricted practising certificate for the same period.

PART 9 COMPLAINTS AND DISCIPLINE**Section 35– Register of disciplinary action – Act, s 448(2)(e)**

Section 448 of the Act requires the licensing body to maintain a register of disciplinary action. The register is required to contain information including particulars prescribed by regulation.

This section requires the register of disciplinary action to include:

- For disciplinary action taken against an Australian legal practitioner, particulars of the date and jurisdiction of the person's first and any later admission to the legal profession must be included in the register of disciplinary action.

DICTIONARY