

WESTERN AUSTRALIA

LEGAL PRACTITIONERS AMENDMENT ACT 1995

No. 27 of 1995

AN ACT to amend the *Legal Practitioners Act 1893*.

[Assented to 18 September 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Legal Practitioners Amendment Act 1995*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Legal Practitioners Act 1893** is referred to as the principal Act.

[* *Reprinted as at 25 March 1993.*
 For correction and subsequent amendments see 1993
 Index to Legislation of Western Australia, Table 1,
 pp. 118-9 and Acts Nos. 32 and 73 of 1994.]

Section 31AA inserted

4. Division 2 of Part IV of the principal Act is amended by inserting after section 31 the following section —

“

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 convicted of an offence by or before a court exercising jurisdiction in any place in Australia, an external territory of Australia, or New Zealand, 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 32A repealed and a section substituted

5. Section 32A of the principal Act is repealed and the following section is substituted —

“

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*, 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 33 amended

6. Section 33 (2) of the principal Act is amended by deleting “inquire as to whether the” and substituting the following —

“

make any inquiry, whether for reasons related to
section 16A (3) or to section 32A or as to whether an

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