

**LEGAL PRACTITIONERS AND OTHER ACTS
(AMENDMENT) ACT.**

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 62, 1974.

An Act to make further provisions for and with respect to the inspection of solicitors' trust accounts; to allow solicitors in certain circumstances to pay unclaimed money in a trust account to the Treasurer; to provide for the disposal of any money so paid; to extend the provisions relating to payments into and claims against the fund formerly known as the Solicitors' Fidelity Guarantee Fund and now to be known as the Solicitors' Fidelity Fund; for these and other purposes to amend the Legal Practitioners Act, 1898; and to amend the Oaths Act, 1900, and the Legal Practitioners (Legal Aid) Act, 1970. [Assented to, 16th October, 1974.]

BE

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974 **B**E 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. 1. This Act may be cited as the "Legal Practitioners and Other Acts (Amendment) Act, 1974".

Commencement. 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 22, 1898. 3. The Legal Practitioners Act, 1898, is amended—

Sec. 1. (Short title and Division into Parts.) (a) by omitting from the matter relating to Part VIII in section 1 (1) the word "*Guarantee*";

Sec. 3. (Interpretation.) (b) by omitting from section 3 the definition of "The Fund" and by inserting instead the following definition :—

"The fund" means the Solicitors' Fidelity Fund established under section 46.

Further amendment of Act No. 22, 1898. 4. The Legal Practitioners Act, 1898, is further amended—

Sec. 42. (a) by omitting section 42 and by inserting instead the following section :—

Keeping of accounts. 42. (1) In this section—
"inspector" means a person appointed as an inspector under subsection (3);

"report"

Legal Practitioners and Other Acts (Amendment).

“report” means a report furnished by an inspector No. 62, 1974 under this section.

(2) Every solicitor shall keep accounts of all moneys received by him and required to be dealt with in accordance with the provisions of section 41 (1) in such a manner as to disclose the true position in regard thereto, and to enable the accounts to be conveniently and properly audited.

(3) The council may at any time and from time to time appoint a person to be an inspector to examine, either generally or in a particular case, the accounts kept pursuant to subsection (2) by any solicitor, former solicitor or deceased solicitor.

(4) Every appointment made under subsection (3) shall be in writing signed by the president or two members of the council.

(5) An inspector may if he thinks fit, and shall if required by the council to do so, furnish to the council a confidential report as to the state of any accounts he is appointed to examine.

(6) An inspector shall give seven days' notice of the date on which he proposes to commence to examine any accounts to the solicitor, the former solicitor or the personal representative of the deceased solicitor, concerned or to any other person whom the inspector believes to have possession or custody of the accounts, except where that solicitor, former solicitor, personal representative or other person agrees to a notice of less than seven days or agrees to waive the requirement that he be given notice under this subsection.

(7) An inspector may, with the approval of the council, retain the services of any person to assist him in examining any accounts.

(8)

*Legal Practitioners and Other Acts (Amendment).*No. 62, 1974

(8) Upon production by an inspector of the instrument of his appointment he may require any person to produce to him and to any assistant retained by him the accounts concerned and any books, papers, securities or other documents in the possession of the person or under his control relating to those accounts, and to give all information in relation thereto, and to furnish all authorities and orders to bankers and other persons that may be reasonably required of him.

(9) The council shall, as soon as practicable, cause a copy of any report furnished to it by an inspector as to the state of the accounts examined by the inspector to be given or sent by post to the solicitor, the former solicitor or the personal representative of the deceased solicitor, concerned.

(10) The council may call upon a solicitor, former solicitor or personal representative of a deceased solicitor to furnish an explanation in writing in respect of any matter disclosed in an inspector's report as to the state of the accounts kept by the solicitor, former solicitor or deceased solicitor.

(11) An inspector shall not communicate the fact of his appointment in any particular case, or any matter which may come to his knowledge in the course of the examination of any accounts, to any person except for the purposes of subsection (8) or 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, or to the Court, the Statutory Committee or any member of the police force.

(12) A person whose services are retained under subsection (7) 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 examination of any accounts, to any

person

Legal Practitioners and Other Acts (Amendment).

person except the inspector who retained his services No. 62, 1974
or, if so required, to the council or to members of
the council or to the solicitors, officers or agents of
the Society, or to the Court, the Statutory
Committee or any member of the police force.

