
JUSTICE

JU302

Legal Profession Act 2008

Legal Profession Amendment Regulations 2019

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Legal Profession Amendment Regulations 2019*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Regulations amended

These regulations amend the *Legal Profession Regulations 2009*.

4. Regulation 5A replaced

Delete regulation 5A and insert:

5A. Exceptions to prohibition on engaging in legal practice when not entitled (Act s. 12(3)(h))

For the purposes of section 12(3)(h) of the Act, section 12(2) of the Act does not apply to —

- (a) legal work done under the supervision of an Australian legal practitioner as a paid employee of —
 - (i) the Legal Aid Commission; or
 - (ii) a community legal centre; or
 - (iii) the Aboriginal Legal Service of Western Australia Limited; or
 - (iv) a corporation other than an incorporated legal practice;

or

- (b) legislative drafting work that is done by an Australian lawyer —
 - (i) under a contract for services with the State; and
 - (ii) under the direction of the Parliamentary Counsel;

or

- (c) legal work that is done by an Australian lawyer —
 - (i) under a contract for services with the State; and
 - (ii) under the direction of the State Solicitor.

5. Regulation 18A inserted

At the end of Part 4 Division 2 insert:

18A. Application of this Division to Australian lawyers referred to in r. 5A(b) and (c) (Act s. 12(8))

- (1) In this regulation —
 - PCO CPD arrangements* means approved CPD arrangements made under regulation 13 for the continuing professional development of PCO lawyers;
 - PCO lawyer* means a WA government lawyer employed in the Parliamentary Counsel's Office;
 - SSO CPD arrangements* means approved CPD arrangements made under regulation 13 for the continuing professional development of SSO lawyers;
 - SSO lawyer* means a WA government lawyer employed in the State Solicitor's Office.
- (2) This Division and the PCO CPD arrangements apply in relation to an Australian lawyer (other than an interstate legal practitioner) who does legislative drafting work referred to in regulation 5A(b) as if the Australian lawyer were a PCO lawyer and the employing authority of the Australian lawyer were the employing authority of PCO lawyers.
- (3) This Division and the SSO CPD arrangements apply in relation to an Australian lawyer (other than an interstate legal practitioner) who does legal work referred to in regulation 5A(c) as if the Australian lawyer were an SSO lawyer and the employing authority of the Australian lawyer were the employing authority of SSO lawyers.

- (4) Subregulations (2) and (3) do not apply to an Australian lawyer if the Australian lawyer holds a current local practising certificate and the employing authority of PCO lawyers or SSO lawyers (as the case requires) has given the Board written notice that the Australian lawyer will not be participating in approved CPD arrangements.

6. Regulation 83 amended

In regulation 83 delete the definition of *exempt practitioner* and insert:

exempt practitioner, in relation to legal practice, means an Australian legal practitioner who is exempt under regulation 97 from the requirement to comply with regulation 96(a) or (b) to the extent that the practitioner engages in that legal practice;

7. Regulation 88 amended

After regulation 88(3) insert:

- (3A) If a law practice makes, in relation to an insurance year, more than 1 application to take and maintain insurance under the PII arrangement in respect of part only of the year, the 2nd and any subsequent application must be accompanied by the amount of the additional administration levy, if any, fixed under regulation 102(5).

8. Regulation 95 amended

In regulation 95 delete “exempt practitioner.” and insert:

exempt practitioner in relation to all legal practice engaged in by the associate as part of the associate’s duties in the law practice.

9. Regulation 96 replaced

Delete regulation 96 and insert:

96. Requirement for Australian legal practitioner to have professional indemnity insurance

An Australian legal practitioner must not engage in legal practice in this jurisdiction unless any of the following applies —

- (a) there is in force with respect to the legal practitioner a valid current certificate of

insurance in accordance with this Part that covers that legal practice;

- (b) there is in force with respect to the legal practitioner valid current professional indemnity insurance, on the terms and conditions of a scheme approved by the Law Society, that covers that legal practice;
- (c) the practitioner is an exempt practitioner in relation to that legal practice.

