

**2007**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**LEGAL PROFESSION AMENDMENT REGULATION 2007 (No. 2)**

**SL2007-10**

**EXPLANATORY STATEMENT**

Circulated by authority of  
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## Legal Profession Amendment Regulation 2007 (No. 2)

### Background

The *Legal Profession Act 2006* (the Act) provides for the regulation of legal practice in the ACT and facilitates the regulation of legal practice on a national basis, in conjunction with the National Legal Profession Model Laws Project. The project involved the development of a model Legal Profession Bill and model Legal Profession Regulations.

The Legal Profession Regulation 2006 commenced on 1 July 2006. Numerous provisions of the model Legal Profession Regulations were not implemented at that time, either because certain policy matters had not been settled or because the commencement of certain relevant parts of the Act was postponed to a later date.

The provisions relating to that postponement are found in Chapter 10 of the Act. Within that Chapter, section 605 deals with the operation of Part 3.1 of the Act, which relates to trust money and controlled money. Sections 606 to 608 deal with the operation of Part 3.2 of the Act, which relates to costs and, in particular, to costs disclosure.

This amending regulation changes the date of commencement of Parts 3.1 and 3.2 the Act from 1 July 2007 to 1 October 2007, to allow the ACT legal profession adequate opportunity to effectively implement the new trust account management and costs disclosure requirements in the Act.

The changes to commencement dates effectively postpone the obligation on legal practitioners to meet more stringent requirements in relation to the provision of advice about costing of legal matters and the maintenance of solicitors' trust accounts. Because the delay will allow the legal profession adequate time to make practitioners aware of the processes required to meet that obligation, it is in the interests of those practitioners' clients that the amendment is made.

The amending regulation also makes the following changes:

- Sections 4 and 5 correct an error in section 10 of the Legal Profession Regulation.
- Section 6 ensures that the Australian Government Solicitor is a government agency for the purposes of the Act.
- Section 7 includes provisions to ensure that 'old' complaints about barristers may be dealt with under the repealed barrister rules, and to ensure that legal practice by government lawyers may be recognised as supervised legal practice, for the purposes of meeting the prescribed criteria for the grant of an unrestricted practising certificate.

## OUTLINE OF PROVISIONS

### PART 1 PRELIMINARY

#### **Section 1 – Name of regulation**

Specifies the name of the Regulation – the Legal Profession Amendment Regulation 2007 (No. 2) (referred to in this instrument as “the amendment”).

#### **Section 2 – Commencement**

This Regulation commences on the day after it is notified on the ACT Legislation Register.

#### **Section 3 – Legislation amended**

This regulation amends the Legal Profession Regulation 2006.

#### **Section 4 – Section 10 heading**

Corrects the heading to section 10 of the Legal Profession regulation to refer to an “unrestricted” practising certificate.

#### **Section 5 – Section 10**

Amends section 10 of the Legal Profession Regulation by substituting “an unrestricted practising certificate” for “a local practising certificate”. The provision is intended only to set out criteria for the grant or renewal of unrestricted practising certificates.

#### **Section 6 – New section 15A**

Inserts a new section 15A into the Legal Profession Regulation to prescribe the Australian Government Solicitor as a government agency for section 82(5) of the Act. The new provision ensures that the Australian Government Solicitor is given the same exemptions, from certain requirements of the Act, as other government legal officers. The provision corrects an earlier misunderstanding that the AGS is a government department, and that it therefore fell within the meaning of “government agency”.

#### **Section 7 – Part 10**

Substitutes a new part 10 into the Legal Profession Regulation.

A new section 36 (Application of section 15A – prescribed agency) ensures that the newly inserted section 15A of the Act applies to the Australian Government Solicitor from the date of commencement of the Act.

Section 37 (Modification of Act, ch 10, s605(2) – Act, s 618) amends section 605(2) of the Act so that the trust accounting provisions (the ‘existing trust account provisions’) in the repealed *Legal Practitioners Act 1970* will continue to apply until 30 September 2007 (rather than 30 June 2007).

Section 38 (Modification of Act, ch 10, s605(3) – Act, s 618) amends section 605(3) of the Act to provide that section 605 (Continuing application of provisions of Legal Practitioners Act about trust money) will expire on 1 October 2007 (rather than 1 July 2007).

Section 39 (Modification of Act, ch 10, s606(2) – Act, s618) amends section 606(2) so that the costs provisions in the repealed *Legal Practitioners Act 1970* (the ‘existing costs provisions’) will continue to apply until 30 September 2007 (rather than 30 June 2007).

Section 40 (Modification of Act, ch 10, s606(3) – Act, s618) amends section 606(3) of the Act to provide that section 606 (Continuing application of provisions of Legal Practitioners Act about costs) will expire on 1 October 2007 (rather than 1 July 2007).

Section 41 (Modification of Act, ch 10, s607(2) – Act, s618) amends section 607(2) of the Act so that Part 3.2 of the Act does not apply, and the costs provisions in the repealed *Legal Practitioners Act 1970* (the ‘existing costs provisions’) will continue to apply to matters in relation to which instructions were first given by the client before 1 October 2007 (rather than 1 July 2007).

Section 42 (Modification of Act, ch 10, s607(3) – Act, s618) amends section 607(3) of the Act so that Part 3.2 of the Act does not apply, and the costs provisions in the repealed *Legal Practitioners Act 1970* (the ‘existing costs provisions’) will continue to apply if a law practice is retained on or after 1 October 2007 (rather than 1 July 2007) by another law practice on behalf of a client, in relation to a matter for which the other law practice was retained by the client before 1 October 2007 (rather than 1 July 2007).

Section 43 (Modification of Act, ch 10, s608(1) – Act, s618) substitutes a new section 608(1) so that the provisions of Part 3.2 of the Act will apply to current requests for taxation of costs from 1 October 2007 (rather than 1 July 2007), if the registrar has not started the taxation by that date. If the registrar has started, but not completed, the taxation by 1 October 2007, the registrar may complete the taxation as if the repealed *Legal Practitioners Act 1970* had not been repealed. The provision applies to matters in relation to which a person has, before 1 October 2007, given notice to the registrar (under the repealed Act) that the person wishes to have a statement of costs and disbursements determined by taxation.

Section 44 (Modification of Act, ch 10 – new section 612A – Act, s 618) inserts a new section 612A (Pending complaints before bar council committee) into Chapter 10 of the Act to allow complaints about barristers, arising before the commencement of the Act, to be dealt with under the repealed barrister rules by the committee established under those rules by the Bar Council to deal with complaints.

Section 45 (Modification of Act, ch 10 – new section 617A – Act, s 618) ensures that supervised legal practice includes legal practice by a government lawyer, if the person is supervised by an Australian lawyer who holds, or who meets the criteria for the grant or renewal of, an unrestricted practising certificate. To achieve this, the definition of “supervised legal practice” is taken to include a new paragraph (ca) from the date of commencement of the Act.

Section 46 (Expiry – pt 10) provides for part 10 of the Regulation to expire on 2 October 2007 (rather than on 2 July 2007).