

LEGAL PRACTITIONERS (AMENDMENT) ACT.

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 29, 1967.

An Act to make further provisions with respect to solicitors' trust accounts and to require solicitors to deposit part of their trust accounts with The Law Society of New South Wales; to provide for the administration and investment of the fund created by amounts so deposited and the disbursement of the interest earned on the investment of moneys in that fund; to make provision for the appointment of a receiver of certain property of a solicitor in certain cases; to give effect to the change of name of the Incorporated Law Institute of New South Wales; for these and other purposes to amend the Legal Practitioners Act, 1898, the Conveyancing Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 30th March, 1967.]

BE

Legal Practitioners (Amendment).

No. 29, 1967 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title and citation.

1. (1) This Act may be cited as the "Legal Practitioners (Amendment) Act, 1967".

(2) The Legal Practitioners Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Legal Practitioners Act, 1898–1967.

(3) The Conveyancing Act, 1919, as amended by subsequent Acts and by this Act, may be cited as the Conveyancing Act, 1919–1967.

Amendment of Act No. 22, 1898.

2. (1) The Legal Practitioners Act, 1898, as amended by subsequent Acts, is amended—

Sec. 3. (Interpretation.)

- (a) (i) by omitting from the definition of "Council" in section three the word "Institute" and by inserting in lieu thereof the word "Society";
- (ii) by omitting from the same section the definition of "Institute";
- (iii) by omitting from the definition of "Secretary" in the same section the word "Institute" and by inserting in lieu thereof the word "Society";
- (iv) by inserting in the same section next after the definition of "Secretary" the following new definition :—

"Society" means The Law Society of New South Wales.

Sec. 40A. (Unqualified person not to act as solicitor.)

- (b) by omitting from subsection two of section 40A the word "Institute" and by inserting in lieu thereof the word "Society";

Sec. 40G. (Employment by solicitor of persons struck off the roll or suspended.)

- (c) by omitting from subsections one and two of section 40G the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society";

(d)

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- (d) by omitting from subsection two of section forty-six the word "Institute" and by inserting in lieu thereof the word "Society"; No. 29, 1967
Sec. 46.
(The fund.)
- (e) by omitting from section forty-nine the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 49.
(Expenditure.)
- (f) by omitting from section fifty-one the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 51.
(Administration.)
- (g) by omitting from subsection one of section fifty-three the word "Institute" and by inserting in lieu thereof the word "Society"; Sec. 53.
(Levies.)
- (h) by omitting from subsection two of section fifty-seven the word "Institute" and by inserting in lieu thereof the word "Society"; Sec. 57.
(Claims against the fund.)
- (i) by omitting from section sixty the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 60.
(Defences.)
- (j) by omitting from section sixty-one the word "Institute" and by inserting in lieu thereof the word "Society"; Sec. 61.
(Subrogation.)
- (k) by omitting from subsection one of section sixty-three the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 63.
(Insufficiency of the fund.)
- (l) by omitting from section sixty-nine the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 69.
(Fee.)
- (m) by omitting from section seventy-five the words "the Institute" wherever occurring and by inserting in lieu thereof the words "the Society"; Sec. 75.
(Statutory Committee.)
- (n) by omitting from section eighty-two the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 82.
(Additional powers of Institute.)
- (o) by omitting from section eighty-three the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society"; Sec. 83.
(Legal assistance.)

(p)

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Sec. 84.
(Recovery of moneys.)
Sec. 85.
(Meetings and minutes.)
Amendment of Act No. 6, 1919.
Sec. 205.
(Interpretation.)
Sec. 206.
(Power to make general orders for remuneration in conveyancing, etc.)
Sec. 207.
(Communication to Incorporated Law Institute.)
Further amendment of Act No. 22, 1898.
Sec. 40A.
(Unqualified person not to act as solicitor.)
Sec. 40B.
(Illegal practices.)
- (p) by omitting from section eighty-four the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society";
- (q) by omitting from section eighty-five the word "Institute" wherever occurring and by inserting in lieu thereof the word "Society".
- (2) The Conveyancing Act, 1919, as amended by subsequent Acts, is amended—
- (a) (i) by omitting from section two hundred and five the definition of "Incorporated Law Institute";
(ii) by inserting at the end of the same section the following new definition :—
"The Law Society of New South Wales" means the body referred to by that name in the Legal Practitioners Act, 1898, as amended by subsequent Acts.
- (b) by omitting from section two hundred and six the words "the Incorporated Law Institute" and by inserting in lieu thereof the words "The Law Society of New South Wales";
- (c) by omitting from section two hundred and seven the words "the Incorporated Law Institute" and by inserting in lieu thereof the words "The Law Society of New South Wales".
3. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—
- (a) by omitting from subsection two of section 40A the words "one hundred dollars" and by inserting in lieu thereof the words "four hundred dollars";
- (b) by omitting from section 40B the words "one hundred dollars" wherever occurring and by inserting in lieu thereof the words "four hundred dollars";

(c)

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- (c) by omitting from subsection one of section 40C the words "one hundred dollars" and by inserting in lieu thereof the words "four hundred dollars"; **No. 29, 1967**
Sec. 40C.
(Certain persons only to draw conveyances, etc.)
- (d) by omitting from section 40D the words "one hundred dollars" and by inserting in lieu thereof the words "four hundred dollars";
Sec. 40D.
(Penalty on unqualified person acting in preparation of papers for probate, etc.)
- (e) (i) by omitting from section 40E the words "two hundred dollars" and by inserting in lieu thereof the words "one thousand dollars";
Sec. 40E.
(Body corporate and officers.)
- (ii) by omitting from the same section the words "one hundred dollars" and by inserting in lieu thereof the words "four hundred dollars";
- (f) by omitting from section 40H the words "twenty dollars" and by inserting in lieu thereof the words "one hundred dollars";
Sec. 40H.
(Penalty on failure to disclose fact of having been struck off, etc.)
- (g) by omitting from section sixty-eight the words "one hundred dollars" and by inserting in lieu thereof the words "four hundred dollars";
Sec. 68.
(Persons practising without certificates.)
- (h) by omitting from subparagraph (ix) of paragraph (b) of subsection one of section eighty-six the words "one hundred dollars" and by inserting in lieu thereof the words "four hundred dollars".
Sec. 86.
(Council may make regulations.)
- 4. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—** **Further amendment of Act No. 22, 1898.**
- (a) (i) by omitting from subsection one of section one the matter relating to Part IV;
Sec. 1.
(Short title and Division into Parts.)
- (ii)

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- (ii) by inserting in the same subsection next after the matter relating to Part VII the following new matter :—

PART VIIA.—*Statutory Interest Account and Law Foundation*—ss. 44A–44C.

- (iii) by omitting from the matter relating to Part VIII in the same subsection the symbols, letters and figures “—ss. 45–65.”;

- (iv) by inserting next after the same matter the following new matter :—

DIVISION 1.—*General*—ss. 45–65.

DIVISION 2.—*Receivers, etc.*—ss. 65A–65Z.

Sec. 3.
(Interpretation.)

- (b) (i) by omitting from section three the definition of “Conveyancer”;

- (ii) by omitting from the definition of “Solicitor” in the same section the words “, and in Parts VII, VIII, IX, X, and XI of this Act includes a conveyancer”;

- (iii) by inserting next after the same definition the following new definition :—

“Statutory Committee” means The Solicitors’ Statutory Committee referred to in section seventy-five of this Act.

- (iv) by omitting from the same section the definition of “University graduate” and by inserting in lieu thereof the following definition :—

“University graduate” means a graduate of the University of Sydney or of any prescribed university.

Sec. 8.
(Exemption of university graduates and certain undergraduates.)

- (c) by inserting in subsection two of section eight after the words “University of Sydney” the words “or any prescribed university”;

(d)

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- (d) by omitting section 13A and by inserting in lieu thereof the following section :—

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Subst.
sec. 13A.

13A. The name of any person who immediately before the commencement of the Legal Practitioners (Amendment) Act, 1967, was a certificated conveyancer under this Act, as then enacted, shall be entered on the roll of solicitors in the Court.

Convey-
ancers'
names to be
entered on
roll of
solicitors.

- (e) by inserting at the end of section fourteen the following new subsections :—

Sec. 14.
(Barristers
of five years
standing.)

(2) Where a person is required under the rules of Court to obtain the leave of the Court before commencing practice, or resuming practice, as a solicitor, the Court may, in granting that leave, impose such terms and conditions as the Court thinks fit.

