

South Australia



**LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT ACT
1996**

No. 10 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 10 of 1996

An Act to amend the Legal Practitioners Act 1981.

[Assented to 11 April 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Legal Practitioners (Miscellaneous) Amendment Act 1996*.
- (2) The *Legal Practitioners Act 1981* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended—

- (a) by inserting "the Registrar of" after "by" in the definition of "**approved auditor**";
- (b) by inserting after the definition of "**banking account**" the following definition:

"Board" means the *Legal Practitioners Conduct Board* continued in existence under this Act;

- (c) by striking out the definition of "**the Committee**";
- (d) by inserting after the definition of "**director**" the following definition:

"document" means book, file, account, paper (including a security or any instrument) or any record of information, whether in writing or accessible only through the use of a computer or other device;

- (e) by striking out the definition of "**the Secretary**".

Amendment of s. 7—Incorporation and powers of Society

4. Section 7 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) The Society—

(a) has perpetual succession and a common seal; and

(b) is capable of suing and being sued.

(2a) Where an apparently genuine document purports to bear the common seal of the Society, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Society was duly affixed to that document.

(2b) The Society has the powers of a natural person.

Amendment of s. 16—Issue of practising certificate

5. Section 16 of the principal Act is amended—

(a) by striking out subparagraph (ii) of subsection (2)(a) and substituting the following subparagraph:

(ii) the director of the company (or, if there is more than one director, each of them) must be a natural person who is a legal practitioner holding a current practising certificate (but if the company only has two directors they may consist of a legal practitioner holding a current practising certificate and a person who is not a legal practitioner holding a current practising certificate but is a prescribed relative of that practitioner);

(b) by inserting in the definition of "prescribed relative" in subsection (6) "brother, sister," after "parent,".

Amendment of s. 31—Disposition of trust money

6. Section 31 of the principal Act is amended by inserting after subsection (7) the following subsection:

(7a) A legal practitioner who receives trust money in the course of acting in a matter must provide the person who instructed him or her in the matter with trust account statements in accordance with the regulations.

Amendment of s. 34—Appointment of inspector

7. Section 34 of the principal Act is amended—

(a) by striking out from subsection (1)(b) ", working papers and other" and substituting "and";

(b) by inserting in subsection (2) "other" after "accounts or".

Amendment of s. 35—Obtaining information for purposes of audit or examination

8. Section 35 of the principal Act is amended—

(a) by striking out from subsection (1)(a) "books, papers, securities and other documents," and substituting "other documents";

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- (b) by striking out from subsection (2) "books, papers and other";
- (c) by striking out from subsection (3)(b) "documentary material" and substituting "documents".

Amendment of s. 37—Confidentiality

9. Section 37 of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (4) and substituting the following paragraphs:

- (a) to a member of a law enforcement or prosecution authority of a State or Territory, or of the Commonwealth, relating to a matter referred to the authority by the Attorney-General or reported to the authority by the Board, to which the information is relevant; or
- (b) to the Board; or.

Amendment of s. 39—Delivery up of legal papers

10. Section 39 of the principal Act is amended by striking out from subsections (1) and (2) "papers", wherever occurring, and substituting, in each case, "documents".

Amendment of s. 42—Costs

11. Section 42 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

- (4) The Board may institute proceedings for the taxation of legal costs under this section on behalf of a person who is liable to pay, or has paid, the legal costs.

Amendment of s. 45—Appointment of manager

12. Section 45 of the principal Act is amended by striking out from subsection (4) "books, papers and documents relating to the practice and for that purpose may enter any place or premises where the manager reasonably suspects any such books, papers or" and substituting "documents relating to the practice and for that purpose may enter any place or premises where the manager reasonably suspects any such".

Amendment of s. 49—Supreme Court may grant authority permitting insolvent persons to practise

13. Section 49 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

- (1) A legal practitioner—
 - (a) who has become bankrupt or subject to a composition or deed of arrangement or assignment with or for the benefit of creditors; or
 - (b) who is or has been a director of an incorporated legal practitioner during the winding up of the company for the benefit of creditors,

must not, without the authority of the Supreme Court, practise the profession of the law.

