

Queensland



QUEENSLAND LAW SOCIETY ACT 1952

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(includes amendments up to Act No. 79 of 1996)**

Warning—see last endnote for uncommenced amendments

Reprint No. 2B

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Information about this reprint

This Act is reprinted as at 14 February 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



QUEENSLAND LAW SOCIETY ACT 1952

TABLE OF PROVISIONS

Section	Page
PART 1—PRELIMINARY	
1	Short title 7
3	Definitions 7
3A	References to practitioners in certain provisions 8
PART 2—THE QUEENSLAND LAW SOCIETY INCORPORATED AND THE COUNCIL	
4	Incorporation of the society 9
4A	Officers of the society 10
5	Council of the society 10
5A	Rules 12
5B 12
5C	Right of audience 17
5D	Institution of proceedings 18
THE STATUTORY COMMITTEE	
6	Statutory committee 18
6A	Solicitors Disciplinary Tribunal 25
6B	Vacation of office 26
6C	Filling casual vacancies 26
6D	Proceeding of tribunal 26
6E	Fees and expenses of lay persons 27
6F	Functions of tribunal 27
6G	Reference to tribunal and notice of hearing 27
6H	Status of tribunal and powers of its members 28
6I	Witness required to answer 28

6J	Powers of tribunal	29
6K	Appearances before tribunal	31
6KA	Hearings to be in public unless tribunal otherwise orders	31
6L	Appeals	32
6M	Tribunal rules	32
6N	Orders in relation to clerks or employees	32
6O	Lay observer	32
6P	Vacation of office	33
6Q	Temporary vacancy	33
6R	Remuneration and staff	34
6S	Functions and powers of lay observer	34
7	Illegal practices	35

MISCELLANEOUS

8	Recovery of fees etc.	36
9	Minutes	36
10	When council may assume control over practitioner's trust accounts	37
11	Powers of the council with respect to trust accounts of deceased practitioners etc.	40
11A	Appointment of receiver of trust property	44

PART 3—LEGAL PRACTITIONERS' FIDELITY GUARANTEE FUND

12	Establishment of fidelity guarantee fund	57
13	Fund to be kept in separate bank account	57
14	Moneys payable into fund	57
15	Expenditure from fund	58
16	Audit of accounts	58
17	Council to administer fund	58
18	Council may delegate its powers in relation to the fund to a committee of management	59
19	Practising practitioners to pay prescribed contribution into fund	59
20	Administration of fund	59
21	In addition to annual contributions, practitioners may be required to pay levy for benefit of fund	61
22	Society may advance moneys from its general funds to the fund	61

23	Investment of fund	61
24	Application of fund	62
24A	Fund offers no protection for certain mortgages	64
24B	Practitioners to notify clients about non-liability of fund for certain mortgages	64
25	Council may settle claims without action	65
26	Defences to claims against fund	67
27	Subrogation of rights of action	67
28	If fund insufficient to satisfy claims, such claims to be charged on future accumulations	68
29	Council may enter into contracts of indemnity for purposes of Act	68
30	Application of indemnity moneys	69
SUPPLEMENTARY PROVISIONS		
31	Council may appoint accountant to investigate affairs of practitioner	69
32	When bond under Trust Accounts Acts or other Act unnecessary	72
33	When report of auditor of trust account may not be accepted	72
34	Solicitor or conveyancer not to act as auditor of trust accounts	73
35	Audit fee in default of payment by practitioner a charge against the fund	73
36	Saving of trust accounts	73
PART 3A—GENERAL TRUST ACCOUNTS' CONTRIBUTION FUND AND GRANTS FUND		
36A	Meaning of terms	74
36B	Establishment of contribution fund	74
36C	Moneys payable into the contribution fund	75
36D	Investment of contribution fund	75
36E	Distributions from contribution fund	76
36F	Establishment of grants fund	76
36G	Moneys payable into the grants fund	76
36H	Grants committee	77
36I	Vacation of office	77
36J	Filling casual vacancies	78
36K	Proceeding of grants committee	78
36L	Fees and expenses	79

36M	Other officers	79
36N	Functions of grants committee	79
36O	Objectives of grants	80
36P	Moneys granted cease to form part of grants fund	81
36Q	Investment of grants fund	81
36R	Audit of account	82

PART 4—ANNUAL PRACTISING CERTIFICATE AND RULES

37	Roll of solicitors and conveyancers	82
38	Prohibition on practising without practising certificate	82
39	Persons practising without certificates	83
39A	Practice of deceased practitioner	84
40	Application for and issue of certificate	85
40A	Condition attaching to practising certificate	88
41	Grounds for refusing or cancelling certificate	88
41A	Refusal or cancellation of certificate on ground of infirmity	90
41B	Ground for suspension of certificate	91
42	Appeal	92
44	Solicitor may not act or recover fees whilst uncertificated	93
45	The like in relation to conveyancers and others	93
46	Governor in Council may make rules for purposes of this Act	94
47	Recovery of moneys	95

PART 5—GENERAL

48	Validation of proceedings etc. of statutory committee	95
49	Protection for acts and omissions under Act	96
50	Confidentiality	96
51	Approval of forms	98
52	Regulation making power	98

ENDNOTES

1	Index to endnotes	99
2	Date to which amendments incorporated	99
3	Key	100

4	Table of earlier reprints	100
5	Tables in earlier reprints	100
6	List of legislation	101
7	List of annotations	104
8	Transitional and savings provisions	116
9	Provisions that have not commenced and are not incorporated into reprint	116

QUEENSLAND LAW SOCIETY ACT 1952

[as amended by all amendments that commenced on or before 14 February 1997]

An Act to provide for the incorporation of the Queensland Law Society, for the establishment and administration of a Legal Practitioners' Fidelity Guarantee Fund, for the issue of annual practising certificates, and for other incidental and consequential purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Queensland Law Society Act 1952*.

Definitions

3. In this Act—

“approved form” see section 51.¹

“chief justice” means the chief justice of the court; in the absence of the chief justice from duty, the term means and includes the senior judge administrator of the court.

“committee of management” means the committee to which the powers of the council in relation to the fund may be delegated pursuant to section 18, or if there shall be no such committee, the council of the society.

“conveyancer” means a person duly admitted as a conveyancer of the court who continues to be on the roll.

¹ Section 51 (Approval of forms)

“council” means the council of the society.

“court” means the Supreme Court of Queensland.

“Legal Practitioners’ Fidelity Guarantee Fund” or **“fund”** means the Legal Practitioners’ Fidelity Guarantee Fund established under this Act.

“practising practitioner” means any solicitor or conveyancer who directly or indirectly practises in Queensland: prima facie a solicitor or conveyancer who draws or prepares any documents relating to real or personal estate or any memorandum or articles of association of any company, or signs any instrument as correct for the purposes of registration, or who receives in trust the moneys of any person shall be deemed to be a practising practitioner, but does not include a solicitor, or conveyancer in any Commonwealth or State department acting in the course of his or her official duties.

“practitioner” means a solicitor or conveyancer.

“registrar” means the registrar of the court.

“roll” means any book, parchment, or paper on which the registrar inscribes the names of persons admitted as practitioners, and **“the roll”** means the solicitors’ roll or the conveyancers’ roll, as the context or the circumstances may require.

“society” means the Queensland Law Society Incorporated duly incorporated under this Act.

“solicitor” means a person duly admitted as a solicitor of the court who continues to be on the roll.

“statutory committee” means the statutory committee of the council.

“tribunal” means the Solicitors Disciplinary Tribunal established under this Act.

References to practitioners in certain provisions

3A. It is declared that, in sections 6(4), 25(1), 26, 27 and 35 the reference to a practitioner includes and always has included reference to a person who ceases, or has ceased, to be qualified or entitled to practise as, or who

becomes, or has become, disqualified from practising, or disentitled to practise as, a solicitor or conveyancer.

PART 2—THE QUEENSLAND LAW SOCIETY INCORPORATED AND THE COUNCIL

Incorporation of the society

4.(1) There shall be a body corporate, by the name of the Queensland Law Society Incorporated.

(1A) Subject to this Act, the society shall consist of all persons who for the time being are and whilst they continue to be members of the society.

Common seal

(2) 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.

Corporate powers

(3) 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.

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

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

(6) A person who—

- (a) is entitled to practise as a practitioner; or
- (b) in the opinion of the council, is a fit and proper person to admit to membership, having regard to that person's involvement with the legal profession;

shall be eligible to be enrolled as a member of the society.

Disqualification of member

(7) If any member of the society in consequence of a judgment or order of the statutory committee or of any court of competent jurisdiction is struck off the rolls or is rendered incapable of practising in the court or in any of the supreme courts of justice in any part of Her Majesty's dominions, the member shall forthwith cease to be a member of the society.

Officers of the society

4A.(1) Subject to subsection (2A) there shall be a president, a deputy president and a vice-president of the society, each of whom shall be elected or appointed as prescribed.

(2) The president of the society shall hold office for a term of 1 year.

(2A) Upon the expiration of the president's term of office the deputy president, if there is one at that time, shall assume the office of president whereupon a vacancy shall exist in the office of deputy president, which shall not be filled until the next election or appointment of all officers of the society as prescribed.

(3) Subject to subsection (2) and (2A), the term of office of officers of the society shall be 2 years and each of the officers shall be eligible for re-election or reappointment as prescribed.

Council of the society

5.(1) For the good government of the society there shall be a council of the society.

(2) The council shall consist of not less than 14 or more than 17 members namely—

- (a) a barrister or a practitioner appointed by the Minister (the “**appointed member**”);
- (b) the president, deputy president (if any) and vice-president of the society;
- (c) members of the society, elected or appointed in accordance with the rules.

(2A) The council may appoint a person who is the immediate past

president to be a member of the council.

(2B) The appointment may be for a term of not longer than 1 year.

(2C) The appointment may be made despite the following—

- (a) that there are already 17 members of the council;
- (b) that the person was not elected as a member of the council, although eligible for nomination and election as a member of the council.

(3) Each of the members of the council shall hold office for a term of 2 years and shall be eligible for re-election or reappointment as prescribed.

Casual vacancies

(4) A rule may be made by the council about the filling of a casual vacancy in the office of president, deputy president, vice-president, or any elected member of the council.

(4A) However, where a vacancy occurs in respect of the member appointed by the Minister the Minister shall appoint some qualified person to act until the term of office of the firstmentioned member shall have expired by effluxion of time.

Quorum

(5) A quorum of the council shall consist of 8 members.

Council to manage society

(6) Subject to the provisions of this Act, 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 hereby directed or authorised to be done by the society.

(6A) The exercise of a power or the performance of a function of the council shall not be affected by the fact that at the time of such exercise or performance a vacancy existed in the membership of the council or that the election or appointment of any member of the council was defective.

Delegation of powers

(7) Subject to section 18, the rules of the society may authorise the council to delegate any of its powers to committees, which may consist of

1 or more members of the council.

Secretary and officers

(8) The council shall have power to appoint a secretary and such other officers as it may deem necessary, and may revoke such appointments.

(9) It shall also have power to prescribe their duties.

Rules

5A.(1) The council may make rules for the following purposes—

- (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 the election or appointment of the president, deputy president and vice-president of the society and the filling of vacancies arising in the office of any of those officers;
- (d) to provide for the constitution of the council, the election or appointment of members of the council, other than the appointed member and members ex officio, and the filling of vacancies arising in the office of any of such firstmentioned members;
- (e) for regulating the meetings and proceedings of the council and the conduct of business thereof;
- (f) to provide for the custody and use of the common seal of the society;
- (g) to govern the admission, resignation, and expulsion of members of the society, to impose fees, levies and subscriptions in respect of membership of the society, to impose fines for any breach of any rule or by-law of the society, to prescribe an annual practising fee and to impose levies on practising practitioners, and to provide for the recovery of all or any of such fees, levies, subscriptions, and fines;
- (h) to provide for the re-entry of persons who have ceased to be members of the society;
- (ha) to provide for and with respect to indemnity against loss arising

Queensland Law Society Act 1952

from claims in respect of every description of civil liability incurred by a practising practitioner or former practising practitioner—

- (i) in connection with his or her practice; or
 - (ii) in connection with any trust of which he or she is or formerly was a trustee;
- (hb) to provide for and with respect to—
- (i) the recognition of specialities within practice as a solicitor or conveyancer;
 - (ii) a minimum amount of continuing or refresher education in fields of law or aspects of legal practice required of practising practitioners or members of a class of practising practitioner as a condition to which the entitlement of a practising practitioner or a member of a class of practising practitioner—
 - (A) to the issue of a certificate under section 40; or
 - (B) to the issue of a certificate that relates to any speciality within practice as a solicitor or conveyancer;is subject;
- (hc) to provide for and with respect to—
- (i) requirements in respect of applications for the issue of certificates pursuant to section 40, including and without limiting the generality thereof requirements in respect of compliance with all or any part of the indemnity rules and the continuing legal education rules and the obtaining or holding of any form of accreditation or certificate pursuant to the continuing legal education rules;
 - (ii) conditions imposed upon any holder of a certificate issued pursuant to section 40 in respect of the nature of the practice authorised by such certificate and in respect of the entitlement of the holder of any such certificate ordinarily to be left in charge of the office of a practitioner in private practice or to be authorised as a signatory upon the trust account of such a practitioner;

Queensland Law Society Act 1952

- (iii) classes of certificates issued pursuant to section 40;
 - (hd) to provide for and with respect to the authority of the council to waive compliance with rules in whole or in part, absolutely or conditionally, in respect of a practitioner or a member of a class of practitioner;
 - (he) to provide for and with respect to the authority of the council to create classes of practising practitioners and the amount of the annual practising fees which shall be payable by members of each such class;
 - (i) to provide for additions to and alterations of the rules of the society;
 - (j) 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;
 - (k) to provide for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act, and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency;
 - (l) generally, to carry the objects of the society into full and complete effect.
- (2) A rule or by-law is subordinate legislation, and must be approved by the Governor in Council.
- (3) Any rule or by-law may (without prejudice to any other method of revocation) be revoked by regulation.
- (4) Rules made under subsection (1)(ha) are the “**indemnity rules**”.
- (5) The indemnity rules—
- (a) may authorise or require the society to establish and maintain a fund or funds;
 - (b) may authorise or require the society to take out and maintain insurance with insurers carrying on insurance business and approved by the council for the purposes of such insurance;

- (c) may require practising practitioners or any specified class of practising practitioners to take out and maintain insurance with insurers carrying on insurance business and approved by the council for the purposes of such insurance.

(6) Without limiting the generality of subsection (1)(ha) or (5), the indemnity rules—

- (a) may specify the terms and conditions on which indemnity is to be available and any circumstances in which the right to indemnity is to be excluded or modified; and
- (b) may provide for the management, administration and protection of any fund established and maintained under the indemnity rules, and require practising practitioners or any class of practising practitioners to make payments to any such fund; and
- (c) may require practising practitioners or any class of practising practitioners to make payments by way of premium on any insurance policy taken out and maintained by the society by virtue of the indemnity rules; and
- (d) may prescribe terms and conditions with which an insurance policy, required by the indemnity rules made for the purposes of subsection (5)(c), must comply; and
- (e) may authorise the society to determine the amount of any payments required by the indemnity rules, subject to such limits or in accordance with such provisions as may be prescribed by the rules; and
- (f) may authorise the society or insurer to take proceedings against a practising practitioner or former practising practitioner in respect of sums paid by way of indemnity in connection with a matter in relation to which he or she has failed to comply with the indemnity rules, and may specify circumstances in which such proceedings may be taken; and
- (g) may specify circumstances in which practising practitioners are exempt from the indemnity rules; and
- (h) may provide for the establishment, maintenance, management and administration on behalf of the society of any scheme of indemnity provided for by or under the indemnity rules by a

prescribed instrumentality of the society and may confer on such instrumentality such powers and functions of the society or the council as may be requisite or expedient for implementation of any provisions of the indemnity rules made in this regard; and

- (i) may empower the council to take such steps as it considers necessary or expedient to ascertain whether or not the indemnity rules are being complied with; and
- (j) may contain incidental, procedural or supplementary provisions.

(7) If any practising practitioner fails in any respect to comply with the indemnity rules, the practising practitioner shall be liable to be dealt with for professional misconduct and the council may, of its own motion, refer to the statutory committee or the tribunal any question in respect of that failure.

(8) The council shall have power, without prejudice to any of its other powers, to carry into effect any arrangements that it considers necessary or expedient for the provisions of indemnity under or pursuant to the indemnity rules.

(9) Rules made under subsection (1)(hb) are the “**continuing legal education rules**”.

(10) Without limiting the generality of subsection (1)(hb), the continuing legal education rules—

- (a) may specify the fields of legal practice in which a specialist accreditation may be available to practising practitioners and may provide for minimum standards of education, forms of assessment and examination necessary to obtain or renew accreditation to a recognised specialty;
- (b) may provide for the form of accreditation (whether by way of certificate or otherwise) to be issued to practising practitioners in respect of any specialist accreditation in a field of legal practice and may give authority to the council to attach conditions to such accreditation;
- (c) may provide for the administration and management of courses of study for practitioners in fields of law, aspects of legal practice and legal practice management, including enrolment procedures, fees payable, minimum course attendance requirements, examination and assessment and procedures relating to review of

assessments and appeals against assessments;

- (d) may require practitioners or any specified class of practitioners to undertake and satisfactorily complete a specified course of study as a condition precedent to the issue of a certificate pursuant to section 40;
- (e) may provide for the form of accreditation (whether by way of certificate or otherwise) to be issued to practising practitioners in respect of accreditation as practitioners who have satisfactorily completed a specified course of study and may give authority to the council to attach conditions to such accreditation;
- (f) may authorise the council to determine a minimum standard of compliance with the continuing legal education rules and to determine assessment procedures in attainment of that standard and in undertaking and satisfactorily complying with any specified course of study;
- (g) may specify the circumstances in which practitioners are exempt from compliance, in whole or in part, with the continuing legal education rules and may authorise the council to waive compliance with those rules absolutely or conditionally in respect of any practitioner or members of a class of practitioners;
- (h) may contain incidental procedural or supplementary provisions.

5B. Where an action in respect of any description of civil liability arising out of the business of practising as a solicitor or conveyancer is before the court or a District Court and any person who may be made liable in that action is indemnified under a contract of insurance in accordance with this Act, such action shall be heard and determined by a judge without a jury.

Right of audience

5C. The council may appoint counsel or a practising practitioner to appear before any committee thereof (including the statutory committee), the tribunal or 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 counsel or the practising practitioner so appointed shall have audience in any court in any such matter (including

inter alia the conducting of any prosecution instituted by the society and also the opposing of or objecting to any application for admission as a practitioner or 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 malpractice, professional misconduct or unprofessional conduct or practice).

Institution of proceedings

5D.(1) The council may, in its own name, by its secretary or any person thereunto authorised in writing under the hand of the president, deputy president or vice-president, institute, carry on, prosecute, and defend any action, complaint, information, or proceeding whatsoever, including in particular any prosecutions or proceedings for the breach of this Act or any statute or rules relating to the practice of law.

(2) The council may, in such manner as aforesaid, institute any proceedings against any person for a breach of the *Legal Practitioners Act 1995*, section 19.

(3) Every court of law shall take judicial notice of the signature of the president, deputy president or vice-president to any such authorisation.

(4) In any proceedings by or on behalf of the council, it shall not be necessary to prove the appointment or election of the members, president, deputy president, vice-president, secretary, or other officers.

THE STATUTORY COMMITTEE

Statutory committee

6.(1) There shall be a committee of the council, to be called the Statutory Committee of the Queensland Law Society Incorporated, for the purpose of hearing charges of malpractice, professional misconduct, or unprofessional conduct or practice upon the part of practitioners, whether such practitioners are members of the society or not and of hearing references and appeals from the tribunal.

Membership

(1A) Any practitioner who is a member of the society, and who has been not less than 5 years in actual practice in Queensland, shall be eligible for membership of the statutory committee.

Appointment

(1B) The statutory committee shall consist of not less than 5 and not more than 7 members.

(1C) Each member shall be nominated by the council, and shall be appointed by the Governor in Council on the recommendation of the chief justice.

(1D) One of such members shall be appointed as chairperson thereof.

(1E) A member of the statutory committee shall be appointed for a term of 2 years but shall be eligible for reappointment.

(1F) However, no such appointment or reappointment shall prejudice the provisions of this Act, relating to the vacation of, or retirement, or removal from office, of a member.

