

WESTERN AUSTRALIA

**LEGAL PRACTITIONERS
AMENDMENT (DISCIPLINARY
AND MISCELLANEOUS
PROVISIONS) ACT 1992**

No. 48 of 1992

AN ACT to amend the *Legal Practitioners Act 1893*, and to make a consequential amendment to the *Consumer Affairs Act 1971*.

[Assented to 10 December 1992.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992*.

Principal Act

2. In this Act, other than in Part 6, the *Legal Practitioners Act 1893** is referred to as the principal Act.

[* Reprinted as approved 12 January 1981.
For subsequent amendments see 1991 Index to
Legislation of Western Australia pp. 114-115.]

Commencement

3. The provisions of this Act come into operation —
- (a) in relation to Part 1, and to Parts 2 and 3, on such day as is fixed by proclamation;
 - (b) in relation to Part 4, on such respective days as are fixed by proclamation;
 - (c) in relation to Part 5, on such day as is fixed by proclamation being a day not earlier than the day fixed in relation to section 52; and
 - (d) in relation to Part 6, on such day as is fixed by proclamation being a day not earlier than the day fixed in relation to Part 2.

PART 2 — DISCIPLINARY MATTERS

Section 3 amended

4. Section 3 of the principal Act is amended —

- (a) by deleting the definition of “Board” and substituting the following definition —

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

and

- (b) by inserting, in their respective appropriate alphabetical sequence, the following definitions —

“ **“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;

“the tribunal” means the Disciplinary Tribunal;

”.

Heading to Part I amended

5. The principal Act is amended by deleting the heading to Part I and substituting the following heading —

“ **PART I — THE LEGAL PRACTICE BOARD** ”.

Section 4 amended

6. (1) Section 4 of the principal Act is amended, in subsection (1) —

- (a) by deleting “The Barristers’ Board,” and substituting the following —

“ The Legal Practice Board, ”; and

- (b) in paragraph (a), by deleting “, who shall be *ex officio* chairman of the Board”.

(2) Section 4 of the principal Act is further amended by inserting after subsection (1) the following sections —

“ (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* 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. ”.

(3) Section 4 of the principal Act is further amended, in subsection (3) —

- (a) by deleting “In the absence of the Attorney-General,” and substituting the following —

“ 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 ”;

and

- (b) by inserting before “Each member,” the subsection designation “(4)”.

(4) Section 4 of the principal Act is further amended by adding after subsection (4) the subsection following —

- “ (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 6 amended

7. Section 6 of the principal Act is amended, in subsection
(1) —

(a) by inserting after paragraph (e) the paragraph
following —

“ (ea) for requiring, and encouraging the
maintenance of, proper professional
standards in the practice of the law; ”;

(b) in paragraph (f), by deleting “investigation of the
conduct of practitioners with respect to the practice of
their profession, and for” and substituting the
following —

“ supervision and investigation of the
conduct of practitioners and of the practice
of the law under this Act, including ”;

and

(c) by inserting after paragraph (ga) the paragraphs
following —

“ (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; ”.

Heading to Part IV amended

8. Part IV of the principal Act is amended by deleting the heading “**PART IV — SUSPENSION AND STRIKING OFF ROLL.**” and substituting the following heading and subheading —

“ **PART IV — PROFESSIONAL CONDUCT
AND DISCIPLINE**

Division 1 — Inquiry as to complaints ”.

Sections 25, 25A, 26 and 27 repealed, and new sections substituted

9. Sections 25, 25A, 26 and 27 of the principal Act are repealed and the following sections are substituted —

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 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.

(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.

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.

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;
 - (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 28 amended

10. Section 28 of the principal Act is amended by deleting “by the Board and signed by the secretary, or other authorized officer,” and substituting the following —

“ under this Part,

”.

New sections added

11. The principal Act is amended by inserting, after section 28, the following subheading and new Division —

“ ***Division 2 — Disciplinary proceedings***

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
- (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.

**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.

**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.

(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.

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.

**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
 - (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 to the procedure of the Disciplinary Tribunal.

”.

Section 29 repealed and new sections substituted

12. Section 29 of the principal Act is repealed and the following sections are substituted —

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.

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;
- (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 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.

Appeals

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

Section 30 amended

13. Section 30 of the principal Act is amended —

(a) by inserting after the section designation “**30.**” the subsection designation “(1)”;

(b) by deleting “Board make a report as aforesaid” and substituting the following —

“ Disciplinary Tribunal under section 29A (2) (a) makes and transmits a report, ”;

(c) by inserting after “such report shall be” the following —

“ taken, subject to section 29B, to be ”;

- (d) by deleting “And the” and substituting the following —

“ (2) The ”;

- (e) by inserting after “such practitioner” the following —

“ or make any order which the Disciplinary Tribunal might make under section 29A (3) ”;

and

- (f) by deleting “him” and substituting the following —

“ that practitioner ”.

