

Queensland



ANNO VICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

No. 35 of 1973

An Act to make provision with respect to the keeping of certain books of account and records by trustees, the establishment and management of trust accounts by trustees, the examination and audit thereof, and matters connected therewith

[ASSENTED TO 26TH APRIL, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title.** This Act may be cited as the *Trust Accounts Act* 1973.
2. **Commencement.** This Act shall commence on the first day of July 1973.
3. **Repeal and transition.** (1) The Acts specified in the Schedule are repealed.

(2) Notwithstanding the repeal of the Acts referred to in subsection (1), the provisions of the repealed Acts with respect to the audit and examination of trust accounts and lodging of reports of the results thereof in relation to any period occurring before the commencement of this Act shall apply in the same manner and with the same incidents and with the same consequences for failure to comply therewith as if this Act had not been passed and for the purposes of such application the repealed Acts shall be deemed to remain in full force.

(3) Any moneys received by a trustee during any period occurring before the commencement of this Act and not disposed of by the trustee according to law shall be brought to account and thereafter dealt with in accordance with this Act.

4. Interpretation. (1) In this Act, unless the contrary intention appears—

“agent” in relation to any trustee includes banker of the trustee and any person employed by the trustee as accountant or auditor, whether such person is or is not a servant of the trustee, and also includes any person who at any time has been or has acted as banker, accountant or auditor or otherwise as agent of the trustee;

“approved” means approved by the Under Secretary;

“bank” means a bank carrying on business in this State under the authority of an Act of this State or of the Commonwealth;

“conveyancer” means a person duly admitted as a conveyancer of the Supreme Court;

“financial period” means, in relation to a trustee, a period within the meaning of that term in subsection (1) of section 16;

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act;

“moneys” includes an instrument for the payment of money in any case where the instrument may be paid into a bank;

“moneys received for or on behalf of any person” includes moneys held for or on behalf of any person whether originally received for or on his behalf or not;

“public accountant” means a person who as a principal either alone or with others carries on the business of—

(a) general accountancy;

(b) the auditing of accounts; or

(c) general accountancy and the auditing of accounts,

and who places his services in such regard at the disposal of the public generally for remuneration and whose services are not either entirely or mainly at the disposal of any individual, firm, trust or association (corporate or unincorporate);

“Public Curator” means the Public Curator within the meaning of the *Public Curator Act 1915-1971*;

“repealed Acts” means the Acts repealed by section 3;

“solicitor” means a person duly admitted as a Solicitor of the Supreme Court;

“trustee” means any solicitor, conveyancer or public accountant engaged in the practice of his profession, or the carrying on of his business, as such either solely on his own account or in partnership with any other person or persons and who, or the firm of which he is a partner, in the course of such practice or carrying on of business receives any money upon trust or upon terms requiring him to account to any person therefor: the term includes any person deemed to be a trustee under subsection (5);

“trust account” means a trust account established and kept under section 7;

“trust moneys” in relation to any trustee means moneys received for or on behalf of any other person by the trustee in the course of or in connexion with the practice of his profession or the carrying on of his business;

“Under Secretary” means the holder of the office of Under Secretary Department of Justice.

(2) In this Act any reference to moneys received by a trustee shall be deemed to include a reference to moneys received in the course of or in connexion with the practice, or carrying on of business, by any partner of that trustee or by any of his or the firm’s clerks or servants or by any trustee with whom he or the firm shares the remuneration of any practice or business.

(3) In this Act, unless the contrary intention appears, any reference to books, accounts, records, securities, trust accounts or practice or business of or in relation to a trustee who carries on practice or business in partnership shall be read and construed as a reference to books, accounts, records, securities, trust accounts or practice or business (as the case requires) of or in relation to the partnership.

(4) A person—

(a) who ceases to practise or carry on business;

(b) who ceases to be qualified or entitled to practise or carry on business;

(c) who becomes disqualified from practising or carrying on business; or

(d) who becomes disentitled to practise or carry on business, as a solicitor, conveyancer or public accountant shall nevertheless continue to be a trustee for the purposes of this Act in respect of all trust moneys received by him before he—

(e) ceased to so practise or carry on business;

(f) ceased to be so qualified or entitled; or

(g) became so disqualified or disentitled.

(5) The Governor in Council may make regulations under section 37 prescribing any person or class of persons for the purposes of this subsection and any person so prescribed or belonging to a class of persons so prescribed shall, whilst he so remains, be deemed to be a trustee for the purposes of this Act and the provisions thereof shall apply accordingly.

(6) Where a person is appointed to be a trustee of a trust account under section 11 of the *Queensland Law Society Act 1952-1971* or a receiver under and for the purposes of section 11A of that Act, the duties and obligations imposed by this Act upon a trustee in relation to—

(a) the trust account whereof the person is appointed trustee under the said section 11;

(b) the property whereof the person is appointed the receiver under the said section 11A,

shall devolve upon the person so appointed to be trustee or, as the case may be, the person so appointed a receiver during the period of his appointment as such trustee or, as the case may be, receiver.

5. **Trustee to give notice to Under Secretary, etc.** (1) Every person who becomes a trustee shall, within fourteen days after he becomes a trustee, lodge with the Under Secretary notice in writing of that fact in the approved form. The notice shall state the full name and full address of the place of practice or business of the trustee and, where he carries on practice or business in partnership, the full names of the persons with whom he carries on such partnership and the name under which the partnership is conducted and shall contain such other particulars as may be prescribed.

(2) Where there is any material change in any of the particulars required to be notified under subsection (1) or, in the case of a person who is a trustee at the commencement of this Act, in any particulars that he would have been required to notify under that subsection if he had become a trustee after the commencement of this Act, the trustee shall, within fourteen days after the change, lodge with the Under Secretary notice in writing of the change in the approved form.

(3) Upon ceasing to be a trustee, the person who has ceased to be such, shall forthwith lodge with the Under Secretary notice in writing of that fact in the approved form.

(4) A trustee shall, before establishing any account under section 7, notify the Under Secretary in writing of his intention so to do, specifying the bank and the office or branch thereof in which he proposes to open the account and the designation of the account, and shall satisfy the manager or other officer in charge of the office or branch of the bank concerned that he has complied with the requirements of this subsection.

(5) Upon establishing any trust account under section 7, the trustee shall notify forthwith in writing the Under Secretary and, where the trustee is a solicitor or conveyancer, the secretary of the Queensland Law Society Incorporated of the establishment of the account, the bank, and the office or branch of the bank, whereat the account is established and, upon any change of designation of any account established or deemed to have been established under this Act or any transfer of any such account to some other office or branch of the bank or the closing of any such account, the trustee shall notify forthwith in writing the Under Secretary and, where the trustee is a solicitor or conveyancer, the secretary of the Queensland Law Society Incorporated, of such matter.

(6) With respect to any trust account to which subsection (5) of section 7 applies, a trustee shall within twenty-eight days after the commencement of this Act notify in writing the Under Secretary and,

where the trustee is a solicitor or conveyancer, the secretary of the Queensland Law Society Incorporated of the bank and the office or branch thereof whereat the account is kept and the designation of the account.

6. Accounts to be kept by trustees. (1) A trustee shall keep or cause to be kept in written or printed form in the English language such accounting and other records of all trust moneys and of any disbursement or disposal thereof or dealing therewith as will sufficiently explain the transactions and true position in regard thereto and enable true and fair accounts to be prepared from time to time and shall keep or cause to be kept those records in such manner as to enable them to be conveniently and properly audited.

(2) Where trust moneys are disbursed by a trustee by way of investment which he has been lawfully directed to subsequently realise with a view to the disposal of the proceeds in accordance with the directions of the person entitled thereto then, where the investments are in the name of the trustee or under his control or the trustee has authority for disposal thereof, the duty of the trustee under this Act with respect to the keeping of accounts and other records of trust moneys and accounting therefor extends at all times in relation to the investments in all respects as if the investments were trust moneys within the meaning of this Act.

