



Queensland

*Legal Profession Act 2004*

# Legal Profession Regulation 2004

Reprinted as in force on 30 June 2006

Reprint No. 1G

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# Information about this reprint

This regulation is reprinted as at 30 June 2006. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

**Replacement reprint date** If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

# Legal Profession Regulation 2004

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# **Legal Profession Regulation 2004**

[as amended by all amendments that commenced on or before 30 June 2006]

## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Legal Profession Regulation 2004*.

### **2 Commencement**

This regulation commences on 1 July 2004.

### **3 Definitions**

The dictionary in schedule 2 defines particular words used in this regulation.

## **Part 2 Prescribed accounts**

### **Division 1 Key terms**

#### **4 What is a prescribed account—Act, s 203**

A prescribed account is an account kept by the chief executive, at a financial institution at which trust accounts are kept, for deposits by solicitors under chapter 2, part 8 of the Act.

**5 Trust account balance**

- (1) For this part, a solicitor's *trust account balance* at a particular time is—
  - (a) if the solicitor is keeping only 1 trust account—the balance in the trust account at the time; or
  - (b) if the solicitor is keeping 2 or more trust accounts—the total of the balances in the trust accounts at the time.
- (2) The trust accounts mentioned in subsection (1)(a) and (b) do not include a trust account being kept by the solicitor for the exclusive benefit of a particular person or persons.

**6 Prescribed account balance**

For this part, a solicitor's *prescribed account balance* at a particular time is the amount the solicitor is keeping on deposit in a prescribed account at the time.

**7 Combined balance**

For this part, a solicitor's *combined balance* at a particular time is the total of the solicitor's trust account balance and the solicitor's prescribed account balance at the time.

**Division 2 Requirements****8 Amount required to be held in a prescribed account**

- (1) A solicitor must keep at least the minimum amount on deposit in a prescribed account.
- (2) The minimum amount applying to a solicitor at any time during a year is the amount that is two-thirds of the solicitor's lowest combined balance at any time during the previous year.
- (3) The minimum amount calculated under subsection (2) is to be rounded down to the nearest \$100.
- (4) The amount that a solicitor must keep on deposit in a prescribed account to comply with this section must be

deposited into a prescribed account from a trust account kept by the solicitor.

- (5) Subsection (1) does not apply to a solicitor during a year if the solicitor's combined balance at any time during the previous year was less than \$3000.
- (6) This section applies subject to sections 9 to 11.

## **9 Withdrawal from prescribed account to operate trust account**

- (1) A solicitor may withdraw an amount that the solicitor is keeping on deposit in a prescribed account in order to operate a trust account and keep the trust account in credit.
- (2) Subsection (1) applies even though the solicitor's prescribed account balance after the withdrawal is less than the minimum amount under section 8.
- (3) After making the withdrawal, the solicitor is not required to make further deposits into a prescribed account in order to comply with section 8(1) unless, for 30 consecutive days, the solicitor's combined balance is at least the amount of the solicitor's lowest combined balance at any time during the previous year.
- (4) A reference in this section to a solicitor withdrawing an amount from a prescribed account is a reference to—
  - (a) the solicitor withdrawing the amount from the prescribed account under arrangements agreed between the chief executive and the financial institution; or
  - (b) the chief executive paying the amount from the prescribed account to the solicitor.

## **10 Requirement at start of each year**

From 1 to 20 January in a year, a solicitor is taken to be complying with section 8 if the solicitor's prescribed account balance is at least the amount that the solicitor's prescribed account balance was required to be on 31 December in the previous year.

**11 Starting practice as a solicitor**

- (1) Section 8 does not apply to a solicitor until 21 January in the year after the year in which the solicitor starts practice.
- (2) Subsection (1) applies to a solicitor whether the solicitor started or starts practice before or after 1 July 2004.

**12 Certificate about compliance**

- (1) At the end of each financial period under the *Trust Accounts Act 1973*, a solicitor must obtain from the solicitor's auditor, and give to the society, a certificate in the approved form about the solicitor's compliance with this part during the financial period.
- (2) The certificate must be given to the society at the same time the solicitor gives an auditor's report under the *Trust Accounts Act 1973*, section 16(1)(b) for the financial period.
- (3) In this section—  
*solicitor's auditor* means the solicitor's auditor under the *Trust Accounts Act 1973*, section 16.

