

WESTERN AUSTRALIA.

LEGAL PRACTITIONERS.

57° Vict., No. XII.

Reprinted for the third time pursuant to the Amendments Incorporation Act, 1938, as amended by No. 37 of 1909*, No. 48 of 1926†, No. 45 of 1944‡, No. 18 of 1945**, No. 18 of 1946††, No. 37 of 1948‡‡, and No. 49 of 1950§§.

AN ACT to consolidate and amend the Law relating to the Admission of Practitioners in the Supreme Court, and to regulate their Conduct and their Remuneration in certain cases.

[Assented to 4th October, 1893.]

BE it enacted by the Queen'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:—

Preamble.

1. This Act may be cited as the *Legal Practitioners Act, 1893-1950*, and is divided into seven parts, as follows:—

Short title and division. 57 Vict. 12, s. 1, as amended by No. 45 of 1944, ss. 4 and 5; No. 49 of 1950, s. 2.

PART I.—BARRISTERS' BOARD, ss. 4-8.

PART II.—ARTICLED CLERKS, ss. 9-14C.

PART III.—ADMISSION OF PRACTITIONERS, ss. 15-24.

PART IV.—SUSPENSION AND STRIKING OFF ROLL, ss. 25-33.

§PART V.—LEGAL PRACTITIONERS' GUARANTEE FUND, ss. 34-58.

Added No. 45 of 1944, s. 4.

PART VI.—SOLICITORS' COSTS, ss. 59-75.

PART VII.—MISCELLANEOUS, ss. 76-84.

* Assented to 21st December, 1909.

† Assented to 24th December, 1926: Proclaimed to commence on 1st August, 1927—*Vide Gazette* dated 17th June, 1927.

‡ Assented to 24th January, 1945: The provisions of Act No. 45 of 1944 relating to the Legal Practitioners' Guarantee Fund to come into operation on a date to be fixed by proclamation. See s. 1 (b) of that Act.

** Assented to 9th January, 1946.

†† Assented to 2nd December, 1946.

‡‡ Assented to 21st December, 1948.

§ Assented to 18th December, 1950.

§ As on the 18th September, 1953, Part V not yet proclaimed to come into operation. See No. 45 of 1944, s. 1 (b) and note ‡ ante.

Repeal.
57 Vict. 12,
s. 2.

2. From and after the passing of this Act, the Acts and Ordinances described in the Schedule to this Act shall be repealed to the extent mentioned in the third column of such Schedule.

Interpreta-
tion.
57 Vict. 12,
s. 3 amended
by No. 48 of
1926, s. 2,
and No. 45
of 1944, s. 2.

3. In this Act, unless the context otherwise requires—

“Board” shall mean the Barristers’ Board as hereinafter constituted;

Inserted by
No. 48 of
1926, s. 2.

“certificated practitioner” means a practitioner who is the holder of a valid and current practice certificate in respect of which he has paid the prescribed annual fee;

§Inserted by
No. 45 of
1944, s. 2.

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

“practitioner” shall mean a person admitted and entitled to practise as a barrister, solicitor, attorney, and proctor of the Supreme Court of Western Australia, or in any one or more of these capacities;

“rules” shall mean the rules from time to time made and prescribed by the Board;

§Inserted by
No. 45 of
1944, s. 2.

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

PART I.—BARRISTERS’ BOARD.

Constitution
of Barristers’
Board.
57 Vict. 12,
s. 4.

4. (1) For the purposes of this Act, there shall be a board, to be called “The Barristers’ Board,” and such board shall consist of—

- (a) The Attorney General, who shall be *ex officio* chairman of the Board;
- (b) The Solicitor General, or, if there be no Solicitor General, the Crown Solicitor;
- (c) Every one of Her Majesty’s counsel learned in the Law, residing and practising in the Colony, and not being a Judge of any Court in the said Colony;

§ As on 18th September, 1953, not yet proclaimed to come into operation. See No. 45 of 1944, s. 1 (b).

- (d) Five practitioners of at least three years' standing and practice in the Colony, to be nominated in the first instance by the other members of the Board, and hereafter to be annually elected by the practitioners on the roll of the Supreme Court residing and practising in the Colony, at such times and in such manner as prescribed by the rules.

(2) Any four members of the Board shall form a quorum. If any vacancy occurs among the elected members of the Board by death, resignation, or otherwise, or if five practitioners be not elected at any annual election as aforesaid, the Board may nominate one or more practitioners as may be required to complete the Board.

(3) In the absence of the Attorney General, the members present at any meeting may elect a chairman for such meeting. Each member, including the chairman, shall have one vote, and such chairman shall, in case of an equality of votes, have a casting vote, in addition to his ordinary vote, and all questions at any meeting of the Board shall be decided by a majority of the votes of the members present.

5. The Board may, in its own name, by its secretary or any person thereunto authorised by the Board in writing under the hand of the chairman, commence, carry on, prosecute and defend any action, complaint, information or proceeding whatsoever, both civil and criminal.

Board may
sue, prosecute,
and defend.
57 Vict. 12,
s. 5.

6. (1) The Board may from time to time make and prescribe all such rules as to the Board may seem meet,—

Power to
make rules.
57 Vict. 12,
s. 6, amended
by No. 48 of
1926, s. 3;
No. 45 of
1944, s. 3;
No. 18 of
1946, s. 2,
and No. 37 of
1948, s. 2.

- (a) for fixing the time and regulating the annual election of the five practitioners on the Board;
- (b) for the examination from time to time of articled clerks and their conduct whilst under articles of clerkship;
- (c) for the admission, qualification, and examination of all candidates for admission as practitioners;

No. 48 of
1926, s. 3.

- (d) for prescribing what portion if any of the articles to be served by articled clerks may be served during the period of their attendance at the University of Western Australia as students of law;

Inserted by
No. 37 of
1948, s. 2.

