

## LEGAL PRACTITIONERS ACT, 1936.

No. 2304 of 1936.

An Act to consolidate certain Acts relating to legal practitioners and public notaries.

[Assented to 19th November, 1936.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

### PART I.

### PART I.

#### PRELIMINARY.

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| Short title.        | <b>1.</b> This Act may be cited as the "Legal Practitioners Act, 1936."   |
| Commence-<br>ment.  | <b>2.</b> This Act shall come into operation on a day to be fixed by proclamation.  |
| Division of<br>Act. | <b>3.</b> This Act is divided into Parts as follows :—<br>PART I.—Preliminary : sections 1-7.<br>PART II.—Admission of legal practitioners ; and practising certificates : sections 8-15.<br>PART III.—Remuneration of solicitors : sections 16-21.<br>PART IV.—Trust Accounts : sections 22-24.<br>PART V.—The Law Society of South Australia Incorporated : sections 25-60.<br>PART VI.—Public Notaries : sections 61-67. |
| Repeals.            | <b>4.</b> The following enactments are repealed namely :—<br>No. 6 of 1845.—An Ordinance to regulate the Profession of the Law in South Australia.<br>No. 14 of 1859.—The Public Notaries Act.  |

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s. 2. This Act was proclaimed to come into force on the 1st May, 1937: *Gazette* 25th March, 1937, p. 645.

No. 8 of 1868-9.—An Act to amend the law relating to the Costs of Practitioners of the Supreme Court.

No. 1050 of 1911.—The Female Law Practitioners Act, 1911.

No. 1220 of 1915.—Law Society Act, 1915.

No. 1460 of 1921.—Law Society Act Amendment Act, 1921.

No. 1756 of 1926.—Legal Practitioners (Trust Accounts) Act, 1926.

5. (1) Notwithstanding the repeals effected by this Act— Saving clause.

(a) every enquiry, proceeding, transaction, act, matter, and thing which at the time of the passing of this Act is pending or in course of being done or carried out under the repealed Acts, shall be continued and completed under this Act :

(b) any proceedings of any kind which, if the repealed Acts had remained in force might have been taken by reason of any act, conduct, or omission which took place before the passing of this Act, may be instituted and completed under this Act and as if this Act had been in force when the act, conduct, or omission took place :

(c) every certificate, rule, regulation, report, complaint, agreement, bill of costs and other document which was made, issued or delivered under the repealed Acts and is in force at the time of the passing of this Act shall continue in force under this Act as if this Act had been in force when it was made, issued or delivered and it had been made, issued or delivered under this Act :

(d) every admission of a person as a barrister, solicitor, attorney or proctor or as a public notary and every appointment ordered or made under the repealed Acts and the effect of which is not expired at the time of the passing of this Act shall continue in force as if this Act had been in force when it was ordered or made and it had been ordered or made under this Act.

(2) Except where inconsistent with this section the provisions of the Acts Interpretation Act, 1915, as to the effect of repeals shall apply to the repeals effected by this Act.

## PART I.

Interpretation.  
8, 1868-9, s. 9.  
1220, 1915, s. 2.  
1756, 1926, s. 2.

6. In this Act, unless the context otherwise requires or some other meaning is clearly intended—

“ Chairman ” means the person for the time being presiding at a meeting of the Statutory Committee :

“ Council ” means Council of the Law Society :

“ Judge ” means Judge of the Supreme Court :

“ the Society ” means the Law Society of South Australia Incorporated :

“ legal practitioner ” means a person duly admitted and enrolled as a barrister, solicitor, attorney, or proctor of the Supreme Court :

“ Master ” means Master or Deputy Master of the Supreme Court :

“ practising certificate ” means a certificate issued under section 13 of this Act :

“ regulations of the Society ” means the rules and by-laws of the Society :

“ Statutory Committee ” means the Statutory Committee of the Council of the Law Society :

“ Supreme Court ” means the Supreme Court of the State.

Separation of  
legal  
profession.  
1845, s. 6, x.

7. (1) Nothing in this Act shall prevent the separation of legal practitioners into two classes, one class consisting of barristers or advocates and the other of attorneys, solicitors and proctors, if the Supreme Court considers it convenient that such a separation should be made.

(2) If such a separation is made, the term “ practitioner ” in sections 12, 13, 14, 15 and 16 of this Act shall include only persons acting as attorneys, solicitors or proctors.

## PART II.

## PART II.

### ADMISSION OF LEGAL PRACTITIONERS AND PRACTISING CERTIFICATES.

Qualification  
for practising  
law.  
6, 1845,  
ss. 1, vi.  
Of U.K.  
22 & 28  
Geo. 5 c. 37,  
ss. 36, 43.

8. No person shall be entitled to practise the profession of the law, within the State, unless—

(a) he is a legal practitioner ; and

(b) he holds a practising certificate duly issued and in force under this Part.

## PART II.

9. (1) Any woman shall be entitled to be admitted to practise as a legal practitioner, on complying with the rules of court in that behalf.

Right of women to practise in the Supreme Court.  
1050, 1911, s. 2.  
Cf. U.K.  
9 & 10  
Geo. 5 c. 71,  
s. 1.

(2) For the purpose of giving effect to this section, every word in any Act or rules of court, of or importing the masculine gender, shall be construed as including the feminine gender.

