

(4) In this section—

“authorized officer” means any officer or servant of the Society who is authorized by a committee established by the Society to administer an approved scheme to sign certificates under this section; “fees” includes stamp duties.

Powers of courts as to costs.  
*Ibid.*, s. 5.

6—A court may make in favour of an assisted person any such order for costs (except against another assisted person) as that court has power to make in favour of a person who is not an assisted person, notwithstanding that no amount is or will be payable by the assisted person or that the costs so ordered are in excess of the amount that is or will be payable by the assisted person.

Subsidies.  
*Ibid.*, s. 6.

7—(1) The Attorney-General may pay to the committees established by the Society to administer an approved scheme, a subsidy of such amount as he may determine towards defraying the costs of administering the scheme.

(2) All payments made by the Attorney-General under this section shall be made out of moneys to be provided by Parliament for the purpose.

Annual report.  
*Ibid.*, s. 7.

8—(1) The Society shall, not later than the thirtieth day of September in each year, submit to the Attorney-General a report by each committee on the operation of the approved schemes during the year ended on the preceding thirtieth day of June.

(2) A report under this section shall be accompanied by an audited statement of the receipt and expenditure of moneys in relation to the respective schemes during the period to which the report relates.

This Act to prevail over certain enactments, &c.  
*Ibid.*, s. 8.

9 Notwithstanding anything in the *Matrimonial Causes Act* 1860 or in the *Supreme Court Civil Procedure Act* 1932 or in any rules of court made thereunder, the provisions of this Act prevail over the provisions of those Acts and rules in respect of any proceedings that are subject to either of those Acts, and any legal assistance granted to any person shall be granted under the approved scheme for the Division of the State in which he resides and not otherwise.

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## LEGAL PRACTITIONERS.

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No. 29 of 1962.

AN ACT to amend the *Legal Practitioners Act* 1959.  
[1 October 1962.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title, citation, and commencement.

1—(1) This Act may be cited as the *Legal Practitioners Act* 1962.

(2) The *Legal Practitioners Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the day on which the *Law Society Act 1962* commences.

**2** Section three of the Principal Act is amended—

Interpre-  
tation.

(a) by inserting in subsection (1), after the definition of "court", the following definition:—

“‘firm’ means two or more practitioners practising as solicitors in partnership and includes—

(a) a practitioner practising as a solicitor on his own account, whether or not he is at the same time in the employ of any other person; and

(b) two or more practitioners of whom one or more practises or practise as a solicitor or solicitors under any contract or arrangement under or by which his or their remuneration is shared by the other or others who does or do not so practise;”;

(b) by omitting from that subsection the definition of “law society” and substituting therefor the following definition:—

“‘Law Society’ means the Law Society of Tasmania incorporated by the *Law Society Act 1962*;”;

(c) by inserting, after subsection (1), the following subsection:—

“(1A) For the purposes of this Act a practitioner who practises shall be deemed to practise as a solicitor unless he professes to practise only as a barrister and does so practise.”; and

(d) by adding at the end thereof the following subsection:—

“(3) For the purpose of this Act a person who has been admitted as a barrister or practitioner—

(a) shall be deemed not to be a barrister or practitioner during any period for which he is suspended from practice; and

(b) is not a barrister or practitioner after he has been disbarred or struck off the roll unless and until he is readmitted or restored to the roll.”.

**3** Sections twenty-one, twenty-two, and twenty-three of the Principal Act are repealed and the following sections are substituted therefor:—

“21—(1) Subject to section fifty-four, on application made to him for that purpose by a firm of which all the members or the sole member are or is on the roll of practitioners and on Issue of practising certificates.

(2) The *Legal Practitioners Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the day on which the *Law Society Act 1962* commences.

**2** Section three of the Principal Act is amended—

Interpre-  
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(a) by inserting in subsection (1), after the definition of “court”, the following definition:—

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(a) a practitioner practising as a solicitor on his own account, whether or not he is at the same time in the employ of any other person; and

(b) two or more practitioners of whom one or more practises or practise as a solicitor or solicitors under any contract or arrangement under or by which his or their remuneration is shared by the other or others who does or do not so practise;”;

(b) by omitting from that subsection the definition of “law society” and substituting therefor the following definition:—

“‘Law Society’ means the Law Society of Tasmania incorporated by the *Law Society Act 1962*;”;

(c) by inserting, after subsection (1), the following subsection:—

“(1A) For the purposes of this Act a practitioner who practises shall be deemed to practise as a solicitor unless he professes to practise only as a barrister and does so practise.”; and

(d) by adding at the end thereof the following subsection:—

“(3) For the purpose of this Act a person who has been admitted as a barrister or practitioner—

(a) shall be deemed not to be a barrister or practitioner during any period for which he is suspended from practice; and

(b) is not a barrister or practitioner after he has been disbarred or struck off the roll unless and until he is readmitted or restored to the roll.”.