Section 31 repealed and new section substituted

14. Section 31 of the principal Act is repealed and the following section substituted —

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.

”.

New subheading and sections inserted

15. The principal Act is amended by inserting, after section 31, the following subheading and new sections —

“

Division 3 — Provisions ancillary to disciplinary proceedings

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.

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.

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
- (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.

**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;
- (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.

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

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.

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.

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.

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 32 repealed

16. Section 32 of the principal Act is repealed.

New subheading inserted

17. The principal Act is amended by inserting, before section 32A, the following subheading —

“ *Division 4 — Effect of striking off or suspension* ”.

Section 32A amended

18. Section 32A of the principal Act is amended by deleting “Board” and substituting the following —

“ Disciplinary Tribunal ”.

Section 33 amended

19. Section 33 of the principal Act is amended, in subsection (1), by deleting “by order of the Full Court”.

Section 58D amended

20. Section 58D of the principal Act is amended, in subsection (1), by inserting, after “section”, the following —

“ 31F, ”.

Section 58I amended

21. Section 58I of the principal Act is amended, in subsection (1) (e), by inserting after “make” the following —

“ an order containing any other provision of a kind referred to in section 29A (3) and ”.

Section 81 amended

22. Section 81 of the principal Act is amended —

(a) by inserting, after “any rule,”, the following —

“ or to any order of the Complaints Committee or of the Disciplinary Tribunal, ”;

(b) by deleting “punished in a penalty not exceeding two thousand dollars” and substituting the following —

“ dealt with accordingly ”; and

(c) by inserting, before “Board”, the following —

“ Complaints Committee or the ”.

Schedule 2 amended

23. Schedule 2 to the principal Act is amended by inserting the following headings and clauses —

“ **PART C**
[sections 25(6) and 28E(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;
- (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, may determine.

PART D

[sections 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 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. ”.

PART 3 — AMENDMENTS CONSEQUENTIAL ON PART 2

Section 16 amended

24. Section 16 of the principal Act is amended in paragraph (b), by deleting “Barristers’ ”.

Section 17 amended

25. Section 17 of the principal Act is amended by deleting “Barristers’ ”.

Section 19 amended

26. Section 19 of the principal Act is amended by deleting “Barristers’ ”.

Section 41 amended

27. Section 41 of the principal Act is amended by deleting “under the provisions of section twenty-six of this Act” and substituting the following —

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

Part VI amended

28. Part VI of the principal Act is amended —

- (a) in section 58L, by deleting the definition of the term “Committee”; and

- (b) throughout sections 58L, 58M, 58P, 58R, 58S, 58T, 58U, 58V, 58W, 58X, 58Y and 58ZA, except where it already appears, by inserting before “Committee” the following —

“ Legal Costs ”.

Schedule 2 amended

29. (1) Schedule 2 to the principal Act is amended —

- (a) by deleting, opposite the heading, the reference “[sections 58M and 58R]”;
- (b) by inserting, opposite the heading “Part A”, the reference “[section 58M]”;
- (c) in the subheading to Part A, by deleting “Committee” and substituting the following —

“ *the Legal Costs Committee* ”;

- (d) by inserting, opposite the heading “Part B”, the reference “[section 58R]”;
- (e) in the heading to Part B, by deleting “Committee” and substituting the following —

“ *Legal Costs Committee* ”; and

- (f) throughout Part A and Part B, by inserting before “Committee” the following —

“ Legal Costs ”.

PART 4 — MISCELLANEOUS MATTERS

Section 3 amended

30. (1) Section 3 of the principal Act is amended by inserting in their respective appropriate alphabetical positions the definitions following —

“ **“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;

“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; ”.

(2) Section 3 of the principal Act is further amended, in the definition of “practitioner”, by deleting “as a barrister, solicitor, attorney, and proctor of the Supreme Court of Western Australia, or in any one or more of these capacities and” and substituting the following —

“ 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, ”.

Section 6 amended

31. (1) Section 6 of the principal Act is amended, in subsection (1) —

- (a) by repealing paragraph (h) and substituting the paragraph following —

“ (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; ”;

and

- (b) in paragraph (i) —

- (i) by deleting “necessary and convenient” and substituting the following —

“ necessary or convenient ”; and

- (ii) by deleting “Part V of this Act” and substituting the following —

“ this Act, other than Divisions 1 and 2 of Part VI ”.