10. (1) If any person not being a legal practitioner, for or in expectation of any gain, fee, or reward—

Penalty for practising when unqualified.

(a) in his own name or in the name of any other person sues out any writ or process or commences prosecutes or defends any action, suit or other proceeding in the Supreme Court or any other court in the State; or

6, 1845, s. 1.  
Cf. U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 45.

(b) directly or indirectly draws or prepares any conveyance, lease, or other deed relating to any real or personal estate or any proceedings in law or equity,

Cf. U.K.  
15 Geo. 5  
c. 21, s. 113.

he shall for every such offence be liable to forfeit the sum of fifty pounds to be sued for and recovered by action of debt in the Supreme Court.

(2) One half of any penalty so recovered shall be paid for his own use to the person who sued for it; and the other half shall be paid to the Treasurer in aid of the general revenue of the State.

11. The last preceding section shall not—

Exemption of clerks and law stationers.

(a) apply to persons acting only as law-stationers or as clerks or to persons employed solely to copy or engross any deed; nor

6, 1845, s. 11.  
Cf. U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 47 (3),  
(4).

(b) prevent any public notary from practising as such, and doing all acts which properly belong to the office of a public notary; nor

(c) prevent any person from drawing or preparing any will or other testamentary papers.

12. If any legal practitioner—

(a) knowingly and wilfully permits or allows any person not a legal practitioner, in his name to sue out any writ or process or commence prosecute or defend any action or other proceeding in any court in the State; or

Employment by practitioners of unqualified persons.

6, 1845, s. 111.  
Cf. U.K.  
22 & 23  
Geo. 5 c. 37,  
ss. 47, 51.

(b) acts as agent for any person not a legal practitioner; or

- (c) permits his name to be in any manner used on account of or for the profit of any person whom he knows not to be a legal practitioner, so as to enable that person indirectly to act as a legal practitioner,

he shall be guilty of an offence, and liable on application made in a summary way to the Supreme Court to be struck off the rolls, and forever disabled from practising as a legal practitioner: Provided that the Supreme Court may re-admit as a legal practitioner, any person so struck off the rolls on any terms which to the Court seem fit.

Duty to procure practising certificates, 6, 1845, s. VI. Statute Law Revision Act, 1936.

Of. U.K. 22 & 23 Geo. 5 c. 37, s. 37 (5).

Regulations under 1801, 1927, dated 22nd Nov. 1927.

Of. U.K. 22 & 23 Geo. 5 c. 37, s. 41.

**13.** (1) Every legal practitioner practising within the State shall, in the month of January in each year, pay to the Master in aid of the general revenue of the State, the sum of seven pounds ten shillings.

(2) Thereupon the practitioner shall be entitled to a practising certificate under the hand of the Master or an officer authorised by him certifying that the practitioner has paid that sum, and every such certificate shall be noted by the Master in a book or on a roll to be kept for that purpose.

(3) Every practising certificate issued in the month of January in any year, shall bear the date of the fifth day of that month, and every practising certificate issued at any other time, shall bear the date on which it is issued.

(4) Every practising certificate shall cease and determine on the fifth day of January, in the year following the year in which it is issued.

Penalty for practising without certificate.

6, 1845, s. VII. Of. U.K. 22 & 23 Geo. 5 c. 37, s. 48.

**14.** If any person who has not obtained a practising certificate as required by this Part—

- (a) for or in expectation of any gain, fee, or reward, in his own name or in the name of any other person, sues out any writ or process, or commences, prosecutes, carries on, or defends any action, suit, or other proceeding in any court of the State; or
- (b) as a practitioner does any act in any such court; or
- (c) for or in expectation of any gain, fee, or reward, directly or indirectly draws or prepares any conveyance, lease, or other deed relating to any real or personal estate or any proceedings in law or equity,

he shall for every such offence, be liable to forfeit the sum of fifty pounds to be sued for and recovered by action of debt in the Supreme Court.

(2) One half of any penalty so recovered, shall be paid for his own use to the person who sued for it; and the other half shall be paid to the Treasurer in aid of the general revenue of the State.

(3) No person shall be entitled to bring any action for the recovery of his fees, in respect of any matter or business done by him as a legal practitioner while he was not the holder of a practising certificate.

Cf. U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 50.

**15.** (1) If any legal practitioner neglects to procure his practising certificate in the month of January in any year, the Master shall not afterwards issue a practising certificate to that practitioner without an order of a judge authorising him to do so.

Issue of  
certificate after  
appointed time  
6, 1845, s. VIII.  
S. L. R. Act,  
1936.  
U.K. 22 & 23  
Geo. 5 c. 37,  
s. 38.  
U.K. 26  
Geo. 5 & 1  
Edw. 8 c. 35,  
s. 11.

(2) The judge may make such an order upon any terms or conditions which he thinks fit.

### PART III.

### PART III.

## REMUNERATION OF SOLICITORS.

### *Bills of Costs.*

**16.** (1) No legal practitioner, or executor, administrator, or assignee of a legal practitioner, shall bring any action for the recovery of any fees, charges, or disbursements until one month after a bill of those fees, charges, or disbursements has been delivered in accordance with the requirements of this section: Provided that if there is probable cause for believing that the party liable is about to leave the State, a judge may authorise the practitioner to bring an action for the recovery of fees, charges, or disbursements, although one month has not expired from the delivery of the bill.