(13) Subject to subsection (14), a member
of the council or any of its solicitors, officers or
agents shall not publish any information disclosed in
any report furnished under subsection (5).

(14) Where an inspector states in a report
furnished by him under subsection (5) that in his
opinion there are reasonable grounds to suspect that
there has been an irregularity or professional mis-
conduct in relation to any accounts which he was
appointed to examine, it shall be lawful for any
member of the council and for any of its solicitors,
officers or agents to publish any information dis-
closed in the report to the Court, any member of
the police force, the council or members of the
council, the Statutory Committee, any barrister
engaged to act for or advise the council, or such
other persons as the council may by resolution
approve for the purpose of this subsection.

(15) Any person who commits a breach of
subsection (11), (12) or (13) is, in addition to
any other proceeding, penalty or punishment to
which he may be liable, guilty of an offence and
liable to a penalty not exceeding \$400.

- (b) by omitting from section 43 the word “forty-two” Sec. 43.
and by inserting instead the figures “42 (2)”;
(Profes-
sional
misconduct.)
- (c) by inserting after section 43A the following Sec. 43B.
section :—

43B. (1) Where the person on whose behalf any Unclaimed
moneys are held in a trust account of any solicitor moneys.
cannot be found by the solicitor and has no agent
known to the solicitor with authority to receive the
moneys,

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

moneys, the solicitor may, if he thinks fit, pay the moneys to the Treasurer to be placed to the credit of the Consolidated Revenue Fund, and the solicitor shall thereafter be relieved from all further liability in respect of the moneys so paid.

(2) A solicitor who pays moneys to the Treasurer under subsection (1) shall when paying the moneys furnish to the Treasurer particulars of the payment and of the person on whose behalf the moneys were held.

(3) If any claimant makes any demand against the Treasurer for any moneys paid to the Treasurer under subsection (1), the Treasurer, on being satisfied that the claimant is entitled to the moneys, shall direct payment thereof to be made to him.

(4) Where any moneys that are paid pursuant to subsection (3) to a claimant are afterwards claimed by any other person, the Treasurer and the Crown are discharged from liability for the payment thereof, but that person may have recourse against the claimant to whom the moneys have been paid.

(5) Where a solicitor has paid any moneys to the Treasurer under this section the Treasurer may at any time require that solicitor or any other person to give to the Treasurer all such information in his possession as the Treasurer may require of him as to the entitlement of any person to the moneys and the steps taken to locate any such person.

(6) A solicitor or other person who refuses or neglects to furnish any information required of him under subsection (5), or who furnishes any information required of him under subsection (2) or (5) which is, to his knowledge, false in a material particular, shall be guilty of an offence and liable to a penalty not exceeding \$400.

Legal Practitioners and Other Acts (Amendment).

5. The Legal Practitioners Act, 1898, is further No. 62, 1974 amended—

- (a) by omitting from section 44A (2) (b) the word "Guarantee";
- (b) by omitting from the heading to Part VIII the word "*Guarantee*";
- (c) by omitting section 45 and by inserting instead the following section :—

Further amendment of Act No. 22, 1898. Sec. 44A. (Statutory Interest Account.)

Part VIII.

45. (1) All moneys forming part of the Solicitors' Fidelity Guarantee Fund established by section 46, as in force immediately before the commencement of section 5 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall, on and after that commencement, form part of the fund.

(2) Subject to subsection (3), a claim made against the Solicitors' Fidelity Guarantee Fund established by section 46, as in force immediately before the commencement of section 5 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, and not finally determined by the council or the committee of management referred to in section 51 at that commencement shall be determined as though it were a claim against the fund and the provisions of this Part, as amended by that Act, shall apply to and for the purposes of that determination.

(3) Nothing in the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall operate so as to revive a claim that was determined or barred before the commencement of section 5 (c) of that Act.

(d)

Legal Practitioners and Other Acts (Amendment).

