

Authorised Version No. 011
Legal Profession Regulations 2005

S.R. No. 152/2005

Authorised Version incorporating amendments as at
3 April 2013

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PART 1.1—PRELIMINARY

1.1.1 Objective

The objective of these Regulations is to prescribe matters required or permitted to be prescribed or necessary to be prescribed to give effect to the **Legal Profession Act 2004**.

1.1.2 Authorising provision

These Regulations are made under section 7.2.17 of the **Legal Profession Act 2004**.

Note

The Part numbering of these Regulations follows the Part numbering of the Legal Profession Act 2004, so that regulations in each Part of these Regulations relate to the corresponding Part in the Act. As not every Part of the Act has corresponding regulations, the Part numbering of these Regulations is not sequential.

1.1.3 Commencement

These Regulations come into operation on 12 December 2005.

PART 1.2—INTERPRETATION

1.2.1 Definitions

In these Regulations—

domestic partner has the same meaning as in the **Property Law Act 1958**;

entity means a person or body;

member of the immediate family of a person means—

- (a) a spouse or domestic partner of the person;
- (b) a child or grandchild of the person;
- (c) a parent or grandparent of the person;
- (d) a brother or sister of the person;

register of controlled money means the register required to be maintained by a law practice under regulation 3.3.26;

register of investments means the register required to be maintained by a law practice under regulation 3.3.30;

register of powers and estates means the register required to be maintained by a law practice under regulation 3.3.32;

spouse has the same meaning as in the **Property Law Act 1958**;

the Act means the **Legal Profession Act 2004**.

1.2.2 Corresponding laws

A law specified in column 2 of the following Table of a jurisdiction specified opposite that law in column 1 of the Table is declared to be a law of that jurisdiction that corresponds to this Act.

TABLE	
<i>Column 1</i>	<i>Column 2</i>
<i>Jurisdiction</i>	<i>Corresponding law</i>
Australian Capital Territory	Legal Profession Act 2006
New South Wales	Legal Profession Act 2004
Northern Territory	Legal Profession Act
Queensland	Legal Profession Act 2004 Queensland Law Society Act 1952 Trust Accounts Act 1973
South Australia	Legal Practitioners Act 1981
Tasmania	Legal Profession Act 1993
Western Australia	Legal Practice Act 2003

Reg. 1.2.2
(Table)
amended by
S.R. No.
31/2007 reg. 5.

* * * * *

Reg. 1.2.3
revoked by
S.R. No.
31/2007 reg. 6.

1.2.4 Default determination of associate's home jurisdiction

- (1) This regulation applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, where—
 - (a) section 1.2.5(4)(b) of the Act is applicable to the associate; and
 - (b) the home jurisdiction for the associate can be determined under neither subparagraph (i) or (ii) of that section.

- (2) For the purposes of section 1.2.5(4)(b)(iii) of the Act, the home jurisdiction for the associate is to be determined in accordance with the following criteria—
- (a) the jurisdiction of the associate's place of residence in Australia; or
 - (b) if the associate does not have a place of residence in Australia, the jurisdiction of the associate's last place of residence in Australia.

1.2.5 References to forms

In these Regulations, a reference to a form designated by a letter and number (for example: "Form B2") is a reference to the form designated by that letter and number, in Schedule 1.

**PART 2.2—RESERVATION OF LEGAL WORK AND LEGAL
TITLES**

**2.2.1 Presumptions about taking or using name, title or
description**

Schedule 2, which sets out circumstances in which
a person is entitled to take or use a name, title or
description, has effect.

Pt 2.2
(Heading and
reg. 2.2.1)
inserted by
S.R. No.
31/2007 reg. 7.

r. 2.4.2

PART 2.4—LEGAL PRACTICE BY AUSTRALIAN LEGAL PRACTITIONERS

Reg. 2.4.1
revoked by
S.R. No.
31/2007
reg. 8(a).

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2.4.2 Completion of periods of supervised legal practice

- (1) For the purposes of sections 2.4.18 and 2.4.35 of the Act, completion by a person of a period or periods of supervised legal practice equivalent to the required period of 18 months or 2 years is to be worked out by satisfying the requirements of this regulation.
- (2) The person satisfies the requirements of this regulation if the person completes—
 - (a) one period of supervised legal practice, worked on a full-time basis, that is equal to the required period worked out on a full-time basis; or
 - (b) one period of supervised legal practice, worked on a part-time basis, that is equivalent to the required period worked out on a full-time basis; or
 - (c) 2 or more periods of supervised legal practice, worked on either or both of those bases, that together are equal or equivalent to the required period.
- (3) For the purposes of this regulation—
 - (a) public holidays during a relevant period are to be included as days of supervised legal practice, whether or not the person engaged in legal practice on those days; and

Reg. 2.4.2(a)
amended by
S.R. No.
31/2007
reg. 8(b).

Reg. 2.4.2(b)
amended by
S.R. No.
31/2007
reg. 8(b).

-
- (b) normal periods of leave taken during a relevant period by the person are to be included as periods of supervised legal practice.
-

**PART 2.7—INCORPORATED LEGAL PRACTICES AND
MULTI-DISCIPLINARY PARTNERSHIPS**

Reg. 2.7.1AA
inserted by
S.R. No.
31/2007 reg. 9.

**2.7.1AA Prohibition on conduct of managed investment
scheme by incorporated legal practice**

Section 2.7.5(2) of the Act is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the Corporations legislation.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

2.7.1 Notice of termination of provision of legal services

For the purposes of section 2.7.9 of the Act, the prescribed period within which a corporation must give a notice under that section is 14 days after it ceases to engage in legal practice in this jurisdiction.

2.7.2 Disqualifications and prohibitions

- (1) This regulation applies to—
- (a) an order made under section 2.7.24 of the Act disqualifying a corporation from providing legal services in this jurisdiction; or
 - (b) an order made under section 2.7.25 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice; or

-
- (c) an order made under section 2.7.50 of the Act prohibiting an Australian legal practitioner from being a partner of a specified person—
- being an order made on the application of the Board.
- (2) The Board may publicise an order in any manner the Board thinks fit.
- (3) The Board—
- (a) must, as soon as practicable after an order was made, give written notice of the order to the corresponding authority of every other jurisdiction; and
 - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.
- (4) The notice under subregulation (3) for an order made under section 2.7.24 of the Act—
- (a) must state—
 - (i) the corporation's name; and
 - (ii) the Australian Company Number (ACN) of the corporation; and
 - (iii) the office or business address of the corporation as last known to the Board; and
 - (iv) the date of the order; and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.

r. 2.7.2

-
- (5) The notice under subregulation (3) for an order made under section 2.7.25 or 2.7.50 of the Act—
- (a) must state—
 - (i) the person's name; and
 - (ii) the person's address as last known to the Board; and
 - (iii) the date of the order; and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.
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PART 2.8—LEGAL PRACTICE BY FOREIGN LAWYERS

2.8.1 Scope of practice of foreign law

- (1) For the purposes of section 2.8.6(1)(b) of the Act, arbitration proceedings in which—
- (a) the arbitrator is not required to apply the rules of evidence; and
 - (b) knowledge of Australian law is not essential—

are prescribed as a kind of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services (including appearances).

- (2) For the purposes of section 2.8.6(1)(d) of the Act, all forms of dispute resolution are prescribed as kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent to which—
- (a) the provisions of other legislation applying to dispute resolution; or
 - (b) the requirements of a body responsible for dispute resolution; or
 - (c) the provisions of a contract that provides for dispute resolution—

restrict participation in dispute resolution to persons of a specified class that does not include Australian-registered foreign lawyers.

- (3) In this regulation—

dispute resolution means conciliation, mediation and other forms of consensual dispute resolution.

r. 2.8.2

Reg. 2.8.2
substituted by
S.R. No.
31/2007
reg. 10.

2.8.2 Trust money and trust accounts

For the purposes of section 2.8.13 of the Act—

- (a) the provisions of Part 3.3 of the Act and any other provisions of the Act (other than Part 3.6 of the Act) relating to trust money and trust accounts; and
- (b) the provisions of Part 3.3 of these Regulations and any other provisions of these Regulations relating to trust money and trust accounts; and
- (c) any provisions of any legal profession rules relating to trust money and trust accounts—

apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer.

Reg. 2.8.3
revoked by
S.R. No.
31/2007
reg. 11.

* * * * *

PART 3.3—TRUST MONEY AND TRUST ACCOUNTS

Division 1—Preliminary

3.3.1 Operation of this Part

- (1) This Part has effect for the purposes of Part 3.3 of the Act, and accordingly applies to a law practice in respect of—
 - (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction; and
 - (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
 - (c) trust money received by the practice in another jurisdiction, if the practice has an office in—
 - (i) this jurisdiction; and
 - (ii) one or more other jurisdictions but not in the jurisdiction in which the money was received—

unless the money is dealt with in accordance with the corresponding law of a jurisdiction in which the practice has an office.

- (2) This Part applies to an approved clerk in respect of trust money received by the clerk in this jurisdiction.

3.3.2 Definitions

In this Part—

BSB number (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI;

r. 3.3.3

Reg. 3.3.2
def. of
deposit
record
revoked by
S.R. No.
31/2007
reg. 12(a).

* * * * *

matter description means a brief phrase or expression assigned by a law practice or an approved clerk to describe a matter;

matter reference means a number or other reference assigned by a law practice or an approved clerk to identify a matter;

trust money means trust money in respect of which this Part for the time being applies, as mentioned in regulation 3.3.1.

Division 2—Computerised accounting systems

3.3.3 Application of Division

This Division applies where a law practice or an approved clerk maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

3.3.4 Copies of trust records to be printed

(1) The law practice or approved clerk must print a paper copy of trust records as follows—

Reg. 3.3.4(1)(a)
amended by
S.R. No.
31/2007
reg. 12(b).