Duty to  
deliver bill of  
costs.  
6, 1845, s. V.  
U.K. 6 & 7  
Vict. c. 73,  
s. 37 (part).  
U.K. 22 & 23  
Geo. 5 c. 37,  
s. 65.

(2) The requirements of this section are as follows:—

(a) the bill must be signed by the practitioner, executor, administrator or assignee, or, if the fees charges or disbursements are due to a firm, by any of the partners, either with his own name or with the name of the firm;

(b) the bill must be delivered to the party to be charged therewith either personally or by being sent to

him by post to, or left for him at, his place of business, dwelling-house or last known place of abode.

### *Taxation of Costs.*

Power to refer bills of costs to be taxed.

6, 1845, s. IV.  
8, 1868-9, s. 4.  
U.K. 6 & 7  
Vict. c. 73,  
s. 37 (part);  
22 & 23  
Geo. 5 c. 37,  
s. 66.

17. (1) Upon the application of any party who is liable to pay or has paid or is chargeable with any bill of costs for any work done by a practitioner, the Supreme Court, or a judge, shall refer the bill to be taxed and settled by the Master without any money being brought into Court.

(2) When the Court or judge orders a bill to be so referred, it or he shall restrain the practitioner, or the executor, administrator, or assignee of the practitioner, from commencing any action for the costs pending the taxation, and shall order the costs of the reference and of the taxation to be taxed.

*Ibid.*, s. 66  
(2).

(3) No costs shall be referred to be taxed if more than twelve months has elapsed from the delivery of a bill of costs as required by the preceding section of this Act, except upon special circumstances to be proved to the satisfaction of the Court or judge to whom the application is made.

(4) This section applies to bills of costs for any business done by a legal practitioner in his professional character whether that business arises out of any action or proceeding in any court or not.

Proceedings on reference.

8, 1868-9, s. 5.  
U.K. 6 & 7  
Vict. c. 73,  
s. 37 (part);  
22 & 23  
Geo. 5 c. 37,  
s. 66 (4).

18. If after due notice, the practitioner, or the executor, administrator, or assignee of a practitioner, or the party who obtained the order of reference, refuses or neglects to attend the taxation, the Master shall tax the bill *ex parte*.

Costs of taxation.

8, 1868-9, s. 5.  
U.K.  
6 & 7 Vict.  
c. 73, s. 37  
(part);  
22 & 23  
Geo. 5 c. 37,  
s. 66 (5).

19. The costs of the reference and taxation shall be borne according to the event of the taxation—that is to say, if the bill when taxed is less by a tenth part than the bill delivered, the practitioner, or the executor, administrator, or assignee of a practitioner, shall pay those costs; and if the bill when taxed, is not less by a tenth part than the bill delivered, then the party making the application shall pay those costs.

Certificate of Master.

8, 1868-9,  
ss. 6 and 7.  
U.K.  
6 & 7 Vict.  
c. 73, s. 43.

20. (1) The Master shall certify what is found upon the reference to be due to or from the practitioner, or the executor, administrator, or assignee of a practitioner, (either deducting or adding as the case may be, the taxed costs of the reference and taxation), in respect of the bill and of the costs of the reference, if payable.

(2) Every such certificate shall be final and conclusive, unless set aside or altered by the Supreme Court or a judge.

*Agreements as to Costs.*

21. Any legal practitioner may make an agreement for the payment of any sum of money for the performance, conduct, or management of any work or business by that practitioner and any agreement so made shall be valid and binding upon the parties thereto: Provided that every such agreement shall be in writing, and signed by the party to be charged thereby, or by his agent duly authorised to sign it, and shall be for the payment of a certain amount, whether the work or business is brought to a successful issue or not.

Agreement as to costs.  
8, 1868-9, s. 8.  
Of. U.K.  
33 & 34 Vict.  
c. 28, s. 4;  
44 & 45 Vict.  
c. 44, s. 8;  
22 & 23  
Geo. 5 c. 37,  
ss. 57, 59, 60.

## PART IV.

## PART IV.

## TRUST ACCOUNTS.

22. (1) Every legal practitioner who receives any money for or on behalf of any person shall hold that money exclusively for that person, to be paid to that person or as he directs, and until the practitioner so pays the money he shall keep it in a general or separate trust account in a bank carrying on business in the State, and proclaimed under section 4 of The Trustee Act, 1893, as a bank in which deposits may be made by trustees.

Duty of practitioners with respect to trust moneys.  
1756, 1926, s. 3.  
N.Z. 100, 1908,  
s. 47.  
Of. U.K.  
23 & 24  
Geo. 5 c. 24.

(2) Such money shall not be available for payment of the debts of any other creditor of the practitioner, and shall not be liable to be attached or taken in execution under the order or process of any Court at the instance of any such creditor.

(3) Any practitioner who knowingly acts contrary to this section, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred pounds.

(4) Nothing in this section shall take away or affect any just claim or lien which any practitioner may have against any money so received by him.