(3) A trustee shall keep all accounting and other records relating to trust moneys at his sole or principal place of business or at such other of the places of his business as may be approved in writing except as otherwise may be approved in writing or except where for the purpose of audit under this Act or any other Act the accounting and other records are in the possession of an auditor for such time as may be reasonably necessary for that purpose.

(4) Subject to section 11 of the *Evidence (Reproductions) Act 1970* a trustee shall retain for a period of not less than seven years, the records referred to in subsection (1).

(5) Without affecting the generality of subsection (1), a trustee—

(a) shall keep or cause to be kept such books, accounts and records as may be prescribed; and

(b) shall keep or cause to be kept his books, accounts and records in such form and manner as may be prescribed.

(6) For the purposes of this section any account or record required to be kept by a trustee may be kept either by making entries in a bound book or by recording the matters in question in any other way.

(7) Where any account or record required by this section to be kept by a trustee is not kept by making entries in a bound book the trustee shall take reasonable precautions for guarding against falsification and for facilitating discovery of any falsification.

(8) Every entry in any book, account or record kept by or belonging to a trustee or found at his place of practice or business shall be deemed, until the contrary is shown to have been made by or at the direction of the trustee.

(9) The power to make regulations under section 37 includes power to prohibit—

(a) the keeping of specified books, accounts or records by a trustee;

(b) the keeping of books, accounts or records by a trustee in a specified form or manner; and

- (c) the adoption by a trustee of specified accounting procedures in respect of his books, accounts and records.

7. Moneys received by trustees to be paid into a trust account.

(1) A trustee shall establish and keep in a bank or banks in the State one or more trust accounts designated or evidenced as such into which he shall pay all trust moneys.

(2) A trustee shall not pay—

- (a) to his general trust account any moneys other than trust moneys received by him; and
 (b) to a separate trust account any moneys other than trust moneys received by him for or on behalf of the person on whose behalf or at whose direction the account was established,

but nothing in this subsection prohibits payment into the trustees' general trust account of moneys received by the trustee where part of such moneys are attributable to professional costs, statutory duties or charges and other proper outlays already incurred or disbursed.

(3) Moneys required by this section to be paid into a trust account shall be so paid daily save where it is not reasonably practicable so to do in which case they shall be so paid as soon as reasonably practicable.

(4) A person who—

- (a) contravenes or fails to comply with any provision of this section is guilty of an offence against this Act and liable on conviction to a penalty of \$500; or
 (b) with intent to defraud contravenes or fails to comply with any provision of this section is guilty of an offence against this Act and liable on conviction to a penalty of \$1,000 or to imprisonment for one year or to both such penalty and imprisonment.

(5) A trust account established for the purposes of the repealed Acts and maintained at the commencement of this Act shall be deemed to have been established under this Act.

8. Purposes for which money may be withdrawn from trust account.

(1) A trustee shall not withdraw any moneys from a trust account except for the purpose of—

- (a) making a payment to the person entitled thereto or in accordance with the directions of that person;
 (b) where the trustee is a solicitor or conveyancer, depositing such moneys with the Queensland Law Society Incorporated in accordance with section 10 of the *Legal Assistance Act 1965-1971*;
 (c) making a payment to himself for professional costs, statutory duties and charges and other proper outlays which payment shall be supported by authorization in writing by the person for or on whose behalf the moneys were received or are held except in the following circumstances—
 (i) where a certificate of taxation of a Bill of Costs is produced covering the withdrawal and no settlement from another source is evidenced by the solicitor's general account;
 (ii) where an untaxed Bill of Costs has been delivered to the client and at the expiration of one month after delivery no evidence exists of any objection by the client to the quantum thereof and the amount of the withdrawal does not exceed the amount at which the Bill was delivered;

(iii) where the solicitor has expended moneys (being moneys that if included in a Bill of Costs would be taxable under the *Costs Act of 1867*) from his general account on behalf of the client in question and on the client's instructions and the amount of the withdrawal from the trust account is no more than sufficient to cover the amount of such moneys;

(d) making a payment that is otherwise authorized by law.

(2) No withdrawal of moneys from a trust account for the purpose of the investment howsoever of such moneys (including but without limiting the generality hereof, a deposit in the nature of an investment) or the loan thereof to any person whomsoever shall be made unless the trustee has first obtained the authorization in writing of the person entitled to those moneys but this subsection shall not apply to the withdrawal of moneys from a trust account for the purposes of paying for any land, chattels or live stock for the purchase in the name of the client of which the moneys in question were paid into the trust account.

9. Wrongful conversion and false accounts. A trustee who—

(a) fraudulently converts to his own use, or to the use of any other person, any trust moneys; or

(b) fraudulently renders any account of any trust moneys, or of the application of any such moneys, knowing the same to be false in any material particular,

is guilty of a crime and shall be liable to imprisonment with hard labour for seven years or, at the discretion of the court, to a fine of \$5,000 or to both such imprisonment and fine.

10. Moneys in trust account not available for payments of debts, etc. Save as otherwise provided in this Act, moneys held in a trust account shall not be available for the payment of the debts of the trustee by whom the account is kept to any other creditor of the trustee or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditor.

11. Claims and liens not affected. Nothing in this Act shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any moneys held in a trust account or against or upon trust moneys before such moneys are paid into a trust account.

12. Disbursements from trust account. (1) A trustee shall not draw against or cause any payment to be made from a trust account kept by him under this Act unless the drawing or payment is made by his cheque or by a cheque drawn by a bank, crossed and marked on its face "not negotiable" and payable to order.

(2) Cheques drawn on a trustee's trust account shall be drawn on cheque forms having pre-printed on the face thereof a direction to pay to order, a crossing "not negotiable" and the words "Trust Account".

(3) Within fourteen days of demand in writing made by the person for whom or on whose behalf trust moneys have been received or are held by a trustee and to which the person is then entitled the trustee shall pay to the person entitled thereto the balance of the moneys to which that person is entitled or as that person may direct in writing unless the trustee has already disposed of the moneys in accordance with a requirement made under section 33 in which case the trustee shall notify the person entitled to the moneys of that fact giving full particulars thereof.

(4) Where, before the making of a payment pursuant to subsection (3), a trustee has received notice in writing from any person who was a party to the business, proceeding or transaction in respect of which the moneys were received that the ownership of the moneys is in dispute, the trustee shall not without the written consent of the parties make payment of any such moneys until such time as—

- (a) all parties to the business, proceeding or transaction notify him in writing that the dispute has been resolved and inform him as to the person to whom the moneys are to be paid, whereupon he shall forthwith pay the moneys to that person or as that person may direct in writing;
- (b) he is advised that legal proceedings have been commenced to determine the ownership of the moneys whereupon he shall forthwith pay the moneys into the court in which the proceedings have been taken to abide the decision of the court; or
- (c) where no notice or advice is received by the trustee pursuant to paragraph (a) or (b) within a period of sixty days after the receipt of the notice firstmentioned in this subsection, the said period expires.

13. Account of moneys received and their application. A trustee within fourteen days of demand in writing made by the person for whom or on whose behalf trust moneys have been received or are held by the trustee and to which the person is entitled, shall render to the person entitled to the moneys a correct and detailed account in writing of all such moneys and of the application thereof unless the trustee has already disposed of the moneys in accordance with a requirement made under section 33 in which case the trustee shall notify the person entitled to the moneys of that fact giving full particulars thereof.

14. Trustee to appoint auditor. (1) A trustee shall appoint a person or a firm as auditor to audit the accounting and other records kept by the trustee in pursuance of section 6 and the trust accounts established and kept by him in pursuance of section 7 and where for any reason the auditor ceases to hold that office the trustee shall within fourteen days thereafter appoint another such auditor.

