

South Australia

# Legal Practitioners (Miscellaneous) Amendment Act 2016

An Act to amend the *Legal Practitioners Act 1981*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Legal Practitioners (Miscellaneous) Amendment Act 2016*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Legal Practitioners Act 1981***

### **4—Amendment of section 5—Interpretation**

- (1) Section 5(1), definition of *approved auditor*—delete the definition
- (2) Section 5(1), definition of *law practice*, (b)—delete paragraph (b) and substitute:
  - (b) a firm of—
    - (i) legal practitioners; or
    - (ii) incorporated legal practices; or
    - (iii) legal practitioners and incorporated legal practices; or
- (3) Section 5(1), definition of *law practice*, (c)—after "practice" insert:

that practises on its own account
- (4) Section 5(1)—after the definition of *participating State* insert:

*partner* includes—

  - (a) an incorporated legal practice that engages in legal practice as a member of a firm of incorporated legal practices or a firm of legal practitioners and incorporated legal practices; and
  - (b) a legal practitioner director of an incorporated legal practice referred to in paragraph (a);
- (5) Section 5(3)—after "partner of the practitioner," insert:

or by a corporation of which the practitioner is a director,

## **5—Amendment of section 5A—Terms relating to associates and principals of law practices**

- (1) Section 5A(1)(a)—after subparagraph (iii) insert:
  - (iia) a legal practitioner director in an incorporated legal practice that is a member of the law practice (in the case of a firm of incorporated legal practices or a firm of legal practitioners and incorporated legal practices); or
- (2) Section 5A(3)(b)—after "legal practitioners" insert:

or of incorporated legal practices or of both
- (3) Section 5A(3)(c)—after "incorporated legal practice" insert:

that is a law practice
- (4) Section 5A(3)—after paragraph (c) insert:
  - (ca) a legal practitioner director of an incorporated legal practice that is a member of the law practice (in the case of a firm of incorporated legal practices); or

## **6—Amendment of section 53—Duty to deposit trust money in combined trust account**

- Section 53(6)—after "a firm of legal practitioners" insert:

or a firm of incorporated legal practices or a firm of legal practitioners and incorporated legal practices

## **7—Insertion of section 67B**

Before section 68 insert:

### **67B—Application of Part**

This Part does not apply to the conduct of a legal practitioner or former legal practitioner—

- (a) who is a judicial officer (within the meaning of the *Judicial Conduct Commissioner Act 2015*) acting in his or her capacity as a judicial officer; or
- (b) who is the Commissioner acting in his or her capacity as Commissioner; or
- (c) insofar as the practitioner is exercising a function or power of the Commissioner in accordance with a delegation under section 77; or
- (d) who is—
  - (i) a member of the Commissioner's staff; and
  - (ii) acting in his or her capacity as a member of the Commissioner's staff,

(but nothing in this paragraph is to be taken to exclude the application of this Part to the conduct of a member of the Commissioner's staff that relates to the member's conduct in appearing on behalf of the Commissioner in proceedings before the Tribunal or the Supreme Court); or

- (e) holding or acting in the office of the Independent Commissioner Against Corruption or the office of the Deputy Commissioner under the *Independent Commissioner Against Corruption Act 2012*.

## **8—Amendment of section 77—Delegation**

Section 77—after subsection (3) insert:

- (4) For the purposes of section 17(1)(c)(ii) of the *Public Sector (Honesty and Accountability) Act 1995*, delegation by the Commissioner of a function or power under this section because of a pecuniary or other personal interest that conflicts or may conflict with the Commissioner's duties does not constitute taking action in relation to the matter the subject of the delegation.

## **9—Amendment of section 77B—Investigations by Commissioner**

- (1) Section 77B(2)—delete "section 77C" and substitute:  
this section and sections 67B and 77C
- (2) Section 77B(2)(b)—delete "a complaint" and substitute:  
a written complaint that complies with subsection (3a)
- (3) Section 77B—after subsection (3) insert:
  - (3a) A complaint must—
    - (a) identify the complainant; and
    - (b) if possible, identify the legal practitioner or former legal practitioner about whom the complaint is made; and
    - (c) describe the alleged conduct the subject of the complaint.
  - (3b) A person who is subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class) may not make a complaint under this section.
  - (3c) A complaint must be made to the Commissioner within 3 years of the conduct that is the subject of the complaint or such longer period as the Commissioner may allow.