**3** Sections twenty-one, twenty-two, and twenty-three of the Principal Act are repealed and the following sections are substituted therefor:—

“21—(1) Subject to section fifty-four, on application made to him for that purpose by a firm of which all the members or the sole member are or is on the roll of practitioners and on Issue of practising certificates.

payment to him of the fee mentioned in the first schedule, the Registrar shall issue to them or him a certificate, to be known as a practising certificate, in the form in the third schedule.

(2) When application is made under this section—

- (a) in the months of and between December and May, the certificate issued thereon shall be in force from the termination of any practising certificate then in force for the firm, or forthwith if there is no such certificate, until the last day of the month of December next following; and
- (b) in the months of and between June and November, the certificate issued thereon shall be in force from the termination of any practising certificate then in force for the firm, or forthwith if there is no such certificate, until the last day of the month of December next but one following.

Effect of not practising.

“22—(1) Where a person who is the sole member of a firm applies for a practising certificate and has for the preceding twelve months not been named in any practising certificate in force during that period, he being all the while on the roll of practitioners, he shall before being entitled to receive the certificate applied for satisfy the court as to the circumstances in which he ceased or failed to begin to practise as a solicitor and as to his conduct and employment since he so ceased or failed to begin.

(2) Where a firm applies for a practising certificate and a member thereof would have to satisfy the court as provided in subsection (1) if he were the sole member, that member shall so satisfy the court before the firm is entitled to receive the certificate.

Practising without certificate.

“23—(1) A practitioner who wilfully practises as a solicitor in partnership or on his own account or shares the remuneration of a practitioner so practising while he is not named in a practising certificate in force commits an offence for which he may be prosecuted only on indictment in the Supreme Court and punished as for a crime.

(2) A firm which has not a practising certificate in force cannot, without the leave of the court, maintain an action for the recovery of costs, fees or disbursements on account of, or in relation to, any act or proceedings done or taken by them or any of them or him as practitioners or a practitioner while not named in a practising certificate.”

**4** Part VI of the Principal Act is repealed and the following Part is substituted therefor:—

#### “PART VI.

#### “FIDELITY BONDS.

Firms to obtain fidelity bonds.

“54—(1) A practising certificate shall not be issued under Part III unless the applicant therefor has lodged with the Registrar a fidelity bond that complies with the requirements of this section.

(2) To comply with the requirements of this section a fidelity bond shall be a bond to the Registrar in accordance with the form set forth in the fourth schedule from an insurance company, banker, the Law Society, or such other person

as a judge may approve, in the sum of twenty thousand pounds, and the period of the bond shall be the period during which, if the application is granted, the practising certificate may remain in force.

(3) Where, in respect of the same firm a person, for the purposes of this section, enters, as obligor, into two or more fidelity bonds the periods of which succeed each other without interval the obligor shall not be liable under those bonds to pay any sums that in the aggregate exceed twenty thousand pounds.

(4) Where a practitioner is a member of a firm of which there are two or more members and also the sole member of a firm the fidelity bond for the firm of two or more members complies with the requirements of this section for the other firm if its period is also that required for the other firm.

“55—(1) If a bond lodged under section fifty-four becomes forfeited on breach of condition, the Registrar may, unless the amount thereof is paid on demand, bring an action thereon.

Enforcement  
of fidelity  
bonds.  
Cf. *ibid.*, s. 53.

(2) If in an action on such a bond judgment is given for the Registrar it shall be for the full amount of the bond and execution may be had thereon for that amount.