- (da) for prescribing what portion of his articles may be served by an articled clerk with a practitioner other than the practitioner to whom he is articled, and the conditions of such service;

Inserted by
No. 18 of
1946, s. 2 as
para. (da):
relettered
(e) in 1949
reprint.

- (e) for prescribing in relation to articled clerks who have served in the armed forces at any time since the 3rd day of September, 1939, and whose articles were registered before enlistment therein, what period of service (not exceeding twelve months) in such forces may be deemed equivalent to actual and *bona fide* service under articles of clerkship to a practitioner for the purposes of this Act; and for prescribing in relation to persons who have so served in such forces what portion of the period of two years required by section fifteen of this Act to be served by graduates may be served before graduation and while attending the University of Western Australia as students of law and which shall be deemed to be actual and *bona fide* service under articles of clerkship to a practitioner for the purposes of this Act;

Formerly
para. (d):
relettered
as (e) by
No. 48 of
1926, s. 3,
and as (f)
in 1949
reprint.

- (f) for regulating the investigation of charges of alleged misconduct of practitioners in connection with the practice of their profession, and for imposing conditions to be observed by applicants for re-admission and regulating such applications;

Formerly
para. (e):
relettered
as (f) by
No. 48 of
1926, s. 3,
and as (g)
in 1949
reprint.

- (g) for regulating the meetings and proceedings of the Board;

(h) 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:—

New paragraph substituted by No. 45 of 1944, s. 3 for former paragraph (g): re-lettered (h) in 1949 reprint.

- (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;

*Added by No. 45 of 1944, s. 3 as para. (h); relettered as (i) in 1949 reprint.

- (i) 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;

*Added by No. 45 of 1944, s. 3 as para. (l); relettered as (j) in 1949 reprint.

- (j) 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 thirty-four 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;

*Added by No. 45 of 1944, s. 3 as para. (j); relettered as (k) in 1949 reprint.

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

*Added by No. 45 of 1944, s. 3 as para. (k); relettered as (l) in 1949 reprint.

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

*Added by No. 45 of 1944, s. 3 as para. (l); relettered as (m) in 1949 reprint.

- (m) prescribing the duties of accountants appointed to conduct an examination of any accounts pursuant to section fifty-six 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;

- (n) for the conduct of inquiries as to the compliance or non-compliance by practitioners with the provisions of sections thirty-four, thirty-five, and thirty-six of this Act; *Added by No. 45 of 1944, s. 3 as para. (m): relettered as (n) in 1949 reprint.
- (o) 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; *Added by No. 45 of 1944, s. 3 as para. (n): relettered as (o) in 1949 reprint.
- (p) 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; *Added by No. 45 of 1944, s. 3 as para. (o): relettered as (p) in 1949 reprint.
- (q) for generally carrying into effect the objects of this Act. Formerly para. (f): relettered as (h) by No. 48 of 1926, s. 3, as (p) by No. 45 of 1944, s. 3 and as (q) in 1949 reprint.

(2) All such rules may be from time to time amended or repealed, and others prescribed in lieu thereof or in addition thereto. And by such rules the Board may impose and provide for the recovery of fines and penalties from any person or persons subject thereto, and may from time to time prescribe a scale of fees to be charged for or in respect of proceedings under this Act or the rules.

(3) All rules to be prescribed as aforesaid shall, where the nature of the case may require, state some maximum fine or penalty for any neglect or breach thereof respectively, provided that no such fine or penalty shall exceed ten pounds.

7. All moneys received by the Board under this Act shall be applied as follows:—

- (1) For the purposes of carrying out the provisions hereof and of the rules;
- (2) Any sum remaining in the hands of the Board on the thirtieth day of June in each year beyond the sum of one hundred pounds may be applied by the Board for the purposes of the Law Library.

Application of moneys received by the board. 57 Vict. 12, s. 7 deleted and new section substituted by No. 48 of 1926, s. 4; amended by No. 49 of 1950, s. 3.

* As on 18th September, 1953, not yet proclaimed to come into operation. See No. 45 of 1944, s. 1 (b).

Board may
appoint and
pay officers.
57 Vict. 12,
s. 8.

8. The Board shall have power to appoint and pay, and to dismiss, an examiner or examiners and a secretary and such other officers as the Board may deem necessary for carrying out this Act and the rules, and all such persons shall hold office subject to the rules.

PART II.—ARTICLED CLERKS.

Conditions
for the
articling of
clerks.
57 Vict. 12,
s. 9.

9. No person shall be articled to a practitioner unless and until such person has

- (a) satisfied the Board that he is of good fame and character, and a natural born or naturalised British subject, of the age of sixteen years or upwards;
- (b) passed to the satisfaction of the Board such examination in general knowledge as may be required by the rules, and
- (c) paid to the Board the sum of twelve guineas.

Restrictions
as to articled
clerks.
57 Vict. 12,
s. 10 amended
by No. 37 of
1948, s. 3.

10. No person shall be articled to any practitioner who has not been admitted to the Supreme Court of the Colony for two years at least, nor shall any practitioner have articled to him more than two articled clerks at the same time, nor take, have, or retain any articled clerk after such practitioner has been suspended from practice or struck off the rolls, or, except in the case of the Crown Solicitor for the time being, has ceased to practise on his own behalf in Western Australia.

Provided that a person who shall have served his articles with the Crown Solicitor for the time being shall not be admitted as a practitioner unless and until he shall have obtained a degree of Bachelor of Laws in any University recognised by the Board for this purpose, and

Provided further that no such person shall be entitled to practise on his own behalf as a practitioner unless and until he shall have satisfied the Board that he has had twelve months' experience in the office of a practitioner in private practice.

11. If a practitioner to whom an articted clerk is articted shall, before the expiration of the term of such clerk's service, die, become lunatic, be suspended from practice, be struck off the rolls, or cease to practise in Western Australia on his own account, or for any other reason with the consent of the Board, the said service may be continued under assignment of articles to, or fresh articles with, any other practitioner qualified to take and have an articted clerk as aforesaid.

