

## LEGAL PRACTITIONERS ACT 1893-1979.

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Approved for Reprint 12 January 1981.  
WESTERN AUSTRALIA.

# LEGAL PRACTITIONERS.

57° Vict., No. XII.

(Affected by Acts No. 56 of 1923, s. 2; No. 26 of 1932, ss. 2 and 6; No. 74 of 1967.)

[As amended by Acts:

No. 37 of 1909, assented to 21/12/1909;  
No. 48 of 1926,<sup>1</sup> assented to 24/12/1926;  
No. 45 of 1944, assented to 24/1/1945;  
No. 18 of 1945, assented to 9/1/1946;  
No. 18 of 1946, assented to 2/12/1946;  
No. 37 of 1948, assented to 21/12/1948;  
No. 49 of 1950, assented to 18/12/1950;  
No. 9 of 1955, assented to 19/10/1955;  
No. 11 of 1957, assented to 29/8/1957;  
No. 4 of 1958, assented to 19/9/1958;  
No. 27 of 1958, assented to 19/11/1958;  
No. 16 of 1960, assented to 6/10/1960;  
No. 15 of 1963, assented to 5/11/1963;  
No. 74 of 1964, assented to 11/12/1964;  
No. 18 of 1966,<sup>2</sup> assented to 17/10/1966;  
No. 21 of 1967, assented to 23/10/1967;  
No. 79 of 1967,<sup>3</sup> assented to 11/12/1967;  
No. 59 of 1969, assented to 29/9/1969;  
No. 92 of 1970, assented to 30/11/1970;  
No. 36 of 1971, assented to 10/12/1971;  
No. 94 of 1972,<sup>4</sup> (as amended by No. 83 of 1973);  
No. 56 of 1973, assented to 19/11/1973;  
No. 113 of 1976,<sup>5</sup> assented to 25/11/1976;  
No. 48 of 1977, assented to 18/11/1977;  
No. 9 of 1978, assented to 15/5/1978;  
No. 66 of 1979, assented to 21/11/79;  
No. 67 of 1979,<sup>6</sup> assented to 21/11/1979,

and reprinted pursuant to the Amendments Incorporation Act 1938.]

**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—

1. This Act may be cited as the *Legal Practitioners Act 1893-1979*, and is divided into parts, as follows:—

Short title and division.  
Amended by No. 87 of 1978, s. 24.

**PART I.—BARRISTERS BOARD, ss. 4-8.**

<sup>1</sup> Came into operation on 1/8/27. See *Gazette*, 17/6/27, p. 1516.  
<sup>2</sup> Came into operation on 21/4/67. See *Gazette*, 21/4/67, p. 987.  
<sup>3</sup> Operative from day on which Part III of Act 74 of 1967 came into operation (i.e., 29/3/68. See *Gazette*, 29/3/68, p. 805.)  
<sup>4</sup> Metric Conversion Act 1972-1973. The relevant amendments included in this reprint effective from 24/5/74. See *Gazette* 24/5/74, p. 1610.  
<sup>5</sup> Came into operation on 21/1/77 (except s. 5). See *Gazette* 21/1/77, p. 101. Section 5 has not been proclaimed as at date of this reprint.  
<sup>6</sup> Came into operation on 11/2/80. See *Gazette* 8/2/80, p. 383.

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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.—PRACTITIONERS' TRUST ACCOUNTS, ss.  
34-42A.

PART VA.—CONTROL OF CERTAIN PRACTICES, ss.  
58A-58K.

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

PART VII.—MISCELLANEOUS, ss. 76-84.

Repeal.

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.  
Amended by  
No. 48 of  
1926, s. 2;  
No. 45 of  
1944, s. 2;  
No. 79 of  
1967, s. 4;  
No. 59 of  
1969, s. 2.

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

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

“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;

“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 and for the purposes of Part V of this Act, the expression includes a firm of practitioners and for the purposes of Part IV and Part VA of this Act the expression includes a person who has been a practitioner;

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

“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.

PART I.—BARRISTERS’ BOARD.

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—

Constitution  
of Barristers’  
Board.  
Amended by  
No. 9 of 1955,  
s. 2;  
No. 58 of  
1973, s. 3;  
No. 113 of  
1976, s. 3.

- (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, permanently residing and practising in the State, and not being a Judge of any Court in the said State;
- (d) Seven practitioners of at least three years’ standing and practice in the State, 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 State, at such times and in such manner as prescribed by the rules.
- (e) [*Deleted by No 56 of 1973, s.3.*]
- (f) [*Deleted by No. 113 of 1976, s. 3.*]

(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 seven 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.

Board may sue, prosecute, and defend.

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.

Power to make rules. Amended by No. 48 of 1926, s. 3; No. 45 of 1944, s. 3; No. 18 of 1946, s. 2; No. 37 of 1948, s. 2; No. 4 of 1958, s. 2; No. 113 of 1965, s. 8; No. 79 of 1967, s. 5; No. 36 of 1971, s. 3; No. 56 of 1973, s. 4; No. 113 of 1976, s. 4; No. 46 of 1977, s. 2; No. 66 of 1979, s. 2.

