

SOUTH AUSTRALIA

LEGAL PRACTITIONERS REGULATIONS 1994

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REGULATIONS UNDER THE LEGAL PRACTITIONERS ACT 1981

Legal Practitioners Regulations 1994

being

No. 149 of 1994: *Gaz.* 1 September 1994, p. 636¹

as varied by

No. 230 of 1995: *Gaz.* 21 December 1995, p. 1787²

No. 147 of 1996: *Gaz.* 13 June 1996, p. 2942³

No. 251 of 1996: *Gaz.* 5 December 1996, p. 1834⁴

No. 27 of 1997: *Gaz.* 13 March 1997, p. 1189⁵

No. 204 of 1998: *Gaz.* 3 December 1998, p. 1746⁶

¹ Came into operation 1 September 1994: reg. 2.

² Came into operation 21 December 1995: reg. 2.

³ Came into operation 13 June 1996: reg. 2.

⁴ Came into operation 5 December 1996: reg. 2.

⁵ Came into operation 13 March 1997: reg. 2.

⁶ Came into operation 3 December 1998: reg. 2.

2.

**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Legal Practitioners Regulations 1994*.

Commencement

2. These regulations will come into operation on 1 September 1994.

Revocation

3. All regulations previously made under the *Legal Practitioners Act 1981* are revoked.

Interpretation

4. In these regulations, unless the contrary intention appears—

"**the Act**" means the *Legal Practitioners Act 1981*;

"**company practitioner**" means a company that holds a practising certificate;

"**Registrar**" means the Registrar of the Supreme Court;

"**trust bank account**", in relation to a practitioner, means a banking account maintained by the practitioner under Part 3 of the Act (see definition of "**trust account**" in section 5 of the Act);

"**trust ledger accounts**", in relation to a practitioner, means the detailed accounts required to be kept by the practitioner under section 31(4) of the Act of trust money received, and of any disbursement of or other dealings with the money.

Forms

5. The forms set out in schedule 1 must—

(a) be used for the purposes specified in the schedule; and

(b) contain the information required by, and be completed in accordance with, the instructions contained in the forms.

Fees

6. The fees set out in schedule 2 are payable as specified in that schedule.

PART 2
PRACTISING CERTIFICATES

Notification of changes in practitioner's circumstances

7. (1) A practitioner must, within one month, give the Registrar and the Law Society notice in writing containing details of any of the following events:

- (a) commencement or recommencement of practice on the part of the practitioner;
- (b) cessation of practice by the practitioner;
- (c) establishment of a new place of business by the practitioner;
- (d) closure of a place of business of the practitioner;
- (e) amalgamation of the practitioner's practice with the practice of another practitioner;
- (f) entry by the practitioner into partnership with another practitioner;
- (g) if the practitioner practises in partnership—dissolution of the partnership or the death or retirement of a member of the partnership or addition of a new member;
- (h) opening or closure of a trust bank account by the practitioner;
- (i) appointment by the practitioner of an approved auditor under these regulations;
- (j) the death, resignation, removal from office or incapacity of an approved auditor appointed by the practitioner under these regulations.

(2) The legal representative of a practitioner who dies while engaged in practice on his or her own behalf and not in partnership with another practitioner must, within one month after the death or 14 days after the grant of probate or letters of administration (whichever is the later), notify the Registrar and the Law Society of the death.

**PART 3
COMPANY PRACTITIONERS**

Annual return of company practitioner (s. 24)

8. (1) If an annual return under section 24 of the Act submitted for lodgement with the Supreme Court—

- (a) contains matter that is, in a material particular, false or misleading in the form and context in which it is included; or
- (b) has not been properly completed because of an omission or misdescription; or
- (c) does not comply with these regulations,

the Registrar may refuse to receive the document and may request that the document be appropriately amended or completed and re-submitted or that a fresh document be submitted in its place.

(2) A company must, at the request of the Registrar, supply the Registrar with such further documents or information as the Registrar may reasonably require.

Registrar may obtain certain information

9. (1) For the purpose of determining whether a company practitioner has complied with sections 16, 25 and 29 of the Act, the Registrar may by notice in writing require the company practitioner or a director of the company to provide the Registrar with such information in relation to those matters as the Registrar may reasonably require.

(2) A company practitioner must comply with a requirement of the Registrar under subregulation (1).

(3) If a failure to comply with a requirement of the Registrar under subregulation (1) continues for a period of not less than 21 days, the Registrar may at any time after that period, on not less than 14 days' notice in writing to the company practitioner, suspend the company practitioner's practising certificate until the requirement is complied with.

PART 4
TRUST ACCOUNTS AND AUDIT

DIVISION 1—TRUST RECORDS

General duty with respect to records

10. The records required to be kept by a practitioner under this Division—

- (a) will be subject to audit as records kept under Division 5 of Part 3 of the Act; and
- (b) must be kept by the practitioner accurately and in a manner that enables the receipt and disposition of trust money by the practitioner to be conveniently and properly audited.

Receipting of trust money by practitioner

11. (1) If a practitioner receives trust money that is to be paid into the practitioner's trust bank account, the practitioner must immediately make out a receipt for it—

- (a) that is legibly written on a form comprised in a series of consecutively pre-numbered duplicate receipt forms marked with the name of the practitioner or firm and the words "Trust Account"; and
- (b) that contains the following information:
 - (i) the date of payment;
 - (ii) the name of the person making the payment;
 - (iii) whether the payment is by cash, cheque or bank draft and, if the payment is by cheque, the name of the drawer of the cheque;
 - (iv) the name of the person for whom the money is received;
 - (v) brief particulars of the purpose of the payment;
 - (vi) the amount of the payment.

(2) The practitioner must make the original receipt available to the person who made the payment of trust money.

(3) The practitioner must ensure that a legible copy of the receipt is made on the duplicate form containing the same details as the original receipt and must keep the duplicate form as part of the practitioner's records.

