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## LEGAL PRACTITIONERS.

8° and 9° GEO. VI., No. XLV.

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No. 45 of 1944.

**AN ACT** to constitute a legal practitioners' guarantee fund, and to amend sections three and six of the Legal Practitioners Act, 1893.

[Assented to 24th January, 1945.]

**BE** it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (a) This Act may be cited as the *Legal Practitioners Act Amendment Act, 1944*, and shall be read as one with the Legal Practitioners Act, 1893 (Act No. 57 Victoria No. 12 as amended by the Acts No. 37 of 1909 and No. 48 of 1926 and consolidated in the sessional volume of statutes for the year One thousand nine hundred and twenty-seven), hereinafter referred to as the principal Act. Short title.

(b) (i) The provisions of this Act relating to the Legal Practitioners' Guarantee Fund shall come into operation on a date to be fixed by proclamation. Commencement.

(ii) All other provisions of this Act shall come into operation on receiving the Governor's assent.

Amendment  
of s. 3 of the  
principal Act.

2. Section three of the principal Act is hereby amended—

(a) by adding after the definition of “certificated practitioner” the following new term and definition:—

“Fund” means the Legal Practitioners’ Guarantee Fund established under Part V. of this Act.

(b) by adding after the definition of “rules” the following new term and definition:—

“Trustees” means the trustees of the fund appointed under Part V. of this Act.

Amendment  
of s. 6 of the  
principal Act.

3. Section six of the principal Act is hereby amended—

(a) by deleting the whole of paragraph (g) and inserting a new paragraph as follows:—

(g) For the issue of annual practice certificates commencing on the first day of July in every yearly period, and for fixing an annual fee to be paid to the Board for the issue of such certificates subject, however, to the following provisions, namely:—

(i) The annual fee fixed as aforesaid shall not exceed the sum of ten pounds.

(ii) Where an annual practice certificate is issued after the thirty-first day of December in any year the fee payable shall be one-half part only of the prescribed annual fee.

(iii) Annual practice certificates which have been issued before and are current at the commencement of this paragraph shall expire on the thirtieth day of June next following the date of the commencement of this paragraph notwithstanding that but for this subparagraph they would continue in operation for a period after the said thirtieth day of June: but in any such case the practitioner shall be entitled to receive from the Board a refund of that part of the annual fee paid for such certificate which bears to the whole of such fee the same ratio as the unexpired portion of the term of the certificate after the said thirtieth day of June bears to a whole year; and

(iv) Where an annual practice certificate is issued after the commencement of this paragraph and before the first day of July next following the date of the commencement of this paragraph such certificate shall expire on the thirtieth day of June next following the date of the commencement of this paragraph but the amount of the fee payable in respect of such certificate shall be such amount as bears to the whole of the prescribed annual fee the same ratio as the period for which the certificate will be current bears to a whole year.

(b) by renumbering paragraph (h) of the principal Act to stand as paragraph (p).

(c) by adding after paragraph (g) the following paragraphs:—

(h) for prescribing the annual contributions to be paid to the fund by legal practitioners to whom this Act applies and the terms and conditions and the method of payment and recovery of any such contributions, and for the apportionment of the prescribed contribution for periods less than a year;

(i) empowering the Board to refuse to issue any annual practice certificate under this Act until the applicant shall have paid the annual contribution to the fund, and has satisfied the Board that he complies with section 28A and where his trust moneys are banked, together with any levy then made by the trustees under this Act and then owing and unpaid by the applicant;

(j) for providing for the investment of so much of the fund as is not immediately required for the purposes thereof;

(k) for prescribing forms of notice to be given to the trustees in relation to claims against the fund and the conditions subject to which and the extent to which the trustees may settle any such claims without recourse being had to legal proceedings;

(l) prescribing the duties of accountants appointed to conduct an examination of any accounts

pursuant to section twenty-eight W hereof; and prescribing also the duties of the legal practitioner or practitioners concerned in relation thereto and the circumstances in which such practitioner or practitioners may be required to pay the costs of such examination;

- (m) for the conduct of inquiries as to the compliance or non-compliance by practitioners with the provisions of sections twenty-eight A, twenty-eight B, and twenty-eight C of this Act;
- (n) prescribing the terms and conditions under which any payments may be made from the fund on the death or retirement from practice of any practitioner under this Act;
- (o) providing for the appropriation towards the establishment and carrying on of a benevolent fund for the relief of distress amongst practitioners and their dependants of any accumulations of the fund beyond the sum of ten thousand pounds.

