



THE VICTORIAN BAR INCORPORATED

CLERKING REGULATIONS 2020

Approved by Bar Council on 21 May 2020

Clerking Regulations 2020

(‘the Regulations’)

In the exercise of its powers under clause 33 of the Constitution of The Victorian Bar Inc. and all other relevant powers, the Bar Council makes the following regulations.

REVOCAION OF EARLIER-MADE CLERKING REGULATIONS AND COMMENCEMENT DATE

1. The Clerking Regulations dated 22 August 2013 (**‘the earlier Regulations’**) are revoked from the date of commencement of the Regulations and are no longer of any effect.
2. The Regulations commence on **1 July 2020**.
3. Nothing in regulation 1 affects the validity of anything done or existing under the earlier Regulations before the commencement of the Regulations, except that any licence that was issued or continued under the earlier Regulations made by the Bar Council prior to the commencement of the Regulations:
 - (a) is of no effect for the purposes of the Regulations; and
 - (b) is not a licence within the meaning of the Regulations.

INTERPRETATION OF THE REGULATIONS

4. The meaning of words used in the Regulations is as set out in ‘Schedule 1 – Dictionary’.

PURPOSE

5. The purpose of the Regulations is to provide for a scheme for the licensing of clerks by the Bar Council.

THE CLERKING COMMITTEE

6. The Bar Council may establish a committee, called the Clerking Committee, and appoint such counsel from time to time as it thinks fit to be members of the Clerking Committee.
7. The functions of the Clerking Committee are to:
 - (a) advise the Bar Council on matters relating to clerking and clerks;
 - (b) formulate policies for the Bar Council in respect of clerking and clerks; and
 - (c) perform such other functions as the Bar Council may from time to time confer upon the Clerking Committee.

LICENSING OF CLERKS

8. The Bar Council may license any person it thinks is fit to act as a clerk on such terms and conditions as it thinks fit.
9. The Bar Council must not license a person to act as a clerk unless it is satisfied that the person:

- (a) is a fit and proper person to act as a clerk;
 - (b) will be financially viable as a clerk;
 - (c) will be able to provide adequate services as a clerk; and
 - (d) is willing and able to be bound by the Regulations -
- (collectively, 'licensing criteria').
10. The Bar Council may at any time revoke the licence of a clerk that has been granted under the Regulations if:
- (a) it is satisfied that the clerk no longer meets the licensing criteria; or
 - (b) the clerk has failed to comply with the Regulations.
11. The Bar Council must not exercise the power under regulation 10 unless it has first:
- (a) notified the clerk and the relevant list committee in writing that it is considering exercising the power, and of the reasons why it is considering doing so;
 - (b) provided the clerk and the relevant list committee with a reasonable opportunity to provide Bar Council with a written response to that notice; and
 - (c) considered any written response that it has received from the clerk or the list committee pursuant to regulation 11(b).
- Note:** Nothing in this regulation prevents Bar Council from conducting an oral hearing before exercising the power under regulation 10, should Bar Council see fit.

REGISTER OF LICENCES AND APPROVED FORM OF LICENCE

12. The Bar Council will from time to time maintain and publish a Register of Licences.
13. A licence issued to a clerk by the Bar Council must be in the approved form under the Regulations as set out in 'Schedule 2 – Approved Form of Licence'.

LIST COMMITTEES

14. The affairs of each list are to be managed by a committee, referred to in the Regulations as a 'list committee'. For the avoidance of doubt, a list committee is not obliged to manage the business or affairs of the list's clerk.
15. Subject to regulations 16 to 18, the manner of election or appointment of the members of a list committee, and the procedures of a list committee, are in the discretion of that list committee.
16. In the event that a written request signed by 10% of the membership of a list is presented to a list committee, a list committee must conduct a special general meeting, the purpose of which is to address the matter(s) raised in the written request, within a reasonable period of time from the date on which the list committee received the written request.
17. At a special general meeting conducted under regulation 16, a list committee may be dissolved, reconstituted or otherwise directed as to any matter described in the written request for meeting.

18. The process in regulations 16 and 17 is subject to any law to the contrary applicable to the governance or affairs of a list committee.

RECEIPT OF BARRISTERS' MONEY BY CLERKS AND ESTABLISHMENT OF BARRISTERS' CLEARING ACCOUNT

19. A clerk must operate one bank account, referred to as the 'barristers' clearing account', for the receipt of all barristers' money.

Note: Receipt includes by way of cash, cheque, credit card, bank transfer or other payment method of barristers' money.

20. A clerk must ensure that all barristers' money is credited to the barristers' clearing account as soon as practicable.

21. A clerk must ensure that all barristers' money that has been credited to the barristers' clearing account is paid or credited as soon as practicable but not later than 5 business days following receipt, and is only to be disbursed towards payment of:

- (a) disbursements incurred by the barrister for whom the credit was received;
- (b) any fee or other amount due to the clerk by the barrister; and
- (c) the barrister's nominated bank account or otherwise as the barrister in writing directs.

22. In the event that money is credited to a barristers' clearing account operated under the Regulations but the relevant barrister cannot be identified for the purposes of the clerk fulfilling the obligation in regulation 21, a clerk must:

- (a) take all reasonable steps to ascertain the identity of the person who is entitled to the money;
- (b) take all reasonable steps to ascertain the source or payer of the money and the circumstances giving rise to the receipt; and
- (c) record in an exception report details of the receipt and the enquiries made.