(2) Section 6 of the principal Act is further amended by adding the subsections following —

“ (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

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

(5) A certified 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 practice 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 10 substituted

32. Section 10 of the principal Act is repealed and the following section is substituted —

Restrictions as to articulated clerks

“ **10.** (1) Subject to subsection (2) and subsection (3), no practitioner shall take, have or retain an articulated 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 articulated 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;
- (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 articulated clerk.

(4) No person, other than an individual referred to in subsection (3), shall take, have or retain more than 2 articulated 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 articulated clerk.

Section 16 amended

33. Section 16 of the principal Act is amended —

- (a) in paragraph (b), by deleting “by the last preceding subsection” and substituting the following —

“ under this Act ”; and

- (b) by repealing the proviso.

Section 16A inserted

34. After section 16 of the principal Act the following section is inserted —

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 articulated 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 articulated 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 22 amended

35. Section 22 of the principal Act is amended —

(a) by inserting after the section designation “**22.**” the subsection designation “(1) ”;

and

(b) by adding the subsection following —

“ (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 23 amended

36. Section 23 of the principal Act is amended —

(a) by inserting after the section designation “**23.**” the
subsection designation “(1)”;

(b) by deleting “Immediately after his admission every
practitioner shall” and substituting the following —

“ Subject to any rule which may be made
under subsection (2), every practitioner
shall, immediately after being admitted, ”;

(c) by inserting after “Supreme Court.” the subsection
following —

“ (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 subsection (2) of section
22, a person is admitted as a practitioner
without personal attendance as applicant
at the hearing of the application. ”;

and

- (d) by deleting "The said roll" and substituting the following —

" (3) The Roll of Practitioners ".

Section 34A inserted

37. The principal Act is amended by inserting after section 34 the new section following —

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

- (a) that is authorised 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 38 amended

38. Section 38 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “registered company auditor within the meaning ascribed to that expression by the Companies Act 1961” and substituting the following —

“ person registered as an auditor, or
taken to be registered as an auditor,
under Part 9.2 of the Corporations
Law ”;

(ii) by deleting “by the Minister under the provisions of section fourteen G of the Land Agents Act 1921” and substituting the following —

“ for the purposes of section 72 (2) of
the *Real Estate and Business Agents
Act 1978* ”;

and

(iii) by deleting “a practitioner’s books of account relating to his trust account or trust accounts” and substituting the following —

“ the books of account and records of a practitioner relating to any trust accounts ”;

and

(b) in subsection (3) (a), by deleting “his”.

Section 40 amended

39. Section 40 (2) of the principal Act is amended, by deleting “paragraph (b) of subsection (1) of section 30D of the *Companies (Western Australia) Code*” and substituting the following —

“ section 1292 (1) (d) of the Corporations Law ”.

Section 42A amended

40. Section 42A of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “registered company auditor within the meaning ascribed to that expression by the *Companies (Western Australia) Code*” and substituting the following —

“ person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law ”;

(ii) by deleting “by the Minister under the provisions of section fourteen G of the Land Agents Act 1921” and substituting the following —

“ for the purposes of section 72 (2) of the *Real Estate and Business Agents Act 1978* ”;

and

(iii) by deleting “his” and substituting the following —

“ that ”;

and

(b) by adding the subsection following —

- “ (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 58B amended

41. Section 58B of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “satisfied that” and substituting the following —

“ satisfied —

(a) that ”;

(ii) by deleting the paragraph designation “(a)” and substituting the subparagraph designation “(i)”;

(iii) deleting “there is a deficiency” and substituting the following —

“ there is, or may be, a deficiency ”;

(iv) by deleting the paragraph designation “(b)” and substituting the subparagraph designation “(ii)” and at the end of that subparagraph deleting the comma and substituting a semicolon;

(v) by inserting after subparagraph (a) (ii) the following —

“ or

(b) a practitioner is suspended from practising, ”;

and

(vi) by deleting “his bankers” and substituting the following —

“ to the bankers of that practitioner ”;

and

(b) in subsection (3), deleting “his bankers” and substituting the following —

“ the bankers of that practitioner ”.

Section 58D amended

42. Section 58D of the principal Act is amended —

(a) in subsection (1), by deleting paragraph (c);

and

(b) by adding the subsections following —

“ (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.