- No. 62, 1974 (d) by omitting from section 46 (1) the word "Guarantee";
- Sec. 46. (The fund.)
- Sec. 47. (Separate bank account.) (e) by omitting from section 47 the word "Guarantee";
- Sec. 49. (Expenditure.) (f) (i) by inserting in section 49 (b) after the word "including" the words "interest and";
(ii) by omitting section 49 (c);
(iii) by inserting in section 49 (e) after the words "Council by" the words "section 42 or";
- Sec. 51. (g) by omitting section 51 and by inserting instead the following section : —
- Administration. 51. (1) The fund shall be administered by the council on behalf of the Society.
- (2) The council may from time to time by resolution delegate all or any of its powers in relation to the fund to a committee of management consisting of not less than three nor more than eight persons, being members of the Society, of whom not less than three shall be members of the council for the time being.
- (3) The council may from time to time by resolution rescind or vary any resolution made under subsection (2).
- (4) The council may at any time remove any member of the committee of management, and may fill any vacancy in that committee however arising.
- (5) A quorum of the committee of management shall be formed by three members of that committee if one of them is a member of the council.

Legal Practitioners and Other Acts (Amendment).

(6) The council shall from time to time ^{No. 62, 1974} appoint a member of the committee of management to be chairman of that committee, and that chairman shall preside at any meeting of the committee at which he is present.

(7) Where the chairman appointed under subsection (6) is absent from a meeting of the committee of management the members present at that meeting may elect from among themselves an acting chairman who shall preside at that meeting so long as the chairman remains absent.

(8) The committee of management shall keep minutes of its proceedings.

(9) Questions arising at any meeting of the committee of management shall be decided by a majority of the votes of the members present and voting, and if there is an equality of those votes the chairman, or in his absence the acting chairman, shall have a casting vote in addition to his ordinary vote.

(10) Subject to this section the committee of management may call, adjourn, and regulate the conduct of its meetings as it thinks proper.

(h) by omitting section 52 and by inserting instead the ^{Sec. 52.} following section :—

52. (1) This section applies to a solicitor, other ^{Contributions.} than a solicitor engaged in the practice of a solicitor solely in the employment of the Crown, or of a corporation prescribed for the purposes of this section.

(2) Subject to subsection (4), a solicitor to whom this section applies shall, when making application for a practising certificate or the renewal of a practising certificate in respect of any year, pay to the Society in respect of that year the annual contribution determined under subsection (3).

(3)

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

(3) The council may, with the consent of the Attorney-General, from time to time determine the amount of the annual contribution, and different amounts may be determined under this subsection in respect of different solicitors.

(4) Where a solicitor to whom this section applies makes application after the thirty-first day of December in any year for a practising certificate in respect of that year, he shall be liable to pay only half of the annual contribution which he would otherwise have been liable to pay.

(5) For the purposes of this section a year shall be deemed to commence on the first day of July and to expire on the thirtieth day of June next following.

Sec. 53.
(Levies.)

(i) (i) by omitting from section 53 (1) the words "this Part" and by inserting instead the words "section 52";

(ii) by inserting after section 53 (1) the following subsection :—

(1A) A resolution made under subsection (1) may impose a levy which differs according to whether the solicitor on whom it is imposed is engaged in the practice of his profession—

- (a) on his own account or in partnership with any other solicitor;
- (b) as an employee of another solicitor; or
- (c) as an employee of a person who is not a solicitor, or of a corporation.

Sec. 54.
(Failure to pay contribution or levy.)

(j) by omitting from section 54 the words "with respect to whom this Part applies";

(k)

Legal Practitioners and Other Acts (Amendment).

(k) by omitting section 56 and by inserting instead the No. 62, 1974 following section :—

Sec. 56.

56. (1) In this Part, unless the context or Application of fund. subject-matter otherwise indicates or requires—

“failure to account” means a failure by a solicitor to whom section 52 applies to account for moneys or other valuable property entrusted to the solicitor, or to any partner, servant or agent of the solicitor, in the course of his practice as a solicitor (including any moneys or other valuable property entrusted to him as a solicitor-trustee), arising from any act or omission of the solicitor or of his partner, servant or agent—

- (a) with respect to which the solicitor or his partner, servant or agent has been convicted of any offence involving dishonesty; or
- (b) which the council determines under subsection (2) to be dishonest,

whether the act or omission occurred before or after the commencement of section 5(k) of the Legal Practitioners and Other Acts (Amendment) Act, 1974;

“pecuniary loss” includes—

- (a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses which a claimant has suffered or incurred as a direct consequence of a failure to account; and
- (b) all interest on moneys or other valuable property which a claimant would have received but for a failure to account for the moneys or other property, calculated to the date on

which

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

which the council determines the claimant's claim to, or a judgment is recovered against the Society in relation to the fund in respect of, the moneys or other property.

