

South Australia

# Legal Practitioners Regulations 2014

under the *Legal Practitioners Act 1981*

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation

### Part 2—Notice requirements

- 4 Notification of changes to Supreme Court and Law Society
- 5 Notification by interstate practitioners establishing South Australian office (section 23D of Act)

### Part 3—Register of Disciplinary Action

- 6 Register of Disciplinary Action (section 89C of Act)

### Part 4—Professional mentoring agreements

- 7 Duties of professional mentor (section 90B of Act)
- 8 Fees and expenses of professional mentor (section 90B of Act)

### Part 5—Incorporated legal practices

- 9 Notice of termination of provision of legal services (Schedule 1 clause 7 of Act)
- 10 Disqualifications and prohibitions (Schedule 1 clauses 21 and 22 of Act)
- 11 Approved form

### Part 6—Trust money and trust accounts

#### Division 1—Preliminary

- 12 Definitions
- 13 Operation of Part

#### Division 2—Computerised accounting systems

- 14 Application of Division
- 15 Copies of trust records to be printed
- 16 Chronological record of information to be made
- 17 Requirements regarding computer accounting systems
- 18 Back-ups

#### Division 3—General trust accounts

- 19 Establishment of general trust account
- 20 Receipting of trust money
- 21 Deposit records for trust money

- 22 Direction for non-deposit of trust money in general trust account (Schedule 2 clause 12 of Act)
- 23 Written record to be kept of verbal direction to disburse trust money
- 24 Payment by cheque
- 25 Payment by electronic funds transfer
- 26 Recording transactions in trust account cash books
- 27 Trust account receipts cash book
- 28 Trust account payments cash book
- 29 Recording transactions in trust ledger accounts
- 30 Journal transfers
- 31 Reconciliation of trust records
- 32 Trust ledger account in name of law practice or legal practitioner associate
- 33 Notification requirements regarding general trust accounts

#### Division 4—Controlled money

- 34 Maintenance of controlled money accounts (Schedule 2 clause 15 of Act)
- 35 Receipt of controlled money
- 36 Deposit of controlled money (Schedule 2 clause 15 of Act)
- 37 Withdrawal of controlled money must be authorised
- 38 Register of controlled money

#### Division 5—Transit money

- 39 Information to be recorded about transit money (Schedule 2 clause 17 of Act)

#### Division 6—Trust money generally

- 40 Trust account statements
- 41 Trust account statements for sophisticated clients
- 42 Register of investments
- 43 Trust money subject to specific powers (Schedule 2 clause 18 of Act)
- 44 Register of powers and estates in relation to trust money
- 45 Withdrawing trust money for legal costs (Schedule 2 clause 22 of Act)
- 46 Keeping of trust records (Schedule 2 clause 25 of Act)
- 47 Keeping other records and information
- 48 Statements regarding receipt or holding of trust money

#### Division 7—External examinations

- 49 Appointment of external examiner (Schedule 2 clause 34 of Act)
- 50 No requirement for external examinations for transit money
- 51 Carrying out examination (Schedule 2 clause 38 of Act)
- 52 External examiner's report (Schedule 2 clause 39 of Act)
- 53 Conditions on approval of ADIs (Schedule 2 clause 41 of Act)
- 54 Information to be provided to Society (Schedule 2 clause 48 of Act)

#### Division 8—Miscellaneous

- 55 Law practice closing down, closing office or ceasing to receive or hold trust money
- 56 Exemptions
- 57 Transitional provision—retention of accounts and records kept under revoked regulations

#### Part 7—Costs disclosure and assessment

- 58 Substantial connection with this State (Schedule 3 of Act)
- 59 Disclosure of costs to clients—form (Schedule 3 clause 10 of Act)
- 60 Exceptions to requirement for disclosure (Schedule 3 clause 13 of Act)

- 
- 61 Interest on unpaid legal costs (Schedule 3 clause 23 of Act)
  - 62 Costs agreement with associated third party payer (Schedule 3 clause 24)
  - 63 Notification of client's rights—form (Schedule 3 clause 33 of Act)

## Part 8—Miscellaneous

- 64 Fees
- 65 Miscellaneous prescribed matters under Act
- 66 Oath of public notary
- 67 Obligation to provide information to Supreme Court
- 68 Offences
- 69 General defence

## Part 9—Transitional provisions—*Legal Practitioners (Miscellaneous) Amendment Act 2013*

- 70 Operation of amendment (requirement of incorporated legal practice to give notice)
- 71 Reporting obligations for 2013/2014 financial year

## Schedule 1—Forms

## Schedule 2—Fees

## Legislative history

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# Part 1—Preliminary

## 1—Short title

These regulations may be cited as the *Legal Practitioners Regulations 2014*.

## 3—Interpretation

In these regulations—

*Act* means the *Legal Practitioners Act 1981*.

# Part 2—Notice requirements

## 4—Notification of changes to Supreme Court and Law Society

- (1) Subject to subregulation (2), a law practice must, within 1 month, give the Supreme Court and the Society notice in writing containing details of any of the following events:
  - (a) establishment of a new place of business by the law practice;
  - (b) closure of a place of business of the law practice;
  - (c) amalgamation of the law practice with another law practice.
- (2) A law practice that is required to give the Society written notice in accordance with regulation 9 or regulation 55(1) is not required to give notice under subregulation (1)(a) or (b).

- (3) A legal practitioner must, within 1 month, give the Supreme Court and the 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) entry by the practitioner into partnership with another practitioner;
  - (d) 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.
- (4) For the purposes of subregulation (3)(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.
- (5) 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 Society of the death.
- (6) If the function of receiving notices under subregulation (1), (3) or (5) is assigned to the Society under section 52A of the Act, the subregulation is to be taken to require that the notices be given only to the Society.