(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-imbusement 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 paragraph (b) of subsection (4) 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 58E amended

43. Section 58E of the principal Act is amended, in subsection (2) —

- (a) by deleting “of his instrument of appointment” and substituting the following —

“ , if so required, of the instrument by which
the appointment in respect of the practice
was made ”;

- (b) by deleting “books, files, papers, or documents” in subparagraph (a) (i) and substituting the following —

“ records ”; and

- (c) by deleting “books, files, papers, documents, and other things relating to the practice, and” in paragraph (b) and substituting the following —

“ records or other things relating to the
practice ”

Section 58G amended

44. Section 58G of the principal Act is amended —

- (a) in subsection (3) —

- (i) by deleting “of his instrument of appointment” and substituting the following —

“ , if so required, of the instrument by
which the appointment in respect of
the practice was made ”;

and

- (ii) in paragraph (a), by deleting “books, files, papers or documents” and substituting the following —

“ records ”;

and

- (b) in subsection (4), by deleting “Penalty: Two hundred dollars” and substituting the following —

“ Penalty: \$2 000 ”.

Section 58K amended

45. Section 58K of the principal Act is amended by deleting “ Penalty: Two hundred dollars ” and substituting the following —

“ Penalty: \$2 000 ”.

Sections 58Q and 58S amended

46. Section 58Q and section 58S of the principal Act are respectively amended by deleting “Board” and substituting the following —

“ Commissioner ”.

Section 61 amended

47. Section 61 of the principal Act is amended —

- (a) by inserting after the section designation “**61.**” the subsection designation “(1)”;

- (b) by deleting “aforesaid” and substituting the following —

“ is referred to in section 59 is made ”;

- (c) by inserting, after “the agreement shall”, the following —

“ , subject to subsection (2), ”; and

- (d) by adding the subsection following —

“ (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* 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 65 amended

48. Section 65 of the principal Act is amended —

(a) in subsection (1), by deleting “signed by that practitioner,”;

(b) in subsection (2), by deleting “section 66A” and substituting the following —

“ section 66B ”;

(c) in subsection (3), by deleting paragraphs (a) and (b) and substituting the following —

“ (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 itemised account of the costs the subject of this account.

Within 30 days of receiving an itemised 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.

”;

and

- (d) by adding the subsection following —

“ (5) Where a lump sum bill or an itemised 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 68 amended

49. Section 68 of the principal Act is amended —

- (a) in subsection (1), by deleting “parties” and substituting the following —

“ 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 ”;

- (b) in subsection (2), by inserting after “as to” the following —

“ , or for the purpose of that officer taxing, ”;

- (c) in subsection (4), by inserting after “tribunal”, where it first occurs, the following —

“ for a report as to the bill ”; and

- (d) by adding the subsection following —

“ (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 68A amended

50. Section 68A of the principal Act is amended —

(a) in paragraph (a) —

(i) by inserting before “party charged” the following —

“ person or ”; and

(ii) by deleting “to his executor or administrator as the case may be” and substituting the following —

“ to —

(i) a person who has paid the bill to which the charge relates;

(ii) any other person who is authorised 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

(iv) a person who is a beneficiary of a trust estate or fund against which costs may be chargeable; ”.

- (b) in paragraph (b), by deleting “his executor, administrator or assignee” and substituting the following —

“ another person who is authorised to administer the estate or affairs of any such person who is deceased, incapable or insolvent or who is an assignee of the practitioner ”;

- (c) in paragraph (c), by deleting “to him at his” and substituting the following —

“ the person at the person’s ”;

- (d) in paragraph (d), by deleting “in his discretion may” and substituting the following —

“ has a discretionary power to ”;

and

- (e) at the end of paragraph (d), by inserting the following —

“ and ”.

Section 72 inserted

51. The principal Act is amended by inserting after section 71 the new section following —

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 79 amended

52. Section 79 of the principal Act is amended by deleting the paragraph designated as “(5)” and substituting the paragraph following —

“ (5) practice —

(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;
or

”.

Section 81 amended

53. Section 81 of the principal Act is amended by deleting “or any section or part thereof” and substituting the following —

“ or to any provision of or obligation imposed by or
under this Act

”.

Section 83 amended

54. Section 83 of the principal Act is amended by adding after “Act” the following —

“ or who is aggrieved by a decision of the Board refusing
the issue or renewal of a practice certificate

”.

PART 5 — FURTHER MISCELLANEOUS AMENDMENTS

Amendments, by way of revision

55. The principal Act is further amended, as follows —

Section 3.