**Part 3 Other matters****13 Agencies with government legal officers—Act, s 10**

Each of the following agencies is prescribed for section 10(1)(a) of the Act—

- the Board of Architects of Queensland;
- the Board of Professional Engineers of Queensland;
- the Commission for Children and Young People;
- the Crime and Misconduct Commission;
- the office of Information Commissioner;
- the Office of the Ombudsman;
- the Office of the Queensland Parliamentary Counsel;



- the parliamentary service;
- the Queensland Building Services Authority;
- Queensland Treasury Corporation;
- the Residential Tenancies Authority;
- the Workers' Compensation Regulatory Authority.

**14 Criteria for deciding home jurisdiction of associate of law practice in particular circumstances—Act, s 12(3)(b)(iii)**

The criteria for deciding the jurisdiction of an associate of a law practice for section 12(3)(b)(iii) of the Act are as follows—

- (a) if the associate has a place of residence in Australia—the jurisdiction of the associate's place of residence;
- (b) otherwise—the jurisdiction of the associate's last place of residence in Australia.

**15 Persons engaging in activities who need not be Australian legal practitioners—Act, s 24(2)(f)**

- (1) The purpose of this section is to authorise the persons, and the activities that the persons may engage in, for section 24(2)(f) of the Act.
- (2) In the following table, each of the persons listed is authorised to engage in the activities stated opposite.

<b>authorised person</b>	<b>activity</b>
1. a corporation that is a community legal service under the <i>Personal Injuries Proceedings Act 2002</i> , section 67A(2)	providing legal services to the community or a section of the community
2. a publicly funded, nonprofit corporation whose primary purpose is to provide legal services to Aboriginal or Torres Strait Islander people	providing legal services to Aboriginal or Torres Strait Islander people

authorised person	activity
3. a publicly funded, nonprofit corporation whose primary purpose is to represent a corporation mentioned in item 1 or 2	providing legal services, to a client of a corporation it is representing, under an agreement with the represented corporation

(3) In this section—

*nonprofit corporation* means a corporation formed for a purpose other than financial gain for its members.

*publicly funded* means obtaining most of its funding from public sources.

## 16 Fees—Act, s 42

The fees stated in schedule 1 are the fees that the board must charge for the matters stated.

## 17 Working out periods of supervised legal practice—Act, ss 59 and 77

- (1) This section applies to working out if a person has undertaken a period or periods equivalent to 18 months or 2 years supervised legal practice for section 59(3) or 77(1) of the Act.
- (2) Non-continuous periods of supervised legal practice undertaken by a person are to be aggregated.
- (3) A period of supervised legal practice, during which a person works less than 35 hours a week, must be multiplied by the person's total hours of work each week during the period and divided by 35.

*Example—*

A person undertakes 4 years of supervised legal practice, during which the person works for 17½ hours each week. The 4 year period must be multiplied by 17½ and divided by 35, giving a period equivalent to 2 years supervised legal practice.

- (4) A period of supervised legal practice is not taken to be equivalent to a longer period merely because a person works for more than 35 hours a week during the period.

- (5) A period of supervised legal practice includes—
  - (a) any periods of leave taken during the period that do not total more than 6 weeks in a calendar year; and
  - (b) any public holidays during the period.
- (6) If, during a period of supervised legal practice, a person takes leave for a period or periods totalling more than 6 weeks in a calendar year, the period of supervised legal practice—
  - (a) includes 6 weeks of the leave; and
  - (b) does not include the remaining period of leave taken during the calendar year.

## **18 Requirements for professional indemnity insurance—Act, ss 50 and 74**

- (1) For section 50(3) of the Act, professional indemnity insurance complies with the Act in relation to a practising certificate granted by the bar association if—
  - (a) the insurance is for at least \$1.5 million; and
  - (b) the insurance—
    - (i) complies with a requirement under an indemnity rule made by the bar association; or
    - (ii) is provided by an insurer approved by the bar association.
- (2) For section 50(3) of the Act, professional indemnity insurance complies with the Act in relation to a practising certificate granted by the law society if the insurance—
  - (a) is for at least \$1.5 million; and
  - (b) complies with a requirement under an indemnity rule made by the law society.
- (3) An interstate legal practitioner's professional indemnity insurance complies with the requirements for section 74(1)(a)(ii) of the Act if—
  - (a) the insurance complies with subsection (1) or (2); or
  - (b) the insurance—
    - (i) is for at least \$1.5 million; and

- (ii) complies with a requirement under a corresponding law for the interstate practising certificate held by the practitioner.
- (4) Subsection (3)(b)(i) does not apply to an interstate legal practitioner who is a barrister.