**Note—**

The functions of the Supreme Court under subregulations (1), (3) and (5) are assigned by the Court, by rules of court, to the Law Society (see section 52A of the Act and Chapter 17 of the *Supreme Court Civil Rules 2006*).

**5—Notification by interstate practitioners establishing South Australian office (section 23D of Act)**

- (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 legal practitioner director, and, if so, the name and business addresses of the firm, employer or incorporated legal practice of which the practitioner is a member, employee or director;
  - (g) whether the practitioner will operate a trust account in this State.

## **Part 3—Register of Disciplinary Action**

### **6—Register of Disciplinary Action (section 89C of Act)**

For the purposes of section 89C(3)(e) of the Act, particulars of the date and jurisdiction of the person's first and each later admission to the legal profession are prescribed as particulars to be included in the Register of Disciplinary Action.

## **Part 4—Professional mentoring agreements**

### **7—Duties of professional mentor (section 90B of Act)**

- (1) A professional mentor appointed under section 90B of the Act has the following duties:
  - (a) to act in good faith;
  - (b) to maintain confidentiality in his or her dealings with the practitioner, and in particular to maintain confidentiality in respect of the practitioner's practice and the practitioner's dealings with the profession at large;
  - (c) to respect the relationships between the legal practitioner and his or her staff, professional colleagues and clients;
  - (d) to meet with the practitioner as required under the professional mentoring agreement.
- (2) For the purposes of section 90B(3)(c) of the Act, a professional mentor must report on the practitioner and the practitioner's practice as follows:
  - (a) if the professional mentor is appointed under an agreement entered into with the Commissioner—in accordance with agreements made from time to time with the Society;
  - (b) in any other case—as required by the Society.

### **8—Fees and expenses of professional mentor (section 90B of Act)**

For the purposes of section 90B(6) of the Act—

- (a) the fees set out in the scale of costs in force under the *Supreme Court Civil Rules 2006*; and
  - (b) the expenses reasonably incurred by the professional mentor in the performance of his or her duties imposed by or under the Act,
- are payable to the professional mentor by the practitioner or law practice.

## **Part 5—Incorporated legal practices**

### **9—Notice of termination of provision of legal services (Schedule 1 clause 7 of Act)**

For the purposes of Schedule 1 clause 7 of the Act, the prescribed period within which a corporation must give a notice under that clause is 14 days after it ceases to engage in legal practice in this jurisdiction.

## 10—Disqualifications and prohibitions (Schedule 1 clauses 21 and 22 of Act)

- (1) This regulation applies to—
  - (a) an order made under Schedule 1 clause 21 of the Act disqualifying a corporation from providing legal services in this jurisdiction; or
  - (b) an order made under Schedule 1 clause 22 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice.
- (2) The Regulator, the Attorney-General or the Society or all of them may publicise an order in any manner the Regulator, the Attorney-General or Society thinks fit.
- (3) The applicant for an order—
  - (a) must, as soon as practicable after the order is made, give written notice of the order to the corresponding authority of every other jurisdiction; and
  - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.
- (4) The notice under subregulation (3) for an order made under Schedule 1 clause 21 of the Act—
  - (a) must state—
    - (i) the corporation's name; and
    - (ii) the Australian Company Number (ACN) of the corporation; and
    - (iii) the office or business address of the corporation, as last known to the applicant for the order; and
    - (iv) the date of the order; and
  - (b) may contain other relevant information; and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The notice under subregulation (3) for an order made under Schedule 1 clause 22 of the Act—
  - (a) must state—
    - (i) the person's name; and
    - (ii) the person's address, as last known to the applicant for the order; and
    - (iii) the date of the order; and
  - (b) may contain other relevant information; and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (6) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of this regulation.
- (7) In this regulation—

**protected person** means—

  - (a) the State; or
  - (b) the Regulator; or

- (c) the Society; or
- (d) a person responsible for keeping the whole or any part of a register or any similar record in or by which an order is publicised; or
- (e) an Internet service provider or Internet content host; or
- (f) a person acting at the direction of the State or of any person or body referred to in this definition.

## 11—Approved form

For the purposes of Schedule 1 clauses 4, 5 and 7 of the Act, an approved form is a form approved by the Supreme Court.

## Part 6—Trust money and trust accounts

### Division 1—Preliminary

#### 12—Definitions

In this Part—

***BSB number*** (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI;

***business day*** means a day other than a Saturday, a Sunday or a public holiday;

***matter description*** means a brief phrase or expression assigned by a law practice to describe a matter;

***matter reference*** means a number or other reference assigned by a law practice to identify a matter;

***named month*** means one of the 12 named months of the year starting with January;

***trust money*** means trust money to which this Part applies, in accordance with regulation 13.

#### 13—Operation of Part

This Part has effect for the purposes of Schedule 2 of the Act, and accordingly applies to a law practice in respect of—

- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in 1 or more other jurisdictions but not in this jurisdiction; and
- (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
- (c) trust money received by the practice in another jurisdiction, if the practice has an office in—
  - (i) this jurisdiction; and
  - (ii) 1 or more other jurisdictions but not in the jurisdiction in which the money was received,

unless the money is dealt with in accordance with the corresponding law of a jurisdiction in which the practice has an office.

## **Division 2—Computerised accounting systems**

### **14—Application of Division**

This Division applies if a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

### **15—Copies of trust records to be printed**

- (1) The law practice must print a paper copy of trust records as follows:
  - (a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;
  - (b) reconciliation statements prepared under regulation 31 are to be printed as at the end of each named month;
  - (c) lists of trust account ledgers and their balances are to be printed monthly as at the end of each named month;
  - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;
  - (e) trust ledger accounts, the register of controlled money and the trust account transfer journal are to be printed before they are archived or deleted from the system;
  - (f) trust ledger account and controlled money account details are to be printed on request by and provided to an investigator (within the meaning of Schedule 2 clause 1 of the Act).
- (2) The trust records printed monthly as at the end of a named month under subregulation (1)(a) to (d) must be printed within 15 business days after the named month.
- (3) The paper copies printed under subregulation (1) are to be kept by the law practice, except where they are printed on request under that subregulation.
- (4) The electronic copy of the trust account cash books under subregulation (1)(a) is to be kept by the law practice.