(3) Notice of any application for any leave of the Court referred to in subsection two of this section shall, before the hearing of the application, be served upon the Society together with copies of all affidavits in support thereof, and the Society shall be entitled to be heard on the application.

- (f) by omitting from section fifteen the words "he or his partner acts as solicitor" and by inserting in lieu thereof the words "he is instructed to act by or on behalf of any person";

Sec. 15.
(Right of
audience.)

- (g) by omitting Part IV.

Part IV.
(Convey-
ancers.)

5. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—

Further
amendment
of Act No.
22, 1898.

- (a) (i) by omitting from subsection one of section twenty-one the words "subscribed in his proper handwriting" and by inserting in lieu thereof the word "signed";

Sec. 21.
(Delivery of
signed bill
before
action.)

(ii)

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- (ii) by omitting from the same subsection the words "has been delivered by him unto" and by inserting in lieu thereof the words "or enclosed in or accompanied by a letter referring thereto and so signed, has been delivered to";
- (iii) by omitting from the same subsection the word "counting-house,";
- (iv) by inserting next after subsection two of the same section the following new subsection :—

(2A) Where a bill is proved to have been delivered, sent or left in accordance with subsection one of this section, it shall be presumed, unless the contrary is shown, to be a bill complying with this Act.

Sec. 22.
(Appointment for
taxation.)

- (b) (i) by omitting from paragraph (a) of subsection two of section twenty-two the words "of lunacy" and by inserting in lieu thereof the words "relating to the protective jurisdiction of the Court";
- (ii) by omitting paragraph (b) of the same subsection;
- (iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) Any power or duty conferred or imposed upon any taxing officer by this Act may in any case be delegated by him to any other officer of the Court and the officer to whom the power or duty is delegated shall be the taxing officer in that case.

Sec. 25.
(Reference to taxation
after one
month.)

- (c) (i) by omitting from subsection one of section twenty-five the words ", and (in case such reference is made on the application of the party so chargeable) without any money being brought into Court" and by inserting in lieu thereof the words "and the Court or Judge may order that money be brought into Court

by

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- by the party so chargeable to be disbursed in accordance with the further order of the Court or Judge after settlement and taxation of the bill or otherwise”;
- (ii) by omitting from paragraph (a) of subsection two of the same section the words “, judgment signed, or writ of inquiry executed” and by inserting in lieu thereof the words “or judgment has been signed”;
- (d) by omitting from section twenty-nine the words “in the same manner as was done as regarded such solicitor by such Court or Judge before the passing of the Act eleventh Victoria number thirty-three, where any such business had been transacted in the Court”;
- (e) by omitting section thirty;
- (f) by omitting section thirty-one;
- (g) by omitting from section thirty-eight the words “the solicitor” and by inserting in lieu thereof the words “the party chargeable”.
- 6. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—**
- (a) by omitting from paragraph (b) of section forty the words “after the thirtieth day of June, one thousand nine hundred and thirty-five,”;
- (b) (i) by inserting in subsection one of section 40C after the word “reward,” the words “does any work of the nature following (in this section referred to as “general legal work”), that is to say,”;
- (ii)
- No. 29, 1967
- Sec. 29.
(Order for delivery of bill or for delivery up of deeds, etc.)
- Sec. 30.
(Evidence of delivery of bill.)
- Sec. 31.
(Costs allowed according to skill and responsibility.)
- Sec. 38.
(Application for taxation, &c., how made.)
- Further amendment of Act No. 22, 1898.
- Sec. 40.
(Qualifications for practising as solicitors.)
- Sec. 40c.
(Certain persons only to draw conveyances, etc.)

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(ii) by omitting paragraph (d) of subsection two of the same section and by inserting in lieu thereof the following paragraphs :—

(d) any person carrying out general legal work for and on behalf of his employer or a corporation of which he is an officer, where he does so in the ordinary course of his duties as an employee of that employer or officer of that corporation and he does not receive any fee, gain or reward for doing so, other than the remuneration paid to him as such an employee or officer; or

(e) any person or class of persons, or any work or class of work, specified in the regulations made by the Governor for the purposes of this paragraph under section eighty-seven of this Act.

(iii) by inserting at the end of the same section the following new subsection :—

(3) For the purposes of this section, where a person carries out any general legal work and that work relates to, or is carried out in conjunction with, any other work carried out by that person for or in expectation of any fee, gain or reward, that person shall be deemed to have carried out the general legal work for or in expectation of a fee, gain or reward, unless he proves that he undertook to carry out, and that he carried out, the general legal work without advantage or benefit to himself and that his undertaking to carry out, and his carrying out of, the general legal work was not an inducement to his being employed to carry out that other work.

(c)

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(c) (i) by inserting in section 40D after the word “reward,” the words “does any work of the nature following (in this section referred to as “probate work”), that is to say,”;

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Sec. 40D.
(Penalty on unqualified person acting in preparation of papers for probate, etc.)

(ii) by inserting at the end of the same section the following new subsections :—

(2) This section shall not extend to—

(a) any person carrying out probate work for and on behalf of his employer or a corporation of which he is an officer, where he does so in the ordinary course of his duties as an employee of that employer or officer of that corporation and he does not receive any fee, gain or reward for doing so, other than the remuneration paid to him as such an employee or officer; or

(b) any person or class of persons, or any work or class of work, specified in the regulations made by the Governor for the purposes of this paragraph under section eighty-seven of this Act.

(3) For the purposes of this section, where a person carries out any probate work and that work relates to, or is carried out in conjunction with, any other work carried out by that person for or in expectation of any fee, gain or reward, that person shall be deemed to have carried out the probate work for or in expectation of a fee, gain or reward, unless he proves that he undertook to carry out, and that he carried out, the probate work without advantage or benefit to himself and that his undertaking to carry out, and his carrying out of, the probate work was not an inducement to his being employed to carry out that other work.

(d)

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Sec. 40E.

(Body corporate and officers.)

- (d) by inserting in section 40E after the word "thereof" the words "in contravention of this Act or";

Sec. 40F.

(Prohibition against solicitor sharing costs with unqualified person.)

- (e) by omitting subsection three of section 40F;

Sec. 40G.

(Employment by solicitor of persons struck off the roll or suspended.)

- (f) (i) by omitting from subsection one of section 40G the word "solicitor" where thirdly and fourthly occurring and by inserting in lieu thereof the words "barrister or solicitor";

- (ii) by inserting next after the same subsection the following new subsections :—

(1A) Subsection one of this section does not apply to the employment or remuneration of a person whose employment or remuneration by a solicitor is prohibited except with the leave of the Statutory Committee granted under section 40J of this Act or the leave of the Court granted under that section.

(1B) No solicitor shall, in connection with his practice as a solicitor, without the written permission of the Society, which may be given for such period and subject to such conditions as the Society thinks fit, employ or remunerate any person who, to his knowledge, has within the next preceding fifteen years been convicted of an offence under this Act, as from time to time amended, unless that person is the holder of a current practising certificate.

(1C) Subsection (1B) of this section applies to a conviction before or after the commencement of the Legal Practitioners (Amendment) Act, 1967.

(iii)

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- (iii) by omitting from subsection two of the same section the word "solicitor" and by inserting in lieu thereof the word "person"; No. 29, 1967
- (g) by omitting from section 40H the word "solicitor" where firstly and secondly occurring and by inserting in lieu thereof the words "barrister or solicitor"; Sec. 40H.
(Penalty on failure to disclose fact of having been struck off, etc.)
- (h) by omitting from section 40I the word, figures and letter "and 40D" and by inserting in lieu thereof the figures, letters and word "40D and 40F"; Sec. 40I.
(Bodies corporate.)
- (i) by inserting next after section 40I the following new sections :— New secs.
40J—40M.

40J. (1) No solicitor shall, in connection with his practice as a solicitor, without the leave of the Statutory Committee or the leave of the Court granted under subsection three of this section, employ or remunerate any person who, to his knowledge, has been convicted of an indictable offence, unless that person is the holder of a current practising certificate. Control of employment of persons convicted of indictable offences.

(2) The Statutory Committee may grant leave under subsection one of this section for such period and subject to such conditions as the Statutory Committee thinks fit.

(3) A person with respect to whom an application for leave is made under subsection one of this section may, if he is aggrieved by the decision of the Statutory Committee on the application, appeal to the Court, which may confirm the decision or may grant the leave for such period and subject to such conditions as the Court thinks fit.

