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WESTERN AUSTRALIA

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**LEGAL PRACTITIONERS ACT 1893**

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WESTERN AUSTRALIA

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## LEGAL PRACTITIONERS ACT 1893

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.

### Short title

1. This Act may be cited as the *Legal Practitioners Act 1893*<sup>1, 1a, 1b</sup>.

[Section 1 inserted by No. 65 of 1987 s.4.]

### Repeal

- [2. Omitted under the *Reprints Act 1984* s.7 (4) (f).]

### Interpretation

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

“**Board**” means The Legal Practice Board constituted under section 4;

**“certificated practitioner”** means a practitioner holding a valid and current practice certificate in respect of which the practitioner has paid the prescribed annual fee;

**“Complaints Committee”** means the Legal Practitioners Complaints Committee established under section 25;

**“Disciplinary Tribunal”** means the Legal Practitioners Disciplinary Tribunal established under Part IV;

**“Law Complaints Officer”** means the person holding or acting in the office of that name established under section 26;

**“practising on their own account”** in relation to a practitioner means carrying on business consisting of the provision of professional services as a practitioner, and not as an employee, whether —

(a) alone; or

(b) together with one or more other practitioners;

**“practitioner”** shall mean a person admitted and entitled to practise as a barrister and solicitor of the Supreme Court of Western Australia, for the purposes of Part IV includes a person who is entitled by virtue of a law of the Commonwealth to perform in Western Australia the functions of a barrister or solicitor, for the purposes of Part V includes a firm of practitioners of which the person is a member and for the purposes of Part IV and Part VA includes a person who has been a practitioner;

**“record”** includes any book, account, file, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

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

**“the tribunal”** means the Disciplinary Tribunal;

**“trust account”** means a bank account maintained within the State, for the purpose of setting apart, and dealing with, trust moneys under Part V;

**“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.

*[Section 3 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; No. 48 of 1992 ss.4, 30 and 55.]*

**PART I — THE LEGAL PRACTICE BOARD**

[*Heading to Part I inserted by No. 48 of 1992 s.5.*]

**Constitution of The Legal Practice Board**

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

- (a) The Attorney General;
- (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) 9 practitioners of at least 3 years' standing and practice in the State, who shall 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 may be prescribed by the rules.

(1a) The body previously known as The Barristers' Board, as constituted under subsection (1) prior to the coming into operation of the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992*<sup>1</sup> is preserved and continued —

- (a) under the name The Legal Practice Board, as the body for the purposes of subsection (1); and
- (b) so that its identity and its rights and obligations are not affected by that amendment of the subsection.

(1b) The members of The Barristers' Board shall continue to hold office as members of The Legal Practice Board, but where such a member was elected under subsection (1) (d) or appointed under subsection (2) that member shall do so only for the balance of the term for which he or she was so elected or appointed as a member of The Barristers' Board.

(2) If 9 practitioners are not elected as members of the Board at any annual election or if, for any other reason, there are at any time fewer than 9 elected members of the Board, the Board may appoint one or more practitioners who would be eligible for election to complete the Board.

(2a) Any 4 members of the Board form a quorum.

(3) The chairman and the deputy chairman of the Board for the time being shall be appointed by the Board from amongst its members, but in the absence of both the chairman and the deputy chairman the members present at any meeting may elect a chairman for such meeting.

(4) 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) Subject to the chairman, or in the absence of the chairman, a person appointed to be the deputy chairman of the Board has and may exercise all the functions of the chairman of the Board.

*[Section 4 amended by No. 9 of 1955 s.2; No. 56 of 1973 s.3; No. 113 of 1976 s.3; No. 90 of 1981 s.2; No. 48 of 1992 s.6.]*

**Board may sue, prosecute, and defend**

5. The Board may, in its own name, by its secretary or any person thereunto authorized 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**

6. (1) The Board may from time to time make all such rules as to 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 articed 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 16;
- (cb) for prescribing fees to be payable to the Board —
  - (i) under this Act, otherwise than under the scale referred to in subsection (2); or
  - (ii) in respect of services provided, or to be provided, by the Board to practitioners or persons;
- (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 the articles may be served by an articted clerk with a practitioner other than the practitioner to whom that person is articted, and the conditions of such service;
- (e) for prescribing in relation to articted clerks who have served in the armed forces at any time since 3 September 1939, and whose articles were registered before enlistment therein, what period of service (not exceeding 12 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 2 years required by section 15 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;
- (ea) for requiring, and encouraging the maintenance of, proper professional standards in the practice of the law;
- (f) for regulating the supervision and investigation of the conduct of practitioners and of the practice of the law under this Act, including 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 to in section 79 (4) with persons other than certificated practitioners, or their executors or administrators;
- (g) for regulating the meetings and proceedings of the Board;

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- (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;
- (gb) for regulating the processes and proceedings to be used in relation to conciliation and the negotiation of settlements, and for securing the attendance of persons and the production of records or other things, for the purposes of section 28B;
- (gc) for regulating all matters relevant to the functions of the Complaints Committee and, subject to the concurrence of the chairman of the Disciplinary Tribunal, to the convening and functions of the Disciplinary Tribunal;
- (h) for regulating the issue, review and renewal or refusal of practice certificates, the conditions to which such certificates may be made subject, and the fees to be charged;
- (i) prescribing all matters and things that are necessary or convenient to be prescribed for the better administration of this Act, other than Divisions 1 and 2 of Part VI; and
- (j) generally, for carrying into effect the objects of this Act.

(1a) Subject to subsection (1b), 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 articled clerk with a practitioner other than the practitioner to whom he is articled 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) shall not continue in operation after 31 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), 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) Subject to section 62A, a practice certificate is required to be held by every practitioner —

- (a) engaged in the practice of law in Western Australia, whether or not as an employee; or
- (b) prepared, or purporting to be prepared, to be retained for reward in the practice of law in the State, otherwise than as a practitioner merely seeking a position as an employee.

(4) A practice certificate —

- (a) if issued on application by a certificated practitioner —
  - (i) takes effect on 1 July next succeeding the expiry of the current certificate held by that practitioner; and
  - (ii) subject to this Act, remains in force for 12 months;
- (b) if issued on application by a person other than a certificated practitioner —
  - (i) takes effect on the date on which it is issued, or on such earlier date as is determined by the Board; and

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- (ii) subject to this Act, remains in force until 30 June next succeeding.

(5) A certificated practitioner shall apply for the issue of a further practice certificate —

- (a) by such date as may be prescribed for applications; or
- (b) prior to the date of expiry of the current certificate,

whichever is the earlier date, unless that practitioner has satisfied the Board that he or she is no longer engaged in the practice of law in Western Australia and is not prepared, and does not purport to be prepared, to be retained for reward in the practice of law in the State.

(6) Where a practitioner has not held a practice certificate, or been deemed to do so, during the 5 years preceding the application, the Board may issue a practice certificate subject to conditions or may withhold the issue of a practice certificate until satisfied as to the current fitness and competence of the applicant to practise in Western Australia, and if not so satisfied shall refuse to issue a practice certificate.

(7) A practitioner may appeal to the Supreme Court against a decision of the Board under subsection (6) to refuse to issue a practice certificate.

*[Section 6 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; No. 42 of 1990 s.4; No. 48 of 1992 ss.7, 31 and 55.]*

**Property vested in Board**

**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.

*[Section 6A inserted by No. 4 of 1958 s.3.]*

**Application of funds**

**7.** The money received by the Board under this Act shall be applied by the Board for the purposes of this Act, which include the administration and enforcement of regulations or rules made under this Act, and for the provision and maintenance of the Law Library.

*[Section 7 inserted by No. 48 of 1992 s.55.]*

**Accounts**

**7A.** (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.

(2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

*[Section 7A inserted by No. 77 of 1987 s.3.]*

**Audit**

**7B.** The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

*[Section 7B inserted by No. 77 of 1987 s.3.]*

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**Annual report**

**7C.** (1) The Board shall on or before 31 December in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.

(2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

*[Section 7C inserted by No. 77 of 1987 s.3.]*

**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**

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

- (a) satisfied the Board that he or she is of good fame and character, and of the age of 16 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 fee prescribed by the rules.

*[Section 9 amended by No. 113 of 1965 s.8; No. 92 of 1970 s.3; No. 90 of 1981 s.3; No. 42 of 1990 s.5; No. 48 of 1992 s.55.]*

**Restrictions as to articled clerks**

**10.** (1) Subject to subsection (2) and subsection (3), no practitioner shall take, have or retain an articled clerk unless that practitioner is of not less than 2 years' standing and is an individual practising on his or her own account.

(2) The Board may, in writing and subject to such conditions as are there specified, permit a person to be articled to a practitioner, notwithstanding that the practitioner is of less than 2 years' standing as a practitioner or practises otherwise than on his or her own account.

(3) A practitioner who —

- (a) is the Crown Solicitor of the State;

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- (b) is Director of Legal Aid, appointed under section 18 of the *Legal Aid Commission Act 1976*;
- (c) is authorized to act in the name of the Australian Government Solicitor, under section 55E (4) of the *Judiciary Act 1903* of the Commonwealth; or
- (d) is the Regional General Counsel of the Australian Securities Commission in Western Australia,

may take, have and retain an articled clerk.

(4) No person, other than an individual referred to in subsection (3), shall take, have or retain more than 2 articled clerks at any one time.

(5) Where a practitioner —

- (a) ceases to be a person practising on his or her own account;
- (b) is suspended from practice; or
- (c) is struck off the Roll of Practitioners,

that person shall not take, have or retain any articled clerk.

[*Section 10 inserted by No. 48 of 1992 s.32.*]

**Articles may be assigned in certain cases**

11. If a practitioner to whom an articled clerk is articled shall, before the expiration of the term of such clerk's service, die, be incapacitated by reason of mental disability, be suspended from practice, be struck off the Roll of Practitioners, or cease to practise in Western Australia on their own account, or where for any other reason the Board gives consent, 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.

[Section 11 amended by No. 48 of 1992 s.55.]

### **Articles to be under seal and registered**

**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.

### **Articled clerk not to be engaged in other employment without consent of practitioner with whom the articles are served**

**13.** (1) No articulated clerk shall, without the written consent of the practitioner with whom the articles are served, which consent shall be filed with the Board by the articulated clerk within 14 days of its being granted, hold any office or engage in any employment other than as a *bona fide* articulated clerk to the practitioner with whom the articles are served for the time being or a partner of that practitioner.

(2) Subject to the provisions of subsection (3) 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 9 a.m. and 5 p.m. 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) 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

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requirement that the period of service under articles of clerkship is extended.

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

*[Section 13 inserted by No. 27 of 1958 s.2; amended by No. 36 of 1971 s.4; No. 48 of 1992 s.55.]*

**Preliminary examination not required of articulated clerks who have matriculated**

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.

*[Section 14 amended by No. 37 of 1909 s.6.]*

**Service under articles to accord with Act and rules**

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

*[Section 14A inserted by No. 37 of 1948 s.4.]*

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

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

*[Section 14B inserted by No. 37 of 1948 s.4; amended by No. 48 of 1992 s.55.]*



**Cancellation of articles**

**14C.** (1) Upon the application of an articed clerk, or of the practitioner to whom a clerk is articed, the Board may cancel the articles of such clerk upon such terms as the Board may see fit.

(2) 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.

*[Section 14C inserted by No. 37 of 1948 s.4; amended by No. 48 of 1992 s.55.]*

**PART III — ADMISSION OF PRACTITIONERS**

**Admission of practitioners**

15. (1) No person shall be admitted as a practitioner unless he or she is of the age of 21 years or upwards.

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

(a) 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) has served for a term of 5 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) is a person who has been admitted and is entitled to practise in the Superior Courts of law in a place where at the time that person was there 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); 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) 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.

[Section 15 inserted by No. 18 of 1966 s.3; amended by No. 21 of 1967 s.3; No. 92 of 1970 s.5; No. 90 of 1981 s.4; No. 48 of 1992 s.55.]

### **Qualifications of managing clerks for admission as practitioners**

16. Any person who —

- (a) shall have completed or may complete the term of 10 years as a clerk in the office of a practitioner or practitioners practising in Western Australia, and shall have been for at least 5 of such 10 years employed in the capacity of a managing clerk in such office or offices; and
- (b)<sup>2</sup> shall have obtained from the Board a certificate to the effect that the person is, in the opinion of the Board (whose decision shall be final), possessed of the qualifications required under this Act, and a fit and proper person to be admitted a practitioner; and

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- (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.

*[Section 16 amended by No. 94 of 1972 s.4 (as amended by No. 83 of 1973); No. 48 of 1992 ss.24, 33 and 55.]*

**Restrictions on entitlement to practise**

**16A.** (1) A practitioner admitted under section 15 (2) (a) or 15 (2) (b) shall not —

- (a) be entitled to practise; or
- (b) practise,

on his or her own account until completing a term of 12 months as an employed practitioner in the office of a practitioner authorized by this Act to take, have and retain an articled clerk.

(2) Where a person is admitted as a practitioner under section 15 (2) (c) or 15 (2) (d) the Board may, in writing, require that person to complete, after being admitted, a term of 12 months as an employed practitioner in the office of a practitioner authorized by this Act to take, have and retain an articled clerk, and a person so required shall not —

- (a) be entitled to practise; or
- (b) practise,

on his or her own account until that requirement has been complied with to the satisfaction of the Board.

(3) A practitioner who —

- (a) is bankrupt; or

- (b) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors,

shall not be entitled to practise unless the consent of the Board, which may be made subject to conditions, is first obtained.

[Section 16A inserted by No. 48 of 1992 s.34.]

### **Power of The Legal Practice Board to make rules**

17. The Board may from time to time make, alter, vary, or repeal any general rule or rules under which the certificate as to the qualifications and fitness for admission of a person to be admitted a practitioner referred to in section 16 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 the application as to such Board may seem expedient.

[Section 17 amended by No. 37 of 1909 s.3; No. 48 of 1992 ss.25 and 55.]