By —

- (a) in the definition of “certificated practitioner” —
 - (i) deleting “who is the holder of” and substituting the following —
“ holding ”; and
 - (ii) deleting “he” and substituting the following —
“ the practitioner ”;
- (b) in the definition of “practitioner” —
 - (i) deleting “of this Act, the expression”;
 - (ii) inserting after “firm of practitioners” the following —
“ of which the person is a member ”; and
 - (iii) deleting “of this Act the expression”;
and
- (c) in the definition of “trust account”, deleting “trust, moneys, pursuant to Part V of this Act” and substituting the following —
“ trust moneys under Part V ”.

Section 6 (1).

By —

- (a) in paragraph (da) —
 - (i) deleting “his” and substituting the following —
“ the ”; and

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(ii) deleting “he” and substituting the following —

“ that person ”;

and

(b) in paragraph (fa), deleting “paragraph (4) of section seventy-nine” and substituting the following —

“ section 79 (4) ”.

Section 7.

By repealing the section and re-enacting it with amendments, as follows —

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 9.

By inserting after “he”, in paragraph (a), the following —

“ or she ”.

Section 11.

By —

(a) deleting “become lunatic” and substituting the following —

“ be incapacitated by reason of mental disability ”;

(b) deleting “rolls” and substituting the following —

“ Roll of Practitioners ”;

(c) deleting “his” and substituting the following —

“ their ”;

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- (d) deleting “or for any other reason with the consent of the Board”
and substituting the following —

“ or where for any other reason the Board gives
consent ”;

and

- (e) deleting “as aforesaid”.

Section 13.

By —

- (a) in subsection (1) —

- (i) deleting “to whom he is articulated” in both places where it
occurs and substituting the following —

“ with whom the articles are served ”;

and

- (ii) deleting “his partner” and substituting the following —

“ a partner of that practitioner ”;

and

- (b) in subsection (4), deleting “his consent” and substituting the
following —

“ the consent sought ”.

Section 14B.

By deleting “his” and substituting the following —

“ the ”.

Section 14C.

By —

- (a) inserting after the section designation “14C.” the subsection designation “(1)”;

and
- (b) deleting “Provided that there” and substituting the following —

“ (2) There ”.

Section 15.

By —

- (a) in subsection (1), inserting after “he” the following —

“ or she ”; and
- (b) in subsection (2) —
 - (i) inserting after “as a practitioner if” the following —

“ that person ”;
 - (ii) in paragraphs (a), (b), (c) and (d), deleting the word “he” at the commencement of each paragraph;

and
 - (iii) in paragraph (c), deleting “he is” and substituting the following —

“ that person was there ”.

Section 16.

By deleting “he”, in paragraph (b), and substituting the following —

“ the person ”.

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Section 17.

By —

- (a) deleting “set forth in subsection (b) of” and substituting the following —

“ as to the qualifications and fitness for admission of a
person to be admitted a practitioner referred to in ”;

and

- (b) deleting “his” and substituting the following —

“ the ”.

Section 19.

By —

- (a) inserting after the section designation “19.” the subsection designation “(1)”;

- (b) deleting “years prescribed in subsection (a) of section sixteen hereof:” and substituting the following —

“ 10 years prescribed in paragraph (a) of section 16. ”;

and

- (c) deleting “Provided that such” and substituting the following —

“ (2) For the purposes of subsection (1), the ”.

Section 20.

By —

- (a) deleting “and until he” and substituting the following —

“ that person ”;

- (b) in paragraph (b), deleting “he” and substituting the following —

“ the person ”;

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- (c) in paragraph (c), deleting “notice of his” and substituting the following —

“ a notice of ”;

and

- (d) in paragraph (d) —

- (i) deleting “; provided that this paragraph shall not apply to” and substituting the following —

“ , except in the case of ”; and

- (ii) deleting “of this Act”.

Section 21.

By —

- (a) inserting after the section designation “21.” the subsection designation “(1)”;
- (b) deleting “by himself or” and substituting the following —
- “ personally or by ”;
- (c) deleting the colon after “admission” and substituting a full stop; and
- (d) deleting “Provided that written” and substituting the following —
- “ (2) A ”.

Section 24.

By —

- (a) inserting after “Every” the following —
- “ person who is admitted as a ”; and
- (b) deleting “his” and substituting the following —
- “ that ”.

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Section 25.

By deleting “by himself or” and substituting the following —

“ personally or by an ”.

Section 25A.

By deleting “his”.

Section 30.

By deleting “him” and substituting the following —

“ the practitioner ”.

Section 31.

By deleting “his” and substituting the following —

“ an ”.

Section 33.

