

South Australia

Legal Practitioners Regulations 2009

under the *Legal Practitioners Act 1981*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Legal Practitioners Regulations 2009*.

2—Commencement

These regulations will come into operation on 1 September 2009.

3—Interpretation

In these regulations—

Act means the *Legal Practitioners Act 1981*;

company practitioner means a company that holds a practising certificate;

registered company auditor has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

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.

4—Forms

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.

5—Fees

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

Part 2—Practising certificates

6—Notification of changes in practitioner's circumstances

- (1) A legal practitioner must, within 1 month, give the Supreme Court 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 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) For the purposes of subregulation (1)(b), a reference to ceasing to practise includes a reference to ceasing to practise in a way that entitles the practitioner to receive trust money or will involve the receipt of trust money.
- (3) 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 1 month after the death or 14 days after the grant of probate or letters of administration (whichever is the later), notify the Supreme Court and the Law Society of the death.

- (4) If the function of receiving notices under subregulation (1) or (3) is assigned to the Law Society under section 52A of the Act, the subregulation is to be taken to require that the notices be given only to the Law Society.

Note—

The functions of the Supreme Court under subregulations (1) and (3) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

Part 3—Notification by interstate practitioners establishing South Australian office

7—Notification by interstate practitioners establishing South Australian office

- (1) For the purposes of section 23D(1) of the Act, an interstate legal practitioner who establishes an office in this State must give the notice required under that section within 28 days after establishing the office.
- (2) For the purposes of section 23D(2) of the Act, the notice must contain the following particulars:
- (a) the practitioner's full name and date of birth;
 - (b) each jurisdiction in which the practitioner currently holds an interstate practising certificate;
 - (c) what conditions or limitations (if any) are imposed on an interstate practising certificate held by the practitioner;
 - (d) the address of the practitioner's place of business in this State;
 - (e) the practitioner's current residential and other business addresses;
 - (f) whether the practitioner will practise in this State as a member of a partnership, as an employee, or as a director of a company, and, if so, the name and business addresses of the firm, employer or company of which the practitioner is a member, employee or director;
 - (g) whether the practitioner will operate a trust account in this State.

Part 4—Company practitioners

8—Annual return of company practitioner

- (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 Court 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 Supreme Court, supply the Court with such further documents or information as the Court may reasonably require.

Note—

The functions and powers of the Supreme Court under subregulations (1) and (2) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

9—Supreme Court may obtain certain information

- (1) For the purpose of determining whether a company practitioner has complied with sections 16, 25 and 29 of the Act, the Supreme Court may by notice in writing require the company practitioner or a director of the company to provide the Court with such information in relation to those matters as the Court may reasonably require.
- (2) A company practitioner must comply with a requirement of the Supreme Court under subregulation (1).

Note—

The functions and powers of the Supreme Court under subregulation (1) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

Part 5—Trust accounts and audit

Division 1—Preliminary

10—Interpretation

In this Part—

practitioner means a legal practitioner within the meaning of Part 3 Division 5 of the Act.

Division 2—Trust records

11—General duty with respect to records

- (1) The records required to be kept by a practitioner under this Division—
- (a) will be subject to audit as records kept under Part 3 Division 5 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.
- (2) If a practitioner uses a computer program to keep records under this Division, the practitioner must ensure that—
- (a) at least once in each month, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program is operating; and
 - (b) before any information is deleted from the computer records, a hard copy of the information is made and kept by the practitioner as part of the practitioner's records; and

- (c) an up-to-date electronic copy of the computer program is made and kept in a safe place at a location other than the premises where the computer program is operating.