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

### **Power of The Legal Practice Board to dispense with part of term**

19. (1) The Board may, in its discretion, and on being satisfied that any applicant shall have *bona fide* completed the term of 3 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 3 years of the term of 10 years prescribed in paragraph (a) of section 16.

(2) For the purposes of subsection (1), the term of 3 years or any part thereof shall be exclusive of the term of 5 years prescribed in paragraph (a) of section 16 as the term during which the applicant shall have been employed as a managing clerk.

*[Section 19 amended by No. 37 of 1909 s.5; No. 48 of 1992 ss.26 and 55; No. 73 of 1994 s.4.]*

### **Further qualifications for admission**

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

*[(a) deleted]*

- (b)<sup>2</sup> satisfied the Board, and obtained from them a certificate, that the person 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 a notice of 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, except in the case of a person who seeks admission for the first time and who relies for qualification for admission on the provisions of section 15 (2) (a) or (b).

*[Section 20 amended by No. 4 of 1958 s.5; No. 113 of 1965 s.8; No. 18 of 1966 s.4; No. 92 of 1970 s.6; No. 113 of 1976 s.7; No. 48 of 1992 s.55.]*

**Objection to admission**

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

(2) A notice, stating the grounds of such objection, shall be lodged in the Supreme Court 7 days at least before the day on which the application for admission is made.

*[Section 21 amended by No. 48 of 1992 s.55.]*

**Admission by Full Court**

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

(2) Where an applicant for admission as a practitioner is admitted to practice as a barrister or solicitor, or as a barrister and solicitor, of a superior court of —

- (a) another State or of a Territory;
- (b) the Federal Court of Australia; or
- (c) the High Court of Australia,

the application for admission may be made by counsel on behalf of the applicant without personal attendance by the applicant at the hearing of the application.

*[Section 22 amended by No. 48 of 1992 s.35.]*

**Practitioners on admission to sign roll**

23. (1) Subject to any rule which may be made under subsection (2), every practitioner shall, immediately after being

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admitted, sign the Roll of Practitioners in the custody of the Principal Registrar of the Supreme Court.

(2) The Supreme Court may make rules providing for the manner in which that person may —

- (a) make oath or affirmation; and
- (b) provide a signature to the Roll of Practitioners,

where, pursuant to section 22 (2), a person is admitted as a practitioner without personal attendance as applicant at the hearing of the application.

(3) The Roll of Practitioners 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.

*[Section 23 amended by No. 67 of 1979 s.25; No. 48 of 1992 s.36.]*

**Certificate of admission**

**24.** Every person who is admitted as a practitioner shall be entitled to obtain from a Registrar of the Supreme Court a certificate of that admission, in such form as may be prescribed by the rules.

*[Section 24 amended by No. 67 of 1979 s.26; No. 48 of 1992 s.55.]*



**PART IV — PROFESSIONAL CONDUCT AND DISCIPLINE**

*[Heading to Part IV inserted by No. 48 of 1992 s.8.]*

***Division 1 — Inquiry as to complaints***

*[Heading to Division 1 inserted by No. 48 of 1992 s.8.]*

**The Complaints Committee**

**25.** (1) There shall be established a committee, to be known as the Legal Practitioners Complaints Committee, the functions of which are —

- (a) to supervise the conduct of practitioners and the practice of the law;
- (b) to receive complaints from —
  - (i) the Attorney General;
  - (ii) the Board;
  - (iii) the Executive Director of the Law Society of Western Australia (Inc.), in respect of matters where the making of the complaint has been authorized by a resolution of the Council of that Society;
  - (iv) any practitioner; or
  - (v) any client of a practitioner or other complainant, or subject to section 27 (1) (d) any other person on behalf of a complainant, the complainant being a person who has or had a direct personal interest in the matters alleged in the complaint,

as to any illegal or unprofessional conduct on the part of any practitioner, whether occurring before or after

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admission as a practitioner, or as to any neglect, or any undue delay, in the course of the practice of the law, alleged as giving grounds for complaint;

(c) to inquire into such complaints and, where the committee so determines whether for cause or not and whether the committee has received a complaint or not, any —

(i) conduct on the part of a practitioner; or

(ii) matters relating to the practice of the law,

for the purpose of determining whether it may constitute illegal or unprofessional conduct, or neglect, or undue delay in the course of the practice of the law;

(d) where appropriate —

(i) to conciliate between a practitioner and a complainant or other person affected by the conduct of the practitioner; or

(ii) to refer a matter for conciliation by the Law Society of Western Australia (Inc.) or another appropriate person or body;

(e) with the consent of the practitioner, to exercise the summary professional disciplinary jurisdiction conferred by section 28A;

(f) where appropriate, and whether or not it has conducted an enquiry, to institute —

(i) professional disciplinary proceedings against a practitioner before the tribunal; or

(ii) proceedings before the Supreme Court;

- (g) to supervise and direct the Law Complaints Officer in the performance of the functions of that officer; and
- (h) to comment upon, and make recommendations in respect of, this Act and the rules made under this Act in so far as they may affect the functions of the committee.

(2) The Complaints Committee shall consist of the following members —

- (a) a chairman and not less than 6 other practitioners appointed by the Board from amongst its membership from time to time; and
- (b) not less than 2 other persons as representatives of the community, none of whom shall be a person who is or has been a practitioner.

(3) Each member of the Complaints Committee who is to hold office as a representative of the community shall —

- (a) be a person appointed as such by the Attorney General, after consultation with the Minister responsible for consumer affairs;
- (b) hold the office, subject to this Act, for such term of not more than 3 years as may be specified in the instrument of appointment; and
- (c) be eligible, subject to subsection (4), to be re-appointed.

(4) The number of persons to be appointed to the Complaints Committee as representatives of the community shall not exceed one quarter of the total membership of the Complaints Committee for the time being, and no person who has held office as such a representative for 6 years in total shall again be eligible to hold that office, or office under section 28E (1) (c), thereafter.

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(5) At any meeting of the Complaints Committee a quorum is constituted by 3 members, of whom —

- (a) 2 are persons appointed under section 25 (2) (a); and
- (b) one is a representative of the community.

(6) Part C of Schedule 2 shall have effect with respect to the constitution of the Complaints Committee.

(7) Part D of Schedule 2 shall have effect with respect to the procedure of the Complaints Committee.

(8) The Complaints Committee shall report —

- (a) in writing annually in accordance with section 31G, and at such other times and in such manner as may be requested, to the Attorney General; and
- (b) at such times and in such manner as may be requested, to the Board,

on all matters relating to its functions and the operation of the provisions of this Act regulating the conduct and disciplining of practitioners, and may so report on any such matter at discretion.

(9) Where a report is to be made under subsection (8) any member of the Complaints Committee may request that the report include such matters as that member considers appropriate, and effect shall be given to the request.

[Section 25<sup>3</sup> inserted by No. 48 of 1992 s.9.]

[25A.<sup>3</sup> Repealed by No. 48 of 1992 s.9.]

**The Law Complaints Officer**

**26.** (1) The Board shall, under section 8, appoint a person in the office of Law Complaints Officer who —

- (a) shall be a person who is a legal practitioner with experience in the conduct of a legal practice; and
- (b) subject to the directions of the Complaints Committee, may exercise the functions of that committee, other than the exercise of summary professional disciplinary jurisdiction, and from time to time on its behalf and in its stead carry out its duties and exercise its powers in relation to those functions.

(2) The Law Complaints Officer may appear at any investigation, inquiry or hearing under this Part either in person or by counsel.

*[Section 26 inserted by No. 48 of 1992 s.9.]*

**Complaints procedure**

**27.** (1) A complaint under this Part —

- (a) should normally be made in writing, but the Complaints Committee or the Law Complaints Officer may formulate in writing any oral complaint received;
- (b) shall set out briefly the allegations upon which the complaint is grounded;
- (c) may be made direct to the Complaints Committee or through the Law Complaints Officer;
- (d) may be made —
  - (i) by the complainant personally;

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- (ii) by a practitioner with the authority of the complainant; or
- (iii) where a person who might have been a complainant has died or is otherwise unable to act, by or on behalf of that person by a personal representative or any other relative or representative of that person;

and

- (e) may be made even though the complainant may bring proceedings in any court with respect to the same matter.

(2) Subject to this Act, and the rules made under this Act, in the exercise of its functions the Complaints Committee may determine its own procedure and is not required to conduct any proceedings in a formal manner.

(3) The Complaints Committee is not bound by the Rules of Evidence but may inform itself in any manner it considers just.

[Section 27 inserted by No. 48 of 1992 s.9.]

### **Effect of summons**

**28.** Every summons issued under this Part, 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.

[Section 28 amended by No. 48 of 1992 s.10.]

***Division 2 — Disciplinary proceedings***

*[Heading to Division 2 inserted by No. 48 of 1992 s.11.]*

**Summary professional disciplinary jurisdiction**

**28A.** (1) The Complaints Committee shall have, and subject to the consent of the practitioner concerned may exercise, jurisdiction summarily to make a finding, arising out of an inquiry under this Part, that a practitioner has been guilty of —

- (a) illegal conduct;
- (b) unprofessional conduct; or
- (c) neglect, or undue delay, in the course of the practice of the law.

(2) The jurisdiction of the Complaints Committee under subsection (1) includes the power to —

- (a) order the practitioner to pay to the Board a fine not exceeding \$500;
- (b) reprimand the practitioner;
- (c) order that the practitioner seek and implement, within a period specified in the order, advice from the Board, or from a person specified in the order, in relation to the management and conduct of the practice, or the specific part or aspect of the practice, specified in the order;
- (d) order that the practitioner, within such limits (if any) as may be fixed by the rules, reduce or refund any fees, charges or disbursements in respect of business to which the inquiry relates; or

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- (e) order that the practitioner pay all or any specific part of the expense incurred by either or both the complainant or the Complaints Committee in relation to the inquiry.

(3) An order of the kind referred to in subsection (2) (e) may be made, even where no finding is made against the practitioner, if the Complaints Committee is of the opinion that the conduct of the practitioner gave reasonable cause for the inquiry.

(4) An order made by the Complaints Committee may be enforced in the same manner as an order of the Court made under this Act.

(5) An appeal lies to a judge of the Supreme Court against any finding or order made by the Complaints Committee under this section.

*[Section 28A inserted by No. 48 of 1992 s.11.]*

**Complaints Committee may give effect to a negotiated settlement**

**28B.** (1) Where the Complaints Committee is of the opinion that a complaint may be resolved by conciliation, the committee may for that purpose —

- (a) cause conferences of the persons concerned, or their representatives, to be arranged and to be presided over by a person acceptable to the committee;
- (b) give such advice and make such recommendations to the persons concerned as may establish or maintain adequate communication between them and encourage them to exchange or divulge information likely to assist in the reaching of agreement; and



- (c) cause persons concerned, or any of them, either separately or together, to appear before the Law Complaints Officer or the Complaints Committee.

(2) Where the Complaints Committee, with the consent of each of the parties to that settlement, by order gives effect to a settlement negotiated under this Part —

- (a) the terms of the settlement reached between the parties referred to in the order are final and binding on those parties;
- (b) the order may include any provision that might have been ordered by the Disciplinary Tribunal; and
- (c) the order of the committee may be enforced as if it had been an order made by the Disciplinary Tribunal.

(3) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of any conciliation proceedings under this Part shall not be used in any subsequent consideration of the complaint by the committee or the tribunal nor, unless that person waives the right to object, be admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

*[Section 28B inserted by No. 48 of 1992 s.11.]*

### **References for hearing by the Disciplinary Tribunal**

**28C.** (1) Where the Complaints Committee determines that a matter should be heard by the Disciplinary Tribunal the committee shall, by a reference in the manner prescribed by the rules, initiate proceedings against the practitioner before the Disciplinary Tribunal, and in so doing is not limited by the terms of any complaint it has received or by the subject matter of any inquiry it has conducted.

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(2) Where the Complaints Committee, after inquiry, determines that a matter of complaint should neither be dealt with summarily under section 28A nor referred to the Disciplinary Tribunal —

- (a) the committee shall cause the Law Complaints Officer to give, in writing to the complainant and to the practitioner concerned, notice of that determination together with short particulars of the reasons for the determination; and
- (b) a complainant aggrieved by the determination may, subject to subsection (3) and section 31, by a reference in the manner prescribed by the rules initiate proceedings against the practitioner before the Disciplinary Tribunal.

(3) Where the Complaints Committee, in its reason for the determination, specifically finds the complaint —

- (a) to be trivial, unreasonable, vexatious or frivolous;
- (b) to relate to conduct or events too remote in time to justify investigation; or
- (c) to be a matter in which the complainant does not have a sufficient interest to justify the complaint,

no reference initiating proceedings before the Disciplinary Tribunal shall be made, and if made shall not be given effect, unless with the consent of the Attorney General.

(4) When a reference initiating proceedings before the Disciplinary Tribunal is made in the manner prescribed by the rules the Disciplinary Tribunal shall hear and determine the matter as expeditiously as is practicable.

*[Section 28C inserted by No. 48 of 1992 s.11.]*

### **The Disciplinary Tribunal**

**28D.** (1) For the purposes of this Part there shall be a tribunal, to be known as the Legal Practitioners Disciplinary Tribunal, and all summonses, orders and other processes issued out of that tribunal shall be stamped with the seal of the tribunal.

(2) The function of the Disciplinary Tribunal is, in accordance with this Part, to hear and determine all matters referred to the tribunal for hearing and to make and enforce such orders in respect of those matters as seem appropriate to the tribunal.

(3) Subject to this Act, and the rules made under this Act, in the exercise of its function the Disciplinary Tribunal may determine its own procedure.

(4) The Disciplinary Tribunal is not bound by the Rules of Evidence but may inform itself in any manner it considers just.