By —

(a) in subsection (1) —

(i) deleting “he”, where it first occurs, and substituting the following —

“ the practitioner ”;

(ii) deleting “his”;

(iii) deleting “may be. Every” and substituting the following —

“ requires, and each ”;

(iv) deleting “provided that” and substituting the following —

“ but ”;

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- (v) inserting after "he", in the second place where it occurs, the following —

" or she ";

and

- (b) in subsection (2) (a), deleting "documents in his possession or power" and substituting the following —

" records in the possession or power of that person ".

Section 34.

By —

- (a) in subsection (2), deleting "his control" and substituting the following —

" the control of that practitioner ";

and

- (b) in subsection (3), deleting "he" and substituting the following —

" the practitioner ".

Section 36.

By deleting "him" and substituting the following —

" that practitioner ".

Section 37.

By —

- (a) in subsection (1) —

- (i) deleting "or the firm of practitioners of which the practitioner is a member"; and

- (ii) in paragraph (b) —

(A) deleting "or the firm"; and

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(B) deleting “he” and substituting the following —

“ the practitioner ”;

(b) in subsection (3) —

(i) deleting “he”; and

(ii) deleting “his intention to deal” and substituting the following —

“ the intention of that practitioner in dealing ”;

and

(c) in subsection (4), deleting “he” and substituting the following —

“ the practitioner ”.

Section 39.

By —

(a) in subsection (1) —

(i) deleting “his”, where it first occurs, and substituting the following —

“ the written ”; and

(ii) in paragraph (a), deleting “his absence” and substituting the following —

“ the absence of that practitioner ”;

and

(b) in subsection (2) —

(i) deleting “him”, where it first occurs, and substituting the following —

“ that person ”;

(ii) deleting “his powers” and substituting the following —

“ any power under this Act ”;

- (iii) deleting "him", in the second place where it occurs, and substituting the following —

" the examiner "; and

- (iv) deleting "his duties" and substituting the following —

" any duty under this Act ".

Section 40.

By —

- (a) in subsection (1) —

- (i) deleting "The examiner and a person employed by" and substituting the following —

" A person who is, or is employed by, ";

- (ii) deleting "he" and substituting the following —

" the person "; and

- (iii) deleting "his knowledge" and substituting the following —

" the knowledge of that person ";

and

- (b) in subsection (2), deleting "he", in both places where it occurs, and substituting the following —

" the examiner ".

Section 42 (1).

By deleting "his next" and substituting the following —

" any succeeding ".

Section 58A.

By deleting the definition of "section".

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and Miscellaneous Provisions) Act 1992*

Section 58C.

By —

- (a) in subsection (1), inserting a comma after “died”;
and
- (b) in subsection (2), deleting “his bankers” and substituting the following —
“ the bankers of that practitioner ”.

Section 58E (2).

By —

- (a) deleting “of his”, in subparagraph (a) (i);
- (b) inserting after “agents”, where it first occurs in subparagraph (a) (i), the following —
“ of the practitioner ”;
- (c) deleting “his personal representative” and substituting the following —
“ the personal representative ”;
and
- (d) in paragraph (b), deleting “his”.

Section 58F.

By —

- (a) in paragraph (a), deleting “to him or as he directs” and substituting the following —
“ to the supervising solicitor or as may be directed ”;
and
- (b) in paragraph (b), deleting “he” and substituting the following —
“ the Judge ”.

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and Miscellaneous Provisions) Act 1992* [No. 48]

Section 58G.

By —

- (a) in subsection (1), deleting “his practice” and substituting the following —

“ the practice carried on by that other practitioner ”;

- (b) in subsection (3) —

(i) deleting “of his” in paragraph (a); and

(ii) inserting after “agents” the following —

“ of the practitioner ”;

* and

- (c) in subsection (4) —

(i) deleting “him”, where it first occurs, and substituting the following —

“ that person ”;

(ii) deleting “his powers” and substituting the following —

“ any power under this Act ”;

(iii) deleting “him”, in the second place where it occurs, and substituting the following —

“ the Board’s appointee ”; and

(iv) deleting “his duties” and substituting the following —

“ any duty ”.

Section 58H.

By deleting “of the Board’s appointee” and substituting the following —

“ from the practitioner appointed under section 58G ”.

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Section 58I.

By —

- (a) in subsection (1) —
 - (i) deleting “his practice” and substituting the following —

“ the practice carried on by that practitioner ”;

and
 - (ii) in paragraph (b), deleting “his bankers” and substituting the following —

“ the bankers of that practitioner ”;

and
- (b) in subsection (4), deleting “his bankers” and substituting the following —

“ the bankers of that practitioner ”.

