

*Legal Practitioners.*

Act No. 22, 1998.

An Act to consolidate the Enactments relating to Legal Practitioners. [27th July, 1898.]

LEGAL PRACTITIONERS.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

*Preliminary.*

1. This Act may be cited as the "Legal Practitioners Act, 1898," and is divided into Parts, as follows:—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Barristers*—ss. 4-12.

PART III.—*Solicitors*—ss. 13-15.

PART IV.—*Conveyancers*—ss. 16-20.

PART V.—*Bills of costs*—ss. 21-39.

PART VI.—*Unqualified practitioners*—s. 40.

2. (1) The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed.

(2) All persons appointed or elected under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed or elected hereunder.

(3) All rules made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act.

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

"Barrister" means a barrister-at-law admitted by the Court.

"Court" means the Supreme Court.

"Judge" means a Judge of the Court.

"Prescribed" means prescribed by rules of Court.

"Solicitor" means an attorney, solicitor, and proctor of the Court, and in Part V of the Act includes the executor, administrator, and assignee of such solicitor and the trustee of his estate.

"University graduate" means a person who has taken any degree in arts, or in law, or in medicine, granted after examination—

(a) in the University of Sydney or of Oxford or of Cambridge; or

(b) in any university granting degrees by virtue of any Imperial Act or Royal Charter, or any Colonial Act assented to by Her Majesty or any of Her Majesty's predecessors.

PART

*ended  
12/1935*

Repeal.  
Schedule.

Officers under Acts  
hereby repealed.

Rules under Acts  
hereby repealed.

Interpretation.

20 Vic. No. 14, s. 1.  
22 Vic. No. 23, s. 1.

*Legal Practitioners.*

## PART II.

*Barristers.*

Admission Board.  
11 Vic. No. 57, s. 1.

**4.** The Judges, the Attorney General, and two barristers to be annually elected by the practising barristers in the month of November or December for the year then ensuing shall form a Board for the approval of properly qualified persons to be barristers.

Meetings.  
*Ibid.* s. 4.

**5.** (1) No meeting of the Board, nor any meeting of the bar for the election of such two members of the Board, shall be held without notice in writing previously given by the Attorney General to each member of the Board (or to each practising barrister, as the case may be) three days at the least before the day of meeting, specifying therein the time and place of meeting.

(2) Every such notice may be given by leaving the same at the party's chambers or usual residence.

(3) The acts and resolutions of the majority of the Board or barristers present at any meeting so called shall have effect and be binding as the acts and resolutions of the whole body.

Rules for  
examination.  
*Ibid.* s. 1.  
39 Vic. No. 32,  
ss. 1, 2.

**6.** The Board shall make and promulgate rules for the examination of candidates for admission as barristers in—

- (a) Latin classics ;
- (b) Greek classics, or logic, or French language and literature ;
- (c) mathematics ;
- (d) law ;

and in such other branches of knowledge as the Board thinks fit.

Examiners.  
11 Vic. No. 57, s. 1.

**7.** The Board may depute the examination of candidates to such persons as they consider competent to examine such candidates, subject to the payment of such reasonable fees to the examiners as the Board shall order to be paid by such candidates.

Exemption of  
university graduates  
and certain under-s  
graduates.  
20 Vic. No. 14, s. 1.  
22 Vic. No. 23, s. 1.  
39 Vic. No. 32, s. 1.

**8.** (1) No university graduate shall be required to pass any examination under this Part of this Act other than an examination in law.

(2) No candidate who has passed two annual examinations in the University of Sydney shall be required to pass an examination in any of the subjects mentioned in sub-sections (a), (b), and (c) of section six.

Character of  
candidates.  
11 Vic. No. 57, s. 2.

**9.** No candidate, however qualified in other respects, shall be admitted as a barrister unless the Board is satisfied that he is a person of good fame and character :

Provided that nothing herein contained shall be construed to apply to the admission of barristers of England or Ireland or advocates of Scotland.

Admission of  
approved  
candidates.  
*Ibid.* s. 3.

