Queensland

QUEENSLAND LAW SOCIETY AMENDMENT BILL 1999

Queensland

QUEENSLAND LAW SOCIETY AMENDMENT BILL 1999

TABLE OF PROVISIONS

1999

A BILL

FOR

An Act to amend the *Queensland Law Society Act 1952*

The Parliament of Queensland enacts—

Short title

Clause **1.** This Act may be cited as the *Queensland Law Society Amendment Act 1999*.

Act amended

Clause **2.** This Act amends the *Queensland Law Society Act 1952*.

Insertion of new s 18A

Clause **3.** After section 18—

insert—

‘Minister may require report about fund

‘**18A.(1)** This section applies if the Minister believes, on reasonable grounds, that the fund is not sufficient to satisfy the liabilities of the society in relation to the fund.

‘**(2)** The Minister may, by written notice to the council, require the council to give the Minister a written report about the fund on the matters stated in the notice.

‘**(3)** The council must comply with the requirement within 14 days after receiving the notice or within the further time allowed by the Minister.’.

Amendment of s 21 (In addition to annual contributions, practitioners may be required to pay levy for benefit of fund)

Clause **4.(1)** Section 21(1), after ‘practitioner’—

insert—

‘, or practising practitioner of a particular class,’.

(2) Section 21(1), ‘fit, not exceeding $20’—

omit,insert—

‘reasonable’.

(3) Section 21(3)—

omit.

Insertion of new s 21A

Clause **5.** After section 21—

insert—

‘**Prescribed levy to be paid for benefit of fund**

‘**21A.(1)** This section applies if the Minister gives the council a written notice under section 18A(2).

‘**(2)** The Governor in Council may, by regulation, impose a levy (the **“prescribed levy”**) on every practising practitioner, or practising practitioner of a particular class, for payment into the fund.

‘**(3)** The prescribed levy—

(a) is payable on the day and in the way stated in the regulation; and

(b) is in addition to any levy imposed by the council under section 21(1).

‘**(4)** The prescribed levy is taken to be a levy imposed by the council under section 21(1).

‘**(5)** Section 52 does not apply to a regulation made under this section.[1]

‘**(6)** This section expires 1 year after it commences.’.

Amendment of s 24 (Application of fund)

Clause **6.(1)** Section 24—

insert—

‘**(1B)** Subsection (1C) applies if—

(a) before the commencement of this section, a practising practitioner, or the practising practitioner’s clerk or employee

---

1 Section 52 (Regulation making power)

received an amount on trust for investing by way of loan; and

(b) the practising practitioner, or the practising practitioner’s clerk or employee—

(i) invested the amount in a loan; or

(ii) purported to invest the amount in a loan (the **“purported loan”**); and

(c) a person suffers a pecuniary loss mentioned in subsection (1) in relation to the amount.

‘**(1C)** In working out the amount to be applied for reimbursing the person, the council may—

(a) have regard only to the amount invested, or purported to have been invested, as principal for the loan or purported loan; and

(b) deduct any amount, whether of principal, interest or another payment however described, paid in relation to the loan or purported loan, that the person has received.’.

(2) Section 24(4)—

omit, insert—

‘**(4)** Subsection (4A) applies despite subsection (1A) if the council, after considering the relevant particulars for the fund, decides that the fund has, or will have, sufficient assets to apply in reimbursing the persons mentioned in subsection (1A) a greater total amount than the amount permitted in subsection (1A).

‘**(4A)** The council may apply, or approve to be applied, out of the fund the amount the council decides is reasonable for the reimbursement of persons mentioned in subsection (1A).

‘**(4B)** The council must notify the Minister in writing if, under this section, either of the following (an **“event”**) happens in relation to a pecuniary loss mentioned in subsection (1)—

(a) the council decides either not to reimburse a person’s loss, or not to reimburse a person’s loss in full;

(b) at any time, the council does not have a reasonable expectation that the amount decided on to reimburse a person’s loss will be paid in full within 2 years of the decision.

‘**(4C)** The notice must give details of—

(a) the assets of the fund; and

(b) the material particulars of the event; and

(c) for an event mentioned in subsection (4B)(a), the matters the council considered in making its decision and its reasons for the decision.