Articles may be assigned in certain cases.
57 Vict. 12, s. 11.

12. All articles of clerkship and every assignment of articles shall be under seal, and shall be registered as required by the rules; and service under any such articles or assignment shall not commence until the same are or is so registered.

Articles to be under seal and registered.
57 Vict. 12, s. 12.

13. No articted clerk shall, without the written consent of the Board, during his term of service under articles, hold any office or engage in any employment other than as *bona fide* articted clerk to the practitioner to whom he is for the time being articted, or his partner; and every articted clerk shall, before being admitted as a practitioner, prove to the satisfaction of the Board, by affidavit or otherwise, that this section has been duly complied with.

Articted clerk not to be engaged in other employment without consent of board.
57 Vict. 12, s. 13.

14. No person who has matriculated or graduated at or passed the matriculation examination of any university in Great Britain or Ireland, or the Commonwealth of Australia or the Dominion of New Zealand, shall be required to pass the preliminary examination required by the rules framed under this Act to be passed by articted clerks.

Preliminary examination not required of articted clerks who have matriculated.
No. 37 of 1909, s. 6, incorporated as s. 13a in 1927 reprint; re-numbered as s. 14 in 1949 reprint.

14A. No service under articles shall be valid unless such service is performed in accordance with this Act and the rules made thereunder.

Service under articles to accord with Act and rules.
Inserted by No. 37 of 1948, s. 4 as s. 13b; re-numbered as s. 14A in 1949 reprint.

If valid service not performed, practitioner to report to board.

Inserted by No. 37 of 1948, s. 4, as s. 13c: re-numbered as s. 14B in 1949 reprint.

14B. If an articulated clerk shall for a period of one month cease to perform valid service under his articles, the practitioner to whom such clerk is articulated shall forthwith make a written report to the Board thereon.

Cancellation of articles. Inserted by No. 37 of 1948, s. 4 as s. 13d: re-numbered as s. 14C in 1949 reprint.

14C. Upon the application of an articulated clerk, or of the practitioner to whom a clerk is articulated, the Board may cancel the articles of such clerk upon such terms as the Board may see fit. Provided that there shall be a right of appeal to the Full Court of Western Australia by any person aggrieved by a decision of the Board under this section.

PART III.—ADMISSION OF PRACTITIONERS.

What persons may be admitted. New section substituted by No. 37 of 1948, s. 5* for 57 Vict. 12, s. 14: re-numbered as s. 15 in 1949 reprint.

15. No person shall hereafter be admitted a practitioner unless he is a natural born or naturalised British subject of the full age of twenty-one years, and

- (a) is a solicitor admitted and entitled to practise in the High Court of Justice in England or Northern Ireland, or in the Supreme Court of an Australian State to which practitioners of the Supreme Court of Western Australia are entitled to be admitted; or
- (b) is a solicitor admitted and entitled to practise in the Superior Courts of Law in a Dominion Colony or Dependency of His Majesty, where in the opinion of the Board—
 - (i) the system of jurisprudence is founded on or assimilated to the common law and principles of equity as administered in England, and where

* It was enacted by subsection (2) of No. 37 of 1948, s. 5, that the repeal by that section of s. 14 of Act 57 Vict. 12 did not, for a period of two years from the date of the commencement of No. 37 of 1948, prejudice or affect the rights or qualifications for admission under the repealed section of any person who, at such date, was domiciled and resident in this State and was then a barrister admitted and entitled to practise in the High Court of Justice of England or Ireland of less than two years' standing.

- (ii) the like service as is mentioned in either of the next two following paragraphs under articles of clerkship to a solicitor and an examination to test the qualification of candidates are required prior to such admission; or
- (c) has actually and *bona fide* served for a term of five years under articles of clerkship to a practitioner as required by this Act; or
- (d) having taken a degree in law at any university recognised by the Board for this purpose has actually and *bona fide* served for a term of two years under articles of clerkship to a practitioner as required by this Act.

Provided that no person shall be qualified for admission under this paragraph until he has satisfied the Board that he obtained his degree only after passing examinations in substantially those subjects and at as high a standard as would be required for the degree of bachelor of laws at the University of Western Australia.

16. Any person who—

- (a) shall have completed or may complete the term of ten years as a clerk in the office of a practitioner or practitioners practising in Western Australia, and shall have been for at least five of such ten years employed in the capacity of a managing clerk in such office or offices; and
- * (b) shall have obtained from the Barristers' Board a certificate to the effect that he is, in the opinion of the Board (whose decision shall be final), possessed of the qualifications required by the last preceding subsection, and a fit and proper person to be admitted a practitioner; and

Qualification of managing clerks for admission as practitioners. No. 37 of 1909, s. 2 incorporated as s. 14a in 1927 reprint: renumbered as s. 16 in 1949 reprint.

* See section 83.

(c) shall have passed the final examination prescribed by the rules framed under this Act for the examination of articled clerks,

shall be qualified to be and, subject to the provisions of this Act and the rules, may be admitted a practitioner.

Provided that it shall not be lawful for any person admitted under the provisions of this section of this Act, at any time during the twelve months next following his admission, to practise as or engage in the practice of a legal practitioner, or be employed in the office of any legal practitioner, within three miles of the office of any practitioner by whom he shall have been engaged at any time during the twelve months next preceding his admission, except with the permission in writing of such practitioner.

Power of Barristers' Board to make rules.
No. 37 of 1909, s. 3, incorporated as s. 14b in 1927 reprint: renumbered as s. 17 in 1949 reprint.

17. The Barristers' Board may from time to time make, alter, vary, or repeal any general rule or rules under which the certificate set forth in subsection (b) of section sixteen is to be applied for by the applicant, and may, in addition thereto, require any particular applicant for such certificate to answer any question or questions, and to furnish such proof or proofs in support of his application as to such board may seem expedient.