(2) A trustee shall notify in writing the Under Secretary and, where the trustee is a solicitor or conveyancer, the secretary of the Queensland Law Society Incorporated and, where the trustee is a public accountant, the secretary of The Public Accountants Registration Board of Queensland of the full name and business address of the auditor appointed by him for the purposes of subsection (1) within one month after—

- (a) the day of commencement of this Act; or
- (b) the date on which he becomes a trustee,

whichever is the later day.

(3) Whenever an appointment of an auditor for the purposes of subsection (1) is terminated, the trustee concerned shall forthwith notify in writing the Under Secretary and, where the trustee is a solicitor or conveyancer, the secretary of the Queensland Law Society Incorporated and, where the trustee is a public accountant, the secretary of The Public Accountants Registration Board of Queensland of the termination and shall within one month of the date of that termination, notify in writing the Under Secretary and, where the trustee is a solicitor or conveyancer, the secretary of the Queensland Law Society Incorporated and, where the trustee is a public accountant, the secretary of the Public Accountants Registration Board of Queensland of the full name and business address of the auditor appointed by the trustee in the place of the auditor whose appointment was terminated.

(4) A notification of appointment of an auditor pursuant to this section shall be endorsed by the auditor, or where a firm is appointed as such by a member of the firm, with a statement that he or it has accepted the appointment.

(5) Such fees and expenses of an auditor appointed under this section shall be payable by the trustee as are prescribed or, where not so prescribed, as are reasonable.

15. Qualifications, resignation, termination of appointment of auditor.

(1) Subject to this section a person shall not—

- (a) accept appointment as auditor for the purposes of section 14;
- (b) act as auditor for a trustee under this Act; or
- (c) prepare a report required by this Act to be prepared by an auditor,

if the person—

- (d) is not registered as a public accountant under the *Public Accountants Registration Act 1946-1971*;
- (e) is indebted in an amount exceeding \$1,000 to the trustee or a firm of which the trustee is a partner except for fees and expenses for professional service rendered by the trustee or such firm; or
- (f) is—
 - (i) a partner or an employee of the trustee; or
 - (ii) a partner, employer or employee of an employee in any capacity howsoever of the trustee.

(2) A firm shall not—

- (a) accept appointment as auditor for the purposes of section 14;
- (b) act as auditor for a trustee under this Act; or
- (c) prepare a report required by this Act to be prepared by an auditor,

unless—

- (d) all members of the firm are persons registered as public accountants under the *Public Accountants Registration Act 1946-1971*;
- (e) where the business name under which the firm is carrying on business is not registered under the *Business Names Act 1962-1971* a return in the approved form showing the full names and addresses of all the members of the firm has been lodged with the Under Secretary;

- (f) no member of the firm is indebted in an amount exceeding \$1,000 to the trustee or a firm of which the trustee is a partner except for fees and expenses for professional service rendered by the trustee or such firm;
 - (g) no member of a firm is—
 - (i) a partner or employee of the trustee; or
 - (ii) a partner, employer or employee of an employee of the trustee.
- (3) For the purposes of subsections (1) and (2) a person shall be deemed to be an employee of the trustee—
- (a) if he is an employee of a firm of which the trustee is a member or of any other member of such a firm;
 - (b) except where the Under Secretary, if he thinks fit in the circumstances of the case, directs otherwise, he has, at any time within the immediately preceding period of twelve months been an employee of the trustee, a firm of which the trustee is a member or any other member of such a firm.
- (4) The appointment under this Act of a firm as auditor by a trustee shall be taken to be an appointment of all persons who are members of the firm, whether resident in a State or Territory of the Commonwealth or not, at the date of the appointment.
- (5) Where a firm has been appointed under this Act as auditor by a trustee and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor by virtue of subsection (2) be deemed to be appointed under section 14 as auditor by the trustee and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.
- (6) A report required to be signed on behalf of a firm appointed under this Act as auditor by a trustee shall be signed in the firm name and in his own name by a member of the firm.
- (7) If, in contravention of this section, a firm consents to be appointed or acts as auditor for a trustee or prepares a report required by this Act to be prepared by an auditor or by an auditor appointed by a trustee, each member of the firm shall be guilty of an offence against this Act.
- (8) An auditor appointed under this Act by a trustee may, by notice in writing given to the trustee, resign as such auditor if—
- (a) he has, by notice in writing given to The Public Accountants Registration Board, applied for consent to his resignation and, at or about the same time as he gave the notice to the Board, notified the trustee in writing of his application to the Board; and
 - (b) received the consent of the Board.
- (9) The Board shall, as soon as practicable after receiving a notice from an auditor under subsection (8), notify the auditor and the trustee whether it consents to the resignation of the auditor.
- (10) A statement made by an auditor in an application to the Board under subsection (8) or in answer to an inquiry by the Board relating to the reasons for the application—
- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate signed by the Chairman of the Board that the statement was made in the application or in the answer to the inquiry by the Board shall be conclusive evidence that the statement was so made.

(11) A person aggrieved by the refusal of consent by the Board pursuant to this section to the resignation of an auditor may, within one month after the date of the refusal, appeal to a District Court Judge from the refusal, and thereupon the judge may confirm or reverse the refusal and may make such further order in the matter as to him seems proper.

(12) Subject to any order of the District Court Judge under subsection (11), the resignation of an auditor takes effect—

(a) on the date (if any) specified for the purpose in the notice of resignation;

(b) on the date on which the Board gives its consent to the resignation; or

(c) on the date (if any) fixed by the Board for the purpose, whichever last occurs.

(13) Whenever the appointment of an auditor for the purposes of subsection (1) of section 14 is terminated by the trustee and the auditor is of opinion that the termination of appointment arose directly or indirectly out of any action or proposed action by the auditor in the discharge of his duties or responsibilities for the purposes of this Act he shall furnish a report in writing to the Under Secretary thereon, setting out the grounds and circumstances upon which the opinion is based. The Under Secretary may, if he thinks proper, forward the report to the Minister.

(14) Where it is, in the opinion of the Under Secretary, impracticable for a trustee to obtain the services of a person who is qualified for, and is not disqualified from, accepting appointment or acting as auditor of the accounts of the trustee under section 14 in view of the locality where the trustee carries on his practice or business or other special circumstances, a person who is, in the opinion of the Under Secretary, suitably qualified or experienced and is approved by the Under Secretary for the purposes of this Act in relation to the audit of the accounts of the trustee, may be appointed as auditor of the trustee's accounts subject to such terms and conditions as are specified in the approval.

(15) A person appointed in accordance with subsection (14) shall in relation to the trustee's accounts be deemed to be the auditor appointed by the trustee under section 14 for the purposes of this Act in relation to those accounts and the provisions of this Act with all necessary modifications, apply to and in relation to him accordingly.

16. Audit of trust accounts. (1) In this section—

“financial period”, in relation to a trustee means—

(a) in the case of a trustee who is a trustee on the commencement of this Act or who becomes a trustee after that commencement but before the first day of April next following that commencement,—

(i) the period (being the first period) commencing on the said commencement or the day on which the trustee becomes a trustee, whichever is later, and ending on the thirty-first day of March next following the said commencement; and

- (ii) the period (being a second or subsequent period) of six months ending on the thirty-first day of March or the thirtieth day of September in any year; and
- (b) in the case of a trustee who becomes a trustee on or after the first day of April next following the commencement of this Act—
 - (i) the period (being the first period) commencing on the day on which the trustee becomes a trustee and ending on the thirty-first day of March or the thirtieth day of September next following the day on which he became a trustee whichever first occurs; and
 - (ii) the period (being a second or subsequent period) of six months ending on the thirty-first day of March or the thirtieth day of September, in any year;

“prescribed day” in relation to a financial period of a trustee means a day that is two months after the end of the financial period or where an extension of time is approved pursuant to subsection (3), the day on which the extended time expires.

