

TASMANIA

RULES OF PRACTICE AMENDMENT RULES 2020
STATUTORY RULES 2020, No.

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RULES OF PRACTICE AMENDMENT RULES 2020

The Council of the Law Society of Tasmania makes the following rules under the *Legal Profession Act 2007*.

1. Short title

These rules may be cited as the *Rules of Practice Amendment Rules 2020*.

2. Commencement

These rules take effect on the day on which their making is notified in the *Gazette*.

3. Principal Rules

In these rules, the *Rules of Practice 1994** are referred to as the Principal Rules.

4. Rule 3 amended (Interpretation)

Rule 3 of the Principal Rules is amended as follows:

- (a) by omitting the definitions of *accounting period* and *accounting record*;
- (b) by omitting the definitions of *approved institution* and *cash book*;
- (c) by omitting the definitions of *controlled fund* and *controlled fund operator*;
- (d) by omitting the definition of *cost agreement*;

*S.R. 1994, No. 229

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- (e) by omitting the definition of *examination*;
- (f) by omitting the definitions of *Executive Director* and *firm* and substituting the following definitions:

Executive Director means the Executive Director of the Law Society;

firm means –

- (a) an Australian legal practitioner who is a sole practitioner; or
- (b) a law firm; or
- (c) a multi-disciplinary partnership; or
- (d) an incorporated legal practice –

where at least one person holds a practising certificate issued by the Law Society;

- (g) by omitting the definitions of *fund*, *fund operator*, *government valuation*, *insured*, *insurer* and *investor*;
- (h) by omitting the definition of *money* and substituting the following definition:

money includes –

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- (a) a cheque, bank draft, bill of exchange or any other negotiable instrument; and
- (b) any instrument or asset that is capable of being converted into money;
- (i) by omitting the definitions of *mortgage* and *mortgage security*;
- (j) by omitting the definitions of *president*, *registered valuer*, *related firm*, *report*, *security valuation* and *short-term money market dealer* and substituting the following definitions:
 - proceedings***, for the purposes of rule 12, means any action or claim at law or in equity;
 - solicitor*** includes an Australian-registered foreign lawyer who practises as or in the manner of a solicitor;
- (k) by omitting the definition of *statutory charge*;
- (l) by omitting “kind;” from the definition of *transaction* and substituting “kind.”;
- (m) by omitting the definition of *trust account inspector*.

5. Rule 4 amended (Attendance at practice)

Rule 4 of the Principal Rules is amended as follows:

(a) by omitting subrule (1) and substituting the following subrules:

(1) A firm must not carry on a practice in any place unless a practitioner –

(a) is in charge of that practice at that place; and

(b) gives substantial attendance at that practice at that place during the normal hours of business of that practice at that place.

(1A) A firm that carries on a practice in any place in accordance with subrule (1), must not carry on another practice in any other place that is a branch of that firm unless –

(a) a practitioner is in charge of the branch; and

(b) a notice, in an approved form, that contains the following information is publically displayed in a

prominent area of the
branch:

- (i) the days, and times, when the practitioner who is in charge of the branch will be in attendance at that branch;
 - (ii) the contact details, at the other practice of the firm to which the branch relates, for the practitioner who is in charge of that branch.
- (b) by omitting from subrule (2) “practitioner” and substituting “firm”;
 - (c) by omitting from subrule (2) “subrule (1)” and substituting “subrules (1) and (1A)”;
 - (d) by inserting the following subrule after subrule (5):
 - (6) In this rule –

branch includes a place that is the Tasmanian office of a firm whose practice is mainly carried on in

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another State or a
Territory.

6. Rule 5 rescinded

Rule 5 of the Principal Rules is rescinded.

7. Divisions 2, 3, 4 and 5 of Part 2 rescinded

Divisions 2, 3, 4 and 5 of Part 2 of the Principal Rules are rescinded.

8. Parts 3, 4 and 5 substituted

Parts 3, 4 and 5 of the Principal Rules are rescinded and the following Part is substituted:

PART 3 – SOLICITORS

17. Transfer of a solicitor's practice

- (1) When a solicitor intends to transfer to another solicitor the whole or part of the solicitor's practice, including clients' work in progress, and to put the other solicitor in possession of documents held by the solicitor on behalf of clients, before the solicitor delivers possession of the practice to the solicitor who is acquiring it the solicitor must give to each client at least 14 days (or such other period as may be reasonable in the circumstances) notice in writing of –

- (a) the intended transfer of documents to the solicitor who is acquiring the practice, unless a contrary direction is received from the client; and
 - (b) the client's right to give to the solicitor a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.
- (2) Any notice sent to a client on whose behalf the solicitor holds money in trust or under the solicitor's control must advise the client of –
- (a) the balance of money held on the client's behalf; and
 - (b) the solicitor's intention to transfer the relevant account to the solicitor who is acquiring the practice, unless advised by the client to the contrary; and
 - (c) the client's right to give to the solicitor a contrary direction as to the manner in which the solicitor should deal with the account on the client's behalf.
- (3) Subrules (1) and (2) do not apply where a new partner is admitted to a partnership which continues to conduct the practice.