New part.

4. A new part is inserted in the principal Act to stand as part V.

#### PART V.—LEGAL PRACTITIONERS' GUARANTEE FUND.

28A. (1) Every practitioner shall, so long as he carries on the practice of his profession in Western Australia, keep a trust account in a bank in Western Australia to be used exclusively for trust moneys from time to time paid to him or held by him as a practitioner or as a trustee. All moneys received for or on behalf of any person by such practitioner acting professionally or as a trustee shall be trust moneys for the purpose of this Act, and shall be held by him in trust for such person to be paid or applied as he directs and until so paid or applied all such moneys shall be paid into and retained in such trust account.

(2) The trust moneys shall not be available for the payment of the debts of any other creditor of such practitioner or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any practitioner may have against any trust moneys.

(4) The bank into which trust moneys are paid by a practitioner under this section shall not be under any obligation to inquire into the application of such moneys or be in any manner liable in respect of any misapplication thereof by the practitioner.

(5) All of the provisions of this Act relating to trust funds and the audit thereof shall apply *mutatis mutandis* to a firm of practitioners and in the case where trust moneys are paid to or held by a practitioner jointly with a person who is not a practitioner.

28B. Every practitioner shall keep an account of all trust moneys so received by him, and of all operations on such account, in such a manner as to disclose the true position in regard thereto and to enable the account to be conveniently and properly audited.

28C. Any practitioner who fails to comply with the provisions of section twenty-eight A or section twenty-eight B may be dealt with under the provisions of section fifty-one of this Act, and the matter shall be subject to inquiry by the Board under the provisions of this Act if the Board shall think necessary.

28D. There is hereby established a fund, to be known as the Legal Practitioners' Guarantee Fund. The fund.

28E. All moneys belonging to the fund shall, pending the investment or application thereof in accordance with this Act, be paid by the trustees into a bank or banks in Western Australia. Such moneys shall be kept in a separate account at the bank to be entitled the "Legal Practitioners' Guarantee Fund Account." Fund to be kept in special account at Bank.

28F. The fund shall consist of— How fund made up.

- (a) all sums paid to or on account of the fund by legal practitioners, either as an annual contribution or as levies in accordance with the provisions of this Part;
- (b) the interest from time to time accruing from the investment of the fund as hereinafter appearing;

(c) all moneys recovered by the trustees of the fund in exercise of any right of action conferred by this Act;

(d) any other moneys that may be lawfully paid into the fund.

Application  
of fund.

28G. There shall from time to time be paid out of the fund as required—

(a) the amount of all claims, including costs, allowed or established against the fund as hereinafter provided;

(b) all legal expenses incurred in defending claims made against the fund or otherwise incurred in relation to the fund;

(c) all premiums payable in respect of contracts of insurance entered into by the trustees in pursuance of section twenty-eight T hereof;

(d) all refunds made to practitioners or to their personal representatives pursuant to section twenty-eight V hereof;

(e) the expenses involved in the administration of the fund, including allowances to the trustees in respect of their services and their reasonable travelling expenses in connection with the management of the fund;

(f) all other expenses properly incurred in or incidental to the carrying out of the provisions of this Act relating to the fund.

Annual audit  
of fund by  
Auditor  
General.

28H. The accounts of the fund shall be audited annually by the Auditor General.

28I. (1) The fund shall be administered by three trustees, who shall be legal practitioners. The trustees shall be appointed as follows:—

(a) one shall be appointed by the Governor;

(b) one shall be nominated in the prescribed manner by the Barristers' Board;

(c) one shall be nominated in the prescribed manner by the Law Society of Western Australia.

(2) The Governor shall appoint one of the trustees to be chairman. The chairman shall have a deliberative as well as a casting vote. Two trustees shall form a quorum.