(2) A trustee shall in respect of the financial period for the trustee first ending after—

- (a) the day on which this Act commences; or
- (b) the day on which the trustee becomes a trustee,

whichever is the later day, and in respect of each financial period for the trustee thereafter, cause the accounting and other records kept by him in pursuance of section 6 and the trust accounts established and kept by him in pursuance of section 7 to be audited by his auditor in respect of the whole of the financial period in question and shall lodge with the Under Secretary, before the prescribed day for that financial period, an auditor's report containing the prescribed information.

(3) An extension of the period of two months referred to in the definition of “prescribed day” in subsection (1) may be approved—

- (a) by the Under Secretary where—
 - (i) application for the extension is made by the trustee;
 - (ii) the reasons for requiring the extension are special; and
 - (iii) the extension does not exceed one month; or
- (b) by the Minister where—
 - (i) the maximum extension has been approved pursuant to paragraph (a); and
 - (ii) the application for extension is made by the trustee and his auditor,

and any such approval may be given subject to conditions.

(4) When in respect of a financial period the accounting and other records and the trust accounts of a trustee, referred to in subsection (2) (hereinafter in this subsection referred to as the “accounts”) are produced to the auditor to enable an audit thereof to be made for the purposes of this section, such accounts shall be accompanied by a statement signed by the trustee and, where the trustee carries on practice or business in partnership, every other member of the firm stating—

- (a) whether the accounts are true and correct;

- (b) whether all moneys received by the trustee or the firm, as the case may be, during the financial period in question and which constitute trust moneys have been lodged to the credit of a trust account kept under this Act at a bank (designating the bank and the office or branch thereof) and disclosed to the auditor for the purposes of the audit;
- (c) whether the moneys referred to in paragraph (b) have been applied for the purposes for which they were so received and in accordance with the Act or are still retained in a trust account referred to in that paragraph (with the exception of the sum (stating the sum)) deposited to the credit of the Queensland Law Society Incorporated pursuant to section 10 of the *Legal Assistance Act 1965-1971*.

(5) Where the matters set out in a statement made for the purposes of subsection (4) are not within the trustee's own knowledge, the trustee shall, before signing the statement, take all reasonable steps to ascertain whether the facts and matters set out in the statement are true and correct.

(6) Every trustee who in a statement made for the purposes of subsection (4) makes a statement false in a material particular knowing it to be false is guilty of an offence and is liable on conviction to a penalty of \$1,000 or to imprisonment for one year or both such penalty and imprisonment.

(7) If a trustee fails to comply with the provisions of subsection (2), the Under Secretary shall report the matter to the Minister.

(8) Every auditor shall have a right of access at all times to the accounting and other records of the trustee kept by him in pursuance of section 6 including all files containing information supporting or relevant to entries in the accounts the subject of the audit and to any books, accounts, cheques or other records relating to an account designated or evidenced as a trust account of the trustee established and kept at any bank and shall be entitled to require from the trustee and where the trustee carries on practice or business in partnership, any of the members of the partnership and any of the trustee's servants or agents and, where the trustee carries on practice or business in partnership, any of the firm's servants or agents such explanation and information as he desires for the audit or unannounced examination.

(9) Where an auditor is of opinion that, to enable him to properly carry out the audit of the accounting and other records and the trust accounts referred to in subsection (2) or an unannounced examination under section 18, it is necessary or desirable that he should be permitted to examine any other books, accounts or records relating to the practice or business of the trustee or where the trustee carries on practice or business in partnership, of the firm, he may require the trustee, and where the trustee carries on practice or business in partnership, the other members of the partnership, to produce for his examination such other books, accounts or records.

(10) The auditor shall forthwith furnish to the Under Secretary a report in writing with respect to—

- (a) any refusal or failure by the trustee to comply with the auditor's requirements under subsection (8) or (9) or the regulations; or

- (b) any refusal or failure by any person without lawful justification to allow the auditor access to any accounting or other records of the trustee to which the auditor has right of access or to give any information possessed by the person as and when required by the auditor pursuant to subsection (8) or the regulations or where the auditor is otherwise hindered, obstructed or delayed in the performance of his duties or the exercise of his powers.

(11) Every auditor shall in the conduct of his audit or examination for the purposes of this Act have due regard to such auditing procedures and standards (if any) as may be prescribed in relation to the audit or, as the case may be, unannounced examination of accounting and other records and trust accounts under this Act. If an auditor departs from the prescribed auditing procedures or standards in the conduct of the audit or, as the case may be, unannounced examination he shall state the extent of such departure in his report or statement for the purposes of this Act on the audit or, as the case may be, examination and his reasons for so doing.

17. Duties of auditor. (1) Where in performance of his duties as auditor for a trustee an auditor becomes aware of any matter which in his opinion—

- (a) may adversely affect the financial position of the trustee to a material extent;
- (b) constitutes a breach of section 6, 7 or 8, or an offence against section 9; or
- (c) is otherwise an irregularity in relation to the accounting and other records or trust accounts of the trustee that ought to be brought to notice,

he shall within seven days furnish a report in writing on such matter to the Under Secretary and a copy thereof to the trustee and, where the trustee is a solicitor or conveyancer, to the Queensland Law Society Incorporated and, where the trustee is a public accountant, to The Public Accountants Registration Board of Queensland.

18. Auditor to make unannounced examinations. (1) An auditor appointed under section 14 shall once at least during every financial period (not being a period of less than six months' duration) make an unannounced examination of the accounting and other records kept by the trustee in pursuance of section 6 and the trust accounts of the trustee kept by him in pursuance of section 7.

(2) If the auditor is of opinion that the results of the examination are such that he should take action in compliance with section 17 he shall take such action accordingly but in any other case he shall include in the auditor's report in respect of the relevant financial period lodged with the Under Secretary under subsection (2) of section 16 a statement that an unannounced examination had been made and the date thereof.

(3) If an auditor or trustee is of the opinion that it is impracticable or unduly onerous to make an unannounced examination in any financial period in accordance with subsection (1), he shall furnish to the Under Secretary a statement in writing setting out his reasons as soon as practicable after the commencement of that financial period.

(4) The Under Secretary may, where he deems it appropriate after consideration of the statement from the auditors or trustee furnished in pursuance of subsection (3), exempt the auditor from making such unannounced examination.

19. Auditing of accounts on ceasing to be trustee. (1) Where a trustee ceases to carry on practice or business or to act as such he shall within two months thereafter—

- (a) cause the accounting and other records kept by him in pursuance of section 6 and the trust accounts kept by him in pursuance of section 7 for the whole of the period from the date up to which those accounts were last audited pursuant to section 16 to the date of his so ceasing or, where no such audit has been performed, for the whole of the period from the date on which he commenced to carry on practice or business or to act as a trustee to the date of his so ceasing, to be audited by his auditor;
- (b) cause a report of the audit performed in pursuance of paragraph (a) to be prepared which report shall contain the prescribed information;
- (c) take action in relation to the auditor's report referred to in paragraph (b) in the manner prescribed by subsection (2) of section 16 in all respects as if the report were a report referred to in that subsection.

(2) Where a trustee ceases to carry on practice or business or to act as such the trustee, or where the trustee is dead his personal representative, shall forthwith take all steps and do all things as are legally permissible and as are requisite for the distribution as soon as practicable and in accordance with law of trust moneys held by the trustee when he ceased to carry on practice or business or to so act.