*[Section 28D inserted by No. 48 of 1992 s.11.]*

### **Composition, constitution and procedure of the Disciplinary Tribunal**

**28E.** (1) The Disciplinary Tribunal shall consist of the following members —

- (a) the chairman, and a deputy chairman if appointed;
- (b) the members for the time being of the Board, other than —
  - (i) those who hold office as members of the Complaints Committee; or

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- (ii) those who, in relation to the particular matter, have been participating in any endeavours at conciliation under this Part;

and

- (c) one or more other persons as representatives of the community, none of whom shall be a person who is or has been a practitioner or holds current office as a representative of the community in the Complaints Committee.

(2) The chairman of the Disciplinary Tribunal shall be appointed by the Governor but shall not be eligible to be so appointed unless he or she is —

- (a) a judge of the Supreme Court;
- (b) a former judge of the Supreme Court, the Federal Court of Australia or the High Court of Australia; or
- (c) a practitioner of not less than 8 years' standing,

and shall hold office, subject to Schedule 2, for such term of not more than 3 years as may be specified in the instrument of appointment but may from time to time be re-appointed.

(3) Each member of the Disciplinary Tribunal who is to hold office as a representative of the community shall —

- (a) be a person appointed as such by the Attorney General, after consultation with the Minister responsible for consumer affairs;
- (b) hold office, subject to this Act, for such term of not more than 3 years as may be specified in the instrument of appointment; and
- (c) be eligible, subject to subsection (4), to be re-appointed.

(4) No person who has held office as a representative of the community on the tribunal for 6 years in total shall again be eligible to hold that office, or office under section 25 (2) (b), thereafter.

(5) At any meeting of the Disciplinary Tribunal a quorum is constituted by —

- (a) the chairman or deputy chairman of the tribunal, or a person acting as chairman;
- (b) 2 persons who are members of the tribunal by reason of their membership of the Board; and
- (c) a member appointed as representative of the community.

(6) Subject to the rules, the chairman of the Disciplinary Tribunal may —

- (a) give directions generally as to the procedure to be adopted to select members, and to constitute the tribunal for the purpose of hearing and determining any matter; and
- (b) select which of the members shall sit in relation to a matter, notwithstanding those directions,

and for the purposes of any matter it shall be sufficient if members constituting not less than a quorum are so selected.

(7) The Board may appoint a person to be Registrar of the Disciplinary Tribunal, who shall perform such functions as are contemplated by the rules or required by the tribunal.

(8) Part C of Schedule 2 shall have effect with respect to the constitution of the Disciplinary Tribunal.

(9) Part D of Schedule 2 shall have effect with respect of the procedure of the Disciplinary Tribunal.

*[Section 28E inserted by No. 48 of 1992 s.11.]*

**Proceedings before the Disciplinary Tribunal**

**29.** (1) Notice of any hearing before the Disciplinary Tribunal shall be given in the manner prescribed by the rules —

- (a) to the practitioner concerned; and
- (b) to any person concerned as complainant,

setting out the time and place of the hearing and short particulars as to the matter to be heard.

(2) If a person acts, or fails to act, in any way which would constitute contempt if a hearing being conducted by the tribunal were civil proceedings in the Supreme Court the tribunal may report the act, or the failure to act, to the Supreme Court and the Supreme Court may, upon motion and upon reading that report, deal with the person in any manner that would be appropriate had the person been in contempt of the Court.

(3) Where, in any proceedings before the tribunal, a person properly claims privilege in respect of any information —

- (a) the tribunal may require that person to disclose the information; and
- (b) if the information is then disclosed, no question or answer relating to that information may be used in any other proceedings or be reported.

*[Section 29 inserted by No. 48 of 1992 s.12.]*

**Powers of the Disciplinary Tribunal**

**29A.** (1) The Disciplinary Tribunal shall have jurisdiction to make a finding that a practitioner has been guilty of —

- (a) illegal conduct;

- (b) unprofessional conduct; or
- (c) neglect, or undue delay, in the course of the practice of the law.

(2) On making a finding under subsection (1) the Disciplinary Tribunal shall have power —

- (a) to make and transmit a report thereon to the Full Court, including where appropriate a record of the evidence taken at the hearing, and pending the determination of the Court —
  - (i) to suspend the practitioner from practice; or
  - (ii) to restrict the entitlement of the practitioner to practise;

or

- (b) to deal with the practitioner under subsection (3),

and may make an order as to costs and expenses in accordance with subsection (4).

(3) The Disciplinary Tribunal may, pursuant to subsection (2) (b), order any one or more of the following —

- (a) the suspension of the practitioner from practice —
  - (i) for a period, not exceeding 2 years, specified in the order; or
  - (ii) until the Board is satisfied that any physical or mental disability, or any problem caused or affected by drugs or alcohol, which the tribunal has determined to have substantially and adversely affected the professional competence or reliability of the practitioner, has been overcome;

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- (b) the imposition of conditions or restrictions on the right of the practitioner to practise for a period, not exceeding 2 years, specified in the order;
- (c) that the practitioner take advice in relation to the management and conduct of the practice, whether from the Board or a person named or approved by the Board or the Law Society of Western Australia (Inc.);
- (d) the payment by the practitioner to the Board of a fine not exceeding \$10 000;
- (e) the reprimand of the practitioner;
- (f) the practitioner, or the firm of the practitioner —
  - (i) if the client agrees, to undertake further work for the client at no cost or at an amount for costs and charges to be determined by the Board;
  - (ii) to pay, wholly or in part, for further work to be done for the client by another practitioner or firm of practitioners; or
  - (iii) to reduce or refund the amount of any fees, charges or disbursements payable or paid in respect of work done for the client, to such an extent as is ordered by the tribunal or as is to be determined by the Board;
- (g) where it appears to the tribunal that a sum certain in money is owing or payable by the practitioner to the complainant or another person, the payment by the practitioner of that sum to the Board for the benefit of the complainant or that person;
- (h) if the conduct of the practitioner has directly caused a person to suffer pecuniary loss and that person so requests, the payment by the practitioner to the Board for the benefit of that person compensation to be



assessed by the tribunal, not exceeding such amount as may for the time being be prescribed under section 106C of the *Local Courts Act 1904* as the maximum sum recoverable in respect of a liquidated demand in money in a claim heard under that Act by the Small Disputes Division, or not exceeding such greater amount as the parties to the proceedings before the tribunal may agree, subject to the person executing and lodging with the tribunal a document in a form satisfactory to the tribunal whereby that person renounces irrevocably any right to recover from the practitioner damages by way of civil proceedings for the pecuniary loss in respect of which an order is made under this paragraph; or

- (j) on application to the tribunal being made for that purpose by the practitioner, the Complaints Committee or the complainant, a variation of any order, or of the conditions applicable to any order, previously imposed.

(4) The Disciplinary Tribunal may order that the practitioner pay all or part of —

- (a) the costs incurred by the party referring the matter to the tribunal, in respect of the proceedings before the tribunal; and
- (b) the expenses, including legal costs of either or both the complainant or the Complaints Committee, in respect of the inquiry,

and may do so even though a finding is not made against the practitioner, where it appears to the tribunal that the conduct of the practitioner concerned has been such as to give reasonable cause for the reference to the tribunal.

(5) The Disciplinary Tribunal may order that any costs payable under this Part be taxed by the taxing officer of the

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Supreme Court, for which costs the taxing officer shall give an *allocatur*.

(6) An order made by the Disciplinary Tribunal may be enforced in the same manner as an order of the Court made under this Act.

(7) Where an order of the Disciplinary Tribunal is made against a practitioner under this section the Board shall revoke, suspend, refuse to issue or impose conditions on the practising certificate of that practitioner to accord with or give effect to that order.

(8) Where the Board is directed or authorized, under subsection (3) (f), to make a determination, for the purposes of that determination the Board may require the attendance of persons and the production of records or other things, and in default may refer the matter back to the tribunal.

*[Section 29A inserted by No. 48 of 1992 s.12.]*

**Appeals**

**29B.** An appeal lies to the Full Court against any finding or order made by the Disciplinary Tribunal under this Part.

*[Section 29B inserted by No. 48 of 1992 s.12.]*

**Report of Tribunal conclusive. Court to punish**

**30.** (1) If the Disciplinary Tribunal under section 29A (2) (a) makes and transmits a report to the Full Court, such report shall be taken, subject to section 29B, to be conclusive as to all facts and findings therein mentioned or contained.

(2) 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 or make any order which the Disciplinary Tribunal might make under section 29A (3), and make such order as to the payment of costs by that practitioner as the Court may think fit.

[Section 30<sup>3</sup> amended by No. 48 of 1992 s.13; *Printers Correction Gazette 4 May 1993 p.2297.*]

### **Complainant may be required to pay costs**

31. (1) Where a reference is made to the Disciplinary Tribunal by a complainant under section 28C (2) (b) initiating proceedings against a practitioner the tribunal may make an order for the complainant to pay all or part of the costs of that practitioner in respect of the proceedings before the tribunal if no finding is made against the practitioner.

(2) An order made under subsection (1) may fix the amount of the costs to be paid or provide for them to be taxed by the Taxing Officer of the Supreme Court, for which costs the taxing officer shall give an *allocatur*, and those costs may then be recovered as though the order of the tribunal or the *allocatur* were a judgment of the Supreme Court for the payment of the sum there specified.

[Section 31<sup>3</sup> inserted by No. 48 of 1992 s.14.]

### **Practitioners convicted of an offence in certain jurisdictions**

31AA. (1) In the exercise of jurisdiction —

- (a) under section 28A, by the Complaints Committee; or
- (b) under section 29A, by the Disciplinary Tribunal,

a finding may be made that a practitioner has been guilty of illegal conduct on it being shown that the practitioner stands

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convicted of an offence by or before a court exercising jurisdiction in any place, whether in Australia or elsewhere, being a conviction which occurred within the period of 10 years prior to the commencement of the proceedings under this Act in which that finding may be made.

(2) In any matter to which subsection (1) relates the Complaints Committee or the Disciplinary Tribunal, as the case may be —

- (a) is not required to inquire as to the propriety of the conviction; and
- (b) without prejudice to the operation of section 28D (3) or (4), may inform itself as to the circumstances giving rise to the conviction from the transcripts or other records of —
  - (i) the court which convicted the practitioner; or
  - (ii) any court which dealt with the conviction on appeal,

and may make such inquiries or requests as are necessary to obtain those transcripts or records; but

- (c) may, where an appeal against the conviction of the practitioner is pending —
  - (i) defer further consideration of the consequences of the finding that the practitioner has been guilty of illegal conduct; and
  - (ii) in the case of the Disciplinary Tribunal, suspend the practitioner from practice, or restrict the entitlement of the practitioner to practise,

until the determination of that appeal.

(3) Where in any proceedings to which subsection (1) relates a finding, in this subsection referred to as “**the adverse finding**”, is made founded upon a conviction that is subsequently quashed, set aside or changed —

- (a) the Complaints Committee or the Disciplinary Tribunal, as the case may be, shall reconsider the adverse finding and —
  - (i) if the conviction was changed, may change the nature of the adverse finding; but
  - (ii) if the conviction was quashed or set aside, shall quash or set aside the adverse finding, and any order made consequential on that finding;

and

- (b) where the adverse finding was reported to the Full Court under section 29A (2) (a), the Disciplinary Tribunal shall make and transmit a further report to the Full Court which —
  - (i) shall reconsider the matter to which those reports relate; and
  - (ii) may vary, quash or set aside any order previously made; and
  - (iii) may substitute another order.

(4) Notwithstanding that subsection (3) has effect, the Complaints Committee may continue the original inquiry, and the Disciplinary Tribunal may resume the hearing of any reference, relating to the matter.

*[Section 31AA inserted by No. 27 of 1995 s.4; No. 75 of 1996 s.3.]*

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***Division 3 — Provisions ancillary to  
disciplinary proceedings***

*[Heading to Division 3 inserted by No. 48 of 1992 s.15.]*

**Protection of persons, etc.**

**31A.** A person who, in relation to any investigation, inquiry or hearing under this Part —

- (a) performs any function under this Part; or
- (b) is otherwise concerned in proceedings under this Part,

has, in respect of any such function or concern, the same protection and immunity as a member or an officer of that Court, or a witness or a party before the Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

*[Section 31A inserted by No. 48 of 1992 s.15.]*

**Representation of persons involved**

**31B.** (1) Before —

- (a) the Complaints Committee —
  - (i) a complainant;
  - (ii) a person making a complaint on the authority of or on behalf of the complainant; or
  - (iii) any practitioner;

or

- (b) the Disciplinary Tribunal, any party to the proceedings,

may be represented by a practitioner or, subject to the approval of the chairman of the meeting, some other representative who is not a practitioner.

(2) A representative who is not a practitioner is not entitled to make a charge for that service, but may be reimbursed for out of pocket expenses.

*[Section 31B inserted by No. 48 of 1992 s.15.]*

### **Hearings generally not to be public**

**31C.** (1) Subject to this section, any inquiry or hearing under this Part shall not be held in public.

(2) The Complaints Committee, or the Disciplinary Tribunal, in a particular case, or as to particular aspects of a particular case, may determine —

- (a) that any proceedings to be conducted before it under this Part shall be conducted in public; or
- (b) who, other than such persons or their representatives as this Act may require or authorize, may be present before it.

(3) In respect of proceedings conducted before it the Complaints Committee or the Disciplinary Tribunal may, if satisfied that it is appropriate to do so, order that —

- (a) any evidence given before it;
- (b) any information, or any record or the contents of any record, produced or referred to before it; or

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- (c) any information that might enable a person who has appeared before it to be identified,

shall not be published by any means, or shall not be published in such manner and to such persons as the order specifies, or otherwise disclosed or made available to any person or any specified person or class of persons.

(4) A person who contravenes an order made under this section shall be liable to be dealt with as though for a contempt of the Court.

(5) The Disciplinary Tribunal shall, in respect of proceedings conducted before it, in the event of an adverse finding against a practitioner, unless it is of the opinion that the circumstances are of such a minor nature as not to so warrant, cause to be published —

- (a) the name of the practitioner;
- (b) the nature of the finding;
- (c) the penalty, if any, imposed; and
- (d) a summary of its reasons for its findings and including such details of the evidence that it considers helpful in understanding the nature of the case, but in doing so may withhold such details as it considers in the interests of the complainant should be withheld or which would prejudice the interests of any person other than the practitioner.