(1G) Also, subject to subsection (1F), a member of the statutory committee shall by virtue of the member's appointment or reappointment thereto, and notwithstanding the limitation of the term of the member's appointment or reappointment to 2 years, continue in office as a member thereof until that office is again filled by the appointment of the member's successor or his or her reappointment.

Removal of member

(1H) The Governor in Council may on the nomination of the council and on the recommendation of the chief justice remove any member of the statutory committee from office as a member of such committee.

Temporary vacancies

(1I) The Governor in Council may on the nomination of the council and on the recommendation of the chief justice appoint a duly qualified person to act as a member of the statutory committee during the absence from the State or inability to act of a member of the statutory committee, and any person so appointed shall have the powers, duties, and obligations of a member of the statutory committee.

Queensland Law Society Act 1952

(1J) A quorum of the statutory committee shall consist of 3 members.

(1K) A member of the statutory committee may retire from office upon giving 1 month notice in writing to the secretary of the society of the member's intention to do so, and such resignation shall take effect upon the expiration of such notice or its earlier acceptance by the council.

(1L) The office of a member of the statutory committee shall ipso facto be vacated—

- (a) if the member dies; or
- (b) if the member becomes of unsound mind; or
- (c) if the member ceases to be a member of the society; or
- (d) if the member becomes bankrupt or makes any arrangement or composition with the member's creditors; or
- (e) if the member is convicted of an offence under the *Trust Accounts Act 1973*.

(1M) However, if any such vacancy shall occur during the hearing of any charge, question, or matter, such hearing may be continued and an order made thereon by not less than 3 of the remaining members of the statutory committee before whom such hearing was commenced and continued prior to such vacancy.

(1N) Also, any charge, question, or matter may be heard and determined by not less than 3 members of the statutory committee, notwithstanding that at the time of such hearing or determination the total number of the members of such committee is less than 5.

(1O) When any charge, question, or matter is heard by and before 3 or more members of the statutory committee, and such members are divided in opinion as to the decision to be given on any point arising during the hearing or as to the order to be made on such charge, question, or matter, such point or order shall be decided or made according to the opinion of the majority of such members, if there be a majority, but if such members are equally divided in opinion then the opinion of the chairperson of the statutory committee if the chairperson is one of such members, or if the chairperson is not, the opinion of the member appointed by the members taking part in such hearing to act as chairperson on such hearing shall prevail.

Complaints

(2) Any person feeling aggrieved by reason of the alleged malpractice, professional misconduct, or unprofessional conduct or practice of any practitioner may, whether the matter charged was committed or suffered before or after the commencement of this Act, by himself or herself or agent make a charge thereof in writing to the council.

Particulars

(2A) The council may require—

- (a) further particulars of any charge;
- (b) any charge to be verified by statutory declaration.

(2B) Subject to compliance with any such requirements, the council may and if required by the Minister shall forthwith refer every charge under subsection (2) to the statutory committee.

Reference to statutory committee

(2C) Subject to this Act, the council may of its own motion refer to the statutory committee any question as to the conduct of any practitioner which may appear to the council to require investigation, and may act as complainant with respect thereto.

Investigation

(2D) The council may, either at the request of the statutory committee or of its own motion, appoint counsel or a practitioner to investigate any matter referred to the statutory committee and to present the same to the statutory committee either on behalf of the complainant or otherwise.

Statutory committee may summon practitioner

(2E) 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 such matter.

Also complainant and witnesses

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

Powers of chairperson

(2G) For the purposes of every inquiry, reference or appeal the chairperson of the statutory committee—

- (a) may administer oaths and affirmations;
- (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 court has for the purpose of the trial of issues in a civil action.

(2H) However, nothing herein contained shall authorise the chairperson to commit any person to prison or to enforce any order by attachment, except upon an order of the court.

Protection to statutory committee—protection and liability of witnesses

(2I) Every member of such statutory committee shall, in the exercise of his or her duty as member of such committee, have the same authority, power, and protection as a commission under the *Commissions of Inquiry Act 1950*.

(2J) Every witness summoned to attend or appearing before the statutory committee shall have the same protection and shall, subject to this Act, be subject to the same liabilities as a witness before any such lastmentioned commission.

Application to strike name off the roll

(3) Subject as hereinafter provided, every application made after the commencement of this Act to strike the name of a practitioner off the roll or to require a practitioner to answer allegations of malpractice or professional misconduct or unprofessional conduct or practice and every reference or appeal from the tribunal shall be heard by the statutory committee in accordance with rules of court made for this Act, and the statutory committee shall, subject to such rules of court, upon every such application, reference or appeal, have power after hearing the case to make any such order as to striking off the roll or suspending from practice either conditionally or otherwise the practitioner to whom such application relates, or as to the payment by any party of costs or otherwise, in relation to the case as before the commencement of this Act the court would have had power to make in accordance with the authority and practice of the court.

(3A) In any case where a practitioner is struck off the roll of barristers or solicitors or barristers and solicitors or suspended from practice in any other State or in a Territory, the statutory committee on proof thereof shall, in accordance with rules of court made for this Act, make an order that such practitioner be struck off the roll or suspended for a similar period in this State unless the practitioner shows cause to the satisfaction of the statutory committee why the practitioner should not be so struck off or suspended.

(3B) Where, as a consequence of any hearing under subsection (3), the statutory committee finds that the practitioner is guilty of malpractice, professional misconduct, unprofessional conduct or practice or of any other charge for which the practitioner may be proceeded against under this Act, the statutory committee—

- (a) may order the practitioner to pay to the society such sum, not exceeding the amount fixed by the rules of court, as the statutory committee thinks fit; and
- (b) where the statutory committee does not strike the name of the practitioner off the roll, whether or not the practitioner is suspended from practice, may do any 1 or more of the following—
 - (i) censure the practitioner;
 - (ii) order the practitioner to make the ledgers, books of account, records, deeds, files and other documents relating to his or her practice available for inspection at such times and by such persons as are specified in the order;
 - (iii) order the practitioner to make reports on his or her practice in such manner and at such times and to such persons as are specified in the order;
 - (iv) order the practitioner to comply with conditions, including attendance at continuing legal education programs and other educational programs and seminars relating to legal education, practice management and other related topics, in respect of the conduct of his or her practice.

Order

(3C) Every order made by the statutory committee shall be signed by the chairperson and shall be prefaced by a statement of the findings of the

statutory committee in relation to the facts of the case, and shall be filed with the registrar.

Order enforceable as an order of court

(3D) Every order made by the statutory committee shall, as soon as the same shall have been filed, be acted upon by the registrar and be enforceable in the same manner as a judgment or order of the court to the like effect.

Inspection of file

(3E) The file of orders made under this Act shall during office hours be open for the inspection of any person upon payment of such fee (if any) as may be prescribed by rules of court.

Copy of order to be served on Minister

(3F) A copy of every such order shall be served on the Minister within 7 days of its making by leaving the same with the chief executive.

Appeal

(4) An appeal to the court from any order of the statutory committee made under the powers of this Act shall lie at the instance either of the Minister or of the applicant or of the practitioner or of the council.

(4A) An appeal is to be by way of rehearing, and is to be made and heard in accordance with the rules of court made for this Act.

(4B) However, the time within which the Minister may appeal from any such order shall be 30 days from the date of the service of the order concerned on the chief executive, as hereinbefore provided.

Saving of jurisdiction

(5) Nothing in this Act contained shall prejudice, diminish, or affect the jurisdiction, powers, and authorities which are exercisable by the court or the registrar or the department over practitioners.

(5A) Any person who but for this Act would have been entitled to apply to the 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 to the court, whether the matter complained of has been made the subject matter of an inquiry before the statutory committee or not.

(5B) However, upon any such application it shall be lawful for the court to transmit to the council any charges against the practitioner for reference to

the statutory committee in the manner provided by this Act.

Judicial notice

(7) Every court of law shall take judicial notice of the appointment of the statutory committee and of the chairperson and each member thereof and of the signature of the chairperson thereof.

Solicitors Disciplinary Tribunal

6A.(1) There shall be established for the purposes of this Act a tribunal to be called the Solicitors Disciplinary Tribunal.

(2) The tribunal consists of the following 12 members—

- (a) 9 persons selected from a panel of 18 practitioners eligible for membership of the statutory committee and nominated by the council;
- (b) 3 lay persons.

(3) The members of the tribunal are to be appointed by the Governor in Council.

(3A) A member mentioned in subsection (2)(a) is to be appointed the chairperson by the Governor in Council.

(4) The term of every appointment made to the tribunal shall commence on the day specified in the instrument of appointment and, except where the appointment is to a casual vacancy, shall be for a period of 3 years.

(5) A person shall be eligible for reappointment as a member of the tribunal.

(6) A person appointed as a member of the tribunal shall, unless the person sooner vacates office as prescribed, continue to hold office until the person's successor assumes office.

(7) In this section and sections 6D and 6E—

“lay person” means a person who is not a practitioner nor an officer of the public service.

Vacation of office

6B.(1) A member of the tribunal may, by notice in writing furnish to the secretary of the society, resign his or her office at any time.

(2) The Governor in Council may at any time, on the recommendation of the Minister, remove from office a member of the tribunal by notice in writing furnished to the member.

- (3)** A member of the tribunal shall be deemed to have vacated office—
- (a) if the member dies;
 - (c) if the member resigns his or her office;
 - (d) if the member is removed from office.

Filling casual vacancies

6C.(1) If a casual vacancy occurs in the office of a member of the tribunal during the currency of the member's term of appointment, there may be appointed to fill that vacancy a person who has the qualification referred to in section 6A(2) by reason of which the member's predecessor in office was eligible to be appointed as a member of the tribunal.

(2) A person appointed to fill a casual vacancy as provided in subsection (1) shall hold office for the remainder of the term for which the person's predecessor was appointed but shall be eligible for reappointment if the person remains otherwise qualified as prescribed to be a member of the tribunal.

Proceeding of tribunal

6D.(1) All business of the tribunal shall be conducted by a quorum of not less than 3 members, 1 of whom shall be a lay person.

(2) The tribunal shall meet at such times and places as it determines and shall conduct its business in such manner as is prescribed or, in so far as is not prescribed, as it determines from time to time.

(3) The chairperson of the tribunal shall preside at all meetings of the tribunal at which the chairperson is present and, in the chairperson's absence from any meeting, the members present shall elect from their number a member being one of those referred to in section 6A(2)(a) who

shall preside at that meeting.

(4) The person who presides at a meeting of the tribunal shall have a deliberative vote and, in the event of an equality of votes on any matter, shall have a casting vote.

(5) A proceeding of the tribunal shall not be invalidated by reason of a defect in the appointment of a member or by reason of a vacancy in the membership of the tribunal.

Fees and expenses of lay persons

6E. Each member of the tribunal who is a lay person shall be entitled to be paid—

- (a) such fees as are approved by the Governor in Council in respect of the member's attendance at meetings of the tribunal and the discharge of the member's functions under this Act; and
- (b) expenses necessarily and reasonably incurred by the member in attending meetings of the tribunal or in connection with the discharge of the member's functions under this Act and approved by the Minister.

Functions of tribunal

6F. It is the function of the tribunal—

- (a) to hear charges of professional misconduct or unprofessional conduct or practice on the part of a practitioner; and
- (b) to hear charges of misconduct or default in respect of a practitioner's practice by a clerk or employee employed in relation to that practice; and
- (c) to make or cause to be made such investigations as it considers necessary for the purposes of its hearings.

Reference to tribunal and notice of hearing

6G.(1) Subject to this Act, the council may of its own motion refer to the tribunal any question as to the conduct of any practitioner or a clerk or

employee employed in relation to a practitioner's practice which may appear to the council to require investigation, and may act as complainant with respect thereto.

(1A) However, the council may first require further particulars of a charge or verification by statutory declaration of a charge before it is referred to the tribunal.

(2) The secretary of the council shall give or cause to be given to every party to a charge or other matter referred to the tribunal, reasonable notice of the time when and the place where the tribunal is to conduct a hearing of the reference.

(3) If a party to whom notice has been given pursuant to subsection (2) does not attend at the time and place mentioned in the notice, the tribunal may hear and determine the reference in the party's absence.

Status of tribunal and powers of its members

6H. Subject to this Act—

- (a) the tribunal shall be deemed to be a commission of inquiry within the meaning of the *Commissions of Inquiry Act 1950*;
- (b) the members of the tribunal shall be deemed to be commissioners to whom that Act applies and to have the powers, authorities, rights, privileges and protection of commissioners under that Act other than—
 - (i) powers reserved by that Act to the chairperson of a commission who is a judge of the court; and
 - (ii) power to issue a warrant in the first instance or before the return of a summons conferred by section 8(2) of that Act;

and the provisions of that Act shall apply accordingly.

Witness required to answer

6I. Where a witness at a hearing of the tribunal objects to answering any question put to the witness or to discovery or production of any document or other thing by reason that such answer or the discovery or production of that document or thing may tend to incriminate the witness, the witness

shall not be excused from answering or from discovery or production of that document or thing, but no such answer given by the witness and no such document or other thing discovered or produced by the witness shall be admissible in evidence in proceedings for an offence other than for an offence referred to in the *Commissions of Inquiry Act 1950*, section 9 or 22.

Powers of tribunal

6J.(1) After inquiry into a charge referred to in section 6F the tribunal may—

- (a) direct that no further action be taken against the practitioner, clerk or employee in respect of the charge before the tribunal;
- (b) if it is of the opinion that the charge against the practitioner should be referred to the statutory committee—refer the matter for hearing by the statutory committee and the council shall act as complainant with respect thereto;
- (c) in the case of a practitioner—if it is of the opinion that the charge has been proved and the provisions of paragraphs (a) and (b) have not been applied—
 - (i) censure the practitioner;
 - (ii) order the practitioner to pay to the society such sum not exceeding \$5 000, as the tribunal thinks fit;
 - (iii) order the practitioner to make the ledgers, books of account, records, deeds, files and other documents relating to the practitioner's practice available for inspection at such times and by such persons as are specified in the order;
 - (iv) order the practitioner to make reports on the practitioner's practice in such manner and at such times and to such persons as are specified in the order;
 - (v) order the practitioner to comply with conditions, including attendance at continuing legal education programs and other educational programs and seminars relating to legal education, practice management and other related topics, in respect of the conduct of the practitioner's practice;
 - (vi) order the practitioner to pay to the society such sum as the

Queensland Law Society Act 1952

tribunal thinks fit in respect of the costs and expenses of and incidental to the inquiry of the charge by the tribunal;

(vii) make such other orders as may be provided for in the rules of practice made for the tribunal;

and make no other order;

(d) in the case of a clerk or employee—if it is of the opinion that the charge has been proved and the provisions of paragraph (a) have not been applied—

(i) order that on and from the date specified in the order no person shall employ that clerk or employee in relation to a practitioner's practice except on such conditions as may be specified in the order;

(ii) order the clerk or employee to pay to the society such sum as the tribunal thinks fit in respect of the costs and expenses of and incidental to the inquiry of the charge by the tribunal;

and make no other order.

(2) The tribunal may by its order direct that what is required to be done by that order shall be done within a period of time specified in the order.

(3) Where a person against whom an order is made is not present at the time the order is made, the secretary of the society shall, as soon as is practicable, cause a copy of that order to be served on that person.

(4) Where a person against whom an order is made fails to comply in all respects with the order, the tribunal may make a further order at any time, varying an order previously made.

(5) A person against whom an order is made may apply to the tribunal at any time for a variation of the order.

(6) The power to make an order varying an order includes the power—

(a) to revoke an original order and to make an order that could be made in the first instance under subsection (1); and

(b) to make an order that the practitioner, clerk or employee must pay to the society a reasonable amount that the tribunal considers appropriate for the costs and expenses of and incidental to the application for variation.

Appearances before tribunal

6K.(1) The following persons are entitled to appear at a hearing of the tribunal—

- (a) any person authorised in writing by the Minister to so appear;
- (b) each person to whom notice of hearing before the tribunal has been given pursuant to section 6G;
- (c) any person granted leave to appear by the tribunal.

(2) Each party to a reference before the tribunal may appear in person and shall be entitled to appear by counsel or solicitor or by agent authorised by written notice.

Hearings to be in public unless tribunal otherwise orders

6KA.(1) Hearings of the tribunal must be held in public unless the tribunal orders otherwise.

(2) The tribunal may make an order under subsection (3) if it is satisfied that it is desirable to do so—

- (a) because of the confidential nature of the evidence or other matter;
or
- (b) for any other reason.

(3) The tribunal may, by order—

- (a) direct that a hearing (or part of a hearing) is to be held in private;
and
- (b) give directions as to the persons who may be present at a hearing held in private.

(4) The tribunal may, by order, prohibit or restrict the publication—

- (a) of evidence given before the tribunal (whether the hearing was in public or in private); and
- (b) of a matter contained in documents filed with, or received in evidence by, the tribunal.

Appeals

6L.(1) The council, the practitioner or the clerk or employee charged may appeal to the statutory committee against an order of the tribunal.

(2) An appeal is to be by way of rehearing unless both parties accept the facts as found, and is to be made and heard in accordance with the rules of court applying to the statutory committee.

Tribunal rules

6M.(1) A proceeding before the tribunal must be started and conducted under its rules.

(2) The tribunal may make rules for regulating its practice and procedure.

(3) A rule is subordinate legislation, and must be approved by the Governor in Council.

Orders in relation to clerks or employees

6N.(1) All orders made under section 6J(1)(d) shall be filed with the secretary of the council in a manner that permits their inspection, without payment of any fee, during office hours by—

- (a) a person authorised in writing by the Minister; or
- (b) a practitioner or practitioner's agent so authorised in writing.

(1A) No other person shall be permitted to inspect such orders.

(2) A clerk or employee in respect of whom an order has been made under section 6J(1)(d) who seeks employment in relation to a practitioner's practice without informing that practitioner of that order, is guilty of an offence.

Maximum penalty—10 penalty units.

(3) A practitioner who knowingly acts in contravention of an order under section 6J(1)(d) shall be guilty of professional misconduct.

Lay observer

6O.(1) The Governor in Council may appoint a person, to be known as

the lay observer, for the purposes of this Act as the Governor in Council considers necessary for the proper discharge of the functions of the lay observer under this Act.

(2) A person who is or has been entitled to practise as a solicitor or barrister-at-law or is otherwise qualified in law or is an officer of the public service shall not be appointed the lay observer.

(3) The term of every appointment as lay observer shall commence on the date specified in the instrument of appointment and, unless the appointment is to a temporary vacancy, shall be for a period of 2 years.

(4) A person shall be eligible for reappointment as lay observer.

(5) A person appointed lay observer shall, unless the person sooner vacates his or her office as prescribed, continue to hold office until the person's successor assumes office.

Vacation of office

6P.(1) The lay observer may, by notice in writing furnished to the Minister, resign his or her office at any time.

(2) The Governor in Council may at any time, on the recommendation of the Minister, remove the lay observer from office by notice in writing furnished to the lay observer.

(3) The lay observer shall be deemed to have vacated office—

- (a) if the lay observer dies;
- (c) if the lay observer resigns his or her office;
- (d) if the lay observer is removed from office.

Temporary vacancy

6Q.(1) The Governor in Council may appoint a person to act as a lay observer during the absence from the State or inability to act as the lay observer of the person appointed lay observer.

(2) A person so appointed shall have the powers, duties and obligations of the lay observer for as long as the person continues to act in the appointment.

Remuneration and staff

6R.(1) The lay observer shall be entitled to be paid—

- (a) such fees as are approved by the Governor in Council in respect of the discharge of the lay observer's duties and obligations under this Act; and
- (b) expenses necessarily and reasonably incurred by the lay observer in connection with the discharge of the lay observer's duties and obligations under this Act and approved by the Minister.

(2) Fees and expenses payable to the lay observer shall be paid out of the fund.

(3) The Department of Justice shall, at its expense, provide the secretarial and administrative staff it considers necessary for the efficient discharge of the lay observer's functions.

Functions and powers of lay observer

6S.(1) The function of the lay observer is to monitor written complaints which the society receives or which are referred to the society by the Minister, against practising practitioners and clerks and employees employed in relation to a practitioner's practice, and for that purpose the lay observer may investigate, examine and make reports and recommendations to the Minister and to the society upon the written complaints received by the Minister or the society alleging—

- (a) professional misconduct, unprofessional conduct or practice by a practising practitioner;
- (b) misconduct or default by a clerk or employee employed in relation to a practitioner's practice;
- (c) misconduct, improper conduct or neglect of duty by the society or a committee thereof or the tribunal in relation to the manner in which complaints or charges against practising practitioners or clerks and employees employed in relation to a practitioner's practice have been dealt with by the society, that committee or the tribunal.