(4) The Registrar may, with the consent of the approved auditor for the time being appointed by a practitioner under Division 2, exempt the practitioner from the requirements of subregulations (1)(a) and (3) on such terms and conditions as the Registrar thinks fit.

Payment of trust money by practitioner

12. (1) A practitioner must not make a payment of trust money in cash.

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(2) When a practitioner makes a payment of trust money by cheque, the practitioner—

- (a) must ensure that the cheque is marked with the name of the practitioner or firm and the words "Trust Account"; and
- (b) must—
 - (i) cause the cheque to be crossed and endorsed "Not negotiable"; or
 - (ii) obtain from the person receiving the cheque a receipt that complies with subregulation (3) and keep the receipt as part of the practitioner's records; and
- (c) must prepare and keep as part of the practitioner's records a cheque stub or voucher containing the following information:
 - (i) the date and reference number of the cheque;
 - (ii) the name of the payee;
 - (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the amount of the cheque.

(3) The receipt must be legible and contain the following information:

- (i) the date and reference number of the cheque;
- (ii) particulars identifying the trust bank account against which the cheque is drawn;
- (iii) the name of the payee;
- (iv) brief particulars of the purpose of the payment;
- (v) the amount of the cheque.

Practitioner must keep cash books

13. (1) A practitioner must keep as part of the practitioner's records—

- (a) a cash receipts book in which the practitioner records the following information in respect of each receipt of trust money:
 - (i) the date and reference number of the receipt;
 - (ii) the name of the person from whom the money is received;
 - (iii) the client name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the receipt;

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- (v) the amount of the receipt; and
- (b) a cash payments book in which the practitioner records the following information in respect of each payment of trust money:
 - (i) the date and reference number of the cheque by which the payment was made;
 - (ii) the name of the payee;
 - (iii) the client name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the payment;
 - (v) the amount of the cheque.

(2) The Registrar may, with the consent of the approved auditor for the time being appointed by a practitioner under Division 2, exempt the practitioner from the requirements of this regulation on such terms and conditions as the Registrar thinks fit.

Separate trust ledger accounts

14. (1) A practitioner must ensure that the practitioner's trust ledger accounts are kept separately—

- (a) in respect of each of the practitioner's clients; and
- (b) if the practitioner performs services for a client in respect of a number of transactions between different parties—in respect of each such transaction.

(2) The practitioner must record in each of the separate accounts the following details:

- (a) the name and address of the client to whom the accounts relate;
- (b) a brief description of the service provided and the transaction to which the accounts relate;
- (c) in respect of each receipt or disbursement of trust money—
 - (i) the date and reference number of the receipt or disbursement;
 - (ii) the name of the person from whom the money is received or to whom the money is disbursed;
 - (iii) brief particulars of the purpose of the receipt or disbursement;
 - (iv) the amount received or disbursed.

(3) If the practitioner transfers money between any of the separate accounts, the practitioner must clearly record the transfer—

- (i) in both accounts; and

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(ii) in a transfer journal,

in sufficient detail that the transfer may be clearly understood.

Preparation of reconciliation statements

15. (1) A practitioner must, at the end of each month, prepare and keep as part of the practitioner's records—

- (a) a statement reconciling the balance of the practitioner's cash books kept under regulation 13 with the balance of the practitioner's trust bank account; and
- (b) a statement reconciling the balances of the ledgers comprised in the practitioner's trust ledger accounts with the balance of the practitioner's trust bank account.

(2) The practitioner is not required to set out a list of individual balances, or the names of the clients on whose behalf money is held, when preparing the statement referred to in subregulation (1)(b).

(3) The Registrar may, with the consent of the approved auditor for the time being appointed by a practitioner under Division 2, exempt the practitioner from the requirements of subregulation (1) on such terms and conditions as the Registrar thinks fit.

Transfer of money from trust bank account to office account

16. (1) A practitioner who becomes entitled to money held in the practitioner's trust bank account in or towards satisfaction of the practitioner's legal costs must, as soon as practicable, transfer the money to a banking account maintained by the practitioner for receipts other than trust money.

(2) A practitioner who fails to make such a transfer within three months of becoming entitled to do so will be taken to have permitted trust money to be intermixed with other money without the approval of the Supreme Court contrary to section 31(6)(a) of the Act.

Practitioner must retain written direction as to disposition of trust money

17. If a practitioner is given a written direction to dispose of trust money in a specified manner under section 31(2) of the Act, the practitioner must retain the written direction as part of the practitioner's records.

Trust account statements

17A. (1) Pursuant to section 31(7a) of the Act, a practitioner who receives trust money in the course of acting in a matter must provide the person who instructed him or her in the matter with a trust account statement within a reasonable time of—

- (a) a request by the person who instructed him or her in the matter; or
- (b) an appropriation of trust money in or towards satisfaction of legal costs payable by the person who instructed him or her in the matter; or
- (c) the conclusion of the practitioner's involvement in the matter.

(2) A trust account statement prepared in relation to a matter under this regulation must contain all of the information required to be included in the trust ledger accounts relating to that matter and must include sufficient detail that each receipt, disbursement or transfer of trust money may be clearly understood.¹

¹A trust account statement may consist of a copy of the relevant trust ledger accounts provided it satisfies the requirements of this subregulation.

Practitioner must keep Register of Direct Payments

18. A practitioner must—

- (a) keep a register designated the *Register of Direct Payments* as part of the practitioner's records; and
- (b) record in the register in respect of each receipt of trust money that is not to be deposited in the practitioner's trust bank account in accordance with a written direction under section 31(2) of the Act the following details:
 - (i) the date of the receipt;
 - (ii) the name of the person on whose behalf the money is received;
 - (iii) the amount of the receipt;
 - (iv) the reference number of any cheque by which the payment was made to the practitioner;
 - (v) the name of the payer;
 - (vi) brief particulars of the purpose of the receipt;
 - (vii) the name of the person to whom the money is directed and the date on which it is forwarded.