*[Section 31C inserted by No. 48 of 1992 s.15.]*

**Powers to require production, and the examination, of records and to inspect practices**

**31D.** (1) For the purposes of this Part, the Complaints Committee, or the Law Complaints Officer exercising the power



of that committee, or the Disciplinary Tribunal or a member of that tribunal may —

- (a) take evidence on oath or affirmation and administer any oath or affirmation;
- (b) summon any person to appear, or to give evidence, or to produce records or any other thing;
- (c) by notice require any practitioner or firm of practitioners to allow any member of the Disciplinary Tribunal or of the Complaints Committee, the Law Complaints Officer, or a person nominated in that notice —
  - (i) to examine the conduct of any legal practice, or to inspect any record or other thing, specified, either particularly or by an appropriate general description, in that notice; and
  - (ii) for that purpose, to enter any premises where there is reasonable cause to believe that the practice is conducted or the record or other thing may be kept;
- (d) examine the records, including any files, accounts (including the personal accounts of any practitioner or other person concerned in or sharing in the profits of that practice), and audit records and reports, relating to a legal practice;
- (e) confer with, and make inquiry of, any existing or former client, accountant or auditor of a legal practice;
- (f) in the case of any record kept otherwise than in a readily intelligible format, require a person to produce the record in a legible form or to provide an explanation of the record;
- (g) make copies of, or take extracts from, any record;

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- (h) take possession of and retain any record or other thing for such reasonable period as may be necessary for the purposes of this Act; and
- (j) if any record or other thing required to be inspected under this section is not produced or delivered, require the person to whom that requirement was made known to state, to the best of the knowledge and belief of that person, where it is,

but shall endeavour to ensure that, so far as is practicable, the confidentiality of any record, and of any other thing, is not thereby prejudiced.

(2) The Law Complaints Officer or a person nominated by the chairman of the Disciplinary Tribunal for that purpose may on behalf of the committee or tribunal take possession of, and retain or secure the retention of, any record or other thing required to be produced or delivered under this Part.

(3) On possession of any record or other thing being taken under this section, the Law Complaints Officer shall cause notice of the taking to be given to the person from whom it was received.

(4) Where any person from whom production of any record or other thing is required under this Part claims a lien upon it, the production of it shall be without prejudice to the lien.

(5) A person who, being required to do anything pursuant to subsection (1), without lawful excuse of which the proof lies on that person, refuses or fails to do the thing required, or who hinders or obstructs a person exercising a power under this section, is, unless the matter is dealt with under Part IV, liable to be dealt with as though for a contempt of court.

*[Section 31D inserted by No. 48 of 1992 s.15.]*

**Evidentiary material**

**31E.** (1) In the course of any proceedings under this Part any evidence given by affidavit or statutory declaration may be received and admitted.

(2) In all courts and before all persons or bodies authorized to receive evidence —

- (a) judicial notice shall be taken of the seal of the Disciplinary Tribunal, and of the signature of —
  - (i) the chairman, and the deputy chairman and other members, respectively of the Board, the Complaints Committee and the Disciplinary Tribunal;
  - (ii) the Registrar of the Disciplinary Tribunal;
  - (iii) the secretary to the Board; and
  - (iv) the Law Complaints Officer;
- (b) a person purporting to hold office as a member of the Board, the Complaints Committee, or the Disciplinary Tribunal, or as the Registrar of the Disciplinary Tribunal, the secretary to the Board or the Law Complaints Officer, as the case may be, or to have performed any function in that capacity, shall, unless evidence to the contrary is shown, be presumed to be the lawful holder of that office and to have performed lawfully that function of the office;
- (c) a certificate purporting to be issued by the secretary to the Board and stating that on any date or during any period specified in that certificate —
  - (i) any person was the holder of an office to which that person was appointed under this Part; or

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- (ii) any person was appointed under this Act as a member of the Complaints Committee or of the Disciplinary Tribunal,

shall be admitted as evidence of the matters therein stated;

or

- (d) a document signed by —
  - (i) the Law Complaints Officer; or
  - (ii) the chairman of, or any 2 members present at, a meeting of the Complaints Committee; or
  - (iii) the Registrar of, or the chairman of, or any 2 members present at a meeting of, the Disciplinary Tribunal,

and purporting to be a record or copy of the finding, order or report of the Complaints Committee or of the Disciplinary Tribunal, respectively, or to set out the nature of the power exercised and the manner in which it was exercised, shall be admitted as a true copy of and evidence of the matters therein stated.

*[Section 31E inserted by No. 48 of 1992 s.15; amended by No. 73 of 1994 s.4.]*

**Interim restrictions on practice**

**31F.** (1) The Complaints Committee may apply to the Supreme Court for an order suspending a practitioner from practice, or restricting the entitlement of a practitioner to practise, pending —

- (a) inquiry, and determination or referral of a matter, by the Complaints Committee;

- (b) the hearing of a matter by the Disciplinary Tribunal;  
or
- (c) an appeal against a decision of the Disciplinary Tribunal.

(2) On an application made under subsection (1), the Supreme Court may make an order under section 58B as though it were an application by the Board.

*[Section 31F inserted by No. 48 of 1992 s.15.]*

## **Reports**

**31G.** (1) In respect of the year ending on the preceding 30 June —

- (a) the chairman of the Complaints Committee, in relation to the activities of that committee; and
- (b) the chairman of the Disciplinary Tribunal, in relation to the proceedings of that tribunal,

shall on or before 31 December in each year cause an annual report to be made and submitted in writing to the Attorney General.

(2) The Attorney General shall cause a copy of each report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report.

(3) The Board may from time to time report to the Attorney General its views as to the jurisdiction conferred and the carrying out of the functions required by this Part, or any matter connected with that jurisdiction or those functions.

*[Section 31G inserted by No. 48 of 1992 s.15.]*

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**Jurisdiction of the Supreme Court not affected**

**31H.** Nothing in this Part affects the jurisdiction of the Supreme Court with respect to legal practitioners.

*[Section 31H inserted by No. 48 of 1992 s.15.]*

**[32.** *Repealed by No. 48 of 1992 s.16.]*

***Division 4 — Effect of striking off or suspension***

*[Heading to Division 4 inserted by No. 48 of 1992 s.17.]*

**Practitioners struck off or suspended in other jurisdictions**

**32A.** (1) A practitioner admitted to practise in Western Australia who was, in any other jurisdiction, struck off the roll or suspended from practice prior to the commencement of the *Legal Practitioners Amendment Act 1995*<sup>1</sup>, or who after the commencement of that Act is so struck off or suspended from practice —

- (a) shall not while so struck off or suspended be entitled to engage in the practice of law in Western Australia, whether or not as an employee, unless the consent of the Board, which may be made subject to conditions, is first obtained; and
- (b) is liable upon the report of the Disciplinary Tribunal to the Full Court to be struck off the roll, or suspended from practice, as the case may require.

- (2) For the purposes of this section —
- (a) a reference in subsection (1) to “**struck off the roll**” or “**suspended from practice**” shall, in relation to a jurisdiction outside Western Australia, be construed as including a reference to any consequence of —
    - (i) judicial proceedings; or
    - (ii) proceedings before a disciplinary authority, which, however it may be described in that jurisdiction, is substantially similar in effect;
  - (b) the Complaints Committee may inquire of a court or disciplinary authority as to —
    - (i) whether any determination, conviction or finding was made; and
    - (ii) the circumstances giving rise to, and the consequences of, any determination, conviction, or finding that was made, in respect of a person; and
  - (c) “**disciplinary authority**” means a body, in a jurisdiction outside Western Australia, which regulates in that jurisdiction the professional conduct of persons in respect to functions similar in kind to the functions of a barrister or solicitor.

(3) The Complaints Committee may refer any matter to which this section relates to the Disciplinary Tribunal, which shall have jurisdiction to make a finding, and power to make and transmit to the Full Court a report, in respect to the matter, for which purpose the provisions of this Part shall apply as though being so struck off or suspended constituted unprofessional conduct.

[Section 32A inserted by No. 27 of 1995 s.5.]

**Deprivation of practice in certain cases**

**33.** (1) A practitioner struck off the roll or suspended from practice shall not be entitled to practise within the meaning of this Act until the practitioner has been re-admitted, or until the period of suspension has elapsed, as the case requires, and each application for re-admission shall be made to the Full Court, but 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 or she 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 make any inquiry, whether for reasons related to section 16A (3) or to section 32A or as to whether an 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 records in the possession or power of that person 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 28 apply to a summons issued by the Board pursuant to this section.

*[Section 33<sup>2</sup> amended by No. 15 of 1963 s.2; No. 48 of 1992 ss.19 and 55; No. 27 of 1995 s.6.]*



**PART V — PRACTITIONERS TRUST ACCOUNTS**

*[Heading to Part V inserted by No. 79 of 1967, s.6.]*

**Trust moneys to be paid to a trust account**

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

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

(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 the practitioner shares remuneration, other than as principal and agent.

*[Section 34 inserted by No. 79 of 1967 s.6; amended by No. 48 of 1992 s.55.]*

**The application of trust moneys to the payment of costs, etc.**

**34A.** A practitioner may apply trust moneys towards the payment of the costs and disbursements charged against the

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person for whose use or benefit the moneys are held by or under the control of the practitioner if —

- (a) that is authorized by the client under the terms on which the moneys are so held under the control of that practitioner; and
- (b) a practitioner within 14 days thereafter causes to be served upon that person a bill of costs in respect of those costs and disbursements showing that trust moneys have been applied by the practitioner towards the payment of those costs and disbursements.

*[Section 34A inserted by No. 48 of 1992 s.37.]*

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

**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.

*[Section 35 inserted by No. 79 of 1967 s.6.]*

**Practitioners to maintain books of account**

**36.** Every practitioner shall maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with by that practitioner, 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.

*[Section 36 inserted by No. 79 of 1967 s.6; amended by No. 48 of 1992 s.55.]*

### **Receipt of cheques**

**37.** (1) Where a practitioner receives a cheque from a person for the use or benefit of a person other than the practitioner —

- (a) the practitioner shall cause an adequate record of the receipt and disposition of the cheque to be made;
- (b) if the cheque is made payable to the practitioner, the practitioner shall not deal with the cheque unless the practitioner has a direction in writing from the person from whom the cheque is received, or from the person for whose use or benefit the cheque is received, as to how the cheque is to be dealt with;
- (c) the practitioner shall retain that record and, where applicable, that direction for at least 7 years.

(2) Subsection (1) does not apply in relation to a cheque that is paid into a trust account.

(3) Notwithstanding paragraph (b) of subsection (1), where the practitioner does not have a direction referred to in that paragraph and it is necessary to deal with the cheque without delay, the practitioner may deal with the cheque but before doing so shall send notice in writing of the intention of that practitioner in dealing with the cheque to the person from whom the cheque is received or to the person for whose use or benefit the cheque is received.

(4) A reference in subsection (1) to the receipt of a cheque by a practitioner includes the receipt of a cheque, in the course of legal practice, by a partner, clerk, servant or agent of the practitioner with whom the practitioner shares remuneration, other than as principal and agent.

(5) A reference in paragraph (b) of subsection (1) to a direction in writing includes a letter, authority or other writing clearly indicating the manner in which the cheque is to be dealt with.

*[Section 37 inserted by No. 65 of 1987 s.7; amended by No. 48 of 1992 s.55.]*

**Board may appoint accountant to examine books of account**

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 authorize an accountant who is a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law, or who is a person approved for the purposes of section 72 (2) of the *Real Estate and Business Agents Act 1978* (in this Part called “**the examiner**”) to examine the books of account and records of a practitioner relating to any trust accounts and to furnish the Board with a confidential report on the matters and things disclosed by the examination.

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

(3) Where an examination is authorized 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 books of account in conformity with the provisions of section 36; 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.

[Section 38 inserted by No. 79 of 1967 s.6; amended by No. 36 of 1971 s.5; No. 48 of 1992 s.38.]

**Examiner may require production of books and documents**

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

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

(2) A person who, being required to do anything pursuant to subsection (1), without lawful excuse of which the proof lies on that person, refuses or fails to do the thing required or who hinders or obstructs the examiner in the exercise of any power under this Act or hinders or obstructs the examiner or any person employed by the examiner in the performance of any duty under this Act commits an offence.

*[Section 39 inserted by No. 79 of 1967 s.6; amended by No. 113 of 1976 s.10; No. 48 of 1992 s.55.]*

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

**40.** (1) A person who is, or is 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

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person any matter of which the person is informed or that comes to the knowledge of that person in the course of an examination made pursuant to this Part.

(2) Where the examiner commits an offence against subsection (1), the examiner shall, without affecting any penalty to which the examiner may be liable under this Act, be taken for the purposes of section 1292 (1) (d) of the Corporations Law, to have failed to carry out properly the duties of an auditor.

*[Section 40 inserted by No. 79 of 1967 s.6; amended by No. 113 of 1976 s.11; No. 10 of 1982 s.28; No. 48 of 1988 s.28; No. 48 of 1992 ss.39 and 55.]*

**Action on examiner's reports**

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, and may request the Complaints Committee to inquire into the matter under Part IV.

(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);
- (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.

*[Section 41 inserted by No. 79 of 1967 s.6; amended by No. 113 of 1976 s.12; No. 48 of 1992 s.27.]*

### **Practitioners to make payments towards Solicitors' Guarantee Fund**

42. (1) Subject to subsection (3), every practitioner who, on 30 June in any year following the commencement of this section, has held a practice certificate for not less than 2 years shall, if and when paying the fee for any succeeding 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 \$20, as may from time to time be prescribed.

(2) The Board shall not issue a practice certificate to a practitioner obliged to make a payment provided by subsection (1), 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 5 annual payments, or has paid an amount equal to 5 annual payments as then prescribed, under subsection (1), is exempt from the requirement of making any further payment under that subsection.