(2) The council may, for the purposes of paragraph (b) of the definition of "failure to account" in subsection (1), determine whether an act or omission is or is not dishonest and that determination shall for all purposes of this Part be final and conclusive.

(3) Subject to this Part, the fund shall be held and applied for the purpose of compensating persons who may suffer or incur pecuniary loss by reason of a failure to account.

(4) The council shall receive and may investigate any claim made under this Part, and subject to this Part shall determine any such claim by allowing, compromising, settling or disallowing it, either in whole or in part.

(5) A person shall not have a claim against the fund in respect of a failure to account unless notice of the failure to account is given to the council as soon as reasonably practicable after the person has become aware of the failure to account, but in any event within three months after the person becomes so aware, unless the council, or in the case of a refusal by the council, the Court, grants further time.

(6) Where no interest is included in a claim received by the council under subsection (4) or in respect of which judgment is recovered against the Society in respect of the fund, interest shall be payable from the fund upon so much of the claim as may be allowed by the council, or upon the amount for which judgment is recovered against the Society, at the prescribed rate, calculated from the

date

Legal Practitioners and Other Acts (Amendment).

date on which notice of the claim was lodged with the Society until the date on which the claim is allowed or the judgment recovered. No. 62, 1974

(7) The legal costs and disbursements suffered or incurred, in consequence of a failure to account, by a claimant whose claim against the fund—

- (a) has not been wholly disallowed shall be assessed by agreement between the claimant and the Society, and in default of agreement shall be taxed as though referred for taxation under Part V; or
- (b) has been wholly disallowed may be paid from the fund if, and to the extent that, the council in its absolute discretion so decides.

- (1) by omitting section 57 and by inserting instead the following section :—

57. (1) The Society may give to a claimant against the fund not less than twenty-one days' notice in writing requiring the claimant to take such steps for the purpose of pursuing his claim, or to do such things or to supply to the Society such particulars in connection with his claim, as are specified in the notice, and where a claimant fails to comply with any such notice the council may disallow the claim wholly or in part or may direct that the whole or part of any interest which would otherwise be payable from the fund under section 56 (6) in respect of the claim be not so payable. Claims
against
the fund.

(2) Subject to section 56 (6), a person shall not be entitled to recover against the fund in respect of a failure to account an amount greater than the balance of the pecuniary loss suffered or incurred by the person by reason of the failure to account after deducting the amount or value of all moneys or other benefits received or recovered, or which in the opinion of the council might but for

his

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

his neglect or default have been received or recovered, by the person from any source other than the fund in reduction of the pecuniary loss.

(3) Where a person has suffered or incurred pecuniary loss by reason of a failure to account, and in respect of the pecuniary loss—

- (a) a payment has been made to the person out of the fund; or
- (b) the person has a judgment against the Society in relation to a claim against the fund,

and the person receives or recovers from any source other than the fund any moneys for or on account of the pecuniary loss—

- (c) the 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 of the payment or judgment, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

(4) The aggregate sum which may be applied in compensating all persons who suffer or incur pecuniary loss by reason of any failure, or failures, to account by the same solicitor or firm of solicitors—

- (a) shall not exceed the sum of \$200,000 or such greater sum as may be prescribed; and
- (b) where the first claim against the fund or judgment against the Society in respect of any such failure to account is made or recovered before the commencement of section 5 (1) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall

not

Legal Practitioners and Other Acts (Amendment).

not exceed the appropriate amount prescribed for that purpose by section 57 as in force immediately before that commencement. pre-No. 62, 1974

(5) Where in respect of a failure to account by a partner, servant or agent of a solicitor—

- (a) all claims against the fund other than claims under this subsection have been determined;
- (b) the solicitor, former solicitor or personal representative of a deceased solicitor has paid moneys to any person by way of compensation for pecuniary loss suffered or incurred by the person by reason of the failure to account; and
- (c) the solicitor, former solicitor or personal representative of a deceased solicitor has in the opinion of the council acted honestly and reasonably in all the circumstances of the case,

the solicitor, former solicitor or personal representative of a deceased solicitor may claim against the fund as though the moneys paid by him amounted to pecuniary loss suffered by him by reason of the failure to account.

