

First print



New South Wales

Legal Profession Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* as follows:

- (a) to provide for a Public Purpose Fund, which will replace the Statutory Interest Account under that Act,
 - (b) to require the Law Society Council, the Bar Council and the Legal Services Commissioner to develop performance criteria relating to the handling of complaints against legal practitioners under that Act and to ensure that information about the complaints procedure is provided to members of the public on request,
 - (c) to make further provision with respect to costs assessors, the functions of the Chief Justice of New South Wales and other matters.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Legal Profession Act 1987

Public Purpose Fund

At present, the *Legal Profession Act 1987* requires solicitors to deposit with the Law Society a prescribed part of the funds kept by solicitors in trust accounts. The Act allows the Law Society to invest these funds. All interest on those investments must be paid to the credit of an account called the "Statutory Interest Account". The Account is maintained by the Law Society and is used for the purpose of paying certain costs and expenses incurred under the Act and supplementing the Legal Aid Fund, and for certain other purposes.

Schedule 1 [9] and [10] replace the Statutory Interest Account with a fund called the "Public Purpose Fund".

The Public Purpose Fund is to be under the management and control of trustees appointed under the Act. The trustees consist of 3 persons appointed by the Attorney General, and the Director-General of the Attorney General's Department. The Fund is to be administered by the Law Society.

Interest paid on investments made by the Law Society (as referred to above) is to be paid into the Public Purpose Fund. In addition, any interest that accrues on general trust accounts kept by solicitors is to be paid into the Fund if that is required under the terms of an agreement between the trustees and the bank, building society or credit union at which the account is kept.

The trustees are to make payments from the Fund to re-imburse certain costs and expenses incurred under the Act. For instance, payments may be made in respect of costs and expenses incurred by the Law Society, a Council (the Law Society Council or the Bar Council) and the Legal Services

Commissioner in connection with the exercise of their functions under the Act. Such payments require the approval of the Director-General of the Attorney General's Department. For the purpose of determining the amount to be paid, the Director-General may require the beneficiary of the payment to submit a budget to the Director-General.

The new provisions also allow discretionary payments to be made from the Fund for certain purposes, including the supplementation of the Legal Aid Fund, the Fidelity Fund and the Law Foundation Fund. Payments may be made for other purposes related to the promotion and furtherance of legal education, law reform and access to legal information. All discretionary payments from the Public Purpose Fund may be made only by unanimous decision of the trustees, and only with the concurrence of the Attorney General.

The Auditor General will be able to conduct a special audit from time to time of the activities of the Legal Services Commissioner and the Councils for which costs may be paid from the Fund and the liability of the Fund for payment of those costs.

A report by the trustees about the income and expenditure of the Fund is to be included in the Law Society Council's annual report.

Schedule 1 [1]–[8], [11]–[19], [21] and [24] contain consequential amendments.

Schedule 1 [29] sets out provisions relating to the trustees of the Public Purpose Fund (such as terms of office and procedures for meetings).

Complaints against legal practitioners

Schedule 1 [20] requires the Law Society Council, Bar Council and Legal Services Commissioner to develop performance criteria relating to the handling of complaints under the Act. Each Council and the Commissioner are also required to produce information about the procedure for dealing with complaints under the Act and to ensure that it is provided to members of the public on request.

Costs assessors, the functions of the Chief Justice of New South Wales, and other matters

At present, under Part 11 of the Act, the Chief Justice of New South Wales is required to appoint costs assessors and also has power to remove them. **Schedule 1** [25] requires any proceedings relating to the appointment or

removal of a costs assessor by the Chief Justice of New South Wales to be taken against "The Proper Officer of the Supreme Court" as nominal defendant rather than the Chief Justice. **Schedule 1 [26]** provides that the Chief Justice of New South Wales and the proper officer of the Supreme Court are not personally liable for acts done in good faith for the purposes of the administration of Part 11 of the Act. **Schedule 1 [27]** is a consequential amendment.

Schedule 1 [30] allows a costs assessor whose term of office has expired to continue in office for the purpose of completing any application for costs assessment that was referred to the costs assessor before his or her term of office expired.

Schedule 1 [22] allows costs assessors to apply a rule known as the "slip rule" to their determinations. The provision will allow a costs assessor who makes a determination in relation to an application for costs assessment to correct an inadvertent error in the determination by making a new determination and issuing a replacement certificate that sets out the new determination. **Schedule 1 [23]** confers a similar power on a panel that conducts a review of the determination of a costs assessor.

Schedule 1 [28] allows the Chief Justice of New South Wales to delegate his or her functions under the Act to a Judge of the Supreme Court or a committee comprised of 1 Judge of the Supreme Court and such other persons as the Chief Justice may appoint.

Savings and transitional provisions

Schedule 1 [31] and **[32]** provide for savings and transitional provisions. In particular, the Public Purpose Fund is a continuation of the Statutory Interest Account and the assets and liabilities of the Statutory Interest Account become the assets and liabilities of the Public Purpose Fund. The assets and liabilities of the Solicitors' Trust Account Fund, a fund established by the Law Society, also become the assets and liabilities of the Public Purpose Fund.