(4)

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(4) If any solicitor acts in contravention of the provisions of this section or of the conditions subject to which any leave has been granted thereunder he shall be guilty of professional misconduct and may be dealt with accordingly.

(5) Subject to subsection six of this section, this section applies to a conviction before or after the commencement of the Legal Practitioners (Amendment) Act, 1967.

(6) This section does not apply to the employment or remuneration, in accordance with leave granted by the Court before the commencement of the Legal Practitioners (Amendment) Act, 1967, by a solicitor of a person convicted of an indictable offence.

Control of
employment
of certain
clerks.
cf. 5 & 6
Eliz. 2
c. 27, s. 38;
1965 c. 31,
s. 18
(U.K.).

40K. (1) Where a person who is or was a clerk to a solicitor, but is not himself a solicitor, with or without the connivance of the solicitor to whom he is or was a clerk, has, in the opinion of the council, been a party to, or has occasioned, an act or default in relation to that solicitor's practice in respect of which an application against that solicitor has been or might be made to the Statutory Committee under any other provision of this Act, an application may be made under this section to the Statutory Committee with respect to that person by or on behalf of the council.

(2) On the hearing of any application under subsection one of this section, the Statutory Committee may make an order that as from such date as may be specified in the order no solicitor shall in connection with his practice as a solicitor take into or retain in his employment, or remunerate, the person with respect to whom the application is made except in accordance with permission in writing granted by the Society for such period and subject to such conditions as the Society

may

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may think fit to specify in the permission, and may also make an order as to the payment by any party to the application of costs. No. 29, 1967

(3) An order made by the Statutory Committee under subsection two of this section, other than an order as to payment of costs, may, on the application of the Society or the person with respect to whom the application for the order was made, be revoked by a subsequent order of the Statutory Committee.

(4) An appeal to the Court from any order made under subsection two of this section shall lie at the instance either of the Society or the person with respect to whom the application for the order was made.

(5) Every such appeal shall be in the nature of a rehearing and shall be made within such time and in such form and shall be heard in such manner as shall be prescribed by rules of Court in that behalf to be made under the authority of this Act.

(6) The Court may order that any order made by the Statutory Committee shall be stayed pending the disposal of an appeal therefrom upon such terms as shall seem just.

(7) Every order made under this section shall be filed with the Secretary, and the file kept by him for that purpose may be inspected by any solicitor during office hours without payment but shall not be open to the inspection of any person other than a solicitor.

(8) For the purposes of this section the death of a solicitor against whom an application or complaint might have been made to the Statutory Committee under this Act shall not prevent an application being made under this section in respect of a person who was a clerk to that solicitor, but

is

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is not himself a solicitor, and who is alleged to have been a party to any act or default in relation to that solicitor's practice.

Offences in connection with orders controlling employment of certain clerks.
cf. 5 & 6
Eliz. 2 c. 27,
s. 39.

40L. (1) Any person who, while there is in force in respect of him an order under section 40K of this Act, seeks or accepts any employment by or remuneration from a solicitor in connection with his practice as a solicitor without previously informing him of that order shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars for each such offence.

(2) Where an order under section 40K of this Act is in force against any person, any solicitor who knowingly acts in contravention of that order or of any condition subject to which permission for the employment of that person has been granted thereunder shall be guilty of professional misconduct and may be dealt with accordingly.

(3) Any document purporting to be such an order as aforesaid and to be signed by the chairman or a member of the Statutory Committee acting as chairman shall be received in evidence in any proceedings under this Act and be deemed to be such an order without further proof unless the contrary be shown.

(4) Proceedings under subsection one of this section may be commenced at any time before the expiration of six months after the first discovery of the offence by the council, but no such proceedings shall be commenced by any person other than the council or a person acting on its behalf.

Hearing of applications under section 40J or 40K of this Act.

40M. (1) The provisions of sections seven, eight, nine, ten, eleven and twelve and of Part III of the Royal Commissions Act, 1923, as amended by subsequent Acts, shall apply mutatis mutandis to and with respect to any hearing of an application

for

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for the leave of the Statutory Committee under section 40J of this Act and of any application to the Statutory Committee for an order under section 40K of this Act. No. 29, 1967

(2) A person with respect to whom an application for leave is made under subsection one of section 40J of this Act or with respect to whom an application for an order is made under subsection one of section 40K of this Act may be represented at the hearing of the application by counsel or solicitor.

7. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended— Further amendment of Act No. 22, 1898.

(a) by inserting in subsection three of section forty-one after the word "section" where firstly occurring the words "or in section 42A of this Act"; Sec. 41. (Payment into bank.)

(b) by inserting next after section forty-two the following new sections :— New secs. 42A-42C.

42A. (1) Notwithstanding the provisions of subsection one of section forty-one of this Act, every solicitor shall out of the moneys which are received by him or by any firm of which he is a member and are required to be dealt with in accordance with the provisions of that subsection— Solicitors to deposit part of trust account with Society.

(a) cause to be deposited with the Society, on or before the commencing date, a sum which is not less than the prescribed part of the lowest balance in his or the firm's trust account on any day during the relevant period; and

(b)

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(b) thereafter, during each period of twelve months ending on the thirty-first day of March, cause to be kept deposited with the Society a sum which is not at any time less than the prescribed part of the aggregate of—

- (i) the amount that was the lowest balance in his or the firm's trust account on any day during that period or the period of twelve months ending on the immediately preceding thirty-first day of March; and
- (ii) any amount which, on the day on which the lowest balance or aggregate is ascertained for the purposes of subparagraph (i) of this paragraph, was standing upon deposit by the solicitor or the firm with the Society in accordance with the provisions of this section.

(2) Where two or more trust accounts are kept by a solicitor or a firm of solicitors on any day, the aggregate of the balances of those trust accounts on that day, excluding any separate trust account maintained on the instructions of a client of the solicitor or firm for the exclusive benefit of the client, shall for the purposes of subsection one of this section be deemed to be the balance in the trust account of that solicitor or that firm of solicitors on that day.

(3) The prescribed part of the amount, or aggregate of the amounts, referred to in subsection one of this section shall be one-third of that amount or aggregate, or such lesser fraction as may be prescribed by regulations made by the Governor under section eighty-seven of this Act.

(4)

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(4) In paragraph (a) of subsection one of No. 29, 1967
this section—

“the commencing date” means—

- (a) in relation to a solicitor who had commenced to practise as a solicitor before the first day of July, one thousand nine hundred and sixty-seven, or in relation to a solicitor who is a member of a firm of solicitors who had so commenced to practise as solicitors—that day; and
- (b) in relation to a solicitor who commences to practise as a solicitor on or after the first day of July, one thousand nine hundred and sixty-seven, or in relation to a solicitor who is a member of a firm of solicitors who so commence to practise as solicitors—the first day of April next following the day on which he or the firm so commences to practise;

“the relevant period” means—

- (a) in relation to a solicitor referred to in paragraph (a) of the definition of the commencing date in this subsection—the period beginning on the first day of April, one thousand nine hundred and sixty-six, or the day on which he, or the firm of solicitors of which he is a member, as the case may be, commenced to practise as a solicitor or as solicitors, whichever day is the later, and ending on the thirtieth day of June, one thousand nine hundred and sixty-seven; and
- (b) in relation to a solicitor referred to in paragraph (b) of the definition of the commencing date in this subsection—the period beginning on the day on which he, or the firm of solicitors of which he

is

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is a member, as the case may be, commenced to practise as a solicitor or as solicitors and ending on the first day of April next following that day.

Moneys deposited by solicitor or firm with Society to be invested, etc.

42B. (1) All moneys deposited with the Society pursuant to the provisions of this Part shall be held by the Society upon trust for the solicitor or firm depositing them and shall be repayable on demand.

(2) The fact that any such moneys are repayable by the Society on demand does not affect the obligations of a solicitor or firm of solicitors under section 42A of this Act.

(3) Until demanded any moneys so deposited shall be invested by the Society either on deposit with a bank in New South Wales bearing interest, or upon loan to the Treasurer at a rate of interest not less than the maximum rate for the time being payable by a bank in New South Wales on fixed deposits.

(4) Any moneys repaid by the Society to a solicitor or firm of solicitors out of the moneys deposited with the Society pursuant to the provisions of this Part shall be paid forthwith into a bank in New South Wales to a trust account maintained in accordance with the provisions of section forty-one of this Act.

Account of moneys deposited to be kept by Society.

42C. An account shall be kept by the Society of all moneys received, dealt with and repaid pursuant to the provisions of sections 42A and 42B of this Act and the account shall be audited annually by an accountant approved of by the Prothonotary and appointed for the purpose by the council.

