

LEGAL PRACTITIONERS (No. 2).

No. 79 of 1967.

**AN ACT to amend the Legal Practitioners Act,
1893-1967.**

[Assented to 11th December, 1967.]

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

1. (1) This Act may be cited as the *Legal Practitioners Act Amendment Act (No. 2)*, 1967.

(2) In this Act, the Legal Practitioners Act, 1893-1967, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Legal Practitioners Act, 1893-1967.

Short title
and
citation.

Vol. 6 of the
Reprinted
Acts.
Approved
for reprint
30th Sep-
tember, 1953
and further
amended
by Acts
Nos. 9 of
1955, 11 of
1957, 4 and
27 of 1958,
16 of 1960,
15 of 1963,
74 of 1964,
18 of 1966
and 21 of
1967.

2. This Act shall come into operation on the day on which Part III of the Legal Contribution Trust Act, 1967, comes into operation. Commence-
ment.

3. Section one of the principal Act is amended by substituting for the passage, "LEGAL PRACTITIONERS' GUARANTEE FUND, Ss. 34-58." in lines ten and eleven, the passage, "PRACTITIONERS' TRUST ACCOUNTS, Ss. 34-41." S. 1
amended.

4. Section three of the principal Act is amended— S. 3
amended.

- (a) by deleting the interpretation, "Fund";
- (b) by adding, at the end of the interpretation, "practitioner", the passage, "and for the purposes of Part V of this Act, the expression includes a firm of practitioners";
- (c) by adding, after the interpretation, "rules", the following interpretations—

"trust account" means a bank account maintained within the State, for the purpose of setting apart, and dealing with, trust moneys, pursuant to Part V of this Act;

"trust moneys" means moneys that are paid and entrusted to a practitioner or a firm of practitioners or to a clerk, servant or agent of a practitioner or firm of practitioners, in the course of legal practice for the use or benefit of a person or persons other than the practitioner or firm of practitioners, but so as to be under the exclusive control of the practitioner or firm of practitioners. ;

and

- (d) by deleting the interpretation, "trustees".

5. Section six of the principal Act is amended, as to subsection (1),— S. 6
amended.

- (a) by deleting the words, "and prescribe", in line two; and

(b) by deleting paragraphs (i) to (q), inclusive, and substituting the following paragraphs—

(i) prescribing all matters and things that are necessary and convenient to be prescribed for the better administration of Part V of this Act; and

(j) generally, for carrying into effect the objects of this Act. .

Part V
repealed and
re-enacted.

6. Part V of the principal Act is repealed and re-enacted with amendments, as follows—

PART V—PRACTITIONERS' TRUST ACCOUNTS.

Trust
moneys to
be paid to
a trust
account.

34. (1) Every practitioner who, practising within the State, receives trust moneys shall, unless then dealing with them as directed by the person from whom, or for whose use or benefit, they are received, forthwith deposit them to the credit of a trust account, whether a general account or an account maintained for one or other of those persons, specifically, and there retain them, until such time as they are dealt with, as so directed or until they are otherwise dealt with according to law.

(2) Trust moneys are not available for the satisfaction of any debt due to, or any claim or demand made by, a person other than the person for whose use or benefit they are received and shall not be attached or taken in execution at the instance of any other person; but nothing in this subsection affects any lien or valid claim that a practitioner may have over or against trust moneys under his control.

(3) A reference in this Part to trust moneys received by a practitioner includes moneys received, in the course of legal practice, by a partner, clerk, servant or agent of the practitioner or by a practitioner with whom he shares remuneration, other than as principal and agent.

35. (1) A bank with which a practitioner maintains a trust account is not obliged to inquire into the application of moneys deposited to the credit of that account and is in no way liable in respect of any misapplication of those moneys.

Banks not to be concerned as to the application of, or to have recourse against, trust moneys.

(2) Except as regards the operation of the account, a bank has no right of recourse against moneys standing to the credit of an account that is designated as, or is evident as being, a trust account.

36. Every practitioner shall maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with by him, in such a manner as to disclose the true position as regards those moneys and to enable the books to be readily and conveniently audited.

Practitioners to maintain books of account.

37. A practitioner who fails to comply with the provisions of section thirty-four or thirty-six of this Act may be dealt with under the provisions of Part IV of this Act.

Sanction for failure to comply with section 34 or 36.

38. (1) The Board may, of its own motion or at the requirement of the Legal Contribution Trust established by the Legal Contribution Trust Act, 1967, at any time after giving the practitioner an opportunity of being heard, appoint and authorise an accountant who is registered as a company auditor under section nine of the Companies Act, 1961 (in this Part called "the examiner") to examine a practitioner's books of account relating to his trust account or trust accounts and to furnish the Board with a confidential report on the matters and things disclosed by the examination.