(5) All proceedings in respect of offences against this section shall be disposed of summarily.

s. 21. HARGRAVE AND OTHERS v. MILLER (1925) S.A.S.R. 379; 12 Austr. Digest 1305. S. 21 applies to agreements relating to past or future work; but such agreements, being between solicitor and client, are subject to the control of a court of equity. The consent of the client must be a real consent obtained without undue influence, or pressure which may arise from the confidential relationship, and upon a full disclosure and without breach of the duty to advise the client fairly and impartially, so far as advice is given.

s. 22. The Trustee Act, 1893, has been repealed and superseded by the Trustee Act, 1936. Section 5 of the Trustee Act, 1936, corresponds to s. 4 of The Trustee Act, 1893.

## PART IV.

Rules of Court  
relating to  
audit of trust  
accounts.

1756, 1926, s. 4.  
N.Z. 72, 1913,  
s. 14.  
Cf. U.K.  
23 & 24  
Geo. 5 c. 24,  
s. 1.

**23.** (1) Any three judges of the Supreme Court may from time to time make rules of court for any of the following purposes, namely :—

- (a) Providing for an annual audit of the trust accounts of every practitioner and for a report of the result of such audit ;
- (b) Defining a class or classes of accountants authorised to make such audits ;
- (c) Requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed ;
- (d) Prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record ;
- (e) Providing that an auditor shall be subject to an obligation not to divulge otherwise than as prescribed any matter of which he is informed in the course of the audit, and shall also be subject to the like liability in damages to a client of the practitioner as the practitioner would be if the practitioner divulged such matter ;
- (f) Prescribing a scale of fees to be paid to such auditors ;
- (g) Prescribing that, in the absence of any agreement in writing with the client to the contrary, the auditor's fees shall be paid by the practitioner ; and
- (h) Generally to ensure that such trust accounts shall be duly kept and audited, and that persons beneficially entitled to moneys and securities held by legal practitioners upon trust shall be informed thereof and of the investment thereof.

(2) Any such rule may prescribe a fine not exceeding one hundred pounds for the breach of any of the provisions and requirements of the same or any other rule.

Summary  
jurisdiction of  
Supreme Court.  
1756, 1926, s. 5.  
Cf. U.K.  
23 & 24  
Geo. 5 c. 24,  
s. 2.

**24.** If any practitioner fails to comply with any provision of this Part or of any rule made under this Part, that failure shall, if the Supreme Court think fit, be ground for the exercise in respect of that practitioner of the summary jurisdiction of that Court over practitioners.

## PART V.

## PART V.

THE LAW SOCIETY OF SOUTH AUSTRALIA  
INCORPORATED.

**25.** (1) There shall be a body corporate by the name of the Law Society of South Australia, Incorporated.

Incorporation  
of the Society.  
1220, 1915, s. 3.

(2) The Society shall consist of—

(a) all persons who at the commencement of this Act are members of the Society; and

(b) all persons who after that time become members of the Society in accordance with its regulations,

so long as such persons continue to be members of the Society.

**26.** The Society shall have and may use a common seal, and may, from time to time, break, or alter the same, or make a new seal, as to the Society seems expedient.

Common seal.  
1220, 1915, s. 4.

**27.** (1) The Society shall have perpetual succession, and may sue and be sued, and shall be capable of acquiring, receiving, and holding real and personal estate of any nature and kind whatsoever.

Corporate  
powers.  
1220, 1915, s. 5.

(2) The Society may also from time to time sell, convey, demise, exchange, and otherwise dispose of or mortgage its property.

(3) Subject to any restrictions expressed or implied by this Act, the Society shall also be capable in law of doing all such other things as it deems expedient for effectuating its objects.

**28.** (1) There shall be a president and a vice-president of the Society, who shall be elected by the Society in general meeting.

Officers of the  
Society.  
1220, 1915, s. 7.

(2) The president and vice-president of the Society holding office at the commencement of this Act shall continue to hold those offices until their successors are so elected.

**29.** Subject to the two next following sections, and to compliance in all respects with the regulations of the Society, every person who is for the time being entitled to practise as a legal practitioner in the Supreme Court shall be entitled to membership of the Society.

Practitioners  
entitled to  
membership of  
the Society.  
1220, 1915, s. 8.

## PART V.

Disqualification  
of members  
1220, 1915, s. 9

**30.** If any member of the Society, in consequence of the order of any court of competent jurisdiction, is rendered incapable by reason of malpractice, professional misconduct, or any other matter, of practising in the Supreme Court, or in any of the Supreme Courts of Justice in any part of His Majesty's dominions, he shall forthwith cease to be a member of the Society.

Expulsion of  
member.  
1220, 1915,  
s. 10.

**31.** The rules of the Society may provide—

- (a) for the expulsion of any member who refuses or neglects to comply with the regulations of the Society :
- (b) for the imposition of terms or conditions in respect of the re-entry of any person who has ceased to be a member owing to non-compliance with the regulations of the Society.

Council of  
the Society.  
1220, 1915,  
s. 11.

**32.** (1) For the good government of the Society there shall be a Council of the Society.

(2) His Majesty's Attorney-General for the State of South Australia, and the president and vice-president of the Society shall be members of the Council by virtue of their respective offices.

(3) The other members of the Council shall be elected by the Society in general meeting.