Practitioner must keep Register of Investments

19. (1) A practitioner must—

- (a) keep a register designated the *Register of Investments* as part of the practitioner's records; and
- (b) record in the register in respect of each investment of trust money made by the practitioner (whether the investment is made in the practitioner's own name, in the name of another or jointly in the practitioner's own name and the name of another) the following details:
 - (i) the name in which the investment is held;
 - (ii) the name of each person for whom the investment is made;
 - (iii) the amount invested for each person;
 - (iv) the date on which the investment is made;

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- (v) a description of the investment;
- (vi) details (including the cheque number or other means of identification) of the payment sufficient to identify the payment in the practitioner's trust ledger account;
- (vii) a statement as to whether a certificate or other document evidencing the investment or security is held by the practitioner;
- (viii) when the investment matures or is realised (in whole or in part) and the practitioner receives the proceeds on behalf of another person—a reference to the record of receipt kept by the practitioner under regulation 11 in respect of the trust money so received.

(2) Details need not be recorded in the register in respect of an investment for which the practitioner holds a security that is required to be recorded in the practitioner's Register of Securities under regulation 20.

(3) The practitioner must keep the register up to date in respect of the crediting of interest.

Practitioner must keep Register of Securities

20. (1) A practitioner must—

- (a) keep a register designated the *Register of Securities* as part of the practitioner's records; and
- (b) record in the register the details required under subregulation (2) in respect of—
 - (i) each security for money the title to which is transferable by delivery held by the practitioner on behalf of, or in trust for, another (excluding negotiable securities received for immediate collection and conversion into money that are receipted under regulation 11 and recorded in the practitioner's cash receipts book under regulation 13); and
 - (ii) each security, document of title or deposit receipt held by the practitioner on behalf of, or in trust for, another (whether the security is held in the practitioner's own name, in the name of another or jointly in the practitioner's own name and the name of another).

(2) The following details are required to be recorded in the register:

- (a) the date the practitioner receives the security, document of title or deposit;
- (b) a description of the security, document of title or deposit receipt;
- (c) the name of the person on whose behalf, or in trust for whom, the security, document of title or deposit receipt is held;
- (d) the date on which the security, document of title or deposit receipt is delivered out of the practitioner's possession and control;

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- (e) particulars of the person to whom and the circumstances under which the security, document of title or deposit receipt is disposed of.

Period for which accounts and records must be retained

21. Accounts and records must be retained by a practitioner as follows:

- (a) in the case of trust ledger accounts—for 15 years after the last entry is made;
- (b) in the case of other records required to be kept under this Division—for seven years after the last entry is made;
- (c) in the case of files relating to trust transactions—for seven years after the last entry is made.

DIVISION 2—APPROVED AUDITORS

Registrar must approve auditor

22. (1) A person is not qualified to act as an approved auditor under the Act unless approved by the Registrar.

(2) Subject to subregulation (3), the Registrar must, on application, approve an accountant—

- (a) who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants (or both); and
- (b) who is engaged as a principal in practice as a public accountant in South Australia; and
- (c) who is of good character,

as an auditor for the purposes of the Act.

(3) The Registrar—

- (a) may refuse to approve an accountant who has not been continuously engaged for at least three years in practice as a public accountant in the State, either as a principal or as an employee of a public accountant or firm of public accountants;
- (b) may refuse to approve, or may withdraw the approval of, an accountant if it appears to the Registrar—
 - (i) that the accountant is liable to forfeit or be deprived of membership of either of the associations referred to in subregulation (2)(a); or
 - (ii) that there is any other sufficient reason to refuse or withdraw approval.

Appointment of auditor

23. (1) A practitioner who commences or recommences to practise the profession of the law must, within two months, appoint an approved auditor for the purposes of Division 5 of Part 3 of the Act.

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(2) An approved auditor may only be appointed by a practitioner for the purposes of Division 5 of Part 3 of the Act if the auditor agrees to act as the practitioner's auditor under that Division by notice in writing addressed to the practitioner.

(3) A person must not hold himself or herself out, or act, as a practitioner's approved auditor for the purposes of Division 5 of Part 3 of the Act unless the person—

- (a) is an approved auditor; and
- (b) has agreed to act as the practitioner's auditor under that Division by notice in writing addressed to the practitioner.

(4) An approved auditor who has been appointed under this regulation may not resign or be removed from office without the approval of the Registrar.

(5) The Registrar may not withhold unreasonably an approval under subregulation (4).

(6) If an approved auditor appointed under this regulation—

- (a) dies; or
- (b) with the approval of the Registrar, resigns or is removed from office; or
- (c) becomes incapable of auditing the accounts of the practitioner (whether because the Registrar has withdrawn approval or for another reason),

the practitioner must, within two months, appoint another approved auditor.

(7) The Registrar may excuse a practitioner from the obligation to appoint an approved auditor if the Registrar is satisfied that the practitioner does not receive or hold trust money.

(8) If the Registrar excuses a practitioner under subregulation (7), the practitioner must, within 30 days, give notice of that fact to the Law Society.

Auditing accounts and records

24. (1) An approved auditor appointed to audit the accounts and records of a practitioner under Division 5 of Part 3 of the Act must conduct such audits in accordance with these regulations as and when such audits are required under the Act.

(2) If a practitioner carries on practice at more than one place, the Registrar may from time to time give such directions as the Registrar thinks fit—

- (a) for separate audits of the practitioner's accounts and records in respect of the practice carried on at each place;
- (b) for the acceptance by the auditor of the certificates of a person approved by the Registrar with respect to the examination of the accounts and records kept at a branch of the practice.