(1A) However, the Minister may direct the lay observer to investigate a complaint in such manner as the Minister may direct.

(2) Where a written complaint is received by the lay observer he or she shall first forward it to the society for investigation.

(3) To enable the lay observer to discharge his or her functions the lay observer may—

- (a) attend any meeting of the complaints committee, the statutory committee or the tribunal and take part in the deliberations thereof but not in a vote;
- (b) unless otherwise directed by the Minister, attend any meeting of the council during its deliberations on a complaint and take part in those deliberations but not in a vote;
- (c) require the council to furnish the lay observer with all information in its possession or control which will enable the lay observer to discharge his or her functions.

(4) The council shall comply in all respects with every requisition of the lay observer under subsection (3)(c).

(5) At least once each year the lay observer shall report on the discharge of the lay observer's functions to the Minister.

(5A) That report shall detail the lay person's activities in monitoring the complaints referred to in subsection (1) and shall make such recommendations to the Minister as the lay observer considers appropriate.

(6) The lay observer shall not communicate any matter which comes to the lay observer's knowledge in the discharge of the lay observer's functions to any person other than the Minister or the society.

Illegal practices

7.(1) Any person who wilfully and falsely—

- (a) pretends to be, or takes or uses any name, title, addition, or description implying that the person is duly qualified to act as a practitioner, or that the person is recognised by law as so qualified; or
- (b) holds himself or herself out or advertises himself or herself as duly qualified to act as a practitioner without being duly qualified to so act;

shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding 10 penalty units.

(3) Where a person, being a body corporate, is guilty of an offence against this section, any director, manager, secretary or other officer of the body corporate who was knowingly a party to the offence shall also be guilty of that offence.

MISCELLANEOUS

Recovery of fees etc.

8.(1) Subject to any rules made in that behalf, all fees, subscriptions, fines, and dues payable under the rules and by-laws of the society or of the council or under this Act may be sued for and recovered in a summary way under the provisions of the *Justices Act 1886*.

(2) All penalties and fees recovered by the society or the council pursuant to the provisions of this Act shall be paid to the society and become part of its funds.

Minutes

9.(1) 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 (including the statutory committee) to be so entered.

Evidence

(2) All 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, deputy president or vice-president of the society, or, in the case of minutes, by the chairperson 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 proceedings before any court or person as

evidence in the case of minutes that all business has been transacted and all proceedings have taken place as therein referred to, and also in the case of any document purporting to be a copy as aforesaid that such copy is a correct copy of the minute of which it purports to be a copy.

Presumption of regularity of proceedings and appointments

(3) Until the contrary is proved—

- (a) every general meeting of the society and every meeting of the council or of any committee of the council (including the statutory committee) in respect of which minutes have been entered in the manner directed or authorised by subsection (1), 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 Act shall be deemed to be valid.

When council may assume control over practitioner's trust accounts

10.(1) If the council is of opinion that any practitioner—

- (a) is an undischarged bankrupt or has taken advantage of the law relating to bankruptcy; or
- (b) has stolen or fraudulently misapplied any trust moneys; or
- (c) has a general deficiency in the practitioner's trust account; or
- (d) has contravened, or failed to comply with, any provision of the *Trust Accounts Act 1973*, or any other Act relating to the practitioner's trust moneys or trust accounts or the trust moneys or the trust accounts of any firm of practitioners of which the practitioner is or has been a member;

the council may appoint any person to be the council's nominee for the purposes of this section in respect of any or all trust accounts of which that practitioner is, whether solely or jointly with any other person or persons, a trustee.

(2) As soon as practicable after any such resolution has been passed, the council, by its secretary, shall serve a written copy of such resolution on—

Queensland Law Society Act 1952

- (a) the practitioner concerned; and
- (b) any other person authorised to operate on any trust account in respect of which the council's nominee is appointed; and
- (c) the manager or other principal officer of the office or branch of the bank (as the case may be) with which any trust account in respect of which the council's nominee is appointed is kept.

(3) After a written copy of any such resolution has been served on the manager or other principal officer of the office or branch of a bank (as the case may be) and until such resolution ceases to be effective, whether or not a copy of such resolution has been served on the practitioner concerned, or on any other person, no payment shall be made by the bank on any cheque or other instrument drawn on any trust account in respect of which the council's nominee has been appointed, unless it bears the signature of the council's nominee as well as the signature of the practitioner or other person authorised to operate on that trust account.

(3A) If that practitioner, and, where any other person is authorised to operate on that trust account, that other person, be unwilling, unable, or not readily available within the locality in which the practitioner carried on practice as such at the date of the appointment of the nominee, to operate on that account in conjunction with the council's nominee, the council's nominee may thereupon operate on any such trust account alone.

(3B) A statutory declaration made by the council's nominee and subscribed under the *Oaths Act 1867* to the effect that the practitioner, and, where any other person is authorised to operate on any trust account, that other person, be unwilling, unable, or not readily available within the locality in which the practitioner carried on practice as such at the date of the appointment of the nominee, to operate on that account in conjunction with the council's nominee shall be sufficient evidence to the practitioner's banker of such fact.

(4) After a written copy of any such resolution has been served on the practitioner concerned, and until such resolution ceases to be effective, that practitioner shall not sign any cheque or other instrument drawn on any trust account in respect of which the council's nominee has been appointed unless such cheque or other instrument has first been signed by the council's nominee.

(5) After a written copy of any such resolution has been served on any

person (other than the practitioner concerned) who is authorised to operate on any trust account in respect of which the council's nominee has been appointed and until such resolution ceases to be effective, that person shall not sign any cheque or other instrument drawn on any trust account in respect of which the council's nominee has been appointed unless such cheque or other instrument has first been signed by the council's nominee.

(6) Any practitioner, or manager or principal officer or other officer of any bank, or any person authorised to operate on the trust account of a practitioner (including any practitioner who is authorised to operate on the trust account of another practitioner) who knowingly acts contrary to the provisions of this section shall be guilty of an offence against this Act.

Maximum penalty—20 penalty units.

(7) Any practitioner in respect of whose trust account a resolution is passed as aforesaid may appeal to a judge of the court in chambers who is hereby authorised to make such order in the matter as the judge may think fit.

(8) A resolution passed as aforesaid shall cease to be effective—

- (a) if the council rescinds such resolution—on the date of the meeting of the council when such resolution is rescinded (and it is hereby declared that any such resolution may be rescinded by the council); or
- (b) if a judge on appeal orders that such resolution shall cease to be effective—on the date specified by the judge as the date on which such resolution shall cease to be effective, or if no date is specified on the date of the order.

(9) In every case in which any such resolution has ceased to be effective, the council by its secretary shall as soon as practicable serve on all persons who have been served with a copy of such resolution written notice that such resolution has ceased to be effective.

(10) Any written copy of any resolution, and any written notice, required by this section to be served upon any person, may be served—

- (a) by delivering it to such person; or
- (b) by sending it by prepaid registered post to such person at the person's usual place of abode or business or at the person's place of abode or business last known to the council.

(11) Where a written copy of any resolution as referred to in this section or a notice in writing as referred to in section 11A(4) (with a certificate of appointment of receiver within the meaning of that section attached or appended thereto) is served on the manager or other principal officer of the office or branch of a bank, then neither that bank nor any manager or principal officer or other officer thereof shall incur any liability for dishonouring or refusing or otherwise failing to make payment by reason of such resolution or notice on a cheque or other instrument drawn on a trust account if such dishonour or refusal or other failure occurs, in a case of a trust account to which subsection (3) or section 11A(4) as the case requires applies, before a notice in writing is served on the manager or other principal officer of the office or branch of the bank by the secretary of the council that the resolution appointing the council's nominee under this section or, as the case requires, the resolution appointing a receiver under section 11A, has ceased to be effective, or, in the case of an appointment or termination of the receiver by the court, before a copy of the order of the court terminating the appointment of the receiver without making any further appointment is served on any officer aforesaid of the bank.

(12) A person appointed under this section to be the council's nominee and a person appointed under section 11A to be a receiver shall be deemed to be 'a practising practitioner' for the purposes of section 24 and to be 'a practitioner' for the purposes of sections 25, 26, 27 and 29.

(13) In this section—

“**bank**” includes a building society or other financial institution.

“**trust account**” includes any account or fund into which moneys which are trust moneys within the meaning of the *Trust Accounts Act 1973*, section 4 are deposited in the name or under the control of the practitioner or where the practitioner has authority for the disposal thereof.

Powers of the council with respect to trust accounts of deceased practitioners etc.

11.(1) If the council is of opinion that any practitioner—

- (a) has died; or
- (b) is because of mental or physical illness incapable of operating on

a trust account; or

- (c) can not be found;

and that practitioner is (or if the practitioner has died was) either solely or jointly with any other person or persons, a trustee of any trust account, the council may appoint any person or persons to be a trustee of such trust account.

(2) Without prejudice to the provisions of subsection (1), the council may appoint a person to be a trustee of any trust account in respect of which some other person has previously been appointed by the council to be a trustee if the resolution passed appointing such other person has ceased to be effective.

(3) At least 14 days before any resolution appointing any person to be a trustee is passed by the council, a copy of the proposed resolution and a written notice that any person desiring to object thereto may forward his or her objection in writing to the council, shall be forwarded by the council through its secretary by prepaid registered post to each of the following persons, at the person's usual place of abode or business or at the person's place of abode or business last known to the council, namely—

- (a) the practitioner who is the trustee of such trust account, if the practitioner is alive; and
- (b) a practitioner who is a partner of such practitioner or was at the date of the practitioner's death a partner of such practitioner who has died; and
- (c) if such practitioner is dead, to any person who has notified the council that the person is the executor or administrator of such practitioner; and
- (d) the manager or other principal officer of the office or branch of the bank (as the case may be) with which such trust account is kept.

(3A) In any case where—

- (a) a practitioner is, or if the practitioner has died was, the sole trustee of a trust account; and
- (b) the council is of the opinion that special circumstances exist that require the immediate appointment of a trustee of the trust

account;

the council may make that appointment notwithstanding that the period of 14 days has not elapsed since the forwarding of the notices prescribed by subsection (3).

(4) No person shall be appointed as trustee under this section if the person does not consent to be so appointed.

(5) The council shall consider any objections to the proposed resolution, but the fact that such objections have been made shall not prevent the council from passing any such resolution.

(6) As soon as practicable after any such resolution has been passed, the council by its secretary shall forward by prepaid registered post a written copy thereof to each of the persons to whom a copy of the proposed resolution was required by this section to be forwarded.

(7) After any such resolution has been passed, and until it ceases to be effective, the person so appointed by the council shall be for all purposes a trustee of such trust account in place of the practitioner referred to in subsection (1).

(8) Any of the following persons may appeal against the appointment of a trustee under this section to a judge of the court in chambers who is hereby authorised to make such order in the matter as the judge may think fit—

- (a) the practitioner in whose place such trustee has been appointed;
- (b) a practitioner who is a partner of the practitioner in whose place such trustee has been appointed or who was at the date of the practitioner's death a partner of such practitioner who has died;
- (c) any other person who is a trustee of the trust account in respect of which a trustee has been appointed;
- (d) any person entitled as beneficiary to any part of such trust account;
- (e) any executor or administrator of a practitioner who has died and in whose place such trustee has been appointed;
- (f) any other person aggrieved by the appointment.

(9) A resolution passed as aforesaid shall cease to be effective—

- (a) if the council rescinds such resolution—on the date of the meeting of the council when such resolution is rescinded (and it is hereby declared that any such resolution may be rescinded by the council); or
- (b) if a judge on appeal orders that such resolution shall cease to be effective—on the date specified by the judge as the date on which such resolution shall cease to be effective or if no date is specified on the date of the order.

(10) In every case in which any such resolution has ceased to be effective, the council by its secretary shall as soon as practicable forward by prepaid registered post to each of the persons to whom a copy of the resolution was forwarded at the person's usual place of abode or business or at the person's place of abode or business last known to the council notice that such resolution has ceased to be effective.

(11) When the manager or other principal officer of the office or branch of any bank (as the case may be) has received from the secretary of the council a copy of a resolution purporting to have been passed under this section, and such manager or other principal officer has not received notice that such resolution has ceased to be effective, such manager or other principal officer shall not be bound to inquire whether the requirements of this section have been complied with, and a bank which makes any payment in good faith in the belief that any such resolution was validly passed shall not incur any liability that it would not have incurred if such resolution had been validly passed.

(12) A person appointed under this section to be a trustee of a trust account shall be deemed to be 'a practising practitioner' for the purposes of section 24 and to be 'a practitioner' for the purposes of sections 25, 26, 27 and 29.

(13) In this section—

“bank” includes a building society or other financial institution.

“trust account” includes any account or fund into which moneys which are trust moneys within the meaning of the *Trust Accounts Act 1973*, section 4 are deposited in the name or under the control of the practitioner or where the practitioner has authority for the disposal thereof.

Appointment of receiver of trust property

11A.(1) In this section—

“certificate of appointment of receiver” means, in relation to a receiver, a copy of the order of the court appointing the receiver, or, where the receiver is appointed by a resolution of the council, a certificate in writing of his or her appointment as receiver under this section, as referred to in subsection (3), including a copy of such certificate.

“court” includes a judge.

“former practitioner” means a person in relation to whom a receiver is appointed under subsection (1A).

“receiver” means a person who holds at any material time the appointment of receiver under and for the purposes of this section.

(1A) An appointment of a receiver under and for the purposes of this section may be made by—

- (a) the council where a person who has been a practitioner—
 - (i) has been and remains struck off the roll; or
 - (ii) has been and remains suspended from practice; or
 - (iii) having been and remaining struck off the roll or suspended from practice, dies; or
- (b) the council—
 - (i) where a practitioner has been refused a certificate, or the certificate held by the practitioner has been cancelled, pursuant to section 41 or 41A; or
 - (ii) where the certificate held by a practitioner has been suspended pursuant to section 41B;
and the refusal, cancellation or, as the case may be, suspension remains of force and effect; or
- (c) the council, where it has passed a resolution, in respect of a practitioner who is neither an applicant for nor the holder of a certificate, that the circumstances relating to that practitioner are such that, if the practitioner were an applicant for or the holder of a certificate, the application would be refused or the certificate

cancelled, as the case may be, pursuant to section 41 or 41A or, if the practitioner were the holder of a certificate, the certificate would be suspended pursuant to section 41B; and such resolution as aforesaid remains of force and effect; or

- (d) the court, on the application of the council, where a practitioner dies.

(1B) Any person may be appointed a receiver.

(1C) The council may—

- (a) if the receiver is a practising practitioner—authorise the receiver to carry on the practice of the former practitioner or the former practitioner's legal personal representative;
- (b) if the receiver is not a practising practitioner—authorise a practising practitioner to carry on the practice of the former practitioner or the former practitioner's legal personal representative on behalf of the receiver;

for such period as is necessary to properly wind-up the practice in the interests of its clients.

(2) A person appointed under and for the purposes of this section as receiver shall be a receiver of all or any property, being of such a nature as is specified in subsection (2A), which belongs to or is held by the former practitioner, or by some person on the former practitioner's behalf, or is recoverable by the former practitioner, or where the former practitioner is dead, which by reason of such death is or may be held or recoverable by the personal representative of the deceased former practitioner.

(2A) The property referred to in subsection (2) is—

- (a) moneys in a trust account in any bank in the name or firm name of the former practitioner or in the name of the former practitioner's personal representative and, except in the case of a former practitioner who has died, other property, whether moneys or not, including a chose in action, held by the former practitioner in trust for another person;
- (b) money, including interest, dividends or other income, received by the receiver during a receivership and arising from property held by the receiver pursuant to this section;

- (c) ledgers, books of account, vouchers, records, deeds, wills, files, and other documents and writings of any description.

(3) When a receiver is appointed by resolution of the council, the secretary of the council may from time to time issue a certificate in writing of such appointment, and any certificate of appointment of receiver may certify the nature of the receiver's authority in relation to any trust account or accounts or other property according to the purpose for which such certificate is to be used.

(3A) Any document or part of or endorsement on any document which purports to be a certificate of appointment of receiver purporting to be under the hand of the secretary of the council shall be received as evidence of the matter or matters certified to therein and, in the absence of evidence in rebuttal thereof, shall be conclusive evidence of such matter or matters; and the signature thereon, purporting to be that of the secretary, shall be taken to be the signature it purports to be until the contrary is proved.

(3B) A certificate of appointment of receiver shall, if and as soon as such service is reasonably practicable, be served on the former practitioner, or if the former practitioner is dead, on the former practitioner's personal representative (if any) as well as on any other person to whom in the opinion of the council or the court, as the case may be, it is desirable that notice of the appointment of the receiver should be given.

(4) The receiver may serve on the manager or other principal officer of the office or branch of a bank a notice in writing, with a certificate of appointment of receiver attached or appended thereto, forbidding any dealing, including in any case the completion of any uncompleted dealing commenced before the service of the notice, except by the receiver, with any trust account in the name or the firm name of the former practitioner or, where the former practitioner is dead, any trust account which is in the former practitioner's name or firm name or which was formerly in the former practitioner's name or firm name and is now in the name of the former practitioner's personal representative.

(4A) Upon service of such a notice and certificate the receiver shall be for all purposes a trustee of any trust account to which the notice relates in place of the former practitioner or the former practitioner's personal representative.

(4B) The bank on whose officer the notice is served shall not permit any

such dealing with any trust account to which the notice relates except by the receiver.

(4C) The receiver may withdraw all the moneys in any such trust account or from time to time withdraw any of such moneys, and pay them into a special account or special accounts in the receiver's own name, and may operate on and otherwise deal with the special account or special accounts as the former practitioner might have operated on or dealt with the aforementioned trust account.

(5) The receiver may by separate advertisement in such form as the receiver considers sufficient or by advertisement jointly with the council if the council is advertising for claims in respect of the former practitioner, or otherwise as the receiver thinks fit, require persons having any claims in respect of any moneys which have been held in any trust account as aforesaid or any other property of which the receiver has been appointed receiver to submit their claims to the receiver, and by such advertisement or otherwise a time may be specified, being in the case of an advertisement not less than 30 days from the date of its publication, within which such claims shall be submitted to the receiver.

(5A) The receiver may in administering any such moneys and other property disregard any claim not submitted to the receiver within the time so specified.

(6) The receiver may acquire or take possession of any property of which the receiver has been appointed receiver and may require the former practitioner or the former practitioner's legal personal representative to immediately deliver to the receiver all property of which the receiver has been appointed receiver or to immediately give to the receiver all relevant information concerning the disposition of that property.

(6A) However, all ledgers, books of account, vouchers, records, deeds, wills, files, and other documents and writings (other than those relating either to any property referred to in subsection (2A)(a) or to the former practice of the former practitioner), shall, as soon as reasonably may, be returned to the former practitioner or the former practitioner's personal representative.

(6B) If the former practitioner or, as the case may be, the former practitioner's personal representative, or any other person, on being required by the receiver to transfer or deliver to the receiver, or to permit the receiver

to take possession of, any such property in his or her possession or at his or her disposition or under his or her control, does not comply with the requirement, or if it appears to the receiver that any such person on being thus required has not fully complied with the requirement, the receiver may apply to the court for an order for the transfer or delivery to the receiver of such property, whereupon the court may make such order as to the court seems fit.

(6C) If it appears to the receiver that an order thus made by the court is not complied with, the court may on application by the receiver authorise any police officer and police officer's assistants, or the receiver or some other person and any police officer and his or her assistants to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled under the provisions of this section to take possession, and to seize such property and remove it to such place as the receiver thinks fit, and on such application the court may make such further order in the matter as to the court seems fit.

(6D) A person who fails or refuses, without lawful justification or excuse, to immediately deliver all property or give all relevant information as required or otherwise hinders, obstructs or delays the receiver in the performance of the receiver's duties or in the exercise of the receiver's powers pursuant to this section shall be guilty of an offence.

Maximum penalty—40 penalty units or 6 months imprisonment.

(7) Notwithstanding the provisions of the *Limitation of Actions Act 1974*, an action by a receiver to recover property of which the receiver has been appointed receiver may be brought at any time within 6 years of the date of the appointment of that person as receiver.

(7A) Where property has been taken by or paid or transferred to a person improperly, unlawfully or in breach of trust and that person knew or had reasonable grounds to believe at the time of the taking, payment or transfer that it was done improperly, unlawfully or in breach of trust, the receiver shall be entitled to recover from that person a sum equal to the difference between the value of the property and any consideration paid in respect of the taking, payment or transfer of the property.