*[Section 42 inserted by No. 79 of 1967 s.6; amended by No. 48 of 1992 s.55.]*

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**Accountant's certificate**

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 person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law, or who is a person approved for the purposes of section 72 (2) of the *Real Estate and Business Agents Act 1978*, a certificate to the effect that the practitioner's books of account relating to that 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.

(4) A practitioner who ceases to hold a practice certificate, and a person administering the estate of a deceased practitioner, shall —

- (a) deliver to the Board a certificate from an accountant which fulfils the requirements of subsection (1) in respect of any period during which the practitioner held a practice certificate and in respect of which no accountant's certificate has been received by the Board; or



- (b) satisfy the Board that the practitioner was not required to maintain a trust account during the relevant period.

*[Section 42A inserted by No. 36 of 1971 s.6; amended by No. 113 of 1976 s.13; No. 10 of 1982 s.28; No. 48 of 1992 s.40.]*

*[43-58. Repealed by Act No. 79 of 1967 s.6.]*

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**PART VA — CONTROL OF CERTAIN PRACTICES**

*[Heading to Part VA inserted by No. 59 of 1969 s.3;  
amended by No. 92 of 1970 s.7.]*

**Interpretation**

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

**“Board’s appointee”** means a certificated practitioner appointed by the Board under section 58G (1);

**“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 58B or 58C;
- (b) a deceased practitioner in respect of whose trust account an order has been made under section 58C;
- (c) a practitioner in respect of whom an inquiry is authorized under section 58G; or
- (d) a practitioner in respect of whom, or in respect of whose trust account, an order has been made under section 58I;

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

- (a) under section 58D; or
- (b) pursuant to the powers conferred on the Board by paragraph (a) of section 58J,

to conduct a practice;

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

[Section 58A inserted by No. 59 of 1969 s.3; amended by No. 92 of 1970 s.8; No. 56 of 1973 s.6; No. 48 of 1992 s.55.]

**Restraint on bank accounts**

**58B.** (1) Where a Judge, on the application of the Board, is satisfied —

- (a) that there are reasonable grounds for believing —
  - (i) that there is, or may be, a deficiency in any trust account of a practitioner; or
  - (ii) 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;

or

- (b) that a practitioner is suspended from practising,

the Judge may make an order directed to the practitioner and to the bankers of that practitioner 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).

(3) If an order, other than an order for revocation, is made under subsection (1) or (2), the practitioner and the bankers of

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that practitioner and their respective servants and agents shall give effect to the order according to its tenor.

*[Section 58B inserted by No. 59 of 1969 s.3; amended by No. 48 of 1992 s.41.]*

**Control of trust moneys by trust**

**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 money deposited by the practitioner, or the deceased practitioner, to the credit of the Trust under section 11 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) the practitioner and the bankers of that practitioner 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.

*[Section 58C inserted by No. 59 of 1969 s.3; amended by No. 92 of 1970 s.9; No. 48 of 1992 s.55.]*

### **Special powers of Board**

**58D.** (1) If an order other than an order for revocation is made under section 31F, 58B or 58C, the Board, during the currency of the order —

- (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 authorize the Trust to advance money, out of the Solicitors' Guarantee Fund established by section 16 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.

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

(3) Where an order to which subsection (1) applies is made —

- (a) the supervising solicitor may enforce the recovery of profit costs earned by the practitioner;
- (b) the practitioner remains liable, and the supervising solicitor shall not be liable, for debts, liabilities and professional obligations incurred, or arising out of circumstances occurring, prior to the date of the order; and
- (c) notwithstanding paragraph (b), the supervising solicitor may, with the consent of the Trust, pay the debts or liabilities or meet the professional obligations referred to in paragraph (b) where that is necessary or convenient for the carrying on of the practice and those sums shall be taken to form part of the proper expenses of the supervising solicitor.

**s. 58D**

(4) The Board, during the currency of the order, may determine —

- (a) what, if any, proportion of any profit costs recovered on account of the practitioner, or on account of the personal representative of the deceased practitioner, shall be payable to that person; and
- (b) what proportion shall be paid to the Trust as a sum properly incurred by the Trust towards —
  - (i) expenses of the Trust arising under section 58C;
  - (ii) the expenses and remuneration of the supervising solicitor; and
  - (iii) the re-imburement of advances made out of the Solicitors' Guarantee Fund and not otherwise recovered.

(5) A sum determined by the Board to be payable pursuant to subsection (4) (b) in so far as not paid to the Trust by the supervising solicitor may be recovered by the Trust from the practitioner or the estate of the deceased practitioner (as the case may require) —

- (a) from any profit costs; or
- (b) otherwise,

as a debt determined to have been properly incurred and to be due to the Trust, and persons acting judicially shall take judicial notice of any such determination.

*[Section 58D inserted by No. 59 of 1969 s.3; amended by No. 92 of 1970 s.10; No. 56 of 1973 s.6; No. 48 of 1992 ss.20 and 42.]*

**Duties of supervising solicitor**

**58E.** (1) The supervising solicitor shall conduct the practice for the purpose of concluding or disposing matters commenced but not concluded by 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, if so required, of the instrument by which the appointment in respect of the practice was made —

(a) require —

(i) the practitioner to whom the appointment relates, or any clerks, servants, or agents of the practitioner, or in the case of a deceased practitioner, the personal representative or any of the former clerks, servants, or agents of the deceased practitioner, to produce to the supervising solicitor any records 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, former premises, and take possession of

**s. 58F**

all records or other things relating to the practice that, in the opinion of the supervising solicitor, may be relevant to or necessary for the conduct of the practice.

*[Section 58E inserted by No. 59 of 1969 s.3; amended by No. 92 of 1970 s.11; No. 56 of 1973 s.6; No. 48 of 1992 ss.43 and 55.]*

**Payment of moneys out of separate account**

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

- (a) the Trust may, on the certificate of the supervising solicitor, pay to the supervising solicitor or as may be directed 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 the Judge thinks fit for the payment by the Trust of any part of the moneys deposited in the separate account under the order.

*[Section 58F inserted by No. 59 of 1969 s.3; amended by No. 48 of 1992 s.55.]*

**Power of Board to appoint certificated practitioner to inquire into and report on practice of another**

**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 the practice carried on by that other practitioner, and to report thereon to the Board.



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

(3) The Board's appointee may, upon production, if so required, of the instrument by which the appointment in respect of the practice was made, require —

- (a) the practitioner to whom the appointment relates, or any clerks, servants, or agents of the practitioner, to produce to the Board's appointee any records 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), without lawful excuse of which the proof lies on that person, refuses or fails to do the thing required or who hinders or obstructs the Board's appointee in the exercise of any power under this Act or hinders or obstructs the Board's appointee, or any person employed by the Board's appointee, in the performance of any duty commits an offence.

Penalty: \$2 000.

*[Section 58G inserted by No. 56 of 1973 s.6; amended by No. 48 of 1992 ss.44 and 55.]*

**s. 58H**

**Board may apply to Judge for an order**

**58H.** On receipt of the report from the practitioner appointed under section 58G the Board shall consider it and may where the circumstances so require apply to a Judge for an order under section 58I.

*[Section 58H inserted by No. 56 of 1973 s.6; amended by No. 48 of 1992 s.55.]*

**Power of Judge**

**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 the practice carried on by that practitioner, the Judge may —

- (a) suspend the practitioner from practising for such period as may be specified in the order;
- (b) restrain the practitioner and the bankers of that practitioner 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) authorize the Board to appoint a supervising solicitor;
- (d) authorize the Board to suspend the practitioner from practising until further notice;
- (e) make an order containing any other provision of a kind referred to in section 29A (3) and such further or other orders as the Judge thinks fit.

(2) Where the Judge authorizes the Board to appoint a supervising solicitor pursuant to the powers conferred by subsection (1) 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 58C.

(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).

(4) The practitioner, and the bankers of that practitioner, 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 subsection (2) (b), paragraphs (a) and (b) of section 58F apply in relation thereto.

*[Section 58I inserted by No. 56 of 1973 s.6; amended by No. 48 of 1992 ss.21 and 55.]*

### **Effect of certain orders**

**58J.** Where an order is made under section 58I (1) —

- (a) the Board has, with such modifications as are necessary, like powers to those conferred by section 58D;
- (b) a supervising solicitor appointed pursuant to that order and those powers has like powers and duties to those conferred and imposed on a supervising solicitor by section 58E, including carrying on the practice until it can be otherwise dealt with according to law.

*[Section 58J inserted by No. 56 of 1973 s.6; amended by No. 48 of 1992 s.55.]*

**s. 58K**

**Offence**

**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: \$2 000.

*[Section 58K inserted by No. 56 of 1973 s.6; amended by No. 48 of 1992 s.45.]*

**PART VI — SOLICITORS' COSTS**

*Division 1 — The Legal Costs Committee*

[*Heading to Division 1 inserted by No. 65 of 1987 s.8;  
amended by No. 73 of 1994 s.4.*]

**Interpretation**

**58L.** In Divisions 1 and 2, unless the contrary intention appears —

**“chairman”** means the chairman of the Legal Costs Committee and includes the deputy chairman;

**“contentious business”** means business carried out as a practitioner in or for the purposes of any action, suit or proceeding before a court, but does not include the administration of estates and trusts;

**“costs”** includes fees, charges and disbursements;

**“court”** includes tribunal, arbitrator and the like;

**“determination”** means a determination made by the Legal Costs Committee under section 58W;

**“deputy chairman”** means the person appointed under clause 2 of Part A of Schedule 2;

**“deputy member”** means a person appointed under clause 3 of Part A of Schedule 2;

**“member”** means the chairman and the other members of the Legal Costs Committee and includes a deputy member;

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**“non-contentious business”** means any business carried out as a practitioner which is not contentious business.

*[Section 58L inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

**Establishment of the Legal Costs Committee**

**58M.** (1) There shall be a committee, to be known as the Legal Costs Committee.

(2) The Legal Costs Committee shall consist of —

(a) a chairman, who shall be —

(i) a judge of the Supreme Court or the District Court; or

(ii) a practitioner of not less than 8 years standing.

(b) 2 members, who shall be practitioners in private practice and who shall, where a panel of names has been submitted to the Attorney General by the Law Society of Western Australia (Inc.) in accordance with section 58N, be nominated from that panel; and

(c) 3 members who are not practitioners, at least one of whom shall be an accountant in private practice who is an associate or fellow of the Institute of Chartered Accountants or the Australian Society of Accountants,

appointed by the Governor.

(3) Part A of Schedule 2 shall have effect with respect to the constitution of the Legal Costs Committee.

*[Section 58M inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

## **Nominations**

**58N.** (1) Where a nomination for appointment under section 58M (2) (b) or clause 3 of Part A of Schedule 2 is required to be made, a panel containing the names of a number of practitioners in private practice (being a number not fewer than twice the number of offices to be filled) shall be submitted by the Law Society of Western Australia (Inc.) to the Attorney General within such time, being not less than 28 days, after receiving notice from the Attorney General that such panel is required as is specified in the notice.

(2) Where the Law Society of Western Australia (Inc.) has been requested under subsection (1) to submit a panel containing the names of a number of persons to the Attorney General, the Attorney General —

- (a) shall, if such a panel is submitted within the time specified in the notice referred to in subsection (1), nominate for appointment to the office of member one or more, as the case requires, of the practitioners in private practice whose names appear on the panel; and
- (b) may, if default is made within that time in submitting such a panel, nominate for appointment to the office of member such practitioner or practitioners (as the case requires) in private practice as the Attorney General thinks fit and a person appointed in accordance with this paragraph shall hold office as if the person had been nominated as required by section 58M (2) (b) or clause 3 of Part A of Schedule 2, as the case may be.

*[Section 58N inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.55.]*

## **Members not subject to *Public Service Act 1978***

**58O.** Appointment as a member does not render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to

**s. 58P**

persons as officers of the Public Service of the State applicable to that person or affect or prejudice the application to that person of those provisions if they applied at the time of appointment.

*[Section 58O inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.55; No. 32 of 1994 s.3(2).]*

**Validity of acts of the Legal Costs Committee**

**58P.** Subject to clause 2 of Part B of Schedule 2, an act or proceeding of the Legal Costs Committee shall not be invalid by reason of a defect in the appointment of a member or a vacancy in its membership.

*[Section 58P inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

**Remuneration and allowances of members**

**58Q.** A member shall be paid such remuneration and allowances as the Attorney General from time to time, on the recommendation of the Public Service Commissioner<sup>4</sup>, determines.

*[Section 58Q inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.46.]*

**Procedure of the Legal Costs Committee**

**58R.** Part B of Schedule 2 shall have effect with respect to the procedure of the Legal Costs Committee.

*[Section 58R inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

**Use of staff and facilities of departments, etc.**

**58S.** The Legal Costs Committee may, by arrangement made between the Legal Costs Committee and the Minister concerned,



and on such terms and conditions as may be mutually arranged with that Minister and with the Public Service Commissioner<sup>4</sup>, make use, either full time or part time, of —

- (a) the services of any officer or person employed in a department of the Government or in a State instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Government or of a State instrumentality.

*[Section 58S inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 ss.28 and 46.]*

### **Reports by the Legal Costs Committee**

**58T.** The Legal Costs Committee may investigate and report and make recommendations to the Attorney General on any matter relating to —

- (a) bills of costs generally and, in particular, the desirability of the use of scales in the calculation and fixing of bills of costs;
- (b) the basis on which costs are or should be calculated and fixed; and
- (c) any other aspect of the remuneration of practitioners.

*[Section 58T inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

### **Funds of the Legal Costs Committee**

**58U.** (1) The funds available for the purpose of enabling the Legal Costs Committee to perform its functions under this Act consist of —

- (a) moneys from time to time appropriated by Parliament for the purposes of this Part; and

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- (b) any other moneys made available for the purposes of this Part.

(2) The funds referred to in subsection (1) shall be credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be called the "Legal Costs Committee Account".

(3) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Legal Costs Committee and its operations.