10. Regulation 97 amended

(1) In regulation 97(1):

- (a) delete “The following Australian legal practitioners are exempt from the requirement to comply with regulation 96(a) or (b) —” and insert:

An Australian legal practitioner is exempt from the requirement to comply with regulation 96(a) or (b) to the extent that the practitioner is engaged in legal practice of any of the following kinds —

- (b) in paragraph (a) delete “a barrister who is covered by” and insert:

legal practice engaged in by a barrister who is covered, in respect of that practice, by

- (c) delete paragraphs (b) to (ea) and insert:

- (b) legal practice engaged in by a practitioner in the course of the practitioner’s duties as an employee of an entity, other than an incorporated legal practice, if —
 - (i) the only legal services provided by the practitioner in the course of those duties are to members or employees of the entity; and
 - (ii) the entity is covered by professional indemnity insurance approved by the Law Society for the period in respect of which the exemption is claimed;
- (c) legal practice engaged in by a practitioner in the course of the practitioner’s duties as an employee of an entity (the *employing entity*), other than an incorporated legal practice, if the only legal services provided by the practitioner in the course of those duties are —
 - (i) in-house legal services; or

- (ii) if the employing entity is a body corporate — legal services provided to a related body corporate (as defined in the *Corporations Act 2001* (Commonwealth) section 9) of the employing entity;
- (d) government work (as defined in section 36(2) of the Act) engaged in by a WA government lawyer;
- (da) legal practice engaged in by a practitioner who is an officer or employee of a government agency (as defined in section 36(1) of the Act) in the course of the practitioner’s duties in that agency;
- (e) legal practice engaged in by a practitioner in the course of the practitioner’s duties as an employee of or volunteer in —
 - (i) a community legal centre that is covered by professional indemnity insurance approved by the Law Society for the period in respect of which the exemption is claimed; or
 - (ii) the Legal Aid Commission; or
 - (iii) the Aboriginal Legal Service of Western Australia Limited (*ALSWA*), but only if ALSWA is covered by professional indemnity insurance approved by the Law Society for the period in respect of which the exemption is claimed; or
 - (iv) another body or organisation providing legal aid in respect of which a resolution of the Law Society Council under subregulation (2) is in force;
- (d) in paragraph (f) delete “a practitioner who does not engage in any legal practice that would result” and insert:

legal practice engaged in by a practitioner that would not result

- (e) in paragraph (g) delete “a practitioner who engages in legal practice as a principal or employee of a national law practice which —” and insert:

legal practice engaged in by a practitioner in the course of the practitioner’s duties as a principal or employee of a national law practice that —

- (f) in paragraph (h) delete “a practitioner who —” and insert:

legal practice engaged in by a practitioner who —
- (g) in paragraph (h)(ii) delete “arrangement.” and insert:

arrangement; and
- (h) after paragraph (h)(ii) insert:
 - (iii) does not otherwise engage in legal practice in this jurisdiction.

(2) Delete regulation 97(2) and insert:

- (2) The Law Society Council may —
 - (a) resolve that employees of, and volunteers in, a specified body or organisation that provides legal aid should be entitled to be exempt from the requirement to comply with regulation 96(a) or (b) to the extent that they engage in legal practice in the course of their duties in that body or organisation; or
 - (b) revoke or amend a resolution made under paragraph (a).

11. Regulation 98 amended

- (1) In regulation 98(1) delete “regulation 97 and wishes to have his or her” and insert:

regulation 97 in relation to any legal practice engaged in by the practitioner and wishes to have the practitioner’s
- (2) In regulation 98(2):
 - (a) in paragraph (b) delete “102(1)(b).” and insert:

102(1)(b); and
 - (b) after paragraph (b) insert:
 - (c) accompanied by information in support of the claim.

- (3) Delete regulation 98(3) and insert:
- (3) After 15 May in each year the Law Society must give notice to the Board, in relation to each notice of claim given under subregulation (1) since the last notice to the Board was given under this subregulation —
- (a) specifying the Australian legal practitioner who gave the notice of claim and the legal practice engaged in by the practitioner to which the claim relates; and
 - (b) stating either —
 - (i) that the Law Society considers that the practitioner is an exempt practitioner in relation to the legal practice to which the claim relates; or
 - (ii) that the Law Society is not satisfied, on the basis of the information submitted under subregulation (2)(c) or any other relevant information before it, that the practitioner is an exempt practitioner in relation to the legal practice to which the claim relates.
- (4) A notice under subregulation (3) that includes the statement referred to in subregulation (3)(b)(ii) must include the reasons why the Law Society is not satisfied as referred to in that subregulation.
- (5) If the Law Society gives a notice including the statement referred to in subregulation (3)(b)(ii), the Law Society must also —
- (a) provide to the Board —
 - (i) the notice of claim given to the Law Society by the Australian legal practitioner; and
 - (ii) any information in support of the claim submitted by the practitioner; and
 - (iii) any other information relevant to the claim considered by the Law Society;and
 - (b) give the practitioner written notice that it has done so.

12. Regulation 99 amended

- (1) Delete regulation 99(1)(b) and insert:
- (b) claims that, if granted a local practising certificate, the Australian lawyer will be an

exempt practitioner in relation to any legal practice to be engaged in by the Australian lawyer,

- (2) In regulation 99(2):
 - (a) in paragraph (b) delete “102(1)(b).” and insert:

102(1)(b); and
 - (b) after paragraph (b) insert:
 - (c) accompanied by information in support of the claim.