Schedule 2 Consequential amendment of other Acts

Schedule 2 amends the following Acts:

Conveyancers Licensing Act 1995

Law Foundation Act 1979

Legal Aid Commission Act 1979

The amendments are consequential on the Public Purpose Fund replacing the Statutory Interest Account.

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New South Wales

Legal Profession Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Legal Profession Act 1987* to provide for a Public Purpose Fund and to make further provision with respect to complaints against legal practitioners, the functions of costs assessors and of the Chief Justice of New South Wales, and other matters; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Legal Profession Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Legal Profession Act 1987 No 109

The *Legal Profession Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts 10

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Legal Profession Act 1987

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

5

Director-General means the Director-General of the
Attorney General's Department.

Public Purpose Fund means the Public Purpose Fund
established under Division 2 of Part 6.

[2] Section 3 (1), definition of "Statutory Interest Account"

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Omit the definition.

[3] Section 59A

Omit section 59A. Insert instead:

59A Payment of costs of Advisory Council

Any amount payable from the Public Purpose Fund for
the purpose of meeting the costs of the Advisory Council
(including remuneration payable under Schedule 3), is to
be paid, in accordance with section 69G, to the Treasurer
for the credit of the Consolidated Fund.

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[4] Part 6, Division 1, heading

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Insert before section 60 in Part 6:

Division 1 General

[5] Section 60 Definitions

Omit "this Part" wherever occurring.
Insert instead "this Division".

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- [6] **Section 61 Money received by solicitor on behalf of another (as inserted by the Legal Profession Amendment Act 1996)**
- Omit "a bank, building society or credit union" from section 61 (1) (a).
Insert instead "an approved financial institution". 5
- [7] **Section 61 (9) (as inserted by the Legal Profession Amendment Act 1996)**
- Insert in alphabetical order:
- approved financial institution* means a bank, building society or credit union that has an agreement with the trustees of the Public Purpose Fund relating to the payment of interest on general trust accounts (as referred to in section 69E). 10
- [8] **Section 61 (9), definition of "controlled money" (as inserted by the Legal Profession Amendment Act 1996)** 15
- Omit "a bank, building society or credit union".
Insert instead "an approved financial institution".
- [9] **Section 67 Statutory Interest Account**
- Omit the section.
- [10] **Part 6, Division 2** 20
- Insert after section 69:
- Division 2 Public Purpose Fund**
- 69A Definitions**
- In this Division:
- general trust account* means a general trust account kept by a solicitor for the purposes of section 61 (1) (a). 25
- trustees* means the trustees of the Public Purpose Fund.

69B Public Purpose Fund

- (1) There is to be established a fund called the "Public Purpose Fund".
- (2) The following amounts are to be paid to the credit of the Fund: 5
 - (a) all interest on investments made under section 65,
 - (b) any interest accruing on general trust accounts that is required to be paid to the Fund under an agreement referred to in section 69E,
 - (c) such other amounts as are payable to the Fund by or under this Act. 10

69C Trustees of Public Purpose Fund

- (1) There are to be trustees of the Public Purpose Fund.
- (2) The trustees consist of:
 - (a) 3 persons appointed by the Attorney General, of whom: 15
 - (i) 2 are to be members of the Law Society Council nominated by the President of the Law Society, and
 - (ii) one is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and 20
 - (b) the Director-General.
- (3) Schedule 3A has effect with respect to the trustees of the Public Purpose Fund. 25

69D Management and control of Fund

- (1) The trustees have the management and control of the Public Purpose Fund.
- (2) The trustees may invest any amount standing to the credit of the Fund in any investment in which a trustee may invest trust funds in accordance with the *Trustee Act 1925*. 30

- (3) The trustees may enter into any agreement or arrangement with a person or body under which:
 - (a) the person or body provides the trustees with advice concerning the investment of any amount standing to the credit of the Fund, or 5
 - (b) the person or body agrees to invest any such amount on behalf of the trustees.
- (4) The Law Society is to administer the Fund on behalf of, and in accordance with the directions of, the trustees.

69E Agreements relating to payment of interest on general trust accounts 10

- (1) The trustees may enter into an agreement with a bank, building society or credit union relating to the payment to the Public Purpose Fund of interest accrued on money held in any general trust account at the bank, building society or credit union. 15
- (2) Interest that accrues on money held in general trust accounts is to be paid to the trustees, for the credit of the Fund, in accordance with the terms of any such agreement. 20

69F Payments from Fund

- (1) The trustees are to pay from the Public Purpose Fund the following:
 - (a) any amounts payable from the Fund for a purpose referred to in section 69G, in accordance with the approval of the Director-General under that section, 25
 - (b) any amounts that the trustees, with the concurrence of the Attorney General, determine should be paid from the Fund for a purpose referred to in section 69I, 30
 - (c) any amounts required to be paid from the Fund in accordance with an order of the Tribunal under section 171E (2),