(4) The president, vice-president, and members of the Council of the Society holding office at the commencement of this Act, shall hold their respective offices until their successors are appointed or elected.

Casual  
vacancies in  
the Council,  
1220, 1915,  
s. 12.

**33.** Notwithstanding any previous section of this Part, the Society may provide that casual vacancies in the offices of president, vice-president, and other members of the Council may be filled by the Council.

Acts of Council  
during  
vacancies.  
1220, 1915,  
s. 13.

**34.** The continuing members of the Council may act notwithstanding any vacancy in their body ; and no act done by or by the authority of the Council shall be invalid in consequence of any defect that is afterwards discovered in the elections or appointments of the members, or any of them.

Management  
of Society's  
affairs.  
1220, 1915,  
s. 14.

**35.** (1) Subject to this Act and to the rules of the Society, the Council shall have the sole management of the Society, and of the affairs and concerns and the income and property thereof, for the purposes and benefit of the Society, and may exercise all powers vested in the Society, and do all such acts and things as are by this Act directed or authorised to be done by the Society, excepting only such powers and acts as are

expressly required by this Act or the said rules to be exercised or done by the Society in general meeting.

(2) Notwithstanding anything in this Part, the regulations of the Society may authorise the Council to delegate any of its powers to committees, which may consist of one or more members of the Council.

**36.** Subject to the rules of the Society, the council may convene general meetings of the Society at such times and places and in such manner as the Council from time to time thinks fit.

General meetings of the Society.  
1220, 1915,  
s. 15.

**37.** (1) The Society in general meeting may from time to time make, alter, and repeal rules for all or any of the following purposes :—

Rules of the Society, and by-laws.  
1220, 1915,  
s. 16.

- (a) To define the objects of the Society :
- (b) For the regulation and good government of the Society, and of the members and affairs thereof :
- (c) To provide for the manner of election of the president and vice-president, of the Society, and their tenure of office :
- (d) To provide for the constitution of the Council, and for the manner of election of the president, vice-president, and other members of the Council, and their tenure of office :
- (e) To provide for the custody and use of the common seal of the Society :
- (f) To provide for the convening of ordinary and special meetings of the Society :
- (g) To govern the admission, resignation, and expulsion of members of the Society, and impose fees and subscriptions in respect of membership :
- (h) To provide for additions to and alterations of the rules of the Society :
- (i) To empower the Council to make by-laws of the Society for any purpose with respect to which the Society is authorised to make rules :
- (j) Generally to carry the objects of the Society into full and complete effect.

(2) The Council may from time to time make, alter, and repeal by-laws in pursuance of any power in that behalf conferred by the rules of the Society for the time being.

## PART V.

Society's right  
of audience.  
1220, 1915,  
s. 17.

**38.** The Council may appoint any practitioner to appear before any court in any matter affecting the interests of the Society or the members thereof, or in which the Society is directly or indirectly concerned or interested, and any practitioner so appointed shall have audience in any court in any such matter, including *inter alia*—

- (a) any prosecution instituted by the Society; and
- (b) opposing or objecting to any application for admission as a practitioner; and
- (c) moving that any practitioner be suspended from practice, or struck off the roll, or called upon to answer any matters alleged or contained in any affidavit, or otherwise dealt with on the ground of professional misconduct.

Institution of  
proceedings on  
behalf of  
Society.  
1220, 1915,  
s. 18.

**39.** (1) The president or vice-president of the Society or any other officer duly authorised by the Council in that behalf, may institute prosecutions and other proceedings in his own name for the breach of any statute or rules relating to the practice of the law, or to the preparation of deeds or instruments relating to real or personal estate.

(2) Unless it is proved to the contrary, every such prosecution or other proceeding shall be deemed to be instituted by and on behalf of the Society.

*The Statutory Committee.*

The Statutory  
Committee.  
1220, 1915,  
s. 19.  
1460, 1921,  
s. 3.  
Of. U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 4.

**40.** (1) There shall be a committee of the Council of the Society (to be called the Statutory Committee of the Law Society of South Australia, Incorporated), for the purpose of hearing charges of illegal or unprofessional conduct upon the part of practitioners.

(2) Any member of the Society who is, or since the time of the passing of this Act has been, a member of the Council, shall be eligible for membership of the Statutory Committee.

(3) The Statutory Committee shall consist of seven members, who shall be appointed by the Governor on the nomination of the Chief Justice of the Supreme Court.

(4) A member of the Statutory Committee shall be appointed for a term of three years: Provided that any member shall be eligible for reappointment from time to time.

Quorum of  
Committee.  
1220, 1915,  
s. 20.

**41.** No charge or question as to the conduct of a practitioner shall be heard before less than three members of the Statutory Committee.

## PART V.

**42.** (1) Any person feeling aggrieved by reason of the alleged illegal or unprofessional conduct of any practitioner may, whether the matter charged was committed or suffered before or after the passing of this Act, by himself or his agent make a charge thereof in writing to the Council.

Complaints to the Society in respect of any practitioner.

1220, 1915, s. 21.  
Of U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 5.

(2) The Council may require—

(a) further particulars of any charge :

(b) any charge to be verified by statutory declaration.

(3) Subject to compliance with any requirements under subsection (2) hereof, the Council shall forthwith refer every charge under this section to the Statutory Committee.