12—Receipting of trust money by practitioner

- (1) If a practitioner receives trust money that must, pursuant to section 31 of the Act, be deposited in the practitioner's trust account, the practitioner must 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) —
 - (A) in the case of a payment made by electronic transfer of funds into a practitioner's trust account—the date on which the practitioner makes out the receipt;
 - (B) in any other case—the date of the payment;
 - (ii) the name of the person making the payment;
 - (iii) whether the payment is by cash, cheque, bank cheque or electronic transfer of funds into the practitioner's trust account and, if the payment is by cheque or bank 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) A receipt required under this regulation must be made out—
 - (a) in the case of a payment made by electronic transfer of funds into a practitioner's trust account—immediately the practitioner receives official confirmation that the payment has been made (whether that is by way of receipt by the practitioner of a trust account statement or some other way, whichever occurs sooner); or
 - (b) in any other case—immediately on receipt of the payment.
- (3) The practitioner must make the original receipt available to the person who made the payment of trust money.
- (4) 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.
- (5) A practitioner need not comply with subregulations (1)(a) and (4) if the practitioner uses a computer program to make out the receipt and the program—
 - (a) automatically produces in chronological sequence consecutively numbered receipts marked with the name of the practitioner or firm and the words "Trust Account"; and

- (b) automatically makes a separate contemporaneous record of the receipt so that, at any time, a hard copy of the receipt may be produced; and
- (c) requires input in each field of a data entry screen intended to receive information for the purposes of producing the receipt so that each receipt contains all of the information required by subregulation (1)(b).

13—Payment of trust money by practitioner

- (1) A practitioner must not make a payment of trust money by cash but may—
 - (a) make a payment of trust money by cheque; or
 - (b) authorise a payment of trust money by electronic transfer of funds from the practitioner's trust account to an ADI account.
- (2) If 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:
 - (a) the date and reference number of the cheque;
 - (b) particulars identifying the trust account against which the cheque is drawn;
 - (c) the name of the payee;
 - (d) brief particulars of the purpose of the payment;
 - (e) the amount of the cheque.
- (4) If a practitioner authorises the payment of trust money by electronic transfer of funds, the practitioner—
 - (a) must prepare and keep as part of the practitioner's records the following information:
 - (i) the date and reference number of the payment;
 - (ii) the name of the payee;

- (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the name or style of the ADI account to which the payment is made, its number and the identifying numbers of the receiving ADI and its branch;
 - (v) the amount of the payment; and
- (b) must, on receiving official written confirmation that the payment has been made, keep that confirmation as part of the practitioner's records.

14—Cash books

- (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;
 - (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 or electronic transfer of funds 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 or electronic transfer of funds.
- (2) A practitioner need not keep a cash receipts book or a cash payments book as required by subregulation (1) if the practitioner uses a computer program to record the information referred to in that subregulation in respect of each receipt or payment of trust money and the program—
 - (a) requires input in each field of a data entry screen intended to receive information in respect of a receipt or payment so that all of the information referred to in subregulation (1) is recorded in respect of each receipt and payment; and
 - (b) is capable, at any time, of producing—
 - (i) a report of the information in respect of receipts of trust money in the order in which they were received; and
 - (ii) a report of the information in respect of payments of trust money in the order in which they were made.

- (3) A practitioner who uses a computer program as referred to in subregulation (2) must ensure that—
 - (a) at the end of each month, hard copies of each of the following reports are produced:
 - (i) a report of the information in respect of receipts of trust money received during that month in the order in which they were received;
 - (ii) a report of the information in respect of payments of trust money made during that month in the order in which they were made; and
 - (b) those hard copies are kept as part of the practitioner's records.
- (4) The records of receipts and payments must be made by the practitioner in accordance with this regulation in the order in which they are received or made, each such record being made within 2 working days after the receipt or payment in question.
- (5) Subregulation (4) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 working days after the practitioner receives official confirmation that the transfer has occurred.
- (6) The Supreme Court may, on terms and conditions that the Court thinks fit, exempt a practitioner from the obligation to record within the time required under subregulation (4) or (5) a receipt or payment.

Note—

The power of the Court under subregulation (6) is assigned, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

15—Separate trust ledger accounts

- (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) The practitioner must ensure that any changes in the details referred to in subregulation (2)(a) or (b) are recorded in a manner that enables the changes and the order in which they occurred to be identified.