- (a) trust account receipts and payments cash books are to be printed monthly as at the end of each month, unless a copy of the books as at the end of the month is kept in electronic form that is readable or reportable on demand;
- (b) reconciliation statements prepared under regulation 3.3.19 are to be printed as at the end of each month;

-
- (c) lists of trust account ledgers and their balances are to be printed monthly as at the end of each month;
- (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each month;
- (e) trust ledger accounts, the register of controlled money and the trust account transfer journal are to be printed before they are archived or deleted from the system;
- (f) trust ledger account and controlled money account details are to be printed on request by and provided to an inspector appointed under section 3.3.29 of the Act.
- (2) The trust records printed monthly as at the end of a month under subregulation (1)(a) to (d) must be printed within 15 working days after the month.
- (3) The paper copies printed under subregulation (1) are to be kept by the law practice or approved clerk, except where they are printed on request under that subregulation.
- (4) The electronic copy of the trust account cash books under subregulation (1)(a) is to be kept by the law practice or approved clerk.
- Reg. 3.3.4(1)(c) substituted by S.R. No. 31/2007 reg. 12(c).
- Reg. 3.3.4(3) amended by S.R. No. 31/2007 reg. 12(d).
- Reg. 3.3.4(4) amended by S.R. No. 31/2007 reg. 12(d).

3.3.5 Chronological record of information to be made

- (1) The law practice or approved clerk must maintain a record, compiled in chronological sequence, of the creation, amendment or deletion of information in the practice's or clerk's computerised accounting system in relation to the following—
- (a) client name;

r. 3.3.6

Reg. 3.3.5(1)(e)
amended by
S.R. No.
31/2007
reg. 12(e).

- (b) client address;
- (c) matter reference;
- (d) matter description;
- (e) ledger account number or other descriptor.

- (2) The record is to be retained by the law practice or approved clerk.

3.3.6 Requirements regarding computer accounting systems

- (1) The law practice or approved clerk must ensure that the practice's or clerk's computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.
- (2) The law practice or approved clerk must ensure that the system is not capable of deleting a trust ledger account unless—
 - (a) the balance of the account is zero and all outstanding cheques have been presented; and
 - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice or approved clerk must ensure that any entry in a record produced in a permanent form appears in chronological sequence.

Reg. 3.3.6(2)(b)
amended by
S.R. No.
31/2007
reg. 12(f)(i).

- (4) The law practice or approved clerk must ensure that each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted.
- (5) The law practice or approved clerk must ensure that the computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice or approved clerk must ensure that the computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

Reg. 3.3.6(5)
amended by
S.R. No.
31/2007
reg. 12(f)(ii).

Reg. 3.3.6(6)
amended by
S.R. No.
31/2007
reg. 12(f)(ii).

3.3.7 Back-ups

The law practice or approved clerk must ensure that—

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month; and
- (b) each back-up copy is kept by the law practice or approved clerk; and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

Reg. 3.3.7(b)
amended by
S.R. No.
31/2007
reg. 12(g).

Division 3—General trust accounts

3.3.8 Establishment of general trust account

- (1) A law practice or an approved clerk may at any time establish a general trust account that satisfies the requirements of this regulation, but must, as soon as practicable after receiving trust money

Reg. 3.3.8(1)
amended by
S.R. No.
31/2007
reg. 12(h).

that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have such a general trust account.

- (2) A general trust account satisfies the requirements of this regulation if—
- (a) the account is established in this jurisdiction, before or after the commencement of this regulation, with an approved ADI; and
 - (b) the account is and is to be maintained in this jurisdiction; and
 - (c) in the case of a law practice, the name of the account includes—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression "law practice trust account" or "law practice trust a/c"; and
 - (d) in the case of an approved clerk, the name of the account includes—
 - (i) the name of the approved clerk or the business name under which the approved clerk conducts business; and
 - (ii) the expression "approved clerk trust account" or "approved clerk trust a/c"; and
 - (e) the account is of a kind that is for the time being approved by the Board.
- (3) Subregulation (2)(c) or (d) does not apply to an account established in this jurisdiction before the commencement of this regulation.

- (4) Subregulation (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.
- (5) Subregulation (2)(d)(ii) does not require the repetition of the words "approved clerk" if those words form part of the business name of the approved clerk.

3.3.9 Receipting of trust money

- (1) This regulation applies if a law practice or an approved clerk receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice or approved clerk must make out a receipt.
- (3) The receipt must be made out as soon as practicable—
 - (a) after the trust money is received, except as provided by paragraph (b); or
 - (b) in the case of trust money received by direct deposit—after the law practice or approved clerk receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.
- (5) For the purposes of subregulation (4), the **required particulars** are as follows—
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;

Reg. 3.3.9(3)(a)
amended by
S.R. No.
31/2007
reg. 12(i)(i).

Reg. 3.3.9(3)(b)
amended by
S.R. No.
31/2007
reg. 12(i)(ii).

r. 3.3.10

- (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of the law practice or approved clerk, or the business name under which the law practice engages in legal practice or the approved clerk conducts business, and the expression "trust account" or "trust a/c";
 - (h) the name of the person who made out the receipt;
 - (i) the number of the receipt.
- (6) The original receipt is to be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

Reg. 3.3.9(8)
amended by
S.R. No.
31/2007
reg. 12(i)(iii).

3.3.10 Deposit records for trust money

- (1) This regulation applies if a law practice or an approved clerk receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.

- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record—
 - (a) the date of the deposit;
 - (b) the amount of the deposit;
 - (c) whether the deposit consists of cheques, notes or coins (and the amount of each);
 - (d) for each cheque—
 - (i) the name of the drawer of the cheque;
 - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn;
 - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

Reg. 3.3.10(5)
amended by
S.R. No.
31/2007
reg. 12(j).

3.3.11 Direction for non-deposit of trust money in general trust account

For the purposes of section 3.3.13(3) of the Act, the prescribed period for which a written direction referred to in section 3.3.13(1)(a) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

3.3.12 Payment by cheque

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice or an approved clerk by cheque.

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- (2) A cheque—
- (a) must be made payable to or to the order of a specified person or persons and not to bearer or cash; and
 - (b) must be crossed "not negotiable"; and
 - (c) in the case of a law practice, must include—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression "law practice trust account" or "law practice trust a/c"; and
 - (d) in the case of an approved clerk, must include—
 - (i) the name of the approved clerk or the business name under which the approved clerk conducts business; and
 - (ii) the expression "approved clerk trust account" or "approved clerk trust a/c".
- (3) In the case of a law practice, a cheque must be signed—
- (a) by an authorised principal of the law practice; or
 - (b) if a principal referred to in paragraph (a) is not available—
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly.

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- (4) In the case of an approved clerk, a cheque must be signed—
- (a) by the approved clerk; or
 - (b) if the approved clerk is not available, by an authorised person.
- (5) A written record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.
- (6) If at the time the cheque is issued the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (7) For the purposes of subregulations (5) and (6), the ***required particulars*** are as follows—
- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.

Reg. 3.3.12(8)
amended by
S.R. No.
31/2007
reg. 12(k).

- (8) Written records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.
- (9) Subregulation (2)(c) or (d) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (10) Subregulation (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.
- (11) Subregulation (2)(d)(ii) does not require the repetition of the words "approved clerk" if those words form part of the business name of the approved clerk.
- (12) In this regulation—
 - associate* means an associate of the law practice;
 - authorised* means authorised by the law practice or approved clerk (as the case requires) to sign cheques drawn on the general trust account.

3.3.13 Payment by electronic funds transfer

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice or an approved clerk by electronic funds transfer.
- (2) In the case of a law practice, an electronic funds transfer must be effected by, under the direction of or with the authority of—
 - (a) an authorised principal of the law practice; or

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- (b) if a principal referred to in paragraph (a) is not available—
- (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (3) In the case of an approved clerk, an electronic funds transfer must be effected by, under the direction of or with the authority of—
- (a) the approved clerk; or
 - (b) if the approved clerk is not available, an authorised person.
- (4) A written record of the required particulars must be kept of each payment, unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (5) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For the purposes of subregulations (4) and (5), the ***required particulars*** are as follows—
- (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and relevant BSB number;

- (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be kept in the order in which the transfers were effected.
- (8) In this regulation—
- associate* means an associate of the law practice;
- authorised* means authorised by the law practice or approved clerk (as the case requires) to effect, direct or give authority for an electronic funds transfer from the general trust account.

Reg. 3.3.13(7)
amended by
S.R. No.
31/2007
reg. 12(k).

3.3.14 Recording transactions in trust account cash books

A law practice that or an approved clerk who maintains a general trust account must keep the following trust account cash books—

- (a) a trust account receipts cash book in accordance with regulation 3.3.15; and
- (b) a trust account payments cash book in accordance with regulation 3.3.16.

3.3.15 Trust account receipts cash book

- (1) The following particulars must be recorded in a law practice's or an approved clerk's trust account receipts cash book in respect of each receipt of trust money—
 - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the form in which the money was received;
 - (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the purpose for which the money was received;
 - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out.
- (4) The particulars in respect of a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

3.3.16 Trust account payments cash book

- (1) The following particulars must be recorded in a law practice's or an approved clerk's trust account payments cash book in respect of each payment of trust money by cheque—
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's or an approved clerk's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer—
 - (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

- (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in respect of payments must be recorded in the order in which the payments are made.
- (4) The particulars in respect of a payment must be recorded within 5 working days counting from and including the day the payment was made.

