

2008

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

LEGAL PROFESSION AMENDMENT REGULATION 2008 (No 1)

SL2008-13

EXPLANATORY STATEMENT

Circulated by authority of
Simon Corbell MLA
Attorney General

Legal Profession Amendment Regulation 2008 (No 1)

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.

The Legal Profession Regulation 2007 replaced the Legal Profession Regulation 2006, which commenced on 1 July 2006. Section 618 of the Act provides regulation may modify chapter 10 of the Act to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in the chapter.

Subdivision 3.1.3.2 of the Act relates to external examinations of the trust records of law practices. Subsection 241(1) provides that a law practice must, at least once in each financial year, have its trust records externally examined by an external examiner appointed as required by regulation. Subsection 241(2) empowers the licensing body (the law society) to appoint an external examiner to examine a law practice's trust records if the licensing body is not satisfied, either that the practice has had its trust records examined under subsection 241(1), or that an examination has been carried out as required by regulations.

Subsection 249(1) of the Act states that the costs of an examination are payable out of the fidelity fund. Subsection 249(2) provides that the law society may decide that all or part of the costs of the examination are payable to the law society, and decide the amount payable, if the licensing body appointed the external examiner. The section incorrectly fails to state that the costs of an examination under subsection 241(1) are payable by the law practice involved. Only when the law society appoints an examiner should the costs of the examination be payable out of the fidelity fund.

This transitional regulation modifies chapter 10 of the Act by inserting a new section 618A. In that section, section 249 of the Act is modified to clarify the responsibility of a law practice to pay the costs of an external examination. The regulation will expire when section 249 is amended by the *Statute Law Amendment Act 2008*.

OUTLINE OF PROVISIONS

PART 1 PRELIMINARY

Section 1 – Name of regulation

Specifies the name of the Regulation – the Legal Profession Amendment Regulation 2008 (No 1) (referred to in this explanatory statement as “the amendment”).

Section 2 – Commencement

States that the 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 2007.

Section 4 – New part 11 – Miscellaneous

Section 90 (Modification of Act, ch 10 – Act, s 618) states that chapter 10 of the Act is modified by the new schedule 1. Section 90 and the schedule expire on the commencement of the *Statute Law Amendment Act 2008*.

Section 5 – New schedule 1

[1.1] – (New section 618A) inserts a new section 618A in to the Act, stating that section 249(1) and (2) of the Act applies as if:

- (1) the costs of an external examination are payable:
 - (a) by the law practice, if the law practice appoints the examiner and the examination is conducted under subsection 241(1); and
 - (b) out of the fidelity fund, if the law society appoints the examiner and the examination is conducted under subsection 241(2).
- (2) for an examination conducted under subsection 241(2), the law society may decide:
 - (a) that all or part of the costs of the examination are payable by the law practice to the law society; and
 - (b) the amount payable.