- (4) If the practitioner transfers money between any of the separate accounts, the practitioner must clearly record the transfer—
- (a) in both accounts; and
 - (b) in a transfer journal,
- in sufficient detail that the transfer may be clearly understood.
- (5) The records of receipts, disbursements and transfers must be made by the practitioner in accordance with this regulation in the order in which the receipts, disbursements or transfers are received or made, each such record being made within 2 working days after the receipt, disbursement or transfer in question.
- (6) Subregulation (5) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 working days after the practitioner receives official confirmation that the transfer has occurred.
- (7) The Supreme Court may, on terms and conditions that the Court thinks fit, exempt a practitioner from the obligation to record within the time required under subregulation (5) or (6) a receipt, disbursement, transfer or payment.
- (8) If a practitioner uses a computer program to keep trust ledger accounts or a transfer journal, the practitioner must ensure that—
- (a) the program is incapable of—
 - (i) recording a transaction that would result in a debit balance in a trust ledger account unless a separate contemporaneous record of the transaction is also made so that, at any time, a hard copy may be produced of all such transactions in chronological order; and
 - (ii) deleting from its records the information relating to a trust ledger account unless—
 - (A) the balance of the account is zero; and
 - (B) a hard copy of all of the information required under this Division relating to the account has been produced; and
 - (C) all cheques drawn against the account have been presented; and
 - (iii) changing existing information relating to a transaction otherwise than by making a further entry showing a separate transaction to effect the change; and
 - (b) the program automatically inserts consecutive page numbers into any hard copy report produced by use of the program; and
 - (c) the program requires input in each field of a data entry screen intended to receive information for the purposes of a trust ledger account or transfer journal so that the entry contains all of the information required by this regulation; and
 - (d) hard copies of the trust ledger accounts and transfer journal are produced within 2 days of a request from an approved auditor or an inspector.

Note—

The power of the Court under subregulation (7) is assigned, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

16—Reconciliation statements

- (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, or equivalent computer records, kept under regulation 14 with the balance of the practitioner's trust 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 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).

17—Transfer of money from trust account to office account

- (1) A practitioner who becomes entitled to money held in the practitioner's trust account in or towards satisfaction of the practitioner's legal costs must, as soon as practicable, transfer the money to an ADI account maintained by the practitioner for receipts other than trust money.
- (2) A practitioner who fails to make such a transfer within 3 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.

18—Practitioner must retain written direction as to disposition of trust money

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.

19—Trust account statements

- (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) For the purposes of subregulation (1)(b), disbursements to meet court or government fees or charges are not to be treated as legal costs.

- (3) 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.

Note—

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

20—Register of Direct Payments

- (1) If a practitioner receives direct payments of trust money, the 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 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.
- (2) If a practitioner uses a computer program to keep the register, the practitioner must ensure that—
- (a) the program requires input in each field of a data entry screen intended to receive information for the purposes of the register so that the entry contains all of the information required to be recorded in the register by this regulation; and
 - (b) the program is capable of producing a hard copy of the register on request of an approved auditor or inspector.

21—Register of Investments

- (1) If a practitioner invests trust money (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 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 the following details:
 - (i) the name in which the investment is held;

- (ii) the name of the person on whose behalf the investment is made;
 - (iii) the amount invested for each person;
 - (iv) the person's address;
 - (v) the date on which the investment is made;
 - (vi) a description of the investment;
 - (vii) 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;
 - (viii) a statement as to whether a certificate or other document evidencing the investment or security is held by the practitioner;
 - (ix) 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 12 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 22.
- (3) The practitioner must keep the register up to date in respect of any interest on an investment to which this regulation applies that has also been invested by the practitioner.
- (4) If a practitioner uses a computer program to keep the register, the practitioner must ensure that—
- (a) the program requires input in each field of a data entry screen intended to receive information for the purposes of the register so that the entry contains all of the information required to be recorded in the register by this regulation; and
 - (b) the program is capable of producing a hard copy of the register on request of an approved auditor or inspector.