(7B) Upon recovery of that sum from that person, that person shall cease to be liable therefor to any other person.

(7C) Where money has been paid by the former practitioner improperly,

Queensland Law Society Act 1952

unlawfully or in breach of trust to a person in respect of a cause of action which that person had or claimed to have against some third party and that person knew or had reasonable grounds to believe at the time of the payment that it was done improperly, unlawfully or in breach of trust, the receiver shall be entitled to recover from that person the money so paid.

(7D) Where property has been used improperly, unlawfully or in breach of trust to discharge a debt or liability of a person, and that person knew or had reasonable grounds to believe at the time of the discharge that it was discharged improperly, unlawfully or in breach of trust, the receiver may recover from that person a sum equal to the value of the property so used.

(7E) In proceedings brought pursuant to subsections (7A) and (7C) a certificate given by an accountant qualified to conduct the audit of trust accounts under the *Trust Accounts Act 1973* and authorised by the society shall be evidence, and in the absence of evidence to the contrary, conclusive evidence in respect of—

- (a) the taking, payment or transfer of the property;
- (b) the nature and value of the property taken, paid or transferred;
- (c) the date of taking, payment or transfer of the property;
- (d) the identity of the person by whom the property was taken or to whom it was transferred or paid;
- (e) the entries made in trust accounts, ledgers, books of account, vouchers and records of the former practitioner and of the truth or falsity of those entries;
- (f) moneys and securities held at any time by the former practitioner.

(7F) Where a person who has suffered pecuniary loss through stealing or fraudulent misappropriation by a former practitioner receives compensation from the fund for the whole or part of that loss and subsequently receives from another source a sum by way of damages or compensation or indemnity in respect of that loss or repayment of money in respect of that stealing or fraudulent misappropriation, that person shall reimburse the fund to the extent that the sum subsequently received permits.

(8) Any person who at any time, whether before or after a receiver has been appointed, with intent to defeat the purposes of this section—

- (a) withdraws money from or makes any payment out of any trust

account; or

- (b) destroys or conceals or removes from one place to another place or delivers into the possession or places under the control of any other person any property of which a receiver may be or has been appointed;

shall be guilty of an offence and shall be liable upon conviction upon indictment to a fine of not more than 100 penalty units or to imprisonment for a term of not more than 2 years.

(8A) If in any prosecution for any such offence it is proved that the person charged has done an act specified in subsection (8)(a) or (b), the person shall be deemed to have done the act with intent to defeat the purposes of this section unless the person proves that he or she did the act without such intent.

(9) The receiver may deal with any trust moneys and other property which the receiver has acquired or of which the receiver has taken possession under the provisions of this section in any manner in which the former practitioner might lawfully have dealt with the trust moneys and property.

(9A) The receiver in the name of the former practitioner or in the receiver's own name may do all acts or things necessary or desirable in the exercise of the receiver's powers or the performance of the receiver's duties and, without limiting the generality thereof may—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the solicitor in connection with any property of which the receiver has been appointed receiver;
- (b) give receipts for any money received by the receiver, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) employ a barrister, solicitor, attorney or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which the receiver has been appointed receiver;
- (d) bring or defend any legal proceedings;
- (e) execute all deeds and other documents;

- (f) lodge any caveat and do any other act or thing necessary or desirable for the preservation of the property of which the receiver has been appointed receiver;
- (g) compromise any claim by the receiver in respect of the property of which the receiver has been appointed receiver which compromise is reasonably necessary or desirable for the preservation of that property.

(10) The receiver, and the former practitioner, or if the latter is dead the former practitioner's personal representative, and any person who has submitted to the receiver a claim in respect of any trust account or other property, may each of them apply to the court for directions to the receiver as to the manner in which the receiver shall or may exercise any or all of the powers conferred or perform any or all of the duties imposed on the receiver by this section, either generally or in respect of any particular matter specified in the application; whereupon the court may make such order as to the court seems fit.

(11) The receiver may give notice to the former practitioner or the former practitioner's personal representative that if he or she has any claims to moneys in a trust account or other property he or she shall, within a reasonable time (being not less than 30 days from the giving of the notice) to be specified in the notice, submit to the receiver full particulars of the moneys or other property claimed and the grounds of the claims.

(11A) If such notice has been given the receiver may disregard any such claim made by the former practitioner or the former practitioner's personal representative otherwise than in accordance with the terms of the notice.

(11B) The former practitioner or the former practitioner's personal representative shall not be entitled to any payment or otherwise in respect of any such claim and shall not be entitled to a lien upon any document or writing held by the receiver unless the proper claims of all other persons are fully satisfied.

(12) If the former practitioner or the former practitioner's personal representative claims a right to payment of costs due to the former practitioner from any person or persons entitled to moneys or other property held by the receiver pursuant to the provisions of this section, the receiver may by notice in writing require the person to deliver to the receiver, within a reasonable time (being not less than 30 days from the

giving of the notice) to be specified in the notice by the receiver, a detailed bill of costs in respect of each of the former practitioner's dealings with each of such persons, and may also by the same or a subsequent notice in writing require the former practitioner to tax any such bill of costs within a reasonable time to be specified therein by the receiver.

(12A) If the former practitioner or the former practitioner's personal representative fails to comply with any such requirement the receiver may, in distributing the moneys and other property thus held by the receiver, disregard any such claim for costs.

(13) If the former practitioner or the former practitioner's personal representative claims a lien for costs on any document or writing held by the receiver, the receiver may by notice in writing require the former practitioner to give to the receiver, within a reasonable time (being not less than 30 days from the giving of the notice) to be specified in the notice by the receiver, particulars of all documents and writings on which the former practitioner claims a lien and to deliver to the receiver, within a reasonable time (being not less than 30 days from the giving of the notice) to be specified in the notice by the receiver, a detailed bill of the costs in respect of which each lien is claimed, and may also, by the same or a subsequent notice in writing, require the former practitioner to tax any such bill of costs within a reasonable time to be specified therein by the receiver.

(13A) If the former practitioner or the former practitioner's personal representative fails to comply with any such requirement in respect of any lien claimed by the former practitioner the receiver may in dealing with such document or writing disregard the lien.

(13B) If the former practitioner or the former practitioner's legal personal representative so requests in writing, the receiver shall give to the former practitioner or the former practitioner's legal personal representative or other person on his or her behalf access to all relevant books and documents as is reasonably necessary to enable the preparation of the bill of costs and the times specified in the notice pursuant to subsection (13) shall not commence until the receiver gives such access.

(14) The receiver may apply to the court for an order that the former practitioner or the former practitioner's personal representative, as the case may be, do appear before the court to be examined by the receiver as to any trust moneys or other property of which the receiver has been appointed to be receiver, whereupon the court may make such order as to such

examination of the former practitioner or the former practitioner's personal representative as to the court seems fit.

(14A) In such examination before the court the receiver may be represented by counsel, and the court may put or allow such questions to be put as it thinks fit.

(14B) The former practitioner or the former practitioner's personal representative shall be examined upon oath and he or she shall answer all such questions as the court puts or allows to be put to him or her.

(14C) Unless the court otherwise directs, the former practitioner or the former practitioner's personal representative shall not be excused from answering any question put to him or her on the ground of any privilege claimed by him or her or on the ground that the answer to it may expose him or her to punishment.

(15) The council may at any time terminate the appointment of a receiver appointed by the council, and if such an appointment has been terminated by the council or otherwise, except by order of the court, the council may appoint another person to be the receiver in the receiver's place.

(15A) The council or the former practitioner or the former practitioner's personal representative may at any time apply to the court for an order that the appointment of a receiver (whether made by the council or by the court) be terminated, whereupon the court may make such order, including the appointment of another person or a direction to the council to appoint another person, to be the receiver in the receiver's place, as to the court seems fit.

(15B) If the appointment of a receiver appointed by the court terminates otherwise than by order of the court, the council may apply to the court for the appointment by the court of another person to be the receiver in the receiver's place, whereupon the court may make such order as to the court seems fit.

(15C) If a receiver's appointment is terminated by the council or by an order of the court, and another person is appointed to be the receiver in the receiver's place, the former receiver shall, as soon as the former receiver reasonably may, and subject to any directions given by the court under this section transfer or deliver to the receiver appointed in the former receiver's place all trust moneys and other property as well as all documents and writings which the former receiver holds by virtue of his or her

appointment as receiver.

(16) Where the former practitioner has been suspended from practice and the period of the former practitioner's suspension has terminated, the receiver may, and upon demand in writing by the former practitioner shall, as soon as the receiver reasonably may, and subject to any directions given by the court under this section and subject unless the council shall otherwise determine to the payment by the former practitioner of the receiver's remuneration expenses and costs set forth in subsections (19) to (19C), transfer or deliver to the former practitioner all trust moneys and other property which the receiver holds by virtue of his or her appointment as receiver, and upon such transfer or delivery being completed the receiver's appointment as receiver shall terminate.

(17) If a receiver's appointment is terminated by the council or by order of the court and no other person is within 14 days of such termination appointed to be receiver in his or her place, the receiver may, and upon demand in writing by the former practitioner or the former practitioner's personal representative shall, as soon as he or she reasonably may, and subject to any directions given by the court under this section, and subject unless the council shall otherwise determine to the payment by the former practitioner or the former practitioner's personal representative of the receiver's remuneration expenses and costs set forth in subsections (19) to (19C), transfer or deliver to the former practitioner or the former practitioner's personal representative all trust moneys and other property which the receiver holds by virtue of his or her appointment as receiver.

(18) If the trust moneys held by the receiver under the provisions of this section are insufficient to satisfy all proper claims in respect of them, the trust moneys so held by the receiver shall be distributed amongst the claimants making such claims in such manner that the deficiency shall be borne by them in proportion to the amounts of the balance of their respective proper claims in respect of such trust moneys.

(18A) For the purposes of subsection (18), the amount of the balance of a claimant's proper claim shall be the amount of that claim less any amount the claimant has received or is entitled to receive from the fund or by action against the society in relation to the fund as reimbursement of pecuniary loss suffered by the claimant so far as that loss related to trust moneys previously held by the former practitioner on behalf of the claimant.

(19) All moneys payable to the receiver as remuneration for the

receiver's services as such and expenses and costs of legal proceedings incurred by the receiver as such, may be paid to the receiver by the society out of the fund.

(19A) All moneys paid out of the fund pursuant to subsection (19) and, where the receiver is the society or an officer of the society, such amounts as are reasonable recompense for the work done by the society or that officer as that receiver shall, notwithstanding any other provision of this Act, be a first charge on the sum of money which under the provisions of section 24 may be applied from the fund for the purpose of reimbursing persons who have suffered pecuniary loss through stealing or fraudulent misappropriation by the former practitioner or by the former practitioner's clerk or employee of any money or other property entrusted to the former practitioner or to the former practitioner's clerk or employee in the circumstances set forth in that section.

(19B) Any amount thus paid shall be recoverable by the society from the former practitioner or the former practitioner's personal representative as a debt owing by the former practitioner to the society.

(19C) The receiver may from time to time submit to the council an account for such remuneration and for such expenses and costs and in default of agreement between the council and the receiver to the amount to be paid to the receiver for such remuneration, expenses and costs, the court may, on application by the council or the receiver, determine the amount to be so paid.

(20) In any proceedings in the court under the provisions of this section the court may make such order as to the payment of costs of the proceedings and costs incurred in the execution of any order made by the court as to the court seems fit.

(21) If any claim or charge is made by any person against the receiver for any act or omission by the receiver or by the receiver's employees or agents done or made by the receiver or them in good faith and in the execution or purported execution of the powers conferred or duties imposed on the receiver by or under this section, the society may reimburse the receiver out of the fund for all or any costs, charges, expenses, or damages which the receiver may have incurred in relation to such claim or charge.

(21A) For the purposes of section 24, a receiver appointed by the society is deemed to be a practising practitioner.

(22) For the carrying out of the objects of this section or the proper administration by a receiver of all or any trust funds or other property and without derogating from any other provision of this section the court may authorise the receiver to do such things (in addition to the powers conferred upon the receiver by this section) and may give such directions as it deems fit.

(23) Any application under this section to the court shall be by summons in chambers and an order may be made pursuant to any such application notwithstanding that such summons has not been served upon the former practitioner or the former practitioner's personal representative or upon any other person.

(23A) An application to the court by the council may be made, in its own name, or by its secretary or any person thereunto authorised in writing under the hand of the president, deputy president or vice-president, and the provisions of section 5D relating to the taking of judicial notice of the signature of the president, deputy president or vice-president and it being unnecessary to prove the appointment or election of the members, president, deputy president, vice-president, secretary, or other officers shall, with all necessary adaptations, apply and extend in relation to any such application.

(24) Where a former practitioner dies or has died, then a receiver, in the execution or purported execution of the powers conferred or duties imposed on the receiver by or under this section, shall be deemed not to be a personal representative of the former practitioner.

(25) Trust moneys and other property held by the receiver under the provisions of this section shall not be levied upon or taken or attached under any judgment.

(26) Subject to such directions as the court may see fit to make, every receiver shall at such times as the court or the council appointing the receiver to be a receiver may determine, furnish to the said court or council, as the case may be, a report of the receiver's receivership containing such information as the said court or council, as the case may be, may require, and upon the conclusion of the receiver's receivership shall forthwith lodge with the said court or council, as the case may be, in addition to the receiver's final report, all documents and writings in the receiver's possession or under the receiver's control relating to the receivership and, subject to any order of the court for their destruction or otherwise, such

documents and writings shall be kept in the custody of the court or council, as the case may be.

(27) Without derogating from the powers of the court, any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act, and shall be liable, if no specific penalty is provided for that offence, to a penalty not exceeding 20 penalty units.

PART 3—LEGAL PRACTITIONERS’ FIDELITY GUARANTEE FUND

Establishment of fidelity guarantee fund

12.(1) There is hereby established a fund to be known as the Legal Practitioners’ Fidelity Guarantee Fund.

(2) The fund shall be vested in the society and shall be held in trust of the purposes hereinafter appearing.

Fund to be kept in separate bank account

13. All moneys constituting the fund shall, pending the investment or application thereof in accordance with this Act, be paid or transferred into a bank for the time being carrying on business in the State to the credit of a separate account to be called ‘The Legal Practitioners’ Fidelity Guarantee Fund Account’.

Moneys payable into fund

14. The fund shall consist of—

- (a) all sums paid to or on account of the fund by practising practitioners either as annual contributions or as levies in accordance with the provisions of this Act in that behalf;
- (b) the interest from time to time accruing from the investment of the fund as hereinafter provided;

- (c) all sums given or advanced to the fund by the society;
- (d) all moneys properly payable to the fund and recovered by or on behalf of the society in the exercise of any right of action conferred by this Act;
- (e) any other moneys that may be lawfully paid into the fund.

Expenditure from fund

15. Subject to this Act, there shall from time to time be paid out of the fund as required—

- (a) the amount of all claims, including costs allowed or established against the fund as hereinafter provided;
- (b) all legal expenses incurred in defending claims made against the fund or otherwise incurred in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance entered into by the council pursuant to section 21;
- (d) the expenses incurred in the administration of the fund;
- (e) any other moneys payable out of the fund in accordance with this Act or with rules made by the council.

Audit of accounts

16.(1) The accounts of the fund shall be audited from time to time by the auditor-general, or an accountant certified under the *Trust Accounts Act 1973* appointed by the auditor-general, and at least once a year.

(2) Every person acting as auditor under this section shall in respect of the fund have the same powers and duties and be subject to the same responsibilities and obligations with such modifications as may be necessary as the person would have in respect of the audit of trust accounts under the provisions of the *Trust Accounts Act 1973*.

Council to administer fund

17. Subject to the provisions of section 18, the fund shall be administered by the council on behalf of the society.

Council may delegate its powers in relation to the fund to a committee of management

18.(1) The council may by resolution delegate its powers in relation to the fund or any of such powers to a committee of management consisting of not less than 3 nor more than 7 persons being members of the society.

(2) However, a majority of members of such committee of management shall be members of the council for the time being.

(3) Any resolution as aforesaid may be at any time in like manner rescinded or varied.

Practising practitioners to pay prescribed contribution into fund

19.(1) Except as provided in section 20, every practising practitioner on making application in any year for a certificate under section 40 shall, in addition to all other fees then payable by the practising practitioner, pay such contribution to the fund as may from time to time be prescribed under the rules made by the council, being not less than \$10 nor more than \$20 in any year, and no such certificate shall be issued unless and until the prescribed contribution is paid.

(2) If any solicitor, or conveyancer with respect to whom this Act is not applicable intends to commence to practise as a practising practitioner, he or she shall thereupon and before commencing so to practise give notice of such intention to the secretary of the society, and the solicitor or conveyancer shall thereupon become liable to pay to the fund the amount of the prescribed contribution for that year, and the solicitor or conveyancer shall not be entitled to practise until such contribution be paid.

(3) All contributions payable under this section shall be paid to the society at its office.

Administration of fund

20.(1) Subject to the fund established under this Act amounting to and being maintained at not less than the prescribed amount—

- (a) every practitioner who has made 20 annual contributions to the fund, and in respect of whom no payment from the fund has been made or if any such payments having been made the fund has

been reimbursed by or on behalf of such practitioner, shall be freed and discharged from further annual contributions to the fund;

- (b) on the retirement from practice of any such practitioner the council may in its discretion pay to such practitioner a sum representing the total amount of annual contributions made by the practitioner to the fund either with or without simple interest thereon at a rate not exceeding 3% per annum;
- (c) on the death of any such practitioner without any payment having been made to the practitioner under paragraph (b) the council may make such a payment to the practitioner's personal representatives or to the practitioner's widow or widower or any dependant or dependants without regard to the last will of the practitioner or to the practitioner's legal personal representative.

(2) If the fund shall be reduced below the prescribed amount the council shall determine to what extent (if any) contributions to the fund shall be required from a practitioner who has been freed and discharged from payment under the provisions of subsection (1).

(3) The council may from time to time decide to apply or not to apply the provisions of subsections (1)(b) and (c) either by making them applicable to the death only or the retirement only of any such practitioner or to the payment only of a portion of the total sum represented by such contributions in either case.

(4) The council may with the consent of the Minister apply the whole or a portion of the capital of the fund exceeding the prescribed amount or the income from such surplus for or towards the establishment of a benevolent and provident fund for the benefit of practitioners, retired practitioners, or the dependents of retired or deceased practitioners or for the objects of the society.

(5) In this section—

“the prescribed amount” means \$5 000 000 or another amount prescribed by regulation.

In addition to annual contributions, practitioners may be required to pay levy for benefit of fund

21.(1) If at any time the fund is not sufficient to satisfy the liabilities of the society in relation thereto, the council may by resolution impose on every practising practitioner for payment into the fund a levy of such amount as it thinks fit, not exceeding \$20.

(2) The amount of such levy shall become payable on a date and in manner to be fixed by the council.

(3) No person shall be required to pay by way of levy under this section more than \$20 in the aggregate in any period of 12 months, or more than \$100 during the whole period of the person's practice.

Society may advance moneys from its general funds to the fund

22. The society may from time to time from its general funds give or advance on such terms as the council may think fit any sums of money for the purposes of the fund.

Investment of fund

23. Any moneys in the fund that are not immediately required for the purposes thereof may be invested by the council—

- (a) in securities of or guaranteed by the government of the Commonwealth or a State;
- (b) with or on deposit with a bank or in securities of, guaranteed by or accepted by a bank carrying on business under the authority of an Act of the Commonwealth or a State;
- (c) with an authorised dealer in the short-term money market with established lines of credit with the Reserve Bank of Australia as a lender of last resort;
- (d) in any manner in which trustees are for the time being authorised by law to invest trust funds.

Application of fund

24.(1) Subject to the provisions of this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss through stealing or fraudulent misappropriation committed by a practising practitioner, or by the practising practitioner's clerk or employee, of any money or other property entrusted to the practising practitioner or to the practising practitioner's clerk or employee in Queensland—

- (a) in the course of the practising practitioner's practice; or
- (b) on account of any trust of which the practising practitioner is the sole or a joint trustee; or
- (c) on account of any trust of which the practising practitioner is the sole or a joint trustee and in respect of which he or she acts as a practising practitioner.