20. Report of auditor to be laid before Minister in certain cases.

(1) If after consideration of an auditor's report lodged under subsection (2) of section 16 or furnished under subsection (10) of that section or section 17 the Under Secretary is not satisfied—

- (a) that the financial position of the trustee in respect of whom the report is made is such as to enable him to meet all his commitments as a trustee; and
- (b) that the trustee has complied in every respect with the requirements of this Act,

the Under Secretary shall, and for any other reason which the Under Secretary thinks proper may, forward the report to the Minister with any further report thereon that the Under Secretary thinks proper to make and, where the trustee is a solicitor or conveyancer, the Under Secretary shall forward a copy of the auditor's report forwarded to the Minister under this subsection to the Queensland Law Society Incorporated and, where the trustee is a public accountant, the Under Secretary shall forward a copy of the auditor's report to The Public Accountants Registration Board of Queensland.

(2) It is a lawful excuse for the publication of any defamatory statement made in a report by an auditor under subsection (13) of section 15, subsection (2) or (10) of section 16, section 17, 19 or 23 or in any report or further report by the Under Secretary made under subsection 7 of section 16 or subsection (1) or in any explanation by a trustee as a result of an inquiry by the Under Secretary in relation to a report by an auditor under subsection (13) of section 15 if the publication is made in good faith and is made for the purposes of this Act or purports to be so made.

(3) For the purposes of subsection (2)—

- (a) a publication is said to be made in good faith if the matter published is relevant to an examination and audit or a report or further report under, or in pursuance of, this Act; if the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion; and if the person by whom it is made is not actuated by ill-will to the person defamed or by any other improper motive, and does not believe the defamatory matter to be untrue; and
- (b) when any question arises whether a publication was or was not made in good faith, the burden of proof of the absence of good faith lies upon the party alleging such absence.

(4) Where the Under Secretary has received a report referred to in subsection (1), the Under Secretary may, with the consent of the Minister, take possession of the accounting and other records relating to trust moneys of the trustee and where the trustee carries on practice or business in partnership, of the firm.

(5) Upon request by the Under Secretary, or a person authorized by the Under Secretary in writing in that behalf, the trustee and, where the trustee carries on practice or business in partnership, the other members of the partnership and the trustee's servants and agents and, where the trustee carries on practice or business in partnership, any of the firm's servants and agents shall produce the accounting and other records relating to trust moneys held by the trustee relating to his practice or business or, where the trustee carries on practice or business in partnership, held by the firm relating to its practice or business.

Penalty: \$1,000 or imprisonment for one year or both such fine and imprisonment. Default penalty.

(6) The Under Secretary may retain possession of the accounting and other records of which he has taken possession under subsection (4) for such period as he considers reasonably necessary for the purposes of the investigation of matters contained in or arising out of a report referred to in subsection (1) and during that period the Under Secretary shall permit a person who would be entitled to inspect the records if they were not in the possession of the Under Secretary to inspect at all reasonable times such of the records as that person would be so entitled to inspect.

21. Power of Minister to appoint independent auditor. (1) Where the Minister has received—

- (a) a report under subsection (7) of section 16 from the Under Secretary; or

(b) an auditor's report forwarded to him pursuant to subsection (13) of section 15 or section 20,

or for any other reason which the Minister thinks proper he may, if he is satisfied that it is in the interests of the trustee concerned, the trustee's clients or the public generally to do so, appoint in writing an independent auditor (who save in special circumstances shall be the Auditor-General, an officer of the Auditor-General or a person registered as a public accountant under the *Public Accountants Registration Act 1946-1971*) to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and trust moneys and securities held by the trustee.

(2) Where the Minister is of opinion that the whole or any part of the costs and expenses of an auditor appointed by him under this section or section 22 should be borne by the trustee concerned, he may, by order in writing, direct the trustee to pay to the Crown a specified amount, being the whole or part of those costs and expenses, within the time and in the manner specified.

(3) Where a trustee has failed to comply with an order of the Minister under subsection (2), the amount specified in the order may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(4) Where under this section or section 22 the Minister appoints an auditor in relation to a trustee who is a solicitor or conveyancer, the Minister may direct that notice thereof be given to the Queensland Law Society Incorporated.

(5) Where under this section or section 22 the Minister appoints an auditor in relation to a trustee who is a public accountant, the Minister may direct that notice thereof be given to The Public Accountants Registration Board of Queensland.

22. Power of Minister to appoint independent auditor upon application of client. (1) Upon receipt of an application in writing from a person who alleges that a trustee has failed to account to him in respect of any moneys or securities held or received by that trustee for him or on his behalf, the Minister may appoint in writing an independent auditor (who save in special circumstances shall be the Auditor-General, an officer of the Auditor-General or a person registered as a public accountant under the *Public Accountants Registration Act 1946-1971*) to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and trust moneys and securities held by that trustee.

(2) Every application under subsection (1) shall state—

- (a) particulars of the circumstances under which the trustee received the moneys or securities in respect of which he is alleged to have failed to account;
- (b) particulars of those moneys or securities and of the transactions of the applicant and the trustee relating thereto; and
- (c) such other particulars as are prescribed.

(3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made in good faith, be privileged. Subsection (3) of section 20 shall, with all necessary modifications, be applicable for the purposes of this subsection.

(4) The Minister shall not appoint an independent auditor under subsection (1) unless he is satisfied—

(a) that the applicant has good reason for making the application; and

(b) that it is expedient in the interests of the trustee or the applicant or the public generally that the books, accounts and records of and trust moneys and securities held by the trustee should be examined, audited and reported upon.

(5) The Minister may, if he thinks fit, before appointing an independent auditor under subsection (1) give the trustee concerned a reasonable opportunity of being heard upon the matters alleged in the application.

23. Auditor to report to Minister. (1) An auditor appointed by the Minister under section 21 or 22 shall, upon the conclusion of the examination and audit in respect of which he was appointed make a report thereon to the Minister.

(2) The Minister may direct that the report or a copy thereof or of part thereof be made available to the Queensland Law Society Incorporated, the Public Accountants Registration Board and such other persons or bodies as the Minister deems proper.

24. Powers of auditors. (1) An auditor appointed by the Minister to examine and audit the books, accounts and records of and trust moneys and securities held by a trustee may for the purpose of carrying out the examination and audit—

(a) examine on oath the trustee concerned and, where the trustee carries on practice or business in partnership, any of the members of the partnership and any of the trustee's servants and agents and, where the trustee carries on practice or business in partnership, any of the firm's servants and agents and any other auditor appointed under this Act in relation to those books, accounts, records, moneys and securities;

(b) employ such persons as he considers necessary; and

(c) by instrument in writing under his hand authorize any person employed by him to do, in relation to the examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the powers conferred by this paragraph.

(2) Where an agent of the trustee is a banker, then for the purposes of this section and section 26, the term agent includes the manager and accountant of the office or branch of the bank at which the trustee has deposited any trust moneys in any account and any other officer of the bank at that office or branch who in the opinion of the auditor appointed by the Minister under section 21 or 22 is able to give information concerning the affairs of the trustee.

25. As to right of auditors and employees to communicate certain matters. Except for the purpose of carrying into effect the provisions of this Act or so far as may be required for the purpose of any proceedings, civil or criminal or any proceedings before the Statutory Committee of

the Queensland Law Society Incorporated under the *Queensland Law Society Act 1952-1971* or any investigation, inquiry or hearing of any charge pursuant to section 25 of the *Public Accountants Registration Act 1946-1971*, an auditor appointed by the Minister under section 21 or 22 and an employee of any such auditor shall not communicate any matter which may come to his knowledge in the performance of his duties as such an auditor or employee to any person other than the Minister, the Under Secretary, the Commissioner of Police or some other member of the Police Force of or above the rank of inspector, any other person specified by the Minister and, in the case of an employee, the auditor by whom he is employed and, in the case of an auditor, any employee of the auditor.