*[Section 58U inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28; No. 49 of 1996 s.64.]*

**Review of the Legal Costs Committee's role**

**58V.** (1) The Attorney General shall carry out a review of the operations of the Legal Costs Committee as soon as practicable after 1 January 1992, and in the course of that review the Attorney General shall consider and have regard to —

- (a) the effectiveness of the operations of the Legal Costs Committee;
- (b) the need for the continuation of the functions of the Legal Costs Committee; and
- (c) such other matters as appear to the Attorney General to be relevant.

(2) The Attorney General shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

*[Section 58V inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 ss.28 and 55.]*

***Division 2 — Determination of remuneration by the Legal Costs Committee***

[*Heading to Division 2 inserted by No. 65 of 1987 s.8; amended by No. 73 of 1994 s.4.*]

**Determinations by the Legal Costs Committee**

**58W.** (1) The Legal Costs Committee may make determinations regulating the remuneration of practitioners in respect of —

- (a) non-contentious business carried out by practitioners;
- (b) contentious business carried out by practitioners in or for the purposes of proceedings before —
  - (i) the Supreme Court;
  - (ii) the District Court;
  - (iii) a Local Court;
  - (iv) a court of petty sessions;
  - (v) a review officer or compensation magistrate's court within the meaning of the *Workers' Compensation and Rehabilitation Act 1981*;
  - (vi) such other court as the Attorney General may by order under subsection (3) declare to be a court to which this section applies.

(2) A determination may be amended or revoked by a subsequent determination.

(3) For the purposes of subsection (1) (b) (vi), the Attorney General may, by order published in the *Gazette*, declare any court to be a court in respect of which the Legal Costs Committee may make a determination under this section and may, by subsequent order so published, vary or revoke that declaration.

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(4) A provision of a determination may authorize any matter or thing to be determined, applied or regulated by a specified person or body.

*[Section 58W amended by No. 65 of 1987 s.8; No. 48 of 1992 s.28; No. 48 of 1993 s.28.]*

**Review of determinations**

**58X.** (1) The Legal Costs Committee shall review each determination in force at least once in the period of 2 years after it was made and in each period of 2 years thereafter.

(2) The Attorney General may at any time request the Legal Costs Committee to review a determination in force and the Legal Costs Committee shall carry out that review as soon as practicable after being so requested.

*[Section 58X inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

**Inquiries by the Legal Costs Committee**

**58Y.** (1) Before making or reviewing a determination the Legal Costs Committee shall —

- (a) give public notification in accordance with subsection (2) of its intention to make or review the determination;
- (b) where the determination is to be made or reviewed in respect of proceedings before a court, consult with that court; and
- (c) make such other inquiries as it considers necessary to facilitate the making or review of the determination.

(2) The intention of the Legal Costs Committee to make or review a determination shall be notified by the publication —

- (a) to the Law Society of Western Australia (Inc.); and

- (b) in 2 issues of a daily newspaper circulating throughout the State,

of a notice specifying the intention of the Legal Costs Committee to make or review the determination concerned and stating the manner in which submissions may be made and the effect of subsection (3) and the period referred to in that section.

(3) Written or oral submissions on an intended determination or review may be made by any person within a period determined by the Legal Costs Committee, which period shall be not less than 30 days after the day on which the notice is last published in accordance with subsection (2) (b).

(4) Subject to subsection (1), in the exercise of its functions the Legal Costs Committee —

- (a) may inform itself in such manner as it thinks fit;
- (b) shall take into consideration submissions received by it in relation to the remuneration of practitioners, whether or not those submissions were received in response to a notification under subsection (1);
- (c) is not required to conduct any proceedings in a formal manner; and
- (d) is not bound by the rules of evidence.

*[Section 58Y inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]*

### **Report and publication of determinations**

**58ZA.** (1) The Legal Costs Committee shall, as soon as practicable after making a determination, make a report to the Attorney General of its determination and of the reasons for its decisions in respect of the determination.

*Legal Practitioners Act 1893*

**s. 58ZB**

(2) The report referred to in subsection (1) shall be published in the *Gazette* as soon as practicable after the report is received by the Attorney General.

(3) A determination shall take effect on and from the date of publication of the report referred to in subsection (1) in the *Gazette* or such later date as is specified in the determination.

(4) Persons acting judicially shall take judicial notice of —

- (a) a determination made under section 58W and published in a report in the *Gazette*; and
- (b) the date of publication of the report.

[Section 58ZA inserted by No. 65 of 1987 s.8; amended by No. 48 of 1992 s.28.]

**Effect of determination**

**58ZB.** (1) Subject to sections 59 and 70 (2) of this Act and section 14 of the *Legal Aid Commission Act 1976* —

- (a) the taxation of bills of costs of practitioners, as between practitioner and client or party and party; and
- (b) any other aspect of the remuneration of practitioners the subject of a determination,

shall be regulated by a determination in force under section 58W.

(2) Where a determination is in force under section 58W in respect of any business referred to in subsection (1) of that section any other subsidiary legislation fixing or purporting to regulate the remuneration of practitioners in respect of that kind of business shall be of no force or effect.

(3) Nothing in subsection (1) shall be construed as limiting any power of a court, a judicial officer or a taxing officer of a court to determine in any particular case before that court or judicial officer the amount of costs allowed.

*[Section 58ZB inserted by No. 65 of 1987 s.8.]*

***Division 3 — Entitlement to remuneration***

*[Heading to Division 3 inserted by No. 65 of 1987 s.8.]*

**Agreements as to costs**

59. (1) A practitioner may make a written agreement with any client of that practitioner 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.

(2) An agreement made under subsection (1) excludes 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.

(3) A client who enters into an agreement made under subsection (1) 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 that agreement beyond the amount payable by the client to the practitioner under that agreement.

(4) No such agreement shall exempt the practitioner from liability for negligence.

(5) An agreement made under subsection (1) may be reviewed by the Supreme Court or a Judge thereof upon application by petition or summons, and if in the opinion of the

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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.

[Section 59 amended by No. 48 of 1992 s.55.]

**Saving in certain cases**

**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.

**Avoidance of agreement in certain cases**

**61.** (1) If after any such agreement as is referred to in section 59 is made 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 solicitor, the agreement shall, subject to subsection (2), cease and be void, and the practitioner, or a person who is authorized to administer the estate of any such practitioner who is deceased or insolvent, or an assignee of that practitioner, shall be entitled to charge the client, or a person who is authorized to administer the estate of any such client who is deceased or insolvent, 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.

(2) Where any such agreement as is referred to in section 59 is entered into after the coming into operation of section 44 of the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992*<sup>1</sup> if —

- (a) the agreement provides for payment after the completion, or partial completion, of any of the services to which the agreement relates; and



- (b) any payment becomes due under that agreement prior to the time at which that agreement would have become void under subsection (1) had this subsection not been enacted,

then, in so far as the services to which the agreement relates have been performed and payment has become due in accordance with the agreement, the agreement may be enforced.

*[Section 61 amended by No. 48 of 1992 ss.47 and 55.]*

### **Security for costs**

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

*[Section 62 amended by No. 48 of 1992 s.55.]*

### **Costs where practitioner employed by Crown in a salaried capacity**

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

(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

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revenue of which body is provided, pursuant to an Act, from the Consolidated 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),

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.

*[Section 62A inserted by No. 16 of 1960 s.3; amended by No. 48 of 1992 s.55; No. 6 of 1993 s.11.]*

**Act not to validate purchase of client's interest, nor agreement for payment only in event of success**

**63.** (1) 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 a client of that practitioner 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.

(2) Where an agreement is entered into with the Executive Director for the time being of the Law Society of Western Australia (Inc.) by the client of a practitioner, for purposes pertaining to the Litigation Assistance Fund operated by that Society, in relation to a contentious proceeding undertaken by the client of that practitioner, the agreement may provide for payment under that Fund to the Society of a contribution which is to be dependent upon the result of, or payable only in the event of success in, that contentious proceeding.

(3) Nothing in subsection (2) shall be construed as relating to an agreement by the practitioner for payment to that practitioner.

*[Section 63 amended by No. 42 of 1990 s.7.]*

[64. *Repealed by No. 65 of 1987 s.9.*]

***Division 4 — Taxation and recovery of costs***

*[Heading to Division 4 inserted by No. 65 of 1987 s.10.]*

**Signed bill of costs to be served before suit**

65. (1) No practitioner shall sue for the recovery of any services, fee, charges or disbursements until a bill for the same, being either a bill containing detailed items or for a lump sum, has been served upon the party charged therewith.

(2) At any time within 30 days from the service of a lump sum bill referred to in subsection (1) the party charged may require the practitioner to serve upon him in lieu of the lump sum bill a bill containing detailed items, and upon that requirement being made the lump sum bill shall be of no effect except that proceedings for recovery already instituted in accordance with subsection (1) may be continued unless stayed by the court in which those proceedings were instituted or under section 66B.

(3) A practitioner shall include in each bill of costs —

(a) where the bill of costs is for a lump sum, a notice to the person charged in the following form —

“ Within 30 days of receipt of this account you may require me by notice in writing to provide to you an itemized account of the costs the subject of this account.

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Within 30 days of receiving an itemized account, you may require me by notice in writing to submit the account to the taxing officer of the Supreme Court of Western Australia for review of the amount of costs charged to you, the subject of this account. ”;

and

- (b) where the bill of costs contains detailed items, a notice to the person charged in the following form —

“ Within 30 days of receiving this account you may require me by notice in writing to submit the account to the taxing officer of the Supreme Court for review of the amount of costs charged to you, the subject of this account. ”,

and any such notice to be given by a practitioner under this subsection shall appear on the face page of each bill of costs in a type print size of not less than 10 point.

- (4) Nothing in section 59 affects the operation of this section.

(5) Where a lump sum bill or an itemized bill of costs does not contain adequate detail to enable the taxing officer to tax the bill, the taxing officer may —

- (a) order the practitioner to remedy the deficiency within a time specified in the order; and
- (b) in default of an account sufficiently detailed being filed, reduce the amount of the costs that might otherwise have been certified by a proportion not greater than 25 per cent.

*[Section 65 inserted by No. 65 of 1987 s.11; and amended by No. 48 of 1992 s.48.]*

**Party charged may give notice of intention to tax**

**66.** (1) Any person charged with an itemized bill of costs may have the same taxed by the taxing officer of the Supreme Court, upon first serving upon the practitioner, within 30 days from the service of such itemized bill, a written notice of intention to have the same taxed.

(2) Where a person, under section 65, has requested a practitioner to serve an itemized bill of costs in lieu of a lump sum bill, if the itemized bill is not served upon that person within 30 days from the service of the request upon the practitioner, the person charged may apply to have the lump sum bill taxed by the taxing officer of the Supreme Court by lodging the same with the taxing officer.

*[Section 66 inserted by No. 65 of 1987 s.12; amended by No. 48 of 1992 s.55.]*

**Written agreement under section 59**

**66A.** (1) When taxing an itemized bill of costs the taxing officer of the Supreme Court shall give effect to any written agreement made under section 59 as to the costs specified in the bill.

(2) The taxing officer, at the request of the party charged with a bill of costs, may refer any written agreement made under section 59 as to the costs specified in the bill to the Supreme Court or a Judge of the Court for review of the agreement under section 59.

*[Section 66A inserted by No. 65 of 1987 s.12.]*

**Stay of recovery proceedings**

**66B.** Where under section 66 a bill of costs is to be taxed, the taxing officer of the Supreme Court may order that any

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proceedings for the recovery of the costs be stayed until such time as the taxing officer may direct and the order shall have effect accordingly.

*[Section 66B inserted by No. 65 of 1987 s.12.]*

**Bill of costs to be lodged with taxing officer**

**67.** (1) Within one month after service of the notice referred to in section 66 (1) the practitioner shall lodge the bill of costs with the taxing officer of the Supreme Court.

(2) Within the period of one month permitted under subsection (1) 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 subsection.

*[Section 67 inserted by No. 113 of 1976 s.16; amended by No. 67 of 1979 s.29; No. 65 of 1987 s.13; No. 48 of 1992 s.55.]*

**Time and place of taxation**

**68.** (1) Upon the bill of costs being lodged in accordance with section 66 (2) or 67, the taxing officer shall —

- (a) appoint a date, time and place for the taxation of the bill of costs; and
- (b) give at least 7 days' notice of the appointment to both parties,

but the bill may be remitted by the taxing officer to an officer of the court or tribunal in the jurisdiction to which the bill relates.

(2) The taxing officer may refer the bill of costs to an officer of the court or tribunal in which the costs were incurred for a report as to, or for the purpose of that officer taxing, the bill.

(3) The taxing officer may, in his discretion, have regard to a report referred to in subsection (2) when taxing a bill of costs.

(4) The reference under subsection (2) of a bill of costs to an officer of a court or tribunal for a report as to the bill does not confer on that officer or that court or tribunal any jurisdiction in relation to that bill of costs.

(5) Where the bill is remitted by the taxing officer to an officer of the court or tribunal in the jurisdiction to which the bill relates for taxing by that officer the officer has, in relation to that bill, like functions and powers to those exercisable by the taxing officer.

*[Section 68 inserted by No. 65 of 1987 s.14; amended by No. 48 of 1992 s.49.]*

### **Interpretation, etc.**

**68A.** For the purposes of this Division —

- (a) a reference to the person or party charged includes a reference to —
  - (i) a person who has paid the bill to which the charge relates;
  - (ii) any other person who is authorized to administer the estate or affairs of any such person who is deceased, incapable or insolvent;
  - (iii) a person liable to pay or to reimburse another for costs in a bill; or

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- (iv) a person who is a beneficiary of a trust estate or fund against which costs may be chargeable;
- (b) a reference to the practitioner includes a reference to another person who is authorized to administer the estate or affairs of any such person who is deceased, incapable or insolvent or who is an assignee of the practitioner 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 the person at the person's last known place of business or residence;
- (d) the taxing officer has a discretionary power to 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; and
- (e) where a practitioner performs services by way of legal assistance under Division 3 of Part V of the *Legal Aid Commission Act 1976*, a reference to the person or party charged includes a reference to the Legal Aid Commission established under section 6 of that Act.