22—Register of Securities

- (1) If a practitioner is authorised (either expressly or by operation of law) to exercise direct or indirect control of a security to which the practitioner is not wholly entitled in law and in equity, the 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 each such security.
- (2) The following details are required to be recorded in the register:
- (a) the date the practitioner receives the security;
 - (b) a description of the security;
 - (c) the name of the person on whose behalf, or in trust for whom, the security is held;

- (d) the date on which the security is delivered out of the practitioner's possession and control;
 - (e) particulars of the person to whom and the circumstances under which the security is disposed of.
- (3) If a practitioner uses a computer program to keep the register, the practitioner must ensure that—
 - (a) the program requires input in each field of a data entry screen intended to receive information for the purposes of the register so that the entry contains all of the information required to be recorded in the register by this regulation; and
 - (b) the program is capable of producing a hard copy of the register on request of an approved auditor or inspector.
- (4) In this regulation—

securities include debentures, bonds, stock, funds, shares, promissory notes and documents of any kind evidencing indebtedness.

23—Period for which accounts and records must be retained

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

- (a) in the case of trust ledger accounts—for 7 years after the last entry is made;
- (b) in the case of other records required to be kept under this Division—for 7 years after the last entry is made;
- (c) in the case of files relating to trust transactions—for 7 years after the last entry is made.

24—Exemption

- (1) Pursuant to section 38(c) of the Act, but subject to this regulation, a practitioner is exempt from the operation of Part 3 Division 5 of the Act and this Part in respect of the receipt and delivery of a cheque by the practitioner if the cheque—
 - (a) is a crossed cheque expressed to be payable to a person or persons not being or including the practitioner (whether or not it is also expressed to be payable to bearer); and
 - (b) is held by the practitioner for the purpose of delivery to a person to whom the cheque is expressed to be payable (or such a person's agent), and is so delivered.
- (2) Subregulation (1) does not apply to a cheque expressed to be payable to a person in a prescribed relationship with the practitioner (within the meaning of section 5(5) of the Act) if the practitioner advised that such a payment be made and the money concerned would come under the indirect control of the practitioner through the prescribed relationship or otherwise.

Division 3—Approved auditors

25—Approval of auditor by Supreme Court

- (1) Pursuant to section 33(1)(a) of the Act, the Supreme Court may, on application, approve an applicant as an auditor for the purposes of the Act if the applicant—
 - (a) is a public accountant engaged as a principal in practice in South Australia; and
 - (b) has, within the period of 2 years immediately preceding the application, satisfactorily completed the *Basic Solicitors' Trust Accounts Audit Course* conducted by the Law Society; and
 - (c) —
 - (i) is a registered company auditor; or
 - (ii) is a member of The Institute of Chartered Accountants in Australia, the National Institute of Accountants or CPA Australia Ltd who—
 - (A) has been continuously engaged for at least 3 years in practice as a public accountant in the State (either as a principal or as an employee of a public accountant); and
 - (B) has, at least twice within the period of 3 years immediately preceding the application, worked as an assistant in auditing a practitioner's trust account under the direct supervision of an approved auditor (whether the auditor was approved under this regulation or under the revoked regulation); and
 - (C) is of good character.
- (2) The Supreme Court may, if it thinks fit in relation to an applicant, dispense with the requirement that the applicant comply with subregulation (1)(c)(ii)(A) or (B) (or both).
- (3) The Supreme Court may withdraw the approval of an auditor if—
 - (a) the auditor does not satisfy a requirement set out in subregulation (1); or
 - (b) the auditor does not comply with a requirement of the Court to attend a refresher course conducted by the Law Society for auditors of solicitors' trust accounts; or
 - (c) there is any other sufficient reason to withdraw the approval.

Note—

The functions and powers of the Supreme Court under subregulations (1), (2) and (3) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

26—Appointment of auditor

- (1) A practitioner who commences or recommences to practise the profession of the law and who maintains a trust account must, within 2 months after the commencement or recommencement, appoint an approved auditor for the purposes of Part 3 Division 5 of the Act.