- (3) Delete regulation 99(3) and insert:
 - (3) The Law Society must, after receiving a notice of claim under subregulation (1), give notice to the Board —
 - (a) specifying the Australian lawyer who gave the notice of claim and the legal practice to be engaged in by the Australian lawyer to which the claim relates; and
 - (b) stating either —
 - (i) that the Law Society considers that the Australian lawyer will, if granted a local practising certificate, be an exempt practitioner in relation to the legal practice to which the claim relates; or
 - (ii) that the Law Society is not satisfied, on the basis of the information submitted under subregulation (2)(c) or any other relevant information before it, that the Australian lawyer will, if granted a local practising certificate, be an exempt practitioner in relation to the legal practice to which the claim relates.
 - (4) A notice under subregulation (3) that includes the statement referred to in subregulation (3)(b)(ii) must include the reasons why the Law Society is not satisfied as referred to in that subregulation.
 - (5) If the Law Society gives a notice including the statement referred to in subregulation (3)(b)(ii), the Law Society must also —
 - (a) provide to the Board —
 - (i) the notice of claim given to the Law Society by the Australian lawyer; and

- (ii) any information in support of the claim submitted by the Australian lawyer; and
 - (iii) any other information relevant to the claim considered by the Law Society;
- and
- (b) give the Australian lawyer written notice that it has done so.

13. Regulation 101 amended

In regulation 101(2) delete “an exempt practitioner notice to that effect from the Law Society under regulation 98(3) or 99(3).” and insert:

an exempt practitioner in relation to any legal practice engaged in by the practitioner notice to that effect from the Law Society under regulation 98(3)(b)(i) or 99(3)(b)(i).

14. Regulation 102 amended

(1) In regulation 102(1):

- (a) delete “law practice or an Australian legal practitioner —” and insert:

law practice, an Australian legal practitioner or an Australian lawyer —

- (b) delete paragraph (b) and insert:

(b) making a claim under regulation 98 or 99; or

(2) In regulation 102(3) delete “practitioners are, or are not, members of Law Society.” and insert:

Australian legal practitioners or Australian lawyers are, or are not, members of the Law Society.

(3) In regulation 102(4) delete “a law practice or an Australian legal practitioner if the law practice or practitioner” and insert:

a law practice, an Australian legal practitioner or an Australian lawyer if the law practice, practitioner or lawyer

- (4) After regulation 102(4) insert:
- (5) The Law Society may from time to time fix an additional administration levy to be paid to the Law Society by a law practice that makes, in relation to an insurance year, more than 1 application to take and maintain insurance under the PII arrangement in respect of part only of the year.

15. Regulation 103 amended

- (1) In regulation 103(1):
- (a) delete “law practice or Australian legal practitioner —” and insert:
- law practice, Australian legal practitioner or Australian lawyer —
- (b) delete paragraph (b) and insert:
- (b) making a claim under regulation 98 or 99; or
- (2) In regulation 103(2) delete “law practice or Australian legal practitioner” and insert:

law practice, Australian legal practitioner or Australian lawyer

16. Regulation 104 amended

- (1) In regulation 104(1) delete “legal practice or Australian legal practitioner” and insert:
- law practice, Australian legal practitioner or Australian lawyer
- (2) In regulation 104(2):
- (a) in paragraph (b) delete “exempt practitioner; or” and insert:
- exempt practitioner in relation to any legal practice; or
- (b) after paragraph (b) insert:
- (ba) an Australian lawyer making a claim under regulation 99; or

- (3) In regulation 104(5) delete “law practice or Australian legal practitioner” and insert:

law practice, Australian legal practitioner or Australian lawyer

17. Part 13 Division 8 inserted

At the end of Part 13 insert:

Division 8 — Provisions for *Legal Profession Amendment Regulations 2019*

124. Resolutions under r. 97 relating to bodies or organisations providing legal aid

- (1) This regulation applies if, immediately before the day on which the *Legal Profession Amendment Regulations 2019* regulation 10 comes into operation (**amendment day**), a resolution made for the purposes of regulation 97(1)(e)(iii) or (ea)(iv) is in force in relation to a body or organisation providing legal aid.
- (2) The resolution is taken, on and after amendment day, to be a resolution made for the purposes of regulation 97(2)(a) that employees of, and volunteers in, the body or organisation should be entitled to be exempt from the requirement to comply with regulation 96(a) or (b) to the extent that they engage in legal practice in the course of their duties in that body or organisation.

C. BARRON, Clerk of the Executive Council.