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

- (a) for fixing the time and regulating the annual election of 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;
- (ca) for prescribing the examinations required to be passed by persons seeking to be admitted under section sixteen of this Act;



- (cb) for prescribing the fee required to be paid to the Board by paragraph (d) of section twenty of this Act;
- (d) for prescribing what portion if any of the articles to be served by articed clerks may be served during the period of their attendance at the University of Western Australia as students of law;
- (da) for prescribing what portion of his articles may be served by an articed clerk with a practitioner other than the practitioner to whom he is articed, and the conditions of such service;
- (e) for prescribing in relation to articed 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;
- (f) for regulating the investigation of the conduct of practitioners with respect to the practice of their profession, and for imposing conditions to be observed by applicants for re-admission and regulating such applications;
- (fa) for prescribing the cases and conditions in which certificated practitioners may share the whole or any part of the costs referred

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to in paragraph (4) of section seventy-nine of this Act with persons other than certificated practitioners, or their executors or administrators;

- (g) for regulating the meetings and proceedings of the Board;
- (ga) for regulating the control and use of the Law Library, prescribing the persons permitted to use the Library, and forbidding the removal of books therefrom except for prescribed purposes;
- (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—
  - (i) [*Deleted by No. 36 of 1971, s. 3.*]
  - (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;
- (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.

(1a) Subject to subsection (1b) of this section, the Board may from time to time make all such rules as to the Board may seem meet for prescribing that with the approval of the Board portion of his articles may be served by an articulated clerk with a practitioner other than the practitioner to whom he is articulated including if the Board is satisfied that special circumstances exist a practitioner who is not practising as a practitioner on his own account, and the conditions of such service.

(1b) Rules prescribed under subsection (1a) of this section shall not continue in operation after the thirty-first day of December, 1983, but the expiry of those rules shall not affect the previous operation thereof or the validity of any action taken under them.

(2) Subject to subsection (1b) of this section, 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) [*Repealed by No. 113 of 1976, s. 4.*]

Property vested in Board. Added by No. 4 of 1958, s. 3.

6A. The books, furniture, pictures and all other things now or hereafter in or used in connection with the Law Library are vested in and are the property of the Board.

Application of moneys received by the Board. Substituted by No. 48 of 1926, s. 4. Amended by No. 49 of 1950, s. 3; No. 113 of 1965, s. 8.

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 two hundred dollars may be applied by the Board for the purposes of the Law Library.

Board may appoint and pay officers.

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.

Amended by No. 113 of 1965, s. 8; No. 92 of 1970, s. 3.

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 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 twenty-five dollars twenty cents.

10. (1) Subject to subsection (2) of this section, no person shall be articed to a practitioner of less than two years' standing.

Restrictions  
as to articed  
clerks.  
Repealed and  
re-enacted  
by No. 21 of  
1967, s. 2.  
Amended by  
No. 92 of  
1970, s. 4;  
No. 56 of  
1973, s. 5;  
No. 46 of  
1977, s. 3;  
No. 9 of  
1978, s. 2;  
No. 66 of  
1979, s. 3.

(2) A person may, subject in all other respects to the provisions of this Act, be articed to a practitioner of less than two years' standing if the practitioner is the Deputy Commonwealth Crown Solicitor in the State and is a barrister or solicitor or both—

- (i) of the High Court of Australia; or
- (ii) of the Supreme Court of a State of the Commonwealth, other than this State,

of not less than two years' standing.

(3) A practitioner—

- (a) shall not have articed to him more than two articed clerks at the same time except where the practitioner is the Crown Solicitor of the State or the Deputy Commonwealth Crown Solicitor in the State, in which case the practitioner shall not have articed to him more than seven articed clerks at the same time and also except where the practitioner is the Director of Legal Aid appointed under section eighteen of the Legal Aid Commission Act 1976, in which case the practitioner shall not have articed to him more than four articed clerks at the same time;
- (b) shall not take, have or retain an articed clerk—
  - (i) while the practitioner is suspended from practice or struck off the roll pursuant to Part IV of this Act; or

- (ii) while the practitioner ceases to practise as a practitioner on his own account in the State except where the practitioner is the Crown Solicitor of the State or the Deputy Commonwealth Crown Solicitor in the State or the Director of Legal Aid appointed under section eighteen of the Legal Aid Commission Act 1976.

(3a) The provisions in subsection (3) and subsection (3b) of this section relating to exceptions in respect of the Director of Legal Aid appointed under section eighteen of the Legal Aid Commission Act 1976 shall not continue in operation after the thirty-first day of December, 1983, but the expiry of those provisions shall not affect the previous operation thereof or the validity of any action taken under them.

(3b) There is an exception to subsection (1) of this section in respect of the Director of Legal Aid appointed under section eighteen of the Legal Aid Commission Act 1976 in that a person may, subject in all other respects to the provisions of this Act, be articulated to the Director if the Director is a practitioner of less than two years' standing but is a barrister or solicitor or both—

- (i) of the High Court of Australia; or

- (ii) of the Supreme Court of a State of the Commonwealth, other than this State

of not less than two years' standing.