(3) The proceeds of such a bond shall be paid into court and administered therein on the principle that, subject to payment of the costs and expenses of administration (including those of recovery, if any), all claims of its clients against the firm for—

- (a) the return of moneys held, acquired, or received by the firm to their use;
- (b) the return of other property held, acquired, or received by the firm to their use; or
- (c) the exoneration of their property fraudulently mortgaged, pledged, or otherwise charged by the firm or any member thereof or any person on their or his behalf otherwise than for the client's benefit,

shall be paid out of the fund in full, or ratably if it is insufficient, and the residue of the fund, if any, shall be paid to the obligor.

(4) Notwithstanding anything contained elsewhere in this Act or in a bond lodged under section fifty-four, no claim is payable under this section in respect of—

- (a) any theft, embezzlement, misappropriation, wrongful conversion, fraud, fraudulent or unauthorized mortgage, pledge, or other charge, or other wrongful act done before the beginning of the period of the first bond given for the purposes of section fifty-four by the obligor of the bond in question in respect of the firm in question; or
- (b) any prior or subsequent failure or inability to return, pay over, or account for money or other property in consequence of a wrongful act so done.

(5) The Law Society shall have the prosecution of the administration of the fund in court as if it were paid in under the judgment in an action in which the Law Society were the plaintiff.

(6) If the firm has money in a trust account out of which any claim payable out of the fund in court is payable in whole or in part, the court may at the suit of the Registrar make such orders as will cause the moneys in that trust account or so much of them as belong to persons entitled to claim on the fund in court to be paid into that fund.

(7) Moneys paid into court under subsection (6) of this section shall form a single fund with the money paid under the bond and be available for the purposes of this section free from all equities affecting the trust account.

(8) Before any client claiming under subsection (3) of this section may receive any payment out of the fund in court he shall, unless the court otherwise orders, assign to the obligor of the bond—

(a) his debt against the firm; and

(b) any right to recover the amount of that debt from any other person,

or so much of it as will then be paid.

(9) In the administration of a fund in court under this section the court may order—

(a) an interim dividend to be paid before all claims of clients payable out of the fund under subsection (3) are determined;

(b) an advance payment in a case of personal hardship;

(c) an advance return to the obligor of money clearly not required to pay claims of clients; and

(d) a client claiming under subsection (3) to take at the expense of the fund in court, or, if he consents, the obligor, proceedings against the firm (including proceedings in bankruptcy) or against any other person from whom he may recover the amount of his claim or any part thereof.

(10) A fund in court under this section is not subject to marshalling for the exoneration of any other fund (not being another fund in court under this section) to which a claimant on the first-mentioned fund may resort.

“ 56—(1) If one month before the expiration of a firm's practising certificate then in force that firm has not applied for a further practising certificate and for that purpose lodged with the Registrar a fidelity bond that complies with the requirements of section fifty-four, the Registrar shall, unless a judge otherwise orders, issue a summons to the firm to show cause within four days to a judge why the powers set forth in subsection (2) of this section should not be exercised.

(2) On the return of a summons under this section the judge may order—

- (a) the bank in which the firm has its trust account not to pay any cheques drawn thereon—
  - (i) unless countersigned by a named officer of the court (including solicitors);
  - (ii) unless signed by such an officer; or
  - (iii) until further order;
- (b) the firm to deliver up to such an officer all clients' securities and muniments of title held by it; and
- (c) the Sheriff to enter the office of the firm, break open all locked receptacles therein, and take possession of such books and documents the property of the firm or its clients as are specified or indicated in the order.

(3) If at any time before the return of a summons under this section the firm become entitled to the issue of a further practising certificate, no proceedings may be had on the summons.

“57—(1) In accordance with the requirements of a notice in writing served by the Law Society on a banker, the banker shall, within such period as may be specified in the notice—

*Inspection  
of bank  
records, &c.  
Ibid., p. 52.*

- (a) notify the Law Society whether a trust account has been opened, or is or has been kept, at his bank by a practitioner (including a former practitioner who has been struck off the roll of practitioners);
- (b) send or deliver to the Law Society a statement in writing of any particulars relating to a trust account that has been opened, or is or has been kept, at his bank; and
- (c) produce for inspection by a person authorized for that purpose by the Law Society under its common seal any documents or records in the possession of the banker relating to any trust account that has been opened, or is or has been kept, at his bank.

Penalty: One hundred pounds.

(2) To comply with paragraph (c) of subsection (1) of this section in respect of any notice the documents or records shall be produced at a branch, or other place of business, of the bank in the State that has been notified by the banker to the Law Society.