(4) The Council may of its own motion refer to the Statutory Committee any question as to the conduct of any practitioner which appears to the Council to require investigation, and may act as complainant with respect thereto.

**43.** The Council may, either at the request of the Statutory Committee or of its own motion, appoint a practitioner to investigate any matter referred to the Statutory Committee and to present that matter to the Statutory Committee, either upon behalf of the complainant or otherwise.

Appointment of practitioner to investigate and present charges.

1220, 1915, s. 22.

**44.** (1) The Statutory Committee may summon before it any practitioner in respect of whose conduct any matter has been referred to it, and may inquire into that matter.

Power of Committee to summon practitioners and inquire.

1220, 1915, s. 23.

(2) The Statutory Committee may summon to appear before it the complainant and any person who in its opinion may be able to give evidence or produce documents touching the matter in question, or whom the complainant or the practitioner desires to call as a witness.

**45.** For the purposes of every inquiry, the Chairman—

(a) may administer oaths and affirmations :

Powers of Chairman upon inquiry.

1220, 1915, s. 24.

(b) shall have the same power and authority, with respect to the discovery and production of documents and in the conduct of the inquiry, as a Judge of the Supreme Court has for the purpose of the trial of issues in a civil action: Provided that nothing in this Part shall authorise the Chairman to commit any person to prison, or to enforce any order by attachment or otherwise.

## PART V.

Summons to be  
in writing.  
1220, 1915,  
s. 25.

**46.** Every summons to appear before the Statutory Committee shall be in writing, signed by the secretary of the Society, or by some other officer authorised for the time being by the Statutory Committee in that behalf.

Service of  
summons.  
1220, 1915,  
s. 26.

**47.** Every summons or notice by the Statutory Committee to a practitioner in respect of whose conduct any matter has been referred to that Committee, or to the complainant or any other person, may be served in such manner as that Committee from time to time directs or deems sufficient.

Procedure  
when practi-  
tioner or other  
person does not  
attend when  
summoned.  
1220, 1915,  
ss. 27, 28.

**48.** (1) If any practitioner summoned as mentioned in the last preceding section fails to attend at the meeting for which he has been summoned, or at any adjournment thereof, the Statutory Committee may inquire into the matter referred to it, in his absence.

(2) If any person summoned as mentioned in the last preceding section, refuses or fails to attend at the meeting for which he has been summoned, or if having attended he refuses to be sworn or to affirm or to answer any lawful question, a certificate of that refusal or failure signed by the chairman, shall be filed in the office of the Supreme Court.

(3) Thereupon any person requiring the attendance of that person may apply to the Supreme Court or a judge, either *ex parte* or on notice, for an order directing that person to attend, or to be sworn or to affirm, or to answer any question (as the case may be), and on the application the Court or judge may make such order as to it or him seems proper, including an order that that person shall pay any costs occasioned by his refusal or failure.

Status of  
Committee.  
1220, 1915,  
s. 29.

**49.** Subject to this Part and to any rules of Court made under this Part, the Chairman and the Statutory Committee shall, in the exercise of their functions under this Part, be officers of the Supreme Court, and for the purposes of enforcing any lawful order of the Chairman, and of punishing any obstruction of the Statutory Committee in its duties or of any inquiry before it, the proceedings of the Statutory Committee shall be deemed to be an inquiry directed by the Supreme Court.

Witnesses  
compellable to  
give evidence.  
1220, 1915,  
s. 30.

**50.** (1) Any person in any examination before the Statutory Committee may object to any question upon the ground that the answer may tend to incriminate him, but shall be compellable to answer that question notwithstanding the objection.

(2) No answer given subject to such an objection shall be permitted in evidence upon any other proceedings for any offence, except that of perjury in connection with the inquiry.

## PART V.

**51.** (1) If, after inquiry into any matter referred to it the Statutory Committee is of opinion that the practitioner has been guilty of any illegal or unprofessional conduct, it shall make and transmit a report thereon to the Supreme Court, together with a copy of the evidence taken on the inquiry.

(2) If any member of the Statutory Committee dissents from the report, the report shall state the fact of dissent, and specify the findings dissented from.

**52.** (1) The Supreme Court may refer any report of the Statutory Committee back for further inquiry or for amendment, and may, if it thinks fit, review any finding of fact therein.

(2) Subject to any such reference back or review every report of the Committee shall be conclusive evidence of all statements and findings of fact therein contained.

**53.** The Supreme Court may upon motion, and upon reading the report of the Statutory Committee upon any matter referred to it, and without any further evidence, make such order as to the Court seems fit.

**54.** (1) The Statutory Committee may, if it dismisses any charge referred to it, order the person making the charge to pay to any practitioner against whom it was made the whole or any part of the costs of and incidental thereto.

(2) Those costs shall be taxed by the Master of the Supreme Court, who shall give his certificate of the amount allowed.

(3) Every such order may be enforced, and the costs may be recovered, by execution or otherwise, in the same manner as if the Master's certificate were a judgment of the Supreme Court for the payment of a liquidated sum of the amount at which the costs are so allowed.

Committee to report to the Supreme Court.  
1220, 1915,  
s. 31.  
U.K. 51 and  
52, Vic., c. 65,  
s. 13.  
Of. U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 7.