(6) The council may disallow wholly or in part a claim against the fund made by a person who knowingly assisted in or contributed towards, or was in any way a party or accessory to, the act or omission from which the failure to account concerned arose.

(7) No person shall be precluded from claiming against the fund in respect of a failure to account by reason only of a solicitor, subsequent to the failure to account, having died, or been struck off the roll of solicitors, or ceased to practice or to hold a current practising certificate.

(8)

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

(8) Where, pursuant to the regulations, a solicitor authorises a person to operate on an account for clients' moneys kept by the solicitor at a bank, any act or omission of that person in, or in relation to, operations by him on the account shall, for the purposes of this section, be treated as if it were the act or omission of an agent of the solicitor.

(9) If a solicitor to whom section 52 does not apply carries on the practice of a solicitor otherwise than in the course of his employment by the Crown or by a corporation prescribed for the purposes of that section, as the case may be, he shall, for the purposes of this section, in respect of the practice so carried on by him, be treated as a solicitor to whom section 52 applies.

Sec. 57A.

(m) by omitting section 57A and by inserting instead the following section :—

Additional
payments to
claimants.

57A. Notwithstanding any other provision of this Part—

- (a) if in the opinion of the council the state of the fund is such, after taking into account all ascertained or contingent liabilities of the fund, that it would be reasonable to make from the fund a payment which could not otherwise be made solely because of the operation of section 57 (4), the council may, in its absolute discretion, make the payment; and
- (b) where a claim against the fund is for an amount not exceeding \$1,000, or such other sum as may be prescribed, the council may, in its absolute discretion, determine and pay the claim on the production of such evidence as to entitlement as the council may deem sufficient.

(n)

Legal Practitioners and Other Acts (Amendment).

(n) (i) by omitting from section 58 the words “theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the” and by inserting instead the words “failure to account by a”; No. 62, 1974
Sec. 58.
(Advertisement.)

(ii) by inserting at the end of section 58 the following subsection :—

(2) The publication bona fide of any notice for the purposes of this subsection shall not subject—

- (a) the Society;
- (b) the council;
- (c) the committee of management;
- (d) any member, employee or agent of the Society, the council or the committee of management; or
- (e) the proprietor, editor or publisher of any newspaper,

to any liability to any person.

(o) by omitting section 59 and by inserting instead the following section :— Sec. 59.

59. The council shall, in respect of a failure to account, be at liberty— Council may distribute.

- (a) after the date fixed by a notice published under section 58 (1); or
- (b) if no notice is so published, after such date as the council may fix,

to distribute the sum from time to time available to be applied in compensation under this Part, having regard only to judgments recovered against the Society in respect of claims made against the fund and claims allowed against the fund.

(p)

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

Sec. 60.
Proceedings
against
Society.

(p) by omitting section 60 and by inserting instead the following section :—

60. (1) No person shall be entitled, without leave of the council, to commence any proceedings against the Society in relation to the fund except as in this section provided.

(2) Where the council has disallowed, either in whole or in part, a claim in respect of a failure to account by a solicitor with respect to which the solicitor or his partner, servant or agent has been convicted of any offence involving dishonesty, the claimant may commence proceedings in the Court as for a debt due by the Society, and in any such proceedings all defences which would have been available to the solicitor shall be available to the Society.

(3) Where the council has disallowed, either in whole or in part, any claim, the Society shall as soon as practicable notify the claimant or his solicitor in writing of the disallowance, and the claimant may, within three months after being so notified or within such further time as the Court may allow, by notice require the Society to state a case for the opinion of the Court on all or any matters relating to the disallowance other than any determination referred to in section 56 (2).

(4) The Society shall, as soon as practicable after being required by a claimant, under subsection (3), to state a case with regard to a disallowance, state and, through its President or one of its Vice-Presidents, sign a case setting forth the facts before it on the disallowance and the question or questions to be decided, and deliver the case to the claimant.

(5) Within twenty-eight days after receiving a case under subsection (4) the claimant shall cause the case to be set down for hearing before the Court as soon as it can under the rules of the Court be heard.

(6)

Legal Practitioners and Other Acts (Amendment).

(6) On hearing a case stated under sub-section (4) the Court shall determine the question or questions set forth in the case, and any question of costs, and shall make such order as it thinks fit. No. 62, 1974

(q) by omitting section 61 and by inserting instead the following section :— Sec. 61.

