

Western Australia

## **Legal Practice Regulations 2005**

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As at 19 Apr 2005

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## Legal Practice Regulations 2005

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Western Australia

Legal Practice Act 2003

## **Legal Practice Regulations 2005**

### **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.

## **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.

- (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;

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- (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.



### **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.

## **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).

Schedule 1 — Forms

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

<b>Notice of corporation's intention to provide legal services</b>		<i>Legal Practice Act 2003 s. 50</i> <i>Legal Practice Regulations 2005 r. 5</i> Form 1
<b>Corporation</b>	Name _____	
	ACN/ARBN _____	
	Registered office _____	
	Telephone _____	Fax _____
	Email _____	
	Date of incorporation     /     / _____	
<b>Incorporated Legal Practice</b>	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 _____ _____ _____		

Schedule 1 Forms

<p><b>Directors and Officers of Corporation</b></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>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>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>



**Notes**

<sup>1</sup> This is a compilation of the *Legal Practice Regulations 2005* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Legal Practice Regulations 2005</i>	19 Apr 2005 p. 1275-88	19 Apr 2005