(4) [*Repealed by No. 66 of 1979, s. 3.*]

(5) A person who in the year nineteen hundred and seventy-six or thereafter is admitted as a practitioner under paragraph (a) of subsection (2) of section fifteen of this Act having served only one year under articles shall not be entitled to practise as a practitioner on his own account unless and until he satisfies the Board that he has had at least twelve months' experience in the office of a practitioner practising on his own account or in the office of

the Crown Solicitor of the State, the Deputy Commonwealth Crown Solicitor in the State or the Director of Legal Aid appointed under section eighteen of the Legal Aid Commission Act 1976.

11. If a practitioner to whom an articulated clerk is articulated 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 articulated clerk as aforesaid.

Articles may be assigned in certain cases.

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.

13. (1) No articulated clerk shall, without the written consent of the practitioner to whom he is articulated, which consent shall be filed with the Board by the articulated clerk within fourteen days of its being granted, hold any office or engage in any employment other than as a *bona fide* articulated clerk to the practitioner to whom he is articulated for the time being or his partner.

Articled clerk not to be engaged in other employment without consent of practitioner to whom he is articulated. Repealed and re-enacted by No. 27 of 1958, s. 2. Amended by No. 36 of 1971, s. 4.

(2) Subject to the provisions of subsection (3) of this section the written consent of a practitioner shall not be given to an articulated clerk unless the hours of such other office or employment are outside the hours of between nine o'clock in the morning and five o'clock in the afternoon on those week days (excluding Saturdays, Sundays and public holidays) when the offices of legal practitioners are normally open to the public.

(3) Where, in the opinion of the Board, there are special circumstances and the written consent of the practitioner is obtained, the Board may determine that the provisions of subsection (2) of this section shall not apply in relation to an articulated clerk, and any such determination may be made conditional upon such requirements as the Board thinks fit which may include a requirement that the period of service under articles of clerkship is extended.

(4) Where a practitioner refuses to give his consent the articulated clerk has the right of appeal to the Board.

Preliminary examination not required of articulated clerks who have matriculated.

No. 37 of 1909, s. 6, incorporated as s. 13a in 1927 reprint; renumbered as s. 14 in 1949 reprint.

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 articulated clerks.

Service under articles to accord with Act and rules.

Added by No. 37 of 1948, s. 4 as s. 13b; renumbered as s. 14A 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.

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

Added by No. 37 of 1948, s. 4, as s. 13c; renumbered 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.  
Added by No. 37 of 1948, s. 4 as s. 13d; renumbered 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.

15. (1) No person shall be admitted as a practitioner unless he is a British subject of the age of twenty-one years or upwards.

Admission of practitioners. 57 Vict. 12. s. 14; renumbered as s. 15 in 1949 reprint. Repealed and re-enacted by No. 18 of 1966, s. 3. Amended by No. 21 of 1967, s. 3; No. 92 of 1970, s. 5.

(2) Subject to subsection (1) of this section, a person may be admitted as a practitioner if—

(a) he has—

(i) fulfilled all the requirements of the University of Western Australia for the taking of a degree in law at that University; or

(ii) such other qualification as in the opinion of the Board is substantially equivalent to that degree,

and has served for such term under articles of clerkship to a practitioner as the Board may prescribe and at any time during that term has passed such examinations as the Board may prescribe; or

(b) he has served for a term of five years under articles of clerkship to a practitioner as required by this Act and has at any time during that term passed such examinations as the Board may prescribe; or .

(c) he is a person who has been admitted and is entitled to practice in the Superior Courts of law in a place where at the time he is so admitted the system of jurisprudence administered therein was equivalent to or in the opinion of the Board was substantially equivalent to the system of

jurisprudence administered in this State and that person—

- (i) is possessed of such qualifications as in the opinion of the Board are substantially equivalent to those referred to in paragraph (a) or paragraph (b) of this subsection; or
  - (ii) has passed such examinations or served such term under articles of clerkship to a practitioner or both as the Board may in writing require in respect to that person; or
- (d) he is a person enrolled or deemed to have been enrolled as a solicitor pursuant to the Solicitors (Scotland) Act 1933 of the United Kingdom or that Act as amended from time to time, and has passed such examinations or served such term under articles of clerkship to a practitioner or both as the Board may in writing require in respect of that person.

Qualifications 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. Amended by No. 94 of 1972, s. 4 (as amended by No. 19 of 1973).

**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

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\* 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 practice as or engage in the practice of a legal practitioner, or be employed in the office of any legal practitioner, within five kilometres 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.

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.

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.

18. [Repealed by No. 113 of 1976, s. 6.]

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

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.

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.

Further qualifications for admission. 57 Vict. 12, s. 15; renumbered s. 20 in 1949 reprint. Amended by No. 4 of 1938, s. 5; No. 113 of 1963, s. 8; No. 18 of 1966, s. 4; No. 92 of 1970, s. 6; No. 113 of 1976, s. 7.