Refusal of Barristers' Board to grant certificate not open to review.
No. 37 of 1909, s. 4, incorporated as s. 14c in 1927 reprint: renumbered s. 18 in 1949 reprint.

18. The refusal of the Barristers' Board to grant to any applicant the certificate set forth in subsection (b) of section sixteen shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature, on any account whatsoever.*

Power of Barristers' Board to dispense with part of term.
No. 37 of 1909, s. 5, incorporated as s. 14d in 1927 reprint: renumbered s. 19 in 1949 reprint.

19. The Barristers' Board may, in its discretion, and on being satisfied that any applicant shall have *bona fide* completed the term of three years as a managing clerk in the office or offices of a practitioner or practitioners in any of the other States of the Commonwealth or in Great Britain or Ireland, dispense in the case of such applicant with any

* See section 83.

portion not exceeding in all three years of the term of years prescribed in subsection (a) of section sixteen hereof:

Provided that such term of three years or any part thereof shall be exclusive of the term of five years herein prescribed as the term during which the applicant shall have been employed as a managing clerk.

20. No person, however qualified in other respects, shall hereafter be admitted as a practitioner unless and until he has

Further qualifications for admission.
57 Vict. 12, s. 15: re-numbered s. 20 in 1949 reprint.

- (a) for six calendar months immediately preceding his application for admission, resided within the Colony of Western Australia; and
- * (b) satisfied the Board, and obtained from them a certificate that he is, in the opinion of the Board, in every respect a person of good fame and character, and fit and proper to be so admitted, and has observed and complied with the provisions of this Act and the rules; and
- (c) advertised notice of his intention to apply for admission in such manner and for such period as required by the rules; and
- (d) paid to the Board the sum of thirty guineas; provided that this subsection shall not apply to any articulated clerk, serving under articles duly executed before the passing of this Act, and registered as prescribed by the rules, nor to any person residing in the Colony at the time of the passing of this Act who has, prior thereto, notified to the Board constituted by the Acts hereby repealed or any of them his intention of applying for admission, and is admitted a practitioner within twelve months thereafter.

21. Any person having reasonable grounds to object to the admission of any other person as a practitioner may be heard by himself or counsel, with or without witnesses, to oppose such admission:

Objection to admission.
57 Vict. 12, s. 16: re-numbered s. 21 in 1949 reprint.

* See section 83.

Provided that written notice, stating the grounds of such objection, shall be lodged in the Supreme Court seven days at least before the day on which the application for admission is made.

Admission by Full Court.
57 Vict. 12, s. 17: re-numbered s. 22 in 1949 reprint.

22. No person shall be admitted a practitioner except by the Full Court.

Practitioners on admission to sign roll.
57 Vict. 12, s. 18: re-numbered s. 23 in 1949 reprint.

23. Immediately after his admission every practitioner shall sign the Roll of Practitioners in the custody of the Registrar of the Supreme Court. The said roll shall, during office hours, be open to the inspection of any person without fee or reward, and a certificate as to any matter appearing in or by the said roll, under the hand of the Registrar of the Supreme Court shall be conclusive evidence thereof.

Certificate of Registrar evidence.

Certificate of admission.
57 Vict. 12, s. 19: re-numbered s. 24 in 1949 reprint.

24. Every practitioner shall be entitled to obtain from the Registrar of the Supreme Court a certificate of his admission, in such form as may be prescribed by the rules.

PART IV.—SUSPENSION AND STRIKING OFF ROLL.

Complaints against practitioner.
Section substituted by No. 37 of 1948, s. 6, for 57 Vict. 12, s. 20: renumbered s. 25 in 1949 reprint.

25. Any person feeling aggrieved by reason of—

- (a) any alleged illegal or unprofessional conduct of any practitioner, whether committed or suffered before or after the coming into operation of this section, or
- (b) any neglect or undue delay in the conduct of the business of such person by any practitioner—

may, by himself or agent, make complaint thereof in writing to the Board.

Board may summon practitioner and investigate conduct.
57 Vict. 12, s. 21, amended by No. 37 of 1948, s. 7: renumbered s. 26 in 1949 reprint.

26. The Board may summon before it any practitioner whose conduct, neglect or undue delay is complained of, or whose conduct, neglect or undue delay, may appear to the Board to require investigation, whether the Board has received a complaint or not, and may inquire into the matter of such conduct, neglect or undue delay; and the Board may

also summon the complainant (if any), and any person who, in the opinion of the Board, can give evidence or produce documents touching the matter in question, or whom the complainant (if any) or the practitioner may desire to call as a witness.

27. For the purposes of any such inquiry as aforesaid, the chairman of any meeting of the Board may administer oaths or affirmations.

Chairman may administer oath or affirmation. 57 Vict. 12, s. 22: re-numbered s. 27 in 1949 reprint.

28. Every summons issued by the Board and signed by the secretary, or other authorised officer, shall have the same effect as a subpoena *ad test* or *duces tecum*, as the case may be, issued by the Supreme Court for the attendance of a witness for examination or production of documents in a civil action, and the obedience thereto or non-observance thereof shall be enforced and punished by a Judge in Chambers, in the same manner as in case of the disobedience or non-observance of a subpoena issued by the said court.

Effect of summons. 57 Vict. 12, s. 23: re-numbered s. 28 in 1949 reprint.

Disobedience or non-observance how punishable.

29. (1) If upon such inquiry the Board shall be of opinion that the practitioner is guilty of any illegal or unprofessional conduct, or that the practitioner is guilty of any neglect or undue delay in the conduct of the business of the complainant, the Board may—

Board to report to Court or to deal summarily with matter. Section substituted by No. 37 of 1948, s. 8, for 57 Vict. 12, s. 24: re-numbered s. 29 in 1949 reprint, amended by No. 49 of 1950, s. 4.