- (2) The appointment by a practitioner of a firm of public accountants of which at least 1 member is an approved auditor will, for the purposes of subregulation (1), be taken to be a valid appointment under that subregulation of each person who is, from time to time, a member of the firm and is an approved auditor.
- (3) An approved auditor or firm may only be appointed by a practitioner under this regulation if the auditor or firm agrees to the appointment by notice in writing addressed to the practitioner.
- (4) A person must not hold himself or herself out, or act, as a practitioner's approved auditor unless—
 - (a) the person is an approved auditor; and
 - (b) the person or his or her firm has agreed to the appointment in accordance with subregulation (3).
- (5) An approved auditor who has been appointed under this regulation may not resign or be removed from office by a practitioner without the prior approval of the Supreme Court.
- (6) Subject to subregulation (2), if an approved auditor appointed under this regulation—
 - (a) dies; or
 - (b) with the approval of the Supreme Court, resigns or is removed from office; or
 - (c) becomes incapable of auditing the accounts of the practitioner (whether because the Court has withdrawn approval or for another reason),the practitioner must, within 2 months, appoint another approved auditor.

Note—

The functions and powers of the Supreme Court under subregulations (5) and (6) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

27—Auditing accounts and records

- (1) An approved auditor appointed to audit the accounts and records of a practitioner under Part 3 Division 5 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 1 place, the Supreme Court may from time to time give such directions as the Court 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 Court 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 account under Part 3 Division 5 of the Act was kept by the practitioner during that period; and
 - (c) make a general test examination of any trust account kept by the practitioner and of the pass books and statements relating to any such account during that period; and
 - (d) ascertain whether the practitioner holds any investments of trust money and obtain independent verification of each such investment; and
 - (e) make a comparison as to no fewer than 2 dates (1 to be the last day of the period of the audit and 1 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 2; and
 - (ii) the aggregate of the balances standing to the credit of the practitioner's trust account and on deposit by the practitioner in the combined trust account under section 53 of the Act; and
 - (f) 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.

Note—

The power of the Supreme Court under subregulation (2) is assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

28—Practitioner's statement

- (1) A practitioner who is required to have accounts and records audited by an approved auditor under Part 3 Division 5 of the Act must, within 2 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 2 partners of the firm; or
 - (c) in the case of a company practitioner—under the hand of 1 or more of the 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—

- (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) particulars of any trust ledger accounts with a balance that has not (apart from the crediting of interest) changed during the period to which the audit relates, including an explanation of why the balances have been dormant; and

- (f) particulars of any trust ledger accounts that have had a debit balance during the period to which the audit relates, including an explanation of why the accounts have had a debit balance; and
 - (g) particulars of any trust accounts that have had a debit balance during the period to which the audit relates, including an explanation of why the trust accounts have had a debit balance; and
 - (h) the amount standing on deposit by the practitioner in the combined trust account under section 53 of the Act; and
 - (i) particulars of any occasion within the period to which the audit relates that the practitioner withheld all or part of a deposit required to be made to the combined trust account, including whether the practitioner provided a notice of withholding pursuant to section 53(4) of the Act to the Society and the date on which any such notice was provided; and
 - (j) particulars of any occasion within the period to which the audit relates that the practitioner withdrew funds from the combined trust account including the date and the amount of the withdrawal; and
 - (k) —
 - (i) the names of the ADI accounts in which the balance of the practitioner's trust money is lodged and the balances on that date of those ADI accounts; and
 - (ii) if the trust account balances are not in agreement with the balances of the practitioner's trust ledger accounts—a statement reconciling those balances; and
 - (l) whether the practitioner holds securities or investments (whether alone or jointly with others) that are required under these regulations to be entered in the practitioner's Register of Securities or Register of Investments.
- (2) A statement under subregulation (1) must be dated by the practitioner at the time the practitioner certifies as to the particulars set out in the statement.
- (3) 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.
- (4) 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 (3) 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 and investments held on the first day of the year or other period to which the audit relates.
- (5) A statement under subregulation (4) must be verified by statutory declaration—
- (a) of the practitioner; or
 - (b) in the case of a firm of practitioners—of not less than 2 of the partners of the firm; or
 - (c) in the case of a company practitioner—of not less than 2 directors of the company.

29—Auditor's report

- (1) The approved auditor must, in each report for the purposes of section 33 of the Act or regulation 33, include all matters relating to the practitioner's accounts and records that should, in the auditor's opinion, be communicated to the Supreme Court 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;
 - (d) whether, at any time during the period of the audit, the practitioner's trust account was overdrawn or deficient 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 ledger accounts and the explanation or reason for such a debit given by the practitioner;
 - (f) whether the practitioner has drawn from his or her trust 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 practitioner holds any investments of trust money and, if so, any independent verification of such investments obtained by the auditor for the purposes of regulation 27(3)(d);
 - (i) whether the auditor has received and examined the statement given to the auditor under regulation 28 and the result of that examination, including the result of examination in relation to trust ledger accounts with dormant balances;
 - (j) if the practitioner uses a computer program to keep the practitioner's accounts and records, whether the program allows for the accounts and records to be conveniently and properly audited;
 - (k) any other matter required by the Act to be included in the report.
- (2) A report need not deal with deficiencies in a trust account that have been promptly rectified and were due to inadvertence or trust account errors provided that, in the case of deficiencies due to inadvertence, the total of the deficiencies has not exceeded \$100 in any 3 month period.
- (3) Each copy of the report required for the purposes of the Act or these regulations must have attached to it a copy of the practitioner's statement under regulation 28(1).
- (4) The auditor must deliver a copy of the report to the practitioner.
- (5) The practitioner must keep the 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.

30—Obtaining information for purposes of audit

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.

31—Reports of irregularities

- (1) If, on receiving an approved auditor's report, it appears to the Supreme Court that the report discloses an irregularity, the Court 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 Supreme Court and the practitioner concerned.
- (3) The Supreme Court must immediately forward a copy of a report under subregulation (2) to the Law Society.
- (4) Subregulations (1) and (3) do not apply if the function of receiving an auditor's report is assigned to the Law Society under section 52A of the Act.

Note—

The functions of the Supreme Court under this regulation are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

32—Access to auditors' reports etc

- (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 Supreme Court 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 Supreme Court 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.

Note—

The power of the Supreme Court under subregulation (1) is assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

33—Audit when practitioner ceases to practise or hold trust money

- (1) This regulation applies to a practitioner who—
 - (a) practices on his or her own behalf and not in partnership with another practitioner; or
 - (b) is a partner in a firm; or
 - (c) is a company practitioner,and a reference in this regulation to a practitioner includes a reference to a former practitioner.
- (2) If a practitioner to whom this regulation applies ceases to practise or closes his or her trust account, the practitioner, or, if the practitioner has died, the practitioner's personal representative, must—
 - (a) cause the practitioner's accounts and records under Part 3 Division 5 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 Supreme Court within 4 months of the practitioner's ceasing to practise or within such further period as the Court may allow.
- (3) Except as otherwise determined by the Supreme Court, 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 2) are properly and finally wound up—
 - (a) cause the practitioner's accounts and records under Part 3 Division 5 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 Court on or before 31 October in that year or a date being 4 months after the date of winding up (whichever is earlier).
- (4) 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.
- (5) 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 2) are properly and finally wound up.
- (6) 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 Supreme Court that the trust money and other matters in respect of which records are required to be kept under Division 2 are under the proper administration and control of the continuing partners or some of them.

- (7) The Supreme Court may excuse a practitioner to whom this regulation applies who has ceased to practise and who has complied with this regulation from the obligation to make a statutory declaration under regulation 34 in respect of the period up to the expiration of any practising certificate held by the practitioner when he or she ceased to practise.
- (8) For the purposes of this regulation, a reference to ceasing to practise includes a reference to ceasing to practise in a way that entitles the practitioner to receive trust money or will involve the receipt of trust money.