(1A) The total amount which may be applied in the reimbursement of all persons who suffer loss through stealing or fraudulent misappropriation by the same practising practitioner or firm of practitioners or his, her or their clerk or employee shall not exceed the sums following, that is to say—

- (a) in respect of any such stealing or fraudulent misappropriation committed partly before 1 July 1967 and partly on or after such date, or committed wholly after such date—the sum of \$60 000;
- (b) in respect of any such stealing or fraudulent misappropriation committed partly before the date specified by the Governor in Council, from time to time, under a regulation and partly on or after such date or committed wholly after such date—the amount prescribed under the regulation.

(2) Every action against the society in relation to the fund shall, subject to this Act and rules made by the council, be brought in the court.

(3) No person shall have any claim against the fund in respect of any stealing or fraudulent misappropriation unless notice of such claim is given in writing to the council or committee of management within 12 months after the claimant has become aware of the stealing or fraudulent misappropriation.

(4) Notwithstanding any other provision of this section to the contrary, if in any particular case after taking into account all liabilities of the fund whether ascertained or contingent, the council considers that the assets of

Queensland Law Society Act 1952

the fund so permit, the council may apply out of the fund such sum in excess of the total amount limited by or under this section as the council thinks fit in or towards the reimbursement of persons who suffer pecuniary loss as specified in subsection (1).

(5) Where a practising practitioner has paid an amount of money to or to the account of a person as reimbursement for pecuniary loss suffered or incurred by that person by reason of the stealing or fraudulent misappropriation by—

- (a) a practising practitioner who at the material time was the partner of the firstmentioned practising practitioner; or
- (b) a clerk or employee at the material time of—
 - (i) the firstmentioned practising practitioner; or
 - (ii) a partnership of which the firstmentioned practising practitioner was a partner;

and that person would otherwise have been entitled to claim and receive reimbursement of an amount from the fund pursuant to subsection (1) the council, if—

- (c) all claims against the fund arising out of that stealing or fraudulent misappropriation (other than claims under this subsection) have been determined; and
- (d) the council is of the opinion that the firstmentioned practising practitioner—
 - (i) was in no way a party to the stealing or fraudulent misappropriation; and
 - (ii) had acted honestly and reasonably; and
 - (iii) had not knowingly assisted in or contributed towards the stealing or fraudulent misappropriation;

may reimburse out of the fund the firstmentioned practising practitioner the amount paid by him or her in respect of which the person could have so sought reimbursement from the fund.

Fund offers no protection for certain mortgages

24A.(1) A claim may not be made against the fund for reimbursing pecuniary loss suffered because of a practising practitioner's unlawful conduct in relation to an excluded mortgage.

(2) Subsection (1) applies to all excluded mortgages for which instructions were given on or after 16 May 1996.

(3) In this section—

“direct mortgage” means a mortgage for which—

- (a) the mortgagee is a financial institution; or
- (b) the mortgagee specifies the mortgagor and the mortgagor is not a person introduced to the mortgagee by a practising practitioner for the making of the mortgage.

“excluded mortgage” means a mortgage other than a direct mortgage.

“mortgage” means a legal or equitable mortgage or charge, or a proposed legal or equitable mortgage or charge, over an interest in land.

“mortgagee” includes proposed mortgagee.

“mortgagor” includes proposed mortgagor.

“practising practitioner” includes a practising practitioner's clerk or employee.

“unlawful conduct” means conduct that, if subsection (1) did not apply, would make the fund liable, under section 24, to reimburse persons who suffer pecuniary loss because of the conduct.

Practitioners to notify clients about non-liability of fund for certain mortgages

24B.(1) This section applies to an amount entrusted, or proposed to be entrusted, to a practising practitioner as mentioned in section 24(1) if the amount, or part of the amount, is to be used or is proposed to be used for an excluded mortgage.

(2) The practising practitioner must give the practitioner's client notice of the effect of section 24A and also give the client a copy of section 24A and this section.

(3) The notice and copy must be given to the client before the practitioner accepts instructions for the excluded mortgage or receives an amount for the excluded mortgage.

(4) The practitioner may use the amount for the excluded mortgage only if the client has authorised the practitioner to use the amount.

(5) A notice mentioned in subsection (2), and an authority mentioned in subsection (4), must be in the appropriate approved form.

(6) A practising practitioner who contravenes this section commits professional misconduct.

(7) A contravention of this section does not limit the operation of section 24A.²

(8) In this section—

“**client**”, of a practising practitioner, means a client—

- (a) receiving the practitioner’s advice about investment in excluded mortgages; or
- (b) giving the practitioner instructions to use an amount for an excluded mortgage.

“**excluded mortgage**” see section 24A.

“**practising practitioner**” see section 24A.

Council may settle claims without action

25.(1) The council may receive and settle any claim against the fund at any time after the commission of the stealing or fraudulent misappropriation in respect of which such claim arose, but no person shall be entitled, without leave of the council, to commence any action or other proceeding against the society in relation to the fund unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the practitioner in relation to whom the claim arose and all other persons liable in respect of the loss suffered by such claimant.

(1A) However, any person who has been refused the leave of the council as aforesaid may apply to a judge in chambers against the refusal by the

² Section 24A (Fund offers no protection for certain mortgages)

council of such leave, and the judge may make such order as the judge may deem fit.

Limitations of right of action to recover moneys from fund

(2) Subject to subsection (3), no person shall be entitled to recover from the society out of the fund by action or other proceeding as aforesaid an amount greater than the amount of the actual pecuniary loss suffered by the person less the amount or value of all moneys or other benefits received or receivable by the person from any source other than the fund in reduction of such loss.

(3) In settling any claim against the fund pursuant to this section, the council may in its absolute discretion pay to the claimant out of the fund, in addition to the amount to which the claimant is entitled pursuant to subsection (2)—

- (a) interest on such part of the claim, for such period and at such rate as the council may determine;
- (b) such costs and expenses as the council may consider have been reasonably incurred by the claimant in making and proving the claimant's claim against the fund.

(4) No right of action or other proceeding shall lie against the society in relation to the fund in respect of any loss suffered by any person by reason of any stealing or fraudulent misappropriation that may be committed by a practitioner at any time after the claimant or persons legally claiming under and through the claimant have received a notification in writing from the council or committee of management warning him, her or them against the employment or continued employment of such practitioner.

(5) No action for damages shall lie against the society or any member or employee of the society or council or committee of management for any notification given in good faith and without malice for the purposes of subsection (4).

(6) A person who has made a claim under this Act against the fund and who is dissatisfied with the decision of the council in respect of the claim may apply to the Supreme Court or a judge thereof for the determination in a summary manner of any question of law or of fact arising under the claim and for a declaration of the rights of the claimant.

(7) The court or a judge shall not be bound to determine any such

question if there is any substantial dispute of fact or if for any other reason in its, his or her opinion it ought not be determined in a summary manner but may direct that the applicant proceed by action against the society.

Defences to claims against fund

26. In any action or other proceeding brought against the society in relation to the fund, all defences which would have been available to the practitioner in relation to whom the claim arose shall be available to the society.

Subrogation of rights of action

27.(1) Upon payment out of the fund of moneys in settlement, in whole or in part, of a claim under this part arising from the act or omission of a practitioner or a clerk or employee employed in relation to a practitioner's practice, the society shall be subrogated, to the extent of that payment, to all the rights and remedies of the claimant against the practitioner or clerk or employee (including any person entitled to administer the estate of any such practitioner or clerk or employee who dies or is bankrupt or under a disability) or any other person in respect of the act or omission.

(2) Where the society is subrogated under subsection (1)—

- (a) the society may exercise those rights and remedies in its own name or in the name of the claimant; and
- (b) the claimant shall, upon request by the society, provide all necessary information and documentation and give all necessary assistance to enable the society to exercise all rights and remedies subrogated to it by virtue of this section; and
- (c) moneys recovered by the society in the exercise of those rights and remedies shall be paid into the fund.

(3) The society shall indemnify a claimant against any costs awarded against the claimant in any proceedings brought by the society in the name of the claimant to enforce the rights and remedies of the claimant subrogated to the society under subsection (1).

If fund insufficient to satisfy claims, such claims to be charged on future accumulations

28.(1) No moneys or other property belonging to the society other than the fund shall be available for the satisfaction of any judgment or order obtained against the society in relation to the fund, or for the payment of any claim allowed by the council; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments, orders and claims they shall (subject to the limitation imposed by this Act) to the extent to which they are not so satisfied, be charged against future accumulations of the fund.

(2) The council may in its absolute discretion, having regard to the rules hereinafter set forth, determine the order in which the judgments and claims charged against the fund as aforesaid shall be satisfied, and may, if the amount accumulated is not sufficient to satisfy all such judgments, orders and claims in full, satisfy any such judgment, order or claim in whole or in part.

(3) Without limiting the discretion of the council it shall, in applying the fund towards the settlement of such judgments, orders and claims as aforesaid, have regard to the following rules—

- (a)** it shall take into consideration the relative degrees of hardships suffered or likely to be suffered by the several claimants in the event of their claims against the fund not being satisfied in whole or in part;
- (b)** subject to paragraph (a), claims for amounts not exceeding \$600 shall, unless in special circumstances, be satisfied in full before claims for amounts exceeding \$600 are satisfied to a greater extent than \$600;
- (c)** where all other considerations are equal, claimants shall have priority among themselves according to the dates of the judgments or orders or the dates when the claims were admitted by the council, as the case may be.

Council may enter into contracts of indemnity for purposes of Act

29.(1) Notwithstanding anything to the contrary in the foregoing provisions, the council may in its discretion enter into any contract or

contracts with the insurance commissioner or any licensed insurer carrying on fidelity insurance business in Queensland whereby the society will be indemnified to the extent and in the manner provided by such contract or contracts against liability to pay claims under this Act.

(2) Any such contract may be entered into in relation to practitioners generally, or in relation to solicitors generally, or in relation to conveyancers generally, or in relation to any solicitor or solicitors, conveyancer or conveyancers named therein, or in relation to practitioners generally or conveyancers generally, with the exclusion of particular solicitors or conveyancers in either case.

(3) No action shall lie against the society or against any member or employee of the society or council or against any member of the committee of management for injury alleged to have been suffered by any practitioner by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to such practitioner.

Application of indemnity moneys

30. No claimant against the fund shall have any right of action against any person, corporation, or company with whom a contract of indemnity is made under this Act in respect of such contract, or have any right or claim to any moneys paid by the insurer in accordance with any such contract of indemnity; but all such moneys shall be paid into the fund and shall be applied in or towards the settlement of relevant claims.

SUPPLEMENTARY PROVISIONS

Council may appoint accountant to investigate affairs of practitioner

31.(1) The council may at any time appoint—

- (a) an accountant for the time being qualified to conduct the audit of trust accounts under the *Trust Accounts Act 1973*; or
- (b) a person employed by the society (whether on a full-time or a

part-time basis) who, at the time the person commences employment with the society, is qualified to conduct the audit of trust accounts under the *Trust Accounts Act 1973*;

(the “**accountant**”) to examine the accounts of any specified practitioner or firm of practitioners whether a member or members of the society or not, and to furnish to the council a confidential report thereon.

(1B) The council shall forthwith cause the Minister to be advised of particulars of any appointment under subsection (1).

(2) Every appointment made under this section shall be in writing, and shall be signed on behalf of the council by the president or 2 members thereof.

(3) Upon production by such accountant of the accountant’s appointment as aforesaid, the accountant may require the practitioner or practitioners in respect of whom the appointment has been made, or any employee or agent of such practitioner or practitioners to produce to the accountant all books, papers, accounts, securities, or other documents relating to the business or accounts of such practitioner or practitioners, and to give all information in relation thereto and to furnish all authorities and orders to bankers and others that may be reasonably required of him, her or them, and if any such person, without lawful justification or excuse, the proof whereof shall lie on the person, refuses or fails so to do, or otherwise hinders, obstructs, or delays the accountant in the performance of the accountant’s duties or the exercise of the accountant’s powers under this section, the person shall be guilty of an offence and shall be liable accordingly.

(5A) If such report in the opinion of the council discloses that an auditor of the account in respect of which the report is made has been guilty of any breach of duty, the council—

- (a) may refer to any accountancy institute or organisation of which the auditor is or has been a member the report or such part of the report as the council considers necessary to enable that institute or organisation to investigate the conduct of the auditor; and
- (b) may, and if required by the Minister shall, furnish the report or a copy of the report to the Minister.

(5AA) When any such report or part thereof has been so referred to such an accountancy institute or organisation—

- (a) the accountant who furnished such report, may, with the permission of the council, give evidence regarding the examination to which such report relates; or
- (b) any officer or member of the council may, with the permission of the council, give evidence of the contents of such report or such part thereof;

upon any such investigation as aforesaid made by such an accountancy institute or organisation, or by any properly constituted committee thereof.

(5AB) Moreover the accountant who furnished such report may give all such evidence regarding the examination to which such report relates as is admissible in proceedings in any court of criminal jurisdiction.

(5B) Notwithstanding anything contained in any Act or in any regulation made thereunder, and notwithstanding any law, rule, or practice to the contrary, it shall be the duty of every manager or other principal officer of any bank, building society or other financial institution with which a practitioner has deposited any moneys, whether in the practitioner's own account or in any general or separate trust account, to disclose every such account to an auditor appointed pursuant to this Act upon demand made by such auditor, and to permit the auditor to make a copy of or extract from any such account, and if such manager or other principal officer fails so to do he or she shall be guilty of an offence and liable accordingly.

(5C) The society shall have an action for damages against an auditor guilty of neglect in relation to the audit of the accounts of any practitioner or firm of practitioners (whether a member or members of the society or not) who or any member of which, or any clerk or employee of whom or which, is guilty of stealing or fraudulent misappropriation similar to, and for the same amount (not exceeding the total amount applied from the fund in the reimbursement of all persons who suffer loss through such stealing or fraudulent misappropriation) as, the action for damages which such practitioner or firm of practitioners or any member of which would have had against such auditor and, in a case where the practitioner or 1 or more of the members of the firm of practitioners is guilty of the stealing or fraudulent misappropriation, as if the stealing or fraudulent misappropriation had been committed by a clerk or employee of such practitioner or firm of practitioners.

(6) Every person who commits a breach of any of the provisions of this

section shall in addition to any other proceedings, penalty or punishment to which the person may be liable, be subject on summary conviction to a fine not exceeding 10 penalty units.

When bond under Trust Accounts Acts or other Act unnecessary

32.(1) Save as herein expressly provided and notwithstanding anything contained in the *Trust Accounts Act 1973* or any other Act, it shall not be necessary for any practising practitioner who complies in full with the provisions of this Act to deposit any moneys or securities or any fidelity bond by way of guarantee for the proper application of trust moneys coming to the practising practitioner in the practice of his or her profession.

(2) However, where any such other Act as aforesaid makes provision for the regulation or licensing of any other profession, business, or occupation or for any purpose incidental to the regulation or licensing thereof, any practising practitioner who carries on such other profession, business, or occupation (and either alone or in connection with his or her practice to which this Act applies) shall save as herein provided comply in full in respect thereto with such other Act.

(3) In addition, such practising practitioner shall not be required to deposit any moneys or securities or any fidelity bond by way of guarantee for the proper application of trust moneys coming to the practising practitioner in the practice of such other profession, business, or occupation if the practising practitioner shall produce to the court charged with the duty of issuing any licence under the Act relating to such other profession, business, or occupation a certificate from the council stating that such practitioner has complied in full with the provisions of this Act.

(4) The council is hereby authorised to give such certificate.

(5) Also, the certificate shall render the fund liable to the same extent as such other Act renders moneys, securities, or a fidelity bond deposited pursuant to the provisions thereof liable.

When report of auditor of trust account may not be accepted

33. Where the council becomes aware of irregularities in the trust accounts of a practitioner the council may if it thinks fit request the Minister no longer to accept the reports of the practitioner's trust account auditor as

the report of a certificated accountant for the audit of trust accounts of a practitioner, and the Minister may if the Minister thinks fit direct accordingly.

Solicitor or conveyancer not to act as auditor of trust accounts

34. No solicitor or conveyancer shall act as a certificated accountant for the audit of the trust account of a practitioner, and a report on the trust account of a practitioner by a solicitor or conveyancer shall not be accepted or in any way regarded as a compliance with the *Trust Accounts Act 1973*.

Audit fee in default of payment by practitioner a charge against the fund

35. Notwithstanding any Act or law to the contrary, in any case where the Attorney-General has pursuant to the Attorney-General's powers and authorities under the *Trust Accounts Act 1973* appointed an auditor to examine the books and accounts of a practitioner and the practitioner fails or neglects to pay the audit fee in connection with such examination, such audit fee shall be a charge against the fund and payable from the fund accordingly, but the society shall have full power and authority to sue for and recover such audit fee from the practitioner so failing or neglecting to pay same in any court of competent jurisdiction; and in the event of the recovery of such fee, the same shall be paid into the fund accordingly.

Saving of trust accounts

36. Save as provided in sections 32, 33, 34 and 35, nothing in this Act shall prejudice, limit, or otherwise affect the provisions of the *Trust Accounts Act 1973*.

PART 3A—GENERAL TRUST ACCOUNTS’ CONTRIBUTION FUND AND GRANTS FUND

Meaning of terms

36A. In this part—

“available moneys” means—

- (a) in respect of the first quarter—all sums accumulated by the society in the account styled ‘Bank Contributions Suspense Account’ together with all interest accrued thereon and all moneys paid during that quarter to the society as trustee of the contribution funds together with all income accrued in respect of the contribution fund in respect of that quarter;
- (b) in respect of each subsequent quarter—all moneys paid during that quarter to the society as trustee of the contribution fund together with all income accrued in respect of the contribution fund in respect of that quarter.

“contribution fund” means the fund established pursuant to section 36B(1) and the income thereof.

“grants committee” means the committee established pursuant to section 36H.

“grants fund” means the fund established pursuant to section 36F and unless the context does not permit includes the income thereof.

“quarter” means the period commencing on the date upon which this part commenced and ending on 31 December 1985 and thereafter each successive period of 3 calendar months commencing on 1 January, April, July and October respectively.

Establishment of contribution fund

36B.(1) The society shall establish and maintain a fund to be called the General Trust Accounts’ Contribution Fund.

(2) The contribution fund shall vest in the society and shall be held in trust for the purposes set out in this part.

(3) All moneys constituting the contribution fund shall be paid or transferred into a separate account maintained by the society for that purpose at a bank carrying on business in the State.

Moneys payable into the contribution fund

36C. The contribution fund shall consist of—

- (a) all sums accumulated by the society in the account styled ‘Bank Contributions Suspense Account’ at the date of the commencement of this part together with all interest accrued thereon; and
- (b) all sums paid to the society after the date of commencement of this part by a bank pursuant to an arrangement or agreement reached between the society and that bank relating to the balances maintained in practitioners’ general trust accounts with that bank, being sums not otherwise dealt with under the provisions of this Act or the *Legal Assistance Act 1965*; and
- (c) interest which may from time to time accrue on moneys held in or forming part of the contribution fund; and
- (d) other moneys that may lawfully be paid into the contribution fund.

Investment of contribution fund

36D. Moneys in the contribution fund that are not immediately required for the purposes thereof may be invested by the society—

- (a) in securities of or guaranteed by the government of the Commonwealth or a State;
- (b) with or on deposit with a bank or in securities of, guaranteed by or accepted by a bank carrying on business under the authority of an Act of the Commonwealth or a State;
- (c) with an authorised dealer in the short-term money market with established lines of credit with the Reserve Bank of Australia as a lender of last resort;

- (d) in any manner in which trustees are for the time being authorised by law to invest trust funds.

Distributions from contribution fund

36E. The society shall, within 21 days after the last day of each quarter distribute the available moneys in respect of that quarter, as follows—

- (a) so much of the available moneys as will reimburse the society for its costs and expenses incurred (and not otherwise reimburse) in the administration of the contribution fund;
- (b) the balance of the available moneys—
- (i) 75% to the Legal Aid Commission for application to the costs paid by the commission to private practitioners;
- (ii) 10% to the chief executive for the provision of Supreme Court library facilities throughout Queensland;
- (iii) 10% to the society for such purposes, including continuing legal education, as may be approved by the Minister;
- (iv) 5% to the grants fund.

Establishment of grants fund

36F.(1) The society shall establish and maintain a fund to be called the grants fund.

(2) The grants fund shall vest in the society and shall be held in trust for the purposes set out in this part.

(3) All moneys constituting the grants fund shall be paid or transferred into a separate account maintained by the society for that purpose at a bank carrying on business in the State.