(3) In carrying out an audit, the approved auditor must—

- (a) make checks that will enable the auditor to give an opinion as to whether the practitioner has, during the period covered by the audit, complied with the Act and these regulations relating to the practitioner's accounts and records; and
- (b) ascertain whether a trust bank account under Division 5 of Part 3 of the Act was kept by the practitioner during that period; and
- (c) make a general test examination of any trust bank account kept by the practitioner and of the pass books and statements relating to any such account during that period; and
- (d) make a comparison as to no fewer than two dates (one to be the last day of the period of the audit and one other to be a date within that period selected by the auditor) between—
 - (i) the liabilities of the practitioner to the practitioner's clients and to other persons in connection with the practitioner's practice as shown by the practitioner's trust ledger accounts and the records kept under Division 1; and
 - (ii) the aggregate of the balances standing to the credit of the practitioner's trust bank account and on deposit by the practitioner in the combined trust account under section 53 of the Act; and
- (e) ask for such information and explanations as the auditor may require for the purposes of this regulation.

(4) For the purpose of making checks, and the general test examination referred to in subregulation (3), the approved auditor is entitled to examine such number of dealings representative of each phase of the practitioner's practice as the auditor in the circumstances considers reasonable.

Practitioner's statement

25. (1) A practitioner who is required to have accounts and records audited by an approved auditor under Division 5 of Part 3 of the Act must, within two months after the last day of the period to which the audit relates, certify—

- (a) under his or her hand; or
- (b) in the case of a firm—under the hands of not less than two partners of the firm; or
- (c) in the case of a company practitioner—under the hands of not less than two directors of the company,

and deliver to the auditor a statement setting out in detail, as of the last day of the period to which the audit relates, particulars of—

- (d) the names of all persons on whose behalf the practitioner is holding trust money and the amount of the credit of each such person; and

- (e) the amount standing on deposit by the practitioner in the combined trust account under section 53 of the Act; and
- (f) —
 - (i) the names of the banking accounts in which the balance of the practitioner's trust money is lodged and the balances on that date of those banking accounts; and
 - (ii) where the bank balances are not in agreement with the balances of the practitioner's trust ledger accounts—a statement reconciling those balances; and
- (g) all securities, documents of title, deposit receipts and investments held by the practitioner (whether alone or jointly with others) particulars of which are required under these regulations to be entered in the practitioner's Register of Securities or Register of Investments.

(2) A true copy of the statement under this regulation must be retained by the practitioner and produced on demand to the approved auditor making the next succeeding audit of the practitioner's accounts and records, together with a signed copy of the report of the last preceding audit of the practitioner's accounts and records.

(3) If a practitioner's accounts and records are being audited for the first time or, if for any other reason a copy of a statement cannot be produced as required under subregulation (2) for the purpose of audit, the practitioner must instead give to the auditor, before the auditor reports, a statement containing the particulars as to trust money, securities, documents of title, deposit receipts and investments held on the first day of the year or other period to which the audit relates.

(4) A statement under subregulation (3) must be verified by statutory declaration—

- (a) of the practitioner; or
- (b) in the case of a firm of practitioners—of not less than two of the partners of the firm; or
- (c) in the case of a company practitioner—of not less than two directors of the company.

Auditor's report

26. (1) The approved auditor must, in each report for the purposes of section 33 of the Act, include all matters relating to the practitioner's accounts and records that should, in the auditor's opinion, be communicated to the Registrar and, in particular, deal with each of the following matters:

- (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;
- (b) whether the accounts and records have been ready for examination at the times appointed by the auditor;
- (c) whether the practitioner has complied with the auditor's requirements;

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- (d) whether, at any time during the period of the audit, the practitioner's trust bank account was overdrawn and, if so, the full explanation for that given by the practitioner;
- (e) whether the practitioner has, or has had, any debit balances in his or her trust bank account and the explanation or reason for such a debit given by the practitioner;
- (f) whether the practitioner has drawn from his or her trust bank account a sum on account of costs or otherwise without at the same time allocating the drawing to a specific account (other than a sum deposited in the combined trust account under section 53 of the Act);
- (g) whether the practitioner has complied with section 53 of the Act;
- (h) whether the auditor has received and examined the statement given to the auditor under regulation 25 and the result of that examination;
- (i) any other matter required by the Act to be included in the report.

(2) The approved auditor must attach a copy of the practitioner's statement under regulation 25(1) to the auditor's report.

(3) The approved auditor must verify the report by statutory declaration and give a signed copy of the report to the practitioner.

(4) The practitioner must keep the signed copy of the approved auditor's report and produce it on demand to the approved auditor making the next succeeding audit of the practitioner's accounts and records.

Obtaining information for purposes of audit

27. An approved auditor appointed by a practitioner is free to examine the accounts, books, papers, securities and other documents that the auditor is entitled to examine under section 35 of the Act at any time during normal business hours of the practitioner during the currency of the appointment of the auditor.

Reports of irregularities

28. (1) If, on receiving an approved auditor's report, it appears to the Registrar that the report discloses an irregularity, the Registrar must immediately forward a copy of the report to the Law Society.

(2) If an approved auditor, in the course of auditing a practitioner's accounts and records, discovers—

- (a) that they are not kept in a manner that enables them to be properly audited; or
- (b) a matter that appears to the auditor to involve dishonesty or a breach of the law on the part of the practitioner; or
- (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or

- (d) a failure to comply with the provisions of the Act or these regulations,

the auditor must as soon as possible furnish a report in respect of the discovery to the Registrar and the practitioner concerned.

(3) The Registrar must immediately forward a copy of a report under subregulation (2) to the Law Society.

Access to auditors reports, etc.

29. (1) On request by a person interested in any money or securities that are or have been or should be held by a practitioner, the Registrar may disclose to the person or the person's solicitor any portion of an approved auditor's report, or of a statutory declaration, statement or other evidence, that may affect the person.