Sec. 43. (Professional misconduct.)

(c) by omitting from section forty-three the words "or section forty-two" and by inserting in lieu thereof the words ", forty-two or 42A";

(d)

Legal Practitioners (Amendment).

(d) by inserting next after Part VII the following new Part :—

No. 29, 1967

New Part
VIIA.

PART VIIA.

*Statutory Interest Account and Law
Foundation.*

44A. (1) The interest earned on the investments made by the Society under subsection three of section 42B of this Act shall be paid to an account to be called the Statutory Interest Account to be kept by the Society.

Statutory
Interest
Account.

(2) The Statutory Interest Account shall be applied in such amounts as from time to time are determined by the council, with the consent of the Attorney-General, to the following purposes :—

- (a) the establishment and conduct of a fund to provide a scheme of legal aid for persons who do not qualify for assistance under the Legal Assistance Act, 1943, as amended by subsequent Acts, and the administration of that scheme;
- (b) supplementation of the Solicitors' Fidelity Guarantee Fund;
- (c) the establishment and conduct of the Law Foundation referred to in section 44B of this Act;
- (d) the payment of the costs, charges and expenses of the collection of the interest earned on the investments made under subsection three of section 42B of this Act and the administration of section 42A of this Act and of the Statutory Interest Account.

44B. (1) There shall be a fund to be called the Law Foundation, in this Part referred to as the Foundation.

Law
Foundation
—Board of
Governors.

(2)

Legal Practitioners (Amendment).

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(2) The Foundation shall be the property of the Society and shall be applied for the purposes of furthering legal education, legal research and law reform, and the establishment, operation and maintenance of law libraries.

(3) The Foundation shall be administered by a Board of Governors which shall consist of seven members.

(4) Of the seven members—

- (a) one shall be the Attorney-General or a person from time to time nominated by him;
- (b) four shall be appointed by the council;
- (c) one, not being a barrister or solicitor, shall be appointed by the Attorney-General; and
- (d) one, not being a barrister or solicitor, shall be appointed by the Minister of Justice.

(5) Of the members referred to in paragraph (b) of subsection four of this section one shall, by the instrument of his appointment, be appointed as chairman of the Board.

(6) The members other than the Attorney-General shall hold office for a period of three years and shall be eligible for reappointment.

(7) Where a casual vacancy occurs in the office of a member, the person or body by whom he was appointed may appoint to the vacant office any person eligible to be appointed to that office by that person or body under subsection four of this section, and the person so appointed shall hold office for the residue of his predecessor's term of office.

(8) A quorum of the Board shall consist of four members thereof.

(9) The continuing members of the Board of Governors may act notwithstanding any vacancy in their body.

(10)

Legal Practitioners (Amendment).

(10) No act done by the authority of the Board of Governors shall be invalid in consequence of any defect that is afterwards discovered in the appointment of the members or any of them. No. 29, 1967

(11) An appointed member of the Board may resign from office upon giving one month's notice in writing to the Attorney-General of his intention so to do, and such resignation shall take effect upon the expiration of such notice or its earlier acceptance by the Board of Governors.

(12) The office of an appointed member of the Board of Governors shall be vacated if—

- (a) he dies;
- (b) he becomes a mentally ill person, a protected person or an incapable person, within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts; or
- (c) he becomes bankrupt, compounds with his creditors or makes any assignment of his estate for their benefit.

(13) The accounts of the Foundation shall be audited annually by an accountant approved by the Prothonotary and appointed for the purpose by the council.

44c. (1) The Foundation shall consist of— Income and expenditure of Foundation.

- (a) all sums paid to or on account of the Foundation by the Law Society out of the Statutory Interest Account;
- (b) the interest from time to time accruing from the investment of the Foundation; and
- (c) any other moneys that may be lawfully paid into the Foundation.

(2) All moneys belonging to the Foundation shall, pending the investment or application thereof in accordance with this Part, be paid into

Legal Practitioners (Amendment).

No. 29, 1967

a bank in New South Wales to the credit of a separate account to be called the Law Foundation Account, and that account shall be operated upon in such manner as the Board of Governors shall from time to time determine.

(3) There shall be paid out of the Foundation from time to time as required—

- (a) the costs, charges and expenses involved in the administration of the Foundation; and
- (b) the costs, charges and expenses incurred by the Board of Governors in the carrying out of the purposes of the Foundation.

(4) Any moneys in the Foundation that are not immediately required for the purposes thereof may be invested in the name of the Society by the Board of Governors in any manner in which trustees are for the time being authorised to invest trust funds.

Further amendment of Act No. 22, 1898.

New sub-heading, Division I, Part VIII, and subst. sec. 45.

Application of Part VIII.

New sec. 47A.

Insurance of the fund.

8. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—

- (a) by omitting section forty-five and by inserting in lieu thereof the following new subheading and section :—

DIVISION 1.—*General.*

45. This Part shall apply with respect to every solicitor to whom subsection one of section forty-one of this Act applies.

- (b) by inserting next after section forty-seven the following new section :—

47A. The Society may, on such terms as the council thinks fit, insure the fund against liability with any person authorised by law to carry on insurance business and may pay the costs of such insurance out of the fund.

(c)

Legal Practitioners (Amendment).

(c) by inserting next after paragraph (b) of section No. 29, 1967 forty-eight the following new paragraph :—

(b1) all sums paid to or on account of the fund out of the Statutory Interest Account; Sec. 48. (Moneys of the fund.)

(d) (i) by omitting from paragraph (d) of section forty-nine the words “the expenses” and by inserting in lieu thereof the words “the costs, charges and expenses”; Sec. 49. (Expenditure.)

(ii) by omitting from paragraph (e) of the same section the words “the expenses” and by inserting in lieu thereof the words “the costs, charges and expenses”;

(iii) by inserting in the same paragraph after the word and symbol “Part X” the words “or section eighty-two or 82A of this Act”;

(iv) by inserting in paragraph (e1) of the same section after the word “reasonable” the words “costs, charges and”;

(v) by omitting from the same paragraph the words and symbol “Part X of”;

(e) (i) by omitting from subsection one of section fifty-two the words “, being not less than six dollars nor more than twenty dollars in any year”; Sec. 52. (Contributions.)

(ii) by omitting from subsection two of the same section the words “If any solicitor who is not during the month of July in any year engaged in the practice of his profession either on his own account or in partnership with any other person commences after the said month of July in any year to practise as a solicitor on his own account or in partnership with any other person, he shall thereupon” and by inserting in lieu thereof the words “A solicitor to whom this Part did not apply during the said

*Legal Practitioners (Amendment).***No. 29, 1967**

said month of July but to whom this Part applies after the said month of July in any year shall, upon this Part applying to him.”;

(iii) by omitting from the proviso to the same subsection the words “of such commencement is” and by inserting in lieu thereof the words “on which this Part so applies to a solicitor is”;

(iv) by omitting from the same proviso the words “so commencing to practise”;

(v) by omitting subsection three of the same section;

**Sec. 53.
(Levies.)**

(f) (i) by omitting from subsection one of section fifty-three the words “not exceeding twenty dollars”;

(ii) by omitting subsection three of the same section;

**Sec. 56.
(Applica-
tion of
fund.)**

(g) by inserting in subsection three of section fifty-six after the words “No person shall” the words “, unless the council otherwise determines.”;

**Sec. 57.
(Claims
against
the fund.)**

(h) (i) by omitting from subsection one of section fifty-seven the words “The council may” and by inserting in lieu thereof the words “Subject to the provisions of section fifty-six of this Act, the council may”;

(ii) by omitting from the same subsection the words “, and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting solicitor or any other person in respect of the loss suffered by him”;

(iii) by inserting next after subsection three of the same section the following new subsection :—

(3A) Where—

(a) a payment has been made to a person out of the fund; or

(b)

Legal Practitioners (Amendment).

- (b) a person has a judgment against the Society in respect of a claim made by him against the fund, No. 29, 1967

and that person receives or recovers from the solicitor or out of his estate any moneys for or on account of his loss,

- (c) that person shall repay to the Society an amount; or

- (d) the Society's liability under the judgment shall be reduced by an amount,

equal to the amount by which the amount received or recovered by him or for which he has the judgment together with the moneys so received or recovered by him exceeds the total amount of his loss.