**19 Particulars required to be included in the register of local practising certificates—Act, s 82**

- (1) A register kept by a regulatory authority under section 82 of the Act must include the following particulars about each local legal practitioner—
- (a) the practitioner's name;
  - (b) the type of local practising certificate held by the practitioner;<sup>1</sup>
  - (c) the practitioner's year of admission;
  - (d) particulars of any incorporated legal practice of which the practitioner is an officer or employee, including its name and Australian Company Number and the names of its directors;
  - (e) the address of each office at which the practitioner practises or provides legal services and, if more than 1 office, an indication as to which is the principal office;
  - (f) if the practitioner is a member or employee of a partnership or is an officer or employee of an incorporated legal practice—the address of each office at which the partnership or incorporated legal practice practises or provides legal services and, if more than 1 office, an indication as to which is the principal office;
  - (g) if the practitioner is employed otherwise than by a partnership or incorporated legal practice—the name of the employer and the address of the employer's principal office;

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<sup>1</sup> Section 226 (Rules other than legal profession rule) of the Act provides for the making of rules, by a regulatory authority, about particular matters including the types of practising certificates that the regulatory authority may grant or renew.

- (h) the telephone number, any facsimile number and any document exchange address of the practitioner at each office at which the practitioner practises or provides legal services.
- (2) Subsection (1) does not limit other information that may be included in the register at the request, or with the consent, of a local legal practitioner including, for example, a special area of legal practice that the practitioner is engaged in.
- (3) Despite subsection (1), a register need not include particular information about a local legal practitioner if—
  - (a) the practitioner has asked the regulatory authority not to include the information; and
  - (b) the regulatory authority is satisfied the practitioner may be at risk of harm if the information is included or there is another good reason not to include the information.

*Example for paragraph (b)—*

A local legal practitioner has obtained a domestic violence order against a previous spouse and changed jobs and addresses to avoid further threatened violence.

## **20 Application of ch 2, pt 7 to defaults of particular barristers—Act, s 145**

Chapter 2, part 7 does not apply to the default of an interstate legal practitioner who is a barrister.

## **21 Caps on payments—Act, s 182**

- (1) The maximum amount that may be paid from the fidelity fund for an individual claim is \$200000.
- (2) The maximum aggregate amount that may be paid from the fidelity fund for all claims made in relation to an individual law practice is \$2000000.

**22 Interstate legal practitioner becoming authorised to withdraw from local trust account—Act, s 198**

- (1) This section applies to an interstate legal practitioner who, whether alone or with a co-signatory, becomes authorised to withdraw money from a local trust account.
- (2) Within 7 days after the authorisation starts, the practitioner must give the law society a notice, in the law society approved form, that includes the following information—
  - (a) the practitioner's name;
  - (b) the corresponding law under which the practitioner's current practising certificate was issued, including the name of the corresponding authority that issued the certificate;
  - (c) the practitioner's principal business address;
  - (d) details of the trust account, including—
    - (i) the name and address of the law practice operating the account; and
    - (ii) the name of the financial institution with which the account is held; and
    - (iii) the names of any other signatories to the account;
  - (e) the day on which the authorisation started.
- (3) The practitioner must give the law society a notice, in the law society approved form, within 7 days after—
  - (a) the authorisation ends; or
  - (b) there is a change in information previously notified to the law society under this section.
- (4) The following requirements apply as if the practitioner were a local legal practitioner—
  - (a) within 7 days after the authorisation starts, the practitioner must pay to the fidelity fund the contribution payable under section 156 of the Act for an application for the grant of a local practising certificate;
  - (b) while the authorisation is in force, the practitioner must pay to the fidelity fund, at the start of each financial year after the financial year in which the authorisation starts,

the contribution payable under section 156 of the Act for an application for the renewal of a local practising certificate;

- (c) if a levy is made under section 157 of the Act in relation to a period that includes the time the authorisation is in force, the practitioner must pay the levy to the fidelity fund.

### **23 Application of particular legal profession rules—Act, s 224**

- (1) Rules 81—108 and 118—126 of the 2004 Barristers Rule do not apply to an employee of a corporation mentioned in section 15(2), table, item 2, column 1.
- (2) This section applies despite rule 142 of the 2004 Barristers Rule.
- (3) In this section—

*2004 Barristers Rule* means the rule in the *Legal Profession (Barristers) Rule 2004*, schedule.