Effect of report by the Committee.  
1220, 1915,  
s. 32.  
U.K. 51 and  
52, Vic., c. 65,  
s. 23.

Jurisdiction of the Court.  
1220, 1915,  
s. 33.  
Of. U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 9.

Costs when charge dismissed.  
1220, 1915,  
s. 34.

s. 51. In *re* a practitioner of the Supreme Court (1918) S.A.L.R. 160; 12 Austn. Digest 1178. The Statutory Committee may find a practitioner guilty of unprofessional conduct upon evidence which would not be sufficient to support a criminal conviction nor a civil action.

In *re* R——, a practitioner of the Supreme Court; IN *re* A——, a practitioner of the Supreme Court (1927) S.A.S.R. 58; 12 Austn. Digest 1180. Unprofessional conduct is not limited to conduct disgraceful or dishonourable in the ordinary sense, but includes conduct which may reasonably be held to violate or fall short of to a substantial degree the standard of professional conduct observed or approved by members of the profession of good repute and competency.

In *re* R—— (1927) S.A.S.R. 448; 12 Austn. Digest 1182. Passing valueless cheques without any reasonable expectation that they will be met on presentation and failing to pay the amounts for which the cheques were drawn, amount to unprofessional conduct.

s. 52. In *re* R——, a practitioner of the Supreme Court; IN *re* A——, a practitioner of the Supreme Court (1927) S.A.S.R. 58; 12 Austn. Digest 1179. Unless there is good reason to the contrary, the findings of the Statutory Committee are binding on the court.

## PART V.

Right to apply  
to the Court  
direct.

1220, 1915,  
s. 35.

**55.** Notwithstanding anything contained in this Part, any person who but for this Part would have been entitled to apply to the Supreme Court to strike a practitioner off the roll, or to apply to require a practitioner to answer allegations contained in an affidavit, shall be entitled so to apply, whether the matter complained of has been made the subject matter of an inquiry before the Statutory Committee or not: Provided, however, that upon any such application the Supreme Court may, if it thinks fit,—

- (a) transmit to the Society any charges against the practitioner for reference to the Statutory Committee in the manner provided by this Act:
- (b) require the Statutory Committee to transmit a report upon any inquiry held by it into the same subject matter, and take that report into consideration upon the hearing of the application, and to give such weight as it thinks fit to any facts and findings in the report.

Rules regula-  
ting practice  
of Committee.

1220, 1915,  
s. 36.  
Of U.K.  
22 & 23  
Geo. 5 c. 37,  
s. 6.

**56. (1)** Any two Judges of the Supreme Court may from time to time make rules of Court for all or any of the following purposes:—

- (a) For regulating the practice and proceedings of the Statutory Committee:
- (b) For conferring upon the Statutory Committee any further powers necessary or convenient for the due fulfilment of its functions:
- (c) For carrying into effect the provisions of this Part as to the Statutory Committee and its functions.

(2) Such rules shall come into force when approved by the Governor.

*Miscellaneous Provisions.*

Members  
entitled to copy  
of the rules.  
1220, 1915,  
s. 37.

**57.** Every member of the Society and every practitioner shall be entitled, upon payment of two shillings and sixpence, to receive a printed copy of all regulations of the Society in force for the time being.

Minutes of  
proceedings of  
the Society.  
1220, 1915,  
s. 38.

**58.** The Society shall cause minutes of all proceedings and resolutions of all general meetings of the Society, and of all meetings of the council, to be entered in a book or books kept for the purpose, and may cause minutes of any proceedings and resolutions of any committee of the council to be so entered.

**59.** All regulations and minutes of the society, or of the council, or of any committee of the council (including the statutory committee), and any document purporting to be a copy thereof or extract therefrom and purporting to be signed by the president or vice-president of the society, or, in the case of minutes, by the chairman of a general meeting of the society or of any meeting of the council or of the committee (as the case may be) shall be received in any proceeding before any court or person as evidence—

Proof of regulations and proceedings.  
1220, 1915,  
s. 39.

- (a) in the case of regulations, that they have been duly made; and
- (b) in the case of minutes that all business has been transacted and all proceedings have taken place as therein referred to; and
- (c) in the case of any document purporting to be a copy as aforesaid, that that document is a correct copy of the regulation or minute of which it purports to be a copy.

**60.** Until the contrary is proved—

Presumption of regularity.  
1220, 1915,  
s. 40.

- (a) every general meeting of the society, and every meeting of the council or of any committee of the council, in respect of which minutes have been entered in the manner directed or authorised by this Part, shall be deemed to have been duly held and convened, and all resolutions passed thereat and proceedings thereof shall be deemed to have been duly passed and transacted;
- (b) all elections and appointments of officers and members and other persons under this Part, shall be deemed to be valid.

## PART VI.

## PART VI.

### PUBLIC NOTARIES.

**61.** (1) No person shall practise as a public notary within the State unless he has been previously admitted to practise as such under this Act.

Appointment of notaries.  
14, 1859, s. 2.  
1456, 1921,  
s. 2.  
U.K. 41  
Geo. 3 c. 79,  
s. 1.

s. 61. In *re KITSON* (1920) S.A.L.R. 230; 12 Austn. Digest 1221. Held (before the enactment of the Sex Disqualification Removal Act, 1921, No. 1456, 1921) that a woman could not be appointed a public notary.