(2) An approved auditor's report or any statutory declaration, statement or other evidence lodged with the Registrar under these regulations is available for inspection—

- (a) by the approved auditor appointed to audit the accounts and records of the same practitioner for the next succeeding year; or
- (b) by an inspector appointed under section 34 of the Act for any purpose in relation to that practitioner.

Audit when practitioner ceases to practise

30. (1) If a practitioner ceases to practise, the practitioner, or, if the practitioner has died, the practitioner's personal representative, must—

- (a) cause the practitioner's accounts and records under Division 5 of Part 3 of the Act to be audited and reported on by an approved auditor for the period from the previous audit up to the date of cessation; and
- (b) submit a copy of the approved auditor's report to the Registrar within four months of the practitioner's ceasing to practise or within such further period as the Registrar may allow.

(2) Except as otherwise determined by the Registrar, the practitioner, or the practitioner's personal representative, must, in each year after the practitioner ceases to practise and until the practitioner's affairs (so far as they relate to trust money and other matters required to be recorded under Division 1) are properly and finally wound up—

- (a) cause the practitioner's accounts and records under Division 5 of Part 3 of the Act to be audited and reported on by an approved auditor for the period from the previous audit up to the next succeeding 30 June or the date of winding up (whichever is earlier); and
- (b) submit a copy of the approved auditor's report to the Registrar on or before 31 October in that year or a date being four months after the date of winding up (whichever is earlier).

(3) The relevant provisions of the Act and of these regulations apply (subject to such modifications as may be necessary) to the audit and report required by this regulation.

(4) The practitioner, or his or her personal representative, must continue to comply with the Act and these regulations as if the practitioner had not ceased to practise until the practitioner's affairs (so far as they relate to trust money and other matters required to be recorded under Division 1) are properly and finally wound up.

(5) The preceding provisions of this regulation do not apply to a practitioner who, before ceasing to practise, was a member of a firm if all continuing members of the firm and (unless the practitioner is dead) the practitioner certify to the Registrar that the trust money and other matters in respect of which records are required to be kept under Division 1 are under the proper administration and control of the continuing partners or some of them.

(6) The Registrar may excuse a practitioner who has ceased to practise and who has complied with this regulation from the obligation to make a statutory declaration under regulation 31 in respect of the period up to the expiration of any practising certificate held by the practitioner when he or she ceased to practise.

(7) In this regulation—

"**practitioner**" includes former practitioner.

Declaration as to non-receipt of trust money

31. (1) A practitioner who did not receive trust money in the course of practice during a financial year must, before 31 October next following, make a statutory declaration to that effect and forward it to the Registrar.

(2) If a practitioner ceases to practise, the practitioner (or if he or she has died, the practitioner's personal representative) must, if he or she did not receive trust money during the financial year up to cessation of practice, within four months of the cessation, make a statutory declaration to that effect and forward it to the Registrar.

(3) The Registrar must notify the Law Society of the name of any practitioner who makes a statutory declaration under this regulation.

(4) In this regulation—

"**practitioner**" includes former practitioner.

Audit and report, etc., for firm operates for each partner

32. An audit of accounts and records kept by a firm of practitioners and the auditor's report and attached statement relating to the firm's accounts and records will be taken to operate as an audit, report and statement in respect of each legal practitioner who is a member of the firm.

Certain persons may not audit accounts and records of practitioner

33. A person must not audit the accounts and records of a practitioner if the person—

- (a) is, or has been within two years, an employee or partner of the practitioner; or
- (b) is an employee of another practitioner actually in practice; or
- (c) is, himself or herself, a practitioner in practice.

Practitioner to bear cost of audit

34. Subject to any written agreement between a practitioner and a person on behalf of whom the practitioner holds trust money, the practitioner must bear the cost of auditing the accounts and records relating to such trust money.

Transitional provisions

35. (1) An accountant who immediately before the commencement of these regulations was approved under the revoked regulations as a person qualified to act as an auditor under those regulations will be taken to have been so approved under these regulations.

(2) A person who immediately before the commencement of these regulations was appointed under the revoked regulations by a practitioner as auditor of the practitioner's accounts and records will be taken to have been appointed under these regulations.

(3) Where, immediately before the commencement of these regulations, a practitioner was exempted under regulation 24 of the revoked regulations from a specified provision of those regulations, the practitioner will be taken to have been exempted from the corresponding provision under these regulations.

(4) Where, immediately before the commencement of these regulations, a practitioner was excused under the revoked regulations from the obligation to appoint an auditor or make a statutory declaration, the practitioner will be taken to have been excused from the corresponding obligation under these regulations.

(5) In this regulation—

"revoked regulations" means the *Legal Practitioners Regulations 1982* revoked by these regulations.

**PART 5
MISCELLANEOUS**

Miscellaneous prescribed matters under Act

36. (1) For the purposes of section 17(2) of the Act, the prescribed fine is—

- (a) if the applicant has practised the profession of law while not holding a practising certificate for a period not exceeding one month—10 per cent of the amount fixed as the fee for the issue or renewal of a practising certificate for at least six months;
- (b) if the applicant has practised the profession of law while not holding a practising certificate for a period exceeding one month but not exceeding three months—50 per cent of the amount of that fee;
- (c) in any other case—100 per cent of the amount of that fee.

(2) For the purposes of section 21(3)(n)(i)(B) of the Act, the maximum rental is \$10 000 per annum.

(3) For the purposes of section 21(3)(n)(ii)(C) of the Act, the maximum rental is \$10 000 per annum.

(4) For the purposes of sections 31(9), 53(8) and 53(11) of the Act, the prescribed rate is two per cent above the rate fixed from time to time on interest on judgment by the Supreme Court under the Third Schedule of the *Supreme Court Rules*.

(5) For the purposes of section 60(3) of the Act, the prescribed rate is ten per cent per annum.

(6) For the purposes of section 64(2) of the Act, the prescribed percentage is five per cent.