(3) The trustees shall, subject as hereinafter provided, hold office for three years from the date of their appointment.

(4) The trustees shall be a body corporate, with perpetual succession and a common seal under the name "The Trustees of the Legal Practitioners' Guarantee Fund," and shall be capable of acquiring and disposing of real and personal property and of suing and being sued and of entering into contracts and of doing all such acts and things as bodies corporate may by law do or suffer.

(5) A trustee shall cease to hold office if he—

- (i) becomes insane or incapable of managing his affairs; or
- (ii) becomes bankrupt or takes any relief under the law relating to insolvent debtors; or
- (iii) is convicted of any crime or misdemeanour.

(6) In the event of the death or resignation of a trustee during his term of office, or in the event of a trustee ceasing to hold office under the provisions of the preceding subsection, a new trustee shall be appointed or nominated by the Governor, the Board or the Law Society of Western Australia, as the case requires, to fill the vacancy so created, and shall hold office for the unexpired period of the term of office of his predecessor.

(7) If the Board or the said Society neglects for three months to appoint any trustee in pursuance of this section, then the Governor may make the appointment.

28J. (1) Except as provided in the next succeeding section every practitioner on making application in any year for a certificate under any rules prescribed pursuant to paragraph (g) of section six of this Act shall pay such contribution not exceeding ten pounds as may from time to time be prescribed for the purpose of this Act, and no such certificate shall be issued unless and until the prescribed contribution is paid. Such contribution shall be in addition to any other fees payable by such practitioner.

Contributions  
to be made.

(2) (i) All sums payable by way of contribution shall be paid to the Board, which shall pay the same to the trustees of the fund.

(ii) The trustees shall apply the moneys so received in accordance with sections twenty-eight E and twenty-eight G.

(3) Any contribution payable by a practitioner under this section and not paid shall be a debt owing to the trustees by such practitioner, and shall be recoverable at the suit of the trustees in any court of competent jurisdiction.

(4) Nothing contained in subsection (3) hereof shall affect the liability of a practitioner who neglects or fails to pay any contribution owing by him to attachment and prosecution under this Act.

No contribu-  
tions while  
fund stands  
at £10,000.

28K. No further contributions in accordance with the last preceding section shall be made to the fund at any time while the fund including the investments thereof is not less than ten thousand pounds.

Provision for  
levies where  
fund in-  
sufficient to  
meet claims.

28L. (1) If at any time the fund is not sufficient to satisfy the liabilities of the trustees in relation thereto, the trustees with the consent of the Governor may impose on every legal practitioner in respect of whom this part of this Act applies for payment into the fund a levy of such amount as the trustees think fit, not exceeding ten pounds.

(2) The amount of such levy shall be payable on a date and in a manner to be fixed by the trustees, and if not theretofore paid shall be paid to the Board together with the next annual contribution payable to the fund pursuant to the provisions of section twenty-eight J.

(3) No practitioner shall be required to pay by way of levy under this section more than ten pounds in any year or more than fifty pounds during the whole period of his practice as a legal practitioner.

(4) Any levy payable by a practitioner under this section, and not paid, shall be a debt owing to the trustees by such practitioner, and shall be recoverable at the suit of the trustees in any court of competent jurisdiction.

(5) Nothing contained in subsection (4) hereof shall affect the liability of a practitioner who neglects or fails to pay any levy owing by him to attachment and prosecution under this Act.

Practitioner  
to register  
office and  
notify  
change of  
address or  
retirement.

28M. For the purpose of this Act every certificated practitioner shall within the prescribed time and manner—

- (a) register with the trustees the situation of or any change of the situation of the place or

principal place where his professional office is situate from time to time; and

- (b) notify any intention on his part to retire from practice and give such other particulars in connection therewith as may be prescribed, and notwithstanding that a practitioner may have ceased actively to practice his profession his liability to make payment to the fund shall continue until he gives the notice prescribed by this paragraph.

28N. Any moneys in the fund that are not immediately required for the purposes thereof may be invested with the Public Trustee or in any manner in which trustees are for the time being authorised to invest trust funds.

Investment  
of moneys in  
the fund.