- (a) make and transmit a report thereon to the Full Court, with a copy of the evidence taken on the inquiry; or
- (b) inflict a fine not exceeding one hundred pounds; or
- (c) suspend the practitioner from practising for a period not exceeding two years; or
- (d) reprimand the practitioner; and
- (e) in any case may make such order as to payment of costs by him as the Board may think fit. The Board may order that any costs be taxed by the Master of the Supreme Court, for which costs the Master shall give his allocatur; and

No. 49 of
1950, s. 4.

(f) if it is satisfied on the evidence before it at such enquiry that any sum certain in money is owing or payable by the practitioner to the complainant, order the practitioner to pay such sum to the Board.

(2) Any order made by the Board under the foregoing provisions may be enforced in the same manner as an order of the Court made under the Act.

(3) A practitioner suspended from practice by order of the Board shall not be entitled to practise within the meaning of this Act until the period of suspension has elapsed, or until readmitted as a practitioner by the Full Court.

(4) The practitioner may appeal to the Full Court in the prescribed manner against any order made by the Board under this section.

Report of
board con-
clusive.
57 Vict. 12,
s. 25: re-
numbered
s. 30 in
1949 reprint.

30. If the Board make a report as aforesaid to the Full Court, such report shall be conclusive as to all facts and findings therein mentioned or contained. And the court may, upon motion and upon reading such report, and without any further evidence, fine, suspend from practice, or strike off the roll such practitioner, and make such order as to the payment of costs by him as the court may think fit.

Court to
punish.

Dismissal of
complaint,
costs and
recovery
thereof.
57 Vict. 12,
s. 26: re-
numbered
s. 31 in
1949 reprint.

31. If the Board dismiss a complaint it may order the person making the same (if any) to pay to the practitioner whose conduct is impugned, the costs of and incidental thereto, to be taxed by the Master of the Supreme Court, for which costs the Master shall give his allocatur, and such order may be enforced and such costs recovered by execution or otherwise in the same manner as if the Master's allocatur were a judgment of the Supreme Court for the payment of a liquidated sum of the amount at which such costs are so taxed and allowed.

Order of
Court, how
enforced.
57 Vict. 12,
s. 27: re-
numbered
s. 32 in
1949 reprint.

32. Any order made by the Court under this Act for the payment of money, costs or otherwise, may be enforced by execution or attachment in the ordinary way, and on the non-payment, non-performance, or non-observance thereof, by

imprisonment as and for contempt of Court until the said order is fully observed and performed, notwithstanding the bankruptcy or insolvency of the practitioner.

33. A practitioner struck off the roll or suspended from practice by order of the Full Court shall not be entitled to practise within the meaning of this Act until he has been re-admitted, or until the period of his suspension has elapsed, as the case may be. Every application for re-admission shall be made to the Full Court, provided that the Court shall have no jurisdiction to hear such application without the production of a certificate from the Board that the rules relating to re-admissions have been complied with.

Deprivation of practice in certain cases. 57 Vict. 12, s. 28: re-numbered s. 33 in 1949 reprint.

§PART V.—LEGAL PRACTITIONERS' GUARANTEE FUND.

34. (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.

New Part. Inserted by No. 45 of 1944, s. 4, to come into operation upon Proclamation. Practitioner to keep trust account. Inserted by No. 45 of 1944, s. 4, as s. 28A: re-numbered s. 34 in 1949 reprint.

(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.

§ As on 18th September, 1953, this Part V not yet proclaimed to come into operation. See No. 45 of 1944, s. 1 (b).

(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.

Accounts of all trust moneys to be kept.

Inserted by No. 45 of 1944, s. 4, as s. 28B: renumbered s. 35 in 1949 reprint.

*35. 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.

Penalty for non-compliance.

Inserted by No. 45 of 1944, s. 4 as s. 28C: renumbered s. 36 in 1949 reprint.

*36. Any practitioner who fails to comply with the provisions of section thirty-four or section thirty-five may be dealt with under the provisions of section eighty-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.

The fund.

Inserted by No. 45 of 1944, s. 4, as s. 28D: renumbered s. 37 in 1949 reprint.

*37. There is hereby established a fund, to be known as the Legal Practitioners' Guarantee Fund.

Fund to be kept in special account at Bank.

Inserted by No. 45 of 1944, s. 4, as s. 28E: renumbered s. 38 in 1949 reprint.

*38. 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."

How fund made up.

Inserted by No. 45 of 1944, s. 4, as s. 28F: renumbered s. 39 in 1949 reprint.

*39. The fund shall consist of—

- (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 herein-after 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.

*40. There shall from time to time be paid out of the fund as required—

Application of fund. Inserted by No. 45 of 1944, s. 4 as s. 28G: renumbered s. 40 in 1949 reprint.

- (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 fifty-three hereof;
- (d) all refunds made to practitioners or to their personal representatives pursuant to section fifty-five 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.

*41. The accounts of the fund shall be audited annually by the Auditor General.

Annual audit of fund by Auditor General. Inserted by No. 45 of 1944, s. 4, as s. 28H: renumbered s. 41 in 1949 reprint.

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

Administration of the Fund. Inserted by No. 45 of 1944, s. 4, as s. 28I: renumbered s. 42 in 1949 reprint.

- (a) one shall be appointed by the Governor;

* See footnote § on page 17 ante.

- (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.

*43. (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 (h) 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.
Inserted by No. 45 of 1944, s. 4, as s. 28J: re-numbered s. 43 in 1949 reprint.

(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 thirty-eight and forty.

(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.

*44. 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.

No contributions while fund stands at £10,000.
Inserted by No. 45 of 1944, s. 4 as s. 28K: re-numbered s. 44 in 1949 reprint.

*45. (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.

Provision for levies where fund insufficient to meet claims.
Inserted by No. 45 of 1944, s. 4, as s. 28L: re-numbered s. 45 in 1949 reprint.

(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 forty-three.

(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.
Inserted by No. 45 of 1944, s. 4, as s. 28M: re-numbered s. 46 in 1949 reprint.

*46. 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.