3.3.17 Recording transactions in trust ledger accounts

- (1) A law practice that or an approved clerk who maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to—
- (a) in the case of a law practice—each client of the practice in each matter for which trust money has been received by the practice;
 - (b) in the case of an approved clerk—each client of the barrister in each matter for which trust money has been received by the clerk on account of the legal costs of the barrister in advance of the provision of the legal services to which those costs relate.
- (2) The following particulars must be recorded in the title of a trust ledger account—
- (a) the name of the person for or on behalf of whom the trust money was paid;
 - (b) the person's address;

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- (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money for the matter—
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the name of the person from whom the money was received;
 - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by cheque—
- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer—
- (a) the date and number of the transaction;

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- (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (7) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry—
- (a) the date of the transfer;
 - (b) the amount transferred;
 - (c) the journal reference number;
 - (d) the name of the other trust ledger account from which or to which the money was transferred;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 working days counting from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

r. 3.3.18

3.3.18 Journal transfers

- (1) Trust money may be transferred by journal entry from one trust ledger account in a law practice's or an approved clerk's trust ledger to another trust ledger account in the trust ledger, but only if—
 - (a) the law practice or approved clerk is entitled to withdraw the money and pay it to the other trust ledger account; and
 - (b) subregulation (1A) is complied with.

Reg. 3.3.18(1)(b)
substituted by
S.R. Nos
31/2007
reg. 12(l),
112/2007
reg. 4(1).

Reg. 3.3.18(1)(c)
inserted by
S.R. No.
31/2007
reg. 12(l),
revoked by
S.R. No.
112/2007
reg. 4(1).

* * * * *

Reg. 3.3.18
(1A)
inserted by
S.R. No.
112/2007
reg. 4(2).

- (1A) The transfer must be authorised in writing by—
 - (a) in the case of a law practice—
 - (i) an authorised principal of the law practice; or
 - (ii) if a principal referred to in subparagraph (i) is not available—
 - (A) an authorised legal practitioner associate; or
 - (B) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or

- (C) two or more authorised associates jointly; or
- (iii) an external intervener for the law practice;
- (b) in the case of an approved clerk—
 - (i) the approved clerk; or
 - (ii) a person who is authorised by the approved clerk to sign cheques drawn on the general trust account without a co-signatory; or
 - (iii) 2 or more persons who are authorised by the approved clerk to sign cheques drawn on the general trust account jointly.

(1B) In subregulation (1A)(a)—

associate means an associate of the law practice;

authorised means authorised by the law practice or an external intervener for the law practice to effect, direct or give authority for the transfer of trust money by journal entry from one trust ledger account in the law practice's trust ledger to another trust ledger account in the trust ledger;

external intervener has the same meaning as in section 5.1.2 of the Act.

- (2) A law practice or an approved clerk must keep a trust account transfer journal if the practice or clerk transfers trust money by journal entry.
- (3) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry—
 - (a) the date of the transfer;

Reg. 3.3.18
(1B)
inserted by
S.R. No.
112/2007
reg. 4(2).

r. 3.3.19

- (b) the trust ledger account from which the money is transferred (including its identifying reference);
 - (c) the trust ledger account to which the money is transferred (including its identifying reference);
 - (d) the amount transferred;
 - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (4) Journal pages or entries must be consecutively numbered.
- (5) A law practice or an approved clerk must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

3.3.19 Reconciliation of trust records

- (1) A law practice that or an approved clerk who maintains one or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each month by preparing—
- (a) a statement—
 - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
 - (ii) showing the date the statement was prepared; and

Reg. 3.3.19(1)
amended by
S.R. No.
31/2007
reg. 12(m)(i).

- (b) a statement—
- (i) reconciling the balance of the trust ledger accounts with the balance of the practice's or clerk's trust account cash books; and
 - (ii) containing a list of the practice's or clerk's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
 - (iii) showing the date the statement was prepared.
- (3) The statements must be prepared within 15 working days after the end of the month concerned.
- (4) The statements must be kept by the law practice or approved clerk.

Reg. 3.3.19(4)
amended by
S.R. No.
31/2007
reg. 12(m)(ii).

3.3.20 Trust ledger account in name of law practice or legal practitioner associate

- (1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this regulation.
- (2) A law practice may maintain in its trust ledger—
- (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and

- (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subregulation (2)(a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.
- (4) In a case to which subregulation (2)(b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

3.3.21 Trust ledger account in name of approved clerk

- (1) An approved clerk must not maintain a trust ledger account in the name of the clerk except as authorised by this regulation.
- (2) An approved clerk may maintain in its trust ledger a trust ledger account in the clerk's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to a barrister on whose behalf the clerk has received money on account of legal costs.
- (3) In a case to which subregulation (2) applies, the approved clerk must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.

Division 4—Controlled money

3.3.22 Maintenance of controlled money accounts

- (1) For the purposes of section 3.3.15(4) of the Act, a controlled money account must be maintained under an account name that includes the following particulars—
 - (a) the name of the law practice concerned;
 - (b) the expression "controlled money account" or the abbreviation "CMA" or "CMA/c";
 - (c) such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.
- (2) This regulation does not apply to an account established in this jurisdiction before the commencement of this regulation.

Reg. 3.3.22(1)(b)
substituted by
S.R. No.
31/2007
reg. 12(n).

3.3.23 Receipt of controlled money

- (1) This regulation applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable—
 - (a) after the controlled money is received, except as provided by paragraph (b); or

Reg. 3.3.23(4)(a)
amended by
S.R. No.
31/2007
reg. 12(o)(i).

r. 3.3.23

Reg. 3.3.23(4)(b)
amended by
S.R. No.
31/2007
reg. 12(o)(ii).

- (b) in the case of controlled money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For the purposes of subregulation (5), the **required particulars** are as follows—
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
 - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "controlled money receipt";

- (i) the name of the person who made out the receipt;
- (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt is to be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

Reg. 3.3.23(10)
amended by
S.R. No.
31/2007
reg. 12(o)(iii).

3.3.24 Deposit of controlled money

For the purposes of section 3.3.15(5) of the Act, the prescribed period for which a written direction referred to in section 3.3.15(1) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

3.3.25 Withdrawal of controlled money must be authorised

- (1) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of—
 - (a) an authorised principal of the law practice; or

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- (b) if a principal referred to in paragraph (a) is not available—
- (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (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.
- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (4) For the purposes of subregulations (2) and (3), the ***required particulars*** are as follows—
- (a) the date and number of the transaction;
 - (b) the amount withdrawn;
 - (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

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- (f) particulars sufficient to identify the purpose for which the payment was made;
 - (g) the person or persons effecting, directing or authorising the withdrawal.
- (5) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.
- (6) In this regulation—
- associate* means an associate of the law practice;
- authorised* means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

3.3.26 Register of controlled money

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information—
 - (a) the name of the person on whose behalf the controlled money is held;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter;
 - (d) any changes to the information referred to in paragraphs (a) to (c).

r. 3.3.26

- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account—
 - (a) the date the controlled money was received;
 - (b) the number of the receipt;
 - (c) the date the money was deposited in the controlled money account;
 - (d) the name of and other details clearly identifying the controlled money account;
 - (e) the amount of controlled money deposited;
 - (f) details of the deposit sufficient to identify the deposit;
 - (g) interest received;
 - (h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 3.3.25(2).
- (5) With the exception of interest and other income received in respect of controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must keep as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 working days after each month, the law practice must prepare and keep as a permanent record a statement as at the end of the month—

Reg. 3.3.26(7)
amended by
S.R. No.
31/2007
reg. 12(p).

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- (a) containing a list of the practice's controlled money accounts showing—
- (i) the name, number and balance of each account in the register; and
 - (ii) the name of the person on whose behalf the controlled money in each account was held; and
 - (iii) a short description of the matter to which each account relates; and
- (b) showing the date the statement was prepared.

Division 5—Transit money

3.3.27 Information to be recorded about transit money

- (1) This regulation has effect for the purposes of section 3.3.16 of the Act.
- (2) A law practice must, in respect of transit money received by the practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Reg. 3.3.27(2)
amended by
S.R. No.
31/2007
reg. 12(p).

Division 6—Trust money generally

3.3.28 Trust account statements—law practices

- (1) A law practice must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice or an associate of the practice.
- (2) In the case of trust money in respect of which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.

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- (3) In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.
 - (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must furnish a separate statement for each record.
 - (5) A trust account statement is to contain particulars of—
 - (a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and
 - (b) the remaining balance (if any) of the money.
 - (6) A trust account statement is to be furnished—
 - (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or
 - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
 - (c) except as provided by subregulation (7), as soon as practicable after 30 June in each year.
 - (7) The law practice is not required to furnish a trust account statement under subregulation (6)(c) in respect of a ledger account or record if at 30 June—

- (a) the ledger account or record has been open for less than 6 months; or
 - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
 - (c) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must keep a copy of a trust account statement furnished under this regulation.

Reg. 3.3.28(8)
amended by
S.R. No.
31/2007
reg. 12(p).

3.3.29 Trust account statements for sophisticated clients

- (1) In this regulation—
sophisticated client has the same meaning as in section 3.4.2 of the Act.
- (2) Regulation 3.3.28 does not apply to a sophisticated client to the extent to which the client directs the law practice not to provide trust account statements under that regulation.
- (3) If the sophisticated client directs the law practice to provide trust account statements on a basis different from that prescribed by regulation 3.3.28, the law practice must provide those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (4) The law practice must keep a copy of a trust account statement provided under this regulation.

Reg. 3.3.29
substituted by
S.R. No.
31/2007
reg. 13.

3.3.30 Register of investments

- (1) This regulation applies if trust money referred to in section 3.3.3(3) of the Act is invested by a law practice for or on behalf of a client, but this regulation does not itself confer power to make investments.
- (2) The law practice must maintain a register of investments of trust money.
- (3) The register must record the following information in relation to each investment—
 - (a) the name in which the investment is held;
 - (b) the name of the person on whose behalf the investment is made;
 - (c) the person's address;
 - (d) particulars sufficient to identify the investment;
 - (e) the amount invested;
 - (f) the date the investment was made;
 - (g) particulars sufficient to identify the source of the investment, including, for example—
 - (i) a reference to the relevant trust ledger; and
 - (ii) a reference to the written authority to make the investment; and
 - (iii) the number of the cheque for the amount to be invested;
 - (h) details of any documents evidencing the investment;
 - (i) details of any interest received from the investment or credited directly to the investment;

- (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (4) This regulation does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another regulation.

