

SOUTH AUSTRALIA

LEGAL PRACTITIONERS DISCIPLINARY
TRIBUNAL RULES

WHEREAS by section 88 of the Legal Practitioners Act, 1981, as amended, it is enacted (*inter alia*) that rules regulating the practice and procedure of the Legal Practitioners' Disciplinary Tribunal, conferring such additional powers on the said tribunal as may be necessary or expedient for carrying out its functions and making any other provision that is necessary or expedient for carrying into effect the provisions of Part VI of the said Legal Practitioners Act relating to the Legal Practitioners' Disciplinary Tribunal, may be made by three or more Judges of the Supreme Court now therefore we, judges of the Supreme Court, in pursuance of the powers given by the said Act and of all other powers us hereto enabling do hereby make the following rules:

1. These rules may be cited as the Legal Practitioners' Disciplinary Tribunal Rules.
2. In these rules, unless the contrary intention appears:
 - (a) the words and expressions defined in section 5 of the Act or in any other part of the Act wherein any word or expression is defined, shall have the meanings therein respectively assigned to them;
 - (b) "The Act" means the Legal Practitioners Act, 1981, as the same shall from time to time be amended;
"The complainant" means a person laying a charge under section 82 of the Act;
"Proceedings" includes an inquiry;
"The Secretary" means the secretary appointed by Rule 3 of these rules;
"The Society" means the Law Society of South Australia;
"The Tribunal" means the Legal Practitioners' Disciplinary Tribunal.
3.
 - (a) There shall be a secretary to the Tribunal.
 - (b) The Secretary shall be appointed by the Tribunal with the approval of the Attorney-General.
 - (c) If at any time there is no person holding the office of Secretary, the Chairman for the time being shall *ipso facto* be constituted secretary to the Tribunal until such time as a person holds such office, and in such case all references in these rules to the secretary shall be read and construed accordingly.
 - (d) The Secretary—
 - (i) shall be responsible for the custody of all papers and records of the Tribunal;
 - (ii) shall not divulge information that comes to his knowledge by virtue of his office except in the course of and for the purpose of carrying out the duties of his office or as may otherwise be authorised by these rules or by the Tribunal or as may be directed by any court of competent jurisdiction.
 - (e) Any notice to or communication with the Tribunal may be given to or served upon the Secretary.
4. A charge laid under section 82 of the Act:
 - (a) shall be in the form No. 1 set out in the schedule hereto;
 - (b) shall be served upon the Secretary, the practitioner to whom the charge relates and, except where the complainant is the society, upon the society;
 - (c) shall be signed personally by the complainant or by a solicitor acting on behalf of the complainant authorised by him in writing so to do.
5. Any notice or other document or communication in relation to any charge may be served upon the complainant at the address specified by him for that purpose in the charge or at such other address as may be notified to the Tribunal in writing by the complainant.
6. The notice required by section 83 (1) of the Act shall be in the form No. 2 set out in the schedule hereto.
7. A summons requiring the attendance of any person or requiring the production of books, papers or documents before the Tribunal:
 - (a) shall be in the form No. 3 set out in the schedule hereto;

- (h) may be signed by any member of the Tribunal whether or not such member is a member of the panel chosen pursuant to section 80 (1) of the Act to hear the proceedings to which such summons relates;
- (c) may be issued by the Tribunal of its own motion, or may issue on application to the Tribunal or any member of the Tribunal whether or not such member is a member of the panel chosen pursuant to section 80 (1) of the Act to hear the proceedings to which such summons relates or to the Secretary by any party to any proceedings before the Tribunal.

8. Any party to proceedings before the Tribunal may be represented at such proceedings by counsel.

9. Before or at the hearing of any proceedings the Tribunal may, upon the application of any party to the proceedings or without any such application, make such order or direction as to the Tribunal in its discretion seems fit as to:

- (a) the discovery and inspection of any documents;
- (b) the giving of any further or better particulars of any charge;
- (c) the procedure to be followed at the hearing;
- (d) any other procedure with respect to the charge the subject of the inquiry or the proceedings; and
- (e) the waiver of compliance with any of these rules.

10. Any application for an order or direction pursuant to Rule 9 may be heard and any such order or direction made, if such order or direction is made or sought to be made other than at the hearing of proceedings before the Tribunal, by the member presiding over the panel constituting such Tribunal for the purpose of such proceedings or by any other member of such panel authorised in that behalf by the presiding member.

11. In the hearing and determination of any proceedings, subject to any provision of the Act relating to the conduct of proceedings and the manner of receiving evidence, the Tribunal shall observe such of the rules of evidence including such of the Supreme Court Rules and other statutory or regulatory provisions relating to evidence as apply from time to time to the hearing of civil proceedings in the Supreme Court of South Australia save that in any particular proceedings, if it is satisfied that such a course will:

- (a) avoid undesirable prolixity, or
- (b) effect a substantial saving in costs, or
- (c) allow evidence to be adduced which should, in the interests of justice be received and which would otherwise be inadmissible or unavailable to it,

the Tribunal may inform its mind in such manner as it thinks fit.