### **24 Limit on fees set by administration rule—Act, ss 226 and 228**

A regulatory authority may not set fees under an administration rule for the grant or renewal of a practising certificate that differ according to whether the legal practitioner is a member of the regulatory authority.

### **25 Covering cost of costs assessor—Act, s 272**

- (1) The commissioner may, by written notice to a complainant, require the complainant—
  - (a) to pay an amount to the commissioner, before a costs assessment is undertaken, to cover the cost of the costs assessor; or
  - (b) to agree, before a costs assessment is undertaken, to pay the commissioner the cost of the costs assessor if the result of the assessment is that the costs charged or

claimed by the relevant law practice are not to be reduced or are not to be reduced by at least 15%.

- (2) The commissioner may, by written notice to a law practice, require it to pay the cost of a costs assessor if the result of the cost assessment is that the costs charged or claimed by the law practice are to be reduced by at least 15%.

**26 Discipline register—Act, s 296(2)(e)**

The discipline register must include the date of birth of the person against whom the disciplinary action was taken.

**27 Application of ch 4—Act, s 316**

Chapter 4 does not apply to an interstate legal practitioner who is a barrister.

**28 Disclosure of information relating to solicitors complaints tribunal—Act, s 637(6)**

- (1) This section applies to information obtained by the commissioner under section 637 of the Act.
- (2) A person may apply to the Supreme Court for an order that allows the commissioner to disclose information, including by giving the person access to, or a copy of, a document.

## **Part 4 Transitional**

**29 Transitional—prescribed accounts**

- (1) Under section 631 of the Act, particular accounts kept by the society were vested in the chief executive on 1 July 2004 and became prescribed accounts for the persons to whom the accounts related.
- (2) A reference in part 2 to a solicitor's prescribed account balance is, in relation to a time before 1 July 2004, a reference



to the amount the solicitor was keeping on deposit with the society at the time under LPA s 51.

- (3) A reference in section 9(3) to a withdrawal includes a withdrawal, before 1 July 2004, from an amount a solicitor was keeping on deposit with the society under LPA s 51, in order to operate a trust account and keep the trust account in credit.
- (4) A reference in section 12 to a solicitor's compliance with part 2 during a financial period includes, for the part of the first financial period before the commencement of part 2, the solicitor's compliance with LPA s 51.
- (5) In this section—

*first financial period* means the financial period ending on 31 March 2005.

*LPA s 51* means the *Legal Practitioners Act 1995*, section 51.

### **30 Transitional—certificate of compliance**

- (1) This section applies if—
  - (a) before the repeal of the *Legal Practitioners Regulation 1996*, a solicitor had obtained an extension of time mentioned in section 3(4) of that regulation; and
  - (b) the extension was to a time on or after 1 July 2004; and
  - (c) immediately before 1 July 2004, the solicitor had not given the society a certificate under section 3 of that regulation relating to the financial period ending on 31 March 2004.
- (2) The solicitor must give the certificate to the society within the extended time.

### **31 Transitional—fees for admission**

- (1) This section applies in relation to a person's application for admission as a legal practitioner at sittings to be held in July 2004 (a *relevant application*).
- (2) The fee stated in schedule 1, item 1, does not apply to the board's consideration of the relevant application.

- (3) The person must pay the fee that would have been payable under the relevant previous admission rules if the person had applied for admission on 30 June 2004.

## **Part 5                      Repeal**

### **32        Repeal of Queensland Law Society (Indemnity) Rule 1987**

The *Queensland Law Society (Indemnity) Rule 1987* is repealed.

### **33        Repeal of Queensland Law Society Rules 1987**

The *Queensland Law Society Rules 1987* are repealed.

**Schedule 1      Fees**

section 16

	\$
1 Board's consideration of an application for admission as a legal practitioner . . . . .	240.00
2 Examination fee for a board examination . . . . .	119.00
3 Application for admission as a student-at-law. . . . .	175.00
4 Application for consent to enter into articles of clerkship.	41.00

## Schedule 2      Dictionary

### section 3

*combined balance*, for part 2, see section 7.

*prescribed account balance*, for parts 2 and 4, see section 6.

*previous admission rules* means—

(a) the *Barristers' Admission Rules 1975*; or

(b) the *Solicitors' Admission Rules 1968*.