[*Section 68A inserted by No. 113 of 1976 s.18; amended by No. 67 of 1979 s.29; No. 65 of 1987 s.15; No. 48 of 1992 s.50.*]

**Costs of taxation**

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

[*Section 69 inserted by No. 113 of 1976 s.19; amended by No. 67 of 1979 s.29.*]



**Master's *allocatur*; interest; amount, how recovered**

**70.** (1) The taxing officer shall certify in writing the amount at which the said bill of costs and the costs of and incidental to such taxation are respectively allowed by the taxing officer, 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.

(2) Where a taxing officer taxes a bill of costs with which the Legal Aid Commission is charged for services by way of legal assistance under Division 3 of Part V of the *Legal Aid Commission Act 1976* —

- (a) the taxing officer shall give effect to section 14 (1) of that Act, other than the requirement under paragraph (a) (ii) of that section that fees be approved, in determining the amount at which the bill of costs is allowed; and
- (b) the amount certified by the taxing officer, or any order made in respect thereof under section 71, shall be binding and conclusive on the Legal Aid Commission and the practitioner notwithstanding the provisions of the *Legal Aid Commission Act 1976*.

[Section 70 amended by No. 67 of 1979 s.30; No. 65 of 1987 s.16; No. 48 of 1992 s.55.]

**Review of taxation**

**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 section 70.

[Section 71 amended by No. 67 of 1979 s.30; No. 73 of 1994 s.4.]

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**Overpayments to be returnable**

**72.** Where under this Division a bill of costs is taxed and as a result of that taxation the amount which has been paid or deducted in respect of that bill is more than the amount authorized by the taxation, to the extent of the excess the person charged has a claim for repayment which may be certified and enforceable under section 70 (1) as though allowed under that subsection.

[Section 72 inserted by No. 48 of 1992 s.51.]

***Division 5 — General***

[Heading to Division 5 inserted by No. 65 of 1987 s.17]

**Practitioner's costs to be a first charge on the property recovered or preserved**

**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.

**Town agent entitled to prior charge**

**74.** In every case in which a practitioner acts as town agent for another practitioner, the agent shall be entitled to apply on summons and obtain a charging order for any costs and expenses

in so acting, in priority to the costs and expenses of the practitioner on whose behalf the agent acts.

*[Section 74 amended by No. 48 of 1992 s.55.]*

**Practitioner may charge interest on moneys disbursed**

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

*[Section 75 amended by No. 48 of 1992 s.55.]*

**PART VII — MISCELLANEOUS**

**Only certificated practitioners to act in legal proceedings in court. Exception of parties in person, etc.**

**76.** (1) No person other than a certificated practitioner shall, whether in their own name or that 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.

(2) Nothing in subsection (1) shall be construed as preventing a party from appearing or defending in person as heretofore, nor to prevent any person from addressing the court if permitted to do so pursuant to section 29 of the *Local Courts Act 1904*.

[Section 76 amended by No. 48 of 1992 s.55.]

**Only certificated practitioners to engage in legal business. Exception of public officers, etc.**

**77.** (1) 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.

(2) Nothing in subsection (1) 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*.

[*Section 77 amended by No. 48 of 1992 s.55.*]

### **No liability in certain cases**

**78.** (1) Nothing in section 77 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 the person has not directly or indirectly been paid or remunerated or promised or expected pay or remuneration for the work or services so done.

(2) 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.

[*Section 78 amended by No. 113 of 1976 s.21; No. 48 of 1992 s.55; No. 73 of 1994 s.4.*]

### **Prohibition of certain acts by practitioner**

**79.** (1) A certificated practitioner shall not act as agent for any person other than a certificated practitioner in or concerning any matter which under this Act may only be done for profit by a certificated practitioner.

(2) A certificated practitioner shall not permit or suffer the name of that practitioner, or the name of a firm in which that practitioner is a partner or employee, to be made use of, in any manner whatever, in or concerning any matter to which

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subsection (1) applies upon the account of any person other than a certificated practitioner.

(3) A certificated practitioner shall not do or permit or suffer to be done any act which enables or tends to enable a person other than a certificated practitioner to appear, act, or practise in any respect as a certificated practitioner in any matter or proceeding, civil or criminal, before any court.

(4) A certificated practitioner shall not, except in accordance with rules made under section 6, share with any person other than a certificated practitioner, or the person authorized to administer the estate of any such practitioner who is deceased, the whole or any part of the costs arising from or in connection with any act, matter, or thing which under this Act may only be done for profit by a certificated practitioner.

(5) A certificated practitioner shall not practise —

- (a) under a name, or use in connection with the practice carried on by that practitioner a name, whether alone or in combination with any other name, not being —
  - (i) the name of the practitioner;
  - (ii) the name of another, or of a former, certificated practitioner which the first mentioned practitioner is lawfully entitled to use in connection with the practice;
  - (iii) the name of a deceased or retired partner of that practitioner or of a legal firm of which that practitioner is a partner; or
  - (iv) the name of a legal firm, whether practising in Western Australia or elsewhere, or part of the name of that firm, which the practitioner or a legal firm of which the practitioner is a partner is lawfully entitled to use in connection with the practice,

without the written consent of the Board; or

- (b) with any person other than a certificated practitioner, or purport so to be in practice.

(6) A certificated practitioner shall not, 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 the practice of that 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 that person is or was employed or any client of such solicitor.

*[Section 79 amended by No. 4 of 1958 s.6; No. 113 of 1976 s.22; No. 66 of 1979 s.5; No. 48 of 1992 ss.52 and 55.]*

**No unqualified person to hold himself out as a practitioner**

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

*[Section 80 amended by No. 48 of 1992 s.55.]*

**Offences against this Act or the rules, how punishable**

81. Without limiting the operation of Part IV, every person who acts contrary to the terms of this Act, or to any provision of or obligation imposed by or under this Act, or to any rule, or to any order of the Complaints Committee or of the Disciplinary Tribunal, shall be guilty of a contempt of the Supreme Court, and may be dealt with accordingly by the said Court or a Judge thereof in Chambers on the motion of the Complaints Committee or the Board.

*[Section 81 amended by No. 4 of 1958 s.7; No. 113 of 1965 s.8; No. 113 of 1976, s.23; No. 65 of 1987 s.18; No. 48 of 1992 ss.22 and 53.]*

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

**Appeals**

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 16, paragraph (b) of section 20 or section 33 or who is aggrieved by a decision of the Board refusing the issue or renewal of a practice certificate.

*[Section 83 inserted by No. 113 of 1976 s.25; amended by No. 48 of 1992 ss.54 and 55.]*

**Shortening Ordinance**

84. Sections A, E, F, G and H of the *Shortening Ordinance 1853*<sup>5</sup>, 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.



**Professional indemnity insurance**

**85.** (1) The Governor may make regulations concerning indemnity against loss arising from claims in respect of any description of civil liability incurred by —

- (a) a practitioner or former practitioner in connection with the practice of that practitioner or former practitioner; or
- (b) an employee or former employee of a practitioner or former practitioner in connection with the practice of that practitioner or former practitioner.

(2) For the purpose of providing the indemnity referred to in subsection (1), regulations made under this section may —

- (a) authorize or require The Law Society of Western Australia (Inc.) to make arrangements with one or more insurers for the provision to practitioners and former practitioners of professional indemnity insurance and may authorize that Society to do such acts and things as may be necessary or expedient for giving effect to those arrangements; and
- (b) require practitioners or former practitioners, or any prescribed category of practitioner or former practitioner, to take out and maintain professional indemnity insurance in accordance with the requirements of the regulations and either in accordance with the arrangements made under the regulations or in accordance with a scheme or policy of insurance approved by or under the regulations.

(3) Without prejudice to the generality of subsections (1) and (2), regulations made under this section may —

- (a) specify the terms and conditions on and subject to which professional indemnity insurance is to be provided, including the amounts of insurance cover to

be taken out and maintained by practitioners or former practitioners or prescribed categories of practitioner or former practitioner and the periods during which such insurance cover is to be maintained;

- (b) specify classes or categories of practitioner or practice to which different provisions or obligations under the regulations may apply;
- (c) provide for and regulate the approval of insurers and the issue of certificates of insurance to persons and firms covered by professional indemnity insurance and prescribe the form of such certificates;
- (d) empower the Board to refuse to issue an annual practice certificate except to a practitioner who —
  - (i) satisfies the Board that the practitioner holds a valid current certificate of insurance for the category of practice the practitioner intends to engage in or who is covered by such a certificate issued in respect of every firm of practitioners of which the practitioner is a member; or
  - (ii) is exempt under the regulations;
- (e) may specify circumstances in which practitioners or former practitioners are exempt from the regulations or empower the Board to exempt any practitioner or former practitioner or class of practitioners or former practitioners in whole or in part from any provision of the regulations either for a specified or indefinite period or subject to any condition which may be imposed by the Board;
- (f) empower the Board to vary or revoke any exemption made by the Board under the regulations;

- (g) empower the Board to take such steps as it considers necessary or expedient to ascertain whether or not the regulations are being complied with; and
- (h) contain incidental, procedural and supplementary provisions.

*[Section 85 inserted by No. 47 of 1984 s.3; amended by No. 48 of 1992 s.55.]*

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**SCHEDULE 1**

[s.2.]

[*Schedule 1* Omitted under the Reprints Act 1984 s.7 (4) (b).]

**SCHEDULE 2**

[s.28E (2)]

**PART A** [ss. 58L, 58M and 58N]

*Provisions as to constitution of the Legal Costs Committee*

**Term of office**

1. (1) Subject to clause 4, a member shall hold office for such term not exceeding 3 years as is specified in the instrument of appointment, but may from time to time be re-appointed.

(2) A person appointed under clause 2 or 3 shall hold office for such term as is specified in the instrument of appointment, but may from time to time be re-appointed.

**Deputy chairman**

2. (1) The Governor may appoint as deputy chairman a person qualified for appointment as chairman under section 58M (2) (a).

(2) The deputy chairman shall act as chairman during the illness or absence of the chairman and while so acting shall have, and may perform, the functions of the chairman.

**Deputy members**

3. (1) The Governor may appoint a person having a like qualification or being nominated in the same manner as the member for whom the person is a deputy to act in the place of a member of the Legal Costs Committee and may terminate such an appointment at any time.

(2) A person appointed under subclause (1) is, during the illness or absence of the member for whom the person is the deputy, entitled to act as a member in place of that member and, when so acting as a member, has and may perform the functions of that member.

**Removal and resignation**

4. (1) The Governor may remove a member from office —

- (a) if the member is an insolvent under administration within the meaning of that term under section 9 of the Corporations Law; or

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- (b) on the grounds of neglect of duty, misconduct, incompetence or mental or physical incapacity impairing the performance of the functions of that member and proved to the satisfaction of the Governor.

(2) A member may resign office by notice in writing delivered to the Governor.

**Leave of absence**

5. The Attorney General may grant leave of absence to a member on such terms and conditions as the Attorney General thinks fit.

**Saving**

6. No act or omission of a person acting in the place of another under clause 2 or 3 shall be questioned on the ground that the occasion for acting had not arisen or had ceased.

**PART B**

[ss. 58P and 58R]

*Provisions as to the procedure of the Legal Costs Committee*

**Meetings of the Legal Costs Committee**

1. (1) The first meeting of the Legal Costs Committee shall be convened by the chairman and thereafter meetings of the Legal Costs Committee shall be held at such times and places as the Legal Costs Committee determines.

(2) The chairman shall preside at all meetings of the Legal Costs Committee at which the chairman is present.

(3) If the chairman is absent from a meeting the members present shall appoint one of their number to preside.

(4) The Legal Costs Committee shall cause accurate minutes to be kept of the proceedings at its meetings.

(5) At any meeting of the Legal Costs Committee —

- (a) each Legal Costs Committee member present is entitled to a deliberative vote;
- (b) if the votes cast on a question are equally divided, the chairman shall have a casting vote; and
- (c) if the votes cast on a question at a meeting from which the chairman is absent are equally divided, the question shall remain unresolved until the next meeting at which the chairman is present.

**Quorum**

2. At any meeting of the Legal Costs Committee 4 members, of whom 2 are practitioners and 2 are members appointed pursuant to section 58M (2) (c), constitute a quorum.

**The Legal Costs Committee to determine procedures**

3. Subject to this Act, the Legal Costs Committee shall determine its own procedures.

**PART C**

[ss. 25 (6) and 28E (2) and (8)]

*Constitutional provisions relating to the Complaints Committee,  
or to the Disciplinary Tribunal, or to both*

**Deputy chairman**

1. (1) The Board may appoint a member as deputy chairman of the Complaints Committee, who shall act as chairman —

- (a) during the incapacity or absence of the chairman of the committee;
- (b) if so requested by the chairman; or
- (c) during a vacancy in the office of chairman,

and while so acting shall have, and may perform, the functions of chairman.

(2) The Governor may appoint as deputy chairman of the Disciplinary Tribunal from time to time a person eligible for appointment under section 28E (2), who shall hold office at the pleasure of the Governor, and shall act as chairman of the tribunal —

- (a) during the incapacity or absence of the chairman;
- (b) if so requested by the chairman; or
- (c) during a vacancy in the office of chairman,

and while so acting shall have, and may perform, the functions of chairman.

**Representatives of the community, and their deputies**

2. (1) On terms applicable to, and selected from persons eligible to be, a representative of the community one or more persons may be appointed to the Complaints Committee or the Disciplinary Tribunal, or both, as deputy representatives of the community.

(2) With the concurrence of the chairman of the meeting, a person appointed as a deputy representative of the community may act at that meeting in the place of a representative of the community, and while so acting any such deputy shall have, and may perform, the functions of a representative of the community.