Maximum penalty: \$10 000

(1a) Authority may be granted under this section on the application of a legal practitioner who is or is about to become bankrupt or subject to a composition or deed of arrangement or assignment with or for the benefit of creditors or who is or has been a director of an incorporated legal practitioner that is being or is about to be wound up for the benefit of creditors.

Amendment of s. 57—Guarantee fund

14. Section 57 of the principal Act is amended—

- (a) by striking out from subsection (3)(b) "Part 6" and substituting "Part 5";
- (b) by inserting after paragraph (d) of subsection (3) the following paragraph:
 - (da) any fee paid to the Board; and.

Amendment of s. 60—Claims

15. Section 60 of the principal Act is amended by inserting in subsection (2)(a) "(including the reasonable costs of making the claim)" after "default".

Amendment of s. 68—Establishment of the Legal Practitioners Conduct Board

16. Section 68 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) The Legal Practitioners Complaints Committee continues in existence as the *Legal Practitioners Conduct Board*.

(1a) The Board—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued.

(1b) Where an apparently genuine document purports to bear the common seal of the Board, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to that document.

(1c) The Board has the powers of a natural person.

Substitution of s. 72

17. Section 72 of the principal Act is repealed and the following section is substituted:

Director and staff of Board

72. (1) There will be a Director appointed by the Board with the approval of the Attorney-General.

(2) The Director is the chief administrative officer of the Board.

(3) The Board may appoint other staff to assist in carrying out its functions.

Amendment of s. 73—Confidentiality

18. Section 73 of the principal Act is amended by striking out paragraphs (ac) and (ad) of subsection (2) and substituting the following paragraph:

- (ac) a member of a law enforcement or prosecution authority of a State or Territory, or of the Commonwealth, relating to a matter referred to the authority by the Attorney-General or reported to the authority by the Board, to which the information is relevant; or.

Amendment of s. 74—Functions of Board

19. Section 74 of the principal Act is amended—

(a) by inserting before paragraph (a) of subsection (1) the following paragraph:

(aa) to investigate suspected unprofessional conduct by legal practitioners of the Board's own motion, or at the direction of the Attorney-General or the Society;;

(b) by striking out subsection (2) and substituting the following subsection:

(2) The Board may, with the approval of the Attorney-General, fix, and require the payment of, fees in connection with the performance of functions of the Board under this Act.

Amendment of heading

20. The heading above sections 76 and 77 of the principal Act is amended by striking out "COMPLAINTS" and substituting "INVESTIGATION".

Amendment of s. 76—Investigations by Board

21. Section 76 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) The Board may, of its own motion, make an investigation into the conduct of a legal practitioner who the Board has reasonable cause to suspect has been guilty of unprofessional conduct.

(1a) The Board must make an investigation into the conduct of a legal practitioner where—

(a) the Board has been directed to make the inquiry by the Attorney-General or the Society; or

(b) a complaint has been received in relation to the conduct of the legal practitioner.

(1b) Despite subsection (1a), the Board may determine not to commence or continue an investigation that would otherwise be required as a result of receipt of a complaint if it is apparent to the Board that the complaint is frivolous or vexatious or if the Board is satisfied that the subject matter of the complaint has been resolved prior to commencement or completion of an investigation.;

(b) by striking out subsections (3) and (4) and substituting the following subsections;

(3) For the purposes of an investigation the Board, or a person authorised by the Board to exercise the powers conferred by this subsection, may—

(a) by notice in writing, require specified documents, or documents of a specified class, in the custody or control of a prescribed person to be produced at a time and place specified in the notice; and

- (b) at any time during ordinary business hours, inspect any documents in the custody or control of a prescribed person; and
 - (c) seize or make notes or copies of any documents produced in accordance with this subsection, or take extracts from them.
- (4) A person who—
- (a) wilfully delays or obstructs the Board or an authorised person in the exercise of powers conferred by subsection (3); or
 - (b) being a prescribed person, refuses without reasonable excuse to produce a document when required to do so in accordance with subsection (3),

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for one year.;

(4a) The Board may, by notice in writing, require a legal practitioner whose conduct is under investigation to make a detailed report to the Board, within the time specified in the notice, in relation to any matters relevant to the investigation.