(2) A person shall not be disqualified by sex or marriage from being admitted as, or from performing the duties and exercising the functions of a public notary.

Applications  
for admission  
as notary.

14, 1859, s. 3.  
Of. U.K.  
6 & 7 Vict.  
c. 90, s. 4.

**62.** (1) Any person desirous of being admitted to practise as a public notary may apply, by petition, to the Supreme Court for that purpose, setting forth such facts in the petition as he deems expedient for the purpose of satisfying the court as to his fitness and qualification to discharge the duties and exercise the functions of a public notary, and such other facts as he deems necessary for the information of the court.

(2) Every such petition shall be filed in the court, and shall be verified by the affidavit of the petitioner, which shall also be filed in the court.

(3) The court, or any judge, shall, on the hearing of the petition, have full power to make an order thereon, and either to comply with the prayer of the petition, or to dismiss the petition, or to make such other order as to the court or judge seems expedient.

Oath to be  
taken on  
appointment.

14, 1859, s. 4  
U.K. 6 & 7  
Vict. c. 90,  
s. 7.

**63.** Every person admitted as a public notary under this Part shall, before his name is entered on the roll of notaries make oath before the master or some commissioner authorised to take affidavits in the Supreme Court, to the effect following : —“ I do swear that I will not make or attest any act, contract, or instrument in which I shall know there is violence or fraud ; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability. So help me God ”.

Roll of  
notaries.  
14, 1859, s. 5.

**64.** (1) A roll shall be kept in the Supreme Court containing the names of all persons admitted to practise as public notaries.

(2) The Master of the Supreme Court, or the Chief Clerk thereof, shall, at the request of any person so admitted as aforesaid, on the production of the order for admission, and after that person has taken the oath prescribed by the preceding section enter the name of that person on the roll.

(3) On the application of any person whose name appears on the roll, the Master shall at any time grant a certificate in the form or to the effect contained in the first schedule to this Act, that that person is a public notary, duly authorised and admitted to practise as such in the State, and shall affix to that certificate the seal of the Court.

(4) Any person to whom any such certificate is granted shall, from the day mentioned in the certificate as the day of the entry of his name on the said roll, have all such powers

and authorities within the State as are usually exercised by public notaries in the United Kingdom of Great Britain and Northern Ireland.

**65.** The Supreme Court shall, on application by any person, and upon due cause being shown to the satisfaction of the court, strike off the roll the name of any public notary; and any person whose name is so struck off shall thereafter be disabled from practising as a public notary within the State: Provided that the court may at any time thereafter, if it thinks fit, order the name of that person to be reinstated on the roll.

Power of Court to strike off roll name of any notary.  
14, 1859, s. 6.

**66.** If any person in his own name, or in the name of any other person, does or executes any act, matter, or thing whatsoever appertaining to the office of a public notary, as heretofore exercised in the State, for or in expectation of any gain, fee, or reward, without being admitted under this Part and entered on the roll of public notaries, he shall be liable to a fine of ten pounds, to be recovered in a summary way.

Persons acting as notaries contrary to Act.  
15, 1859, s. 7.  
Of. U.K.  
41 Geo. 3  
c. 79, s. 10;  
6 & 7 Vict.  
c. 90, s. 10.

**67.** The fees mentioned in the second schedule to this Act shall be payable in respect of the matters therein referred to.

Fees.  
15, 1859, s. 8.

## SCHEDULES.

### THE FIRST SCHEDULE.

I, [Master or Chief Clerk, as the case may be], of the Supreme Court of South Australia, do hereby certify that [residence or place of business and profession or occupation], has been duly sworn to act uprightly and justly in the business of a public notary according to the best of his skill and ability, and that he has been duly authorised and admitted to act as such notary within South Australia, and that his name was entered upon the roll of public notaries on the day of 19 , and still remains on such roll.

Dated at Adelaide, this                      day of                      , 19 .

(L.S)

Master or Clerk of the Supreme Court.

## THE SECOND SCHEDULE.

*Fees payable in matters relating to public notaries.*

	£	s.	d.
Filing every petition and affidavit (each) .....	0	1	6
For administering every oath .....	0	1	0
For every search .....	0	2	6
For every order .....	0	5	0
For entering on the roll .....	2	0	0
For every certificate of entry on the roll and seal.....	0	5	0
For every office copy of any document, per folio of seventy-two words .....	0	0	6

### Rules of the Supreme Court and Rules of the Law Society.

The following rules were in force under this Act on 26th April, 1937:—

#### RULES OF COURT AS TO THE STATUTORY COMMITTEE—

*Gazette*—9th November, 1916, p. 943.

#### RULES OF THE LAW SOCIETY OF SOUTH AUSTRALIA, INCORPORATED—

##### *Principal Rules.*

Passed—27th March, 1916.

##### *Amending Rules.*

Passed—29th February, 1924.  
 24th February, 1926.  
 24th February, 1930.  
 29th February, 1932.  
 24th February, 1936.  
 21st September, 1936.

### LEGISLATURE

see Constitution.

### LEGITIMATION

see Births and Deaths Registration.

### LIBEL

see Wrongs.