23. A clerk must ensure that a compliance audit of the barristers' clearing account is conducted once each financial year by an auditor that is qualified to act as an approved auditor in relation to any applicable law for the management of trust money.

24. By no later than 31 October in each year, a clerk must provide:

- (a) the report prepared by the auditor in respect of the financial year then just passed;
- (b) an attestation by the clerk in respect of the previous financial year that:
 - (i) save for the transactions identified as required by subparagraph (ii) below, all transactions undertaken through the clerk's barristers' clearing account complied with the Regulations; and
 - (ii) for any transaction undertaken through the clerk's barristers' clearing account that did not comply with the Regulations, identifying the transaction, describing the noncompliance, and explaining the steps taken to rectify the noncompliance; and

- (c) an attestation that the clerk has otherwise complied with the Regulations for that year –
to:
 - (d) the Bar Council; and
 - (e) the list committee for that clerk’s list.
25. A clerk must make available to:
- (a) the Bar Council;
 - (b) the list committee for that clerk’s list; and
 - (c) the auditor appointed for the purposes of the compliance audit referred to in regulation 23 -
- all reconciliations, exception reports and other accounting information relating to the operation of the barristers’ clearing account as that person might require from time to time to determine whether that account is being operated in compliance with the Regulations.
26. Any bank account that was operated by a clerk prior to the commencement date of the Regulations that, in the opinion of the Bar Council, reasonably meets the description of a ‘barristers’ clearing account’ may be used as the account for the purposes of a clerk’s obligation in regulation 19.

PROVISION OF INFORMATION BY LIST COMMITTEES TO THE BAR COUNCIL

27. By 14 November each year, a list committee must provide to the Bar Council an annual written statement as to the following matters:
- (a) the date of the last annual general meeting of the list;
 - (b) the name of each person who is a member of the list committee at the time of the written statement, and the date on which that person was elected or appointed to the list committee;
 - (c) whether the list committee has satisfied itself that in the preceding financial year the clerk has complied with the Regulations;
 - (d) in the event that the list committee is aware that there has been non-compliance with the Regulations in the preceding year, the steps that the clerk and the list committee have taken, are taking or propose to take to rectify such non-compliance; and
 - (e) whether the list committee has determined that the clerk satisfies and will likely continue to satisfy the licensing criteria.
28. The Bar Council may issue a written notice to a list committee requesting that it provide information as to:
- (a) the number and names of counsel on the list;
 - (b) the name of any counsel who is not engaged in active practice;
 - (c) the services provided, or the methods used, by the clerk; and

- (d) any other matter the Bar Council thinks appropriate for the purpose of monitoring compliance with the Regulations.
29. A written notice under regulation 28 must:
- (a) be addressed to the chair of the list committee;
 - (b) outline the information sought under regulation 28; and
 - (c) specify the time, date and method by which the information sought is to be supplied to the Bar Council.
30. A list committee must comply with any written notice issued by the Bar Council under regulation 28.

GUIDANCE NOTES

31. On a recommendation from the Clerking Committee, the Bar Council may publish guidance notes in relation to the Regulations.
32. Clerks and list committees may have regard to but are not bound by guidance notes.

Made by the Bar Council on 21 May 2020

Schedule 1 – Dictionary

In the Regulations, unless a contrary intention appears:

Act means the *Legal Profession Uniform Law Application Act 2014* (Vic).

barristers' clearing account means an account referred to and required to be operated by a clerk as set out in regulation 19.

barristers' money means money other than trust money received by a clerk in payment of a barristers' fees and disbursements for services rendered by a barrister or for reimbursement of associated expenses incurred by barristers.

clerk means an 'approved clerk' under the Act.

Clerking Committee means the committee established by the Bar Council under regulation 6

compliance audit means the audit required to be conducted under regulation 23, and includes testing the system of internal controls governing transactions conducted through the barristers' clearing account, the reconciliation of that account and reporting to members of the list concerning disposition of barristers' money credited to and debited from that account, in order for the auditor to satisfy itself that the Regulations have been complied with.

guidance notes has the meaning given to it in regulation 31.

licensed clerk means a clerk approved by the Bar Council to hold a licence under the Regulations.

licensing criteria has the meaning given to it in regulation 9.

list means a group of counsel that has engaged a clerk to perform services as a clerk.

list committee means the committee referred to in regulation 14.

person means either a natural person or a company or other body corporate.

Regulations means these Regulations, being the *Clerking Regulations 2020* as executed and published by the Bar Council under the Constitution.

trust money has the meaning given to it by the Act and the *Legal Profession (Approved Clerks Trust Account) Rules 2015* made by the Victorian Bar Incorporated under the Act.

Schedule 2 – Approved form of licence

Licence under the *Clerking Regulations 2020*
(**'the Regulations'**)

[This pro forma has been prepared to deal with a clerk that is a single corporate entity but should be amended to deal with individuals or combinations of persons]

1. The Bar Council issues a licence to *[insert name of the clerking entity, and refer to as 'the clerk']* under the Regulations.
2. The licence is effective and operates until such time as it is revoked by the Bar Council.
3. The clerk agrees to be bound by the Regulations at all times while it holds this licence.
4. The clerk may identify and promote itself as a 'licensed clerk' under the Regulations while it holds this licence, but agrees that it will not do so after the termination of this licence.

[To be executed as a contract by the Bar and the clerk]

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