61. (1) Subject to subsection (3), on payment out of the fund of any moneys in settlement in whole or in part of any claim under this Part arising from the act or omission of a solicitor or of his partner, servant or agent, the Society shall be subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the solicitor, or the partner, servant or agent, or any other person (including any person entitled to administer the estate of any such solicitor, partner, servant or agent who is insolvent or dies) in respect of the act or omission. Subroga-
tion.

(2) Where the Society is subrogated under subsection (1) to the rights and remedies of a claimant—

- (a) the Society shall be at liberty to exercise those rights and remedies in its own name or the name of the claimant; and
- (b) any moneys recovered by the Society in the exercise of those rights and remedies shall be paid into the fund.

(3) In the case of a claim under section 57 (5) the Society shall not be subrogated to any right or remedy against a solicitor who is a partner of the claimant and who has in the opinion of the council acted honestly and reasonably in all the circumstances of the case.

(4) The Society shall indemnify a claimant against any costs awarded against the claimant in any proceedings brought by the Society in the name

of

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

of the claimant to enforce the rights and remedies of the claimant to which the Society is subrogated under subsection (2).

Sec. 62.
(Council may require production, etc., of documents.)

- (r) (i) by omitting from section 62 the word "servant" and by inserting instead the words "partner, servant or agent";
- (ii) by omitting from section 62 the word "reject" and by inserting instead the word "disallow";

Sec. 63.
(Insufficiency of the fund.)

- (s) by omitting from section 63 (3) the words "reimbursement under section fifty-seven of this Act" and by inserting instead the words "compensation under this Part";

Sec. 64.
(Refund to representatives of deceased solicitor or to retiring solicitor.)

- (t) by omitting section 64.

Further amendment of Act No. 22, 1898.

6. The Legal Practitioners Act, 1898, is further amended—

Sec. 65A.
(Interpretation.)

- (a) by omitting from section 65A the definition of "Defalcation";

Sec. 65B.
(Power of Court to appoint receiver in certain cases.)

- (b) (i) by omitting from section 65B (a) the words "defalcation has been or may have been committed" and by inserting instead the words "failure to account has or may have occurred";
- (ii) by inserting in section 65B (b) (iii) after the word "practice;" the word "or";
- (iii) by omitting from section 65B (b) (iv) (b) the words "practice; or" and by inserting instead the word "practice,";

(iv)

(iv) by omitting section 65B (b) (v);

No. 62, 1974

(v) by inserting at the end of section 65B the following subsection:—

(2) Where the council has—

- (a) refused to issue a practising certificate or renewal of a practising certificate to a solicitor;
- (b) cancelled a practising certificate issued to a solicitor;
- (c) resolved to refer to the Statutory Committee for enquiry any question as to the professional misconduct of a solicitor; or
- (d) resolved to initiate proceedings in the Court in respect of the professional misconduct of a solicitor,

the Court, on application in that behalf made by the Society not later than twelve months after the date of the refusal, cancellation or resolution, and on being satisfied that the council had reasonable grounds for the refusal, cancellation or resolution, 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.

(c) by inserting after section 65G the following section :—

Sec. 65GA.

65GA. (1) Where any property has been taken by, or paid or transferred to, any person (in this section referred to as the “transferee”) in breach of

Further powers of receiver.

trust

Legal Practitioners and Other Acts (Amendment).

No. 62, 1974

trust or unlawfully, and the property is property of which the receiver has been appointed receiver under section 65B or might have been so appointed but for the taking, payment or transfer, the receiver shall—

- (a) if the transferee knew or believed at the time of the taking, payment or transfer that it was done in breach of trust or unlawfully, or if the transferee did not provide any consideration for the taking, payment or transfer, be entitled to recover from the transferee the amount of the payment or the value of the property;
- (b) if the transferee provided inadequate consideration for the taking, payment or transfer, be entitled to recover from the transferee the amount of the inadequacy; or
- (c) if the transferee by reason of the taking, payment or transfer became indebted, or otherwise liable, in any amount to the solicitor or the firm of solicitors of which the solicitor is or was a partner, or a client of the solicitor or firm, be entitled to recover that amount from the transferee.

(2) Where the receiver recovers from a transferee any amount which the receiver is entitled under subsection (1) to recover, the transferee shall not be liable for that amount to any other person.

