

# Legal Profession Regulation 2017

Explanatory notes for SL 2017 No. 174

made under the

*Legal Profession Act 2007*

## General Outline

### Short title

*Legal Profession Regulation 2017*

### Authorising law

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

### Policy objectives and the reasons for them

The *Legal Profession Regulation 2007* (LPR 2007) made under the Act will automatically expire on 1 September 2017 by operation of section 54 of the *Statutory Instruments Act 1992*. In order to support the operation of the Act, it is necessary that the LPR 2007 be remade.

The Act includes matters relating to admission to the legal profession and legal practice, the reservation of legal work, the complaints and disciplinary processes, the fidelity fund, external administration, incorporated legal practices and multi-disciplinary partnerships, the registration of foreign lawyers, solicitors' trust accounts and legal costs.

The LPR 2007 includes provisions for -

- the prescription of matters that are not legal practice;
- the calculation of periods of supervised practice based on a standard week;
- the particulars of the local practising certificate register;
- the prescription of agencies for the purposes of the definition 'government legal officer';
- a cap on fidelity fund claims;
- the requirements for professional indemnity insurance for local lawyers;
- the arrangements for the recovery by the Legal Services Commissioner of the costs of a costs assessment in the context of a complaint;
- the fees for applications for admission and the fees charged by the Legal Practitioners Admissions Board;

- the requirement for employees of community legal services to contribute on a concessional basis to the fidelity fund and exemptions for volunteers of community legal services from the requirement to contribute;
- the trust account requirements in relation to matters which include the establishment of accounts, keeping of records, transaction methods and processes, required account statements and the external examination of accounts;
- the circumstances where a matter has a 'substantial connection' with Queensland for part 3.4 (Costs disclosure and assessment) of the Act;
- the prescription of certain categories of matter for which costs disclosure is not necessary; and
- a cap on the interest rate that can be charged for unpaid legal costs.

The *Legal Profession Regulation 2017* (LPR 2017) is in substantially the same form as the LPR 2007, with changes to reflect current drafting style. It includes the following changes from the LPR 2007:

- updating the prescription of agencies for the definition of '*government legal officer*' under the Act and removing unnecessary references to public service offices;
- permitting law practices to retain trust records in a printable or readable (rather than printed) form;
- providing a new requirement for a principal of a law practice to review and annotate trust account / controlled money statements in a way that acknowledges completion of the review;
- restricting the method of withdrawal from a controlled money account to either cheque or electronic funds transfer;
- removing examples of particulars which may be recorded in a law practice's register of investments to identify the source of investments where the particulars are otherwise required to be recorded;
- clarifying that an entry in a law practice's register of powers and estates in relation to trust money is not required where the law practice or associate acts or is entitled to act alone or jointly in relation to trust money under a power or for an estate with one or more persons who are not associates of the law practice;
- providing for an employee or agent of the Queensland Law Society (QLS) to be appointed as an external examiner; and
- permitting the QLS to exempt an external examiner from the requirements to report on an external examination in the approved form.

## **Achievement of policy objectives**

The policy objectives of the LPR 2017 are achieved by remaking the LPR 2007 in substantially the same form, with amendments arising from consultation.

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

The LPR 2017 is consistent with the objectives of the Act.

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

The LPR 2017 is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The LPR 2017 supports the effective operation of the Act.

There are no anticipated implementation costs for the LPR 2017.

## **Consistency with fundamental legislative principles**

The LPR 2017 does not breach fundamental legislative principles.

## **Consultation**

The QLS, the Legal Services Commission (LSC) and the Bar Association of Queensland were consulted during the preparation of the LPR 2017. The QLS and LSC have indicated their support the LPR 2017.

The Legislative and Governance Forum for Corporations was advised of the intended remaking of a section of the LPR 2007 which declares section 112(2) of the Act to be a Corporations legislation displacement provision under section 5G of the *Corporations Act 2001* (Cth).

The Queensland Productivity Commission (QPC) was consulted regarding the requirements under the '*Queensland Government Guide to Better Regulation*' (Guidelines) for the LPR 2017. QPC has advised that the objectives for sunset reviews provided in the Guidelines have been satisfied.