

South Australia

Public Finance and Audit (Legal Assistance Costs) Regulations 2026

under section 20B of the *Public Finance and Audit Act 1987*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Public Finance and Audit (Legal Assistance Costs) Regulations 2026*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

- (1) In these regulations—

Act means the *Public Finance and Audit Act 1987*;

relevant civil or criminal proceedings means—

- (a) a criminal prosecution of a Government employee, Government Board appointee, Member of Parliament or Minister for alleged offending arising out of the performance of their duties; or
- (b) a civil action brought against a Government employee, Government Board appointee, Member of Parliament or Minister arising out of the performance of their duties; or
- (c) a coronial inquest where a Government employee, Government Board appointee, Member of Parliament or Minister is required to give evidence connected with the performance of their duties,

but does not include—

- (d) a recovery action by or on behalf of the State under section 74(4) of the *Public Sector Act 2009*; or
- (e) any proceeding or action (or part thereof) for the suppression of the name or any identifying information of the Government employee, Government Board appointee, Member of Parliament or Minister; or
- (f) any proceedings of a Royal Commission; or
- (g) any disciplinary proceeding or action against the Government employee, Government Board appointee, Member of Parliament or Minister; or
- (h) any proceeding or action arising out of the exercise of powers or functions by the Ombudsman under the *Ombudsman Act 1972* or by the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*;

relevant statutory review or proceedings means—

- (a) a review undertaken by the Inspector appointed under Schedule 4 of the *Independent Commission Against Corruption Act 2012*; or
- (b) proceedings before a judicial conduct panel under Part 4 of the *Judicial Conduct Commissioner Act 2015*.

- (2) In these regulations, a term defined in section 20B of the Act has the same meaning as in that section.

Part 2—Reimbursement of legal fees

4—Eligibility for reimbursement

- (1) A Government employee, Government Board appointee, Member of Parliament or Minister may be reimbursed for costs they have incurred associated with their engagement of an independent legal practitioner where—
 - (a) the Government employee, Government Board appointee, Member of Parliament or Minister has been the subject of, or required to participate in, relevant civil or criminal proceedings or a relevant statutory review or proceedings; and
 - (b) the additional criteria for reimbursement set out in these regulations are satisfied.

- (2) A Government employee's union or professional association that has paid legal costs on behalf of the employee in respect of their participation in relevant civil or criminal proceedings or a relevant statutory review or proceedings may seek reimbursement in accordance with these regulations as if the Government employee were making the claim, subject to the same restrictions and conditions.
- (3) Eligibility for reimbursement is to be determined by—
 - (a) in the case of a Government employee or Government Board appointee—the Attorney-General; or
 - (b) in the case of a Member of Parliament or Minister—the Crown Solicitor.

5—Discretion to reimburse in exceptional circumstances

A Government employee or Government Board appointee who incurs costs associated with their engagement of an independent legal practitioner in relation to proceedings other than relevant civil or criminal proceedings or a relevant statutory review or proceedings (not being proceedings of a kind excluded from the definition of relevant civil or criminal proceedings in regulation 3(1)) may be reimbursed for those costs where—

- (a) in the opinion of the Attorney-General, exceptional circumstances exist such that it is appropriate for the legal fees to be reimbursed; and
- (b) the additional criteria for reimbursement set out in these regulations are satisfied.

6—Additional criteria for reimbursement

The additional criteria for reimbursement are—

- (a) no material adverse finding against the Government employee, Government Board appointee, Member of Parliament or Minister has been made, and no material dereliction of duty has been revealed, as a result of the relevant civil or criminal proceedings or relevant statutory review or proceedings; and
- (b) the Crown Solicitor has, in writing—
 - (i) advised the Government employee, Government Board appointee, Member of Parliament or Minister that they will not be represented by the Crown Solicitor for the purposes of responding to or participating in the relevant civil or criminal proceedings or relevant statutory review or proceedings (or the Crown Solicitor considers that it was appropriate in all the circumstances for the Government employee, Government Board appointee, Member of Parliament or Minister not to approach the Crown Solicitor before obtaining representation); and
 - (ii) agreed that the legal representation of the Government employee, Government Board appointee, Member of Parliament or Minister for the purposes of responding to or participating in the relevant civil or criminal proceedings or relevant statutory review or proceedings is or was reasonably required; and
- (c) the Crown Solicitor has, in writing, certified that the costs to be reimbursed are reasonable; and

- (d) the Government employee, Government Board appointee, Member of Parliament or Minister is not indemnified in relation to those costs (including by the State of South Australia (through SAFA or another agency), or under a policy of insurance) and is not entitled to assistance pursuant to the Department of Health Professional Indemnity (Medical Malpractice) Program; and
- (e) the Government employee, Government Board appointee, Member of Parliament or Minister has assigned to the Crown in the right of the State of South Australia any right to recover the costs to be reimbursed from any other party; and
- (f) if the person seeking reimbursement is a Government employee or Government Board appointee—the Attorney-General has approved the reimbursement.