**10.** Every candidate whom the Board shall approve as a fit and proper person to be made a barrister shall be admitted as a barrister by the Court on any day appointed for that purpose.

*Legal Practitioners.*

11. Any solicitor of five years standing from the date of his admission in New South Wales, upon having his name on his own application removed from the roll of solicitors in the Court, shall be entitled, without examination, to be admitted as a barrister.

Solicitors of five years standing.  
55 Vic. No. 31, s. 3.

12. Any person duly admitted to practise as a barrister in the Supreme Court of Victoria or of Queensland shall be entitled to be admitted as a barrister upon such terms and conditions and payment of such fees as may be prescribed.

Barristers of Victoria or Queensland.  
46 Vic. No. 2, s. 1.

## PART III.

*Solicitors.*

13. No university graduate who is desirous of being admitted as a solicitor shall be required to pass any examination, other than in law, either before or after entering into articles of clerkship, or to serve under such articles for more than three years.

Exemption of university graduates.  
20 Vic. No. 14, s. 2.  
22 Vic. No. 23, s. 1.

14. Any barrister of five years standing from the date of his admission in New South Wales, upon having his name on his own application removed from the roll of barristers in the Court, shall be entitled, without examination, to be admitted as a solicitor.

Barristers of five years standing.  
55 Vic. No. 31, s. 3.

15. Every solicitor shall be competent to appear and shall have the right of audience in all Courts in New South Wales in all matters and proceedings in which he acts as solicitor.

Right of audience.  
*Ibid.* s. 2.

## PART IV.

*Conveyancers.*

16. Every person not being a barrister or solicitor who is desirous of practising as a conveyancer shall, one month at least before making application as hereinafter mentioned, give notice in the prescribed manner and form of his intention to apply for a certificate to practise as a conveyancer.

Notice of intention to apply.  
11 Vic. No. 33, s. 14.

17. Upon the application of any such person, having given such notice, the Court or a Judge shall direct that the applicant be examined at the earliest convenient time by the master in equity (or by the said master and such other one or two officers of the Court as the Court or Judge may appoint to assist him) touching the applicant's skill and knowledge in conveyancing as well as his character for integrity.

Order for examination.  
*Ibid.*

18.

*Legal Practitioners.***Examination.**

11 Vic. No. 33, s. 14.

**18.** The said master and other officers may put such questions to the applicant in respect to the matters aforesaid, and may require such proof of his character as they think fit.

**Certificate.***Ibid.* s. 14.

**19.** If the applicant is considered of competent ability and knowledge and a fit and proper person to practise as a conveyancer, the said master shall grant to him a certificate authorising him to draw, fill up, and prepare any conveyance, will, deed, bond, lease, or agreement for a lease, or other contract whatsoever of or relating to any estate or property, whether real or personal.

The applicant shall have the power of appeal to the Court in case of refusal of such certificate by the master.

**Enrolment.***Ibid.* s. 14.

**20.** Such certificate shall be enrolled in the office of the prothonotary of the Court, whereupon the applicant shall be deemed a certificated conveyancer, and entitled to practise as such.

## PART V.

*Bills of costs.***Delivery of signed bill before action.***Ibid.* s. 1.

**21.** (1) No solicitor, or executor, administrator, or assignee of any solicitor, or trustee of his estate, shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such solicitor until the expiration of one month after a bill of such fees, charges, and disbursements, subscribed in his proper handwriting—

(a) by such solicitor, or

(b) in the case of partnership, by any of the partners, either with his own name or with the name and style of such partnership, or

(c) by the executor, administrator, or assignee of such solicitor, or the trustee of his estate,

has been delivered by him unto the party to be charged therewith, or sent by post to, or left for such party at his counting-house, office of business, dwelling-house, or last-known place of abode.

*Ibid.* s. 4.

(2) Provided always that a Judge may authorise the commencement of such action or suit against such party, although one month has not expired as aforesaid, on proof to the satisfaction of the Judge that there is probable cause for believing that such party is about to quit New South Wales.

(3) The word “bill” when hereinafter used means a bill of such fees, charges, and disbursements.