### **16—Chronological record of information to be made**

- (1) The law practice must maintain a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following:
  - (a) client name;
  - (b) client address;
  - (c) matter reference;
  - (d) matter description;
  - (e) ledger account number or other descriptor.
- (2) The record is to be kept by the law practice.

## 17—Requirements regarding computer accounting systems

- (1) The law practice must ensure that its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.
- (2) The law practice must ensure that the system is not capable of deleting a trust ledger account unless—
  - (a) the balance of the account is 0 and all outstanding cheques have been presented; and
  - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure that any entry in a record produced in a permanent form appears in chronological sequence.
- (4) The law practice must ensure that each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted.
- (5) The law practice must ensure that its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice must ensure that its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

## 18—Back-ups

The law practice must ensure that—

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month; and
- (b) each back-up copy is kept by the law practice; and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

## Division 3—General trust accounts

### 19—Establishment of general trust account

- (1) A law practice may at any time establish a general trust account that satisfies the requirements of this regulation, but must, as soon as practicable after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have such a general trust account.
- (2) A general trust account satisfies the requirements of this regulation if—
  - (a) the account is established in this jurisdiction, before or after the commencement of this regulation, with an approved ADI (within the meaning of Schedule 2 of the Act); and

- (b) the account is and is to be maintained in this jurisdiction; and
  - (c) the name of the account includes—
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
    - (ii) the expression "law practice trust account" or "law practice trust a/c"; and
  - (d) the account is of a kind that is for the time being approved by the Society.
- (3) Subregulation (2)(c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (4) Subregulation (2)(c)(ii) does not require the repetition of the words "law practice" if those words form part of the name or business name of the law practice.

## 20—Receipting of trust money

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made out as soon as practicable—
- (a) after the trust money is received, except as provided by paragraph (b); or
  - (b) in the case of trust money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.
- (5) For the purposes of subregulation (4), the *required particulars* are as follows:
- (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the amount of money received;
  - (c) the form in which the money was received;
  - (d) the name of the person from whom the money was received;
  - (e) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (f) particulars sufficient to identify the purpose for which the money was received;
  - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "trust account" or "trust a/c";
  - (h) the name of the person who made out the receipt;
  - (i) the number of the receipt.

- (6) The original receipt is to be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

## **21—Deposit records for trust money**

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record:
  - (a) the date of the deposit;
  - (b) the amount of the deposit;
  - (c) whether the deposit consists of cheques, notes or coins (and the amount of each);
  - (d) for each cheque—
    - (i) the name of the drawer of the cheque; and
    - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn; and
    - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

## **22—Direction for non-deposit of trust money in general trust account (Schedule 2 clause 12 of Act)**

For the purposes of Schedule 2 clause 12(3) of the Act, the prescribed period for which a written direction referred to in Schedule 2 clause 12(1)(a) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

## **23—Written record to be kept of verbal direction to disburse trust money**

If the person on whose behalf trust money is held gives a verbal direction for the money to be disbursed, a contemporaneous written record of the direction must be made by the law practice setting out the date and time that the direction was given and the purpose of the disbursement.

## **24—Payment by cheque**

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by cheque.

- (2) A cheque—
- (a) must be made payable to or to the order of a specified person or persons and not to bearer or cash; and
  - (b) must be crossed "not negotiable"; and
  - (c) must include—
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
    - (ii) the expression "law practice trust account" or "law practice trust a/c".
- (3) A cheque must be signed—
- (a) by an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available—
    - (i) by an authorised legal practitioner associate; or
    - (ii) by an authorised legal practitioner who holds a practising certificate that does not prohibit the receipt of trust money; or
    - (iii) by 2 or more authorised associates jointly.
- (4) A person referred to in subregulation (3) must not sign a cheque unless—
- (a) he or she has seen a written direction, given by the person on whose behalf the trust money is held, authorising the disbursement; or
  - (b) if the money is being disbursed in accordance with a verbal direction given by the person on whose behalf the trust money is held—he or she has made a contemporaneous written record of the direction or seen a contemporaneous written record of the direction made by the person to whom the direction was given.
- (5) Subregulation (4) does not apply if the trust money is disbursed in accordance with an order of a court or as otherwise authorised by law.
- (6) A written record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.
- (7) If at the time the cheque is issued the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (8) For the purposes of subregulations (6) and (7), the **required particulars** are as follows:
- (a) the date and number of the cheque;
  - (b) the amount ordered to be paid by the cheque;
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;

- (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (e) details clearly identifying the ledger account to be debited;
  - (f) particulars sufficient to identify the purpose for which the payment was made;
  - (g) the name of the person or persons effecting, directing or authorising the payment.
- (9) Written records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.
- (10) Subregulation (2)(c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (11) Subregulation (2)(c)(ii) does not require the repetition of the words "law practice" if those words form part of the name or business name of the law practice.
- (12) In this regulation—
- associate* means an associate of the law practice;
- authorised* means authorised by the law practice to sign cheques drawn on the general trust account.