- (iv) by inserting next after subsection six of the same section the following new subsection :—

(7) In respect of any theft or fraudulent misapplication committed—

- (a) on or after the fourteenth day of February, one thousand nine hundred and sixty-six, and before the commencement of the Legal Practitioners (Amendment) Act, 1967, the provisions of this section shall be read as though—

- (i) subsections three and six were omitted therefrom; and

- (ii) the words "ten thousand pounds" were omitted from subsection four and the words "thirty thousand dollars" were inserted in lieu thereof; or

(b)

Legal Practitioners (Amendment).

No. 29, 1967

(b) on or after the commencement of the Legal Practitioners (Amendment) Act, 1967, the provisions of this section shall be read as though—

(i) subsections three and six were omitted therefrom; and

(ii) the words “ten thousand pounds” were omitted from subsection four and the words “one hundred and fifty thousand dollars” were inserted in lieu thereof.

New sec.
57A.

(i) by inserting next after section fifty-seven the following new section :—

Additional
payments to
claimants.

57A. Notwithstanding any other provision of this Part, the council may pay to a claimant against the fund any part of his loss, as referred to in subsection one of section fifty-six of this Act, to the payment of which part he is not entitled by reason of the operation of subsection four, six or seven of section fifty-seven of this Act, and any amounts paid by the Society under this section shall be disregarded for the purposes of those subsections.

Sec. 65.
(Examina-
tion of
account.)

(j) by omitting section sixty-five.

Further
amendment
of Act No.
22, 1898.

9. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended by inserting next after section sixty-five the following new Division :—

New Divi-
sion 2,
Part VIII.DIVISION 2.—*Receivers, etc.*Interpreta-
tion.

65A. In this Division, unless inconsistent with the context or subject-matter—

cf. Vic.
No. 6291,
1958,
s. 104A.

“Defalcation” means any larceny, embezzlement, omitting to account, fraudulent misappropriation or other act punishable by imprisonment, of or in relation to any money or other property.

“Money”

Legal Practitioners (Amendment).

“Money” includes instrument for the payment of money in any case where the instrument may be paid into a bank, and any security for money the title to which is transferable by delivery. No. 29, 1967

“Property”, in relation to a solicitor, means—

- (a) money or other property which was in the course of or in connection with the practice of the solicitor, or the practice of any firm of solicitors of which the solicitor is or has been a member, entrusted to or received on behalf of any other person by the solicitor or firm or by any of his or its clerks, servants or agents or by any solicitor with whom the solicitor or firm shares remuneration and which has not been paid or delivered by the solicitor or firm to the person entitled thereto or as that person has directed or otherwise according to law ;
- (b) money or other property which would, were it not for the appointment of a receiver as provided in this Division, be receivable on behalf of any other person by the solicitor or firm of solicitors after the appointment of that receiver ;
- (c) money received by the receiver during a receivership under this Division being interest, dividends or other income arising from any property held by the receiver under this Division ; and
- (d) ledgers, books of account, vouchers, records, deeds, wills, files and other documents and writings of any description.

“Solicitor” means any person who is or has been a solicitor and includes, where the context so admits or requires, the personal representative of a deceased solicitor.

Legal Practitioners (Amendment).

No. 29, 1967

Power of
Court to
appoint
receiver in
certain
cases.

cf. Vic. No.
6291, 1958,
s. 104B.

65B. Where the council is of opinion—

- (a) that any defalcation has been or may have been committed in relation to any trust account or trust fund of any solicitor; or
- (b) that through—
 - (i) the mental or physical infirmity of a solicitor;
 - (ii) the death or insolvency or the sequestration or assignment for the benefit of creditors of the estate of a solicitor;
 - (iii) the abandonment of a solicitor's practice;
 - (iv) a solicitor—
 - (a) having been and remaining struck off the roll; or
 - (b) having been and remaining suspended from practice; or
 - (v) the practising certificate of a solicitor having been cancelled or a solicitor's application for such a certificate having been refused,

any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the solicitor or by any firm of solicitors of which the solicitor is or was a partner,

the Court, on application in that behalf by the Society and on being satisfied that the council has reasonable grounds for such opinion, may appoint a receiver of all or any property which is held by the solicitor or the firm of solicitors of which the solicitor is or was a partner or by some other person on his behalf or is recoverable by the solicitor or firm, or, where the solicitor is dead, which by reason of his death is or may be recoverable by his personal representative.

65c.

Legal Practitioners (Amendment).

65c. (1) An application under this Division for the appointment of a receiver shall be made by way of summons in chambers and the Court may give such directions as to service thereof or may dispense with service as the Court thinks fit.

No. 29, 1967
Application
for
appointment
of receiver.
cf. Vic. No.
6291, 1958,
s. 104c.

(2) In the absence of any directions or order dispensing with service or reducing the time for service, the summons shall be served upon the solicitor not less than forty-eight hours before the return of the summons.

(3) Upon and during the hearing of any such application or any subsequent proceeding of any kind relating to the order or the conduct of the receivership thereunder, no person shall be or be permitted to be present in Court, or if the proceedings are heard in chambers, in chambers, except—

- (a) the judge to whom the application is being made and the officers of the Court;
- (b) the applicant and the respondent and their respective barristers and solicitors and the clerks of such barristers and solicitors;
- (c) the members of any firm of solicitors of which the respondent is a member; and
- (d) any person while being examined as a witness, unless the Court in the interests of justice permits any other person to be present.

(4) The Court may, on the application of any party or as it thinks fit, make an order forbidding the publication of any report or account of the evidence or other proceedings on the hearing of an application under this section and a breach of any such order or any colourable or attempted evasion thereof may be dealt with as a contempt of the Court.

65d. Unless the Court dispenses with service, a copy of the order of the Court appointing the receiver shall, as soon as practicable, be served on the solicitor and on any other person to whom the Court directs that notice of the appointment of the receiver should be given.

Copy of
order
appointing
receiver to
be served
on solicitor.
cf. Vic. No.
6291, 1958,
s. 104d.

65E.

*Legal Practitioners (Amendment).***No. 29, 1967**Receiver
may require
delivery of
property to
him.cf. Vic. No.
6291, 1958,
s. 104E.

65E. (1) The receiver may require any person to give to the receiver such information concerning any property of which he has been appointed receiver as may reasonably be required.

(2) Any person so required to give information, who without lawful justification or excuse (the proof whereof shall lie on him) refuses or fails so to do or otherwise hinders, obstructs or delays the receiver in the performance of his duties or the exercise of his powers under this Division shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Receiver
may forbid
withdrawal
of moneys
from bank.cf. Vic. No.
6291, 1958,
s. 104F.

65F. (1) Where the receiver has reasonable grounds for believing that there is in any bank account money received for or on behalf of any person by the solicitor or by the firm of solicitors of which the solicitor is or was a partner, he may serve on the bank a notice in writing with a copy of the order of the Court attached or appended thereto forbidding, except by him or on his authority, any withdrawal of moneys from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the solicitor or the name of any firm of solicitors of which the solicitor is or was a partner or, where the solicitor is dead, any account which is in such name or firm name or which was formerly in such name or firm name and is now in the name of his personal representative.

(2) Without prejudice to any other mode of service, service of any notice pursuant to this section may be effected by leaving such notice and copy of the order as aforesaid with the manager, accountant or such other person as appears to be at the time of service in charge of the branch of the bank at which there is an account to which subsection one of this section refers.

(3)

Legal Practitioners (Amendment).

(3) The bank on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver. No. 29, 1967

(4) The receiver may withdraw all the moneys in any such account or from time to time withdraw any of such moneys and pay them into a special account or special accounts in his own name and may operate on and otherwise deal with the special account or special accounts in accordance with law.

65G. (1) The receiver may acquire or take possession of any property of which he has been appointed receiver :

Receiver may take possession of property. cf. Vic. No. 6291, 1958, s. 104g.

Provided that all ledgers, books of account, vouchers, records, deeds, wills, files, and other documents and writings (other than those relating either to any property referred to in paragraph (a) or (b) of the definition of "Property" in section 65A of this Act or to any former practice of the solicitor) shall, as soon as is reasonable, be returned to the solicitor.

(2) If the solicitor or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in his possession or at his disposition or under his control does not comply with the requirement, or if it appears to the receiver that any such person on being thus required has not fully complied with the requirement the receiver may apply to the Court for an order for the transfer or delivery to him of such property, whereupon the Court may make such order.

(3) If it appears to the receiver that an order made by the Court under subsection two of this section is not complied with, the Court may, on application by the receiver, authorise any member of the police force, or the receiver or some other person and any member of the police force, to enter any premises or other place specified in the order and to search for any property of which

Legal Practitioners (Amendment).