Moneys payable into the grants fund

36G. The grants fund shall consist of—

- (a) all sums paid to the grants fund pursuant to section 36E; and
- (b) interest which may from time to time accrue on moneys held in

the grants fund; and

- (c) other moneys that may lawfully be paid into the grants fund.

Grants committee

36H.(1) There shall be established for the purposes of administering the grants fund a committee to be called the grants committee.

(2) The grants committee shall consist of 5 persons (2 of whom shall be nominated by the society) appointed as members by the Governor in council.

(3) An officer of the public service shall not be eligible for appointment as a member of the grants committee.

(4) The chairperson of the grants committee shall be the member appointed by the Governor in Council from time to time as chairperson.

(5) The term of every appointment made to the grants committee shall commence on the day specified in the instrument of appointment and, except where the appointment is to a casual vacancy, shall be for a period of 3 years.

(6) A person shall be eligible for reappointment as a member of the grants committee.

(7) A person appointed as a member of the grants committee shall, unless the person sooner vacates his or her office as prescribed, continue to hold office until the person's successor assumes office.

Vacation of office

36I.(1) A member of the grants committee may, by notice in writing furnished to the secretary of the society, resign office at any time.

(2) The Governor in Council may at any time, on the recommendation of the Minister, remove from office a member of the grants committee by notice in writing furnished to the member.

(3) A member of the grants committee shall be deemed to have vacated office—

- (a) if the member dies;

- (c) if the member resigns his or her office;
- (d) if the member is removed from office.

Filling casual vacancies

36J.(1) If a casual vacancy occurs in the office of a member of the grants committee during the currency of the member's term of appointment, a person may be appointed in the same manner as the member's predecessor was appointed pursuant to section 36H, to fill that vacancy.

(2) A person appointed to fill a casual vacancy as provided in subsection (1) shall hold office for the remainder of the term for which the person's predecessor was appointed but shall be eligible for reappointment as a member of the grants committee.

Proceeding of grants committee

36K.(1) All business of the grants committee shall be conducted by a quorum of not less than 3 members, 2 of whom were appointed as members otherwise than on the nomination of the society.

(2) The grants committee shall meet at such times and places as it determines and shall conduct its business in such manner as is prescribed or, in so far as is not prescribed, as it determines from time to time.

(3) The chairperson of the grants committee shall preside at all meetings of the grants committee at which the chairperson is present and, in the chairperson's absence from any meeting, the members present shall elect from their number a member who was appointed otherwise than on the nomination of the society to be a member, who shall preside at that meeting.

(4) The person who presides at a meeting of the grants committee shall have a deliberative vote and, in the event of an equality of votes on any matter, shall have a casting vote.

(5) A proceeding of the grants committee shall not be invalidated by reason of a defect in the appointment of a member or by reason of a vacancy in the membership of the grants committee.

Fees and expenses

36L. Each member of the grants committee who was appointed otherwise than on the nomination of the society shall be entitled to be paid—

- (a) such fees as are approved by the Governor in Council in respect of the member's attendance at meetings of the grants committee and the discharge of the member's functions under this Act; and
- (b) expenses necessarily and reasonably incurred by the member in attending meetings of the grants committee or in connection with the discharge of the member's functions under this Act and approved by the Minister.

Other officers

36M.(1) The grants committee may from time to time appoint a secretary or other officers to assist the grants committee in the administration of the grants fund.

(2) In the absence of any such appointment the secretary for the time being of the society shall be the secretary of the grants committee.

(3) The secretary of the grants committee and other persons appointed under subsection (1) shall carry out such duties as the grants committee may from time to time decide or as may be prescribed.

Functions of grants committee

36N.(1) It is the function of the grants committee to—

- (a) solicit and receive applications for grants from the grants fund;
- (b) approve in whole or in part applications for grants for purposes which in the opinion of the grants committee are within the objects specified in section 36O.

(2) The grants committee may attach to any grant it approves such conditions as in the opinion of the grants committee are appropriate and may at any time, with the approval of the grantee, amend such conditions.

(3) A decision of the grants committee under this section shall not be subject to review or appeal in any manner.

Objectives of grants

360. The grants committee may apply the grants fund in promotion of any of the following objects—

- (a) to enable or assist a person to—
 - (i) make, investigate or inquire into proposals for the improvement of the administration of the law, including proposals with respect to technological change and other matters relating to the delivery of legal services generally;
 - (ii) promote and carry out legal research and law reform activities;
 - (iii) promote the encouragement and carrying on of legal education and training of practitioners, their employees and persons proposing to practise as practitioners in any subject or field likely to achieve or promote the competent and efficient practice of the law;
 - (iv) promote and encourage the use by practising practitioners of efficient methods of accounting and office management in relation to their practices;
 - (v) promote public education in law and the legal system, including the conduct of programs in schools;
 - (vi) encourage the provision of legal services to all sections of the community including the development and support of advice and referral centres;
 - (vii) publish and disseminate material and information relating to, resulting from or connected with the carrying out of all or any of the objects set out in this paragraph, including and without limiting the generality of the foregoing—
 - (A) the holding of training and educational programs in relation to aspects of the law, the legal system, office management and accounting for the education, assistance and guidance of practitioners, their employees, their auditors and persons proposing to practise as practitioners;
 - (B) the publication and distribution of information relating

to aspects of the law, the legal system, office management procedures and accounting methods for the information, assistance and guidance of practitioners, their employees, their auditors and persons proposing to practise as practitioners;

- (C) the provision of advice and recommendations to practitioners, their employees and persons proposing to practise as practitioners in relation to the aspects of the law in relation to which it is desirable that they maintain or increase their competence and the improvement of and more efficient use of the accounting methods and office management procedures used by practitioners in their practices;

(viii) maintain and improve law library services;

- (b) to enable or assist a person to do any act or thing incidental or conducive to carrying out the objects specified in paragraph (a)(i) to (vii), including and without limiting the generality of the foregoing to enable or assist a person to pay the salaries and wages of persons employed in connection with the carrying out of any such object and to purchase, lease, hire or otherwise acquire any real or personal property or any share or interest therein where such acquisition is incidental or conducive to the acquirer carrying out any of the prescribed objects.

Moneys granted cease to form part of grants fund

36P.(1) Upon the grants committee making a grant of moneys as provided in this part, the moneys granted shall cease to form part of the grants fund.

(2) Subsection (1) shall apply notwithstanding that the society is the recipient of the grant either absolutely or as a trustee.

Investment of grants fund

36Q. Moneys in the grants fund that are not immediately required for the purposes thereof may be invested by the grants committee—

- (a) in securities of or guaranteed by the government of the Commonwealth or a State;
- (b) with or on deposit with a bank or in securities of, guaranteed by or accepted by a bank carrying on business under the authority of an Act of the Commonwealth or a State;
- (c) with an authorised dealer in the short-term money market with established lines of credit with the Reserve Bank of Australia as a lender of last resort;
- (d) in any manner in which trustees are for the time being authorised by law to invest trust funds.

Audit of account

36R. The accounts of the contribution fund and the grants fund shall be audited from time to time and at least once in each year by the auditor-general.

PART 4—ANNUAL PRACTISING CERTIFICATE AND RULES

Roll of solicitors and conveyancers

37. It shall be the duty of the secretary to keep a roll of practising practitioners and to issue certificates to persons who apply for and are entitled to take out certificates authorising them to practise, and it shall be lawful for the council to make such orders, directions, and regulations touching the performance and execution of the duties aforesaid as they shall think proper.

Prohibition on practising without practising certificate

38.(1) No solicitor shall on or after 1 June 1931, act or practise as a solicitor unless—

- (a) the solicitor has obtained from the secretary on application in

proper form a certificate which is then in force to the effect that the solicitor is on the roll of the court as a solicitor thereof and entitled to practise as a solicitor; and

- (b) in the case where the certificate aforesaid obtained by the solicitor is subject to a condition prescribed by this Act or a condition prescribed by or imposed pursuant to the rules—the solicitor acts or practises as a solicitor in accordance in all respects with that condition.

(2) No conveyancer shall on or after 1 June 1931, act or practise as such unless the conveyancer has obtained from the secretary on application in proper form a certificate which is then in force to the effect that the conveyancer is on the roll of the court as a conveyancer and entitled to practise as a conveyancer.

Persons practising without certificates

39.(1) Every person who directly or indirectly acts or practises as a solicitor or conveyancer—

- (a) without having at the time a certificate then in force issued to the person by the secretary, being a certificate referred to in section 38; or
- (b) otherwise than in accordance in all respects with the conditions to which a certificate then in force issued to the person by the secretary, being a certificate referred to in section 38, is subject as prescribed by this Act;

shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding 10 penalty units and in addition shall be guilty of a contempt of the court and shall be liable to be punished accordingly.

(3) Where a person, being a body corporate, is guilty of an offence against this section, any director, manager, secretary or other officer of the body corporate who was knowingly a party to the offence shall also be guilty of that offence.

(4) This section does not apply in relation to a barrister-at-law, solicitor or conveyancer in any department of the Government of the Commonwealth or State in the course of his or her official duties.

Practice of deceased practitioner

39A.(1) Notwithstanding any other provision of this Act or the provisions of any other Act upon the death of a sole practitioner the executors or administrators of the estate may, with the permission of the council, carry on in the name of the deceased practitioner the practice formerly carried on by the deceased practitioner upon condition that some other solicitor entitled to practise and having a current certificate shall be in charge of the practice and shall ordinarily attend at the office where the practice is carried on each day on which that office is open and shall personally carry on and supervise the work of such practice.

(2) Any permission pursuant to subsection (1) shall in the first instance be limited to a period of 12 months after the practitioner's death, but may from time to time be extended by the council for a further period or periods.

(3) Any permission pursuant to subsection (1) may be withdrawn by the council at any time notwithstanding that the period for which it was granted has not expired.

(4) The decision of the council to grant or refuse any permission for the purposes of this section or to withdraw any such permission shall be final and conclusive and shall not be subject to any appeal, and no such decision nor any proceedings of the council in relation to the granting refusing or withdrawing of any such permission shall be subject to prohibition, certiorari, mandamus or injunction or be otherwise challenged or called in question in any court on any account whatever.

(5) For the purposes of section 24 any clerk or employee employed in any practice in respect of which permission to carry on the same is granted under this section shall be deemed to be the clerk or employee of the solicitor in charge of the practice.

(6) The council may appoint the solicitor in charge of the practice as a trustee of the trust account of the deceased practitioner under section 11.

(7) The conduct of the practice of a deceased sole practitioner by the executors or administrators of the sole practitioner's estate in accordance with the foregoing provisions of this section shall be deemed not to be a breach by the solicitor in charge of the practice or any other solicitor employed in the practice of the provisions of section 41(1)(f) or of rule 67 of the rules or any rule in substitution therefor.

(8) The executors or administrators of the estate of a deceased sole practitioner may maintain an action or suit for the recovery of any fee, reward or disbursement for or in respect of any business, matter or thing done by them in carrying on the practice of the deceased practitioner in accordance with the provisions of this section as if such executors or administrators were a practitioner holding a current certificate.

(9) The solicitor in charge of the practice of a deceased sole practitioner pursuant to this section shall not be subject to the direction or control of the executors or administrators of the estate of the deceased practitioner in matters of professional conduct or otherwise in respect of the solicitor's actions as a solicitor in the carrying on of the practice.

(10) In this section—

“sole practitioner” means a practitioner who is not in partnership with any other practitioner at the time of the practitioner's death in respect of the carrying on of the practitioner's practice.

Application for and issue of certificate

40.(1) Subject to this Act, on payment by the applicant of the prescribed practising fee, together with the prescribed contribution to the fund and any levy then payable under this Act by the applicant, the secretary shall—

- (a) on application by a solicitor practising as a solicitor, or by a conveyancer practising as such—issue to him or her a certificate in the approved form endorsed with such conditions as may apply pursuant to the rules and—
 - (i) every such application shall be made on or before 31 May in each year, and subject to the due observance of the foregoing provisions of this section the practising certificate issued on such application shall be in force from 1 July next succeeding such application until the next succeeding 30 June;
 - (ii) if any application shall be made after 1 July in any year the certificate shall bear date and shall be in force from the date on which all the requirements of this section, save the aforesaid requirement, as to date of lodgment shall have been fully satisfied;

- (iii) the council may however for cause to it appearing sufficient allow a practising certificate to relate back to 1 July of the then current period;
 - (iv) if any practising practitioner shall be absent from the State or for any other reason sufficient to the council be unable to make an application for a practising certificate the council may act upon an application made by any partner or attorney of such practitioner, and such alterations as the nature of the case may require may be made in any declaration required to be lodged with such application;
- (b) on application by a solicitor or conveyancer who shall not have practised as a solicitor or conveyancer prior to the date of such application, accompanied by a declaration by the applicant in the approved form showing, in the case of a solicitor—
- (i) that the applicant has qualified for admission as a solicitor after completing service for the period prescribed and applicable to the applicant under the *Solicitors' Admission Rules 1968* or under any rules in substitution therefor—
 - (A) under articles of clerkship to a practising practitioner in accordance with such rules; or
 - (B) as a managing clerk in the office of a practising practitioner in accordance with such rules; or
 - (C) under articles of clerkship to a practising practitioner followed by bona fide employment as a law clerk or managing clerk in the office of a practising practitioner in accordance with such rules; or
 - (ii) that the applicant has completed the period of service applicable to the applicant prescribed by the *Legal Practitioners Act 1995*, section 58 in 1 or more of the offices referred to in that section; or
 - (iii) that the applicant has completed 1 year since admission as a solicitor in full-time employment as an employed solicitor of a practising practitioner;

issue to the applicant a certificate in the approved form endorsed with such conditions as may apply pursuant to the rules which

shall be in force from the date of such certificate until 30 June next following such date;

- (ba) on application by a solicitor who, although not having practised as a solicitor in Queensland prior to the date of the solicitor's application, shows in a declaration by the solicitor in the approved form accompanying the solicitor's application that he or she has completed 1 year in full-time legal professional practice (not being at any time in that year exclusive practice as a barrister) in another State or a Territory whether as a principal, a partner or an employee of another practising solicitor—issue to the solicitor a certificate in the approved form endorsed with such conditions as may apply pursuant to the rules which shall be in force from the date of such certificate until 30 June next following such date;
- (c) on application by a solicitor or conveyancer who shall have been, but at the date of such application is not, in practice as a solicitor or conveyancer, accompanied by a declaration by the applicant in the approved form—issue to the solicitor or conveyancer a certificate in the approved form endorsed with such conditions as may apply pursuant to the rules which shall be in force from the date of such certificate until 30 June next following such date;
- (d) on application by a solicitor who has not held a certificate as to his or her entitlement to practise as a solicitor, save one issued pursuant to this paragraph, and who is not a person to whom paragraph (b) or (ba) applies, accompanied by a declaration by the applicant in the approved form—issue to the solicitor a certificate in the approved form endorsed with such conditions as may apply pursuant to the rules, which shall be in force from the date of such certificate until 30 June next following such date;
- (e) where a solicitor is unable to comply with the provisions for the issue of a certificate under a preceding paragraph, on application by that solicitor, who is in the opinion of the council a fit and proper person to practise as a practitioner—issue to the solicitor a certificate in the approved form endorsed with such conditions as may apply pursuant to the rules which shall be in force from the date of such certificate until 30 June next following such date.

(2) The secretary may and, if required by an applicant, shall refer any application for a certificate or any question arising in relation to the

application to the council for its opinion or decision, and the secretary shall act in accordance with such opinion or decision when given.

Condition attaching to practising certificate

40A.(1) A certificate issued under section 40(1)(d) shall be at all times subject to the condition that the solicitor to whom it is issued shall not practise as a solicitor on his or her own account, either alone or in partnership, until the solicitor has completed 52 weeks since the solicitor's admission as a solicitor in full-time employment as an employed solicitor of a practising practitioner either continuously or in periods aggregating 52 weeks.

(2) A certificate issued under a provision of section 40 other than subsection (1)(d) shall, unless the council otherwise determines, be conditional on the solicitor to whom it is issued maintaining a professional practice address in Queensland.

(3) The condition prescribed by subsection (1) may be specified in a certificate that is subject to it.

Grounds for refusing or cancelling certificate

41.(1) The secretary may refuse to issue a certificate, the council may, upon a reference by the secretary of any application for a certificate or any question arising in relation to such an application, direct the secretary to refuse to issue a certificate and the council may cancel a certificate when issued under the foregoing provisions of this part if the applicant for or the holder of such certificate, as the case may be—

- (a) is an undischarged bankrupt or has taken advantage of the law relating to bankruptcy;
- (b) has been convicted upon indictment in Queensland or elsewhere of an offence or has been convicted in Queensland or elsewhere of an offence punishable summarily which involves moral turpitude or fraud on his or her part;
- (c) has failed to comply with any Act, regulation or order relating to his or her trust funds or the trust funds of any partnership of which the applicant or holder was a member at the time of such

failure;

- (d) has after being called upon by the council or the secretary so to do failed to give to the council an explanation in writing which is in the opinion of the council sufficient and satisfactory in the circumstances touching any matter relating to his or her conduct, or to his or her practice, as a solicitor or conveyancer or to give to the council any document (or copy thereof), which is in his or her custody or possession and which the applicant or holder is entitled at law so to give, sought by the council or the secretary to enable the council to satisfy itself concerning the explanation, and such failure still continues;
- (e) is in any way in default under any of the provisions of this Act or of the *Trust Accounts Act 1973*;
- (f) subject to section 39A(7) is sharing or has shared with an unqualified person receipts from a business of a nature usually performed by practising practitioners;
- (g) is in default in the performance, fulfilment or satisfaction of any order made by the statutory committee or the tribunal;
- (h) has acted or practised as a solicitor or conveyancer when not holding a certificate then in force certifying that the applicant or holder is authorised so to do or during any period of suspension of his or her certificate unless authorised pursuant to section 41B(2) so to do;
- (i) has failed to reimburse the fund any sum paid out of the fund on his or her account;
- (j) is in any way in default under any of the provisions of the indemnity rules.

(2) The secretary shall give to any applicant whose application for a certificate is refused under this part and to any person whose certificate is cancelled under this part notice in writing of the refusal or cancellation, which notice shall be served on the practitioner either personally or posted to the practitioner at his or her usual or last-known place of business or abode or the place of business or abode appearing in the register kept by the secretary or appearing in the last application for a certificate lodged by the practitioner with the society.

(3) If the secretary refuses to issue or the council cancels a certificate under this part, the secretary or as the case may be, the council shall, if so required in writing by the applicant or holder, as the case may be, within 14 days after being so required, state in writing the grounds for the refusal or cancellation.

(4) Where an order is made striking a practitioner off the roll, any certificate issued to the practitioner under this part and in force at the date of the order shall, by virtue of that order, be cancelled on and from the date of the order.

(5) Where an order is made suspending a practitioner from practising as a solicitor or conveyancer, any certificate issued to the practitioner under this part and in force at the date of the order shall, by virtue of that order, be cancelled on and from the date of the order and, whilst the practitioner remains so suspended, the practitioner is disqualified from holding or obtaining any certificate under this part.

Refusal or cancellation of certificate on ground of infirmity

41A.(1) Notwithstanding any other provision of this Act, where the secretary, in the case of an applicant for a certificate under the foregoing provisions of this part, the council, in the case of a reference by the secretary of any such application or any question arising in relation to such an application or the council, in the case of the holder of such a certificate, is satisfied on such evidence as to he, she or it seems proper that—

- (a) the applicant for or holder of the certificate is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his or her practice; and
- (b) it is in the interests of his or her clients or of the public that the certificate should not be issued or that the certificate should be cancelled;

the secretary may refuse to issue, the council may direct the secretary to refuse to issue, or the council may cancel, the certificate, as the case may be.

(2) For the purposes of subsection (1), the secretary or, as the case may be, the council—

- (a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be

specified by the secretary or, as the case may be, the council; and

- (b) may hold such inquiry as the secretary or, as the case may be, the council thinks fit.

(3) A failure or refusal by any person required by the secretary or, as the case may be, the council to undergo a medical examination in accordance with a requirement of the secretary, or as the case may be, the council made under subsection (2)(a) may be regarded by the secretary or, as the case may be, the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his or her practice.

(4) Nothing in this section affects the powers under any other provision of this Act of the secretary to refuse to issue a certificate, of the council to direct the secretary to refuse to issue a certificate or of the council to cancel a certificate.