If the Tribunal informs its mind in any of the ways set out in the proviso to this rule, the information so obtained shall be communicated to the parties by the Tribunal. Nothing in this rule affects the operation of the provisions of section 84 (7) of the Act.

12. No order or direction of the Tribunal need be drawn up, but if drawn up, the same and any memorandum of findings may be drawn up subsequently to the time at which the same was or were pronounced given or made and may be signed by the Chairman or presiding member of the Tribunal on behalf of the Tribunal.

13. Any copies of books, papers or documents made pursuant to the powers contained in section 84 (1) (c) of the Act shall be of equal validity as evidence if tendered before the Tribunal as the originals from which they were copied would have been.

14. Any certificate or report given by an auditor or inspector employed or appointed to make any audit or examination of the accounts of a legal practitioner or firm of legal practitioners shall be *prima facie* evidence of the truth of the matters set out in the certificate or report of such auditor or inspector.

THE SCHEDULE
FORM 1
Charge

IN the matter of the Legal Practitioners Act, 1981, as amended, and in the matter of (name of practitioner charged)
To: The Legal Practitioners Disciplinary Tribunal.

..... of
(name and address of person or body laying charge) (hereinafter called "the complainant") HEREBY CHARGES
..... (name and address of practitioner charged)
with unprofessional conduct in that:

(set out details of the charge)

The name and address of the solicitor for the complainant is telephone
The address at which documents may be left for service upon the complainant is telephone

Dated the day of 19 ..

Signed

FORM 2
Notice of Inquiry

(Heading as in Form 1)

TO: of
TAKE NOTICE that the Legal Practitioners' Disciplinary Tribunal will on the day of 19 .. at a.m./p.m. conduct an inquiry into the matter of the charge laid by against the abovenamed a legal practitioner AND FURTHER TAKE NOTICE that if you do not attend at the time and place set out in this notice, subject to the provisions of the Legal Practitioners Act, 1981 and the Legal Practitioners' Disciplinary Tribunal Rules, the Tribunal may proceed with the inquiry in your absence.

Dated the day of 19 ..

(Secretary to the Legal Practitioners' Disciplinary Tribunal)

FORM 3
Summons to witness

(Heading as in Form 1)

TO: of
Pursuant to the Legal Practitioners Act, 1981, as amended, and to the Legal Practitioners' Disciplinary Tribunal Rules. NOTICE IS HEREBY GIVEN that you are required to attend before the Legal Practitioners' Disciplinary Tribunal appointed under the said Act at on the day of 19 .., at the hour of o'clock in the fore (or after) noon and so from day to day until the above matter is heard to give evidence in the above matter [and also to bring with you and produce at the time and place aforesaid (specify documents to be produced)].

Dated the day of 19 ..

(Member, Legal Practitioners' Disciplinary Tribunal)

GIVEN under our hands and the seal of the Supreme Court at Adelaide this 19th day of January 1983.

- L. J. KING CJ
- ROMA MITCHELL J
- GEORGE H. WALTERS J
- HOWARD ZELLING J
- W. A. N. WELLS J
- A. K. SANGSTER J
- S. J. JACOBS J
- CHRISTOPHER J. LEGOE J
- D. W. BOLLEN J

SOUTH AUSTRALIA

Rules Amending the Legal Practitioners Disciplinary Tribunal Rules

WHEREAS by Section 88 of the Legal Practitioners Act 1981 (as amended), it is enacted (inter alia) that Rules regulating the practice and procedure of the Legal Practitioners' Disciplinary Tribunal, conferring such additional powers on the said Tribunal as may be necessary or expedient for carrying out its functions and making any other provision that is necessary or expedient for carrying into effect the provisions of Part VI of the said Legal Practitioners Act relating to the Legal Practitioners' Disciplinary Tribunal, may be made by three or more Judges of the Supreme Court NOW THEREFORE, we, Judges of the Supreme Court, in pursuance of the powers given by the said Act and of all other powers us hereto enabling do hereby make the following rules to take effect as amendments to the Legal Practitioners' Disciplinary Tribunal Rules.

1. These Rules may be cited as the "Legal Practitioners' Disciplinary Tribunal Rules 1984 (No. 1)".

2. The Legal Practitioners' Disciplinary Tribunal Rules as amended by these Rules may be cited as the "Legal Practitioners' Disciplinary Tribunal Rules 1983-1984".

3. The following Rule 12A is inserted to follow immediately after Rule 12:

"12A. Upon the Tribunal making any order pursuant to Section 82 (6) (iii) and/or Section 82 (6) (iv) of the Act the Secretary shall immediately communicate in writing the terms of such order to the Registrar of the Supreme Court."