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

(a) [*Deleted by No. 92 of 1970, s. 6.*]

\* (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 such sum as the Board may prescribe; provided that this paragraph shall not apply to a person who seeks admission for the first time and who relies for qualification for admission on the provisions of paragraph (a) or paragraph (b) of subsection (2) of section fifteen of this Act.

Objection to admission. 57 Vict. 12, s. 18; renumbered s. 21 in 1949 reprint.

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: 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.

\* See section 83.

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

Admission by Full Court. 57 Vict. 12, s. 17; renumbered s. 22 in 1949 reprint.

23. Immediately after his admission every practitioner shall sign the Roll of Practitioners in the custody of the Principal 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 a Registrar of the Supreme Court shall be conclusive evidence thereof.

Practitioners on admission to sign roll. 57 Vict. 12, s. 18; renumbered s. 23 in 1949 reprint. Amended by No. 67 of 1979, s. 25.

Certificate of Registrar evidence.

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

Certificate of admission 57 Vict. 12, s. 19; renumbered s. 24 in 1949 reprint. Amended by No. 67 of 1979, s. 26.

PART IV.—SUSPENSION AND STRIKING OFF ROLL.

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—

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

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

25A. The Executive Director for the time being of the Law Society of Western Australia (Inc.) may, if so authorised by a resolution of the Council of that Society, make complaint in writing to the Board that a practitioner has been guilty of illegal or unprofessional conduct or of neglect or undue delay in the conduct of his professional work, and upon inquiry by the Board into such complaint the Society may appear and be heard.

Law Society may make a complaint against a practitioner. Added by No. 16 of 1960, s. 2. Amended by No. 66 of 1979, s. 4.

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.

Chairman may administer oath or affirmation. 57 Vict. 12, s. 22; renumbered s. 27 in 1949 reprint.

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

Effect of summons. 57 Vict. 12, s. 23; renumbered s. 28 in 1949 reprint.

28. Every summons issued by the Board and signed by the secretary, or other authorized 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.

Disobedience or non-observance how punishable.

Board to report to Court or to deal summarily with matter. Substituted by No. 37 of 1948, s. 8 for 57 Vict. 12, s. 24; renumbered s. 29 in 1949 reprint. Amended by No. 49 of 1950, s. 4; No. 113 of 1965, s. 8; No. 113 of 1976, s. 8; No. 67 of 1979, s. 27.

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, the Board may—

- (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 two thousand dollars; 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 taxing officer of the Supreme Court, for which costs the taxing officer shall give his allocatur; and
- (f) if it is satisfied on the evidence before it at such inquiry 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.

(1a) If upon such inquiry the Board is of opinion that the practitioner is not guilty of any illegal or unprofessional conduct or of neglect or undue delay but that nevertheless his conduct has given reasonable cause for the inquiry the Board may make such order as to payment of costs by him as it may think fit.

(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 re-admitted 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.

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

Report of  
Board con-  
clusive.  
57 Vict. 12,  
s. 25.;  
renumbered  
s. 30 in  
1949 reprint.  
Court to  
punish.

the roll such practitioner, and make such order as to the payment of costs by him as the Court may think fit.

Dismissal of complaint, costs and recovery thereof.  
57 Vict. 12, s. 28;  
renumbered s. 31 in 1949 reprint.  
Amended by No. 67 of 1979, s. 28.

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 taxing officer of the Supreme Court, for which costs the taxing officer 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 taxing officer'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;  
renumbered 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.

Practitioners struck off or suspended in other jurisdictions.  
Added by No. 113 of 1976, s. 9.

32A. A practitioner admitted to practice in Western Australia who is struck off the roll or suspended from practice in any other jurisdiction shall be liable upon the report of the Board to the Full Court to be struck off the roll or suspended from practice as the case may be.

Deprivation of practice in certain cases.  
57 Vict. 12, s. 28;  
renumbered s. 33 in 1949 reprint.  
Amended by No. 15 of 1963, s. 2.

33. (1) 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 applicant for re-admission has satisfied the Board that he is, in the opinion of the Board, a fit and proper person to be re-admitted and that the rules relating to re-admissions have been complied with.

(2) For the purposes of enabling the Board to inquire as to whether the applicant for re-admission is a fit and proper person to be so re-admitted, the Board may—

- (a) by summons require any person, who the Board or the applicant for re-admission desires to be so summoned, to attend before the Board as a witness and give evidence or to produce any documents in his possession or power that relates or relate to any matter in question at the inquiry;
- (b) examine any such witness on oath or affirmation and for that purpose the person acting as Chairman of the Board at the inquiry may administer oaths or affirmations.

(3) The provisions of section twenty-eight of this Act apply to a summons issued by the Board pursuant to this section.

**PART V—PRACTITIONERS' TRUST ACCOUNTS.**

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.

Part V  
repealed and  
re-enacted  
by No. 79  
of 1967, s. 6.

Trust  
moneys to  
be paid to  
a trust  
account.  
Re-enacted  
by No. 79 of  
1967, s. 6.

(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.

Banks not to be concerned as to the application of, or to have recourse against trust moneys.  
Re-enacted by No. 79 of 1967, s. 6.

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.

(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.