Ground for suspension of certificate

41B.(1) The council may suspend the certificate held by any practitioner in any of the following events, namely—

- (a) upon the council's having resolved to prefer to the statutory committee or to the court any charge against the practitioner;
- (b) upon the council's having received from the Minister advice of any irregularity or deficiency revealed by any audit of the practitioner's trust account;
- (c) upon the practitioner being convicted upon indictment in Queensland or elsewhere of an offence or being convicted in Queensland or elsewhere of an offence punishable summarily which involves moral turpitude or fraud on the practitioner's part;
- (d) upon the council's having passed in relation to the practitioner a resolution for an appointment under section 10, 11 or 11A;
- (e) upon the failure of the practitioner to give to the council an explanation in writing in the opinion of the council sufficient and satisfactory in the circumstances touching any matter relating to his or her conduct or to his or her practice as a practitioner or to give to the council any document (or copy thereof), which is in

the custody or possession of the practitioner and which the practitioner is entitled at law so to give, sought by the council or the secretary to enable the council to satisfy itself concerning the explanation, and such failure continues;

- (f) upon the practitioner being in default of a provision of this Act or the *Trust Accounts Act 1973*;
- (g) upon the practitioner being in default of an order made by the statutory committee or an order made or condition imposed by the tribunal;
- (h) upon the failure of the practitioner to comply with a condition endorsed upon a certificate issued under section 40 and held by the practitioner.

(2) Any suspension under this section shall be notified in writing to the practitioner by the secretary and the practitioner shall upon such notification cease practising as a practitioner and shall not except pursuant to an order of a court or judge or by resolution of and notification by the council resume practice during the currency of such suspension.

(3) Notice of any suspension under this section shall be in writing and may be served on the practitioner either personally or posted to the practitioner at his or her usual or last known place of business or abode or the place of business or abode appearing in the register kept by the secretary or appearing in the last application for a certificate lodged by the practitioner with the society.

(4) Any suspension of a certificate by the council under this section shall be for the then unexpired period of the certificate or for such other period as the council may by resolution determine and such suspension shall operate from the date of notification to the practitioner of such suspension.

Appeal

42.(1) Where the secretary refuses to issue a certificate to an applicant or the council cancels or suspends a certificate, the applicant or the holder, as the case may be, may appeal to the court or to a judge in chambers, who may make such order in the matter as the court or judge may think fit.

(2) An appeal under this section shall not lie unless it is instituted within 28 days after the sending by the secretary of the notice of the refusal,

cancellation or suspension, as the case may be.

(3) An appeal under this section is instituted by lodging in the registry of the court a notice of appeal complying with the rules of court.

(4) The notice of appeal shall state the grounds of the appeal which shall be limited to the grounds so stated.

(5) Upon the institution of an appeal, a copy of the notice of appeal shall be served on the secretary forthwith.

(6) An appeal under this section shall be in the nature of a rehearing.

(8) Subject to section 41B(2) and this subsection, the instituting of an appeal shall not operate as a stay of the refusal to issue, cancellation or suspension of a certificate under this part appealed against save to the extent and subject to such conditions (if any) that the court or a judge may, upon good cause shown by the applicant or holder in question, by order permit.

Solicitor may not act or recover fees whilst uncertificated

44. No person acting as a solicitor for a client shall sue, prosecute, defend, or carry on any action or suit or any proceedings in any court without having previously obtained a practising certificate which shall be then in force, or shall be capable of maintaining any action or suit for the recovery of any fee, reward, or disbursement for or in respect of any business, matter, or thing done by the person as a solicitor whilst the person shall have been without such practising certificate.

The like in relation to conveyancers and others

45. No person acting as a solicitor or conveyancer for a client without having previously obtained a practising certificate which shall be then in force, shall be capable of maintaining any action or suit for the recovery of any fee, reward, or disbursement for or in respect of instructions for, or drawing, preparing, engrossing, stamping, registering, or recording any deed, document, or instrument whilst the person shall have been without such practising certificate.

Governor in Council may make rules for purposes of this Act

46.(1) The Governor in Council may make rules under this Act on the recommendation of the council.

(1A) A rule may make provision for the following purposes—

- (a) prescribing the amount of the annual contributions to the fund to be paid by practitioners with respect to whom this Act applies;
- (b) providing for the method of payment and recovery of any fee, contribution, or levy;
- (c) providing that in addition to any remedy for recovery of any fee, contribution, or levy hereunder a practitioner shall not be entitled to have issued to the practitioner any practising or other certificate necessary to entitle the practitioner to practise his or her profession or prohibiting the practitioner from practising his or her profession until such fee be paid;
- (d) providing for the investment of so much of the fund as is not immediately required for the purposes thereof;
- (e) prescribing forms and times of notice to be given to the council in respect of claims against the fund and the particulars thereof, and the conditions subject to which and the extent to which the council may settle any such claims without recourse being had to legal proceedings;
- (f) prescribing the duties of accountants appointed to conduct an examination of any accounts pursuant to section 31; and prescribing also the duties of the practitioner or practitioners concerned in relation thereto and the circumstances in which such practitioner or practitioners may be required to pay the cost of such examination;
- (g) for providing forms of certificate to be issued to persons practising as solicitors or conveyancers, declarations, applications, notices, and documents to be used in relation to any application or refusal of any application under this Act;
- (h) for requiring any evidence that a person has been admitted to practise or is still practising, or has ceased practising or has continued or discontinued practising as a solicitor, or conveyancer, or as to the reason of any person discontinuing

practice, and generally for the obtaining of information which may be considered necessary or reasonable for the purposes of determining the merits of applications for certificates or matters in relation thereto.

(2) A rule may (without prejudice to any other method of revocation) be revoked by regulation.

(4) Any rules under this section may also be made under section 5A.

Recovery of moneys

47. In addition to any other right, remedy, or power vested in the society, council, or secretary, whether by this Act or otherwise, any sum of money whatsoever payable under this Act may be recovered either in a summary manner under the provisions of the *Justices Act 1886* or by action as for a civil debt due to the society.

PART 5—GENERAL

Validation of proceedings etc. of statutory committee

48. Every proceeding, investigation, hearing, direction, decision, order, or other act, matter, or thing had, commenced, continued, given, pronounced, made, or done before or by not less than 3 members of the statutory committee, and any person acting as a member or the chairperson of such committee, whether before or after the passing of this Act shall, notwithstanding that it has been or shall afterwards be discovered that there was some defect in the appointment of such person so acting or purporting to act as a member or the chairperson of such committee or absence of any right or authority in such person so to act be and be deemed to have been as valid, effectual, and binding and may be maintained, enforced, and (subject to the due appointment of such person as a member or the chairperson of such committee) continued as if the person so acting or purporting to act had been at all material times a duly appointed member or the duly appointed chairperson of such committee.

Protection for acts and omissions under Act

49.(1) No matter or thing done or omitted to be done by the society, and no matter or thing done or omitted to be done by the president, deputy president, vice-president or any member of the council or by the secretary or by any officer or employee or other person acting under the direction of or appointed by the society or the council shall, if it is done or omitted to be done, or purports to be done or omitted to be done, bona fide for the purpose of executing this Act or any function of the society or the council under this Act or under any other Act, subject to the president, deputy president, vice-president, any member of the council or the secretary or any officer or employee or other person acting under the direction of or appointed by the society or the council to any personal liability in respect thereof and any expense incurred or sustained by the president, deputy president, vice-president, any member of the council or the secretary or any such officer, employee or other person acting as aforesaid shall be deemed to be an expense authorised by this Act.

(2) The president, deputy president, vice-president and every member of the council and the secretary and every officer and employee and other person acting under the direction of or appointed by the society or the council shall be indemnified out of the funds of the society against all liability incurred by him or her as such president, deputy president, vice-president, member of the council, secretary or officer or employee or other person acting under the direction of or appointed by the society or the council as aforesaid.

(3) When any question arises under this section whether a matter or thing was or was not done or omitted to be done or purported to be done or omitted to be done, bona fide, the burden of proof of the absence of bona fides shall lie upon the party alleging such absence.

Confidentiality

50.(1) For the purposes of this section, any information, document or matter is confidential as respects an official if it was acquired by him or her, was furnished to him or her, is in his or her custody or he or she has access to it by reason of his or her office, appointment, employment or his or her being authorised in that respect in the making of an examination of accounts and a report thereon under section 31 or, as the case may be, an

investigation of a complaint to which subsection (2)(b)(i) refers.

(2) For the purposes of this section—

“official” means—

- (a) every person who is an accountant appointed under section 31 to make an examination of accounts of a practitioner; and
- (b) every person who is employed, appointed or authorised to perform any function in relation to—
 - (i) the investigation of a complaint against a practitioner concerning any matter relating to his or her conduct or his or her practice in the practitioner’s profession;
 - (ii) an examination of the accounts of a practitioner and the report thereon in pursuance of section 31; and
- (c) every person who is a member of the council; and
- (d) every person who is a member of a committee of the council; and
- (e) every person who is an officer of the council.

(3) An official—

- (a) shall not—
 - (i) communicate to any person any confidential information;
 - (ii) produce to any person any confidential document;
relating to the affairs of another person, except in the performance of the official’s functions under this Act;
- (b) shall not—
 - (i) be required to produce in any court or other court or tribunal (other than a court in the exercise of its criminal jurisdiction) any confidential document;
 - (ii) communicate to any court or other court or tribunal (other than a court in the exercise of its criminal jurisdiction) any confidential information or matter;
relating to the affairs of another person, except where, in the opinion of the council it is necessary so to do to carry the

provisions of this Act into effect.

Maximum penalty—10 penalty units.

Approval of forms

51. The council may approve forms for use under this Act.

Regulation making power

52. The Governor in Council may make regulations under this Act on the recommendation of the council.

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	99
3 Key	100
4 Table of earlier reprints	100
5 Tables in earlier reprints	100
6 List of legislation	101
7 List of annotations	104
8 Transitional and savings provisions	116
9 Provisions that have not commenced and are not incorporated into reprint .	116

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 February 1997. Future amendments of the Queensland Law Society Act 1952 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No. [X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 29 of 1994	24 May 1995
2	to Act No. 58 of 1995	18 December 1995
2A	to Act No. 21 of 1996	23 August 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Changed names and titles	1
Corrected minor errors	1, 2
Obsolete and redundant provisions	1
Renumbered provisions	1, 2

6 List of legislation**Queensland Law Society Act 1952**

(Queensland Law Society Acts 1927 to 1952 and Queensland Law Society Acts 1930 to 1952 consolidated by authority of Queensland Law Society Acts Amendment Act 1952 1 Eliz 2 No. 24 pt 4)
 date of assent 26 September 1952
 commenced on date of assent

List of legislation to Queensland Law Society Act 1927 18 Geo 5 No. 14—before consolidation**Queensland Law Society Act 1927 18 Geo 5 No. 14**

date of assent 17 December 1927
 commenced on date of assent

as amended by—

Queensland Law Society Act Amendment Act 1930 21 Geo 5 No. 46

date of assent 30 December 1930
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1938 2 Geo 6 No. 6

date of assent 10 October 1938
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1952 1 Eliz 2 No. 24

date of assent 26 September 1952
 commenced on date of assent

List of legislation to Queensland Law Society Act Amendment Act 1930 21 Geo 5 No. 46—before consolidation**Queensland Law Society Act Amendment Act 1930 21 Geo 5 No. 46**

date of assent 30 December 1930
 commenced on date of assent

as amended by—

Queensland Law Society Acts Amendment Act 1938 2 Geo 6 No. 6

date of assent 10 October 1938
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1939 3 Geo 6 No. 33 (as from 30 December 1930 (see s 2(2)))

date of assent 6 December 1939
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1941 5 Geo 6 No. 4

date of assent 16 October 1941
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1952 1 Eliz 2 No. 24

date of assent 26 September 1952
 commenced on date of assent

List of legislation to Queensland Law Society Act 1952—after consolidation**Queensland Law Society Act 1952**

(Queensland Law Society Acts 1927 to 1952 and Queensland Law Society Acts 1930 to 1952 consolidated by authority of Queensland Law Society Acts Amendment Act 1952 1 Eliz 2 No. 24 pt 4)

date of assent 26 September 1952
 commenced on date of assent

as amended by—

Queensland Law Society Acts Amendment Act 1952 1 Eliz 2 No. 24

date of assent 26 September 1952
 commenced on date of assent

Queensland Law Society Act Amendment Act 1961 10 Eliz 2 No. 24

date of assent 7 April 1961
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1962 No. 37

date of assent 21 December 1962
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1963 No. 5

date of assent 23 September 1963
 commenced on date of assent

Queensland Law Society Acts Amendment Act 1967 No. 12

date of assent 5 April 1967
 commenced on date of assent

Queensland Law Society Acts Amendment Act (No. 2) 1967 No. 26

date of assent 3 November 1967
 commenced on date of assent

Queensland Law Society Act Amendment Act 1971 No. 64

date of assent 16 December 1971
 commenced on date of assent

Queensland Law Society Act Amendment Act 1974 No. 4

date of assent 2 April 1974
 commenced 18 April 1974 (proc pubd gaz 20 April 1974 p 1519)

Queensland Law Society Act Amendment Act 1978 No. 9

date of assent 24 May 1978
 commenced 1 June 1978 (proc pubd gaz 1 June 1978 p 655)

Queensland Law Society Act and Another Act Amendment Act 1979 No. 17 pt 2

date of assent 15 May 1979
commenced on date of assent

Queensland Law Society Act Amendment Act 1980 No. 9

date of assent 10 April 1980
commenced on date of assent

Queensland Law Society Act Amendment Act 1985 No. 109

date of assent 20 December 1985
commenced on date of assent

Queensland Law Society Act and Another Act Amendment Act 1988 No. 93 pt 2

date of assent 1 December 1988
commenced on date of assent

Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 1

date of assent 14 November 1990
commenced 7 December 1989 (see s 2(4)(b))

Public Accountants Registration (Repeal and Consequential Amendments) Act 1990 No. 85 s 5 sch 2

date of assent 29 November 1990
commenced 1 January 1991 (see s 2(3) of Act)

Legal Aid Act Amendment and Public Defence Act Repeal Act 1991 No. 3 pt 5

date of assent 6 March 1991
commenced 28 March 1991 (proc pubd gaz 23 March 1991 p 1761)

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1 (as amd by 1994 No. 15 s 3 sch 2 (as from 3 June 1993))

date of assent 3 June 1993
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 2

date of assent 10 May 1994
commenced on date of assent

Anti-Discrimination Amendment Act 1994 No. 29 ss 1–3 sch

date of assent 28 June 1994
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1994 (see s 2)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Queensland Law Society Legislation Amendment Act 1996 No. 21 pts 1, 2

date of assent 15 August 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 16 May 1996 (see s 2)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 28**

date of assent 12 December 1996

pt 1 commenced on date of assent

remaining provisions not yet proclaimed into force**7 List of annotations**

Note—(Queensland Law Society Acts 1927 to 1952 and Queensland Law Society Acts 1930 to 1952 consolidated by authority of Queensland Law Society Acts Amendment Act 1952 1 Eliz 2 No. 24 pt 4)

Long title—[1927 Act]

om 1952 1 Eliz 2 No. 24 s 9(2)(a)

Long title—[1930 Act]

om 1952 1 Eliz 2 No. 24 s 9(2)(a)

Long title

ins 1952 1 Eliz 2 No. 24 s 9(2)(a)

Short title and commencement of Act—[1927 Act]

s 1 om 1952 1 Eliz 2 No. 24 s 9(2)(b)

PART 1—PRELIMINARY—[1930 Act]

pt hdg om 1952 1 Eliz 2 No. 24 s 9(2)(b)

Short title and commencement—[1930 Act]

s 1 om 1952 1 Eliz 2 No. 24 s 9(2)(b)

Parts of Act—[1930 Act]

s 2 om 1952 1 Eliz 2 No. 24 s 9(2)(b)

PART 1—PRELIMINARY

pt hdg ins 1952 1 Eliz 2 No. 24 s 9(2)(b)

Short title

s 1 ins 1952 1 Eliz 2 No. 24 s 9(2)(b)

Parts of Act

s 2 ins 1952 1 Eliz 2 No. 24 s 9(2)(b)

amd 1985 No. 109 s 2

om R1 (see RA s 36)

THE QUEENSLAND LAW SOCIETY INCORPORATED AND THE COUNCIL—[1927 Act]

hdg prec s 3 om 1952 1 Eliz 2 No. 24 s 9(2)(d)

Definitions

- prov hdg** ins 1952 1 Eliz 2 No. 24 s 9(2)(c)
sub 1995 No. 58 s 4 sch 1
- s 3** amd 1952 1 Eliz 2 No. 24 s 9(2)(c); 1974 No. 4 s 3(a), (i); 1985 No. 109 s 3(b)
(2) renum as s 3A 1995 No. 58 s 4 sch 1
- def **“approved form”** ins 1995 No. 58 s 4 sch 1
- def **“chief justice”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
amd 1985 No. 109 s 3(a)(i)
- def **“committee of management”** (prev 1930 21 Geo 5 No. 46 s 3)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
amd 1974 No. 4 s 3(b); 1985 No. 109 s 3(a)(ii)
- def **“conveyancer”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
amd 1974 No. 4 s 3(c)
- def **“council”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“court”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“Director-General”** ins 1990 No. 80 s 3 sch 1
om R1 (see RA s 39)
- def **“Legal Practitioners’ Fidelity Guarantee Fund”** or **“fund”** (prev 1930 21 Geo 5 No. 46 s 3)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“Minister”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
sub 1990 No. 80 s 3 sch 1
om R1 (see RA s 39)
- def **“practising practitioner”** (prev 1930 21 Geo 5 No. 46 s 3)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
amd 1974 No. 4 s 3(d); 1985 No. 109 s 3(a)(iii)
- def **“practitioner”** (prev 1927 18 Geo 5 No. 14 s 2(1))
amd 1930 21 Geo 5 No. 46 s 36(a)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
sub 1974 No. 4 s 3(e)
- def **“prescribed”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
om 1985 No. 109 s 3(a)(iv)
- def **“prescribed”** (prev 1930 21 Geo 5 No. 46 s 3)
om 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“registrar”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“roll”** (prev 1927 18 Geo 5 No. 14 s 2(1))
amd 1930 21 Geo 5 No. 46 s 36(b)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
amd 1974 No. 4 s 3(f)
- def **“rules”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)

- om R1 (see RA s 39)
- def **“society”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“solicitor”** (prev 1927 18 Geo 5 No. 14 s 2(1))
amd 1930 21 Geo 5 No. 46 s 36(c)
om 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“solicitor”** (prev 1930 21 Geo 5 No. 46 s 3)
reloc 1952 1 Eliz 2 No 24 s 9(2)(c)
amd 1952 1 Eliz 2 No 24 s 9(2)(c)
sub 1974 No. 4 s 3(g)
- def **“statutory committee”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
- def **“This Act”** (prev 1927 18 Geo 5 No. 14 s 2(1))
reloc 1952 1 Eliz 2 No. 24 s 9(2)(c)
om 1985 No. 109 s 3(a)(iv)
- def **“tribunal”** ins 1985 No. 109 s 3(a)(v)
- def **“Trust Accounts Act”** (prev 1930 21 Geo 5 No. 46 s 3)
reloc 1952 1 Eliz 2 No 24 s 9(2)(c)
sub 1974 No. 4 s 3(h)
om 1985 No. 109 s 3(a)(iv)

References to practitioners in certain provisions

- s 3A new s 3A (prev s 3(2)) renum 1995 No. 58 s 4 sch 1

PART 2—THE QUEENSLAND LAW SOCIETY INCORPORATED AND THE COUNCIL

- pt hdg ins 1952 1 Eliz 2 No. 24 s 9(2)(d)

Incorporation of the society

- s 4 (prev 1927 18 Geo 5 No. 14 s 3)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1980 No. 9 s 2; 1985 No. 109 ss 4, 40

Officers of the society

- s 4A ins 1980 No. 9 s 3

Council of the society

- prov hdg om 1980 No. 9 s 4(a)
ins 1985 No. 109 s 5(a)
- s 5 (prev 1927 18 Geo 5 No. 14 s 4)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1963 No. 5 s 2; 1967 No. 12 s 2; 1974 No. 4 s 4; 1978 No. 9 s 3; 1980 No. 9 s 4; 1985 No. 109 ss 5(b)–(g), 40; 1988 No. 93 s 4; 1993 No. 32 s 3 sch 1; 1995 No. 58 s 4 sch 1

Rules

- s 5A new s 5A (prev s 5(9)) renum 1993 No. 32 s 3 sch 1
amd 1993 No. 32 s 3 sch 1; 1995 No. 58 s 4 sch 1
- s 5B new s 5B (prev s 5(9A)) renum 1993 No. 32 s 3 sch 1