## 25—Payment by electronic funds transfer

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.
- (2) An electronic funds transfer must be effected by, under the direction of or with the authority of—
- (a) an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available—
    - (i) an authorised legal practitioner associate; or
    - (ii) an authorised legal practitioner who holds a practising certificate that does not prohibit the receipt of trust money; or
    - (iii) 2 or more authorised associates jointly.
- (3) A person referred to in subregulation (2) must not effect, direct or authorise an electronic funds transfer unless—
- (a) he or she has seen a written direction, given by the person on whose behalf the trust money is held, authorising the disbursement; or
  - (b) if the money is being disbursed in accordance with a verbal direction given by the person on whose behalf the trust money is held—he or she has made a contemporaneous written record of the direction or seen a contemporaneous written record of the direction made by the person to whom the direction was given.
- (4) Subregulation (2) does not apply if the trust money is disbursed in accordance with an order of a court or as otherwise authorised by law.

- (5) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (6) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (7) For the purposes of subregulations (5) and (6), the *required particulars* are as follows:
- (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and relevant BSB number;
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (f) details clearly identifying the ledger account to be debited;
  - (g) particulars sufficient to identify the purpose for which the payment was made;
  - (h) the name of the person or persons effecting, directing or authorising the payment.
- (8) Any written confirmation that an electronic funds transfer has been made must be retained by the law practice.
- (9) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be kept in the order in which the transfers were effected.
- (10) In this regulation—
- associate* means an associate of the law practice;
- authorised* means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.

## 26—Recording transactions in trust account cash books

A law practice that maintains a general trust account must keep the following trust account cash books:

- (a) a trust account receipts cash book in accordance with regulation 27;
- (b) a trust account payments cash book in accordance with regulation 28.

## 27—Trust account receipts cash book

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in respect of each receipt of trust money:
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;

- (b) the receipt number;
  - (c) the amount of money received;
  - (d) the form in which the money was received;
  - (e) the name of the person from whom the money was received;
  - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (g) particulars sufficient to identify the purpose for which the money was received;
  - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
  - (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out.
  - (4) The particulars in respect of a receipt must be recorded within 5 business days counting from and including the day the receipt was made out.

## **28—Trust account payments cash book**

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in respect of each payment of trust money by cheque:
  - (a) the date and number of the cheque;
  - (b) the amount ordered to be paid by the cheque;
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (e) details clearly identifying the ledger account to be debited;
  - (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer:
  - (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (f) details clearly identifying the ledger account to be debited;

- (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in respect of payments must be recorded in the order in which the payments are made.
- (4) The particulars in respect of a payment must be recorded within 5 business days counting from and including the day the payment was made.

## **29—Recording transactions in trust ledger accounts**

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded in the title of a trust ledger account:
  - (a) the name of the person for or on behalf of whom the trust money was paid;
  - (b) the person's address;
  - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money for the matter:
  - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
  - (b) the receipt number;
  - (c) the amount of money received;
  - (d) the name of the person from whom the money was received;
  - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by cheque:
  - (a) the date and number of the cheque;
  - (b) the amount ordered to be paid by the cheque;
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer:
  - (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;

- (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) particulars sufficient to identify the purpose for which the payment was made.
- (7) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry:
- (a) the date of the transfer;
  - (b) the amount transferred;
  - (c) the journal reference number;
  - (d) the name of the other trust ledger account from which or to which the money was transferred;
  - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 business days counting from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

### 30—Journal transfers

- (1) Trust money may be transferred by journal entry from 1 trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if—
- (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
  - (b) subregulation (2) is complied with.
- (2) The transfer must be authorised in writing—
- (a) by an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available—
    - (i) by an authorised legal practitioner associate; or
    - (ii) by an authorised legal practitioner who holds a practising certificate that does not prohibit the receipt of trust money; or
    - (iii) by 2 or more authorised associates jointly; or
  - (c) by a supervisor or manager appointed in relation to the practice.
- (3) In a paragraph of subregulation (2)—

**associate** means an associate of the law practice;

**authorised** means authorised by the law practice or a supervisor or manager appointed in relation to the practice to effect, direct or give authority for the transfer of trust money by journal entry from one trust ledger account in the practice's trust ledger to another trust ledger account in the trust ledger.

- (4) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (5) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry:
  - (a) the date of the transfer;
  - (b) the trust ledger account from which the money is transferred (including its identifying reference);
  - (c) the trust ledger account to which the money is transferred (including its identifying reference);
  - (d) the amount transferred;
  - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (6) Journal pages or entries must be consecutively numbered.
- (7) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

### **31—Reconciliation of trust records**

- (1) A law practice that maintains 1 or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing—
  - (a) a statement—
    - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
    - (ii) showing the date the statement was prepared; and
  - (b) a statement—
    - (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
    - (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
    - (iii) showing the date the statement was prepared.
- (3) The statements must be prepared within 15 business days after the end of the month concerned.
- (4) The statements must be kept by the law practice.

### **32—Trust ledger account in name of law practice or legal practitioner associate**

- (1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this regulation.

- (2) A law practice may maintain in its trust ledger—
  - (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and
  - (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subregulation (2)(a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than 1 month after the day on which the money was transferred to the trust ledger account.
- (4) In a case to which subregulation (2)(b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

### **33—Notification requirements regarding general trust accounts**

- (1) Within 14 days after establishing a general trust account, a law practice must give the Society written notice of that fact.
- (2) Subregulation (1) does not apply to a general trust account established before the commencement of this regulation.
- (3) A law practice—
  - (a) either before, or within 14 days after, authorising or terminating the authority of an associate of the practice—
    - (i) to sign cheques drawn on a general trust account of the practice; or
    - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice,must give the Society written notice of that fact (including the name and address of the associate or practitioner and indicating, in the case of an associate, whether the associate is an employee of the practice); and
  - (b) during April of each year, must give the Society written notice of the associates (including their names and addresses) who are authorised, as at 31 March of that year—
    - (i) to sign cheques drawn on a general trust account of the practice; or
    - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (4) A law practice must, within 14 days after closing a general trust account maintained by the practice, give the Society written notice of the closure.
- (5) A notice under this regulation given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.