(3) A person authorized in accordance with that paragraph may inspect and take copies of, or extracts from, any documents or records produced pursuant to that paragraph and any person who obstructs a person so authorized in the exercise of his powers under this subsection is liable to a penalty of one hundred pounds.

(4) A notice under subsection (1) of this section may be served by delivering it to the manager, or other officer in charge, of—

- (a) the principal office; or
- (b) any branch at which moneys are paid, of the bank in this State.

Solicitors' Guarantee Fund to be wound up.

“58—(1) The Solicitors' Guarantee Fund together with all claims for its benefit as existing at the commencement of the *Legal Practitioners Act 1962* shall notwithstanding any repeal made by that Act continue, and be vested in the Law Society on trust—

- (a) to pay any claims for compensation then payable thereout; and
  - (b) subject to such payments and to the expenses of administration, to wind up the fund by distributing the fund ratably among the contributors thereto or their personal representatives in proportion to their contributions.
- (2) In the distribution of the fund no person against whom there was a claim under section sixty-eight as repealed by that Act is entitled to share until he has satisfied the claim.
- (3) The Law Society shall not protract the distribution of the fund and for that purpose may—
- (a) disregard all claims on the fund not made before the expiration of one year after the commencement of that Act; and
  - (b) fix the rate for distribution as if any then unsatisfied claim for the benefit of the fund were incapable of satisfaction.
- (4) If any claim for the benefit of the fund produces any money after the distribution thereof the money belongs to the Law Society.”.

Persons not to act as barristers and solicitors unless admitted.

5 Section seventy-four of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “has been admitted as a practitioner” and substituting therefor the words “is a practitioner or barrister, as the case requires”;
- (b) by omitting from paragraph (c) of subsection (2) the words “section forty-seven of the *Justices Procedure Act 1919*” and substituting therefor the words “section thirty-eight of the *Justices Act 1959*”; and
- (c) by omitting subsection (3) and substituting therefor the following subsection:—
  - “(3) A person—
  - (a) who, contrary to the provisions of this section, directly or indirectly practises or acts as a barrister or solicitor;
  - (b) who, not being a barrister represents or holds himself out as or to be a barrister; or



(c) who, not being a practitioner—

- (i) represents or holds himself out as or to be a solicitor, notary, or similar person; or
- (ii) makes or claims to make a charge or demand, whether as counsel's fee or legal costs, expenses, or commissions, which he would only be entitled to make if he were a barrister or solicitor, as the case requires,

is liable to a penalty of not less than ten pounds and not more than one hundred pounds or to be prosecuted on indictment and punished as for a crime.”.

**6** Section seventy-five of the Principal Act is repealed and the following section is substituted therefor:—

“75—(1) A person who is not a practitioner and for fee or reward given or to be given, prepares or assists in preparing a deed or will, or an instrument in writing purporting to create or convey any estate or interest, legal or equitable, either originally or in execution of a power, in real or personal property or otherwise practises the business of a conveyancer is liable to a penalty of not less than ten pounds and not more than one hundred pounds or to be prosecuted on indictment and punished as for a crime. Illegal conveyancing for reward.

(2) Nothing in this section applies to—

- (a) a barrister acting within his professional rights;
- (b) a practitioner's clerk or typist acting in the course of his employment; or
- (c) a person whose preparation or assistance in preparation is done in the course of his duties as an employee and without knowledge that his employer is contravening this section with his help.”.

**7** After section seventy-six of the Principal Act the following section is inserted:—

“76A—(1) A judge may on the application of the Law Society and on evidence that a practitioner practising as a solicitor— Solicitor lunatic, missing, &c.

- (a) is of unsound mind and has no committee or quasi-committee of his estate;
- (b) has disappeared leaving no responsible person in charge of his office; or
- (c) is incapable of business and that in consequence loss to his clients may be expected,

make any order that he may make under section fifty-six.

(2) This section is in aid of and not in derogation from the powers of the court over solicitors as officers of the court.”.

See also 637 1963

Amendment  
of first  
schedule.

**8** The first schedule to the Principal Act is amended by omitting the last item and substituting therefor the following item:—

“ For a practising certificate under section 21 ... 10 0 ”.

Third and  
fourth  
schedules.

**9** The third schedule to the Principal Act is repealed and the following schedules are substituted therefor:—

“ THE THIRD SCHEDULE.

