

# Legal Profession Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 312

Made under the

*Legal Profession Act 2007*

## General Outline

*Legal Profession Amendment Regulation (No. 1) 2014*

### Authorising law

Section 715 of the *Legal Profession Act 2007* (the Act)

### Policy objectives and the reasons for them

The objectives of the *Legal Profession Amendment Regulation (No. 1) 2014* (the Amendment Regulation) are to amend the *Legal Profession Regulation 2007* (the Regulation) to:

- include the National Heavy Vehicle Regulator (NHVR) as a prescribed agency for the purposes of the definition of ‘government legal officer’ in section 12 of the Act;
- provide that the general prohibition on engaging in legal practice when not entitled to do so does not apply to a government legal officer moving an application for admission to the legal profession if the Legal Practitioners Admissions Board (the board) has recommended the applicant’s admission, without conditions under rule 15(1) of the *Supreme Court (Admission) Rules 2004*; and
- align the cap on the rate of interest that may be charged by law practices on unpaid legal costs with the rate of interest applied to a money order debt under section 59(3) of the *Civil Proceedings Act 2011*.

### Achievement of policy objectives

#### Prescription of agency for definition ‘government legal officer’

Section 12 of the Act defines ‘government legal officer’ to include a person whose employment in a department, the Legal Services Commission or an agency prescribed under a regulation includes, or may include, engaging in legal practice. This section states that a government legal officer is ‘engaged in government work’ when that officer

is engaged in legal practice in the course of their duties for the entity in relation to which the person is an employee or appointee. Government legal officers engaged in government work are not required to hold practising certificates. Section 5 of the Regulation prescribes the agencies for the definition of 'government legal officer'.

The Amendment Regulation provides that the NHVR, a body corporate which is established under the *Heavy Vehicle National Law (Queensland)* (Heavy Vehicle National Law) and represents the State of Queensland, to be an agency for the definition of 'government legal officer'. The functions of the NHVR are regulatory in nature. The NHVR does not provide legal services to members of the public.

### **Exemption of moving an uncontested application for admission from the definition of legal practice**

Section 24(1) of the Act prohibits persons from engaging in legal practice in this jurisdiction unless the person is an Australian legal practitioner. Section 24(2) provides that the section 24(1) prohibition on engaging in legal practice does not apply to certain kinds of legal practice, including legal practice prescribed under a regulation. Section 6 of the Regulation prescribes legal practice for the purpose of section 24(2)(e) of the Act.

The Amendment Regulation amends section 6 of the Regulation to provide that the prohibition on engaging in legal practice contained in section 24(1) of the Act does not apply to a government legal officer moving an application for admission to the legal profession if the board has recommended the applicant's admission, without conditions, under rule 15(1) of the *Supreme Court (Admission) Rules 2004*.

### **Interest charged on unpaid legal costs**

Under section 321 of the Act, a law practice may charge interest on unpaid legal costs. The interest that may be charged is capped at a rate prescribed by regulation. Under section 82 of the Regulation, that rate is currently set at two points above the official cash rate stated by the Reserve Bank of Australia. The amendment to section 82 of the Regulation will better reflect the true cost to a law practice of unpaid legal costs.

### **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the Act which provides for the regulation of legal practice in Queensland.

### **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

### **Benefits and costs of implementation**

The Amendment Regulation will have no implementation costs for Government.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

The NHVR requested the amendment to section 5 of the Regulation.

The Chief Justice was consulted in relation to facilitating government legal officers moving an application for admission.

The Queensland Law Society was consulted on the amendment relating to interest on unpaid legal costs.

The Office of Best Practice Regulation was consulted and confirmed that a Regulatory Impact Statement is not required.