‘**(4D)** The notice must be given—

(a) for an event mentioned in subsection (4B)(a)—within 14 days after the decision; or

(b) for an event mentioned in subsection (4B)(b)—

(i) if the council does not have the expectation when the decision is made—within 14 days after the decision; or

(ii) if the council ceases to have the expectation after the decision is made—within 14 days after ceasing to have the expectation.’.

(3) Section 24—

insert—

‘**(6)** In this section—

“loan” includes an arrangement for providing financial accommodation.

“relevant particulars”, for the fund, means—

(a) the liabilities of the fund, whether ascertained or contingent; and

(b) the amount of the levies for payment into the fund that may be imposed under section 21.’.

Insertion of new s 24AA

Clause **7.** After section 24—

insert—

‘**Minister may direct further reimbursement**

‘**24AA.(1)** This section applies if the Minister—

(a) is given a notice under section 24(4B); and

(b) after considering the relevant particulars for the fund and the assets of the fund, reasonably believes that—

(i) the loss mentioned in the notice should be reimbursed or reimbursed to a greater extent; or

(ii) if the reimbursement of the loss is to be paid over a period, the period is unreasonable.

‘**(2)** The Minister may, by written notice to the society, direct the society to—

(a) reimburse the loss or reimburse the loss to a greater extent; or

(b) pay the reimbursement in the way and within the period stated in the notice.

‘(3) In this section—

“relevant particulars” has the meaning given by section 24(6).’.

Insertion of new s 24C

Clause **8.** After section 24B—

insert—

‘Fund does not protect investments

‘**24C.(1)** This section applies if a practising practitioner receives or holds an amount on trust and is instructed to invest the amount.

‘**(2)** A claim may not be made against the fund for reimbursing pecuniary loss suffered because of the practising practitioner’s unlawful conduct in relation to the amount.

‘**(3)** However, subsection (2) does not apply if the principal purpose for which the practising practitioner holds the amount on trust is a purpose other than investing the amount.

Examples for subsection (3)—

- the balance of settlement moneys for the purchase of property in a conveyancing transaction pending settlement
- an amount received as the proceeds of a plaintiff’s damages claim held pending disbursement to the plaintiff and any persons entitled to a part of the proceeds

- an amount held as executor of a deceased estate pending finalisation of the estate

'**(4)** In this section—

"practising practitioner" includes a practising practitioner's clerk or employee.

"unlawful conduct" means conduct that, if subsection (2) did not apply, would make the fund liable, under section 24, to reimburse persons who suffer pecuniary loss because of the conduct.'.

Insertion of division heading

Clause **9.** Part 6, before section 54—

insert—

'***Division 1—Transitional provisions for Act No. 13 of 1997***.'.

Insertion of division heading

Clause **10.** Before section 56—

insert—

'***Division 2—Transitional provision for Act No. 20 of 1998***.'.

Insertion of new pt 6, div 3

Clause **11.** After section 56—

insert—

'***Division 3—Transitional provision for Queensland Law Society Amendment Act 1999***

'Transitional provisions for particular practitioner levies

'**57.(1)** This section applies if, within the 5 years immediately before the commencement of this section—

(a) the fund has been insufficient to satisfy the liabilities of the society for the fund; and

(b) under rules of the society made under section 5A,[2] the council has levied practising practitioners for an amount (the **"levy amount"**) payable into its general funds to enable the society to give or advance an amount to the fund under section 22.[3]

'**(2)** It is declared that despite the provisions of section 21, as in force immediately before the commencement of this section, the levy is taken to have been validly imposed under section 21.[4]

'**(3)** It is further declared that—

(a) the levy amount is taken—

(i) to be an amount paid to or on account of the fund by a practising practitioner under section 14(a);[5] and

(ii) not to have been paid to the general funds of the society; and

(b) any advance under section 22 by the society to the fund arising out of or because of the levy is taken to have not been made.'.

2 Section 5A (Rules)

3 Section 22 (Society may advance moneys from its general funds to the fund)

4 Section 21 (In addition to annual contributions, practitioners may be required to pay levy for benefit of fund)

5 Section 14 (Moneys payable into fund)