Given under our hands and the seal of the Supreme Court at Adelaide the 26th day of June 1984.

L. J. KING, CJ
GEORGE H. WALTERS, J
HOWARD ZELLING, J
S. J. JACOBS, J
J. M. WHITE, J
CHRISTOPHER J. LEGOE, J
B. R. COX, J
R. F. MOHR, J
R. G. MATHESON, J
D. M. BOLLEN, J
ROBIN MILLHOUSE, J
ELLIOTT JOHNSTON, J
G. C. PRIOR, J

SOUTH AUSTRALIA

RULES OF COURT
Amending the Legal Practitioners Disciplinary Tribunal Rules

BY virtue and in pursuance of Section 88 of the Legal Practitioners Act 1981 (as amended) and of all other powers us thereunto enabling, We, Judges of the Supreme Court of South Australia, do hereby make the following Rules to take effect as amendments to the Legal Practitioners Disciplinary Tribunal Rules, as amended:

1. These Rules may be cited as the "Legal Practitioners Disciplinary Tribunal Rules 1992."

2. The Legal Practitioners Disciplinary Tribunal Rules as amended may be cited as the "Legal Practitioners Disciplinary Tribunal Rules."

3. That after Rule 14 a further Rule 15 shall be added as follows:

"15 (a) The Supreme Court whenever it may appear necessary or expedient may issue a summons requiring a person to attend for examination before the Tribunal or (as the case requires) to produce to the Tribunal the document or documents specified in the summons.

(b) The summons of the Supreme Court may be issued whenever it is made to appear to the Court (by affidavit) that a summons may required to be served out of South Australia or otherwise when it is made to appear that a summons of the Tribunal under Section 84 (1) of the Legal Practitioners Act is insufficient.

(c) In the event that a person who has been summoned as hereinbefore mentioned (and paid or tendered reasonable expenses) without reasonable excuse refuses or fails to attend before the Tribunal as required by the summons or having attended refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Tribunal or refuses or fails to produce a document or documents in accordance with the tenor of the summons, a certificate of refusal or failure signed by a member of the Tribunal may be filed in the Supreme Court.

(d) Where such a certificate has been filed a party (to the proceedings before the Tribunal which gave rise to the issue of the subpoena) may apply (either *ex parte* or on notice) to the Supreme Court for an order requiring compliance with the summons or for an order dealing with the person named in the certificate upon default in compliance with the subpoena of the Court; on that application the Court may make such orders as it thinks fit (including orders for costs).

(e) The practice of the Court in its civil jurisdiction *mutatis mutandis* shall apply to the issue and service of a summons in accordance with this rule and to any subsequent proceedings in the Court."

GIVEN under our hands and the Seal of the Supreme Court at Adelaide this 3rd day of May 1992.

(L.S.)

L. J. KING, CJ
J. M. WHITE, J
CHRISTOPHER J. LEGOE, J
B. R. COX, J
R. F. MOHR, J
R. G. MATHESON, J
D. W. BOLLEN, J
G. C. PRIOR, J
L. T. OLSSON, J
J. W. PERRY, J
K. P. DUGGAN, J
E. P. MULLIGHAN, J
B. M. DEBELLE, J
HOWARD ZELLING, AJ

SOUTH AUSTRALIA

RULES OF COURT
Amending the Legal Practitioners Disciplinary Tribunal Rules

BY virtue and in pursuance of section 88 of the Legal Practitioners Act, 1981, as amended, and of all other powers us thereunto enabling, We, Judges of the Supreme Court of South Australia, do hereby make the following Rules to take effect as amendments to the Legal Practitioners Disciplinary Tribunal Rules as amended:

1. These Rules may be cited as the "Legal Practitioners Disciplinary Tribunal Rules, 1996".
2. The Legal Practitioners Disciplinary Tribunal Rules as amended may be cited as the "Legal Practitioners Disciplinary Tribunal Rules".
3. That Rule 3 (b) and (c) be deleted and the following inserted in lieu thereof:
 - "(b) The Secretary shall be appointed by the Presiding Member of the Tribunal subject to the approval of the Chief Justice.
 - (c) In the absence of the Secretary or if the office of Secretary is vacant, the Presiding Member of the Tribunal for the time being shall act as secretary to the Tribunal for so long as the Secretary is absent or the office of Secretary is vacant."

Given under our hands and the seal of the Supreme Court at Adelaide the 27th day of May 1996.

(L.S.)

J. DOYLE, CJ
B. R. COX, J
R. G. MATHESON, J
ROBIN MILLHOUSE, J
G. C. PRIOR, J
L. T. OLSSON, J
J. W. PERRY, J
K. P. DUGGAN, J
E. P. MULLIGHAN, J
B. M. DEBELLE, J
M. J. NYLAND, J
B. T. LANDER, J
H. C. WILLIAMS, J