## **10—Amendment of section 77D—Notification of complaint to practitioner**

Section 77D(1)(c)—after "determination" insert:

(other than a determination not to investigate, or to close, a complaint)

### **11—Amendment of section 77H—Report on investigation**

- (1) Section 77H(2)—delete "the Commissioner must" and substitute:  
the Commissioner may
- (2) Section 77H—after subsection (2) insert:
  - (2a) However, if the information or evidence suggests that a serious offence has been committed, the Commissioner must pass the information or evidence on to the Crown Solicitor.

### **12—Amendment of section 77K—Appeal against determination of Commissioner**

Section 77K—after subsection (3) insert:

- (3a) Subject to subsections (3b) and (3c), the Tribunal will, in exercising its review jurisdiction, examine the determination of the Commissioner by way of rehearing.
- (3b) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to, and give appropriate weight to, the determination of the Commissioner.
- (3c) A procedure on a rehearing will include—
  - (a) an examination of the evidence or material before the Commissioner (unless any such evidence or material is to be excluded under another provision of this Act or under any other law); and
  - (b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for the purposes of rehearing the matter.

### **13—Amendment of section 77N—Investigation of allegation of overcharging**

- (1) Section 77N(6)(a)—after "complainant" insert:  
, the client to whom the bill was delivered (if that client is not the complainant)
- (2) Section 77N(7)(c)—after "complainant" insert:  
, the client to whom the bill was delivered (if that client is not the complainant)
- (3) Section 77N(8)(a)—after "complainant" insert:  
, the client to whom the bill was delivered (if that client is not the complainant)

### **14—Amendment of section 84—Powers of Tribunal**

- (1) Section 84(7)(a)—delete "of any State" and substitute:  
or tribunal of any State or the Commonwealth
- (2) Section 84(7)(b)—after "court" insert:  
or tribunal

## **15—Amendment of section 89B—Definitions**

Section 89B, definition of *disciplinary action*—after paragraph (a) insert:

- (ab) the making of an order by the Supreme Court suspending a legal practitioner's practising certificate; or

## **16—Amendment of section 89C—Register of Disciplinary Action**

Section 89C—after subsection (7) insert:

- (7a) The Commissioner may cause information about disciplinary action to be removed from the Register in the circumstances prescribed by regulation (if any).

## **17—Amendment of Schedule 1—Incorporated legal practices**

- (1) Schedule 1—after clause 3 insert:

### **3A—Incorporated legal practices may practise in partnership**

Subject to this Act, an incorporated legal practice may practise in partnership with another incorporated legal practice or a legal practitioner (or both).

- (2) Schedule 1—after clause 4 insert:

### **4A—Notice to be given by incorporated legal practice of intention to practise in partnership**

- (1) Before an incorporated legal practice starts to engage in legal practice in this jurisdiction in partnership with another incorporated legal practice or a legal practitioner (or both), the practice must give the Supreme Court written notice, in the approved form, and accompanied by the prescribed fee, of its intention to do so.
- (2) An incorporated legal practice must not engage in legal practice in this jurisdiction in partnership with an incorporated legal practice or a legal practitioner (or both) if it is in default of this clause.  
Maximum penalty: \$50 000.
- (3) An incorporated legal practice that starts to engage in legal practice in this jurisdiction in partnership with an incorporated legal practice or a legal practitioner (or both) without giving a notice under subclause (1) is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has started to engage in legal practice in partnership with an incorporated legal practice or a legal practitioner.
- (4) The giving of a notice under subclause (3) does not affect an incorporated legal practice's liability under subclause (1) or (2).
- (5) A firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, is not entitled to recover any amount for anything the firm did while a member of the firm was in contravention of subclause (2).