18. Debt collection or mercantile agencies

- (1) A solicitor must not allow the solicitor's business name or stationery to be used by a debt collection agent or mercantile agent in a manner that is likely to mislead the public.
- (2) A solicitor who receives, from a debt collection agent or mercantile agent, instructions to act for a client must ensure that –
 - (a) the solicitor's relationship with the agent is fully disclosed in writing to the client; and
 - (b) the information required to be disclosed to the client by any relevant legislation and these rules is communicated to the client; and
 - (c) the solicitor maintains direct control and supervision of any proceedings or correspondence on behalf of the client; and
 - (d) any money recovered on behalf of the client is accounted for by the solicitor.

19. Conducting another business

- (1) A solicitor who engages in the conduct of another business concurrently, but not

directly in association, with the conduct of the solicitor's legal practice must –

- (a) ensure that the other business is not of such a nature that the solicitor's involvement in it would be likely to impair, or conflict with, the solicitor's duties to clients in the conduct of the legal practice; and
 - (b) maintain separate and independent files, records and accounts in respect of the legal practice and the other business; and
 - (c) disclose the solicitor's financial or other interest in that business to any client of the solicitor who, in the course of dealing with the solicitor, deals with the other business; and
 - (d) cease to act for the client if the solicitor's independent service of the client's interest is reasonably likely to be affected by the solicitor's interest in the other business.
- (2) For the purposes of this rule, a solicitor is taken to engage in the conduct of another business where the solicitor, or an associate –

- (a) is entitled, at law or in equity, to an interest in the assets of the business which is significant or of relatively substantial value; or
- (b) exercises any material control over the conduct and operation of the business; or
- (c) has an entitlement to a share of the income of the business which is substantial, having regard to the total income which is derived from it.

20. Litigation lending

- (1) A solicitor who has assisted a client to obtain a litigation lending account with a bank, or other financial institution, for the purpose of funding litigation, must not withdraw, or cause or permit the withdrawal of, money from the client's account for any purpose other than –
 - (a) to reimburse the solicitor for disbursements (including Counsel's fees) already paid; or
 - (b) to pay on behalf of the client any accounts due for payment to a third party, including the payment of costs due to a solicitor who has previously acted for the client where such a payment is required to obtain delivery of documents

retained under a lien for unpaid costs claimed by that solicitor.

- (2) All withdrawals of money from the client's account under subrule (1) must be made in accordance with the client's instructions.

9. Rule 75 amended (Indemnity cover schemes)

Rule 75 of the Principal Rules is amended as follows:

- (a) by omitting from subrule (1) "Society" and substituting "Law Society";
- (b) by omitting from subrule (1) "of" second occurring and substituting "for";
- (c) by omitting from subrule (2) "Society" and substituting "Law Society";
- (d) by inserting the following subrule after subrule (3):
- (4) The Law Society may grant, in writing, an exemption to a firm from taking out and maintaining an approved indemnity cover in accordance with this Part.

10. Rule 76 substituted

Rule 76 of the Principal Rules is rescinded and the following rule is substituted:

76. Period of indemnity cover

If the Law Society has negotiated, or entered into, an agreement or arrangement relating to a scheme providing for an approved indemnity cover for professional indemnity insurance for a firm under rule 75, the firm is to take out and maintain the approved indemnity cover provided in that scheme for the period specified in the agreement or arrangement.

11. Rule 77 amended (Payment of indemnity cover)

Rule 77 of the Principal Rules is amended as follows:

- (a) by omitting from subrule (1) “Society” and substituting “Law Society”;
- (b) by omitting from subrule (3) “certificate” and substituting “demand for payment”.

12. Rule 78 rescinded

Rule 78 of the Principal Rules is rescinded.

13. Rule 79 rescinded

Rule 79 of the Principal Rules is rescinded.

14. Rule 81 rescinded

Rule 81 of the Principal Rules is rescinded.

15. Part 7, Division 2 rescinded

Division 2 of Part 7 of the Principal Rules is rescinded.

16. Rule 88A amended (Professional indemnity insurance)

Rule 88A of the Principal Rules is amended by omitting “1 million dollars” and substituting “1.5 million dollars”.

17. Part 9 rescinded

Part 9 of the Principal Rules is rescinded.

18. Schedules 1 and 2 rescinded

Schedules 1 and 2 to the Principal Rules are rescinded.

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These rules were made by the Council of the Law Society of Tasmania at a meeting held on _____ .

The common seal of the Law Society of Tasmania was affixed on _____ , in the presence of –

President

Member

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on _____ 20 .

These rules are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules amend the *Rules of Practice 1994* to –

- (a) provide for the duties and obligations of solicitors and law practices in relation to –
 - (i) the transfer of business; and

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- (ii) the conduct of a business that is not a legal practice in addition to the conduct of the legal practice; and
 - (iii) their relationship with a debt collection agent or mercantile agent; and
 - (iv) the use of a client's litigation funding account; and
- (b) rescind a number of rules consequent on the making of the *Legal Profession (Solicitors' Conduct) Rules 2020*.