(7) For the purposes of section 95(1)(b)(i) of the Act, the prescribed proportion is 19 per cent.

(8) For the purposes of section 95(1)(b)(ii) of the Act, the prescribed proportion is 78.5 per cent.

Oath of public notary

37. For the purposes of section 91(3) of the Act, the oath to be taken by a person admitted as a public notary under Part 7 of the Act must be in the following form:

"I
do swear that I will not make or attest any act, contract or instrument in which I know there is violence or fraud; and in all things I will act uprightly and justly in the business of a public notary according to the best of my skill and ability. So help me God."

Registrar's powers and review and appeal

38. (1) A practitioner or other person must, if so required by the Registrar, furnish to the Registrar any evidence, record or information reasonably required by the Registrar for the purpose of determining an application or exercising any discretion under the Act or these regulations.

(2) A decision of the Registrar may be reviewed or varied or revoked by the Registrar.

(3) In the exercise of the discretions conferred by these regulations, the Registrar is not restricted to legal evidence but may inform himself or herself as the Registrar thinks fit.

(4) A person affected by a decision of the Registrar, or the failure of the Registrar to make a decision, may appeal to the Supreme Court.

(5) An appeal under this regulation is by way of a fresh hearing.

Offences

39. (1) If a person makes a statement that is false or misleading in a material particular in an application, record or return made or lodged under the Act or these regulations, the person is guilty of an offence.

(2) If a person contravenes, or fails to comply with a provision of these regulations, the person is guilty of an offence.

(3) It is a defence to a charge under these regulations if the person charged establishes—

(a) that the contravention was due to a reasonable mistake; or

(b) that the contravention was due to reasonable reliance on information supplied by another person; or

(c) that—

(i) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the control of the person charged; and

(ii) the person charged took reasonable precautions and exercised due diligence to avoid the contravention.

General penalty

40. A person guilty of an offence against these regulations is liable to a penalty not exceeding a division 8 fine.

Service of documents

41. Any notice to be given to a practitioner, approved auditor or other person by the Registrar under these regulations may be given—

(a) by delivering the notice to the person personally; or

(b) by enclosing the notice in a sealed envelope and—

(i) leaving it at the person's usual or last known place of business with a person apparently employed there; or

(ii) posting it to the address of the person's usual or last known place of business or residence.

SCHEDULE 1

Forms

(Regulation 5)

Form

1. Application by individual for issue or renewal of practising certificate
2. Application by company for issue of practising certificate
3. Application by company for renewal of practising certificate
4. Statutory declaration by approved auditor
5. Statutory declaration by legal practitioner who did not hold trust money during relevant year
6. Annual return of company holding practising certificate
7. Certificate of Registrar as to Public Notary

FORM 1
South Australia

(Sections 16 and 18)

Legal Practitioners Act 1981
**APPLICATION BY AN INDIVIDUAL FOR ISSUE OR RENEWAL OF
PRACTISING CERTIFICATE**

To The Registrar of the Supreme Court of South Australia

Application is made for a practising certificate under the *Legal Practitioners Act 1981* and the following statements are made in respect of the application:

1. (a) Applicant's family name:
Other names:

(b) Business Address: Postcode.....
.....

(c) Home Address: Postcode.....
.....

(d) Business Telephone No:
Home Telephone No.:

2. Date of Birth: . . . / . . . /

3. Date and place first admitted as a legal practitioner
.....

4. Date of admission to practise as a legal practitioner in South Australia:

5. Did the Applicant hold a practising certificate immediately preceding the period for which a
practising certificate is applied for:

6. If a practising certificate was not held, has the Applicant practised law in South Australia either on
the Applicant's own account or as an employee at any time prior to the date of this application:
.....

7. Does the Applicant intend to practise in South Australia—
· on the Applicant's own behalf under the Applicant's own name; or
· on the Applicant's own behalf under a firm name and, if so, the name of the firm; or
· as a partner and, if so, the name of the firm; or
· as an employee and, if so, the name of the employer
.....
.....

8. If the business carried on or to be carried on by the Applicant is in partnership with other persons,
state the names of those other persons:
.....

9. (a) State the principal place of business or intended principal place of business of the
Applicant or of the Applicant's firm or of the firm employing the Applicant:
.....
.....

(b) State any other place or intended place of business of the Applicant or the place of business of the Applicant's firm or employer:
.
.

10. Is the Applicant required to take out insurance under a scheme under section 52 of the *Legal Practitioners Act 1981*?

11. Has the Applicant ever been disqualified or suspended from legal practice under the law of any place other than South Australia? If so, give particulars:
.

12. Is the Applicant an undischarged bankrupt or has the Applicant applied to take the benefit of a law for the relief of bankrupt or insolvent debtors? If so, give particulars:
.

I declare that the above statements are true in every particular.

Dated

Signature of Applicant

DIRECTIONS FOR COMPLETING APPLICATION

This application is to be accompanied by—

- evidence of professional indemnity insurance that will be in force throughout the term for which the practising certificate is to be issued; or
- a certificate issued by the Law Society of South Australia that the Applicant is exempt from the obligation to take out such insurance.