26. Books, accounts and records to be produced upon demand.

(1) Upon request by an auditor appointed by the Minister under section 21 or 22 or by a person who produces a written authority in that behalf given under paragraph (c) of subsection (1) of section 24—

(a) a trustee and, where the trustee carries on practice or business in partnership, the other members of the partnership and the trustee's servants and agents and, where the trustee carries on practice or business in partnership, any of the firm's servants and agents shall produce any books, accounts and records of and trust moneys and securities held by the trustee relating to his practice or business and where the trustee carries on practice or business in partnership, held by the firm relating to its practice or business; and

(b) an auditor appointed by a trustee shall produce any books, accounts and records held by him relating to the practice or business of the trustee and where the trustee carries on practice or business in partnership, to the firm's practice or business.

(2) A trustee and, where the trustee carries on practice or business in partnership, the other members of the partnership and the trustee's servants and agents and, where the trustee carries on practice or business in partnership, any of the firm's servants and agents and any auditor appointed by the trustee shall answer all questions relevant to the examination and audit which are put to him by an auditor appointed by the Minister under section 21 or 22 or by a person who produces a written authority in that behalf given under paragraph (c) of subsection (1) of section 24.

(3) Where the Minister has appointed an auditor under section 21 or 22, and the Minister is satisfied that the auditor has reasonable grounds for suspecting or believing that trust moneys have been paid by the trustee in question to any person, on demand in writing in that behalf by the Minister, any such person and, where the person is a corporation, the officers of the corporation shall produce to the auditor or a person who produces a written authority in that behalf given under paragraph (c) of subsection (1) of section 24, any books, accounts or other records of that person relevant to trust moneys paid to the person by the trustee and any person on whom a demand in writing is made under this subsection including the officers of a corporation shall be deemed to be an agent of the trustee for the purposes of subsection (1) of section 24 and subsection (2) of this section.

(4) Where books, accounts or records are produced under this section, the auditor or person to whom they are produced may take possession thereof for such period as the auditor or the person to whom they are produced considers necessary for the purposes of the examination and audit and during that period the auditor or person in possession under this subsection shall permit a person who would be entitled to inspect those books, accounts or records if they were not in possession of the auditor or the person who produced the written authority referred to in subsection (1) to inspect at all reasonable times such of those books, accounts or records as that person would be so entitled to inspect.

(5) Any person—

- (a) who fails to comply with any provision of subsection (1), (2) or (3);
- (b) gives any false or misleading answer to any question in pursuance of subsection (2) by an auditor appointed by the Minister under section 21 or 22 or by a person who produces a written authority in that behalf given under paragraph (c) of subsection (1) of section 24; or
- (c) impedes, delays or otherwise howsoever obstructs an auditor appointed by the Minister under section 21 or 22 or any person who produces a written authority given under paragraph (c) of subsection (1) of section 24 in the exercise of his powers or in the discharge of his duties under this Act or attempts so to do,

is guilty of an offence against this Act.

Penalty: \$1,000 or imprisonment for one year, or both such fine and imprisonment: Default penalty.

27. Duties of bank relating to trustee's accounts. (1) Where the Minister has appointed an auditor under section 21 or 22 it shall be the duty of the manager or other principal officer of a bank with which a trustee has deposited any trust moneys whether in his own account or in any general trust account or separate trust account to disclose each and every such account to the auditor upon demand in writing delivered to him personally by the auditor and to permit the auditor to inspect and make and take away with him a copy of or extract from each and every such account and of or from any book, account, document, or writing relating to any such account.

(2) It shall be the duty of the manager (or other principal officer at the office or branch of the bank at which a trustee keeps a trust account designated or evidenced as such to inform the Under Secretary and, where the trustee is a solicitor or conveyancer, the Queensland Law Society Incorporated and, where the trustee is a public accountant, The Public Accountants Registration Board of Queensland forthwith whenever the

trust account is overdrawn or whenever a cheque drawn on the trust account is dishonoured by reason of insufficiency of funds in the trust account to meet the cheque.

(3) For the purposes of this Act the bank shall be deemed to be the agent of the trustee and such books, accounts, cheques or other records of the bank referred to in subsection (1) shall be deemed to be the books, accounts, cheques or other records of the trustee.

(4) No bank shall incur any liability whether in respect of any breach of trust or otherwise by reason only of any disclosure made pursuant to this section or section 16, 24 or 26.

28. Penalty for destroying, concealing or altering records or sending records or other property out of the State. (1) A person who, with intent to defeat the purposes of this Act or with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Act—

- (a) destroys, conceals or alters any book, account, record or document relating to the practice or business of a trustee; or
- (b) sends or attempts to send or conspires with any other person to send out of the State any such book, account, record or document or any property of any description belonging to or in the disposition of or under the control of a trustee,

shall be guilty of an offence against this Act.

Penalty: \$1,000 or imprisonment for one year, or both such fine and imprisonment.

(2) If in a prosecution for an offence under subsection (1) it is proved that the person charged—

- (a) destroyed, concealed or altered any book, account, record or document aforesaid; or
- (b) sent or attempted to send or conspired to send out of the State any such book, account, record or document or any property aforesaid,

the onus of proving that in so doing he did not act with intent to defeat the purposes of this Act or with intent to prevent, delay or obstruct the carrying out of an examination or audit under this Act shall lie on him.

29. Saving in respect of obligations and requirements under Queensland Law Society Act. Nothing contained in this Act shall prejudice or affect any provision of the *Queensland Law Society Act 1952-1971* or the Rules made thereunder whereby or whereunder further obligations or requirements are or may be imposed on a solicitor or conveyancer with respect to—

- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the Council of the Society);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of accounts, books and records.

30. Inspection of auditor's reports. (1) The reports of auditors lodged with or furnished to the Under Secretary under this Act shall so far as they relate to moneys in respect of which any person satisfies the Under Secretary that he has a sufficient interest, be available in the hands of the Under Secretary for inspection by that person or by a person authorized in writing in that behalf by that person.

(2) The report of an auditor in respect of any financial period or part of a financial period shall be available in the hands of the Under Secretary for inspection including the making of copies thereof or the taking of extracts therefrom by the auditor appointed to audit the accounts of the trustee for the next ensuing financial period or by any member of The Public Accountants Registration Board of Queensland or by any person authorized so to do by the said Board or by the secretary of the Queensland Law Society Incorporated or by a person appointed by the Council of the Society or by such other persons or bodies as the Under Secretary deems proper.

(3) A report referred to in subsection (2), or subsection (1) of section 23, or a copy of or extract therefrom certified as correct by the Under Secretary shall for the purposes of section 25 of the *Public Accountants Registration Act 1946-1971* be deemed to be a complaint or charge preferred to the Board under subsection (1) of that section and for the purposes of the said Act to be prima facie evidence of the matters set out in such report, copy or extract.

31. Security to be lodged by trustee. (1) Within fourteen days after the expiration of each financial period, every trustee shall lodge with the Under Secretary a statement in writing signed and certified as correct by the trustee in the presence of a justice of the peace setting out the largest amount of trust moneys in his possession solely or jointly with any other person or persons during the financial period in question.

(2) Every trustee shall within the period specified in subsection (1) lodge with the Under Secretary a security for the proper application by him of trust moneys in or coming into his possession solely or jointly with any other person or persons during the financial period next succeeding the last financial period in respect whereof he is required to lodge with the Under Secretary a statement in compliance with subsection (1).

(3) The security required by subsection (2) shall be in an amount equal to one third of the amount required to be set out in the statement referred to in subsection (1) or the amount of \$10,000 whichever is the less.

(4) The security required by this section shall be by such method as is prescribed.

(5) The power to make regulations under this Act includes power to make regulations with respect to the custody and investment of, and payment of interest on, any security by way of cash deposit lodged under this section.

(6) A security lodged under this section shall be applied by the Under Secretary subject to and in accordance with the regulations.

(7) The regulations may provide that, subject to terms and conditions prescribed, this section shall not apply to prescribed trustees.