(Section 21.)

IN THE SUPREME COURT OF TASMANIA.

I hereby certify that [firm name] a firm of legal practitioners of which the members are \_\_\_\_\_ and \_\_\_\_\_, esquires, are [or \_\_\_\_\_, esquire, a legal practitioner practising alone, is] entitled to practise as [a] solicitor[s] until the last day of December 19 \_\_\_\_\_.

Given at Hobart this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
Registrar.”.

“ THE FOURTH SCHEDULE.

(Section 54.)

FIDELITY BOND.

KNOW ALL MEN by these presents that we, [obligor] of \_\_\_\_\_ are bound to the Registrar of the Supreme Court of Tasmania in the sum of twenty thousand pounds, to be paid to the said Registrar, for which payment we bind ourselves by these presents.

Sealed with our common seal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

WHEREAS A.B. of \_\_\_\_\_, C.D. of \_\_\_\_\_, and E.F. of \_\_\_\_\_, esquires, barristers and solicitors of the said Supreme Court practising [or about to practise] as solicitors in partnership under the name of \_\_\_\_\_ (hereinafter called “ the firm ”) are [or A.B. of \_\_\_\_\_, esquire, barrister and solicitor of the said Supreme Court practising [or about to practise] as a solicitor [under the name of \_\_\_\_\_] (hereinafter called “ the solicitor ”) is] applying for a practising certificate under Part III of the *Legal Practitioners Act 1959* for a period beginning on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

NOW THE CONDITION of the above-written bond is such that if the firm [or solicitor] shall in their practice as solicitors [or his practice as a solicitor] observe all the Rules of Practice made under the *Law Society Act 1962* in respect of the opening, keeping, and recording of accounts at banks for clients' moneys and in respect of the receipt, custody, deposit, investment, and return of clients' moneys and other property and truly and punctually account for and pay or hand over, without unreasonable delay, to the person entitled thereto, or as that person may direct, all moneys and other property held, acquired, or received by the firm [or solicitor] or any other person on their [or his] behalf otherwise than for their [or his] own use during the said period or in respect of any dealing or transaction completed or entered into or upon during the said period, then the above-written bond shall be void or otherwise shall remain in full force.

The common seal of [obligor] was hereunto affixed in the presence of \_\_\_\_\_.”.

Consequential  
amendments.

**10** The sections of the Principal Act that are specified in the first column of the schedule to this Act are amended as respectively specified in the second column of that schedule.

**11**—(1) If this Act commences on a day other than the first day of a year the following provisions have effect:— Transitory provisions.

- (a) Every annual certificate under section twenty-one of the Principal Act in force at the commencement of this Act shall continue in force until the last day of December next following;
- (b) Every firm as defined by the Principal Act of which every or the sole member has an annual certificate in force until that day shall be deemed to have a practising certificate in force until that day;
- (c) For the purpose of allowing persons to begin or continue practice as solicitors between the commencement of this Act and the last day of December next following annual certificates may be issued as if this Act had not commenced;
- (d) For the purposes of section fifty-eight of the Principal Act as enacted by this Act the commencement of this Act shall be deemed to be the first day of January next following; and
- (e) In respect of the year in which this Act commences the fee paid for an annual certificate in force in that year shall be deemed to be satisfaction *pro tanto* of the membership subscription payable to the Law Society in that year.

(2) If this Act commences on the first day of a year Part VI of the Principal Act as enacted by this Act shall be deemed to be in force from the first day of November next preceding, and for that purpose every firm as defined by the Principal Act of which every or the sole member has an annual certificate in force until the day before the commencement of this Act shall be deemed to have a practising certificate in force until that day.

### THE SCHEDULE.

(Section 10.)

#### CONSEQUENTIAL AMENDMENTS.

FIRST COLUMN Section.	SECOND COLUMN How amended.
10	By omitting "secretaries of every law society" and substituting therefor "secretary of the Law Society".
15	By omitting "Notwithstanding anything in Part III or Part VII a" and substituting "A".
16	By omitting "A law society" and substituting "The Law Society".
78	(a) By omitting subsection (2); (b) By renumbering subsection (3) as subsection (2); (c) By adding at the end the following subsection:— " (3) Fees payable for practising certificates shall be paid into the Consolidated Revenue."