

Legal Profession National Rules
under the
Legal Profession National Law
December 2010

Part 4.5 Fidelity cover

Division 1 Preliminary

4.5.1 Authorising provision

The rules in this Part are made under Part 4.5 of the National Law.

Division 2 Defaults and claims

4.5.2 Time of default

- (1) A default is taken to have occurred when the act or omission giving rise to or constituting the default occurred.
- (2) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed.

4.5.3 Defaults to which National Law does not apply

Part 4.5 of the National Law does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the law practice for or in connection with:

- (a) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate is required to hold an Australian financial services licence covering the provision of the financial service; or
- (b) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate provides the service as an authorised representative of another person who carries on a financial services business; or
- (c) investment purposes, whether on its own account or as an agent, unless:
 - (i) the money or property was entrusted to or held by the law practice in the ordinary course of legal practice and primarily in connection with the provision of legal services to or at the direction of the client; and
 - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the

money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

4.5.4 Making a claim

- (1) For the purposes of section 4.5.16 of the National Law, a claim against a fidelity fund is to be given to a fidelity authority.
- (2) Where necessary, a fidelity authority must give a claim received by it to the relevant fidelity authority.

4.5.5 Claims

- (1) The fidelity authority may require a person who makes a claim:
 - (a) to give further information about the claim or any dispute to which the claim relates; or
 - (b) to verify the claim or any further information by statutory declaration.
- (2) A claim about a default of a law practice:
 - (a) may be made despite a change in status of the law practice or the associate concerned after the occurrence of the default; and
 - (b) is not affected by the change in status.
- (3) In this rule, *change in status* includes:
 - (a) in relation to a law practice:
 - (i) a change in the directorship, membership or staffing of the law practice; or
 - (ii) the dissolution or winding up of the law practice; or
 - (b) in relation to an associate who is an Australian legal practitioner, the fact that the associate has ceased to practise or to hold an Australian practising certificate or has died.

4.5.6 Advertisements

- (1) A notice under section 4.5.17 of the National Law must be published:
 - (a) in a newspaper circulating generally throughout Australia; and
 - (b) in a newspaper circulating generally in each jurisdiction in which the law practice has, or at any relevant time, had, an office; and
 - (c) if the fidelity authority has an internet site, on that site.
- (2) Apart from extending the period during which claims can be made, publication of a notice under this rule does not confer any entitlement in relation to a claim or the default to which it relates or provide any grounds affecting the determination of a claim.

4.5.7 Notification of delay in making decision

If the fidelity authority considers that a claim is not likely to be determined within 12 months after the claim was made, the fidelity authority must notify the claimant in writing to that effect and provide a brief statement of the reasons for the delay.

4.5.8 Recommendations by the fidelity authority to other fidelity authorities

If the fidelity authority is acting as agent of another fidelity authority in relation to a claim:

- (a) the fidelity authority acting as agent may make recommendations about the decision that the other authority might make about the claim; and

- (b) the fidelity authority acting as agent cannot make a decision about the claim; and
- (c) the other fidelity authority:
 - (i) may make a decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or
 - (ii) may disregard the recommendations.