(8) This section does not apply to—

- (a) a trustee who is a practising practitioner within the meaning of the *Queensland Law Society Act 1952-1971* in respect of whom it is provided by section 32 of that Act that it shall not be necessary to deposit any moneys or securities or fidelity bond by way of guarantee for the proper application of trust moneys coming to him in the practice of his profession and where he carries on any other business or profession whereby he is a trustee, that business or profession; and
- (b) a trustee in relation to his appointment as a trustee of a trust account under section 11 of the *Queensland Law Society Act 1952-1971* or a receiver under and for the purposes of section 11A of that Act.

32. Power of Minister to exempt. (1) The Minister may by order published in the Gazette, exempt any trustee or class of trustee from the operation of all or any of the provisions of this Act either absolutely or subject to such conditions as the Minister specifies in the order.

(2) The Minister may, by order published in the Gazette, revoke or vary any previous order made under subsection (1) or under this subsection.

(3) Upon publication of any order under this section, that order shall take and have effect according to its tenor.

(4) The Minister may in relation to a particular trust or particular trusts by writing under his hand exempt a trustee either from compliance with all or any of the provisions of this Act and until it is revoked an exemption under this subsection shall take and have effect according to its tenor.

(5) An exemption under subsection (4) may be subject to conditions and may be revoked or varied by the Minister.

(6) A trustee shall not contravene or fail to comply with any condition to which an exemption granted under this section is subject.

33. Return of property in trustees' hands to which beneficiaries are absolutely entitled. (1) Any trustee who on the thirtieth day of September in any year has in his possession or under this control any property to which a person (hereinafter in this section referred to as the "beneficiary") to whom subsection (2) relates—

(a) is on that day; and

(b) was during the whole of the year ended on that day,

absolutely entitled shall, within thirty-one days after that day, lodge with the Under Secretary a return in writing signed by the trustee setting out full particulars of that property.

(2) The return shall be lodged under subsection (1) in relation to the following beneficiaries, that is to say—

(a) a beneficiary who is not known;

(b) a beneficiary whose whereabouts are unknown;

- (c) a beneficiary of whom it is not known whether the beneficiary is alive or dead; or
- (d) a beneficiary who has died, the executors or administrators of whom are dead or whose whereabouts are unknown.

(3) The return lodged under subsection (1) shall be accompanied by a statement of all costs, charges, and expenses (if any) claimed by the trustee to be chargeable in his favour against or payable to him out of the property referred to in the return, and of any claim or lien by him and of the full and true reasons why the property has not been transferred, assigned, delivered, or paid over to the beneficiary.

(4) Any trustee who fails to lodge the return required to be lodged under subsection (1) shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding five hundred dollars, and in any proceeding for the recovery of any such penalty the burden of proof that no circumstance had arisen which under this section would render it necessary to lodge a return shall lie upon the defendant.

(5) Upon the receipt of a return lodged in pursuance of subsection (1) the Minister may by notice under his hand or under the hand of the Under Secretary require the trustee to transfer, assign, deliver, or pay over, as the case may require, to the Public Curator all property referred to in the return within such time as the Minister may fix and any lien claimed against such property by the trustee shall, upon such requirement of the Minister being made, cease to have any legal effect whatever.

(6) If a trustee fails to comply with a requirement made under subsection (5) according to its tenor the Public Curator may apply by motion to the Supreme Court for an order that the trustee shall transfer, assign, deliver, or pay over the property the subject of the requirement forthwith. An order may be made in the absence of the trustee concerned if the notice of motion has been duly served upon him or the Court or Judge is satisfied that reasonable efforts have been made to serve the same.

(7) The certificate of the Minister under his hand or of the Under Secretary under his hand that the Minister has made a requirement under subsection (5) is conclusive evidence of the requirement and the making thereof.

(8) Upon the property being transferred, assigned, delivered, or paid over to the Public Curator in accordance with a requirement or order under this section, the Public Curator shall deal with and apply the same as the trustee thereof pursuant to the provisions of the *Public Curator Act 1915-1971* and shall without delay use every endeavour to ascertain the beneficiary or beneficiaries and to hand over or distribute the property to him or amongst them.

(9) Any costs, charges, or expenses which are claimed by the trustee to be chargeable in his favour against or payable to him out of the property in question shall be properly vouched by the trustee and investigated by the Public Curator; and if the Public Curator is satisfied that the same are correct, then the sum allowed by him, or, if the trustee requires that his claim should be taxed, then the sum allowed by the Taxing

Officer of the Supreme Court after taxation, shall be paid to the trustee as and when moneys in respect of such property become available, or in the discretion of the Public Curator may be paid forthwith to the trustee, in which case the sum so paid shall be part of the costs, charges and expenses of the Public Curator against the property.

(10) In this section the term "trustee" means a trustee within the meaning of section 4 and every person who is a trustee under any other Act or law or rule of law.

34. When Public Curator may control operations on trust accounts.

(1) Where the Public Curator is of opinion that any trustee (other than a trustee who is a "practising practitioner" within the meaning of the *Queensland Law Society Act 1952-1971*)—

- (a) is an undischarged bankrupt;
- (b) has stolen or fraudulently misapplied any trust moneys; or
- (c) has a general deficiency in his trust account,

the Public Curator may under, subject to, and in accordance with the provisions of this section, control operations on any or all trust accounts of which that trustee is, whether solely or jointly with any other person or persons a trustee.

(2) Where the Public Curator proposes to take action under subsection (1), he shall serve notice in writing on—

- (a) the trustee concerned; and
- (b) any other person authorized to operate on any trust account in respect of which the notice is served; 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 notice is served is kept.

(3) A notice served under subsection (2) shall be signed by the Public Curator and dated and shall state that the Public Curator requires the trust account or trust accounts specified therein to be operated on under his control.

(4) After a notice served under subsection (2) 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 notice ceases to be effective, whether or not a copy of such notice has been served on the trustee 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 specified in the notice unless it bears (as well as the signature of the trustee or other person authorized to operate on that trust account) the signature of the Public Curator or of a person thereunto authorized by him (it being hereby declared that the Public Curator may in writing so authorize any of his officers or agents).

(5) If that trustee or other person authorized to operate on a trust account specified in the notice served under subsection (2) is unwilling to operate thereon in conjunction with the Public Curator or person thereunto authorized by the Public Curator, the Public Curator or, with his consent in writing, that authorized person may thereupon operate on any such trust account alone.

(6) A statutory declaration made by the Public Curator or person authorized by him under subsection (4) and subscribed under *The Oaths Acts 1867 to 1960* to the effect that the trustee or other person authorized to operate on any trust account is unwilling to operate thereon in conjunction with the Public Curator or the person authorized by the Public Curator shall be sufficient evidence to the trustee's banker of that fact.

(7) After a notice served under subsection (2) has been served on the trustee concerned, and until such notice ceases to be effective, that trustee shall not sign any cheque or other instrument drawn on any trust account specified in the notice unless the cheque or other instrument has first been signed by the Public Curator or a person thereunto authorized by the Public Curator.

(8) After a notice served under subsection (2) has been served on any person (other than the trustee concerned) who is authorized to operate on any trust account specified in the notice and until the notice ceases to be effective, that person shall not sign any cheque or other instrument drawn on any trust account specified in the notice unless the cheque or other instrument has first been signed by the Public Curator or a person thereunto authorized by the Public Curator.

(9) Any trustee, or manager or principal officer or other officer of any bank, or any person authorized to operate on the trust account of a trustee (including any trustee who is authorized to operate on the trust account of another trustee) who knowingly contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act and liable to a penalty of \$500.

(10) Any trustee in respect of whose trust account a notice is served under subsection (2) may appeal to a Judge who may make such order in the matter as he thinks fit.