Practitioners to maintain books of account.  
Re-enacted by No. 79 of 1967, s. 6.

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.

Sanction for failure to comply with section 34 or 36.  
Re-enacted by No. 79 of 1967, s. 6.

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.

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, appoint and authorise an accountant who is a registered company auditor within the meaning ascribed to that expression by the Companies Act 1961, or who is a person approved by the Minister under the provisions of section fourteen G of the Land Agents Act 1921<sup>1</sup> (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.  
Re-enacted by No. 79 of 1967, s. 6.  
Amended by No. 36 of 1971, s. 5.

(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.

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

Examiner may require production of books and documents.  
Re-enacted by No. 79 of 1967, s. 6.  
Amended by No. 113 of 1976, s. 10.

<sup>1</sup> Now see s. 72 Real Estate and Business Agents Act 1978.

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.

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

Re-enacted by No. 79 of 1967, s. 6. Amended by No. 113 of 1976, s. 11.

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.

(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 this Act, guilty of conduct discreditable to an auditor, within the meaning of section nine of the Companies Act 1961.

Action on examiner's reports.  
Re-enacted by No. 79 of 1967, s. 6. Amended by No. 113 of 1976, s. 12.

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.

(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.

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.

Practitioners  
to make  
payments  
towards  
Solicitors'  
Guarantee  
Fund.  
Re-enacted  
by No. 79  
of 1967, s. 6.

(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.

Accountant's  
certificate.  
Added by  
No. 38 of  
1971, s. 6.  
Amended by  
No. 113 of  
1976, s. 13.

42A. (1) Every practitioner who is required to maintain a trust account shall when applying for the annual practice certificate deliver to the Board from an accountant who is a registered company auditor within the meaning ascribed to that expression by the Companies Act 1961, or who is a person approved by the Minister under the provisions of section fourteen G of the Land Agents Act 1921,<sup>1</sup> a certificate to the effect that the practitioner's books of account relating to his trust account have been kept in accordance with the rules, if any, relating to the keeping of trust accounts and that the practitioner has deposited to the credit of the Trust established under the provisions of the Legal Contribution Trust Act 1967, such moneys as are required to be deposited under that Act.

(2) If no or no satisfactory certificate is delivered to the Board in accordance with this section, the Board in its discretion may withhold the issue of the annual practice certificate.

(3) Every practitioner who claims not to be required to maintain a trust account shall prove that fact to the satisfaction of the Board, and pending such satisfaction the Board in its discretion may withhold the issue of the annual practice certificate.

[Sections 43 to 58 repealed by Act No. 79 of 1967, s. 6.]

<sup>1</sup> Now see s. 72 Real Estate and Business Agents Act 1978.

PART VA—CONTROL OF CERTAIN PRACTICES.

Heading  
Added by  
No. 59 of  
1969, s. 3.  
Amended by  
No. 52 of  
1970, s. 7.

58A. In this Part unless the contrary intention appears—

Interpreta-  
tion.  
Added by  
No. 59 of  
1969, s. 3.  
Amended by  
No. 52 of  
1970, s. 7;  
No. 56 of  
1973, s. 6.

“Board’s appointee” means a certificated practitioner appointed by the Board under subsection (1) of section fifty-eight G;

“practice” means, as the case requires, the practice of—

- (a) a practitioner in respect of whose bank account or accounts an order, other than an order for revocation, has been made under section fifty-eight B or fifty-eight C;
- (b) a deceased practitioner in respect of whose trust account an order has been made under section fifty-eight C;
- (c) a practitioner in respect of whom an inquiry is authorised under section fifty-eight G; or
- (d) a practitioner in respect of whom, or in respect of whose trust account, an order has been made under section fifty-eight I;

“section” means a section of this Act;

“supervising solicitor” means, as the case requires, a certificated practitioner appointed by the Board—

- (a) under section fifty-eight D; or
- (b) pursuant to the powers conferred on the Board by paragraph (a) of section fifty-eight J,

to conduct a practice;

“the Trust” means the Legal Contribution Trust established under the Legal Contribution Trust Act 1967.

Restraint  
on bank  
accounts.  
Added by  
No. 59 of  
1969, s. 3.

**58B.** (1) Where a Judge, on the application of the Board, is satisfied that there are reasonable grounds for believing—

- (a) that there is a deficiency in any trust account of a practitioner; or
- (b) that there has been undue delay on the part of a practitioner in properly paying or applying trust moneys to or on behalf of a person or persons for whose use or benefit they have been received,

the Judge may make an order directed to the practitioner and his bankers and their respective servants and agents restraining dealings in all or any of the bank accounts of the practitioner, subject to such terms and conditions as the Judge thinks fit.

(2) A Judge may, on the application of the Board, the practitioner, or any person interested, by further order revoke or vary an order made under subsection (1) of this section.

(3) If an order, other than an order for revocation, is made under subsection (1) or (2) of this section, the practitioner and his bankers and their respective servants and agents shall give effect to the order according to its tenor.

Control of  
trust  
moneys by  
trust.  
Added by  
No. 59 of  
1969, s. 3.  
Amended by  
No. 82 of  
1970, s. 2.