**Appointment for taxation.***Ibid.* s. 1.

**22.** (1) Upon the application of the party chargeable with a bill within such month, an appointment for taxation of the same may be obtained as of course, and without order of a Judge, from the taxing officer.

*Legal Practitioners.*

(2) The taxing officer under this Act shall be—

- (a) the master in equity in case the whole of the business contained in such bill has been transacted in the Court in its equitable jurisdiction, or in any matter of lunacy, or relates to conveying business ;
- (b) the registrar in bankruptcy in case the whole of such business has been transacted in the Court in its bankruptcy jurisdiction ;
- (c) the registrar in divorce in case the whole of such business has been transacted in the Court in its matrimonial causes jurisdiction ;
- (d) the registrar of probates in case the whole of such business has been transacted in the Court in its probate jurisdiction ;
- (e) the prothonotary of the Court in every other case, including criminal business, and though the business or part of the business contained in such bill has not been transacted in the Court.

Taxing officers.  
11 Vic. No. 33, s. 1.

(3) Provided that any power or duty conferred or imposed upon any taxing officer by this Act may in any case be delegated by him as follows, that is to say—

Delegation by  
taxing officers.

- (a) by the master in equity to the deputy registrar in equity ;
- (b) by the registrar in bankruptcy to the chief clerk in bankruptcy ;
- (c) by the registrar in divorce to the deputy registrar in divorce ;
- (d) by the registrar of probates to the deputy registrar of probates ;
- (e) by the prothonotary to the chief clerk of the Court ;

and the officer to whom such power or duty is delegated shall be the taxing officer in such case.

**23.** Such bill and the demand of the solicitor thereupon shall be taxed and settled by the taxing officer without any money being brought into Court.

Taxation.  
*Ibid.* s. 1.

**24.** The Court or a Judge shall restrain the solicitor from commencing any action or suit touching such demand pending such taxation.

Action restrained  
pending taxation.  
*Ibid.*

**25.** (1) In case no such application be made within such month as aforesaid, the Court or a Judge may upon the application either—

Reference to taxation  
after one month.  
*Ibid.* s. 2.

- (a) of the solicitor whose bill has been so delivered, sent, or left as aforesaid ; or
- (b) of the party chargeable with such bill,

with such directions and subject to such conditions as the Court or Judge thinks fit, refer the bill and the demand of the solicitor thereupon to be settled and taxed by the taxing officer, and (in case such reference is made on the application of the party so chargeable) without any money being brought into Court.

*Legal Practitioners.*

- Taxation after verdict, &c., or after twelve months. (2) Provided that no such reference shall be made on the application of the party so chargeable—
- (a) after a verdict has been obtained, judgment signed, or writ of inquiry executed in any action for the recovery of the demand of such solicitor ; or
- (b) after the expiration of twelve months after the bill has been delivered, sent, or left as aforesaid,
- except under special circumstances to be proved to the satisfaction of the Court or Judge.
- Action restrained pending reference. 11 Vic. No. 33, s. 2. 26. The Court or a Judge may restrain the solicitor from commencing or prosecuting any action or suit touching such demand, pending such taxation, upon such terms as the Court or Judge thinks fit.
- Taxation in absence of solicitor or party chargeable. *Ibid.* s. 3. 27. Upon every such appointment or reference if either the solicitor whose bill has been delivered, sent, or left, or the party chargeable with such bill, having due notice, refuses or neglects to attend the taxation, the taxing officer may proceed to tax and settle the bill and demand *ex parte*.
- Costs of taxation. *Ibid.* 28. (1) In case any such appointment or reference is obtained or made—
- (a) upon the application of the party so chargeable ; or
- (b) upon the application of the solicitor, and the party so chargeable attends upon the taxation,
- the costs of the taxation shall, except as hereinafter provided, be paid according to the event of such taxation, that is to say—
- (c) by the solicitor, if the bill when taxed be less by a sixth part than the bill delivered, sent, or left ; and
- (d) by the party so chargeable, if the bill when taxed be not less by a sixth part than the bill delivered, sent, or left.
- Taxation and certificate. (2) The taxing officer shall tax the costs of the taxation, and certify what upon such taxation is found to be due to or from the solicitor in respect of such bill or demand, and of the costs of the taxation, if payable.
- Special certificate by taxing officer. (3) Provided that such officer may in any case certify specially any circumstances relating to such bill or taxation, and the Court or a Judge may thereupon make such order as the Court or Judge thinks fit respecting the payment of the costs of the taxation.
- Special directions. (4) Provided also that where any such reference is made the Court or Judge may give any special directions relative to the costs of the taxation.
- (5) In this section the expression “ costs of the taxation ” includes the costs of the appointment or reference.
- Order for delivery of bill or for delivery up of deeds, &c. *Ibid.* 29. The Court or a Judge may in any case make such order for the delivery of such bill as aforesaid by any solicitor, or the executor, administrator, or assignee of any solicitor, or trustee of his estate, and for the delivery up of deeds, documents, or papers in his custody, possession,
- or