7—Reasonable costs

- (1) For the purposes of regulation 6(c), the Crown Solicitor will only certify that costs to be reimbursed are reasonable where satisfied that—
 - (a) the costs claimed have been reasonably incurred in order to allow the Government employee, Government Board appointee, Member of Parliament or Minister to appropriately respond to or participate in the relevant civil or criminal proceedings or relevant statutory review or proceedings; and
 - (b) the costs claimed have been calculated consistently with the applicable Crown Solicitor's rates for private legal practitioner fees as published on the Attorney-General's Department website from time to time, or such other rate as had been agreed in relation to a particular matter—
 - (i) in the case of a Government employee or Government Board appointee—by the Attorney-General on the advice of the Crown Solicitor; or
 - (ii) in the case of a Member of Parliament or Minister—by the Crown Solicitor; and
 - (c) in the case of costs associated with the briefing of Senior Counsel or King's Counsel, and including where costs associated with the briefing of junior counsel in the same matter are also sought, the exceptional circumstances of the matter justify such expenditure; and
 - (d) in the case of costs associated with any review or appeal proceedings arising out of the relevant civil or criminal proceedings or relevant statutory review or proceedings instigated or joined by the Government employee, Government Board appointee, Member of Parliament or Minister, the exceptional circumstances of the matter justify such expenditure; and
 - (e) any costs or expenses recovered by the Government employee, Government Board appointee, Member of Parliament or Minister from other sources have been appropriately deducted from the costs claimed; and
 - (f) the Government employee, Government Board appointee, Member of Parliament or Minister has provided all information reasonably requested to allow the costs claimed to be assessed in accordance with these regulations.

- (2) The amount to be reimbursed under these regulations will include GST on the legal costs to be reimbursed if the Government employee, Government Board appointee, Member of Parliament or Minister or, in the case of a Government employee, their union or professional association, is not able to recover the GST as an input tax credit.

8—Procedure for reimbursement

- (1) In the event that it is necessary for any statutory authority or other person or body to authorise the provision of information to another person for the purposes of these regulations, the Government employee, Government Board appointee, Member of Parliament or Minister will seek that authorisation as appropriate.
- (2) A Government employee, Government Board appointee, Member of Parliament or Minister seeking reimbursement of legal fees in accordance with these regulations must—
- (a) obtain as soon as practicable the necessary written agreement from the Crown Solicitor as required by regulation 6(b); and
 - (b) await the finalisation of the relevant civil or criminal proceedings or relevant statutory review or proceedings (unless seeking an interim payment in accordance with regulation 9); and
 - (c) submit a written claim for certification of the reasonableness of the costs for reimbursement to the Crown Solicitor, including—
 - (i) an assignment of rights (as contemplated by regulation 6(e)) in a form approved by the Crown Solicitor; and
 - (ii) all relevant information in support of the eligibility of the claim pursuant to this Policy, including any additional information reasonably requested by the Crown Solicitor; and
 - (d) calculate the costs claimed in accordance with regulation 7(1)(b), or have those costs calculated on their behalf.
- (3) If the person seeking reimbursement is a Government employee or Government Board appointee, the Attorney-General must have approved the reimbursement in accordance with regulation 6(f), and, if reimbursement is claimed in accordance with regulation 5, have formed the opinion specified in regulation 5(a), before the Crown Solicitor can certify the costs as reasonable for the purposes of regulation 6(c).
- (4) If the costs claimed (or part thereof) are certified as reasonable, the Crown Solicitor will forward the claim to the Attorney-General for finalisation of the claim.

Note—

In accordance with section 20B(3) of the Act, in a case where the person claiming reimbursement is a Minister or Member of Parliament, the Attorney-General must not exercise discretion in the finalisation of the claim.

9—Interim payments

- (1) Prior to the finalisation of a relevant civil or criminal proceedings or relevant statutory review or proceedings, a Government employee, Government Board appointee, Member of Parliament or Minister may be reimbursed on an interim basis for costs they have incurred associated with their engagement of an independent legal practitioner, where—
 - (a) the Government employee, Government Board appointee, Member of Parliament or Minister enters into a legally enforceable agreement with appropriate security for repayment of any reimbursement in the event that a material adverse finding against the Government employee, Government Board appointee, Member of Parliament or Minister is later made, or a material dereliction of duty is later revealed, as a result of the relevant civil or criminal proceedings or relevant statutory review or proceedings; and
 - (b) the criteria for reimbursement set out in these regulations are otherwise satisfied.
- (2) A Government employee, Government Board appointee, Member of Parliament or Minister seeking an interim payment of legal fees must do so in accordance with the procedure for reimbursement set out in regulation 8.
- (3) A refusal by the Attorney-General or Crown Solicitor (as applicable) to approve an interim payment does not prevent a Government employee, Government Board appointee, Member of Parliament or Minister from seeking reimbursement in accordance with these regulations following the finalisation of the relevant civil or criminal proceedings or relevant statutory review or proceedings.
- (4) If the Crown Solicitor certifies that costs in excess of \$100 000 are likely to be incurred in respect of relevant civil or criminal proceedings or a relevant statutory review or proceedings, the Attorney-General (in the case of a Government employee or Government Board Member) or Crown Solicitor (in the case of a Member of Parliament or Minister) must not refuse to approve interim payments on the making of an application in accordance with the requirements of this regulation.

10—Delegation

- (1) The Attorney-General or Crown Solicitor may delegate a function or power under these regulations to any person that is, in their opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this regulation—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this regulation may, if the instrument of delegation so provides, be further delegated.

Schedule 1—Transitional provision

1—Transitional provision

These regulations apply to a claim for reimbursement by a Government employee, Government Board appointee, Member of Parliament or Minister, including a claim that was made prior to the commencement of these regulations but is yet to be finalised, regardless of when the review or proceedings that form the basis of the claim for reimbursement was undertaken or occurred.

Legislative history

Notes

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

Principal regulations

Year	No	Reference	Commencement
2026	83	<i>Gazette 1.10.2026 p3103</i>	1.10.2026: r 2