(3) Where any property has been paid or transferred, in breach of trust or unlawfully, to or for the benefit of any person (in this section referred to as the "prospective plaintiff") in respect of a cause of action which the prospective plaintiff had or claimed to have against another person, and the property is property of which the receiver has been

appointed

Legal Practitioners and Other Acts (Amendment).

appointed receiver under section 65B or might have been so appointed but for the payment or transfer the receiver shall be entitled— No. 62, 1974

- (a) subject to subsection (4), to recover the property from the prospective plaintiff; and
- (b) to the extent that he does not recover the property in full take in the name of the prospective plaintiff such proceedings in relation to the cause of action against the other person as the prospective plaintiff might have taken.

(4) If the receiver takes proceedings in relation to a cause of action in the name of a prospective plaintiff he shall not thereafter be entitled to recover, pursuant to subsection (3) (a), any of the property paid or transferred to the prospective plaintiff in respect of the cause of action.

(5) In any proceedings brought by the receiver under subsection (1) or (3) the receiver, or an accountant authorised by the Society to give certificates for the purposes of this subsection, may give a certificate as to all or any of the following—

- (a) the receipt of property by the solicitor or firm of solicitors of which the solicitor is or was a partner from any person, the nature and value of the property, the date of the receipt and the identity of the person;
- (b) the taking by, or payment or transfer to, any person of property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person;
- (c) the entries made in the accounts and other books, ledgers, statements, journals and other records of the solicitor or firm of

solicitors

No. 62, 1974

solicitors of which the solicitor is or was a partner, and the truth or falsity of those entries;

- (d) the property held by the solicitor or firm of solicitors of which the solicitor is or was a partner at any time,

and any such certificate shall be received by any court or tribunal as evidence of the facts stated therein.

(6) Where any property has been used in breach of trust or unlawfully so as to discharge a debt or liability of any person, the receiver shall be entitled to recover from the person the amount of the debt or liability so discharged less the value of any consideration provided by the person for the discharge.

(7) Where a claimant has received from the fund an amount by way of compensation in whole or in part for pecuniary loss suffered or incurred by him by reason of a failure to account, and the claimant subsequently receives from any person any amount by way of damages or compensation in respect of the pecuniary loss or by way of payment or repayment of any money in respect of which the failure to account took place, the receiver shall be entitled to recover from the claimant—

- (a) where the amount received from the fund is by way of compensation for the whole pecuniary loss, the amount subsequently received; or
- (b) where the amount received from the fund is by way of compensation in part for the pecuniary loss, any amount by which the aggregate of the amount received from the fund and the amount subsequently received exceeds the amount of the pecuniary loss.

(8)

Legal Practitioners and Other Acts (Amendment).

(8) This section has effect whether the No. 62, 1974
 appointment of the receiver, or any breach of trust
 or taking, payment or transfer of any property,
 occurred before or after the commencement of sec-
 tion 6 (c) of the Legal Practitioners and Other
 Acts (Amendment) Act, 1974.

- (d) by inserting in section 65o (2) after the word “pro- Sec. 65o.
 perty” where firstly occurring the words “other than (Property
 moneys”. with by receiver.)

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

- (a) (i) by omitting from section 69 the words “pre- Sec. 69.
 scribed by regulations made under the (Fee.)
 authority of this Act” wherever occurring and
 by inserting instead the words “determined by
 the council, with the consent of the Attorney-
 General”;
- (ii) by omitting from section 69 the words “further
 fee or subscription” and by inserting instead the
 words “amount other than the annual prac-
 tising fee and the annual contribution required
 under section 52”;
- (b) (i) by omitting from section 70 (1) the words Sec. 70.
 “prescribed practising fee” and by inserting (Application
 instead the words “practising fee determined for and
 under section 69”; issue of
 certificate.)
- (ii) by omitting from section 70 (1) the words
 “prescribed contribution to the fund” and by
 inserting instead the words “contribution to the
 fund determined under section 52 (3)”;

(c)

*Legal Practitioners and Other Acts (Amendment).***No. 62, 1974****Sec. 71.**(Grounds
for refusing
certificate.)

