



Queensland

Legal Profession Regulation 2004

Subordinate Legislation 2004 No. 109

made under the

Legal Profession Act 2004

Supreme Court of Queensland Act 1991

Trust Accounts Act 1973

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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 \$3 000.
- (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 Queensland Building Services Authority;
- Queensland Treasury Corporation;
- the Residential Tenancies 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.

authorised person	activity
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
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;¹
 - (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;
 - (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

¹ 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.

- (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 \$200 000.
- (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 \$2 000 000.

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.

32 Payment of fee relating to July admission

- (1) This section applies to a person's payment of a fee under section 31(3), on or after 1 July 2004, relating to a relevant application under section 31(1).
- (2) The person is taken to have paid the fee charged by the board if the payment is made to the Supreme Court Library Committee in the way provided under the relevant previous admission rules.
- (3) This section is a transitional regulation.
- (4) Under section 643(5) of the Act, this section expires 1 year after the commencement of that section.

33 Tribunal may make a costs order on appeal—Act, ss 293 and 643

- (1) This section applies if a party appeals to the tribunal under section 293 of the Act.
- (2) The orders the tribunal may make to decide the discipline application include an order about costs.
- (3) This section is a transitional regulation.
- (4) Under section 643(5) of the Act, this section expires 1 year after the commencement of that section.

Part 5 Amendments**Division 1 Trust Accounts Regulation 1999****34 Regulation amended**

This division amends the *Trust Accounts Regulation 1999*.

35 Insertion of new pt 1A

After part 1—

insert—

‘Part 1A Application of act to particular persons**‘1A Non-application of Act to particular classes of persons—Act, s 4F**

- ‘(1) The following classes of persons and circumstances are prescribed for section 4F(3) of the Act—
 - (a) a barrister;
 - (b) a government legal officer engaged in government work;

- (c) an Australian legal practitioner who is employed by a corporation, that is not an incorporated legal practice, and who provides only in-house legal services to the corporation.

‘(2) In this section—

barrister see the *Legal Profession Act 2004*, section 8.

engaged in government work see the *Legal Profession Act 2004*, section 10(2).

government legal officer see the *Legal Profession Act 2004*, section 10.

in-house legal services see the *Legal Profession Act 2004*, schedule 5.’.

Division 2 Uniform Civil Procedure (Fees) Regulation 1999

36 Regulation amended

This division amends the *Uniform Civil Procedure (Fees) Regulation 1999*.

37 Omission of s 4 (Fee on application for admission)

Section 4—

omit.

38 Insertion of new pt 5

After part 4—

insert—

‘Part 5 Transitional

‘18 Fee for application for admission

‘The fee stated in schedule 1, item 3(1), does not apply to an application for admission as a legal practitioner at sittings to be held in July 2004.’

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

(1) Schedule 1, item 3(2), ‘subitem (1)’—

omit, insert—

‘subitem (2)’.

(2) Schedule 1, items 3(1) and (2)—

renumber as items 3(2) and (3).

(3) Schedule 1, item 3—

insert—

‘(1) Application to the Supreme Court to be admitted under the *Legal Profession Act 2004* as a legal practitioner 220.00 not applicable’.

(4) Schedule 1, item 6—

insert—

‘(3) This fee does not apply to sealing and certifying the original certificate of admission of a person as a legal practitioner under the *Legal Profession Act 2004*’.

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. Made by the Governor in Council on 24 June 2004.
2. Notified in the gazette on 25 June 2004.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.