Board may appoint accountant to examine books of account.

(2) An appointment made pursuant to subsection (1) of this section shall be in writing and be signed by the Chairman or by two members of the Board.

(3) Where an examination is authorised under this section at the requirement of the Legal Contribution Trust, the Board may require that body to defray, and it shall thereupon defray, the costs of the examination; but,

in any event, where the report of the examiner discloses that the practitioner to whom it relates—

- (a) has failed to keep his books of account in conformity with the provisions of section thirty-six of this Act; or
- (b) has contravened the provisions of this or any other Act relating to trust accounts or trust moneys,

the Board may order the practitioner to pay the costs, or any part of the costs, of the examination.

Examiner
may require
production
of books and
documents.

39. (1) The examiner may, upon production of his instrument of appointment, require—

- (a) the practitioner to whom the appointment relates or, in the event of his absence, any of the practitioner's clerks, servants or agents to produce to the examiner any books, papers and documents relating to trust moneys or trust accounts that, in the opinion of the examiner, may be reasonably necessary for the purposes of the examination; and
- (b) the manager or principal officer of a bank in which the practitioner to whom the appointment relates has deposited money, notwithstanding any law or rule of law to the contrary, to disclose every account of the practitioner that, in the opinion of the examiner, may be relevant to the examination and to permit the making of a copy or extracts of any such account.

(2) A person who, being required to do anything pursuant to subsection (1) of this section, without lawful excuse of which the proof lies on him, refuses or fails to do the thing required or who hinders or obstructs the examiner in the exercise of his powers or

hinders or obstructs the examiner or any person employed by him in the performance of his duties commits an offence.

Penalty: Two hundred dollars.

40. (1) The examiner and a person employed by the examiner shall not, except in the course of the examiner's report to the Board, or any inquiry into the report, disclose or communicate to any person any matter of which he is informed or that comes to his knowledge in the course of an examination made pursuant to this Part.

Limitation on disclosure of matters revealed in the course of examinations.

Penalty: Two hundred dollars.

(2) Where the examiner commits an offence against subsection (1) of this section, he is, without affecting any penalty to which he may be liable under that subsection, guilty of conduct discreditable to an auditor, within the meaning of section nine of the Companies Act, 1961.

41. (1) Upon receipt of the examiner's report, the Board shall consider it and may, where the circumstances so require, proceed to inquire into the matters revealed by the report, under the provisions of section twenty-six of this Act.

Action on examiner's reports.

(2) Where it appears from the report of the examiner that an accountant or auditor has been guilty of neglect, breach of duty or any improper conduct, the Board may communicate that fact to the association of which the accountant or auditor is a member.

(3) The Board or a member or servant of the Board shall not, except—

- (a) in the course of any action taken by the Board as the result of an inquiry conducted pursuant to subsection (1) of this section;
- (b) to the Attorney General or an officer of the Crown;

(c) to the Legal Contribution Trust; or

(d) as otherwise provided by this section,

communicate to any person any matter appearing in the examiner's report; and a person to whom any such matter is communicated pursuant to this section shall not, except in the course of legal proceedings, communicate it to any other person, without the authority of the Board.

Penalty: Two hundred dollars.

Practitioners
to make
payments
towards
Solicitors'
Guarantee
Fund.

42. (1) Subject to subsection (3) of this section, every practitioner who, on the thirtieth day of June in any year following the commencement of this section, has held a practice certificate for not less than two years shall, if and when paying the fee for his next annual practice certificate, pay to the Board, for application to the Solicitors' Guarantee Fund established under the Legal Contribution Trust Act, 1967, such amount not exceeding twenty dollars, as may from time to time be prescribed.

(2) The Board shall not issue a practice certificate to a practitioner obliged to make a payment provided by subsection (1) of this section, until the payment is made; and shall pay to the Legal Contribution Trust established under the Legal Contribution Trust Act, 1967, all moneys received by it pursuant to that subsection.

(3) A practitioner who has made five annual payments, or has paid an amount equal to five annual payments as then prescribed, under subsection (1) of this section, is exempt from the requirement of making any further payment under that subsection. .

7. Section sixty-four of the principal Act is amended by substituting for the words, "of the Supreme Court and the board may from time to time make any such general order as to a majority of them seems fit for", in lines one, two and three of subsection (1), the passage, ", or a majority of the judges, and the Board may, from time to time, make a general order".

S. 64
amended.