28O. (1) Subject to the provisions of this Act the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of theft or fraud by any certificated practitioner or by his servant or agent in respect of any money or other valuable property entrusted to him, or to his servant or agent in the course of his practice as a practitioner including any money or other valuable property entrusted to him as a trustee: Provided that a co-trustee of a certificated practitioner shall not be deemed to be a servant or agent of a certificated practitioner merely because he is a co-trustee.

Purpose of  
the fund.

Provided also that the maximum liability of the fund to any one person shall be limited where the theft or fraud occurs—

- before the 30th day of June, 1951, to one thousand pounds;
- in the twelve months ending the 30th day of June, 1952, to one thousand two hundred and fifty pounds;
- in the twelve months ending the 30th day of June, 1953, to one thousand five hundred pounds;
- in the twelve months ending the 30th day of June, 1954, to one thousand seven hundred and fifty pounds;
- in the twelve months ending the 30th day of June, 1955, to two thousand pounds;

after the 30th day of June, 1955, to two thousand two hundred and fifty pounds.

For the purpose of the preceding proviso, where two or more persons are jointly entitled to any fund or property, they shall be considered as one person.

(2) No person shall have any claim against the fund in respect of any theft or fraud—

(a) that may be committed before the commencement of this Part; or

(b) unless notice of such claim is given in writing to the trustees within twelve months after the claimant has become aware of the theft or fraud.

Conditions on which claim may be settled.

28P. (1) The trustees may receive and settle any claim against the fund at any time after the commission of the theft or fraud in respect of which such claim arose, but no person shall be entitled without leave of the trustees to commence any action in relation to the fund until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting practitioner or any other person in respect of the loss suffered by him.

(2) No person shall be entitled to recover from the fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of such loss.

(3) No amount shall be paid or payable out of the fund as interest on the amount of any judgment obtained or of any claim admitted against the fund.

(4) No right of action shall lie in relation to the fund in respect of any loss suffered by any person by reason of any theft or fraud that may be committed by a practitioner at any time after the claimant or his agent or any person through whom he claims has received a notification in writing from the trustees warning him or them against the employment or continued employment of such practitioner.

(5) No action for damages shall lie against the trustees or any member or servant of the trustees for any notification given in good faith and without malice for the purpose of the last preceding subsection.

28Q. In an action brought against the trustees in relation to the fund, all defences which would have been available to the defaulting practitioner shall be available to the trustees.

Trustees may raise same defence as practitioner could against any claimant.

28R. On payment out of the fund of any moneys in settlement in whole or in part of any claim under this Part of this Act, the trustees shall be subrogated to the extent of such payment to all the rights and remedies of claimant against the practitioner in relation to whom the claim arose, or in the event of his death or insolvency or other disability against his personal representatives or other persons having authority to administer his estate.

Trustees' right of subrogation.

28S. (1) No moneys or other property belonging to the trustees or to the Board or to the Law Society of Western Australia other than the fund shall be available for the satisfaction of any judgment obtained against the trustees in relation to the fund or for the payment of any claim allowed by the trustees; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall to the extent to which they are not so satisfied but subject to the limitation prescribed in section twenty-eight O be charged against future accumulations of the fund.

Trustees Board and Law Society not liable.

(2) The trustees may in their absolute discretion, having regard to the rules hereinafter set forth, determine the order in which the judgments and claims charged against the fund shall be satisfied, and may if the amount accumulated is not sufficient to satisfy all such judgments and claims in full satisfy any such judgment or claim in whole or in part.

(3) Without limiting the discretion of the trustees they may, in applying the fund towards the settlement of such judgments and claims, have regard to the following rules—

- (a) they may take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants in the event of their claims against the fund not being satisfied in whole or in part;
- (b) claims for amounts not exceeding five hundred pounds may, unless in special circumstances, be satisfied in full before claims for amounts

exceeding five hundred pounds are satisfied to a greater extent than five hundred pounds;

- (c) where all other considerations are equal claimants shall have priority as between themselves, according to the dates of the judgments or dates when the claims were admitted by the trustees, as the case may be.

Trustees may obtain insurance.