**Removal or resignation, and leave**

3. (1) Without limiting section 52 of the *Interpretation Act 1984*, the Attorney General may remove from office any member —

- (a) for —
  - (i) neglect of duty;
  - (ii) misconduct;
  - (iii) incompetence, including any mental or physical incapacity impairing the performance of the functions of the member; or
- (b) if —
  - (i) the member is, or becomes, an insolvent under administration within the meaning of that term under section 9 of the Corporations Law; or
  - (ii) the member has been absent from meetings, without leave, for more than 3 consecutive meetings.

(2) A member of the Complaints Committee or the Disciplinary Tribunal appointed by the Attorney General may resign office by notice in writing delivered to the Attorney General.

(3) A reference in this clause to the office of a member includes a reference to the office of a person as a deputy member.

**Termination of office may be deferred**

4. Notwithstanding that the term of office of a member may have expired, a member shall continue in the office —

- (a) until that member is re-appointed, or a successor is appointed; and
- (b) in any event for the purpose of completing any part-heard proceedings,

unless the Governor otherwise directs.

**Remuneration**

5. There shall be paid to —

- (a) the chairman of the Disciplinary Tribunal;

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- (b) a person for the time being holding office as deputy chairman of the tribunal; and
- (c) persons appointed to the committee or to the tribunal as representatives of the community,

such fees and allowances as the Attorney General, after consultation with the Public Service Commissioner<sup>4</sup>, may determine.

**PART D**

[ss. 25 (7) and 28E (9)]

*Procedural provisions relating to the Complaints Committee,  
or to the Disciplinary Tribunal, or to both*

**Meetings**

1. (1) The first meeting of the Complaints Committee shall be convened by the secretary of the Board, thereafter meetings shall be convened —

- (a) by the chairman of that committee;
- (b) by the Law Complaints Officer; or
- (c) at such times and places as the committee determines.

(2) Where —

- (a) the chairman; or
- (b) the deputy chairman,

is not present at a meeting the members who are present shall appoint one of their number to act as chairman at that meeting, and in relation to that meeting the acting chairman shall have, and may perform, the functions of chairman.

**Divisions**

2. (1) The Complaints Committee and the Disciplinary Tribunal may respectively sit and exercise jurisdictions as one or more Divisions where a quorum is present.

(2) A reference in this Act, unless the context otherwise requires, to a meeting of the Complaints Committee or the Disciplinary Tribunal includes a reference to a meeting when that body is constituted as a Division.

(3) A determination made by that committee or that tribunal when sitting as a Division shall be taken to be the determination of that body as a whole.

**Quorum**

3. (1) Where any inquiry or hearing under Part IV has been commenced and a member present at that commencement fails to continue to participate in the proceedings the determination of the

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matter may be completed by the remaining members if they constitute a quorum.

(2) If an inquiry or hearing under Part IV is commenced and, upon the failure of a representative of the community to continue to participate in the proceedings, no quorum can be convened the determination of the matter may be completed by the remaining members.

(3) A vacancy in the membership of the Complaints Committee or of the Disciplinary Tribunal does not preclude either body from meeting, or from performing its functions, if a quorum is present.

**Voting**

4. (1) At any meeting of the Complaints Committee, subject to subclause (2), each member present is entitled to a deliberative vote.

(2) Where the Complaints Committee is exercising the jurisdiction conferred by section 28A or determining an order under section 28B (2) only those members present who are also members of the Board shall be entitled to a deliberative vote.

(3) At any meeting of the Disciplinary Tribunal the chairman of that meeting and each member present who is also a member of the Board is entitled to a deliberative vote.

(4) Any question shall be determined by a majority of the votes lawfully cast but when the deliberative votes cast on a question are equally divided the chairman of the meeting has also a casting vote.

**The function of representatives of the community**

5. A representative of the community does not have a deliberative vote on any question in the exercise of disciplinary jurisdiction, but —

- (a) in all other respects, may participate fully in any meeting, whether or not being conducted as the hearing of a matter; and
- (b) may report independently, as an individual, to the Attorney General on any aspect of —
  - (i) an alleged complaint;
  - (ii) any inquiry or hearing as to disciplinary matters under this Act;
  - (iii) the rules made under this Act as they relate to disciplinary matters or the conduct of practice under this Act; or

- (iv) the activities or proceedings of the Law Complaints Officer, the Complaints Committee or the Disciplinary Tribunal.

**Records**

**6.** (1) The member presiding at any meeting shall cause an accurate record to be kept —

- (a) as minutes of the proceedings; and
- (b) in the case of a hearing, of the finding upon which any determination was based and of its reasons,

and a register of those records shall be maintained.

(2) The Complaints Committee or the Disciplinary Tribunal may cause its records, or information related to any inquiry or proceeding or as to those records, to be published but shall ensure that the publication is so edited as to prevent —

- (a) the identification of persons, unless a determination to permit identifying publication has been made; or
- (b) the revealing of confidential information.

*[Schedule 2 inserted by No. 65 of 1987 s.20; amended by No. 48 of 1992 ss.23, 29 and 55.]*

## *Legal Practitioners Act 1893*

### NOTES

<sup>1</sup>. This reprint is a compilation as at 27 November 1996 of the *Legal Practitioners Act 1893* and includes the amendments effected by the other Acts referred to in the following Table<sup>1a, 1b</sup>.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Legal Practitioners Act 1893</i>	57 <sup>o</sup> Vict., No. 12	4 October 1893	4 October 1893	
<i>Legal Practitioners Act Amendment Act 1909</i>	37 of 1909	21 December 1909	21 December 1909	
<i>Legal Practitioners Act Amendment Act 1926</i>	48 of 1926	24 December 1926	1 August 1927 (see <i>Gazette</i> 17 June 1927 p.1516)	
<i>Legal Practitioners Act Amendment Act 1944</i>	45 of 1944	24 January 1945	Sections 1, 2 and 3: 24 January 1945 (see section 2); balance to be proclaimed <sup>6</sup>	
<i>Legal Practitioners Act 1893 Amendment Act 1945</i>	18 of 1945	9 January 1946	9 January 1946	
<i>Legal Practitioners Act Amendment Act 1946</i>	18 of 1946	2 December 1946	2 December 1946	
<i>Legal Practitioners Act Amendment Act 1948</i>	37 of 1948	21 December 1948	21 December 1948	
<i>Legal Practitioners Act Amendment Act 1950</i>	49 of 1950	18 December 1950	18 December 1950	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Legal Practitioners Act Amendment Act 1955</i>	9 of 1955	19 October 1955	19 October 1955	
<i>Legal Practitioners Act Amendment Act 1957</i>	11 of 1957	29 August 1957	29 August 1957	
<i>Legal Practitioners Act Amendment Act 1958</i>	4 of 1958	19 September 1958	19 September 1958	
<i>Legal Practitioners Act Amendment Act (No. 2) 1958</i>	27 of 1958	19 November 1958	19 November 1958	
<i>Legal Practitioners Act Amendment Act 1960</i>	16 of 1960	6 October 1960	6 October 1960	
<i>Legal Practitioners Act Amendment Act 1963</i>	15 of 1963	5 November 1963	5 November 1963	
<i>Legal Practitioners Act Amendment Act 1964</i>	74 of 1964	11 December 1964	11 December 1964	
<i>Decimal Currency Act 1965, section 8 (1)</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance: 21 December 1965	
<i>Legal Practitioners Act Amendment Act 1966</i>	18 of 1966	17 October 1966	21 April 1967 (see <i>Gazette</i> 21 April 1967 p.987)	
<i>Legal Practitioners Act Amendment Act 1967</i>	21 of 1967	23 October 1967	23 October 1967	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Legal Practitioners Act Amendment Act (No. 2) 1967</i>	79 of 1967	11 December 1967	29 March 1968 (see section 2 and <i>Gazette</i> 29 March 1968 p.805)	
<i>Legal Practitioners Act Amendment Act 1969</i>	59 of 1969	29 September 1969	29 September 1969	
<i>Legal Practitioners Act Amendment Act 1970</i>	92 of 1970	30 November 1970	30 November 1970	
<i>Legal Practitioners Act Amendment Act 1971</i>	36 of 1971	10 December 1971	10 December 1971	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in the Third Schedule, took effect on 24 May 1974 (see section 4 (2) and <i>Gazette</i> 24 May 1974 p.1610)	The Third Schedule was inserted by the <i>Metric Conversion Act Amendment Act (No. 2) 1973</i> (No. 83 of 1973)
<i>Legal Practitioners Act Amendment Act 1973</i>	56 of 1973	19 November 1973	19 November 1973	
<i>Legal Practitioners Act Amendment Act 1976<sup>1a</sup></i>	113 of 1976	25 November 1976	21 January 1977 (except section 5) (see <i>Gazette</i> 21 January 1977 p.101)	
<i>Legal Practitioners Act Amendment Act 1977</i>	46 of 1977	18 November 1977	18 November 1977	
<i>Legal Practitioners Act Amendment Act 1978</i>	9 of 1978	15 May 1978	15 May 1978	



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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Legal Practitioners Act Amendment Act 1979</i>	66 of 1979	21 November 1979	21 November 1979	
<i>Acts Amendment (Master, Supreme Court) Act 1979, Part IV</i>	67 of 1979	21 November 1979	11 February 1980 (see <i>Gazette</i> 8 February 1980 p.383)	
<i>Legal Practitioners Amendment Act 1981</i>	90 of 1981	26 November 1981	26 November 1981	
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2 (1) and <i>Gazette</i> 25 June 1982 p.2079)	
<i>Legal Practitioners Amendment Act 1984</i>	47 of 1984	5 September 1984	13 May 1988 (see <i>Gazette</i> 13 May 1988 p.1581)	
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987, Part II</i>	65 of 1987	1 December 1987	Sections 5, 7 to 20 and 22 to 45: 12 February 1988 (see <i>Gazette</i> 12 February 1988 p.397); balance: 1 December 1987	Section 21 validation <sup>7</sup>
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987, section 3</i>	77 of 1987	26 November 1987	1 January 1988 (see section 2)	Section 4 savings and transitional
<i>Companies and Securities Legislation (Miscellaneous Amendments) Act 1988, Part 9</i>	48 of 1988	1 December 1988	9 December 1988 (see <i>Gazette</i> 9 December 1988 p.4817)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Legal Practitioners Amendment Act 1990</i>	42 of 1990	21 November 1990	26 April 1991 (see <i>Gazette</i> 26 April 1991 p.1843)	
<i>Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992</i>	48 of 1992	10 December 1992	1 February 1993 (see section 3 and <i>Gazette</i> 26 January 1993 p.823)	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	
<i>Workers' Compensation and Rehabilitation Amendment Act 1993, section 28 (Schedule 1, item 33)</i>	48 of 1993	20 December 1993	1 March 1994 (see section 2 (1) and <i>Gazette</i> 24 December 1993 p.6795)	Section 28 (2) transitional
<i>Acts Amendment (Public Sector Management) Act 1994, section 3 (2)</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994	
<i>Legal Practitioners Amendment Act 1995</i>	27 of 1995	18 September 1995	18 September 1995	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2 (1))	
<i>Legal Practitioners Amendment Act 1996</i>	75 of 1996	13 November 1996	13 November 1996	

Note: The *Legal Practitioners Act 1893* is affected by the —

- (a) *Women's Legal Status Act 1923* (Act No. 56 of 1923);
- (b) *Justices Act Amendment Act 1932* (Act No. 26 of 1932);
- (c) *Legal Contribution Trust Act 1967* (Act No. 74 of 1967).

NB. In this reprint the renumbering of sections in the 1949 reprint (not in a volume) and retained in subsequent reprints has again been retained. Reference to the original numbering are contained in those reprints.

<sup>1a</sup> As at the date of this reprint section 5 of the *Legal Practitioners Act Amendment Act 1976* (Act No. 113 of 1976) was not in operation. That section reads as follows —

“ **Section 16 amended**

5. Section 16 of the principal Act is amended —

- (a) by deleting the passage “(whose decision shall be final)” in lines three and four of paragraph (b); and
- (b) by deleting paragraph (c) and substituting the following paragraph —
  - (c) shall have passed such examinations as the Board may prescribe,

”.

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<sup>1b</sup> As at the date of this reprint section 17 of the *Industrial Relations Legislation Amendment and Repeal Act 1995* (Act No. 79 of 1995) was not in operation. Section 17 reads as follows —

“ ***Legal Practitioners Act 1893 amended***

17. After section 77 of the *Legal Practitioners Act 1893* the following section is inserted —

**Sections 76 and 77 not to apply to certain persons**

77A. Nothing in sections 76 and 77 shall be construed as preventing a person from appearing for a person before a court, or as preventing a person from providing advice or other services, if that appearance or the provision of that advice or service, is authorized by a written law. ”

<sup>2</sup> See section 83.

<sup>3</sup> The amendment to this section as made by section 55 of the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992* (Act No. 48 of 1992) has no effect.

<sup>4</sup> This is to be read as a reference to the Minister for Public Sector Management. See section 112 (2) of the *Public Sector Management Act 1994* (Act No. 31 of 1994).

<sup>5</sup> See now the Schedule to *Interpretation Act 1918* and section 77 (4) of the *Interpretation Act 1984*.

<sup>6</sup> Provisions relating to Legal Practitioners Guarantee Fund to operate on a date fixed by proclamation (see section 1 (1) (i)). No proclamation was ever issued. Those provisions included new Part 5 (ss. 28A-28Y) the sections of which were renumbered 34-58 in the 1949 reprint were subsequently repealed by No. 79 of 1967 section 6.

<sup>7</sup> Section 21 of the *Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987* (Act No. 65 of 1987) reads as follows —

“ **Validation**

21. Where after 31 December 1983 the Director of Legal Aid appointed under section 18 of the *Legal Aid Commission Act 1976* has had articulated to him more than 2 articulated clerks in contravention of section 10 (3) (a) as read with section 10 (3a) of the principal Act as in force before the coming into operation of section 6 of this Act —

(a) those articles of clerkship; and

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- (b) the admission as a practitioner under section 15 (2) (a) of a person who has served those articles of clerkship,

shall not be invalid by reason only of that contravention. ”.