**58C.** (1) Where a Judge is satisfied, on the application of the Board, that there is a deficiency in any trust account of a practitioner, or that a sole practitioner has died the Judge may order that the Trust—

- (a) take possession of the moneys constituting the balance of the account, or constituting the trust account of the deceased practitioner, and amalgamate them with moneys deposited by the practitioner, or the deceased practitioner, to the credit of the Trust under section eleven of the Legal Contribution Trust Act 1967;



- (b) deposit the amalgamated moneys in a separate account in the name of the Trust; and
- (c) deal with those moneys according to law.

(2) If an order is made under subsection (1) of this section the practitioner and his bankers and their respective servants and agents, or the former servants, agents, and bankers of the deceased practitioner, and the servants and agents of those former bankers, shall permit the Trust to give effect to the order according to its tenor.

58D. (1) If an order other than an order for revocation is made under section fifty-eight B or fifty-eight C, the Board, during the currency of the order—

Special powers of Board.  
Added by No. 59 of 1969, s. 3.  
Amended by No. 92 of 1970, s. 10; No. 56 of 1973, s. 6.

- (a) may, on such terms and conditions as to remuneration and indemnity as the Board thinks fit, appoint a certificated practitioner to be supervising solicitor of the practice;
- (b) may authorise the Trust to advance money, out of the Solicitors' Guarantee Fund established by section sixteen of the Legal Contribution Trust Act 1967, to the supervising solicitor for the purpose of carrying on the practice and, in the case of deficiency, to the practitioner for his sustenance; and
- (c) may determine what, if any, proportion of any profit costs recovered on account of the practitioner, or the personal representative of the deceased practitioner, shall be paid to him, or the personal representative and what proportion shall be paid to the Trust towards the expenses and remuneration of the supervising solicitor and for re-imburement of advances made out of the Solicitors' Guarantee Fund.

(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.

Duties of  
supervising  
solicitor.  
Added by  
No. 59 of  
1969, s. 3.  
Amended by  
No. 92 of  
1970, s. 11;  
No. 56 of  
1973, s. 6.

58E. (1) The supervising solicitor shall conduct the practice for the purpose of concluding or disposing of matters commenced but not concluded on behalf of clients of the practice and, where necessary, for the purpose of disposing of, or dealing with, documents relevant to those matters and, in the case of the practice of a deceased practitioner, shall carry on the practice until it can otherwise be dealt with according to law.

(2) The supervising solicitor may, on production of his instrument of appointment—

(a) require—

(i) the practitioner to whom the appointment relates, or any of his clerks, servants, or agents, or in the case of a deceased practitioner, his personal representative or any of the former clerks, servants, or agents of the deceased practitioner, to produce to the supervising solicitor any books, files, papers, or documents relating to the practice that, in the opinion of the supervising solicitor, may be reasonably necessary for the purposes of conducting the practice; and

(ii) the manager or principal officer of a bank in which the practitioner or deceased practitioner to whom the appointment relates has or had deposited money, notwithstanding any rule of law to the contrary, to disclose every account of that practitioner that, in the opinion of the supervising solicitor, may be relevant to the conduct of the practice and to permit the making of a copy or extracts of any such account;

(b) enter upon any premises of the practitioner to whom the appointment relates, or, in the case of a deceased practitioner, his former premises, and take possession of all books,

files, papers, documents, and other things relating to the practice, and that, in the opinion of the supervising solicitor, may be relevant to or necessary for the conduct of the practice.

**58F.** If an order is made under section fifty-eight C—

Payment of moneys out of separate account. Added by No. 59 of 1969, s. 3.

- (a) the Trust may, on the certificate of the supervising solicitor, pay to him or as he directs in the certificate, out of the moneys deposited in the separate account under the order, such amount or amounts as are specified in the certificate, without enquiring as to, or being liable in respect of, the correctness of the certificate or the application of any money paid on the certificate; and
- (b) a Judge may, on the application of the Board, the Trust, or any person interested, give such directions as he thinks fit for the payment by the Trust of any part of the moneys deposited in the separate account under the order.

**58G.** (1) The Board may at any time appoint a certificated practitioner to inquire whether or not another practitioner is, for any reason, incapable of properly conducting his practice, and to report thereon to the Board.

Power of Board to appoint certificated practitioner to inquire into and report on practice of another. Added by No. 56 of 1973, s. 6.

(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) The Board's appointee may, upon production of his instrument of appointment, require—

- (a) the practitioner to whom the appointment relates, or any of his clerks, servants, or agents, to produce to the Board's appointee any books, files, papers, or documents relating to the practice that, in the opinion of the Board's appointee, may be reasonably

necessary for the purposes of the inquiry;  
and

- (b) the manager or principal officer of a bank in which the practitioner to whom the inquiry relates has deposited money, notwithstanding any rule of law to the contrary, to disclose every account of that practitioner that, in the opinion of the Board's appointee, may be relevant to the inquiry and to permit the making of a copy or extract of any such account.