Investment of moneys in the fund.
Inserted by No. 45 of 1944, s. 4, as s. 28N: re-numbered s. 47 in 1949 reprint.

*47. 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.

*48. (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. Inserted by No. 45 of 1944, s. 4 as s. 280: re-numbered s. 48 in 1949 reprint.

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 purposes 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.

* See footnote § on page 17 ante.

Conditions on which claim may be settled. Inserted by No. 45 of 1944, s. 4, as s. 28P: re-numbered s. 49 in 1949 reprint.

*49. (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.

Trustees may raise same defence as practitioner could against any claimant. Inserted by No. 45 of 1944, s. 4, as s. 28Q: re-numbered s. 50 in 1949 reprint.

*50. 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.

*51. 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.
Inserted by
No. 45 of
1944, s. 4, as
s. 28R: re-
numbered
s. 51 in
1949 reprint.

*52. (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 forty-eight be charged against future accumulations of the fund.

Trustees
Board and
Law Society
not liable.
Inserted by
No. 45 of
1944, s. 4 as
s. 28S: re-
numbered
s. 52 in
1949 reprint.

(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.
Inserted by
No. 45 of
1944, s. 4 as
s. 28T: re-
numbered
s. 53 in
1949 reprint.

*53. (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.

* See footnote § on page 17 ante.

§ Now the Insurance Companies Act, 1918-1931.

*54. 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.

In case of insurance no claim lies against company but shall be made against the fund.
 Inserted by No. 45 of 1944, s. 4 as s. 28U: re-numbered s. 54 in 1949 reprint.

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

Payment to practitioner on retirement in necessitous case.
 Inserted by No. 45 of 1944, s. 4 as s. 28V: re-numbered s. 55 in 1949 reprint.

- (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.

*56. (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.
 Inserted by No. 45 of 1944, s. 4 as s. 28W: re-numbered s. 56 in 1949 reprint.

(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

* See footnote § on page 17 ante.

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.
Inserted by No. 45 of 1944, s. 4 as s. 28X: re-numbered s. 57 in 1949 reprint.

*57. 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.
Inserted by No. 45 of 1944, s. 4 as s. 28Y: re-numbered s. 58 in 1949 reprint.

*58. 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 (2) of section seven of this Act, whichever first happens.

PART VI.—SOLICITORS' COSTS.

59. A practitioner may make a written agreement with his client respecting the amount and manner of payment for the whole or any part or parts of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such practitioner, either by a gross sum or otherwise howsoever. Such an agreement shall exclude any future claim of the practitioner in respect of any services, fees, charges, or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such as are excepted by the agreement: Provided always, that the client who has entered into such agreement shall not be entitled to recover from any other person, under any order, judgment, or agreement for the payment of costs, any costs which are the subject of such first mentioned written agreement beyond the amount payable by the client to the said practitioner under the same. And provided, also, that no such agreement shall exempt the practitioner from liability for negligence. Any such agreement may be reviewed by the Supreme Court or a judge thereof upon application by petition or summons, and if in the opinion of the Court or judge the same is unreasonable the amount payable may be reduced or the agreement cancelled and the costs taxed in the ordinary way, and the Court or judge may also make such order as to the costs of and relating to such review, and the proceedings thereon, as to the said Court or judge may seem fit.

57 Vict. 12,
Part V.
Agreements
as to costs.
57 Vict. 12,
s. 29; re-
numbered
s. 59 in
1949 reprint.

60. Nothing in the last section contained shall prejudice or affect the Law Officers of the Crown or a practitioner acting for any person, corporation, or company on a fixed annual salary.

Saving in
certain
cases.
57 Vict. 12,
s. 30; re-
numbered
s. 60 in 1949
reprint.

61. If after any such agreement as aforesaid and before the full performance thereof, the practitioner shall die, become incapable to act (unless such incapacity is caused by the practitioner being struck off the roll, or suspended from practice), or cease to practise in Western Australia, or the client shall die or change his solicitor, the agreement shall cease

Avoidance
of agree-
ment in
certain
cases.
57 Vict. 12,
s. 31; re-
numbered
s. 61 in 1949
reprint.

and be void, and the practitioner, or his executors, administrators, or assigns, shall be entitled to charge such client, or his executors or administrators, for all services, fees, charges, or disbursements then performed, paid, or incurred, and such costs may be taxed and shall be dealt with as if such agreement had never been made.

Security for costs.
57 Vict. 12, s. 32: re-numbered s. 62 in 1949 reprint.

62. A practitioner may take security from his client or any other person for his future services, fees, charges, or disbursements.

Act not to validate purchase of client's interest, nor agreement for payment only in event of success.
57 Vict. 12, s. 33: re-numbered s. 63 in 1949 reprint.

63. Nothing in this Act contained shall be construed to give validity to any purchase by a practitioner of the interest or any part of the interest of his client in any suit, action, or other contentious proceeding to be brought or maintained, or to any agreement by a practitioner for payment only in the event of success in any suit, action, or other contentious proceeding.

Judges of Supreme Court and the board may make general order as to costs in certain classes of business.
57 Vict. 12, s. 34: re-numbered s. 64 in 1949 reprint.

64. (1) The judges 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 prescribing and regulating the maximum remuneration of practitioners in respect of any business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing and other business not being business in any action, suit, or proceeding or transacted in any court and not being otherwise contentious business, and may revoke or alter any such order.

(2) No general order as aforesaid shall take effect unless and until it has been published in the *Government Gazette* for one calendar month.

(3) As long as any general order as aforesaid is in operation, the taxation of bills of costs of practitioners, as between solicitor and client or party and party, shall be regulated thereby.

Signed bill of costs to be delivered before suit.
57 Vict. 12, s. 35: re-numbered s. 65 in 1949 reprint.