*Legal Practitioners.*

or power, or otherwise touching the same in the same manner as was done as regarded such solicitor by such Court or Judge before the passing of the Act eleventh Victoria number thirty-three, where any such business had been transacted in the Court.

**30.** It shall not in any case be necessary in the first instance for a solicitor in proving a compliance with this Act to prove the contents of the bill he may have delivered, sent, or left, but it shall be sufficient to prove that a bill subscribed in the manner aforesaid was delivered, sent, or left in manner aforesaid, but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a bona fide compliance with this Act.

Evidence of delivery of bill.  
11 Vic. No. 33, s. 4.

**31.** In taxing any bill for preparing or drawing any deed, contract, case, or other document, the taxing officer in estimating the proper sum to be charged for such transaction shall consider the skill and labour properly employed, and the expense and responsibility incurred in the preparation thereof.

Costs allowed according to skill and responsibility.  
*Ibid.* s. 5.

**32.** (1) Where any person not the party chargeable with a bill within the meaning of the provisions hereinbefore contained is liable to pay or has paid such bill either to the solicitor or to the party chargeable with such bill, such person, his executor, administrator, or assignee, or the trustee of his estate, may make such application for a reference for the taxation and settlement of such bill as the party chargeable therewith might himself make, and the same reference and order shall be made thereupon, and the same course pursued in all respects as if such application were made by the party so chargeable.

Taxation on application of third parties.  
*Ibid.* s. 6.

(2) Provided always that in case such application is made when under the provisions herein contained a reference is not authorised to be made except under special circumstances, the Court or Judge to whom such application is made may take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party so chargeable if he were the party making the application.

Special circumstances.

**33.** (1) In any case in which a trustee, executor, or administrator has become chargeable with a bill, a Judge may, in his discretion, upon the application of a party interested in the property out of which such trustee, executor, or administrator has paid or is entitled to pay such bill, refer the same and the demand of the solicitor thereupon to be taxed and settled by the taxing officer, with such directions, and subject to such conditions as the Judge thinks fit, for the payment of what may be found due, and of the costs of the taxation and reference to or by the solicitor by or to the party making the application, having regard to the provisions of this Act relative to applications for the like purpose by the party chargeable with such bill, so far as the same are applicable.

Taxation of bills chargeable to trustees, &c., on application of parties interested.  
*Ibid.* s. 7.

(2) In exercising such discretion the Judge may take into consideration the extent and nature of the interest of the party making the application.

(3)

*Legal Practitioners.*

(3) Provided always that where any money shall be so directed to be paid by the solicitor, the Judge may order the same or any part thereof to be paid to the trustee, executor, or administrator so chargeable instead of being paid to the party making the application; and when such party shall pay any money to the solicitor in respect of such bill, he shall have the same right to be paid by such trustee, executor, or administrator as the solicitor had.

Delivery of bill to  
third parties.  
11 Vic. No. 33, s. 8.

**34.** For the purpose of any reference under either of the two last-preceding sections the Court or a Judge may order the solicitor to deliver to the party making the application a copy of such bill upon payment of the costs of such copy.

No retaxation  
except under special  
circumstances.  
*Ibid.* s. 9.  
Review of taxation.