(4) A person who, being required to do anything pursuant to subsection (3) 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 Board's appointee in the exercise of his powers or hinders or obstructs the Board's appointee, or any person employed by him, in the performance of his duties commits an offence.

Penalty: Two hundred dollars.

Board may  
apply to  
Judge for  
an order.  
Added by  
No. 58 of  
1973, s. 6.

58H. On receipt of the report of the Board's appointee the Board shall consider it and may where the circumstances so require apply to a Judge for an order under section fifty-eight I.

Power of  
Judge.  
Added by  
No. 58 of  
1973, s. 6.

58I. (1) Where a Judge, on the application of the Board, notice whereof shall be given to the practitioner, is satisfied that there are reasonable grounds for believing that a practitioner is, for any reason, incapable of properly conducting his practice, the Judge may—

- (a) suspend the practitioner from practising for such period as may be specified in the order;
- (b) restrain the practitioner and his bankers and their respective servants and agents from dealing in all or any of the bank accounts of the practitioner, subject to such terms and conditions as the Judge thinks fit;

- (c) authorise the Board to appoint a supervising solicitor;
- (d) authorise the Board to suspend the practitioner from practising until further notice;
- (e) make such further or other orders as the Judge thinks fit.

(2) Where the Judge authorises the Board to appoint a supervising solicitor pursuant to the powers conferred by subsection (1) of this section the Judge—

- (a) may order that the supervising solicitor be empowered to withdraw moneys from any bank account of the practitioner; and
- (b) may make like orders to those which may be made under section fifty-eight C.

(3) A Judge may, on the application of the Board, the practitioner, or any person interested, notice whereof shall be given, by further order revoke or vary an order made under the provisions of subsections (1) and (2) of this section.

(4) The practitioner and his bankers and their respective servants and agents shall give effect to an order made under this section according to its tenor.

(5) If an order is made under paragraph (b) of subsection (2) of this section, paragraphs (a) and (b) of section fifty-eight F apply in relation thereto.

58J. Where an order is made under subsection (1) of section fifty-eight I—

- (a) the Board has, with such modifications as are necessary, like powers to those conferred by paragraphs (a), (b) and (c), of section fifty-eight D;
- (b) a supervising solicitor appointed pursuant to that order and those powers has like powers and duties to those conferred and

Effect of certain orders.

Added by No. 58 of 1973, s. 6.

imposed on a supervising solicitor by section fifty-eight E, including carrying on the practice until it can be otherwise dealt with according to law.

Offence.  
Added by  
No. 56 of  
1973, s. 6.

**58K.** A person who, being required to do anything by a supervising solicitor pursuant to the powers conferred on the supervising solicitor by this Act, without lawful excuse of which the proof lies on him, refuses or fails to do the thing required or who hinders or obstructs the supervising solicitor in the exercise of his powers or hinders or obstructs the supervising solicitor, or any person employed by him, in the performance of his duties commits an offence.

Penalty Two hundred dollars.

#### PART VI.—SOLICITORS' COSTS.

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

**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.

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; renumbered 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 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.

Avoidance of agreement in certain cases.  
57 Vict. 12, s. 31; renumbered s. 61 in 1949 reprint.

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

Security for costs  
57 Vict. 12, s. 32; renumbered s. 62 in 1949 reprint.

62A. (1) Every practitioner employed by the Crown in a salaried capacity, shall while acting in his official capacity as a practitioner so employed, be deemed to be a certificated practitioner.

Costs where practitioner employed by Crown in a salaried capacity.  
Added by No. 18 of 1960, s. 3.

(2) In all actions, causes, suits or matters of whatever kind in which a practitioner so employed acts, performs any work or renders any services in his official capacity for—

- (a) the Crown, whether in right of this State, the Commonwealth, or any other State of the Commonwealth;

- (b) an agent of the Crown;
- (c) a body, whether corporate or not, constituted by or under any Act, the whole or main portion of the revenue of which body is provided, pursuant to an Act, from the Consolidated Revenue Fund or money appropriated by Parliament at the time when the work is or the services are done, rendered or commenced; or
- (d) a party who is or may be indemnified, or entitled to be indemnified, by the Crown, or by an agent of the Crown, or by a body referred to in paragraph (c) of this subsection,

the party for whom the practitioner so acts is entitled to and may recover counsel fees, costs charges, disbursements and other remuneration in respect of any work performed or services rendered by the practitioner for the party in the same manner and to the same extent as if the practitioner so employed were a certificated practitioner in private practice engaged by that party.

Act not to validate purchase of client's interest, nor agreement for payment only in event of success.  
57 Vict. 12, s. 33;  
renumbered 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;  
renumbered s. 64 in 1949 reprint.  
Amended by No. 79 of 1967, s. 7.

64. (1) The Judges, or a majority of the Judges, and the Board may, from time to time, make a general order 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.

65. No practitioner shall sue for the recovery of any services, fee, charges, or disbursements until a bill of the same, being either a bill containing detailed items or for a lump sum, signed by such practitioner, shall have been served upon the party charged therewith. Provided that at any time within one month from the service of a lump sum bill as aforesaid the party charged may require the practitioner to serve upon him in lieu thereof a bill containing detailed items, and thereupon the lump sum bill shall be of no effect.