65. No practitioner nor any executor, administrator, or assignee of any practitioner shall sue for the recovery of any services, fee, charges, or disbursements until a bill of the same, signed by such practitioner or executor, administrator, or assignee

shall have been delivered to the party charged therewith, or his executors or administrators, or left at or sent by post addressed to him or them at his or their last known place of business or residence in Western Australia.

66. Except in cases where there is a written agreement as to costs, as hereinbefore provided, any person charged with or liable to pay a bill of costs as aforesaid, or his executors or administrators, may within one month from the delivery, leaving, or sending thereof as last aforesaid have the same taxed by the taxing master of the Supreme Court upon first giving to the practitioner, his executors or administrators or assignee, or leaving at or posting, addressed to his or their last known place of business or residence, a written notice of his or their intention to have the same taxed, and setting forth the item or items and amounts objected to.

Party charged may give notice of intention to tax, and of items objected to. 57 Vict. 12, s. 36: re-numbered s. 66 in 1949 reprint.

67. If within fourteen days after the giving or leaving or posting of such notice as aforesaid the practitioner, or his executors, administrators, or assignee, as the case may be, shall not admit and allow the said objections, the person charged or liable to pay as aforesaid, or his executors or administrators, may, upon payment to the practitioner, his executors, administrators, or assignee, of the admitted balance, obtain from the taxing master *ex parte* an appointment to tax the disputed items in said bill of costs. Provided that within the fourteen days aforesaid the practitioner, his executors, administrators, or assignee, may deliver an amended bill of costs, and in such case such amended bill shall be treated as and be in lieu of the original and be subject to all the provisions as to taxation herein contained, except this proviso.

If objections not allowed or amended bill delivered, party charged may tax. 57 Vict. 12, s. 37: re-numbered s. 67 in 1949 reprint.

68. Upon obtaining an appointment to tax as last aforesaid, two days' written notice thereof at least shall be left with or given or posted to the practitioner, his executors, administrators, or assignee, in manner aforesaid, and the taxing master shall proceed to tax the said bill. In the absence of the practitioner, his executors, adminis-

Taxation. 57 Vict. 12, s. 38: re-numbered s. 68 in 1949 reprint.

trators, or assignee, the taxing master may proceed to such taxation *ex parte* upon proof satisfactory of the due service as aforesaid of the notice of such appointment.

Costs of taxation
57 Vict. 12,
s. 39: re-
numbered
s. 69 in 1949
reprint.

69. The costs of and incidental to such taxation shall be taxed and ascertained by the said taxing master, and shall be paid and borne as follows:— If one-sixth in amount of the items objected are disallowed, the practitioner, his executors, administrators, or assignee, shall pay the costs, but in every other case the same shall be paid by the party requiring taxation, his executors or administrators.

Master's allocatur; interest; amount, how recovered.
57 Vict. 12,
s. 40: re-
numbered
s. 70 in 1949
reprint.

70. The master shall certify in writing the amount at which he allows the said bill of costs and the costs of and incidental to such taxation, and such certificate or certificates shall be binding and conclusive on both parties, and shall bear interest, and may be enforced by either party against the person liable to pay in the same manner in every respect by execution, attachment, or otherwise, as if it were a judgment of the Supreme Court for the payment of the amount therein mentioned.

Review of taxation.
57 Vict. 12,
s. 41: re-
numbered
s. 71 in 1949
reprint.

71. Such taxation may be reviewed before a Judge in Chambers as provided and allowed by the rules of the Supreme Court for the time being in cases of taxations under those rules, and the order or orders so made shall be enforceable in the same manner as the certificate of the master under the last preceding section.

Judge may order taxation under special circumstances.
57 Vict. 12,
s. 42: re-
numbered
s. 72 in 1949
reprint.

72. Notwithstanding the expiration of one month as aforesaid, taxation of any bill of costs may, under special circumstances, upon a summons be ordered by a Judge in Chambers at any time before the expiration of three months after the delivery, posting, or leaving of such bill of costs as aforesaid.

Practitioner's costs to be a first charge on the property recovered or preserved.
57 Vict. 12,
s. 43: re-
numbered
s. 73 in 1949
reprint.

73. In every case in which a practitioner shall be employed to prosecute or defend any suit, matter, or proceeding in any court of justice whatsoever, such practitioner shall be entitled to a first charge upon the property recovered or preserved, and such practitioner shall have a prior right to payment out

of the same for the taxed costs, charges, and expenses as between solicitor and client of or in reference to such suit, matter, or proceeding; and the Court before which such suit, matter, or proceeding has been heard or is pending, or a Judge thereof in Chambers, may make *ex parte* such order or orders for taxation of and for raising and paying such costs, charges, and expenses out of the said property as to such court or judge shall appear just and proper.

Charging order.

74. In every case in which a practitioner acts as town agent, he shall be entitled to apply on summons and obtain a charging order for his costs and expenses, in priority to the costs and expenses of the practitioner on whose behalf he acts as agent.

Town agent entitled to prior charge.
57 Vict. 12, s. 44: re-numbered s. 74 in 1949 reprint.

75. A practitioner shall be entitled to charge interest on all moneys disbursed by him in connection with litigious or other business, at the rate from time to time allowed on judgment debts.

Practitioner may charge interest on moneys disbursed.
57 Vict. 12, s. 45: re-numbered s. 75 in 1949 reprint.

PART VII.—MISCELLANEOUS.

76. No person other than a certificated practitioner shall in the name of himself or of any other person directly or indirectly sue out any writ or process, nor commence, carry on, solicit, defend, or appear in any action, suit, or other proceedings in any court whatever of civil or criminal jurisdiction in Western Australia, nor act as a barrister, solicitor, attorney, or proctor of the Supreme Court of Western Australia in any cause, matter or suit, information or complaint, civil or criminal, wheresoever and before whomsoever the same is to be heard, tried, or determined, or under any commission for the examination within the Colony of witnesses, or others issued by any court in or out of Western Australia: Provided that nothing herein contained shall prevent a party from appearing or defending in person as heretofore, nor to prevent any person from addressing the court by leave under the provisions of section thirty of the Small Debts Ordinance, 1863*.