(4b) A legal practitioner must comply with a requirement under subsection (4a).

Maximum penalty: \$10 000 or imprisonment for one year.;

- (c) by striking out paragraph (c) of the definition of "prescribed person" in subsection (5) and substituting the following paragraph:
 - (c) the person (including a legal practitioner or the Legal Services Commission) who instructed the legal practitioner whose conduct is under investigation in the matter in relation to which that conduct occurred or a servant or agent of the person who instructed the legal practitioner; or.

Amendment of s. 77—Report on investigation

22. Section 77 of the principal Act is amended—

- (a) by striking out from subsection (1) "where, after a complaint has been investigated" and substituting "if, in the course or in consequence of an investigation by the Board";
- (b) by striking out from subsection (2) "the complaint" and substituting "a complaint";
- (c) by striking out subsection (3);
- (d) by striking out from subsection (4) "investigation of a complaint" and substituting "an investigation by the Board";
- (e) by inserting in subsection (4) "and to all relevant law enforcement and prosecution authorities" after "Attorney-General".

Amendment of s. 77A—Investigation of allegation of overcharging

23. Section 77A of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

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- (3) For the purposes of an investigation the Board may, by notice in writing—
- (a) require the legal practitioner to make a detailed report to the Board, within the time specified in the notice, on the work carried out for the complainant;
 - (b) require the legal practitioner to produce to the Board, within the time specified in the notice, documents relating to the work.

Amendment of s. 79—Conditions of membership

24. Section 79 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) A member of the Tribunal who completes his or her term of office and is not reappointed may continue to act as a member of the Tribunal for the purpose of completing the hearing and determination of proceedings part-heard at completion of the term.

Amendment of s. 80—Constitution and proceedings of the Tribunal

25. Section 80 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(4) If, before proceedings are finalised, a member of a panel chosen under subsection (1) dies or is otherwise unable to continue acting, the two remaining members of the panel may continue to hear and determine the proceedings provided that the legal practitioner in relation to whom the proceedings were instituted consents to the two members continuing to hear and determine the proceedings.

(4a) Subject to subsection (4b), the Tribunal may decide matters by majority decision of its members.

(4b) If the Tribunal is completing the hearing and determination of proceedings in relation to a charge with two members only under subsection (4), a decision of the Tribunal must be arrived at unanimously (and if a decision cannot be arrived at unanimously the charge may be relaid).

Amendment of s. 82—Inquiries

26. Section 82 of the principal Act is amended—

- (a) by inserting the following subparagraphs after subparagraph (i) of subsection (6)(a):
- (ia) it may accept an undertaking from the legal practitioner that the legal practitioner will not, during a period specified in the undertaking, practise the profession of the law otherwise than in accordance with conditions stipulated in the undertaking;
 - (ib) it may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Tribunal (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;
- (b) by striking out "six" from subsection (6)(a)(iv) and substituting "12";
- (c) by inserting the following subsections after subsection (6):

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(6a) An undertaking entered into by a legal practitioner and accepted by the Tribunal under subsection (6) may be varied or revoked at any time on application by the legal practitioner.

(6b) Any contravention of or non-compliance with an undertaking or order under subsection (6) is itself unprofessional conduct and may be the subject of a charge under this section.

Amendment of s. 84—Powers of Tribunal

27. Section 84 of the principal Act is amended—

(a) by striking out from subsection (1)(b) "books, papers or";

(b) by striking out from subsection (1)(c) "books, papers or";

(c) by inserting after paragraph (e) of subsection (1) the following paragraph:

(f) require any person appearing before the Tribunal (whether summoned to appear or not) to prepare a document (including a bill of costs in taxable form) as reasonably directed by the Tribunal, or to comply with any other reasonable direction issued by the Tribunal in furtherance of the inquiry.;

(d) by striking out from subsection (3)(b) "books, papers or";

(e) by inserting after paragraph (d) of subsection (3) the following paragraph:

(e) neglects or fails without reasonable excuse to comply with any other reasonable requirement of the Tribunal.;

(f) by striking out subsection (6).