FORM 2
South Australia

(Section 16)

Legal Practitioners Act 1981

APPLICATION BY COMPANY FOR ISSUE OF PRACTISING CERTIFICATE

To the Registrar of the Supreme Court of South Australia:

Application is made for a practising certificate under the *Legal Practitioners Act 1981* and the following statements are made in respect of the application:

- 1. (a) Applicant's name:
- (b) Registered office: Postcode
- (c) Business Address: Postcode
- (d) Telephone No:

2. Date of Incorporation: . . . / . . . /

3. State whether the Applicant intends to practise in South Australia under its own name, or under a business name and if so, state the business name proposed to be used:

- 4. (a) State the intended principal place of business of the Applicant:
- (b) State any other intended place of business of the Applicant:

5. State in relation to each director (within the meaning of the Act):

- (a) the director's full name and usual residential address
- (b) whether the director holds a current practising certificate under the Act
- (c) if the director does not hold a current practising certificate, whether the director is a prescribed relative of a director who is a legal practitioner holding a current practising certificate and if so, particulars of the relationship
- (d) whether the director is a director of any other company which holds a practising certificate under the Act and if so, full particulars of that other directorship

6. Give particulars of the issued capital of the Applicant specifying the number, class and nominal value of all shares on issue

7. State in relation to each person who is a member of the Applicant or the beneficial owner of a share in the Applicant—

- (a) the person's full name and usual residential address

- (b) whether the person holds a current practising certificate under the Act
- (c) whether the person is a director or employee of the Applicant or a prescribed relative of a person who is a director or employee of the Applicant
- (d) the following particulars of all shares in the Applicant held or owned beneficially by such person:
 - a description of the shares (including the number, nominal value and class)
 - particulars of the voting rights (if any) exercisable at a meeting of the members of the Applicant attached to the shares
 - if the person is not the holder of the shares, the name and address of the holder and particulars of the nature of the beneficial ownership of the shares of such person

We (insert full name and address of each director) declare—

- (a) that the above statements are true in every particular to the best of our knowledge, information and belief; and
- (b) that we are authorised by the board of the Applicant to make this application on behalf of the Applicant.

Dated

Signature of Applicant

.

.

DIRECTIONS FOR COMPLETING APPLICATION

This application must be accompanied by—

- a true copy of each of the Certificate of Incorporation and the Memorandum and Articles of Association of the Applicant, each verified by statutory declaration made by a director of the Applicant to be a true copy; and
- evidence that the Registrar has approved the Memorandum and Articles of Association of the Applicant.

FORM 3
South Australia

(Section 18)

Legal Practitioners Act 1981

APPLICATION BY COMPANY FOR RENEWAL OF PRACTISING CERTIFICATE

To the Registrar of the Supreme Court of South Australia

Application is made for the renewal of a practising certificate under the *Legal Practitioners Act 1981* and the following statements are made in respect of the application:

- 1. (a) Applicant's name:
- (b) Registered office:
..... Postcode
- (c) Business address:
..... Postcode
- (d) Telephone No:

2. State whether the Applicant held a practising certificate immediately preceding the period for which a practising certificate is applied for:

3. State whether the Applicant practises in South Australia under its own name, or under a business name and if so, state the business name:
.....
.....

- 4. (a) State the principal place of business of the Applicant:
- (b) State any other place of business of the Applicant:

5. State whether the Applicant complies with those requirements of the Act which apply to companies holding practising certificates, and if not, particulars of any non-compliance:
.....
.....

I, (insert full name and address of director) declare that the above statements are true in every particular to the best of my knowledge, information and belief.

Dated

Signature of Applicant

DIRECTIONS FOR COMPLETING APPLICATION

This application must be accompanied by evidence of professional indemnity insurance that will be in force throughout the term for which the practising certificate is to be issued.

FORM 4
South Australia

Legal Practitioners Act 1981
(Name of Practitioner or Firm)

STATUTORY DECLARATION BY APPROVED AUDITOR

I
of
(Occupation)

DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. That I have been approved by the Registrar of the Supreme Court of South Australia as an auditor for the purposes of Division 5 of Part 3 of the *Legal Practitioners Act 1981*.

2. That I have personally (with the assistance of my staff)* by means of appropriate techniques and test checks audited the accounts and records of
a practitioner/practitioners* of the Supreme Court of South Australia, practising at*
practising under the firm name of*
at
for the year ending

3. That the document annexed to this declaration and marked "A" dated
and signed by me is my report of the result of the audit.

4. That the document annexed to this declaration and marked "B" dated
is the statement delivered to me on behalf of the practitioner(s) under regulation 25 of the *Legal Practitioners Regulations 1994*.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1936*.

DECLARED at
the day of Signed:
..... 19....

before me:

Commissioner for Affidavits or Justice of the Peace

* Delete if unnecessary.

DIRECTIONS FOR COMPLETING DECLARATION

1. Where the report is on the accounts and records of a firm of practitioners, the names of individual partners constituting the firm are to be separately specified.
2. Where changes have taken place during the year in the firm, the periods in respect of which the accounts and records of any new or retiring partner have been audited are to be shown.
3. Where the report covers a period other than a year, the report must so specify.

FORM 5
South Australia

Legal Practitioners Act 1981

**STATUTORY DECLARATION BY LEGAL PRACTITIONER WHO DID NOT HOLD
TRUST MONEY DURING RELEVANT YEAR**

I
of
South Australia, legal practitioner, DO SOLEMNLY AND SINCERELY DECLARE as
follows:

1. That I hold a current practising certificate issued under the *Legal Practitioners Act 1981* by the
Supreme Court of South Australia.

2. That I have been excused by the Registrar of the Supreme Court of South Australia from the
obligation to appoint an auditor of trust funds.

3. (Here set out the nature of the practice (or otherwise) during the relevant period, using more than one
paragraph, if necessary).

4. That during the period from
to I did not receive
or hold any money for or on behalf of any other person.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the
provisions of the *Oaths Act 1936*.

DECLARED at

the day of

Signed:

..... 19....

before me:

Commissioner for Affidavits or Justice of the Peace

FORM 6
South Australia

(Section 24)

Legal Practitioners Act 1981

ANNUAL RETURN OF COMPANY HOLDING PRACTISING CERTIFICATE

1. Name and Particulars of Practice

- (a) Company practitioner's name:
- (b) Registered office:
- (c) Principal address at which the practice is conducted:
- (d) Full address of all other places where the practice is conducted:
- (e) Business name (if any) under which the practice is carried on:
- (f) Telephone number:
- (g) This return relates to the period from
to 30 June.