- (6) In this regulation—

*law practice* includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

## Division 4—Controlled money

### 34—Maintenance of controlled money accounts (Schedule 2 clause 15 of Act)

- (1) For the purposes of Schedule 2 clause 15(4) of the Act, a controlled money account must be maintained under an account name that includes the following particulars:
- (a) the name of the law practice concerned;
  - (b) the expression "controlled money account" or the abbreviation "CMA" or "CMA/c";
  - (c) such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.
- (2) This regulation does not apply to an account established in this jurisdiction before the commencement of this regulation.

### 35—Receipt of controlled money

- (1) This regulation applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable—
- (a) after the controlled money is received, except as provided by paragraph (b); or
  - (b) in the case of controlled money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For the purposes of subregulation (5), the *required particulars* are as follows:
- (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the amount of money received;
  - (c) the form in which the money was received;
  - (d) the name of the person from whom the money was received;
  - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;

- (f) particulars sufficient to identify the purpose for which the money was received;
  - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
  - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "controlled money receipt";
  - (i) the name of the person who made out the receipt;
  - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt is to be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

### **36—Deposit of controlled money (Schedule 2 clause 15 of Act)**

For the purposes of Schedule 2 clause 15(5) of the Act, the prescribed period for which a written direction referred to in Schedule 2 clause 15(1) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

### **37—Withdrawal of controlled money must be authorised**

- (1) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of—
- (a) an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available—
    - (i) an authorised legal practitioner associate; or
    - (ii) an authorised legal practitioner who holds a practising certificate that does not prohibit the receipt of trust money; or
    - (iii) 2 or more authorised associates jointly.
- (2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (4) For the purposes of subregulations (2) and (3), the required particulars are as follows:
- (a) the date and number of the transaction;

- (b) the amount withdrawn;
  - (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (f) particulars sufficient to identify the purpose for which the payment was made;
  - (g) the person or persons effecting, directing or authorising the withdrawal.
- (5) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.
- (6) In this regulation—
- associate* means an associate of the law practice;
- authorised* means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

### 38—Register of controlled money

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information:
- (a) the name of the person on whose behalf the controlled money is held;
  - (b) the person's address;
  - (c) particulars sufficient to identify the matter;
  - (d) any changes to the information referred to in paragraphs (a) to (c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account:
- (a) the date the controlled money was received;
  - (b) the number of the receipt;
  - (c) the date the money was deposited in the controlled money account;
  - (d) the name of and other details clearly identifying the controlled money account;
  - (e) the amount of controlled money deposited;
  - (f) details of the deposit sufficient to identify the deposit;
  - (g) interest received;

- (h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 37(4).
- (5) With the exception of interest and other income received in respect of controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must keep as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 business days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month—
  - (a) containing a list of the practice's controlled money accounts showing—
    - (i) the name, number and balance of each account in the register; and
    - (ii) the name of the person on whose behalf the controlled money in each account was held; and
    - (iii) a short description of the matter to which each account relates; and
  - (b) showing the date the statement was prepared.

## **Division 5—Transit money**

### **39—Information to be recorded about transit money (Schedule 2 clause 17 of Act)**

For the purposes of Schedule 2 clause 17(2) of the Act, a law practice must, in respect of transit money received by the practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

## **Division 6—Trust money generally**

### **40—Trust account statements**

- (1) A law practice must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice or an associate of the practice.
- (2) In the case of trust money in respect of which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.
- (3) In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.

- (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must furnish a separate statement for each record.
- (5) A trust account statement is to contain particulars of—
  - (a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and
  - (b) the remaining balance (if any) of the money.
- (6) A trust account statement is to be furnished—
  - (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or
  - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
  - (c) except as provided by subregulation (7), as soon as practicable after 30 June in each year.
- (7) The law practice is not required to furnish a trust account statement under subregulation (6)(c) in respect of a ledger account or record if at 30 June—
  - (a) the ledger account or record has been open for less than 6 months; or
  - (b) the balance of the ledger account or record is 0 and no transaction affecting the account has taken place within the previous 12 months; or
  - (c) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must keep a copy of a trust account statement furnished under this regulation.

#### **41—Trust account statements for sophisticated clients**

- (1) Regulation 40 does not apply to a sophisticated client to the extent to which the client directs the law practice not to provide trust account statements under that regulation.
- (2) If the sophisticated client directs the law practice to provide trust account statements on a basis different from that prescribed by regulation 40, the law practice must provide those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (3) The law practice must keep a copy of a trust account statement provided under this regulation.
- (4) In this regulation—

*sophisticated client* has the same meaning as in Schedule 3 of the Act.

#### **42—Register of investments**

- (1) The law practice must maintain a register of investments of trust money.

- (2) The register must record the following information in relation to each investment:
- (a) the name in which the investment is held;
  - (b) the name of the person on whose behalf the investment is made;
  - (c) the person's address;
  - (d) particulars sufficient to identify the investment;
  - (e) the amount invested;
  - (f) the date the investment was made;
  - (g) particulars sufficient to identify the source of the investment, including, for example—
    - (i) a reference to the relevant trust ledger; and
    - (ii) a reference to the written authority to make the investment; and
    - (iii) the number of the cheque for the amount to be invested;
  - (h) details of any documents evidencing the investment;
  - (i) details of any interest received from the investment or credited directly to the investment;
  - (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (3) This regulation does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another regulation.