Amendment of s. 84A—Proceedings to be generally in public

28. Section 84A of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) The Tribunal may order that an inquiry or part of an inquiry be conducted in private if satisfied that it is necessary to do so in the interests of justice or in order to protect the privacy of clients of the legal practitioner or former legal practitioner whose conduct is the subject of the inquiry.;

(b) by inserting in subsection (3) "and the need to protect the privacy of clients" after "justice".

Amendment of s. 95—Application of certain revenues

29. Section 95 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The Treasurer must in each year pay to the Society, from the money paid by way of practising certificate fees—

(a) an amount approved by the Attorney-General towards the Society's costs in providing administrative assistance for the issue and renewal of practising certificates under this Act; and

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- (b) after deduction of the amount described in paragraph (a)—
 - (i) a prescribed proportion of the balance for the purpose of maintaining and improving the library of the Society;
 - (ii) a prescribed proportion of the balance to be credited by the Society to the guarantee fund.

Insertion of ss. 95A, 95B and 95C

30. The following sections are inserted after section 95 of the principal Act:

Inspection of documents

95A. A power to inspect or require production of a document includes, in relation to a record of information that is accessible only through the use of a computer or other device, power to produce or require production of the information in an understandable form through the use of that computer or other device.

False or misleading information

95B. A person must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or a record kept, under this Act.

Maximum penalty: \$10 000

Self-incrimination and legal professional privilege

95C. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce a document as required under this Act on the ground that to do so might tend to incriminate the person, or make the person liable to a penalty, or on the ground of legal professional privilege.

(2) If a person objects to answering a question or to producing a document on the ground that the answer or document might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce a document—the fact of production of the document (as distinct from the contents of the document); or
- (b) in any other case—the information furnished in compliance with the requirement,

is not admissible in evidence against the person in proceedings (other than proceedings in respect of the making of a false or misleading statement or perjury) in which the person might be found guilty of an offence or liable to a penalty.

(3) If a person objects to answering a question or to producing a document on the ground of legal professional privilege, the answer or document will not be admissible in civil or criminal proceedings against the person who would, but for this subsection, have the benefit of the legal professional privilege.

Consequential amendments

31. The principal Act is further amended in the manner set out in schedule 1.

Revision of penalties

32. The principal Act is further amended in the manner set out in schedule 2.

SCHEDULE 1
Further Amendments of Principal Act

Provision Amended	How Amended
Section 57, subsections (3)(d), 4(e) and (ea) and (6)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Heading to Division 1 of Part 6	Strike out "COMPLAINTS COMMITTEE" and substitute "CONDUCT BOARD".
Section 68, subsections (2), (3), (5), (6), (7)(a) and (8)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 69, subsections (1), (2), (3) and (4)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 70, subsections (1), (2), (3), (4), (5) and (6)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 71, subsections (1) and (2)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 73, subsection (1)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Heading to Division 2 of Part 6	Strike out "COMMITTEE" and substitute "BOARD".
Section 74, subsection (1)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 75, subsections (1) and (3)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 76, subsection (2)	Strike out "Committee" and substitute "Board".
Section 77, subsections (1), (3), (4) and (5)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 77A, subsections (1), (2) and (5)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 82, subsections (2)(b) and (7)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 90, subsections (3) and (4)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".
Section 90A, subsections (1) and (3)	Strike out "Committee" (wherever occurring) and substitute, in each case, "Board".

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SCHEDULE 2
Revision of Penalties

Provision Amended	How Amended
Section 21(1)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.
Section 22	Strike out the penalty provision at the foot of this section and substitute the following: Maximum penalty: \$10 000.
Section 23(1)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.
Section 23(2)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.
Section 23(3)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.
Section 24(1)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$2 500.
Section 25	Strike out the penalty provision at the foot of this section and substitute the following: Maximum penalty: \$1 250.
Section 31(8)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.
Section 33(1)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.
Section 35(4)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000.

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Section 94

Strike out the penalty provision at the foot of this section and substitute the following:

Maximum penalty: \$10 000.

Section 97(2)(d)

Strike out from this paragraph "division 5 fine" and substitute "fine of \$10 000".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor