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## INFORMATION SHEET

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# THE AUTHORISATION AND LICENSING OF CLERKS IN VICTORIA

### Information sheet for barristers and readers

#### Introduction

The clerking regime is a long-established and useful part of the life at the Victorian Bar, and one of the important means by which it reduces barriers to entry. Clerks are presently regulated by a combination of state government legislation and contractual 'licences' that are issued by the Bar.

Cooperation between the Bar and the clerks is mutually beneficial and to the ultimate benefit of barristers.

The relationship between a barrister and a clerk is principally a contractual one. Any person can be a barrister's clerk. However:

- only persons authorised pursuant to the Legal Profession (Approved Clerks Trust Account) Rules 2015 (**2015 Rules**) may hold trust money; and
- the Bar maintains a system of licensing clerks under the 'Clerking Regulations'.

#### Authorised clerks

The main objective of the 2015 Rules is to regulate the way in which approved clerks receive and handle trust money and keep trust records. The rules also provide for the appointment of external examiners of approved clerks' trust accounts. They also modify the application of the 2015 Rules to approved clerks so that the features of the clerking system in Victoria can be maintained alongside the nationalised system of regulating the legal profession.

#### Licensed clerks

The Bar Council has the power under its constitution to make regulations in respect of "all matters relating to the licensing of barristers' clerks". It also has the power to make provision in respect of any other matter authorised, required or permitted by its constitution or legislation.

The currently applicable Clerking Regulations commenced on 1 July 2020.

The purpose of licensing is to give members of the Bar confidence in the capacity of licensed clerks effectively to act as clerks to members. For that purpose, the licensing regulations provide for certain minimum standards and ongoing supervision requirements.

Under the Clerking Regulations, the Bar Council will issue a licence to a person if it is satisfied of 'licensing criteria', being that the person:

- is a fit and proper person to act as a clerk;
- is financially viable to act as a clerk;
- will be able to provide adequate services as a clerk; and
- is willing and able to be bound by the Clerking Regulations.

The Bar Council may revoke a clerk's licence if it is satisfied that the clerk no longer meets the licensing criteria, or the clerk has failed to comply with the Clerking Regulations.

As at 1 July 2020, all barristers' clerks operating in Victoria have been issued a licence under the Clerking Regulations.

The Clerking Regulations require:

- clerks to operate a clearing account for the receipt of all barristers' fees, and to ensure that all barristers' money is properly credited and appropriately reconciled through the clearing account, and paid or credited to barristers as soon as practicable following receipt; and
- list committees to provide an annual written statement to the Bar Council, which confirms that a clerk has complied with the Clerking Regulations for the preceding financial year, or has or will take appropriate steps to rectify any non-compliance. The list committee must also state that the clerk satisfies, and will likely continue to satisfy, the licensing criteria.

The Bar Council has powers under the Clerking Regulations to request further information from a list committee for the purpose of monitoring compliance with the Clerking Regulations. It also issues non-binding guidance notes in relation to the Clerking Regulations.

The Clerking Regulations are available on the Victorian Bar [website](#).