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LEGAL PRACTICE ACT 2003



**LEGAL PRACTICE
REGULATIONS 2005**

Western Australia

Legal Practice Regulations 2005

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Legal Practice Act 2003

Legal Practice Regulations 2005

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Legal Practice Regulations 2005*.

2. Interpretation

In these regulations —

“**ASIC**” has the same meaning as in the Corporations Act;

“**ASIC Act**” means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“**Form**” means a form set out in Schedule 1.

Legal Practice Regulations 2005**Part 2** Incorporated legal practices**r. 3**

Part 2 — Incorporated legal practices**3. Community legal centres are not incorporated legal practices (s. 47)**

- (1) Section 47(1) does not apply in respect of a corporation if it is a community legal centre.
- (2) In this regulation —
“**community legal centre**” means a corporate body of any kind —
 - (a) the constitution, rules of association or other constituting documents of which provide that it is to operate on a not-for-profit basis; and
 - (b) which provides legal services on a not-for-profit basis, whether or not it also provides other services.

4. Services and businesses of incorporated legal practices (s. 48)

An incorporated legal practice or a related body corporate must not conduct a managed investment scheme within the meaning of the Corporations Act.

5. Notice of intention to commence providing legal services (s. 50)

- (1) A notice under section 50(1) is to be —
 - (a) in the form of Form 1; and
 - (b) accompanied by —
 - (i) a copy of the corporation’s constitution or other constituent documents; and
 - (ii) documentary evidence, from the Australian Securities and Investments Commission or other authority with whom the corporation is registered, of the directors and officers of the corporation.

Legal Practice Regulations 2005

Incorporated legal practices

Part 2**r. 6**

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- (2) For the purposes of section 50(2) the particulars necessary to complete Form 1 are prescribed.
- (3) While the corporation continues to provide legal services it must notify the Board of any change in any of the information given in or with the notice.
- 6. Investigative powers relating to incorporated legal practices (s. 67)**
- (1) In this regulation —
“investigator” means the Board or an examiner.
- (2) For the purpose of carrying out a function referred to in section 67(1) an investigator may exercise the powers conferred on ASIC by —
- (a) in relation to the examination of a person — ASIC Act sections 19, 20, 21, 22(1), 23, 24 and 25(1) and (3);
 - (b) in relation to the inspection of books and records — ASIC Act sections 30(1), 34, 37, 38 and 39; and
 - (c) when holding a hearing — ASIC Act sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (except paragraph (b)).
- (3) Those provisions apply to and in respect of the exercise of those powers with the following, and any other necessary, modifications —
- (a) a reference to ASIC (however expressed) is a reference to the investigator;
 - (b) a reference to a member or staff member is a reference to the investigator, or a person authorised by the investigator who is an officer or employee of the investigator;
 - (c) a reference to an investigation under Division 1 of the ASIC Act (however expressed), is a reference to the matter under investigation by the investigator;

Legal Practice Regulations 2005**Part 2** Incorporated legal practices**r. 7**

- (d) a reference to a body corporate (whether or not an exempt public authority) is a reference to an incorporated legal practice;
- (e) a reference in ASIC Act section 30 to an eligible person is a reference to an officer or employee of the incorporated legal practice the books and records of which are being inspected;
- (f) a reference in ASIC Act section 37 to a proceeding is a reference to a function referred to in section 67(1) or any proceedings under the Act that arise as a result of the exercise of that function;
- (g) a reference to a prescribed form is a reference to a form approved by the Board.

7. Publication of court order (s. 69 and 70)

If an order is made —

- (a) under section 69 in respect of a corporation, the corporation; or
- (b) under section 70 in respect of a person, the person,

must, as soon as practicable, cause a copy of the order to be —

- (c) published in the *Gazette*;
- (d) published in a newspaper circulating throughout the State;
- (e) given to the authority responsible for the registration of legal practitioners in each other State and Territory; and
- (f) given to ASIC.

Penalty: \$2 500.

Legal Practice Regulations 2005

Multi-disciplinary partnerships

Part 3**r. 8****Part 3 — Multi-disciplinary partnerships****8. Conduct of multi-disciplinary partnership (s. 75)**

A legal practitioner must not be in partnership with a person who conducts a managed investment scheme within the meaning of the Corporations Act.

9. Publication of court order (s. 87)

If an order is made under section 87 in respect of a legal practitioner, he or she must, as soon as practicable, cause a copy of the order to be —

- (a) published in the *Gazette*;
- (b) published in a newspaper circulating throughout the State;
- (c) given to the authority responsible for the registration of legal practitioners in each other State and Territory; and
- (d) if the order relates in any way to a corporation, ASIC.

Penalty: \$2 500.

Legal Practice Regulations 2005**Part 4** Foreign lawyers**r. 10**

Part 4 — Foreign lawyers**10. Interpretation**

In this Part —

“home jurisdiction”, in relation to a registered foreign lawyer, means the place in which the lawyer is registered by his or her home registration authority.

