

Queensland



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

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No. 22 of 1974

**An Act to amend the Trust Accounts Act 1973 in certain particulars**

[ASSENTED TO 24TH APRIL, 1974]

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 and citation.** (1) This Act may be cited as the *Trust Accounts Act Amendment Act 1974*.

(2) The *Trust Accounts Act 1973* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Trust Accounts Act 1973—1974*.

**2. Amendment of s. 4.** Section 4 of the Principal Act is amended by, in subsection (1), inserting after the definition " moneys received for or on behalf of any person " the following definition:—

" " person " includes a body corporate;".

**3. New s. 16A.** The Principal Act is amended by inserting after section 16 the following section:—

**" 16A. Liability of principal or employer for offence by agent or employee.** (1) Where a person who is an agent or, as the case may be, employee of a principal or, as the case may be, employer contravenes or fails to comply, in the course of his duties as such agent or employee, with any provision of section 16. that principal or employer shall be deemed to have committed the offence constituted by such contravention or failure to comply and, whether or not that agent or employee is prosecuted in respect of an offence, may be convicted thereof.

The operation of the provisions of section 23 of *The Criminal Code* is excluded in respect of the liability of a principal or, as the case may be, employer for an offence so deemed under this subsection to have been committed.

In any proceeding against a principal or, as the case may be, employer for an offence referred to in this subsection, it is immaterial that—

- (a) the offence was committed without the authority or contrary to the instructions of that principal or employer;
- (b) the offence occurred independently of the exercise of the will of that principal or employer.

(2) Nothing in this section shall affect the liability of a person who actually commits an offence referred to in subsection (1)."

**4. Amendment of s. 17.** Section 17 of the Principal Act is amended by omitting the expression " (1) ".

**5. Amendment of s. 20.** Section 20 of the Principal Act is amended by, in subsection (2), inserting after the words " report or further report " the words " by an inspector under section 26A, or ".

**6. New s. 26A.** The Principal Act is amended by inserting after section 26 the following section:—

**" 26A. Appointment and powers of inspector.** (1) The Governor in Council may from time to time appoint such and so many inspectors as he considers necessary for the effectual administration of this Act. Such inspectors shall be appointed and hold office under, subject to, and in accordance with the *Public Service Act* 1922-1973.

(2) Without limiting the generality of subsection (1), an officer employed in any Department of the Government of this State may be appointed an inspector under this section and any such appointee may hold that appointment in conjunction with the office for the time being held by him in that Department.

(3) An inspector may at any time and from time to time require a trustee—

- (a) to produce to him for inspection, or examination, or audit, or inspection and examination and audit—
  - (i) all accounting and other records whatever kept by the trustee in pursuance of section 6;
  - (ii) all trust accounts whatever required to be established by the trustee and kept in pursuance of section 7; and
  - (iii) all contracts, agreements and other documents whatever in the possession, custody, or power of the trustee that relate to any transaction whatever by or with the trustee, or any such contract, agreement, or other document that the inspector may specify; and
- (b) to answer any question or supply any information that relates to any record, account, contract, agreement or document referred to in this subsection, or that relates to any entry therein.

(4) An inspector at any time and from time to time—

- (a) may require any person who has possession, custody, or power of any record, account, contract, agreement or document whatever relating to any transaction by or with any trustee, to produce to that inspector for inspection, or examination, or audit, or inspection and examination and audit, that record, account, contract, agreement or document and in addition, to the satisfaction of the inspector, supply any information with respect thereto or with respect to any entry therein;
- (b) may, in relation to any record, account, contract, agreement or document referred to in subsection (3) or this subsection, take notes or copies or extracts from any such record, account, contract, agreement, or document, or of any entries therein.

(5) Where an inspector considers it necessary to do so for the purpose of obtaining evidence for production in any proceeding for an offence suspected, on reasonable grounds, of having been committed against this Act, he may impound and retain any record, account, contract, agreement, or document produced to him in pursuance of this section.

(6) In any case referred to in subsection (5), the trustee or other person having the possession, custody or power of that record, account, contract, agreement, or document at the time it was impounded and retained shall be entitled, upon request made to that inspector, to receive from him, within a reasonable time after that request is made, a copy of any such document certified by that inspector to be a true copy thereof and any such certified copy shall be received in any proceeding in any Court as evidence of and shall be of the same force and effect as that original record, account, contract, agreement or document.

(7) A record, account, contract, agreement or document that is impounded and retained by an inspector under this section may be kept by him—

- (a) for such period as he reasonably considers necessary for the purposes of this Act; or
- (b) where any proceeding is commenced or to be commenced for an offence against this Act and to which that record, account, contract, agreement or document relates in any manner whatever, until the final determination, including any appeal, in respect of that proceeding.

(8) For the purpose of performing any duties or, as the case may be, exercising any powers that are imposed or conferred upon him by this section, an inspector may enter upon and remain on any premises where a trustee is engaged in the practice of his profession or the carrying on of his business.

(9) A trustee or other person shall not—

- (a) obstruct, threaten, or intimidate or attempt so to do an inspector in the exercise of any of his powers or authorities or functions under this section or in the discharge of any of his duties thereunder;
- (b) fail to produce for inspection, or examination, or audit, or inspection and examination and audit any record, account, contract, agreement, or document whatever when required so to do under this section;
- (c) when required under this section to answer any question or supply any information, refuse to give that answer or supply that information, or give an answer or supply information that in either case is false or misleading; or
- (d) retake possession of or attempt to retake possession of any record, account, contract, agreement or document impounded and retained under the authority of this section.

(10) A trustee or other person convicted of an offence against any provision of this section shall be liable to a fine not exceeding \$500.00 nor less than \$20.00, or to imprisonment for not more than six months, or to both that fine and that imprisonment, and, on conviction for a second or subsequent offence, to a fine not exceeding \$1 000.00 nor less than \$50.00, or to imprisonment for twelve months, or to both that fine and that imprisonment.

(11) Any requirement whatever under this section directed to a trustee or other person by an inspector may be made verbally or by notice in writing served by post, within the meaning of the term "service by post" under the *Acts Interpretation Act 1954-1971*.

(12) Notwithstanding any provision of this section to the contrary, a person shall not be required to answer any question or supply any information that tends to incriminate him.

(13) In every case where, under this section, an inspector has performed any duties or, as the case may be, exercised any powers, he shall as soon as practicable thereafter furnish a report thereon in writing to the Under Secretary."

**7. Amendment of s. 27.** Section 27 of the Principal Act is amended by, in subsection (2), inserting after the words "to meet the cheque" the words "except where the trustee is a solicitor and the amount by which the trust account is overdrawn does not exceed the moneys deposited to a special account of the Queensland Law Society Incorporated under the name of that trustee in compliance with the provisions of section 10 of the *Legal Assistance Act 1965-1971*".