Note—

The functions and powers of the Supreme Court under subregulations (2), (3), (6) and (7) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

34—Declaration as to non-keeping of trust account

- (1) 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 keep a trust account during the financial year up to cessation of practice, within 4 months of the cessation, make a statutory declaration to that effect and forward it to the Supreme Court.
- (2) The Supreme Court must notify the Law Society of the name of any practitioner who makes a statutory declaration under this regulation.
- (3) Subregulation (2) does not apply if the function of receiving a statutory declaration under this regulation is assigned to the Law Society under section 52A of the Act.
- (4) In this regulation—

practitioner includes former practitioner.

Note—

The functions of the Supreme Court under this regulation are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

35—Audit and report etc for firm operates for each partner

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 partner of the firm.

36—Certain persons may not audit accounts and records of practitioner

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

- (a) is, or has been within 2 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.

37—Practitioner to bear cost of audit

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.

Part 6—Miscellaneous

38—Miscellaneous prescribed matters under Act

- (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 3 months—50% of the amount fixed as the fee for the issue or renewal of a practising certificate for at least 6 months;
 - (b) in any other case—100% of the amount of that fee.
- (2) For the purposes of section 21(3)(n)(i)(A) of the Act, the maximum rental is \$36 000 per annum.
- (3) For the purposes of section 21(3)(n)(ii)(A) of the Act, the maximum rental is \$17 000 per annum.
- (4) For the purposes of sections 31(9) and 53(8) of the Act, the prescribed rate is 2% above the rate fixed from time to time on interest on judgment by the Supreme Court under rule 261 of the *Supreme Court Civil Rules 2006*.
- (5) For the purposes of section 60(3) of the Act, the prescribed rate is 10% per annum.
- (6) For the purposes of section 64(2) of the Act, the prescribed percentage is 5%.
- (7) For the purposes of section 95(1)(b)(i) of the Act, the prescribed proportion is 19%.
- (8) For the purposes of section 95(1)(b)(ii) of the Act, the prescribed proportion is 78.5%.

39—Lowest aggregate amount

For the purposes of section 53(4)(b) of the Act, the sum fixed is \$10 000.

40—Oath of public notary

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."

41—Obligation to provide information to Supreme Court

- (1) A practitioner or other person must, if so required by the Supreme Court, furnish to the Court any evidence, record or information reasonably required by the Court for the purpose of determining an application or exercising a discretion under the Act or these regulations.
- (2) If the Supreme Court has, by rules of court, assigned a function or power conferred or vested on it under Part 3 of the Act to a person or body other than a judge of the Court, a person affected by a decision of the assignee, or the failure of the assignee to make a decision, may appeal to the Supreme Court.
- (3) An appeal under this regulation is by way of a fresh hearing.

Note—

The power of the Supreme Court under subregulation (1) is assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

42—Offences

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

Maximum penalty: \$10 000.

43—General defence

It is a defence to a charge of an offence under these regulations if the defendant proves that the alleged offence—

- (a) was due to a reasonable mistake; or
- (b) was due to reasonable reliance on information supplied by another person; or
- (c) that—
 - (i) the alleged offence was due to the act or default of another person, to an accident or to some other cause beyond the control of the defendant; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

Schedule 1—Forms

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—Constitution of company practitioner

- (a) Have there been any amendments to the constitution 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, has the constitution 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 constitution 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 or her 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:

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 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.

Note—

The function of the Supreme Court to receive the return of the company practitioner is assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and the *Supreme Court Admission Rules 1999*).

Certificate of Registrar as to Public Notary

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:

Registrar of the Supreme Court:

Schedule 2—Fees

- | | | |
|---|---|-------------------------|
| 1 | For the issue or renewal of a practising certificate— | |
| | (a) for more than 6 months | \$340 fee
\$115 levy |
| | (b) for 6 months or less | \$198 fee
\$57 levy |
| 2 | Fee to accompany written notice provided under section 23D of the Act | \$30 |
| 3 | Fee to accompany an annual return lodged under section 24 of the Act | \$46 |

Schedule 3—Revocation

1—Revocation of *Legal Practitioners Regulations 1994*

The *Legal Practitioners Regulations 1994* are revoked.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2009	229	<i>Gazette</i> 27.8.2009 p4316	1.9.2009: r 2