3.3.31 Trust money subject to specific powers

- (1) This regulation has effect for the purposes of section 3.3.17 of the Act.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep—
 - (a) a record of all dealings with the money to which the practice or associate is a party; and
 - (b) all supporting information in relation to the dealings—in a manner that enables the dealings to be clearly understood.
- (3) If an approved clerk is given a power to deal with trust money for or on behalf of another person, the clerk must keep—
 - (a) a record of all dealings with the money to which the clerk is a party; and
 - (b) all supporting information in relation to the dealings—in a manner that enables the dealings to be clearly understood.
- (4) The record, supporting information and power must be kept by the law practice or approved clerk as part of the practice's or clerk's trust records.

Reg. 3.3.31(2)
amended by
S.R. No.
31/2007
reg. 14(1)(a).

Reg. 3.3.31(3)
amended by
S.R. No.
31/2007
reg. 14(1)(a).

3.3.32 Register of powers and estates in relation to trust money

- (1) A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice, in relation to trust money.
- (2) Subregulation (1) does not apply where the law practice or associate is also required to act jointly with one or more persons who are not associates of the law practice.
- (3) The register of powers and estates must record—
 - (a) the name and address of the donor and date of each power; and
 - (b) the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

Reg. 3.3.33
revoked by
S.R. No.
31/2007
reg. 14(1)(b).

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3.3.34 Withdrawing trust money for legal costs—law practices

- (1) This regulation prescribes, for the purposes of section 3.3.20(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).

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- (3) The law practice may withdraw the trust money—
- (a) if—
 - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
 - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
 - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person; and
 - (b) if, before effecting the withdrawal, the practice gives or sends to the person—
 - (i) a request for payment, referring to the proposed withdrawal; or
 - (ii) a written notice of withdrawal.
- (4) The law practice may withdraw the trust money—
- (a) if the practice has given the person a bill relating to the money; and
 - (b) if—
 - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
 - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or

Reg. 3.3.34(5)
substituted by
S.R. No.
31/2007
reg. 14(2).

- (iii) the money otherwise becomes legally payable.
- (5) Instructions mentioned in subregulation (3)(a)(ii)—
 - (a) if given in writing, must be kept as a permanent record; or
 - (b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.
- (6) For the purposes of subregulation (3)(a)(iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

3.3.35 Withdrawing trust money for legal costs—approved clerks

- (1) This regulation prescribes, for the purposes of section 3.3.20(2)(a) of the Act, the procedure for the withdrawal of trust money held in a general trust account of an approved clerk for payment of legal costs owing to a barrister for whom the clerk acts by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).
- (3) The approved clerk may withdraw the trust money—
 - (a) if—
 - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or

- (ii) the money is withdrawn in accordance with instructions that have been received by the clerk and that authorise the withdrawal; or
 - (iii) the money is owed to the barrister by way of reimbursement of money already paid by the barrister on behalf of the person; and
 - (b) if, before effecting the withdrawal, the barrister or clerk gives or sends to the person—
 - (i) a request for payment, referring to the proposed withdrawal; or
 - (ii) a written notice of withdrawal.
- (4) The approved clerk may withdraw the trust money—
 - (a) if the barrister or clerk has given the person a bill relating to the money; and
 - (b) if—
 - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
 - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or
 - (iii) the money otherwise becomes legally payable.
- (5) Instructions mentioned in subregulation (3)(a)(ii)—
 - (a) if given in writing, must be kept as a permanent record; or

Reg. 3.3.35(5)
substituted by
S.R. No.
31/2007
reg. 14(3).

- (b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the approved clerk effects the withdrawal and a copy must be kept as a permanent record.
- (6) For the purposes of subregulation (3)(a)(iii), money is taken to have been paid by the barrister on behalf of the person when the relevant account of the barrister maintained by the approved clerk has been debited.

3.3.36 Keeping of trust records

- (1) This regulation has effect for the purposes of section 3.3.25 of the Act for the keeping in a permanent form of a law practice's or an approved clerk's trust records in relation to trust money received by the practice or clerk.
- (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) to (m) of the definition of "trust records" in section 3.3.2(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.
- (3) This regulation does not apply to a written direction referred to in section 3.3.13(1)(a) or 3.3.15(1) of the Act.

3.3.37 Keeping other records and information

Reg. 3.3.37
(Heading)
amended by
S.R. No.
31/2007
reg. 14(4)(a).

- (1) A record maintained under regulation 3.3.5 is, so far as it relates to particular information, to be kept by the law practice or approved clerk for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this Part to be kept by a law practice or an approved clerk is to be retained for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This regulation does not apply to records to which regulation 3.3.11, 3.3.24 or 3.3.36 applies.

Reg. 3.3.37(1)
amended by
S.R. No.
31/2007
reg. 14(4)(b).

Reg. 3.3.37(2)
amended by
S.R. No.
31/2007
reg. 14(4)(b).

3.3.38 Statements regarding receipt or holding of trust money

- (1) The Board may, by notice given under this regulation, require a law practice or an approved clerk to give the Board a statement—
 - (a) specifying whether or not, as the case may be, the practice or clerk has during a period specified by the Board received or held trust money; and
 - (b) if the practice or clerk has received or held trust money during that period, specifying to which of the following categories the trust money belongs—
 - (i) general trust money (being trust money other than that referred to in subparagraphs (ii) to (iv));

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- (ii) controlled money;
 - (iii) transit money;
 - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise), and may be withdrawn or varied by a further notice.
- (3) A notice may specify the time by which or the period during which the requirement is to be complied with.
- (4) A notice is given to—
- (a) a particular law practice or approved clerk by sending the notice by post to the practice or clerk; or
 - (b) a particular class of law practices or approved clerks by publishing the notice in a circular distributed generally to law practices or approved clerks of the class or in a magazine or other publication available generally to law practices or approved clerks of the class.
- (5) A law practice or an approved clerk—
- (a) must comply with a requirement imposed on it under this regulation and must do so by the time or during the period specified in the notice for compliance; and
 - (b) must not include in the statement any information that is false or misleading in a material particular.

Division 7—External examinations

3.3.39 Application of Division

This Division applies to a law practice that, or an approved clerk who, is required by the Act to have their trust records examined by an approved external examiner in respect of each audit year.

Note

This Division has a modified application to community legal centres—see regulation 3.3.51.

3.3.40 Appointment of external examiner

- (1) The law practice or approved clerk must appoint an approved external examiner within one month after receiving trust money (other than transit money).
- (2) An approved external examiner is not eligible to be appointed to examine the trust records of a law practice or an approved clerk if—
 - (a) the examiner carries out any work for the practice or clerk, other than—
 - (i) the examination of any records or accounts (other than trust records) kept by the practice or clerk on the practice's or clerk's own account or on behalf of other persons in connection with the business of the practice or clerk; or
 - (ii) advisory or consulting duties consequential on the examiner's function as examiner; or
 - (iii) the preparation of income tax returns for the practice or clerk; or
 - (b) any of the following is, or has been at any time in the last 2 years, engaged in keeping any trust records of the practice or clerk—

Reg. 3.3.40(1)
substituted by
S.R. No.
31/2007
reg. 14(5).

- (i) the examiner; or
 - (ii) a member of a firm of which the examiner is a member or employee; or
 - (iii) an employee of the examiner, or of a firm of which the examiner is a member or employee; or
- (c) the examiner is, or has been at any time in the last 2 years, an associate of the practice or an employee of the clerk; or
- (d) the examiner is a member of the immediate family of an associate of the practice, or of the clerk; or
- (e) the examiner is in practice as an Australian legal practitioner or in business as an approved clerk; or
- (f) the examiner is an associate of another legal practice.
- (3) Subregulation (2) does not apply if the Board gives prior written approval for the appointment.
- (4) A law practice or an approved clerk cannot appoint an approved external examiner unless the examiner signs a written consent in or to the effect of the form approved by the Board.

3.3.41 Notification of appointment

Within 14 days after appointing an approved external examiner, a law practice or an approved clerk must—

- (a) notify the Board of the appointment; and
- (b) give the examiner's written consent under regulation 3.3.40(4) to the Board.

3.3.42 Termination of appointment—show cause notice

- (1) If the Board considers that for any reason an approved external examiner appointed by a law practice or an approved clerk has not properly performed the examiner's duties, or may not properly perform them, the Board, by written notice, may require the practice or clerk to show cause why the examiner's appointment should not be terminated.
- (2) After considering any representations made by the law practice or approved clerk, the Board, by written notice, may require the practice or clerk to terminate the examiner's appointment, if the Board is satisfied that the examiner has not properly performed his or her duties or may not properly perform them.

3.3.43 Disqualification of appointed examiner

- (1) An approved external examiner appointed to examine the trust records of a law practice or an approved clerk is disqualified from examining those records if—
 - (a) the examiner carries out any work for the practice or clerk, other than—
 - (i) the examination of any records or accounts (other than trust records) kept by the practice or clerk on the practice's or clerk's own account or on behalf of other persons in connection with the business of the practice or clerk; or
 - (ii) advisory or consulting duties consequential on the examiner's function as examiner; or
 - (iii) the preparation of income tax returns for the practice or clerk; or

- (b) the examiner is engaged in keeping any trust records of the practice or clerk; or
 - (c) any of the following is, or has been at any time in the last 2 years, engaged in keeping any trust records of the practice or clerk—
 - (i) a member of a firm of which the examiner is a member or employee; or
 - (ii) an employee of the examiner or of a firm of which the examiner is a member or employee; or
 - (d) the examiner is an associate of the practice or an employee of the clerk; or
 - (e) the examiner is a member of the immediate family of an associate of the practice, or of the clerk; or
 - (f) the examiner is in practice as an Australian legal practitioner or in business as an approved clerk; or
 - (g) the examiner is an associate of another legal practice.
- (2) Subregulation (1) does not apply if the Board gives prior written approval for the examiner to examine the trust records of the law practice or approved clerk.

3.3.44 Termination generally

- (1) A law practice or an approved clerk must terminate the appointment of an approved external examiner if—
 - (a) the examiner is disqualified under regulation 3.3.43 from examining the trust records of the practice or clerk; or
 - (b) under regulation 3.3.42(2) the Board requires the practice or clerk to terminate the appointment.

- (2) A law practice or an approved clerk may terminate the appointment of an approved external examiner with the prior approval of the Board.
- (3) The Board may give approval under subregulation (2) if satisfied that it is reasonable in the circumstances for the practice or clerk to terminate the appointment.
- (4) The Board may require the law practice or approved clerk to supply any evidence the Board requires in order to be satisfied under subregulation (3).
- (5) A law practice or an approved clerk must notify the Board of the termination of the appointment of an approved external examiner within 14 days after the termination in the form approved by the Board.

3.3.45 Appointment of new examiner

- (1) Within one month after terminating the appointment of an approved external examiner, a law practice or an approved clerk must appoint another approved external examiner.
- (2) Regulations 3.3.40(2), (3) and (4) and 3.3.41 apply to the appointment of an approved external examiner under this regulation.

3.3.46 Statement of trust money

- (1) Within one month after the end of each audit year, a law practice or an approved clerk must prepare a statement containing the information, and in or to the effect of the form, approved by the Board and deliver a copy of the statement to—
 - (a) the approved external examiner appointed to examine the trust records of the practice or clerk; and
 - (b) the Board.

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- (2) Each copy of the statement must be certified and signed—
- (a) in the case of a law practice—by a principal of the law practice;
 - (b) in the case of an approved clerk—by the approved clerk.

Note

The statement must also be certified by the external examiner at the conclusion of the external examination—see regulation 3.3.48.

- (3) This regulation does not apply in relation to an audit year if the law practice or approved clerk lodges a statutory declaration under section 3.3.54(3) of the Act in relation to that year.

3.3.47 Duties of examiner

- (1) In examining the trust records of a law practice or an approved clerk, an approved external examiner must—
- (a) ascertain whether any trust account was kept by the law practice or approved clerk during the period covered by the examination; and
 - (b) make test examinations of any trust accounts and any statements relating to those accounts during that period, including statements in relation to deposits under Division 6 of Part 3.3 of the Act; and
 - (c) make a comparison as at 2 or more days as determined under subregulation (3) of—
 - (i) in the case of a law practice—the liabilities of the law practice to the practice's clients and to other persons in connection with the practice's practice, as shown in the trust records; and

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- (ii) in the case of an approved clerk—the liabilities of the clerk to the clients of the barristers on whose behalf the trust money was received and to other persons in connection with those barristers' practice, as shown in the trust records; and
 - (iii) the balance standing to the credit of a trust account; and
 - (d) for the purpose of enabling the examiner to express an opinion as to whether the law practice or approved clerk has complied with the requirements of the Act and these Regulations during the period covered by the examination—
 - (i) make checks and examine accounting records (including records other than trust records) and files representative of every part of the affairs of the law practice or the approved clerk's business that the examiner considers reasonable in the circumstances; and
 - (ii) make test examinations of the withdrawal of trust money by electronic funds transfer to determine if the transfers have been effected in accordance with regulation 3.3.13; and
 - (iii) in the case of a law practice—check that each principal of the law practice held an Australian practising certificate authorising the receipt of trust money.
- (2) In addition to the duties under subregulation (1), in examining the trust records of a law practice, an approved external examiner must make a test examination of—

r. 3.3.48

- (a) trust assets and liabilities, including securities, investments, financial instruments, wills and deeds over real property; and
 - (b) the register of controlled money maintained by the law practice; and
 - (c) the register of investments maintained by the law practice; and
 - (d) the register of powers and estates maintained by the law practice.
- (3) For the purposes of subregulation (1)(c)—
- (a) one day is to be the last day of the period covered by the examination; and
 - (b) the other day or days are to be a day or days selected by the examiner.
- (4) On or within one month after each day referred to in subregulation (3)(b), the examiner or a person assisting the examiner must, without notice to the law practice or approved clerk, visit the practice or the clerk's place of business and examine the trust records of the practice or clerk.

Reg. 3.3.47(4)
amended by
S.R. No.
31/2007
reg. 14(6)(a).

3.3.48 Examiner's annual report and certificate

On completing an examination of the trust records of a law practice or an approved clerk, the approved external examiner must—

- (a) sign a report and certificate containing the information, and in or to the effect of the form, approved by the Board; and
- (b) certify and sign the statement of trust money prepared by the law practice or approved clerk under regulation 3.3.46; and
- (c) give the law practice or approved clerk the signed report and certificate, and the certified and signed statement, on or before

15 February next following the period covered by the examination.

3.3.49 Statutory declaration if trust money not held

The prescribed form of statutory declaration for the purposes of section 3.3.54(3) of the Act is—

- (a) Form A1 for a law practice;
- (b) Form A2 for an approved clerk.

3.3.50 Statutory declaration on ceasing to hold trust money

The prescribed form of statutory declaration for the purposes of section 3.3.55(3)(b) of the Act is—

- (a) Form B1 for a law practice;
- (b) Form B2 for an approved clerk.

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Reg. 3.3.51
revoked by
S.R. No.
31/2007
reg. 14(6)(b).

Division 8—Miscellaneous

3.3.52 Exemptions

The Board may—

- (a) exempt a law practice or an approved clerk from complying with any of the provisions of this Part subject to any conditions that may be imposed by the Board; and
 - (b) at any time impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.
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PART 3.4—COSTS DISCLOSURE AND REVIEW

3.4.1 When does a matter have a substantial connection with this jurisdiction?

For the purposes of Part 3.4 of the Act, a matter involving a client of a law practice has a substantial connection with this jurisdiction in any of the following circumstances—

- (a) the client is a natural person and is resident in this jurisdiction;
- (b) the client is a body corporate and—
 - (i) the client carries on its business activities principally in this jurisdiction; or
 - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this jurisdiction;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this jurisdiction;
- (d) the legal services provided or to be provided relate to this jurisdiction, including, for example, legal services provided or to be provided for or in connection with—
 - (i) the conveyance or transfer of real property located in this jurisdiction; or
 - (ii) court proceedings in this jurisdiction.

3.4.2 Exceptions to requirement for disclosure

For the purposes of section 3.4.12(1)(f) of the Act, the following circumstances are prescribed as circumstances in which disclosure under section 3.4.9 or 3.4.10(1) of the Act is not required—

- (a) the client is an overseas-registered foreign lawyer or a foreign law practice (respectively within the meaning of Part 2.8 of the Act);
- (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or a Territory.

3.4.3 Interest on unpaid legal costs

- (1) This regulation is made for the purposes of section 3.4.21(4) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under section 3.4.21 of the Act or under a costs agreement.
- (2) The rate for the period commencing on and including the first commencement day and ending immediately before the second commencement day is the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** as at the relevant date.
- (3) The rate for the period commencing on and including the second commencement day is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.
- (4) In this regulation—

Cash Rate Target means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target;

Reg. 3.4.3
inserted by
S.R. No.
31/2007
reg. 15.

r. 3.4.4

first commencement day means the day on which regulation 15 of the Legal Profession (Amendment) Regulations 2007 comes into operation;

relevant date means the date the bill was issued by the law practice concerned;

second commencement day means the day that is 28 days after the first commencement day.

Reg. 3.4.4
inserted by
S.R. No.
112/2007
reg. 5.

3.4.4 Disclosure of costs to clients—form

- (1) A written statement in the form of Form B3 is prescribed for the purposes of section 3.4.9(3) of the Act in connection with the details referred to in section 3.4.9(1)(b)(i), (ia) and (ii), (h), (j), (k) and (m) of the Act.
- (2) The Commissioner must produce and maintain the fact sheet referred to in a written statement in the form of Form B3 and make it available on the Internet.
- (3) The Commissioner must develop the fact sheet in consultation with the professional associations.

Reg. 3.4.5
inserted by
S.R. No.
112/2007
reg. 5.

3.4.5 Notification of client's rights—form

- (1) A written statement in the form of Form B4 is prescribed for the purposes of section 3.4.35(3) of the Act.
- (2) The Commissioner must produce and maintain the fact sheet referred to in a written statement in the form of Form B4 and make it available on the Internet.
- (3) The Commissioner must develop the fact sheet in consultation with the professional associations.

PART 3.6—FIDELITY COVER

3.6.1 Protocols

- (1) The Board may enter into protocols with corresponding authorities for or with respect to any of the following matters—
 - (a) the forwarding of claims, or copies of claims, under section 3.6.33 of the Act and corresponding laws;
 - (b) the making and acceptance of requests to act as agent under Part 3.6 of the Act and corresponding laws;
 - (c) the processing or investigation of claims or aspects of claims as agent under Part 3.6 of the Act and corresponding laws.
- (2) A protocol may be amended, revoked or replaced by agreement of the parties to it.

PART 6.2—LEGAL SERVICES BOARD

6.2.1 Definitions

Reg. 6.2.1
substituted by
S.R. No.
31/2007
reg. 16.

In this Part—

ballot material means the material sent to a person under regulation 6.2.15(2);

candidate's indication of preferences means an indication of preferences prepared by a candidate under regulation 6.2.14;

candidate's personal statement means a personal statement prepared by a candidate under regulation 6.2.9;

close of voting means 5.00 p.m. on the last day of voting;

declaration envelope has the meaning given in regulation 6.2.15(2)(f);

election official means—

- (a) a person appointed as an election manager under regulation 6.2.2; or
- (b) a person appointed as a deputy election manager or election official under regulation 6.2.3;

electoral rolls means the roll of advocates and the roll of non-advocates;

last day of voting means the day fixed by the election manager under regulation 6.2.5 or as altered by the election manager under regulation 6.2.6;

nomination day has the meaning given in regulation 6.2.7(2)(b);

return envelope has the meaning given in regulation 6.2.15(2)(g);

roll of advocates means the roll kept under clause 1(1)(a) of Schedule 1 to the Act;

roll of non-advocates means the roll kept under clause 1(1)(b) of Schedule 1 to the Act;

working day means a day that is not a Saturday, Sunday or public holiday within the meaning of the **Public Holidays Act 1993**.

6.2.2 Election manager

From time to time the Board may appoint an election manager to conduct elections of elected members to the Board.

Reg. 6.2.2
inserted by
S.R. No.
31/2007
reg. 16.

6.2.3 Deputy election manager and other election officials

- (1) The election manager may appoint a deputy election manager to assist the election manager or to act in their absence and may appoint election officials to assist in the conduct of elections.
- (2) An appointment under subregulation (1) must be in writing and signed by the election manager.
- (3) A deputy election manager may exercise any power or perform any function of an election manager under these Regulations, other than the power of appointment under subregulation (1).

Reg. 6.2.3
inserted by
S.R. No.
31/2007
reg. 16.

6.2.4 Election officials not to be candidates

The election manager, deputy election manager and any election officials appointed under regulation 6.2.3 must not be candidates in the election.

Reg. 6.2.4
inserted by
S.R. No.
31/2007
reg. 16.

6.2.5 Last day of voting

- (1) For the purpose of an election, the election manager must fix a day by which postal votes in that election must be received by the election manager.

Reg. 6.2.5
inserted by
S.R. No.
31/2007
reg. 16.

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- (2) The last day of voting—
- (a) must be a working day; and
 - (b) must be at least 6 weeks after the day on which notice of the election is published in the Government Gazette under regulation 6.2.7(1).

Reg. 6.2.6
inserted by
S.R. No.
31/2007
reg. 16.

6.2.6 Change to last day of voting

- (1) If special circumstances exist, the election manager may alter the last day of voting and fix a different later day by notice published in the Government Gazette.
- (2) If ballot material has not yet been issued, the notice must indicate the week in which it is likely to be issued.
- (3) No later than 7 days after the publication of the notice in the Government Gazette, the election manager must cause a copy of the notice to be published in a daily newspaper circulating throughout Victoria.
- (4) For the purposes of subregulation (1), a special circumstance includes—
 - (a) an unforeseen delay in printing ballot material or in the processing of candidates' personal statements or indications of preferences; or
 - (b) a postal strike or any disruption to the postal service—

that would, in the opinion of the election manager, necessitate altering the last day of voting.

6.2.7 Notice of election

- (1) The Board must cause a notice of each election to be published in the Government Gazette.
- (2) The notice must specify—
 - (a) the vacancy for which the election is to be held; and
 - (b) the day by which nominations of candidates for the election must be received by the election manager (*nomination day*); and
 - (c) the name of the election manager; and
 - (d) the address at which the election manager will receive nominations; and
 - (e) the last day of voting.
- (3) The nomination day must be a working day that is at least 14 days after the day the notice of election is published in the Government Gazette.
- (4) No later than 7 days after the publication of the notice of election in the Government Gazette, the Board must cause a copy of the notice to be published in a daily newspaper circulating throughout Victoria.

Reg. 6.2.7
inserted by
S.R. No.
31/2007
reg. 16.

6.2.8 Nominations

- (1) A person wishing to be a candidate in an election must deliver or cause to be delivered to the election manager a nomination in Form C1 before 12 noon on the nomination day.
- (2) A nomination must be signed by the candidate and by 2 other local legal practitioners entitled to vote at the election.

Reg. 6.2.8
inserted by
S.R. No.
31/2007
reg. 16.

- (3) The Board must confirm that the person nominated is entitled to be a candidate and that the nominators are entitled to vote in the election.
- (4) If requested, the election manager must issue a receipt for a nomination.

Reg. 6.2.9
inserted by
S.R. No.
31/2007
reg. 16.

6.2.9 Candidate's personal statement

- (1) A candidate may lodge with the election manager a personal statement for inclusion in the ballot material.
- (2) A personal statement—
 - (a) must be no longer than 250 words; and
 - (b) must not refer to another candidate standing in the election without that person's written consent; and
 - (c) may be accompanied by a recent photograph of passport-photograph size for distribution with the statement; and
 - (d) must be lodged before 12 noon on the nomination day.
- (3) A consent under subregulation (2)(b) must be lodged with the personal statement.
- (4) A candidate who provides a photograph under subregulation (2)(c) must write his or her name on the back of the photograph.
- (5) The election manager may—
 - (a) liaise with any candidate with respect to the form and content of a personal statement;
 - (b) amend a personal statement in accordance with the written authorisation of the candidate.
- (6) The election manager must keep a record of any amendments made under subregulation (5)(b).

- (7) A candidate who lodges a personal statement is responsible for the accuracy and integrity of all statements contained in it.

6.2.10 No or insufficient nominations

Reg. 6.2.10
inserted by
S.R. No.
31/2007
reg. 16.

- (1) If no valid nominations are received in an election—
- (a) the election manager must notify the Board immediately after the nomination day; and
 - (b) the Board must cause a notice to be published in the Government Gazette as soon as practicable after the nomination day—
 - (i) stating that no valid nominations were received in the election; and
 - (ii) giving further notice of election in accordance with regulation 6.2.7.
- (2) In the case of an election of the non-advocate members, if only one valid nomination is received—
- (a) the election manager must notify the Board immediately after the nomination day; and
 - (b) the Board must cause a notice to be published in the Government Gazette as soon as practicable after the nomination day—
 - (i) stating that the candidate whose nomination was received is elected; and
 - (ii) in relation to the vacancy that has not been filled, giving further notice of election in accordance with regulation 6.2.7.

r. 6.2.11

Reg. 6.2.11
inserted by
S.R. No.
31/2007
reg. 16.

6.2.11 Uncontested elections

If the number of nominations received for an election is equal to the number of vacancies to be filled, the election manager must—

- (a) publish a notice in the Government Gazette declaring the candidate or candidates elected; and
- (b) forward a copy of the notice to the Board.

Reg. 6.2.12
inserted by
S.R. No.
31/2007
reg. 16.

6.2.12 Contested elections

If the number of nominations received for an election is greater than the number of vacancies to be filled, the election manager must—

- (a) announce the full name of each candidate on the nomination day; and
- (b) publish a notice of each nomination in the Government Gazette as soon as practicable after the nomination day.

Reg. 6.2.13
inserted by
S.R. No.
31/2007
reg. 16.

6.2.13 Preparation and form of ballot-papers

- (1) In the event of a contested election, the election manager must hold a ballot immediately after the nomination day to determine the order of candidates on the ballot-paper.
- (2) Candidates may be present at this ballot.
- (3) A ballot-paper—
 - (a) must be in Form C2; and
 - (b) must show the names of the candidates in the order determined under subregulation (1); and
 - (c) must not contain a candidate's title, qualifications or reference to any political or other affiliation or allegiance.

6.2.14 Candidate's indication of preferences

Reg. 6.2.14
inserted by
S.R. No.
31/2007
reg. 16.

- (1) A candidate may lodge with the election manager an indication of preferences containing the candidate's preferred order of voting.
- (2) A candidate's indication of preferences—
 - (a) must be in the form of a ballot-paper; and
 - (b) must be lodged in person by the candidate, or a person authorised by the candidate, no later than 3 days after the nomination day.
- (3) In an indication of preferences a candidate must—
 - (a) identify each candidate in the form and order in which the candidates appear on the ballot-paper; and
 - (b) place once only the figures 1, 2, 3, 4 (and so on as the case requires) in the squares opposite the names of the candidates so as to indicate the candidate's preference for them.

6.2.15 Dispatch of polling material

Reg. 6.2.15
inserted by
S.R. No.
31/2007
reg. 16.

- (1) No later than 7 days after the nomination day, the Board must supply the election manager with the electoral roll for the election.
- (2) At least 14 days before the last day of voting the election manager must post or deliver to each person on the electoral roll for the election—
 - (a) a ballot-paper made of a marked security paper; and
 - (b) any candidate's personal statement lodged in accordance with regulation 6.2.9; and
 - (c) any photograph lodged with a candidate's personal statement in accordance with regulation 6.2.9; and

- (d) any candidate's indication of preferences lodged in accordance with regulation 6.2.14; and
 - (e) if a candidate has not lodged a personal statement or indication of preferences that complies with these Regulations, a statement to that effect; and
 - (f) an envelope for the ballot-paper, indicating a place for the voter to sign and date it (*declaration envelope*); and
 - (g) a prepaid envelope bearing the election manager's address (*return envelope*); and
 - (h) instructions on how to vote; and
 - (i) notice of how and when the ballot material must be returned; and
 - (j) any other material that the election manager thinks is appropriate.
- (3) The election manager may specify formatting limitations that will apply to the publication of candidate statements and may alter the format of statements lodged in accordance with regulation 6.2.9 to comply with those limitations.
- (4) An election is not invalidated only because ballot material has been forwarded to a person who is not entitled to vote.

Reg. 6.2.16
inserted by
S.R. No.
31/2007
reg. 16.

6.2.16 Marking a vote

- (1) Subject to this regulation, a voter must mark his or her vote by placing once only the figures 1, 2, 3, 4 (and so on as the case requires) in the squares opposite the names of the candidates so as to indicate the voter's preference for them.

- (2) If there are only 2 candidates at an election, the requirements of subregulation (1) are sufficiently complied with in the case of any ballot-paper marked with the figure 1 opposite the name of only one candidate to indicate the voter's first preference.
- (3) If there are more than 2 candidates, the requirements of subregulation (1) are sufficiently complied with in the case of any ballot-paper marked with the figures 1, 2, 3, 4 (and so on as the case requires) opposite the names of all the candidates on the ballot-paper except one.
- (4) In the circumstances set out in subregulation (3), the voter is to be taken to have given his or her last preference vote to the candidate opposite whose name no figure is marked.

6.2.17 Return of ballot-papers

- (1) A voter must—
 - (a) insert the marked ballot-paper in the declaration envelope and seal that envelope; and
 - (b) sign and date the declaration envelope; and
 - (c) place the declaration envelope in the prepaid return envelope.
- (2) The voter must post or deliver the return envelope to the election manager at the address on the envelope, or at another address notified to the voter by the election manager, so as to reach the election manager by the close of voting.

Reg. 6.2.17
inserted by
S.R. No.
31/2007
reg. 16.

r. 6.2.18

Reg. 6.2.18
inserted by
S.R. No.
31/2007
reg. 16.

6.2.18 Issue of replacement ballot-papers

The election manager may issue a replacement ballot-paper to a voter if the voter gives the election manager a declaration to the effect that—

- (a) the voter has not received a ballot-paper or the ballot-paper has been lost, spoiled or destroyed; and
- (b) the voter has not already voted in the election.

Reg. 6.2.19
inserted by
S.R. No.
31/2007
reg. 16.

6.2.19 Withdrawal or death of candidate

- (1) A candidate for an election may withdraw his or her consent to the nomination by lodging a notice of retirement with the election manager at any time before the commencement of the scrutiny of votes in the election.
- (2) If a candidate withdraws or dies after the close of nominations but before the commencement of the scrutiny of votes in an election, the candidate's first preference votes are to be distributed amongst the other eligible candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates.

Reg. 6.2.20
inserted by
S.R. No.
31/2007
reg. 16.

6.2.20 Place where votes are to be counted

The election manager must designate the place where the votes are to be counted and must advise each candidate of that place.

Reg. 6.2.21
inserted by
S.R. No.
31/2007
reg. 16.

6.2.21 Scrutineers

- (1) A candidate may appoint one or more scrutineers to scrutinise the electoral activities set out in subregulation (2), but only one scrutineer for a candidate may be present at an electoral activity at any one time.

-
- (2) The electoral activities referred to in subregulation (1) are—
- (a) the opening and emptying of the ballot box or other container in which the declaration envelopes are kept;
 - (b) the processing of declaration envelopes;
 - (c) the counting and recounting of ballot-papers.
- (3) An appointment of a scrutineer must be in Form C3.
- (4) The election manager may have a scrutineer removed if—
- (a) more than one scrutineer for a candidate is present at an electoral activity at the one time; or
 - (b) the scrutineer touches a ballot-paper or otherwise interferes with or obstructs an electoral activity; or
 - (c) the scrutineer fails to obey a lawful instruction from an election official.
- (5) A person cannot be appointed as a scrutineer in an election if he or she is—
- (a) a member or employee of the Board; or
 - (b) a candidate in the election; or
 - (c) a candidate in any other election being held simultaneously with the election.
- (6) For the avoidance of doubt, a reference in subregulation (5) to a member of the Board includes a reference to the chairperson of the Board.

Reg. 6.2.22
inserted by
S.R. No.
31/2007
reg. 16.

6.2.22 Receipt of return envelopes

- (1) The election manager, with the assistance of any election officials, may on the receipt of return envelopes at any time before the close of voting—
 - (a) remove the declaration envelopes from the return envelopes; and
 - (b) separate the signed declaration envelopes from the unsigned declaration envelopes and record receipt of each declaration envelope on the electoral roll; and
 - (c) accept any declaration envelopes that are undated but disallow the unsigned declaration envelopes; and
 - (d) place each signed declaration envelope in a sealed postal ballot receptacle.
- (2) As soon as practicable after the close of voting, the election manager must, in accordance with subregulation (1), deal with all ballot-papers received on or before the close of voting that have not already been dealt with under that subregulation.
- (3) The election manager must reject any declaration envelope not received in accordance with regulation 6.2.17(2).
- (4) If it appears to the election manager that a voter has signed and returned more than one declaration envelope, the election manager must—
 - (a) accept the declaration envelope that appears to have been signed first by the voter;
 - (b) reject all other declaration envelopes that appear to have been returned by the voter—without opening the declaration envelopes.

6.2.23 Scrutiny of votes

As soon as practicable after the close of voting, the election manager must—

- (a) produce unopened all signed declaration envelopes containing ballot-papers received by the close of voting; and
- (b) open each signed declaration envelope, withdraw the ballot-paper and deposit it in the ballot box; and
- (c) when all ballot-papers have been deposited in the ballot box, withdraw the ballot-papers and count the votes in accordance with the Act and these Regulations.

Reg. 6.2.23
inserted by
S.R. No.
31/2007
reg. 16.

6.2.24 Adjournment of scrutiny

The election manager may from time to time adjourn the scrutiny of votes to a day and time fixed by the election manager and notified to the scrutineers.

Reg. 6.2.24
inserted by
S.R. No.
31/2007
reg. 16.

6.2.25 Notification and publication of results

- (1) The election manager must notify each candidate of the result of the election within 7 days after the day on which the scrutiny of votes in the election is completed.
- (2) As soon as practicable after all candidates have been notified in accordance with subregulation (1), the election manager must declare the result of the election by notice published in the Government Gazette.
- (3) The election manager must send a copy of the notice published in the Government Gazette to the Board.

Reg. 6.2.25
inserted by
S.R. No.
31/2007
reg. 16.

r. 6.2.26

Reg. 6.2.26
inserted by
S.R. No.
31/2007
reg. 16.

6.2.26 Recounts

At any time before notice of an election result is published in the Government Gazette, the election manager may (and must, if requested in writing by a candidate) conduct a recount of the votes in the election.

Reg. 6.2.27
inserted by
S.R. No.
31/2007
reg. 16.

6.2.27 Disposal of ballot-papers

At the end of the period of 60 days after notice of an election result is published in the Government Gazette, the election manager must destroy all ballot-papers, declaration envelopes and return envelopes used in the election.

PART 6.7—FUNDING

6.7.1 Maximum Fidelity Fund contribution per member

For the purposes of section 6.7.25(3) of the Act, the prescribed amount is—

- (a) \$100.00 per member in the case of a member employed by a community legal centre; or
- (b) \$1500.00 per member in any other case.

6.7.2 Maximum Fidelity Fund levy per member

(1) For the purposes of section 6.7.31(2) of the Act, the prescribed amount is—

- (a) \$110.00 per member in the case of a member employed by a community legal centre; or
- (b) \$1650.00 per member in any other case.

(2) For the purposes of section 6.7.32(4) of the Act, the maximum amounts are—

- (a) \$1650.00 in any 12 month period;
 - (b) \$8250.00 in total.
-

SCHEDULES

SCHEDULE 1

FORM A1

Regulation 3.3.49(a)

**STATUTORY DECLARATION IF TRUST MONEY NOT HELD—
LAW PRACTICE**

I, *[insert full name]*,

of *[insert name of law practice]*

of *[insert address]*

DECLARE THAT:

1. I am a principal of a law practice who is authorised to receive trust money.
2. The law practice of which I am a principal did not hold any trust money within the meaning of section 3.3.2 of the **Legal Profession Act 2004** in its trust account during the audit year ending on 31 October *[insert year]*.
3. *The law practice of which I am a principal received transit money within the meaning of section 3.3.2 of the **Legal Profession Act 2004** during the audit year ending on 31 October *[insert year]* and retained the particulars required by regulation 3.3.27 of the Legal Profession Regulations 2005.

** delete if not applicable*

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signed

Full Name *[block letters]*

DECLARED AT
in the State of Victoria

[place]

on *[date]*

Legal Profession Regulations 2005
S.R. No. 152/2005

Sch. 1

Before:

*[Name and address in legible
writing, type or stamp below
signature]*

A person authorised under
section 107A(1) of the **Evidence
Act 1958** to witness the signing
of a statutory declaration.

FORM A2

Regulation 3.3.49(b)

**STATUTORY DECLARATION IF TRUST MONEY NOT HELD—
APPROVED CLERK**

I, *[insert full name]* ,

of *[insert address]*

DECLARE THAT:

1. I am an approved clerk who is authorised to receive trust money.
2. I did not hold any trust money within the meaning of section 3.3.2 of the **Legal Profession Act 2004** in my trust account during the audit year ending on 31 October *[insert year]*.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signed

Full Name *[block letters]*

DECLARED AT *[place]*

in the State of Victoria

on *[date]*

Before:

[Name and address in legible writing, type or stamp below signature]

A person authorised under section 107A(1) of the **Evidence Act 1958** to witness the signing of a statutory declaration.

FORM B1

Regulation 3.3.50(a)

**STATUTORY DECLARATION ON CEASING TO HOLD TRUST
MONEY—LAW PRACTICE**

I, *[insert full name]* ,

of *[insert name of law practice]*

of *[insert address]*

DECLARE THAT:

1. I am or was a principal of a law practice that
on *[insert date]* ceased to be authorised to
receive trust money.
2. The law practice does not now hold any trust money, all
such trust money having been applied in accordance with
the **Legal Profession Act 2004**.

I acknowledge that this declaration is true and correct and I make it in the
belief that a person making a false declaration is liable to the penalties of
perjury.

Signed

Full Name *[block letters]*

DECLARED AT *[place]*

in the State of Victoria

on *[date]*

Before:

*[Name and address in legible
writing, type or stamp below
signature]*

A person authorised under
section 107A(1) of the **Evidence
Act 1958** to witness the signing
of a statutory declaration.

Sch. 1

FORM B2

Regulation 3.3.50(b)

**STATUTORY DECLARATION ON CEASING TO HOLD TRUST
MONEY—APPROVED CLERK**

I, *[insert full name]* ,

of *[insert address]*

DECLARE THAT:

1. I am or was an approved clerk who on *[insert date]*
ceased to be authorised to receive trust money.
2. I do not now hold any trust money, all such trust money
having been applied in accordance with the **Legal
Profession Act 2004**.

I acknowledge that this declaration is true and correct and I make it in the
belief that a person making a false declaration is liable to the penalties of
perjury.

Signed

Full Name *[block letters]*

DECLARED AT
in the State of Victoria

[place]

on *[date]*

Before:

*[Name and address in legible
writing, type or stamp below
signature]*

A person authorised under
section 107A(1) of the **Evidence
Act 1958** to witness the signing
of a statutory declaration.

FORM B3

Regulation 3.4.4

Sch. 1
Form B3
inserted by
S.R. No.
112/2007
reg. 6.

FORM OF DISCLOSURE OF COSTS TO CLIENTS

Legal Profession Act 2004

Legal costs—your right to know

You have the right to—

- negotiate a costs agreement with us
- receive a bill of costs from us
- request an itemised bill of costs within 30 days after you receive a lump sum bill from us
- request written reports about the progress of your matter and the costs incurred in your matter
- apply for costs to be assessed within 12 months if you are unhappy with our costs
- apply for the costs agreement to be set aside
- make a complaint to the Legal Services Commissioner. This includes making a complaint that involves a civil dispute to the Legal Services Commissioner within 60 days after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within 30 days after the request was complied with
- accept or reject any offer we make for an interstate costs law to apply to your matter
- notify us that you require an interstate costs law to apply to your matter

For more information about your rights, please read the fact sheet entitled *Legal costs—your right to know*. You can ask us for a copy, or obtain it from the Legal Services Commissioner (or download it from their website).

Sch. 1

Sch. 1
Form B4
inserted by
S.R. No.
112/2007
reg. 6.

FORM B4

Regulation 3.4.5

FORM OF NOTIFICATION OF CLIENT'S RIGHTS

Legal Profession Act 2004

Your rights in relation to legal costs

The following avenues are available to you if you are not happy with this bill—

- requesting an itemised bill
- discussing your concerns with us
- having our costs assessed
- making a complaint to the Legal Services Commissioner
- applying to set aside our costs agreement

There may be other avenues available in your State or Territory (such as mediation).

Time limits apply to the avenues for resolving costs disputes.

For more information about your rights, please read the fact sheet titled *Your right to challenge legal costs*. You can ask us for a copy, or obtain it from the Legal Services Commissioner (or download it from their website).

FORM C1

Regulation 6.2.8(1)

NOMINATION FORM

Legal Services Board

Advocate/Non-advocate⁽¹⁾

Sch. 1
Form C1
inserted by
S.R. No.
31/2007
reg. 17.

Legal Profession Regulations 2005, regulation 6.2.8(1)

CANDIDATE

Name

Postal address for correspondence

Date of admission

Form in which given names are to appear on ballot-paper⁽²⁾

To the election manager: We, the local legal practitioners named below, being enrolled on the roll of advocates/roll of non-advocates⁽¹⁾, nominate the local legal practitioner of not less than 5 years' standing referred to above as a candidate for election to the Legal Services Board.

NOMINATORS

Name

Postal address for correspondence

Signature

Date

Name

Postal address for correspondence

Signature

Date

Candidate's declaration of consent:

I consent to be nominated as a candidate for election to the Legal Services Board as an advocate/non-advocate member to represent electors on the advocates'/non-advocates' roll⁽¹⁾.

I declare that I am qualified to be a candidate under the provisions of the **Legal Profession Act 2004⁽³⁾**.

Signature of candidate

Date

(1) *Delete whichever is not appropriate*

(2) *You may use an initial or initials or common abbreviation or alternative for your given names*

(3) *A candidate should ensure that he or she is qualified to be a candidate.*

Sch. 1

Sch. 1
Form C2
inserted by
S.R. No.
31/2007
reg. 17.

FORM C2

Regulation 6.2.13(3)(a)

BALLOT-PAPER

Legal Services Board

[Advocate/Non-advocate] Roll

Number the boxes from 1 to [*insert number of candidates*] in the order of your choice.

You must number EVERY box.

You must NOT use any number more than once.

[Candidate name]

[Candidate name]

[Candidate name]

[Candidate name]

[Candidate name]

[Candidate name]

Dimensions of ballot-paper: 105 mm × 210 mm.

FORM C3

Regulation 6.2.21(3)

**APPOINTMENT AND DECLARATION
OF SCRUTINEER**

Legal Services Board

Advocate/Non-advocate Roll⁽¹⁾

Legal Profession Regulations 2005, regulation 6.2.21(3)

Candidate

Name
Address

Scrutineer

Name
Address

Appointment

I, a candidate for election as an elected member of the Legal Services Board at the election to be held on [*insert date*], appoint the person named above to be my scrutineer.

Candidate's signature

Date

Scrutineer's declaration:

I, the scrutineer named above, undertake to be a scrutineer for the candidate named above and declare that I am an eligible person to be appointed as a scrutineer⁽²⁾.

Scrutineer's signature

Date

in the presence of

Name and signature of witness

Date

- (1) *Delete whichever is not appropriate*
(2) *Regulation 6.2.21(5) of the Legal Profession Regulations 2005 provides that a person cannot be appointed as a scrutineer in an election if he or she is—*
(a) *a member or employee of the Legal Services Board; or*
(b) *a candidate in the election; or*
(c) *a candidate in any other election being held simultaneously with the election.*

Sch. 2

Sch. 2
inserted by
S.R. No.
31/2007
reg. 18.

SCHEDULE 2

Regulation 2.2.1

**PRESUMPTIONS ABOUT TAKING OR USING NAME, TITLE
OR DESCRIPTION**

1. For the purposes of section 2.2.4(1A) of the Act, the kinds of persons specified in column 3 of the following Table are persons who are entitled, in the circumstances specified opposite in column 4, to take or use a name, title or description specified opposite in column 2.

TABLE

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Name, title or description</i>	<i>Kinds of persons who are entitled to take or use name, title or description</i>	<i>Circumstances in which the persons are entitled to take or use name, title or description</i>
1	legal practitioner	Australian legal practitioner	all circumstances (no restriction)
2	legal practitioner	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate

Legal Profession Regulations 2005
S.R. No. 152/2005

Sch. 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Name, title or description</i>	<i>Kinds of persons who are entitled to take or use name, title or description</i>	<i>Circumstances in which the persons are entitled to take or use name, title or description</i>
3	barrister and solicitor, or solicitor and barrister, or solicitor, or attorney	Australian legal practitioner	when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a solicitor
4	barrister and solicitor, or solicitor and barrister, or solicitor, or attorney	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a solicitor as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
5	barrister	Australian legal practitioner	when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a barrister

Legal Profession Regulations 2005
S.R. No. 152/2005

Sch. 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Name, title or description</i>	<i>Kinds of persons who are entitled to take or use name, title or description</i>	<i>Circumstances in which the persons are entitled to take or use name, title or description</i>
6	barrister	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a barrister as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
7	counsel	Australian legal practitioner	all circumstances (no restriction)
8	counsel	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate; or

Legal Profession Regulations 2005
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Sch. 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Name, title or description</i>	<i>Kinds of persons who are entitled to take or use name, title or description</i>	<i>Circumstances in which the persons are entitled to take or use name, title or description</i>
			when the Australian lawyer, not holding an Australian practising certificate, provides legal service to his or her employer, or to a related entity, in the ordinary course of his or her employment and for no fee, gain or reward other than his or her ordinary remuneration as an employee
9	Senior Counsel or SC	Australian lawyer	when the Australian lawyer currently holds the status of Senior Counsel, as recognised by the High Court or a Supreme Court of any jurisdiction
10	Queen's Counsel or QC, or King's Counsel or KC, or Her Majesty's Counsel, or His Majesty's Counsel	Australian lawyer	when the Australian lawyer currently holds the appropriate status, as conferred by the Crown in any capacity or as recognised by the High Court or a Supreme Court of any jurisdiction

2. In this Schedule—

Australian law means a law of the Commonwealth or of a State or Territory;

employee of an entity means a person who is employed or engaged under a contract of service or contract for services in or by the entity whether or not—

- (a) the person works full time, part time, or on a temporary or casual basis; or
- (b) the person is a law clerk or articled clerk;

government agency means—

- (a) a government department of the Commonwealth or of a State or Territory; or
 - (b) a body that is established by or under the law of the Commonwealth or of a State or Territory for a public purpose or to exercise governmental functions.
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ENDNOTES

1. General Information

The Legal Profession Regulations 2005, S.R. No. 152/2005 were made on 29 November 2005 by the Lieutenant-Governor as the Governor's Deputy with the advice of the Executive Council under section 7.2.17 of the **Legal Profession Act 2004**, No. 99/2004 and came into operation on 12 December 2005: regulation 1.1.3.

The Legal Profession Regulations 2005 will sunset 10 years after the day of making on 29 November 2015 (see section 5 of the **Subordinate Legislation Act 1994**).

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Legal Profession Regulations 2005 by statutory rules, subordinate instruments and Acts.

Legal Profession (Amendment) Regulations 2007, S.R. No. 31/2007

Date of Making: 8.5.07

Date of Commencement: Regs 5–14, 16–18 on 9.5.07: reg. 3(1); reg. 15 on 8.11.07: reg. 3(2)

Legal Profession (Further Amendment) Regulations 2007, S.R. No. 112/2007

Date of Making: 9.10.07

Date of Commencement: 9.10.07

3. Explanatory Details

No entries at date of publication.