No. 29, 1967

which the receiver is entitled to take possession under the provisions of this section and to seize such property and remove it to such place as the receiver thinks fit and on such application the Court may make such further order in the matter as to the Court seems fit.

(4) Wilful failure to comply with any order made by the Court under subsection two of this section shall be punishable as a contempt of the Court.

Improperly withdrawing money or destroying or concealing property. cf. Vic. No. 6291, 1958, s. 104H.

65H. Any person who at any time with intent to defeat the purposes of this Division and whether before or after a receiver has been appointed—

- (a) withdraws money from or makes any payment out of any account; or
- (b) destroys or conceals or removes from one place to another place or delivers into the possession or places under the control of any other person any property of which a receiver has been or is likely to be appointed.

shall be guilty of an offence and shall be liable to a penalty not exceeding five hundred dollars.

Power of receiver to deal with property. cf. Vic. No. 6291, 1958, s. 104J.

65I. (1) The receiver may deal with any property which he has acquired or of which he has taken possession under the provisions of this Division in any manner in which the solicitor or the firm of which the solicitor is or was a partner might lawfully have dealt with the property and shall as soon as is reasonably possible and to the extent to which ownership can be established deliver such property to the persons lawfully entitled thereto.

(2) Without restricting or in any way derogating from the powers of the receiver under the provisions of subsection one of this section, the receiver may—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the solicitor in connection with any property of which the receiver has been appointed receiver;

(b)

Legal Practitioners (Amendment).

- (b) give receipts for any money received by him, No. 29, 1967 which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; and
- (c) employ a barrister or solicitor or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which he has been appointed receiver.

65J. The receiver, the solicitor, any member of the firm of which the solicitor is or was a partner or the personal representative of a deceased solicitor, or any person who has submitted to the receiver a claim in respect of any property may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on him by this Division either generally or in respect of any particular matter specified in the application, whereupon the Court may make such order as to the Court seems fit.

Summons for directions.
cf. Vic. No. 6291, 1958, s. 104k.

65K. (1) The receiver may give notice to the solicitor or any other person that, if the solicitor or other person has any claim to any property, he shall within the time specified in the notice (being not less than thirty days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of such claim.

Property claimed by solicitor.
cf. Vic. No. 6291, 1958, s. 104L.

(2) If such notice has been given the receiver may disregard any claim made by the solicitor or other person otherwise than in accordance with the terms of the notice.

(3) The solicitor shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against his client to a lien upon any document or writing held by the receiver unless and until the proper claims of all other

*Legal Practitioners (Amendment).***No. 29, 1967**

other claimants are fully satisfied and the expenses of the receivership, as defined in section 65Q of this Act, have been paid.

Liens for costs on property held by receiver.
cf. Vic. No. 6291, 1958, s. 104M.

65L. (1) If the solicitor or the firm of which the solicitor is or was a partner claims a lien for costs on any document, writing or other property held by the receiver, the receiver may by notice in writing require him or them to give to the receiver within a time specified in the notice (being not less than thirty days from the giving of the notice) particulars of all documents, writings and other property on which he claims or they claim a lien together with a detailed bill of costs in respect of which each lien is claimed and may also, by the same or a subsequent notice in writing, require him or them to tax any such bill of costs within a reasonable time to be specified in the notice by the receiver.

(2) If the solicitor or firm fails to comply with any such requirement in respect of any lien claimed by him or them the receiver may in dealing with such document or writing disregard the lien.

(3) If the solicitor or firm so requests in writing, the receiver shall give to the solicitor or firm or any other person on his or their behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of such bill of costs and in such event the time specified in the notice pursuant to subsection one of this section shall not commence until the receiver gives such access as aforesaid.

Power of Court to order person to appear for examination by receiver.
cf. Vic. No. 6291, 1958, s. 104N.

65M. (1) The receiver may apply to the Court for an order that the solicitor or any other person appear before the Court to be examined by the receiver as to any property of which the receiver has been appointed receiver, whereupon the Court may make such order as to the examination of the solicitor or other person as to the Court seems fit.

(2)

Legal Practitioners (Amendment).

(2) Upon any such examination before the Court the receiver and the solicitor or other person may be represented by counsel, and the Court may put or allow to be put to the solicitor or other person such questions as it thinks fit. No. 29, 1967

(3) The solicitor or other person shall be examined on oath and shall answer all such questions.

(4) The solicitor or other person may object to any question upon the ground that the answer may tend to incriminate him but shall be compellable to answer such question notwithstanding such objection.

(5) No answer given subject to such objection shall be permitted in evidence upon any proceedings for any offence except that of perjury in connection with the examination.

65N. (1) The council, the receiver or the solicitor or the firm of solicitors of which the solicitor is or was a partner may at any time apply to the Court for an order that the appointment of a receiver be terminated, whereupon the Court may make such order and may if it thinks fit appoint another person to be the receiver in his place. Application for termination of appointment of receiver. cf. Vic. No. 6291, 1958, s. 104o.

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

(3) If a receiver's appointment is terminated by order of the Court and no other person is within fourteen days of such termination appointed to be receiver in his place, he may, and upon demand in writing by the solicitor or the firm of solicitors of which the solicitor is or was a partner shall, as soon as he reasonably may and subject to any directions given by

the

Legal Practitioners (Amendment).

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the Court under this section and subject, unless the council shall otherwise determine, to the payment by the solicitor or firm to the Society of the expenses of the receivership, as defined in section 65Q of this Act, transfer or deliver to the solicitor or firm all property which he then holds by virtue of his appointment as receiver.

Property
not dealt
with by
receiver.
cf. Vic. No.
6291, 1958,
s. 104P.

65o. (1) All moneys and other property which come into the possession of the receiver in the course of the receivership and which the receiver has not dealt with in accordance with the provisions of this Division, other than this section, shall be paid or delivered by the receiver to the Society on and to the extent of a request by the Society for such payment or delivery, but where no such request is made, the moneys and other property shall be paid or delivered to the solicitor or to the firm of solicitors of which the solicitor is or was a partner, as the case may require.

(2) Where property is delivered to the Society pursuant to subsection one of this section, the Society shall deal with such property in such manner as the Court, upon application by the Society, may direct, and where the property is sold, the proceeds of the sale shall for the purposes of subsection three of this section, be deemed to be moneys paid by the receiver to the Society in accordance with subsection one of this section.

(3) All moneys paid by the receiver to the Society in accordance with subsection one of this section shall be paid to the fund to be applied firstly in the reimbursement to it of any claims paid by it in respect of the solicitor or the firm of solicitors of which the solicitor is or was a partner, secondly in the satisfaction of or partial satisfaction of claims against the solicitor or firm of solicitors of which the solicitor is or was a partner to the extent to which they or any of them have not otherwise been fully satisfied and thirdly in payment of the expenses of the receivership, as defined in section 65Q of this Act.

(4)

Legal Practitioners (Amendment).

(4) If after the moneys have been so applied No. 29, 1967 there remains a surplus of moneys paid by the receiver to the Society, such surplus shall be paid to the solicitor or to the firm of solicitors of which the solicitor is or was a partner, as the case may require.

65P. (1) The receiver may invest any moneys in his hands in the course of his receivership in any manner in which trustees are for the time being authorised by law to invest funds. Receiver may invest moneys in his hands. cf. Vic. No. 6291, 1958, s. 104Q.

(2) Any income accruing from the investment of such moneys and any profit from the sale of any such investment shall be added to and form part of the property of which he has been appointed receiver.

65Q. (1) All moneys payable to the receiver as remuneration for his services, all costs of legal proceedings and other expenses incurred by him in the course of his receivership, and any reimbursement made pursuant to section 65S of this Act (all of which are hereafter in this section referred to as "the expenses of the receivership") shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to him by the Society out of the fund. Remuneration of receiver and expenses of receivership. cf. Vic. No. 6291, 1958, s. 104R.

(2) Any amount paid out of the fund for the expenses of the receivership shall be recoverable by the Society from the solicitor as a debt owing by him to the Society.

(3) In default of agreement between the council and the receiver as to the amount to be paid to the receiver as his remuneration the Court may, on application by the Society or the receiver, determine the amount to be so paid.

65R. In any proceedings in the Court under the provisions of this Division the Court may make such order as to the payment of the costs of the proceedings and costs incurred in the execution of any order made by the Court as to the Court seems fit. Cost of proceedings. cf. Vic. No. 6291, 1958, s. 104S.