**35.** (1) No bill which has been taxed and settled either under an appointment or reference shall be again referred, unless under special circumstances the Court or a Judge thinks fit to direct a retaxation.

(2) Provided nevertheless that where a bill of costs has been taxed an order for review of the taxation may be made by the Court or a Judge after rule or summons to show cause, and the Court or Judge may thereupon direct the taxing officer to review and correct such taxation instanter.

Costs.

(3) The costs of the application shall be in all cases in the discretion of the Court or Judge.

Taxation after  
payment of bill.  
*Ibid.* s. 10.

**36.** The payment of a bill shall in no case preclude the Court or Judge from referring such bill for taxation if the special circumstances of the case, in the opinion of the Court or Judge, appear to require the same, upon such terms and conditions and subject to such directions as the Court or Judge thinks fit:

Provided always that the application for such reference be made within twelve months after payment.

Prothonotary may  
request other taxing  
officer to assist in  
taxing bill.  
*Ibid.* s. 11.

**37.** (1) In all cases in which an appointment or reference is obtained or made for the taxation and settlement of a bill by the prothonotary, he may request the master in equity, the registrar in bankruptcy, the registrar in divorce, or the registrar of probates to assist him in taxing and settling such bill or any part thereof.

(2) Such officer shall thereupon proceed to tax and settle the same, and shall have the same powers in respect thereof as upon a reference to him, and shall return the same with his opinion thereon to the prothonotary.

Application for  
taxation, &c., how  
made.  
*Ibid.* s. 12.

**38.** All applications made under this Act to refer a bill to be taxed and settled, or for the delivery of a bill, or for the delivery up of deeds, documents and papers, shall be made in the matter of the solicitor.

Certificate of taxing  
officer final.  
*Ibid.*

**39.** (1) Upon the taxation or retaxation and settlement of any bill the certificate of the taxing officer shall (unless set aside or altered by order, decree, or rule of Court) be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the course and practice of the Court.

(2)



*Legal Practitioners.*

(2) The Court or a Judge may order judgment to be entered up for such amount with costs, unless the retainer shall be disputed, or make such other order thereon as the Court or Judge thinks fit. Judgment may be entered up.

PART VI.

*Unqualified practitioners.*

40. Every person not being—

- (a) a barrister, solicitor, or certificated conveyancer; or
- (b) a person solely employed to engross any deed, instrument, or other proceeding not drawn or prepared by himself and for his own account; or
- (c) a public officer drawing or preparing official instruments applicable to his office and in the course of his duty,

who shall, for or in expectation of any fee, gain, or reward, directly or indirectly, draw or prepare any conveyance or other deed or instrument in writing relating to any real estate or any proceedings in law or equity shall be deemed guilty of a contempt of Court, and shall and may be punished accordingly for every such offence upon the application of any person complaining thereof, or shall for every such offence forfeit and pay the sum of twenty pounds, to be sued for and recovered in a summary way before any court of summary jurisdiction.

Certain persons only to draw conveyances, &c.  
11 Vic. No. 33, s. 13.

THE SCHEDULE.

Reference to Act.	Title or short title.	Extent of Repeal.
11 Vic. No. 33..	An Act to regulate the taxation of Attorneys' Bills of Costs and the practice of conveyancing.	The whole.
11 Vic. No. 57..	An Act to regulate the admission in certain cases of barristers of the Supreme Court of New South Wales	The whole.
20 Vic. No. 14..	An Act to confer certain privileges on graduates of the University of Sydney.	The whole.
22 Vic. No. 23..	An Act to extend to graduates of other universities certain privileges enjoyed by graduates of the University of Sydney.	The whole.
39 Vic. No. 32..	An Act to amend an Act intituled an Act to regulate the admission in certain cases of barristers of the Supreme Court of New South Wales.	The whole.
46 Vic. No. 2 ..	An Act to amend the Acts to regulate the admission in certain cases of barristers of the Supreme Court of New South Wales.	The whole.
55 Vic. No. 31..	Legal Practitioners Act of 1892 .. .. .	The whole.