2. Memorandum and Articles of Association

- (a) Have there been any amendments to either the Memorandum or Articles of Association of the company practitioner during the period to which this return relates? If so, give particulars: . . .
.....
.....
.....
- (b) During the period to which this return relates, have the Memorandum and Articles of Association of the company practitioner at all times contained stipulations complying with the requirements of section 16(2)(a) of the Act? If not, give particulars of any non-compliance:
- (c) During the period to which this return relates, have stipulations contained in the Memorandum and Articles of Association of the company practitioner in accordance with the requirements of section 16(2)(a) of the Act been complied with at all times by the company practitioner? If not, give particulars of any non-compliance:

3. *Directors*

In relation to each person who was at any time during the period to which this return relates a director (within the meaning of the Act) of the company practitioner, state:

- (a) the director's full name and the most recent usual residential address:
.
.
- (b) whether the director was a director during the whole of such period and if not, the date on which he or she became, or ceased to be, a director (as the case may be):
.
.
- (c) whether the director held a current practising certificate under the Act and, if so, was the practising certificate held for the whole or part of the period and if part only, the period during which the practising certificate was held:
.
- (d) in the case of a director permitted to hold office under section 16(2)(a)(ii) of the Act, not being a legal practitioner holding a current practising certificate, sufficient particulars of the director's relationship to a director who is a legal practitioner holding a current practising certificate. (This is in order to show compliance with section 16 of the Act during the whole of the period or during that part of the period for which he or she held office as a director.)
.
.
- (e) whether he or she was at any time during such period a director of any other company practitioner and if so, full particulars of that other directorship:
.
.

4. *Shareholders*

In relation to each person who was at any time during the period to which this return relates a member of the company practitioner, or the beneficial owner of shares in the company practitioner, state—

- (a) the person's full name and most recent usual residential address:
.
.
- (b) in the case of a member, whether the person was a member during the whole of the period and if not, the date on which the person became or ceased to be a member:
.
.
- (c) whether the person held a current practising certificate under the Act and whether such practising certificate was held for the whole or part of the period and if part only, the period during which the practising certificate was held:
.
.
- (d) in the case of a person being a prescribed relative of a legal practitioner who is a director or employee of the company practitioner, sufficient particulars of his relationship to such director or employee of the company practitioner. (This is in order to show compliance with section 16 of the Act during the whole of the period or during that part of the period for which he or she was a member of or the beneficial owner of shares in the company practitioner.)

- (e) the following particulars of all shares owned beneficially by the person at any time during the period:
 - a description of the shares (including the number nominal value and class)
 - particulars of the voting rights (if any) exercisable at a meeting of the members of the company practitioner attached to the shares
 - if the person was not the holder of the shares, the name and address of the holder and particulars of the nature of the beneficial ownership of the shares of the person
 - if the person became the beneficial owner of the shares at any time during such period—particulars of the date on which and circumstances in which the person became the beneficial owner of the shares
 - if the person ceased to become the beneficial owner of the shares at any time during the period—particulars of the date on which and circumstances in which the person ceased to be the beneficial owner of the shares
- (f) the qualification that entitled the person to be a member of the company during the period to which this return relates

5. Practice in Partnership

Has the company practitioner at any time during the period to which this return relates practised as a legal practitioner in partnership with any other person? If so, give particulars:

6. Employees

Has the company practitioner at any time during the period to which this return relates contravened section 26 of the Act? If so, give particulars:

I DECLARE that the above statements are true in every particular to the best of my knowledge, information and belief.

Dated

Signature of Director

DIRECTIONS FOR COMPLETING RETURN

1. The return is to be made by a director of the company practitioner.
2. The return is to be lodged with the Registrar of the Supreme Court during July in each year.
3. The return is to be made annually in respect of the year ended 30 June or, in the case of a company practitioner's first year, in respect of the period from the date of the issue of a practising certificate to the company and the succeeding 30 June.

FORM 7

(Section 92(2))

Legal Practitioners Act 1981

I, the Registrar of the Supreme Court of South Australia, certify that

.....

of

.....

(residence or place of business and profession or occupation), has been sworn to act uprightly and justly in the business of a public notary according to the best of his/her skill and ability, and that he/she has been authorised and admitted to act as a notary within South Australia, and that his/her name was entered on the roll of public notaries on, and remains on the roll.

Dated at Adelaide on

(L.S.)

.....

Registrar of the Supreme Court

SCHEDULE 2
Fees

1. (1) Fee for the issue or renewal of a practising certificate (not being a practising certificate that is to be subject to conditions under s. 17A of the Act)—

- (a) for at least 6 months—
 - (i) if the certificate is to take effect before 1 January 1999 \$220.00 fee
\$50.00 levy
 - (ii) if the certificate is to take effect on or after 1 January 1999 \$245.00 fee
\$50.00 levy
- (b) for less than 6 months—
 - (i) if the certificate is to take effect before 1 January 1999 \$122.50 fee
\$25.00 levy
 - (ii) if the certificate is to take effect on or after 1 January 1999 \$143.75 fee
\$25.00 levy

(2) If—

- (a) a practising certificate is to be issued subject to conditions under s. 17A of the Act; and
- (b) the holder of the certificate is not to be employed as a legal practitioner on a full-time basis during the period for which the certificate is to be in force,

the fee for the issue of the certificate is a fee equal to 50 per cent of the fee prescribed by subclause (1) and no levy is payable.

2. Fee to accompany an annual return lodged under s. 24 of the Act \$30.00

APPENDIX

LEGISLATIVE HISTORY

Regulation 17A:	inserted by 147, 1996, reg. 3
Regulation 36(7):	varied by 27, 1997, reg. 3(a)
Regulation 36(8):	varied by 27, 1997, reg. 3(b)
Schedule 2:	varied by 230, 1995, reg. 3; substituted by 251, 1996, reg. 3; varied by 27, 1997, reg. 4; 204, 1998, reg. 3