Section 58J.

By deleting, in paragraph (a), “paragraphs (a), (b) and (c), of”.

Section 58N (2).

By —

- (a) in paragraphs (a) and (b), deleting “to him” in each place where it occurs; and
- (b) in paragraph (b) —
 - (i) deleting “he”, where it first occurs, and substituting the following —

“ the Attorney General ”; and
 - (ii) deleting “he”, in the second place where it occurs, and substituting the following —

“ the person ”.

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Section 58O.

By —

- (a) deleting “to him”, where it first occurs, and substituting the following —
“ to that person ”;
- (b) deleting “to him”, in the second place where it occurs;
and
- (c) deleting “his”.

Section 58V.

By —

- (a) in subsection (1) (c), deleting “to him” and substituting the following —
“ to the Attorney General ”; and
- (b) in subsection (2), deleting “his” and substituting the following —
“ the ”.

Section 59.

By —

- (a) inserting after the section designation “59.” the subsection designation “(1)”;
- (b) deleting “his client” and substituting the following —
“ any client of that practitioner ”;
- (c) deleting “Such an agreement shall exclude” and substituting the following —
“ (2) An agreement made under subsection (1) excludes ”;

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- (d) deleting "agreement: Provided always, that the client who has entered into such agreement" and substituting the following —

" agreement.

(3) A client who enters into an agreement made
under subsection (1) ”;

- (e) deleting "such first mentioned written agreement" and substituting the following —

" that agreement ”;

- (f) deleting "the said practitioner under the same. And provided, also, that no" and substituting the following —

" the practitioner under that agreement.

(4) No ”;

and

- (g) deleting "Any such agreement" and substituting the following —

" (5) An agreement made under subsection (1) ”.

Section 61.

By —

- (a) deleting "his", where it first occurs;
(b) deleting "his executors, administrators, or assigns," and substituting the following —

" a person who is authorised to administer the estate
of any such practitioner who is deceased or insolvent,
or an assignee of that practitioner, ”;

and

- (c) deleting "such client, or his executors or administrators," and substituting the following —

" the client, or a person who is authorised to
administer the estate of any such client who is
deceased or insolvent, ”.

Section 62.

By —

- (a) deleting “his”, where it first occurs, and substituting the following —
“ a ”; and
- (b) deleting “his”, in the second place where it occurs.

Section 62A (1).

By deleting “his” and substituting the following —

“ an ”.

Section 66.

By —

- (a) in subsection (1), deleting “his”; and
- (b) in subsection (2) —
 - (i) deleting “Any person who” and substituting the following —
“ Where a person ”;
 - (ii) deleting “upon him”;
 - (iii) deleting “may”; and
 - (iv) inserting before “have” the following —
“ the person charged may apply to ”.

Section 67.

By —

- (a) inserting after the section designation “67.” the subsection designation “(1)”;

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- (b) deleting “Provided that within the month aforesaid” and substituting the following —

“ (2) Within the period of one month permitted under subsection (1) ”;

and

- (c) deleting “proviso” and substituting the following —

“ subsection ”.

Section 70.

By —

- (a) in subsection (1) —

(i) deleting “he allows”; and

(ii) inserting after “taxation” the following —

“ are respectively allowed by the taxing officer ”;

and

- (b) in subsection (2) (a) —

(i) deleting “he allows”; and

(ii) inserting after “costs” the following —

“ is allowed ”.

Section 74.

By —

- (a) deleting “, he” and substituting the following —

“ for another practitioner, the agent ”;

- (b) deleting “his costs and expenses” and substituting the following —

“ any costs and expenses in so acting ”; and

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- (c) deleting "he acts as agent" and substituting the following —
- " the agent acts ".

Section 75.

By deleting "by him".

Section 76.

By —

- (a) inserting after the section designation "76." the subsection designation "(1)";
- (b) deleting "in the name of himself or of any other person" and substituting the following —

" , whether in their own name or that of any other person ".

- (c) deleting "Western Australia: Provided that nothing herein contained shall prevent" and substituting the following —

" Western Australia.

(2) Nothing in subsection (1) shall be construed as preventing ";

and

- (d) deleting "by leave under the provisions of section thirty of the Small Debts Ordinance 1863" and substituting the following —

" if permitted to do so pursuant to section 29 of the Local Courts Act 1904 ".

Section 77.

By —

- (a) inserting after the section designation "77." the subsection designation "(1)"; and

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- (b) deleting “equity: Provided that nothing herein contained” and substituting the following —

“ equity.

(2) Nothing in subsection (1) ”.