#### **43—Trust money subject to specific powers (Schedule 2 clause 18 of Act)**

- (1) This regulation has effect for the purposes of Schedule 2 clause 18(2) of the Act.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep—
- (a) a record of all dealings with the money to which the practice or associate is a party; and
  - (b) all supporting information in relation to the dealings,
- in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

#### **44—Register of powers and estates in relation to trust money**

- (1) A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or 1 or more associates of the practice, in relation to trust money.
- (2) Subregulation (1) does not apply where the law practice or associate is also required to act jointly with 1 or more persons who are not associates of the practice.
- (3) The register of powers and estates must record—
- (a) the name and address of the donor and date of each power; and

- (b) the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

#### **45—Withdrawing trust money for legal costs (Schedule 2 clause 22 of Act)**

- (1) This regulation prescribes, for the purposes of Schedule 2 clause 22(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).
- (3) The law practice may withdraw the trust money—
  - (a) if—
    - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
    - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
    - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person; and
  - (b) if, before effecting the withdrawal, the practice gives or sends to the person—
    - (i) a request for payment, referring to the proposed withdrawal; or
    - (ii) a written notice of withdrawal.
- (4) The law practice may withdraw the trust money—
  - (a) if the practice has given the person a bill relating to the money; and
  - (b) if—
    - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
    - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or
    - (iii) the money otherwise becomes legally payable.
- (5) Instructions mentioned in subregulation (3)(a)(ii)—
  - (a) if given in writing, must be kept as a permanent record; or
  - (b) if not given in writing, must be confirmed in writing either before, or not later than 5 business days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.
- (6) For the purposes of subregulation (3)(a)(iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

**46—Keeping of trust records (Schedule 2 clause 25 of Act)**

- (1) This regulation has effect for the purposes of Schedule 2 clause 25 of the Act for the keeping in a permanent form of a law practice's trust records in relation to trust money received by the practice.
- (2) The trust records are to be kept for a period of 7 years after—
  - (a) in the case of a trust record referred to in paragraphs (a) to (m) (inclusive) of the definition of *trust records* in Schedule 2 clause 1 of the Act—the only or the last transaction entry in the trust record; or
  - (b) in the case of any other trust record—finalisation of the matter to which the trust record relates.
- (3) This regulation does not apply to a written direction referred to in Schedule 2 clause 12(1)(a) or 15(1) of the Act.

**47—Keeping other records and information**

- (1) A record maintained under regulation 16 is, so far as it relates to particular information, to be kept by the law practice for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this Part to be kept by a law practice is to be kept for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This regulation does not apply to records to which regulation 22, regulation 36 or regulation 46 applies.

**48—Statements regarding receipt or holding of trust money**

- (1) The Society may, by notice given under this regulation, require a law practice to give the Society a statement—
  - (a) specifying whether or not the practice has during a period specified by the Society received or held trust money; and
  - (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs:
    - (i) general trust money (being trust money other than that referred to in subparagraphs (ii) to (iv) (inclusive));
    - (ii) controlled money;
    - (iii) transit money;
    - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of 1 or more periods (whether they occur annually or otherwise), and may be withdrawn or varied by a further notice.
- (3) A notice may specify the time by which or the period during which the requirement is to be complied with.
- (4) A notice is given to—
  - (a) a particular law practice by sending the notice by post to the practice; or

- (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.
- (5) A law practice—
  - (a) must comply with a requirement imposed on it under this regulation and must do so by the time or during the period specified in the notice for compliance; and
  - (b) must not include in the statement any information that is false or misleading in a material particular.

## **Division 7—External examinations**

### **49—Appointment of external examiner (Schedule 2 clause 34 of Act)**

- (1) The appointment by a law practice of a firm of public accountants of which at least 1 member is a designated person will, for the purposes of Schedule 2 clause 34(1) of the Act, be taken to be a valid appointment under that clause of each person who is, from time to time, a member of the firm and is a designated person.
- (2) A designated person or firm may only be appointed by a law practice under this regulation if the designated person or firm agrees to the appointment by notice in writing addressed to the practice.
- (3) A person must not hold himself or herself out, or act, as a law practice's approved external examiner unless—
  - (a) the person is a designated person; and
  - (b) the person or his or her firm has agreed to the appointment in accordance with subregulation (2).
- (4) A law practice must, within 2 months, give the Society notice in writing of the appointment of a designated person as an external examiner.
- (5) A designated person who has been appointed under this regulation may not resign or be removed from office by a law practice without the prior approval of the Society.
- (6) Subject to subregulation (1), if a designated person appointed under this regulation—
  - (a) dies; or
  - (b) with the approval of the Society, resigns or is removed from office; or
  - (c) becomes incapable of auditing the accounts of the law practice (whether because the Society has revoked the designation or for another reason),the practice must, within 2 months, appoint another designated person and give the Society notice in writing of the appointment and the details of the events referred to in paragraphs (a) to (c) (inclusive) that led to the new appointment.

### **50—No requirement for external examinations for transit money**

If the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records in respect of that year are not required to be externally examined.

**51—Carrying out examination (Schedule 2 clause 38 of Act)**

- (1) This regulation has effect for the purposes of Schedule 2 clause 38 of the Act in connection with an external examination of trust records.
- (2) An external examiner appointed to examine a law practice's trust records under Schedule 2 Part 3 of the Act must conduct such examinations in accordance with these regulations as and when such examinations are required under the Act.
- (3) If a law practice carries on practice at more than 1 place, the Society may from time to time give such directions as the Society thinks fit for separate examination of the practice's trust records in respect of the practice carried on at each place.
- (4) In carrying out an examination, the external examiner must—
  - (a) make checks that will enable the examiner to give an opinion as to whether the law practice has, during the period covered by the examination, complied with the Act and these regulations relating to the practice's trust account and records; and
  - (b) ascertain whether a trust account was kept by the law practice during that period; and
  - (c) make a general test examination of any trust account kept by the law practice and of the pass books and statements relating to any such account during that period; and
  - (d) ascertain whether the law practice 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 examination and 1 other to be a date within that period selected by the examiner) between—
    - (i) the liabilities of the law practice to the practice's clients and to other persons in connection with the practice as shown by the practice's trust ledger accounts and the records kept under this Part; and
    - (ii) the aggregate of the balances standing to the credit of the law practice's trust account and on deposit by the practice 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.
- (5) For the purpose of making checks, and the general test examination referred to in subregulation (4), the external examiner is entitled to examine such number of dealings representative of each phase of the law practice's practice as the examiner in the circumstances considers reasonable.