Signed bill of costs to be served before suit. Repealed and re-enacted by No. 113 of 1976, s. 14.

66. Except in cases where there is a written agreement as to costs, as hereinbefore provided, any person charged with an itemised bill of costs may have the same taxed by the taxing officer of the Supreme Court, upon first serving upon the practitioner, within one month from the service of such itemised bill a written notice of his wish to have the same taxed.

Party charged may give notice of intention to tax. Repealed and re-enacted by No. 113 of 1976, s. 15. Amended by No. 67 of 1979, s. 29.

67. Within one month after service of the notice aforesaid the practitioner shall lodge the bill of costs with the taxing officer of the Supreme Court. Provided that within the month aforesaid the practitioner may serve upon the party charged an amended bill of costs, and in such case that 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.

Bill of costs to be lodged with taxing officer. Repealed and re-enacted by No. 113 of 1976, s. 16. Amended by No. 67 of 1979, s. 29.

Time and place of taxation. Repealed and re-enacted by No. 113 of 1976, s. 17. Amended by No. 67 of 1979, s. 29.

68. Upon the bill of costs being lodged the taxing officer shall appoint a date, time and place for the taxation of the bill of costs and the party lodging the same shall serve on the party charged therewith at least seven days before the time appointed notice of the appointment and a copy of the bill of costs.

Interpretation, etc. Added by No. 113 of 1976, s. 18. Amended by No. 67 of 1979, s. 29.

68A. For the purposes of sections sixty-five to sixty-eight, inclusive, of this Act—

- (a) a reference to the party charged includes a reference to his executor or administrator as the case may be;
- (b) a reference to the practitioner includes a reference to his executor, administrator or assignee as the case may be;
- (c) service of any notice or document may be effected by delivery to the person to be served or by being left at or sent by post addressed to him at his last known place of business or residence;
- (d) the taxing officer in his discretion may enlarge the time prescribed for the taking of any step therein provided for, and may give direction for substituted service of any notice or document required to be served.

Costs of taxation. Repealed and re-enacted by No. 113 of 1976, s. 19. Amended by No. 67 of 1979, s. 29.

69. The costs of and incidental to such taxation shall be in the discretion of the taxing officer.

Master's allocatur; interest; amount, how recovered. 57 Vict. 12, s. 40; renumbered s. 70 in 1949 reprint. Amended by No. 67 of 1979, s. 30.

70. The taxing officer 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.

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 taxing officer under the last preceding section.

Review of taxation. 57 Vict. 12, s. 41; renumbered s. 71 in 1949 reprint. Amended by No. 67 of 1979, s. 30.

72. [Repealed by No. 113 of 1976, s. 20.]

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.

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

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; renumbered 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; renumbered s. 75 in 1949 reprint.

## PART VII.—MISCELLANEOUS.

Only certified practitioners to act in all legal proceedings in Court. 57 Vict. 12, s. 45 amended by No. 48 of 1926, s. 6; renumbered s. 76 in 1949 reprint.

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 State 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.\*

Exception of parties in person.

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. 8; renumbered s. 78 in 1949 reprint. Amended by No. 113 of 1976, s. 21.

78. Nothing in the last preceding section contained shall extend to make any person liable to any penalty if such person satisfies the Court or a Judge thereof, as the case may be, that he has not

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

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.

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 respect as a certificated practitioner in any matter or proceeding, civil or criminal, before any court; or
- (4) except in accordance with rules made under section six of this Act, 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,

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. Amended by No. 4 of 1858, s. 6; No. 113 of 1976, s. 22; No. 66 of 1979, s. 5.

or hold himself forth as practising with any person other than a certificated practitioner; or

- (6) without the written consent of the Board and subject to such conditions, as to period or otherwise, as the Board shall think fit, in any manner employ or remunerate in connection with his practice as a legal practitioner any person who, to the knowledge of the practitioner—
- (a) has been struck off the roll and who has not been re-admitted or who is suspended from practice under this Act; or
- (b) is or was a clerk to a solicitor and who has been convicted of any fraudulent conduct in respect of any money or property belonging to or held or controlled by the solicitor by whom he is or was employed or any client of such solicitor.

No unqualified person to hold himself out as a practitioner.  
57 Vict. 12, s. 50; renumbered s. 80 in 1949 reprint.

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.

Offences against this Act or the rules, how punishable.  
57 Vict. 12, s. 51; renumbered s. 81 in 1949 reprint. Amended by No. 4 of 1958 s. 7, No. 113 of 1965, s. 8; No. 113 of 1976, s. 23.

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 in a penalty not exceeding two thousand dollars by the said Court or a Judge thereof in Chambers on the motion of the Board.

82. [*Repealed by No. 113 of 1976, s. 24.*]

83. 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 paragraph (b) of section sixteen, paragraph (b) of section twenty or section thirty-three of this Act.

Appeals.  
Repealed  
and  
re-enacted  
by No. 113 of  
1976, s. 25.

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.

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

Section 2.

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.

† See now the Schedule to Interpretation Act 1918.