11. Scope of practice allowed by foreign lawyer (s. 114(1))

- (1) For the purposes of section 114(1)(b) and (d) arbitration proceedings, conciliation, mediation and other forms of consensual dispute resolution (the **“proceedings”**) are prescribed if —
 - (a) the proceedings relate to matters occurring in the lawyer’s home jurisdiction;
 - (b) the law applying to the dispute to which the proceedings relate is the law of the lawyer’s home jurisdiction; or
 - (c) knowledge of the law of the lawyer’s home jurisdiction is essential for the purposes of the proceedings.
- (2) If the proceedings are partly of a kind prescribed by subregulation (1) and partly of another kind, the proceedings are prescribed only to the extent that they are of a kind prescribed by subregulation (1).

Legal Practice Regulations 2005Forms **Schedule 1****Schedule 1 — Forms**

[r. 2]

Form 1 Notice of corporation's intention to provide legal services

Notice of corporation's intention to provide legal services		<i>Legal Practice Act 2003 s. 50</i> <i>Legal Practice Regulations 2005 r. 5</i> Form 1
Corporation	Name _____	
	ACN/ARBN _____	
	Registered office _____	
	Telephone _____	Fax _____
	Email _____	
	Date of incorporation / /	
Incorporated Legal Practice	Name under which legal services will be provided _____	
	Address _____	
	Postal address <i>(if different)</i> _____	
	Telephone _____	Fax _____
	Email _____	
	Intended commencement date / /20	
	The Incorporated Legal Practice is — <input type="checkbox"/> replacing an existing practice <i>(name)</i> _____ <input type="checkbox"/> a new practice	
	Corporation's trust account	
	Bank _____	
	Branch _____	
Name of account _____		
BSB no. _____	Account no. _____	
The Corporation <input type="checkbox"/> will <input type="checkbox"/> will not provide non-legal services. If yes, give details _____ _____ _____		

Legal Practice Regulations 2005**Schedule 1 Forms**

<p>Directors and Officers of Corporation</p> <p><i>(Give details for all directors and officers.</i></p> <p><i>Add extra pages if required.)</i></p>	<p>Name _____</p> <p>Residential address _____</p> <p>_____</p> <p>Telephone (h) _____ (w) _____</p> <p>Fax (h) _____ (w) _____</p> <p>Mobile _____</p> <p>Email (h) _____ (w) _____</p> <p>Office —</p> <p><input type="checkbox"/> Legal practitioner director —</p> <p style="padding-left: 20px;"><input type="checkbox"/> Admitted in WA</p> <p style="padding-left: 40px;">Current practice certificate <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="padding-left: 20px;"><input type="checkbox"/> Interstate practitioner (<i>home State</i>) _____</p> <p><input type="checkbox"/> Other director</p> <p><input type="checkbox"/> Officer (<i>office</i>) _____</p> <p>Shares in Corporation (<i>number</i>) _____</p>
	<p>Name _____</p> <p>Residential address _____</p> <p>_____</p> <p>Telephone (h) _____ (w) _____</p> <p>Fax (h) _____ (w) _____</p> <p>Mobile _____</p> <p>Email (h) _____ (w) _____</p> <p>Office —</p> <p><input type="checkbox"/> Legal practitioner director —</p> <p style="padding-left: 20px;"><input type="checkbox"/> Admitted in WA</p> <p style="padding-left: 40px;">Current practice certificate <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="padding-left: 20px;"><input type="checkbox"/> Interstate practitioner (<i>home State</i>) _____</p> <p><input type="checkbox"/> Other director</p> <p><input type="checkbox"/> Officer (<i>office</i>) _____</p> <p>Shares in Corporation (<i>number</i>) _____</p>

Legal Practice Regulations 2005

Forms Schedule 1

<p>Employed legal practitioners</p> <p><i>(Give details for all legal practitioners employed by the Corporation or who will be employed when the Corporation commences practice.</i></p> <p><i>Add extra pages if required.)</i></p>	<p>Name _____</p> <p>Residential address _____</p> <p>_____</p> <p>Legal status —</p> <p><input type="checkbox"/> Admitted in WA Current practice certificate <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Interstate practitioner (<i>home State</i>) _____</p> <p><input type="checkbox"/> Registered foreign lawyer (<i>home country</i>) _____</p> <p>Shareholder in Corporation <input type="checkbox"/> No <input type="checkbox"/> Yes (<i>number</i>) _____</p>
<p>Other shareholders</p> <p><i>(Give details for all shareholders of the Corporation, other than directors, officers and employed legal practitioners.</i></p> <p><i>Add extra pages if required.)</i></p>	<p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>Shareholder in Corporation <input type="checkbox"/> No <input type="checkbox"/> Yes (<i>number</i>) _____</p>
<p>Execution by Corporation</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Date / /20</p>

Legal Practice Regulations 2005

Schedule 1 Forms

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.