*solicitor*, for parts 2 and 4, see section 203 of the Act.

*trust account*, for parts 2 and 4, see section 203 of the Act.

*trust account balance*, for part 2, see section 5.

*year*, for part 2, means a calendar year.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 June 2006. Future amendments of the Legal Profession Regulation 2004 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2004	
1A	2004 SL No. 145	30 July 2004	
1B	2004 SL No. 274	10 December 2004	
1C	2005 SL No. 74	29 April 2005	
1D	2005 Act No. 28	31 May 2005	
1E	—	1 June 2005	provs exp 31 May 2005
1F	2005 SL No. 145	1 July 2005	
1G	2006 SL No. 168	30 June 2006	

## 5 List of legislation

### **Legal Profession Regulation 2004 SL No. 109**

made by the Governor in Council on 24 June 2004

notfd gaz 25 June 2004 pp 573–81

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2004 (see s 2)

exp 1 September 2014 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Legal Profession Amendment Regulation (No. 1) 2004 SL No. 145**

notfd gaz 30 July 2004 pp 1009–10

commenced on date of notification

### **Legal Profession Amendment Regulation (No. 2) 2004 SL No. 274**

notfd gaz 10 December 2004 pp 1195–8

commenced on date of notification

### **Legal Profession Amendment Regulation (No. 1) 2005 SL No. 74**

notfd gaz 29 April 2005 pp 1392–5

commenced on date of notification

### **Freedom of Information and Other Legislation Amendment Act 2005 No. 28 ss 1–2(3)–(4), ch 3 pt 2**

date of assent 31 May 2005

commenced on date of assent (see s 2(3)–(4))

### **Legal Profession Amendment Regulation (No. 1) 2005 SL No. 74**

notfd gaz 29 April 2005 pp 1392–5

commenced on date of notification

**Freedom of Information and Other Legislation Amendment Act 2005 No. 28 ss 1–2(3)–(4), ch 3 pt 2**

date of assent 31 May 2005

commenced on date of assent (see s 2(3)–(4))

**Legal Profession Amendment Regulation (No. 2) 2005 SL No. 145**

notfd gaz 1 July 2005 pp 763–6

commenced on date of notification

**Legal Profession Amendment Regulation (No. 1) 2006 SL No. 168**

notfd gaz 30 June 2006 pp 1060–7

ss 1–2 commenced on date of notification

remaining provisions commenced 30 June 2006 (see s 2)

## 6 List of annotations

**Agencies with government legal officers—Act, s 10**

s 13 amd 2004 SL No. 145 s 3; 2005 SL No. 74 s 3

**PART 5—REPEAL**

pt hdg prev pt hdg om R1 (see RA s 7(1)(k))

pres pt hdg ins 2005 SL No. 145 s 3

**Repeal of Queensland Law Society (Indemnity) Rule 1987**

s 32 prev s 32 exp 31 May 2005 (see s 32(4))

pres s 32 ins 2005 SL No. 145 s 3

**Repeal of Queensland Law Society Rules 1987**

s 33 prev s 33 om 2005 No. 28 s 90

pres s 33 ins 2006 SL No. 168 s 4

**Division 1—Trust Accounts Regulation 1999**

div hdg om R1 (see RA s 7(1)(k))

**Records of Solicitors' Board and Barristers' Board**

s 34 prev s 34 om R1 (see RA s 40)

pres s 34 ins 2004 SL No. 274 s 3

om 2005 No. 28 s 90

**Amendment of Queensland Law Society Rule 1987**

s 35 prev s 35 om R1 (see RA s 40)

pres s 35 ins 2005 SL No. 74 s 4

exp 31 May 2005 (see s 35(5))

**Division 2—Uniform Civil Procedure (Fees) Regulation 1999**

div hdg om R1 (see RA s 7(1)(k))

**Transitional—practising certificates**

s 36 prev s 36 om R1 (see RA s 40)

pres s 36 ins 2005 SL No. 74 s 4

exp 31 May 2005 (see s 36(4))

**Repeal of Continuing Legal Education Rule 1988**

**s 37**      prev s 37 om R1 (see RA s 40)  
              pres s 37 ins 2005 SL No. 74 s 4  
              exp 31 May 2005 (see s 37(3))

**Insertion of new pt 5**

**s 38**      om R1 (see RA s 40)

**Amendment of sch 1 (Fees payable in the Supreme Court and the District Court)**

**s 39**      om R1 (see RA s 40)