(c) by inserting after section 71 (b) the following paragraph :—

(b1) have become bankrupt or made any arrangement or composition with his creditors, and have committed in the conduct of his affairs prior to the bankruptcy, arrangement or composition any act which, in the opinion of the council, amounts to conduct unbefitting a solicitor and contributed to the bankruptcy or the need to make an arrangement or composition ;

Sec. 75.(Statutory
Committee.)

(d) by inserting after section 75 (8) the following subsection :—

(8A) If the resignation of a member of the Statutory Committee pursuant to subsection (8) takes effect during the hearing of any charge, question or matter before more than three members of the Statutory Committee the hearing may be continued and an order made thereon by not less than three of the remaining members of the Statutory Committee before whom such hearing was commenced and continued prior to such resignation.

**Further
amendment
of Act No.
22, 1898.****8. The Legal Practitioners Act, 1898, is further amended—****Sec. 82A.**
(Investiga-
tion of
accounts,
transac-
tions and
affairs of
solicitors.)

(a) (i) by inserting in section 82A (7) after the word “except” the words “for the purposes of subsection (5) or”;

(ii) by inserting in section 82A (7) after the word “Society” the words “, or to the Court, the Statutory Committee or any member of the police force”;

(iii) by inserting in section 82A (9) after the word “council” the words “, or to the Court, the Statutory Committee or any member of the police force”;

(iv)

Legal Practitioners and Other Acts (Amendment).

- (iv) by omitting section 82A (10) and by inserting **No. 62, 1974** instead the following subsections :—

(10) Subject to subsection (10A), it shall not be lawful for any member of the council or any of its solicitors, officers or agents to publish any information disclosed in any report furnished under subsection (1).

(10A) Where a person appointed under subsection (1) states in a report furnished by him under that subsection that in his opinion there are reasonable grounds to suspect that there has been an irregularity or professional misconduct in relation to any matter investigated by him, it shall be lawful for any member of the council and for any of its solicitors, officers or agents to publish any information disclosed in the report to the Court, any member of the police force, the council, the Statutory Committee, any barrister engaged to act for or advise the council, or such other persons as the council may by resolution approve for the purpose of this subsection.

- (b) by omitting section 83A and by inserting instead **Sec. 83A.** the following section :—

83A. No matter or thing done or suffered by the Society or the council or any member or employee or agent of the Society or the council or person appointed under section 42 or 82A 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 Society or the council or any such member, employee, agent or person to any liability in respect thereof.

- (c) by omitting from section 84 (2) the word **Sec. 84.** "Guarantee"; **(Recovery of moneys.)**

(d)

Legal Practitioners and Other Acts (Amendment).

No. 42, 1974

Sec. 86.
(Council
may make
regulations.)

(d) (i) by omitting section 86 (1) (a) (ia) and by inserting instead the following subparagraph :—

(ia) as to the method of operating on such accounts and specifying the persons, or providing for the authorisation by solicitors (subject to such restrictions and conditions as may be prescribed) of persons, who may operate on such accounts;

(ii) by omitting section 86 (1) (b) (i);

(iii) by inserting after section 86 (1) (b) (iii) the following subparagraph :—

(iiia) empowering the council to require a solicitor to inform the council if he becomes bankrupt or makes any arrangement or composition with his creditors and, where he becomes bankrupt or makes such an arrangement or composition, to comply with any directions of the council in relation to his practice as a solicitor;

(iv) by inserting in section 86 (1) (b) (iv) after the word "section" the matter "42 or";

(v) by inserting after section 86 (5) the following subsection :—

(6) Section 53 of the Trustee Act, 1925, shall not apply to or in respect of any person who, pursuant to the regulations or an authorisation by a solicitor thereunder, may operate on an account for clients' moneys kept by a solicitor at a bank.

Amendment
of Act No.
20, 1900.
Sec. 27.
(Authority
to take
and receive
affidavits.)

9. The Oaths Act, 1900, is amended by inserting in section 27 (1) after the words "New South Wales" the words "or for any other purpose to be effected in New South Wales".

Legal Practitioners and Other Acts (Amendment).

10. The Legal Practitioners (Legal Aid) Act, 1970, is No. 62, 1974 amended by omitting from section 15 (3) (a1) the words "salaries (including professional fees)" and by inserting instead the words "professional fees".

Amendment
of Act No.
37, 1970.

Sec. 15.
(Legal
Aid
Fund.)

PAWNBROKERS