**52—External examiner's report (Schedule 2 clause 39 of Act)**

- (1) The external examiner must, in each report for the purposes of Schedule 2 Part 3 of the Act, include all matters relating to the law practice's accounts and records that should, in the examiner's opinion, be communicated to the Society 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 examiner;
  - (c) whether the law practice has complied with the examiner's requirements;
  - (d) whether, at any time during the period of the examination, the law practice's trust account was overdrawn or deficient and, if so, the full explanation for that given by the practice;
  - (e) whether the law practice 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 practice;
  - (f) whether the law practice 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 law practice has complied with section 53 of the Act;
  - (h) whether the law practice holds any investments of trust money and, if so, any independent verification of such investments obtained by the examiner for the purposes of regulation 51(4)(d);
  - (i) if the law practice uses a computer program to keep the practice's accounts and records, whether the program allows for the accounts and records to be conveniently and properly audited;
  - (j) 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) The examiner must deliver a copy of the report to the law practice.
- (4) The law practice must keep the copy of the external examiner's report and produce it on demand to the external examiner making the next succeeding examination of the practice's accounts and records.

### **53—Conditions on approval of ADIs (Schedule 2 clause 41 of Act)**

For the purposes of Schedule 2 clause 41(3) of the Act, the kinds of conditions that may be imposed on an approval of an ADI under Schedule 2 clause 41 of the Act are conditions that provide for, or conditions that require arrangements to be negotiated and entered into between the ADI and the Society that provide for, any 1 or more of the following:

- (a) the payment of interest to the Society on the whole or any part of deposits in trust accounts;
- (b) the manner in which the Society is informed of amounts held in trust accounts;
- (c) the auditing of balances in trust accounts;
- (d) the keeping of any trust accounts or only trust accounts of a particular class (for example, controlled money accounts);

- (e) any matters relevant to paragraphs (a) to (d).

#### **54—Information to be provided to Society (Schedule 2 clause 48 of Act)**

- (1) For the purposes of Schedule 2 clause 48 of the Act, a law practice must notify the Society of the following details in respect of each account that is maintained at an ADI by the law practice (or by any legal practitioner associate of the practice) and in which is held money entrusted to the law practice (or by any legal practitioner associate of the practice):
- (a) the name of the ADI, together with its BSB number;
  - (b) the name of the account, together with its account number;
  - (c) the name of each person who is authorised to operate on the account;
  - (d) for each amount of money so entrusted—
    - (i) the name of the person for whom the money is entrusted; and
    - (ii) the purpose for which the money is entrusted; and
    - (iii) the date on which money is deposited in the account, together with the manner in which it is deposited; and
    - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn.
- (2) The matters referred to in subregulation (1) must be notified to the Society at such times, and in such manner, as the Society requires.

### **Division 8—Miscellaneous**

#### **55—Law practice closing down, closing office or ceasing to receive or hold trust money**

- (1) A law practice that holds trust money must give the Society at least 14 days' written notice of its intention—
- (a) to cease to exist as a law practice; or
  - (b) to cease to engage in legal practice in this jurisdiction; or
  - (c) to cease to practise in such a way as to receive trust money.
- (2) Within 14 days of ceasing to hold trust money, a law practice that holds trust money must give the Society—
- (a) written notice of that fact; and
  - (b) if the practice has not given a notice under subregulation (1) within the previous 28 days, a notice that complies with that subregulation.
- (3) A notice under this regulation must include particulars sufficient to identify—
- (a) a law practice's general trust accounts and controlled money accounts; and
  - (b) trust money controlled by the practice (or by an associate) pursuant to a power; and
  - (c) trust money invested by the practice.

- (4) In this regulation—

*law practice* includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

## 56—Exemptions

The Society—

- (a) may exempt a law practice from complying with any of the provisions of Schedule 2 of the Act, subject to any conditions that may be imposed by the Society; and
- (b) may, at any time, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

## 57—Transitional provision—retention of accounts and records kept under revoked regulations

- (1) An account or record that a legal practitioner was required to retain under regulation 23 of the *Legal Practitioners Regulations 2009* immediately before the revocation of those regulations by these regulations must be retained by the practitioner until the expiry of 7 years after the last entry was made in the account or record.

- (2) In this regulation—

*legal practitioner*—

- (a) has the same meaning as in Part 3 Division 5 of the Act as in force immediately before the commencement of section 24 of the *Legal Practitioners (Miscellaneous) Amendment Act 2013*; but
- (b) includes an incorporated legal practice that was a legal practitioner before the commencement of Schedule 1 of the Act.

## Part 7—Costs disclosure and assessment

### 58—Substantial connection with this State (Schedule 3 of Act)

For the purposes of Schedule 3 of the Act, a matter involving a client of a law practice has a substantial connection with this State in any of the following circumstances:

- (a) the client is a natural person and is resident in this State;
- (b) the client is a body corporate and—
  - (i) the client carries on its business activities principally in this State; or
  - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this State;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this State;
- (d) the legal services provided or to be provided relate to this State, including, for example, legal services provided or to be provided for or in connection with—

- (i) the conveyance or transfer of real property located in this State; or
- (ii) court proceedings in this State.

#### **59—Disclosure of costs to clients—form (Schedule 3 clause 10 of Act)**

- (1) The form set out in Form 1 of Schedule 1 is prescribed for the purposes of Schedule 3 clause 10(5) of the Act in connection with the details referred to in Schedule 3 clause 10(1)(c)(i) to (iii) (inclusive), (h), (j), (k) and (m) of the Act.
- (2) The Society is required to produce and maintain the fact sheet referred to in the form and make it available on the Internet.

