

Hello Legal Profession Act 2004



Tory Strong

None is pretending it's riveting, exciting, plot-driven drama, but all young lawyers should have a good understanding of the new *Legal Profession Act 2004* and the main changes it brings to the profession in Victoria.

It is, after all, the backbone of the way the profession is defined, regulated and managed in the state. So whatever your recollection of the Act – probably based on the semester at university spent on professional conduct, it's time for a quick refresh.

"It is a bit dry," said LIV president and former Young Lawyers' president Tory Strong. "But the LIV recognises that all practitioners need to be across the basics of the new Act."

"We've got a number of information resources available to help – including print and an interactive online Q and A facility. Everything is available online – from the Act to the summary information, so it's very easy to access," she said.

The major reforms introduce a new regulatory system for the legal profession and also pave the way towards a unified, national profession.

A significant development will be the provision for local practising certificates to be valid

in jurisdictions across Australia, easing the administrative burden for solicitors practising across state and territory borders in other jurisdictions.

Apart from this, practising certificate types remain essentially the same, with the exception of a new type of practising certificate for volunteers at community legal centres and there will no longer be an incorporated practising certificate.

Practitioners who take out their first practising certificate after the commencement of the Act will be subject to a supervised practice requirement, regardless of when they were admitted to practice.

However, the new Act has important implications for all areas of practice, including:

- regulation via the new Legal Services Board and Legal Services Commissioner;
- trust money;
- costs agreements;

- fidelity cover;
- incorporated legal practice;
- multi-disciplinary partnerships;
- practising certificates; and
- changes in terminology.

The overhaul of the regulatory regime will result in the Legal Practice Board and the Legal Ombudsman being abolished and replaced by a Legal Services Board and a Legal Services Commissioner.

The new structure will involve:

- the Legal Services Board being the peak regulatory body responsible for funding, policy-setting and all non-disciplinary regulatory functions;
- the Legal Services Commissioner, who will be CEO to the Board, being responsible for investigating complaints, prosecuting solicitors and barristers over conduct matters, and resolving disputes;
- the Victorian Civil and Administrative Tribunal (VCAT) taking over the functions of the Legal Profession Tribunal and being the venue for hearings;
- the commissioner being the single entry point for complaints against the legal profession. Previously complaints could be taken to the Legal Ombudsman, the Law Institute of Victoria (LIV) or the Victorian Bar;
- the commissioner being able to delegate investigations to the LIV and the Victorian Bar; and
- the associations no longer making decisions whether to prosecute or dismiss a case, but instead making a recommendation to the commissioner.

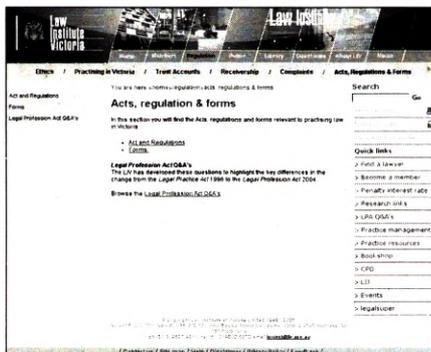
Need more information?

Practitioners are encouraged to have a look at a copy of the new Act (available from the LIV Library, Bookshop or website), however, there are three ways the LIV can assist you to become familiar with the changes which come into effect in July.

Get a copy of our detailed *Goodbye Legal Practice Act 1996 Hello Legal Profession Act 2004* booklet. The free booklet was mailed directly to all practitioners in April with the latest RPA News. Copies are also available from the LIV.

Go to the *Legal Profession Act Questions and Answers* section of our website at www.liv.asn.au/regulation/arf. There you can find the booklet in PDF format, post a question and read other members' questions. All posted questions will carry LIV answers.

Call us for assistance on ph 9607 9423. ■



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carte blanche to impose the restrictions on any person who, in the Minister's opinion, falls within that category.

Furthermore, while the legislation granting the Minister with the power makes reference to upholding the rights and freedoms of the ICCPR, the arbitrary cancellation of Mr Habib's passport without due process is difficult to reconcile with the overall aims of the treaty.

Ultimately, Mr Habib's case highlights the fact that, while a passport may be easily obtained by the majority of Australians, the right to obtain same may be withheld in certain circumstances, and often without any clear evidence or due process.

Therefore, while the problems faced by Mrs Skase and Mr Habib arise from entirely different bases, they do seek to highlight the many issues that surround Australian citizen-

ship rights. Moreover, as the current global climate promotes increasing issues in this area of law, further situations of this type will undoubtedly continue to arise. ■

1. *Skase v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] AATA 308 (8 April 2005).

References

Binnie, C, "Skase's widow shown the door", *The Advertiser* (Adelaide), 28 January 2005.

Binnie, C, "Pixie Skase misses family", *Herald Sun* (Melbourne), 29 January 2005.

"Skase set for citizenship appeal", *The Age* (Melbourne), 28 January 2005.

Skase v. Minister for Immigration and Multicultural and Indigenous Affairs [2005] AATA 308 (8 April 2005)

"Give me my passport back, says Habib", *The Sydney Morning Herald* (Sydney), 4 February 2005.