Right of audience

- s 5C new s 5C (prev s 5(10)) renum 1993 No. 32 s 3 sch 1

Institution of proceedings

s 5D new s 5D (prev s 5(11)) renum 1993 No. 32 s 3 sch 1

THE STATUTORY COMMITTEE

hdg prec s 6 (prev 1927 18 Geo 5 No. 14 hdg prec s 5)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)

Statutory committee

s 6 (prev 1927 18 Geo 5 No. 14 s 5)
amd 1930 21 Geo 5 No. 46 s 37; 1938 2 Geo 6 No. 6 s 2; 1952 1 Eliz 2
No. 24 s 4
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1952 1 Eliz 2 No. 24 s 9(2)(d)(i); 1974 No. 4 ss 5, 23(a); 1978 No. 9
s 4; 1985 No. 109 ss 6, 40; 1988 No. 93 s 5; 1990 No. 80 s 3 sch 1;
1995 No. 58 s 4 sch 1

Solicitors Disciplinary Tribunal

s 6A ins 1985 No. 109 s 7
amd 1993 No. 32 s 3 sch 1

Vacation of office

s 6B ins 1985 No. 109 s 7
amd 1994 No. 29 s 3 sch

Filling casual vacancies

s 6C ins 1985 No. 109 s 7

Proceeding of tribunal

s 6D ins 1985 No. 109 s 7

Fees and expenses of lay persons

s 6E ins 1985 No. 109 s 7

Functions of tribunal

s 6F ins 1985 No. 109 s 7

Reference to tribunal and notice of hearing

s 6G ins 1985 No. 109 s 7

Status of tribunal and powers of its members

s 6H ins 1985 No. 109 s 7

Witness required to answer

s 6I ins 1985 No. 109 s 7

Powers of tribunal

s 6J ins 1985 No. 109 s 7
amd 1988 No. 93 s 6; 1993 No. 32 s 3 sch 1

Appearances before tribunal

s 6K ins 1985 No. 109 s 7
amd 1993 No. 32 s 3 sch 1

Hearings to be in public unless tribunal otherwise orders

s 6KA ins 1993 No. 32 s 3 sch 1

Appeals

s 6L ins 1985 No. 109 s 7
amd 1995 No. 58 s 4 sch 1

Tribunal rules

s 6M ins 1985 No. 109 s 7
amd 1993 No. 32 s 3 sch 1
sub 1995 No. 58 s 4 sch 1

Orders in relation to clerks or employees

s 6N ins 1985 No. 109 s 7
amd 1995 No. 58 s 4 sch 1

Lay observer

s 6O ins 1985 No. 109 s 7
amd 1993 No. 32 s 3 sch 1

Vacation of office

s 6P ins 1985 No. 109 s 7
amd 1994 No. 29 s 3 sch

Temporary vacancy

s 6Q ins 1985 No. 109 s 7
amd 1993 No. 32 s 3 sch 1

Remuneration and staff

s 6R ins 1985 No. 109 s 7

Functions and powers of lay observer

s 6S ins 1985 No. 109 s 7

Illegal practices

s 7 (prev 1927 18 Geo 5 No. 14 s 6)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1974 No. 4 s 6; 1985 No. 109 ss 8, 40; 1995 No. 58 s 4 sch 1

MISCELLANEOUS

hdg prec s 8 (prev 1927 18 Geo 5 No. 14 hdg prec s 7)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)

Recovery of fees etc.

s 8 (prev 1927 18 Geo 5 No. 14 s 7)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1985 No. 109 ss 9, 40

Minutes

s 9 (prev 1927 18 Geo 5 No. 14 s 8)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1985 No. 109 ss 10, 40

When council may assume control over practitioner's trust accounts

s 10 (prev 1927 18 Geo 5 No. 14 s 9)
ins 1952 1 Eliz 2 No. 24 s 5
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)

amd 1952 1 Eliz 2 No. 24 s 9(2)(d)(ii); 1962 No. 37 s 2; 1974 No. 4 s 7;
1985 No. 109 ss 11, 40; 1995 No. 58 s 4 sch 1

Powers of the council with respect to trust accounts of deceased practitioners etc.

s 11 (prev 1927 18 Geo 5 No. 14 s 10)
ins 1952 1 Eliz 2 No. 24 s 6
reloc 1952 1 Eliz 2 No. 24 s 9(2)(d)
amd 1952 1 Eliz 2 No. 24 s 9(2)(d)(iii); 1985 No. 109 ss 12, 40; 1988
No. 93 s 7

Appointment of receiver of trust property

s 11A ins 1962 No. 37 s 3
amd 1974 No. 4 s 8; 1978 No. 9 s 5; 1985 No. 109 s 13; 1988 No. 93 s 8;
1995 No. 58 s 4 sch 1

PART 2—LEGAL PRACTITIONERS’ FIDELITY GUARANTEE FUND—[1930 Act]

pt hdg om 1952 1 Eliz 2 No. 24 s 9(2)(e)

PART 3—LEGAL PRACTITIONERS’ FIDELITY GUARANTEE FUND

pt hdg ins 1952 1 Eliz 2 No. 24 s 9(2)(f)

Establishment of fidelity guarantee fund

s 12 (prev 1930 21 Geo 5 No. 46 s 4)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 ss 14, 40

Society is statutory body for guarantee fund

s 12A ins 1996 No. 54 s 9 sch

Fund to be kept in separate bank account

s 13 (prev 1930 21 Geo 5 No. 46 s 5)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 s 40

Moneys payable into fund

s 14 (prev 1930 21 Geo 5 No. 46 s 6)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 ss 15, 40

Expenditure from fund

s 15 (prev 1930 21 Geo 5 No. 46 s 7)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 s 40; 1995 No. 58 s 4 sch 1

Audit of accounts

s 16 (prev 1930 21 Geo 5 No. 46 s 8)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1974 No. 4 s 23(a); 1985 No. 109 ss 16, 40

Council to administer fund

s 17 (prev 1930 21 Geo 5 No. 46 s 9)

reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 s 40

Council may delegate its powers in relation to the fund to a committee of management

s 18 (prev 1930 21 Geo 5 No. 46 s 10)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1974 No. 4 s 9; 1985 No. 109 s 40

Practising practitioners to pay prescribed contribution into fund

s 19 (prev 1930 21 Geo 5 No. 46 s 11)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1952 1 Eliz 2 No. 24 s 9(2)(f)(i); 1974 No. 4 s 10; 1985 No. 109 s 40;
1995 No. 58 s 4 sch 1

Administration of fund

s 20 (prev 1930 21 Geo 5 No. 46 s 12)
sub 1938 2 Geo 6 No. 6 s 3
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1961 10 Eliz 2 No. 24 s 2; 1967 No. 26 s 2; 1979 No. 17 s 4; 1985
No. 109 ss 17, 40; 1988 No. 93 s 9; 1993 No. 32 s 3 sch 1

In addition to annual contributions, practitioners may be required to pay levy for benefit of fund

s 21 (prev 1930 21 Geo 5 No. 46 s 13)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 s 40

Society may advance moneys from its general funds to the fund

s 22 (prev 1930 21 Geo 5 No. 46 s 14)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 s 40

Investment of fund

s 23 (prev 1930 21 Geo 5 No. 46 s 15)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1985 No. 109 ss 18, 40
om 1996 No. 54 s 9 sch

Application of fund

s 24 (prev 1930 21 Geo 5 No. 46 s 16)
amd 1939 3 Geo 6 No. 33 s 2(1); 1941 5 Geo 6 No. 4 s 2
reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
amd 1961 10 Eliz 2 No. 24 s 3; 1967 No. 26 s 3; 1971 No. 64 s 2; 1978
No. 9 s 6; 1985 No. 109 ss 19, 40; 1988 No. 93 s 10; 1993 No. 32 s 3
sch 1; 1995 No. 58 s 4 sch 1

Fund offers no protection for certain mortgages

s 24A ins 1996 No. 21 s 4

Practitioners to notify clients about non-liability of fund for certain mortgages

s 24B ins 1996 No. 21 s 4

Council may settle claims without action

- s 25** (prev 1930 21 Geo 5 No. 46 s 17)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1974 No. 4 s 11; 1985 No. 109 ss 20, 40

Defences to claims against fund

- s 26** (prev 1930 21 Geo 5 No. 46 s 18)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1974 No. 4 s 12; 1985 No. 109 s 40

Subrogation of rights of action

- s 27** (prev 1930 21 Geo 5 No. 46 s 19)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 sub 1985 No. 109 s 21

If fund insufficient to satisfy claims, such claims to be charged on future accumulations

- s 28** (prev 1930 21 Geo 5 No. 46 s 20)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1974 No. 4 s 13; 1985 No. 109 s 40

Council may enter into contracts of indemnity for purposes of Act

- s 29** (prev 1930 21 Geo 5 No. 46 s 21)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1985 No. 109 s 40

Application of indemnity moneys

- s 30** (prev 1930 21 Geo 5 No. 46 s 22)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1985 No. 109 ss 22, 40

Council may appoint accountant to investigate affairs of practitioner

- prov hdg** amd 1990 No. 85 s 5 sch 2
s 31 (prev 1930 21 Geo 5 No. 46 s 23)
 amd 1938 2 Geo 6 No. 6 s 4; 1941 5 Geo 6 No. 4 s 3; 1952 1 Eliz 2 No. 24 s 8
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1974 No. 4 s 14; 1985 No. 109 ss 23, 40; 1988 No. 93 s 11; 1990 No. 85 s 5 sch 2; 1995 No. 58 s 4 sch 1

SUPPLEMENTARY PROVISIONS

- hdg prec s 32** (prev 1930 21 Geo 5 No. 46 hdg prec s 23)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)

When bond under Trust Accounts Acts or other Act unnecessary

- prov hdg** sub 1938 2 Geo 6 No. 6 s 5(1)
s 32 (prev 1930 21 Geo 5 No. 46 s 24)
 amd 1938 2 Geo 6 No. 6 s 5
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1952 1 Eliz 2 No. 24 s 9(2)(f)(ii); 1974 No. 4 s 23(a); 1985 No. 109 ss 24, 40; 1995 No. 58 s 4 sch 1

When report of auditor of trust account may not be accepted

- s 33** (prev 1930 21 Geo 5 No. 46 s 24A)

ins 1938 2 Geo 6 No. 6 s 6
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1985 No. 109 s 40

Solicitor or conveyancer not to act as auditor of trust accounts

s 34 (prev 1930 21 Geo 5 No. 46 s 24B)
 ins 1938 2 Geo 6 No. 6 s 6
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1974 No. 4 s 23(b); 1985 No. 109 ss 25, 40

Audit fee in default of payment by practitioner a charge against the fund

s 35 (prev 1930 21 Geo 5 No. 46 s 24C)
 ins 1938 2 Geo 6 No. 6 s 6
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1967 No. 26 s 4; 1974 No. 4 s 23(a); 1985 No. 109 ss 26, 40

Saving of trust accounts

s 36 (prev 1930 21 Geo 5 No. 46 s 24D)
 ins 1938 2 Geo 6 No. 6 s 6
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(f)
 amd 1952 1 Eliz 2 No. 24 s 9(2)(f)(iii); 1974 No. 4 s 23(a); 1985 No. 109
 ss 27, 40

PART 3—ANNUAL PRACTISING CERTIFICATE AND RULES—[1930 Act]

pt hdg om 1952 1 Eliz 2 No. 24 s 9(2)(e)

PART 3A—GENERAL TRUST ACCOUNTS' CONTRIBUTION FUND AND GRANTS FUND

pt hdg ins 1985 No. 109 s 28

Meaning of terms

s 36A ins 1985 No. 109 s 28

Establishment of contribution fund

s 36B ins 1985 No. 109 s 28

Moneys payable into the contribution fund

s 36C ins 1985 No. 109 s 28

Investment of contribution fund

s 36D ins 1985 No. 109 s 28
 sub 1996 No. 54 s 9 sch

Distributions from contribution fund

s 36E ins 1985 No. 109 s 28
 amd 1990 No. 80 s 3 sch 1; 1991 No. 3 s 5.2

Establishment of grants fund

s 36F ins 1985 No. 109 s 28

Society is statutory body for grants fund

s 36FA ins 1996 No. 54 s 9 sch

Moneys payable into the grants fund

s 36G ins 1985 No. 109 s 28

Grants committee

s 36H ins 1985 No. 109 s 28
amd 1993 No. 32 s 3 sch 1; 1996 No. 54 s 9 sch

Vacation of office

s 36I ins 1985 No. 109 s 28
amd 1994 No. 29 s 3 sch

Filling casual vacancies

s 36J ins 1985 No. 109 s 28

Proceeding of grants committee

s 36K ins 1985 No. 109 s 28

Fees and expenses

s 36L ins 1985 No. 109 s 28

Other officers

s 36M ins 1985 No. 109 s 28

Functions of grants committee

s 36N ins 1985 No. 109 s 28

Objectives of grants

s 36O ins 1985 No. 109 s 28

Moneys granted cease to form part of grants fund

s 36P ins 1985 No. 109 s 28

Investment of grants fund

s 36Q ins 1985 No. 109 s 28
sub 1996 No. 54 s 9 sch

Audit of account

s 36R ins 1985 No. 109 s 28

PART 4—ANNUAL PRACTISING CERTIFICATE AND RULES

pt hdg ins 1952 1 Eliz 2 No. 24 s 9(2)(g)

Roll of solicitors and conveyancers

s 37 (prev 1930 21 Geo 5 No. 46 s 25)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
amd 1985 No. 109 ss 29, 40

Prohibition on practising without practising certificate

prov hdg om 1979 No. 17 s 5
ins 1988 No. 93 s 12(a)

s 38 (prev 1930 21 Geo 5 No. 46 s 26)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
amd 1974 No. 4 s 15; 1979 No. 17 s 5; 1985 No. 109 ss 30, 40; 1988
No. 93 s 12(b)–(c)

Persons practising without certificates

s 39 (prev 1930 21 Geo 5 No. 46 s 27)
amd 1938 2 Geo 6 No. 6 s 7
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)

amd 1974 No. 4 s 16; 1979 No. 17 s 6; 1985 No. 109 s 31; 1995 No. 58 s 4 sch 1

Practice of deceased practitioner

s 39A ins 1974 No. 4 s 17

Application for and issue of certificate

s 40 (prev 1930 21 Geo 5 No. 46 s 28)
amd 1938 2 Geo 6 No. 6 s 8
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
amd 1974 No. 4 s 18; 1978 No. 9 s 7; 1979 No. 17 s 7; 1985 No. 109 ss 32, 40; 1988 No. 93 s 13; 1995 No. 58 s 4 sch 1

Condition attaching to practising certificate

prov hdg amd 1985 No. 109 s 33(a)
s 40A ins 1979 No. 17 s 8
amd 1985 No. 109 s 33(b)–(d)

Grounds for refusing or cancelling certificate

s 41 (prev 1930 21 Geo 5 No. 46 s 29)
amd 1938 2 Geo 6 No. 6 s 9
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
amd 1952 1 Eliz 2 No. 24 s 9(2)(g)(i)
sub 1974 No. 4 s 19
amd 1978 No. 9 s 8; 1985 No. 109 s 34

Refusal or cancellation of certificate on ground of infirmity

s 41A ins 1974 No. 4 s 19

Ground for suspension of certificate

s 41B ins 1974 No. 4 s 19
amd 1985 No. 109 s 35

Appeal

s 42 (prev 1930 21 Geo 5 No. 46 s 30)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
sub 1974 No. 4 s 20
amd 1995 No. 58 s 4 sch 1

Appeal

s 43 (prev 1930 21 Geo 5 No. 46 s 31)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
om 1974 No. 4 s 20

Solicitor may not act or recover fees whilst uncertificated

s 44 (prev 1930 21 Geo 5 No. 46 s 32)
reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
amd 1985 No. 109 ss 36, 40

The like in relation to conveyancers and others

s 45 (prev 1930 21 Geo 5 No. 46 s 33)
renum 1952 1 Eliz 2 No. 24 s 9(2)(g)
amd 1985 No. 109 ss 37, 40; 1993 No. 32 s 3 sch 1

Governor in Council may make rules for purposes of this Act

- s 46** (prev 1930 21 Geo 5 No. 46 s 34)
 amd 1938 2 Geo 6 No. 6 s 10
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
 amd 1952 1 Eliz 2 No. 24 s 9(2)(g)(ii); 1974 No. 4 s 21; 1985 No. 109
 ss 38, 40; 1993 No. 32 s 3 sch 1; 1995 No. 58 s 4 sch 1

Recovery of moneys

- s 47** (prev 1930 21 Geo 5 No. 46 s 35)
 reloc 1952 1 Eliz 2 No. 24 s 9(2)(g)
 amd 1952 1 Eliz 2 No. 24 s 9(2)(g)(iii); 1985 No. 109 s 40

PART 4—AMENDMENTS OF THE PRINCIPAL ACT—[1930 Act]

- pt hdg** om 1952 1 Eliz 2 No. 24 s 9(2)(e)

Amendments of 18 Geo 5 No. 14 s 2—[1930 Act]

- s 36** om 1952 1 Eliz 2 No. 24 s 9(2)(h)

Amendment of s 5—[1930 Act]

- s 37** om 1952 1 Eliz 2 No. 24 s 9(2)(h)

PART 5—GENERAL

- pt hdg** ins 1952 1 Eliz 2 No. 24 s 9(2)(i)

Validation of proceedings etc. of statutory committee

- s 48** (prev 1930 21 Geo 5 No. 46 s 38)
 reloc 1 Eliz 2 No. 24 s 9(2)(i)
 amd 1985 No. 109 s 40

Protection for acts and omissions under Act

- s 49** ins 1974 No. 4 s 22
 amd 1985 No. 109 s 39; 1988 No. 93 s 14

Confidentiality

- s 50** ins 1988 No. 93 s 15
 amd 1996 No. 79 s 103

Approval of forms

- s 51** ins 1993 No. 32 s 3 sch 1
 s 51 (prev s 52) renum 1994 No. 15 s 3 sch 2
 sub 1995 No. 58 s 4 sch 1

Regulation making power

- s 52** ins 1995 No. 58 s 4 sch 1

Transitional provision about forms

- s 53** ins 1995 No. 58 s 4 sch 1
 exp 28 May 1996 (see s 53(3))

8 Transitional and savings provisions

Queensland Law Society Act Amendment Act 1930 21 Geo 5 No. 46 s 38 provides—

Validation of proceedings, &c., of statutory committee

38. Every proceeding, investigation, hearing, direction, decision, order, or other act, matter, or thing had, commenced, continued, given, pronounced, made, or done before or by not less than three members of the statutory committee, and any person acting as a member or the chairman of such committee, whether before or after the passing of this Act shall, notwithstanding that it has been or shall afterwards be discovered that there was some defect in the appointment of such person so acting or purporting to act as a member or the chairman of such committee or absence of any right or authority in such person so to act be and be deemed to have been as valid, effectual, and binding and may be maintained, enforced, and (subject to the due appointment of such person as a member or the chairman of such committee) continued as if the person so acting or purporting to act had been at all material times a duly appointed member or the duly appointed chairman of such committee.

9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 s 9 sch amdts 1–6 read as follows—

1. After section 12—

insert—

‘Society is statutory body for guarantee fund

‘12A.(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the society is a statutory body in relation to the Legal Practitioners’ Fidelity Guarantee Fund.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the society’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’

2. Section 23—

omit.

3. Section 36D—

omit, insert—

‘Society is statutory body for contribution fund

‘**36D.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the society is a statutory body in relation to the contribution fund.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the society’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’

4. After section 36F—

insert—

‘Society is statutory body for grants fund

‘**36FA.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the society is a statutory body in relation to the grants fund.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the society’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’

5. Section 36H(1), after ‘fund’—

insert—

‘on behalf of the society’.

6. Section 36Q—

omit, insert—

‘Investment of grants fund

‘36Q. For investing moneys in the grants fund, the grants committee may exercise the powers of the society.’.

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 s 103 reads as follows—

Amendment of s 50 (Confidentiality)

103. Section 50—

insert—

‘(4) Subsection (3) does not prevent an official communicating to the Australian Securities Commission particulars of—

- (a) any practitioner dealing in excluded mortgages; or
- (b) any breach by a practitioner of—
 - (i) a rule about mortgage investments; or
 - (ii) a condition of an exemption given by the Australian Securities Commission under the Corporations Law, section 1084(2).’.