#### **60—Exceptions to requirement for disclosure (Schedule 3 clause 13 of Act)**

For the purposes of Schedule 3 clause 13(1)(f) of the Act, disclosure under Schedule 3 clauses 10 or 11(1) of the Act is not required if the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or a Territory.

#### **61—Interest on unpaid legal costs (Schedule 3 clause 23 of Act)**

- (1) This regulation is made for the purposes of Schedule 3 clause 23(4) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under Schedule 3 clause 23(4) of the Act or under a costs agreement.
- (2) The rate for the period commencing on the date of commencement of this subregulation is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.
- (3) In this regulation—

*Cash Rate Target* means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target;

*relevant date* means the date the bill was issued by the law practice concerned.

#### **62—Costs agreement with associated third party payer (Schedule 3 clause 24)**

Schedule 3 clause 25 of the Act is a prescribed provision for the purposes of Schedule 3 clause 24(6) of the Act.

#### **63—Notification of client's rights—form (Schedule 3 clause 33 of Act)**

- (1) The form set out in Form 2 of Schedule 1 is prescribed for the purposes of Schedule 3 clause 33(3) of the Act.
- (2) The Society is required to produce and maintain the fact sheet referred to in the form and make it available on the Internet.

### **Part 8—Miscellaneous**

#### **64—Fees**

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

## 65—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 section 53(9) and (12) and Schedule 2 clause 27(1) 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 20%.
- (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%.

## 66—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."

## 67—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 Chapter 17 of the *Supreme Court Civil Rules 2006*).

## 68—Offences

If—

- (a) a person contravenes, or fails to comply with, a provision of these regulations; and
- (b) no penalty in the Act applies in relation to the contravention or failure, the person is guilty of an offence against these regulations.

Maximum penalty: \$10 000.

## 69—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.

## Part 9—Transitional provisions—*Legal Practitioners (Miscellaneous) Amendment Act 2013*

### 70—Operation of amendment (requirement of incorporated legal practice to give notice)

Schedule 1 clause 6 of the Act (as inserted by the *Legal Practitioners (Miscellaneous) Amendment Act 2013*) does not apply to an incorporated legal practice, or to a director, officer, employee or agent of an incorporated legal practice, if Schedule 1 clause 5 of the Act applies to the practice.

### 71—Reporting obligations for 2013/2014 financial year

- (1) For the purposes of section 90A of the Act (as amended by the *Legal Practitioners (Miscellaneous) Amendment Act 2013*), the Commissioner's report to the Attorney-General and the Chief Justice in respect of the 2013/2014 financial year is—
  - (a) to report on the proceedings of the Legal Practitioners Conduct Board (the **Board**) for that financial year; and
  - (b) to be in the same form, and deal with the same matters, as the report on the proceedings of the Board for the 2012/2013 financial year presented by the Board to the Attorney-General and the Chief Justice in accordance with that section.

- (2) Presentation to the Attorney-General of a report prepared under subregulation (1) will be taken to have satisfied the Commissioner's obligation to present a report to the Minister under section 12 of the *Public Sector Act 2009* in respect of the 2013/2014 financial year.

## **Schedule 1—Forms**

### **Form 1—Disclosure of costs to clients (regulation 59)**

#### **Legal costs—your right to know**

You have the right to—

- negotiate a costs agreement with us
- receive a bill of costs from us
- request an itemised bill of costs after you receive a lump sum bill from us
- request written reports about the progress of your matter and the costs incurred in your matter
- apply for costs to be adjudicated within 6 months if you are unhappy with our costs
- apply for the costs agreement to be set aside
- make a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging)
- accept or reject any offer we make for an interstate costs law to apply to your matter
- notify us that you require an interstate costs law to apply to your matter

For more information about your rights, please read the fact sheet titled *Legal Costs—your right to know*. You can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

### **Form 2—Notification of client's rights (regulation 63)**

#### **Your rights in relation to legal costs**

The following avenues are available to you if you are not happy with this bill:

- requesting an itemised bill
- discussing your concerns with us
- having our costs adjudicated
- applying to set aside our costs agreement
- making a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging)

There may be other avenues available in your State or Territory (such as mediation).

For more information about your rights, please read the fact sheet titled *Your right to challenge legal costs*. You can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

## Schedule 2—Fees

1	For the issue or renewal of a practising certificate—	
	(a) for more than 6 months	\$403 fee \$182 levy
	(b) for 6 months or less	\$237 fee \$91 levy
2	Fee to accompany written notice provided under section 23D of the Act	\$30
3	Fee to accompany written notice provided under Schedule 1 clause 4	\$30
4	Fee to accompany written notice provided under Schedule 1 clause 5	\$30

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Legal Practitioners Regulations 2014* revoked the following:

*Legal Practitioners Regulations 2009*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2014	67	<i>Gazette 5.6.2014 p2243</i>	1.7.2014: r 2
2014	247	<i>Gazette 2.10.2014 p6066</i>	2.10.2014: r 2
<b>2015</b>	<b>59</b>	<b><i>Gazette 11.6.2015 p2544</i></b>	<b>11.6.2015: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>2.10.2014</i>
Pt 6		
r 24		
r 24(3)	varied by 247/2014 r 4	2.10.2014
r 30		
r 30(2)	varied by 247/2014 r 5	2.10.2014
r 37		
r 37(1)	varied by 247/2014 r 6	2.10.2014
<b>Sch 2</b>	<b>substituted by 59/2015 r 4</b>	<b>11.6.2015</b>
<i>Sch 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>2.10.2014</i>

## Historical versions

2.10.2014