28T. (1) Notwithstanding anything to the contrary in the foregoing provisions, the trustees may in their discretion enter into any contract or contracts of insurance with any company carrying on business under the Insurance Companies Act, 1918, in Western Australia whereby the trustees and the fund may be indemnified to the extent and in manner provided by such contract or contracts against liability to pay claims under this Act.

(2) Any such contract of insurance may be entered into in relation to legal practitioners generally or in relation to any practitioner or practitioners named therein.

(3) No action shall lie against the trustees, the Board, or the Law Society of Western Australia, or any member or officer of any of the said bodies for injury alleged to have been suffered by any practitioner by reason of the publication in accordance with fact of a statement that any contract of insurance entered into under this section does or does not apply with respect to such practitioner:

Provided that in the event of any contract of insurance being entered into in respect of any specified practitioner or practitioners, the trustees shall on the application of any other practitioner enter into a like contract of insurance in respect of such last-mentioned practitioner, if the insurer signifies that the insurer is willing to enter into such contract on the like terms and conditions.

In case of insurance no claim lies against company but shall be made against the fund.

28U. No claimant against the fund shall have any right of action against any insurance company or other person with whom a contract of insurance is made under this Part in respect of such contract, or have any right to claim any moneys paid by the insurer in accordance with any such contract of insurance; but all such moneys shall be paid into the fund and shall be applied in or towards the settlement of relevant claims.

28V. If and when the fund amounts to Ten thousand pounds then in the event of:—

Payment to practitioner on retirement in necessitous case.

- (a) the death of a certificated practitioner the Trustees shall pay to his personal representative a sum equal to the aggregate amount of his contributions to the fund; and
- (b) the voluntary retirement from practice of a certificated practitioner the Trustees may in their discretion pay to him a sum not exceeding the aggregate amount of his contributions to the fund.

*Audit.*

28W. (1) For the purpose of safeguarding the fund established under this Part the trustees may at any time appoint a practising accountant to audit the accounts of any practitioner and to furnish them with a confidential report as to any irregularity in the accounts of such practitioner that may be disclosed by such examination, or as to any other matter that in the opinion of such accountant should in the interests of the fund be further investigated.

Trustees may appoint auditor.

(2) Every appointment made under this section shall be in writing signed by at least two of the trustees.

(3) Upon production by such accountant of the instrument of his appointment, he may require the practitioner or practitioners in respect of whom the appointment is made or any servant or agent of such practitioner or practitioners to produce to him all books, papers, accounts, securities or other documents relating to the business or accounts of such practitioner or practitioners, and to give all information in relation thereto that may be reasonably required of him or them, and if any such person without lawful justification or excuse, the proof whereof shall be on him, refuses or fails so to do or otherwise hinders, obstructs or delays the accountant in the performance of his duties or the exercise of his powers under this section he shall be guilty of an offence.

(4) No accountant appointed to make an examination of accounts for the purposes of this section shall communicate any matter which may come to his knowledge in the course of such examination to any person except in the course of his report to the trustees.

(5) On receipt of the report the trustees shall consider the same, but it shall not be lawful for any trustee or any officer employed by the trustees to publish to any person any information disclosed in such report except in performance of his duty.

(6) Every person who commits a breach of any of the provisions of this section commits an offence.

Penalty—Fifty pounds.

Accounts to  
be kept.

28X. The trustees shall cause proper accounts to be kept of their administration of the fund, and shall before the thirtieth day of September in each year forward to the Minister for Justice or the Attorney General as the case may be, for presentation to Parliament a report of their proceedings and operations for the preceding twelve months.

Appropriation  
of penalties.

28Y. Notwithstanding anything contained in the Fines and Penalties Appropriation Act, 1909 (No. 4 of 1909), all penalties imposed in respect of any offence against this Act or the regulations from time to time made thereunder shall be paid to the fund until the fund reaches the sum of ten thousand pounds, or until the Board ceases to make the annual contribution to the University of Western Australia as authorised in paragraph (ii) of section seven of this Act, whichever first happens.

Citation of  
principal  
Act as  
amended.

5. The principal Act as amended by this Act may be cited as the Legal Practitioners Act, 1893-1944.