Only certificated practitioners to act in all legal proceedings in Court.
57 Vict. 12, s. 46 amended by No. 48 of 1926, s. 6: renumbered s. 76 in 1949 reprint.

Exception of parties in person.

* Repealed by Local Courts Act, 1904, s. 4.

Only certified practitioners to engage in legal business.
57 Vict. 12, s. 47 amended by No. 48 of 1926, s. 6: renumbered s. 77 in 1949 reprint.

Exception of public officers.

77. No person other than a certificated practitioner shall directly or indirectly perform or carry out or be engaged in any work in connection with the administration of law, or draw or prepare any deed, instrument, or writing relating to or in any manner dealing with or affecting real or personal estate or any interest therein or any proceedings at law, civil or criminal, or in equity: Provided that nothing herein contained shall be construed to affect public officers acting in discharge of their official duty, or the paid or articled clerks of certificated practitioners, or any person drawing or preparing any transfer under the Transfer of Land Act, 1893.*

No liability in certain cases.
57 Vict. 12, s. 48 amended by No. 37 of 1948, s. 9: renumbered s. 78 in 1949 reprint.

78. Nothing in the last preceding section contained shall extend to make any person liable to any penalty if such person satisfies the court, judge, or justice, as the case may be, that he has not directly or indirectly been paid or remunerated or promised or expected pay or remuneration for the work or services so done.

Where such person directly or indirectly receives, expects, or is promised pay or remuneration for or in respect of other work or services relating to, connected with or arising out of the same transaction or subject-matter as that to which the said first-mentioned work or services shall relate, the provisions of this section shall not apply.

Prohibition of certain acts by practitioner.
57 Vict. 12, s. 49, amended by No. 48 of 1926, s. 6: renumbered s. 79 in 1949 reprint.

79. No certificated practitioner shall—

- (1) act as agent for any person not being a duly qualified certificated practitioner in or concerning any matter which it is herein provided shall be done for profit by a duly qualified certificated practitioner only; or
- (2) permit or suffer his name or the name of his firm to be made use of, in any manner whatever, in or concerning any such matter upon the account of any person other than a certificated practitioner; or
- (3) do or permit or suffer to be done any act which enables or tends to enable such person to appear, act, or practise in any

* Now the Transfer of Land Act, 1893-1950; See Act No. 17 of 1950, s. 4.

respect as a certificated practitioner in any matter or proceeding, civil or criminal, before any court; or

- (4) share with any person other than a certificated practitioner, or his executors or administrators, the whole or any part of the costs arising from or in connection with any act, matter, or thing which it is herein provided shall be done for profit by a certificated practitioner only; or
- (5) use the name of any person other than a certificated practitioner or a deceased or retired partner in conjunction with his own, or hold himself forth as practising with any person other than a certificated practitioner; or
- (6) in any manner employ or engage or permit or suffer to be employed or engaged in or about his office or affairs any person who has been or shall hereafter be struck off the roll of the Supreme Court or suspended from practice, until such person is re-admitted or such suspension is removed.

80. No person other than a practitioner shall in any manner hold himself out as or pretend to be or make or use any words or any name, title, addition, or description implying or tending to the belief that he is a practitioner or is recognised by law as such.

No unqualified person to hold himself out as a practitioner.
57 Vict. 12, s. 50: re-numbered s. 80 in 1949 reprint.

81. Every person who acts contrary to the terms of this Act, or any section or part thereof, or to any rule, shall be guilty of a contempt of the Supreme Court, and may be punished accordingly by the said Court or a Judge thereof in Chambers on the motion of the Board, and shall, whether any such motion has been made or not, on conviction forfeit and pay for every such offence the sum of twenty pounds, or such less sum (if any) as mentioned in the rules.

Offences against this Act or the rules, how punishable.
57 Vict. 12, s. 51: re-numbered s. 81 in 1949 reprint.

82. Except where otherwise expressly provided to the contrary by this Act or the rules, all offences, penalties, fines, or fees under this Act or the said rules, and all orders for the payment of money or

Prosecution of offences and recovery of penalties.
57 Vict. 12, s. 52: re-numbered s. 82 in 1949 reprint.

otherwise may be tried and determined, enforced, and recovered summarily before any two or more justices of the peace in petty sessions.

Provision for appeal from decision of Barristers' Board.

No. 46 of 1926, s. 7, incorporated in 1927 reprint as s. 53: re-numbered s. 83 in 1949 reprint.

83. Notwithstanding anything to the contrary in this Act or in the Legal Practitioners Act Amendment Act, 1909, there shall be an appeal to the Full Court of Western Australia by any person to whom the Board shall have refused to grant a certificate under section twenty (b) of this Act, or section two (b) of the Legal Practitioners Act Amendment Act, 1909.*

Shortening Ordinance. 57 Vict. 12, s. 53: re-numbered as s. 54 in 1927 reprint and as s. 84 in 1949 reprint.

84. Sections A, E, F, G and H of the Shortening Ordinance, 1853†, shall be incorporated with and taken to form part of this Act to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

THE SCHEDULE REFERRED TO.

Ordinance or Act.	Title.	Part Repealed.
24 Vic., No. 15	"The Supreme Court Ordinance, 1861."	Section 16, and so much of section 31 as relates to the power of the Chief Justice to make rules and orders as to the fees and costs of practitioners.
29 Vic., No. 9	An Ordinance to regulate the admission of Attorneys and Solicitors.	The whole.
45 Vic., No. 1	An Act to regulate the admission in certain cases of Barristers, etc.	The whole.
50 Vic., No. 31	An Act to amend the Law regulating the admission of Barristers, etc.	The whole.
53 Vic., No. 6	"The Barristers Board Act, 1889."	The whole.

* Inserted as paragraph (b) of section 16 of this reprint.

† See now the Schedule to Interpretation Act, 1918-1948.