Section 78.

By —

- (a) inserting after the section designation “78.” the subsection designation “(1)”;
- (b) deleting “he” and substituting the following —
- “ the person ”;
- and
- (c) inserting before “Where” the subsection designation “(2)”.

Section 79.

By —

- (a) deleting “No certificated practitioner shall —
- (1) act as agent for any person not being a duly qualified”
- and substituting the following —
- “ (1) A certificated practitioner shall not act as agent for any person other than a ”;
- (b) deleting “it is herein provided shall” and substituting the following —
- “ under this Act may only ”;
- (c) deleting “duly qualified”, in the second place where it occurs;
- (d) deleting “only; or” and substituting a full stop;

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- (e) deleting “(2) permit or suffer his name or the name of his firm” and substituting the following —

“ (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, ”;

- (f) deleting “such matter” and substituting the following —

“ matter to which subsection (1) applies ”;

- (g) deleting “practitioner; or” and substituting the following —

“ practitioner. ”;

- (h) in the paragraph designated as “(3)” —

- (i) inserting after that designation, as the subsection designation, the following —

“ A certificated practitioner shall not ”;

- (ii) deleting “such person” and substituting the following —

“ a person other than a certificated practitioner ”;
and

- (iii) deleting “; or” and substituting a full stop;

- (j) in the paragraph designated as “(4)” —

- (i) inserting after the designation, as the subsection designation, the following —

“ A certificated practitioner shall not, ”;

- (ii) deleting “his executors and administrators” and substituting the following —

“ the person authorised to administer the estate of any such practitioner who is deceased ”;

- (iii) deleting “it is herein provided shall” and substituting the following —

“ under this Act may only ”; and

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- (iv) deleting “only; or” and substituting a full stop;
- (k) in the paragraph designated as “(5)”, inserting after that designation, as the subsection designation, the following —
 - “ A certificated practitioner shall not ”;
 - and
- (l) in the paragraph designated as “(6)” —
 - (i) inserting after that designation, as the subsection designation, the following —
 - “ A certificated practitioner shall not, ”;
 - (ii) deleting “his practice as a” and substituting the following —
 - “ the practice of that ”; and
 - (iii) in paragraph (b), deleting “he” and substituting the following —
 - “ that person ”.

Section 80.

By —

- (a) deleting “hold himself out as or pretend to be” and substituting the following —
 - “ purport or pretend to be, ”;
- (b) deleting “he is” and substituting the following —
 - “ the person is, ”; and
- (c) deleting “is”, in the second place where it occurs.

Section 83.

By inserting before “of section sixteen” the following —

“ of subsection (1) ”.

Section 85.

By —

- (a) in subsection (1), in paragraph (a), deleting “his practice” and substituting the following —

“ the practice of that practitioner or former practitioner ”;

and

- (b) in subsection (3) (d), deleting “he”, wherever it occurs, and substituting the following —

“ the practitioner ”.

Schedule 2, Part A.

By —

- (a) in clause 1 (1) and (2) —

- (i) deleting “his”, wherever it occurs, and substituting the following —

“ the ”;

and

- (ii) deleting “he” wherever it occurs;

- (b) in clause 3 (1) and (2), deleting “he”, wherever it occurs, and substituting the following —

“ the person ”;

- (c) in clause 4 (1) (a) —

- (i) deleting “he” and substituting the following —

“ the member ”; and

- (ii) deleting “the *Companies (Western Australia) Code*” and substituting the following —

“ that term under section 9 of the Corporations Law ”;

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- (d) in clause 4 (1) (b), deleting “his functions” and substituting the following —

“ the functions of that member ”;

- (e) in clause 4 (2), deleting “his”;

- (f) in clause 5, deleting “he” and substituting the following —

“ the Attorney General ”; and

- (g) in clause 6, deleting “his”.

Schedule 2, Part B.

By deleting “he” in clause 1 (2), and substituting the following —

“ the chairman ”.

PART 6 — CONSUMER AFFAIRS ACT 1971

Principal Act

56. In this Part the *Consumer Affairs Act 1971** is referred to as the principal Act.

[* *Act No. 68 of 1971 reprinted as at 22 May 1984.*
For amendments to 6 May 1992 see 1991 Index to Legislation of Western Australia, p. 44.]

Section 4 amended

57. Section 4 of the principal Act is amended by inserting after subsection (2a) the subsection following —

“ (2b) On and after the coming into operation of Part 2 of the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992* the definition “**services**” shall be taken not to include a service to which Part IV of the *Legal Practitioners Act 1893* applies.

”.