65s.

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Claim or charge against receiver may be paid from fund. cf. Vic. No. 6291, 1958, s. 104T.

65S. If any claim or charge is made by any person against the receiver for any act or omission by the receiver or by his servants or agents done or made by him or them in good faith and in the execution or purported execution of the powers conferred or duties imposed on him by or under this Division, the Society may reimburse the receiver out of the fund for all or any costs, charges, expenses or damages which he may have incurred in relation to such claim or charge.

Re-opening of agreement as to receiver's remuneration.

65T. The Court, on application by the solicitor or by any firm of which the solicitor is or was a partner, may re-open any agreement between the council and the receiver as to the amount to be paid to the receiver as his remuneration, and may determine the amount to be so paid.

Court may review receiver's expenses.

65U. (1) Where proceedings are taken by the Society under subsection two of section 65Q of this Act for the recovery of any amount paid out of the fund for the expenses of the receivership therein referred to and there is evidence which satisfies the Court that the amounts charged for such expenses are excessive, the Court may take an account between the Society and the receiver and relieve the solicitor from payment of any sum in excess of the sum adjudged by the Court to be fairly payable in respect of such expenses.

If any excess has been paid or allowed in account by the Society, the Court may order the receiver to repay it.

(2) The Court shall have and may, on the application of the solicitor or of any firm of which the solicitor is or was a partner, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of any amount paid out of the fund for the expenses of the receivership pursuant to section 65Q of this Act, and the Court shall have power to entertain any such application, notwithstanding that the expenses of the receivership have not been paid to the receiver.

(3)

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(3) No proceedings to obtain any relief under this section shall be taken after three months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased solicitor may take such proceedings at any time within six months thereafter. **No. 29, 1967**

65v. For carrying out the objects of this Division or the administration by a receiver of all or any property the Court may, without derogating from any other provisions of this Division, authorise the receiver to do such things as it thinks fit and may give directions accordingly. **Power of Court to give general directions. cf. Vic. No. 6291, 1958, s. 104u.**

65w. Where a solicitor dies, a receiver in the execution of his functions under this Division shall not be deemed or taken to be a personal representative of the solicitor. **Receiver not deemed to be personal representative. cf. Vic. No. 6291, 1958, s. 104v.**

65x. Property held by a receiver under the provisions of this Division shall not be levied upon or taken or attached under any judgment. **Property held by receiver to be free from execution or attachment. cf. Vic. No. 6291, 1958, s. 104w.**

65y. Subject to any directions given by the Court, every receiver shall at such times as the Court determines furnish to the Court and to the council a report of his receivership containing such information as the Court requires and upon the conclusion of his receivership shall forthwith lodge with the Court, in addition to his final report, all documents and writings in his possession or under his control relating to his receivership, and subject to any order of the Court for their destruction or otherwise, such documents and writings shall be kept in the custody of the Court. **Returns by receiver. cf. Vic. No. 6291, 1958, s. 104x.**

65z. Without in any way limiting or derogating from the powers of the Court, any person who contravenes or fails to comply with any provision of this Division shall be **Penalty. cf. Vic. No. 6291, 1958, s. 104y.**

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No. 29, 1967 be guilty of an offence against this Act and, if no penalty is expressly provided for that offence, shall be liable to a penalty not exceeding five hundred dollars.

Further amendment of Act No. 22, 1898. **10.** The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—

Sec. 67.
(Solicitor's practising certificate.)

(a) (i) by omitting from section sixty-seven the words "on or after the first day of July, one thousand nine hundred and thirty-five,";

(ii) by inserting in the same section after the word "solicitor" where lastly occurring the words "and he complies with any conditions subject to which the certificate was issued";

Sec. 68.
(Persons practising without certificates.)

(b) (i) by omitting from section sixty-eight the words "after the thirtieth day of June, one thousand nine hundred and thirty-five,";

(ii) by inserting at the end of the same section the following new subsection :—

(2) For the removal of doubt it is hereby declared that in subsection one of this section a reference to a person includes a reference to a body corporate.

Sec. 69.
(Fee.)

(c) (i) by omitting from paragraph (a) of section sixty-nine the words "the sum of two guineas or such other sum as may from time to time be prescribed in lieu thereof" and by inserting in lieu thereof the words "such sum as may from time to time be prescribed";

(ii) by omitting from paragraph (b) of the same section the words "the sum of one guinea or such other sum as may from time to time be prescribed in lieu thereof by regulations made under

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under the authority of this Act;" and by inserting in lieu thereof the following words and new paragraph :—

such sum, being less than the sum prescribed under paragraph (a) of this section, as may from time to time be prescribed by regulations made under the authority of this Act; and

(c) for any solicitor first admitted to the roll of solicitors less than three years before the date of his application for a practising certificate, such sum, being less than the sum prescribed under paragraph (a) of this section, as may from time to time be prescribed by regulations made under the authority of this Act,

- (d) (i) by omitting from paragraph (a) of section seventy the word "certificate" and by inserting in lieu thereof the words "practising certificate or renewal of a practising certificate"; Sec. 70. (Application for and issue of certificate.)
- (ii) by inserting at the end of the same section the following new subsections :—

(2) Practising certificates may be in different forms depending on whether the applicant intends to engage in practice as a solicitor on his own account or in partnership or intends not to be so engaged.

(3) The council may instead of issuing a practising certificate entitling an applicant to practise on his own account issue to that applicant a practising certificate subject to conditions limiting the applicant to a right to practise as a solicitor either in partnership only or as an employee of a solicitor engaged in practice on his own account or of two or more solicitors practising in partnership, or otherwise, as the council may determine.

(e)

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Sec. 71.
(Grounds for refusing certificate.)
- (e) by inserting in paragraph (d) of section seventy-one after the word "Act" the words "or in the regulations made under this Act";
- Sec. 72.**
(Appeal.)
- (f) (i) by omitting from section seventy-two the words "any application for a certificate," and by inserting in lieu thereof the words "to issue any certificate to an applicant or shall refuse to issue a certificate in accordance with any application";
- (ii) by inserting in the same section after the word "refusal" the words "to issue any certificate to an applicant";
- (iii) by inserting in the same section after the words "practising certificate." the words "In the case of an appeal against a refusal to issue a certificate in accordance with an application for the renewal of a certificate, the appellant shall, pending the disposal of the appeal, be deemed to be the holder of the certificate held by him immediately before the date of his application.";
- Sec. 73.**
(Solicitor may not act or recover costs while uncertificated.)
- (g) by omitting from section seventy-three the words "on or after the first day of July, one thousand nine hundred and thirty-five,";
- Sec. 74.**
(The like in relation to preparation of documents, &c.)
- (h) by omitting from section seventy-four the words "on or after the first day of July, one thousand nine hundred and thirty-five,".
- Further amendment of Act No. 22, 1898.
- 11. (1)** The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended—
- Sec. 75.**
(Statutory Committee.)
- (a) (i) by omitting from subsection one of section seventy-five the words "The Statutory Committee of the Incorporated Law Institute of New

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New South Wales” and by inserting in lieu No. 29, 1967 thereof the words “The Solicitors’ Statutory Committee”;

- (ii) by inserting in the same subsection after the words “or not” the words “, and for the purpose of exercising or performing such other powers or functions as may be conferred or imposed on it under this Act”;
- (iii) by omitting from subsection two of the same section the word “five” and by inserting in lieu thereof the word “seven”;
- (iv) by inserting at the end of the same subsection the following new paragraph :—

The powers and functions of the Statutory Committee may be exercised or performed by any committee of three or more members and any committee when exercising or performing any such powers or functions shall be deemed to be the Statutory Committee.
- (v) by omitting paragraph (b) of subsection nine of the same section and by inserting in lieu thereof the following paragraph :—
 - (b) if he becomes a mentally ill person, a protected person or an incapable person, within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts; or
- (vi) by inserting in paragraph (e) of the same subsection after the word “Act” the words “or the regulations made under this Act”;
- (vii) by inserting in the same subsection after the word “matter” the words “before more than three members of the Statutory Committee”;

(b)

*Legal Practitioners (Amendment).***No. 29, 1967****Sec. 76.**
(Reference
to Statutory
Committee.)

- (b) by omitting from paragraph (a) of subsection two of section seventy-six the words “, whether the matter charged was committed or suffered before or after the commencement of the Legal Practitioners (Amendment) Act, 1935,”;

Sec. 77.
(Jurisdiction
of
Statutory
Committee.)