- (6) A person may recover from a firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, as a debt due to the person, any amount the person paid to or at the direction of the firm for anything the firm did while a partner of the firm was in contravention of subclause (2).
  - (7) This clause does not apply in relation to—
    - (a) a firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, if the firm—
      - (i) was established before the commencement of this clause; and
      - (ii) engaged in legal practice in this jurisdiction immediately before the commencement of this clause; or
    - (b) an incorporated legal practice that was a member of a firm referred to in paragraph (a) immediately before the commencement of this clause insofar as the practice engages in legal practice as a member of the firm.
- (3) Schedule 1—after clause 5 insert:

**5A—Notice to be given by incorporated legal practice providing legal services in partnership**

- (1) This clause applies to—
  - (a) an incorporated legal practice that—
    - (i) immediately before the relevant day—
      - (A) was a legal practitioner within the meaning of this Act (as in force immediately before the relevant day); and
      - (B) was practising in partnership with another legal practitioner; and
    - (ii) immediately before the commencement of this clause, continued to practise in the partnership; and
  - (b) an incorporated legal practice that, after the relevant day but before the commencement of this clause—
    - (i) commenced practising in partnership with another incorporated legal practice or a legal practitioner (or both); and
    - (ii) immediately before the commencement of this clause, continued to practise in the partnership.

- (2) An incorporated legal practice to which this clause applies must, if it intends to continue to engage in legal practice in this jurisdiction in partnership with another incorporated legal practice or a legal practitioner (or both), within 28 days following the commencement of this clause, give the Supreme Court written notice, in the approved form and accompanied by the prescribed fee, of that intention.
- (3) An incorporated legal practice to which this clause applies must not engage in legal practice in this jurisdiction in partnership with an incorporated legal practice or a legal practitioner (or both) if it is in default of this clause.

Maximum penalty: \$50 000.

- (4) An incorporated legal practice to which this clause applies that engages in legal practice in this jurisdiction in partnership with another incorporated legal practice or a legal practitioner (or both) after the end of the 28 day period referred to in subclause (2) without giving a notice under that subclause is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has continued to engage in legal practice in partnership with another incorporated legal practice or a legal practitioner (or both).
- (5) The giving of a notice under subclause (4) does not affect an incorporated legal practice's liability under subclause (2) or (3).
- (6) A firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, is not entitled to recover any amount for anything the firm did while a member of the firm was in contravention of this clause.
- (7) A person may recover from a firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, as a debt due to the person, any amount the person paid to or at the direction of the firm for anything the firm did while a member of the firm was in contravention of this clause.
- (8) In this clause—

*relevant day* means the day on which this Schedule came into operation.

- (4) Schedule 1, clause 18(1)(b)—delete "a partner of" and substitute:  
engaging in legal practice in partnership with
- (5) Schedule 1, clause 32(1)(a)—after "incorporated legal practices" insert:  
or a specified class of incorporated legal practices
- (6) Schedule 1, clause 32(1)(b)—after "incorporated legal practices" insert:  
, or a specified class of incorporated legal practices,



## **18—Amendment of Schedule 2—Trust money and trust accounts**

Schedule 2, clause 46—after "incorporated legal practices" insert:  
, or to specified classes of incorporated legal practices,

## **19—Amendment of Schedule 3—Costs disclosure and adjudication**

Schedule 3, clause 52—after "incorporated legal practices" insert:  
, or to specified classes of incorporated legal practices,

## **20—Amendment of Schedule 4—Investigatory powers**

Schedule 4, clause 10(1)—after "incorporated legal practices" insert:  
(whether engaged in legal practice on their own account or in partnership)

## **21—Insertion of Schedule 5**

After Schedule 4 insert:

### **Schedule 5—Transitional provisions**

#### **1—Closure of certain complaints**

- (1) A complaint received by the Commissioner under Part 6 before the commencement of subsection (3b) of section 77B may, if the complaint was made by a person who was, at the time of making the complaint, subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class), be closed by the Commissioner without an investigation or without completing an investigation.
- (2) If the Commissioner determines to close a complaint under subclause (1)—
  - (a) the Commissioner must notify the complainant in writing of the closure of the complaint; and
  - (b) the determination is not subject to appeal.