- (11) A notice served under subsection (2) shall cease to be effective—
- (a) if the Public Curator rescinds the notice, on the date when it is so rescinded (and it is hereby declared that any such notice may be rescinded by the Public Curator); or
 - (b) if a Judge on appeal orders that the notice cease to be effective, on the date specified by the Judge as the date on which the notice shall cease to be effective, or, if no date is specified, on the date of the order.

(12) In every case in which any notice has ceased to be effective, the Public Curator shall, as soon as practicable, serve on all persons who have been served therewith a further written notice that such notice has ceased to be effective.

(13) Any notice or further 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 his usual place of abode or business or at his place of abode or business last known to the Public Curator.

(14) No bank, and no manager or principal officer or other officer of a bank shall incur any civil liability to any person for dishonouring or refusing or failing to make payment on a cheque or other instrument which is drawn on a trust account in respect of which the Public Curator has served a notice under subsection (2) and is not signed by the Public Curator or a person thereunto authorized by the Public Curator, if such dishonour or refusal or failure to make payment occurs before the manager or other principal officer who was served with the notice is served by the Public Curator with a further written notice that such notice has ceased to be effective.

35. Powers of the Public Curator with respect to trust accounts of deceased trustees, etc. (1) Where the Public Curator is of opinion that any trustee (other than a trustee who is a practising practitioner within the meaning of the *Queensland Law Society Act 1952-1971*)—

- (a) has died;
- (b) is because of mental or physical illness incapable of operating on a trust account; or
- (c) cannot be found,

and that trustee is (or if he has died was) either solely or jointly with any other person or persons, a trustee of any trust account, the Public Curator may, under, subject to and in accordance with the provisions of this section, act as a trustee of that trust account.

(2) At least fourteen days before commencing to act, pursuant to this section, as a trustee, written notice that any person desiring to object thereto may forward his objection in writing to the Public Curator shall be forwarded by the Public Curator by prepaid registered post to each of the following persons, at his usual place of abode or business or at his place of abode or business last known to the Public Curator, namely—

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

(3) The Public Curator shall consider any objections to his acting under this section as trustee in respect of the trust account in question, but the fact that such objections have been made shall not prevent the Public Curator from so acting.

(4) If, at the expiration of the period of fourteen days after the forwarding by post of the notices specified in subsection (2) notwithstanding objections, if any, forwarded in answer to those notices, the Public Curator determines to act as a trustee of the trust account in question the Public

Curator shall forward by prepaid registered post a further notice to each of the persons to whom a notice was, in respect of the trust account in question, required by subsection (2) of this section to be forwarded at his usual place of abode or business or at his place of abode or business last known to the Public Curator.

(5) The further notice forwarded under subsection (4) shall be signed by the Public Curator and dated and shall state that the Public Curator will act as a trustee of the trust account specified therein.

(6) After any such further notice has been served as required by subsection (4) and until it ceases to be effective, the Public Curator shall be for all purposes a trustee of any trust account specified in the further notice in place of the trustee referred to in subsection (1).

(7) Any of the following persons may appeal against the Public Curator acting as a trustee under this section to a Judge (who may make such order in the matter as he thinks fit), namely—

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

(8) A further notice forwarded under subsection (4) shall cease to be effective—

- (a) if the Public Curator rescinds it, on the date when it is so rescinded (and it is hereby declared that any such further notice may be rescinded by the Public Curator); or
- (b) if a Judge on appeal orders that the Public Curator shall cease to act as trustee in respect of the trust account in question, on the date specified by the Judge as the date on which the Public Curator shall so cease or, if no such date is specified, on the date of the order.

(9) In every case in which any further notice has ceased to be effective under subsection (8), the Public Curator shall as soon as practicable notify by prepaid registered post each of the persons to whom a copy of the further notice was forwarded at his usual place of abode or business or at his place of abode or business last known to the Public Curator that such further notice has ceased to be effective.

(10) When the manager or other principal officer of the office or branch of any bank (as the case may be) has received from the Public Curator a further notice under this section in respect of any trust account kept with that office or branch, and such manager or other principal officer has not been notified that such further notice has ceased to be

effective, such manager or other principal officer shall not be bound to enquire 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 further notice is in force shall not incur any liability that it would not have incurred if such further notice were in force.

36. Act to apply in respect of certain moneys and bank accounts.

Where any solicitor, conveyancer or person deemed to be a trustee under subsection (5) of section 4 is authorized howsoever to withdraw moneys from or otherwise operate on any account opened or kept at any bank in the name of a client of the solicitor, conveyancer or other person so deemed to be a trustee in the course of the practice of his profession or the carrying on of business as such for the purpose of the use or application by the solicitor, conveyancer or, as the case may be, person so deemed to be a trustee of any moneys in such account in connexion with or in relation to any business, proceeding, transaction or matter in which or with respect to which he acts in the course of or in connexion with his practice or business as such for the client in question than in relation to the solicitor, conveyancer or person so deemed to be a trustee—

- (a) the moneys for the time being in such an account shall be deemed to be moneys received for or on behalf of the client by the solicitor, conveyancer or, as the case may be, person so deemed to be a trustee in the course of or in connexion with the practice of his profession or the carrying on of his business as such;
- (b) the account shall be deemed to be an account established and kept under section 7; and
- (c) in relation to such moneys the solicitor, conveyancer or, as the case may be, person so deemed to be a trustee shall be deemed to be a trustee within the meaning of this Act,

and accordingly this Act shall apply and extend subject to such modifications (if any) as may be prescribed by the regulations.

37. Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act for or with respect to—

- (a) providing for the production to an auditor appointed under section 14 by the trustee, his servants and agents (including any banker of the trustee), of books, papers and accounts;
- (b) prescribing the persons to whom the reports of auditors shall be sent for inspection, information or record;
- (c) trustees books, accounts and records, the form and manner of keeping the same and accountancy procedures to be followed in relation thereto;
- (d) the nature and scope of, and procedures and standards to be followed or given due regard to in, audits and unannounced examinations for the purposes of this Act and the form and content of reports on such audits and examinations;

- (e) returns and statements to be furnished by trustees and the persons to whom the returns shall be sent or made available for inspection, information or record;
- (f) forms and the purposes for which the forms are to be used;
- (g) the preparation by trustees of accounts and financial statements and the form and content thereof;
- (h) cheques and receipts of trustees relating to trust moneys;
- (j) requiring persons appointed as auditors under section 14 to have professional indemnity insurance in the prescribed amount indemnifying persons having lawful claims against such auditors in relation to their functions and duties under this Act;
- (k) all matters and things which by this Act are permitted or required to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

(2) Save as is otherwise expressly prescribed in this Act, the regulations—

- (a) may be of general or specifically limited application; and
- (b) may impose a penalty of not more than \$500 for any contravention thereof.

38. Offences and penalties. (1) A person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act.

(2) Where no penalty is expressly provided, a person guilty of an offence against this Act is liable to a penalty of \$500.

(3) Proceedings summarily for any offence against this Act may be taken by the Under Secretary or, with the written consent of the Minister, by any person.

(4) Except where this Act otherwise provides, offences against this Act shall be punishable upon summary conviction.

39. Default penalty. (1) Where in, or at the foot of, any section or part of a section there appears the expression "Default penalty" it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is convicted and liable to an additional penalty for each day during which the offence so continues of \$30.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything forthwith or within a particular period, that offence, for the purposes of subsection (1) shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such time or period has elapsed.

SCHEDULE
ACTS REPEALED

[s. 3

Year and Number of Act	Title of Act
14 Geo. 5 No. 4	The Trust Accounts Act of 1923
16 Geo. 5 No. 2	The Trust Accounts Act Amendment Act of 1925
1 Eliz. 2 No. 27	The Trust Accounts Acts Amendment Act of 1952
8 Eliz. 2 No. 6	The Trust Accounts Acts Amendment Act of 1959