- (c) (i) by omitting from subsection one of section seventy-seven the words “four hundred dollars” and by inserting in lieu thereof the words “one thousand dollars”;
- (ii) by inserting at the end of the same subsection the following new proviso :—

Provided that where the Statutory Committee is of the opinion that the conduct of the solicitor having regard to all the circumstances does not warrant the making of an order or the imposing of a penalty as aforesaid it may dismiss the charge or decline to make a finding of professional misconduct but may, if it considers the conduct of the solicitor warrants its doing so, make an order reprimanding the solicitor.

**New sec.
78A.**

- (d) by inserting next after section seventy-eight the following new section :—

**Trust
account to
be evidence
of moneys
paid or
received.**

78A. Where, at the hearing of any enquiry referred to the Statutory Committee under section seventy-six of this Act at which the solicitor claims that moneys shown to the credit of a client in the trust account of the solicitor include moneys owing or which had been owing to him by the client for costs, the failure of the solicitor to produce in evidence a statement of account or a copy of such statement of account containing the full particulars of the matter or matters in respect of which such costs were incurred and showing the amount of such costs shall be prima facie evidence that the entries in the trust account relating to the matter

or

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or matters are a correct record of moneys received and paid by the solicitor including costs paid or payable to him relating to such matter or matters. No. 29, 1967

(2) The alteration of the name of the Statutory Committee effected by the amendment made by subparagraph (i) of paragraph (a) of subsection one of this section or of the constitution of the Statutory Committee effected by the amendment made by subparagraph (iii) of that paragraph shall not affect the powers or functions of the Statutory Committee or render defective any proceedings instituted or to be instituted before the Statutory Committee.

(3) Any such proceedings may be continued or completed before the Statutory Committee by its name, as amended by this Act, that might have been continued or completed before the Statutory Committee by its name immediately before the commencement of this Act.

12. The Legal Practitioners Act, 1898, as amended by subsequent Acts, is further amended— Further amendment of Act No. 22, 1898.

(a) (i) by inserting in paragraph (a) of subsection one of section eighty-two after the word “solicitor” the words “or as to the conduct of a person who is or was a clerk to a solicitor but is not himself a solicitor”; Sec. 82. (Additional powers of Institute.)

(ii) by omitting paragraph (c) of the same subsection and by inserting in lieu thereof the following paragraph :—

(c) to appear and be heard in support of or in opposition to any application to the Court, or the Statutory Committee, in the exercise of its jurisdiction, powers and authorities either under this Act and the regulations made under this Act or otherwise, or over candidates for admission as solicitors;

(b)

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No. 29, 1967
 New sec.
 82A.

Investigation
 of accounts,
 transactions
 and affairs
 of solicitors.

(b) by inserting next after section eighty-two the following new section :—

82A. (1) The council may, in addition to and not in substitution for the powers conferred on it by section eighty-two of this Act, at any time and from time to time appoint a solicitor or an accountant or an officer or employee of the Society to investigate any accounts, transactions and affairs of a solicitor, a former solicitor, a deceased solicitor or a firm of solicitors specified in the appointment and to furnish to the council a confidential report as to any irregularity or professional misconduct or alleged or suspected irregularity or professional misconduct in or in relation to the accounts, transactions or affairs of the solicitor, former solicitor, deceased solicitor or firm that may be disclosed by the investigation or as to any other matter that in the opinion of the person so appointed should be further investigated.

(2) A copy of the report shall forthwith be sent by post by the person so appointed to the solicitor, former solicitor, personal representative of the deceased solicitor or firm concerned.

(3) Unless the person who investigates the accounts, transactions and affairs of any solicitor, former solicitor or firm of solicitors pursuant to subsection one of this section certifies to the council that his investigation discloses that the solicitor, former solicitor or firm of solicitors has not been guilty of any irregularity or professional misconduct the solicitor, former solicitor or firm of solicitors shall upon written demand made by the council pay to the council the costs, charges and expenses incurred by the council in connection with the investigation, but the council may if it thinks fit waive payment of any such costs, charges and expenses.

(4)

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(4) Every appointment made under this ^{No. 29, 1967} section shall be subject to the approval of the Prothonotary and shall be in writing signed by the president or two members of the council.

(5) Upon production by any person so appointed of the instrument of his appointment, he may require any person to produce to him and any assistant retained by him any books, papers, accounts, securities or other documents in his possession or under his control and relating to the accounts, transactions and affairs of the solicitor, former solicitor, deceased solicitor or firm of solicitors, and to give all information in relation thereto, and to furnish all authorities and orders to bankers and others that may be reasonably required of him or them.

(6) If any person so required without lawful justification or excuse, the proof whereof shall lie on him, refuses or fails so to do, or otherwise hinders, obstructs, or delays the person so appointed in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence and shall be liable to the penalty provided under subsection eleven of this section.

Any such offence shall also be professional misconduct.

(7) No person appointed to make any investigation for the purposes of this section shall communicate that fact or any matter which may come to his knowledge in the course of such investigation to any person except in the course of his report to the council or to members of the council or to the solicitors, officers or agents of the Society.

(8) Any person appointed to make an investigation for the purposes of this section may, with the approval of the council, retain the services of any person to assist him in carrying out the investigation.

(9)

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(9) A person so retained shall not communicate the fact of any appointment under this section or any matter which may come to his knowledge in the course of the investigation to any person except to the person appointed to make the investigation or, if so required, to the council.

(10) It shall not be lawful for any member of the council or its solicitors, officers or agents to publish, except to the Court or to the council, or to the Statutory Committee, any information disclosed in such report.

(11) Every person who commits a breach of any of the provisions of this section shall, in addition to any other proceeding, penalty or punishment to which he may be liable, be guilty of an offence and liable to a penalty not exceeding four hundred dollars.

Sec. 83.
(Legal
assistance.)

(c) by inserting in section eighty-three after the word "court" wherever occurring the words "or the Statutory Committee";

New
sec. 83A.

(d) by inserting next after section eighty-three the following new section :—

Protection
of council,
etc.

83A. No matter or thing done or suffered by the council or any member or officer of the council or person appointed under section 82A of this Act bona fide in the execution or purported execution of this Act or discharge of any of its or his powers, authorities, duties or functions whether under this Act or otherwise shall subject the council or any such member, officer or person to any liability in respect thereof.

New
sec. 84A.

(e) by inserting next after section eighty-four the following new section :—

Recovery of
penalties.

84A. Subject to this Act, any penalty for an offence against this Act may be recovered before any two justices in petty sessions.

(f)

Legal Practitioners (Amendment).

- (f) (i) by inserting in subparagraph (i) of paragraph No. 29, 1967
(a) of subsection one of section eighty-six after
the word "moneys" the words "and as to the
depositing with the Society of part thereof";
Sec. 86.
(Council
may make
regulations.)
- (ii) by inserting next after the same subparagraph
the following new subparagraph :—
- (ia) as to the method of operating on such
accounts and specifying the persons
who may operate on such accounts;
- (iii) by omitting from subparagraphs (iii) and (iv)
of the same paragraph the word and symbols
"and (ii)" wherever occurring and by insert-
ing in lieu thereof the word and symbols
", (ia) and (ii)";
- (iv) by omitting from subparagraph (iv) of para-
graph (b) of the same subsection the words
"of accountants appointed to conduct an
examination of any accounts pursuant to sec-
tion sixty-five" and by inserting in lieu thereof
the words "of persons appointed to conduct an
investigation of any accounts, transactions and
affairs pursuant to section 82A";
- (v) by inserting next after the same subparagraph
the following new subparagraph :—
- (iva) as to the conduct, remuneration and
duties of a receiver appointed under
Division 2 of Part VIII of this Act;
- (g) by inserting next after section eighty-six the
following new section :— New sec.
87.
87. (1) The Governor may make regulations
for or with respect to— Governor's
power to
make
regulations
- (a) prescribing any person or class of persons
or any work or class of work for the pur-
poses of paragraph (e) of subsection two
of section 40c, or paragraph (b) of sub-
section two of section 40D, of this Act;
- (b)

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- (b) specifying the prescribed part for the purposes of section 42A of this Act;
- (c) the establishment and conduct of the fund referred to in paragraph (a) of subsection two of section 44A of this Act and the scheme of legal aid to be provided out of that fund.

(2) No regulations shall be made under paragraph (a) of subsection one of this section except on the recommendation of the Society.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or a later date to be specified therein;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

MARKETABLE