



NOTICE TO PRACTITIONERS

RECEIVING A BENEFIT UNDER A WILL OR OTHER INSTRUMENT

It has come to the attention of members of the Probate Users' Committee of the Supreme Court that a number of practitioners are unaware of the existence of rule 10 of the **Professional Conduct and Practice Rules 2005**. The current rule commenced operation on 30 June 2005 and applies to all regulated practitioners of Law Institute of Victoria Limited.

The relevant rule places limitations upon practitioners who prepare wills for clients under which they, or their associates, receive a benefit such as an entitlement to charge executor's commission. Despite the existence of the rule, the Committee is concerned that some practitioners may not have complied with the rule.

All practitioners must act in accordance with the general principles of professional conduct as set out in the rules, discharge their obligations in relation to the administration of justice and provide legal services of the highest standards unaffected by self interest.

Rule 10 is as follows: -

Professional Conduct and Practice Rules 2005

10 Receiving a Benefit Under a Will or Other Instrument

10.1 A practitioner who receives instructions from a client to draw a will appointing the practitioner or an associate of the practitioner an executor must inform the client in writing before the client signs the will -

10.1.1 of any entitlement of the practitioner, or the practitioner's firm or associate, to claim commission;

10.1.2 of the inclusion in the will of any provision entitling the practitioner, or the practitioner's firm or associate, to charge legal costs in relation to the administration of the estate, and;

10.1.3 if the practitioner or the practitioner's firm or associate has an entitlement to claim commission, that the person could appoint as

executor a person who might make no claim for commission.

10.2 A practitioner who receives instructions from a person to -

10.2.1 draw a will under which the practitioner or the practitioner's firm or associate will, or may, receive a substantial benefit other than any proper entitlement to commission (if the practitioner is also to be appointed executor) and the reasonable professional fees of the practitioner or the practitioner's firm; or

10.2.2 draw any other instrument under which the practitioner or the practitioner's firm or associate will, or may, receive a substantial benefit in addition to the reasonable remuneration, including that payable under a conditional costs agreement,

must:

(a) decline to act on those instructions; and

(b) offer to refer the person, for advice, to another practitioner who is not an associate of the practitioner;

unless the person instructing the practitioner is either:

(i) a member of the practitioner's immediate family; or

(ii) a practitioner, or a member of the immediate family of a practitioner, who is a partner, employer, or employee, of the practitioner.

10.3 For the purposes of rule 10:

"substantial benefit" means a benefit which has a substantial value relative to the financial resources and assets of the person intending to bestow the benefit.

MICHAEL J. HALPIN
Registrar of Probates
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