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- (d) any costs or expenses incurred in collecting the interest payable to the Fund and in the management or administration of the Fund.
 - (2) Payments from the Public Purpose Fund may be made from the capital or income of the Fund, at the discretion of the trustees. 5
 - (3) The fact that money is paid out of the Public Purpose Fund under this section does not preclude the recovery of that money in accordance with this Act from any person liable to pay the money. Any such money recovered must be paid to the credit of the Public Purpose Fund. 10

69G Payment of certain costs and expenses from Fund

- (1) Payments are to be made from the Public Purpose Fund for the purpose of meeting the following costs and expenses: 15
 - (a) the costs of a Council in exercising its functions under section 16,
 - (b) the legal costs of a Council in exercising its functions in relation to practising certificates under Division 1 of Part 3, including in responding to an appeal referred to in section 38B, 20
 - (c) the costs of a Council in exercising its functions in taking action under section 38E to restrain a legal practitioner or interstate legal practitioner from contravening section 25, 25
 - (d) the costs of the Law Society Council (including its members, employees or agents) in respect of an inspection or investigation of the accounts or affairs of a solicitor or solicitors or a locally registered foreign lawyer under section 55, to the extent that such costs are not recoverable under section 55 (8), 30
 - (e) the costs of the Advisory Council in exercising its functions for the purposes of this Act, including remuneration payable under Schedule 3 (see section 59A), 35

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- (f) the expenses of the Law Society in connection with the management of a solicitor's practice under Part 8A (see section 114G), including any damages and costs reimbursed by the Law Society under section 114F, 5
- (g) the costs of the Commissioner or the Tribunal in relation to the administration of Part 10 (see section 171T),
- (h) the costs of the Commissioner or the Tribunal in relation to the administration of Part 10 as applied by section 82 of the *Conveyancers Licensing Act 1995*, 10
- (i) the costs of a Council in exercising its functions for the purposes of Parts 3A and 10,
- (j) the costs of a Council in relation to any proceedings in the Supreme Court with respect to the discipline of a legal practitioner or a locally registered foreign lawyer (as referred to in section 171M), 15
- (k) the costs of a Council or the Commissioner in connection with the provision of mediators for the mediation of consumer disputes under Division 4 of Part 10, 20
- (l) the costs of the costs assessors' rules committee in exercising its functions for the purposes of this Act (see section 208R (4A)). 25
- (2) Such payments are to be made by the trustees of the Fund in accordance with the approval of the Director-General.
- (3) The Director-General is to approve the payment from the Fund of such amounts as the Director-General considers necessary for the purpose of meeting any reasonable costs and expenses referred to in subsection (1), having regard to any budget submitted under section 69H. 30
- (4) An approval is subject to such conditions as the Director-General specifies in the approval. 35
- (5) Payments under this section are to be made in advance of the relevant cost or expense.

69H Submission of budgets to Director-General

- (1) For the purpose of determining the amount to be paid from the Public Purpose Fund for a purpose referred to in section 69G, the Director-General may require the beneficiary of the payment to prepare and submit a budget to the Director-General, in respect of such period as the Director-General directs, relating to the costs or expenses of the beneficiary (including projected costs and expenses). 5
- (2) The budget is to include such information as the Director-General directs. In particular, the Director-General may require the provision of information about the administration of the beneficiary. 10
- (3) The Director-General may refuse to approve a payment under section 69G if the beneficiary has failed to submit a budget as required under this section. 15
- (4) In this section:
- beneficiary* of a payment means the person or body to whom or in respect of whom a payment from the Fund may be made. 20

69I Discretionary payments from Fund for other purposes

- (1) The trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from the Public Purpose Fund for any of the following purposes: 25
- (a) the supplementation of any of the following funds:
- (i) the Legal Aid Fund,
- (ii) the Fidelity Fund,
- (iii) the Law Foundation Fund,
- (b) the promotion and furtherance of legal education in New South Wales, 30
- (c) the advancement, improvement and extension of the legal education of members of the community,

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- (d) the conduct of research into the law, the legal system, law reform and the legal profession and into their impact on the community,
 - (e) the furtherance of law reform,
 - (f) the establishment and improvement of law libraries and the expansion of the community's access to legal information, 5
 - (g) the collection, assessment and dissemination of information relating to legal education, the law, the legal system, law reform, the legal profession and legal services, 10
 - (h) the encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services,
 - (i) the improvement of the access of economically or socially disadvantaged people to the legal system, legal information or legal services. 15
- (2) The trustees are to invite applications for payments from the Fund for the purposes referred to in this section at such intervals as the Director-General directs. 20
- (3) Before making a payment from the Fund for a purpose other than the supplementation of the Legal Aid Fund, the trustees are to consider whether adequate provision has been made from the Fund for the purpose of supplementation of the Legal Aid Fund. 25
- (4) The trustees may approve the making of a payment in advance under this section, but the period with respect to which the payment is made must not exceed 3 years.
- (5) A determination of the trustees under this section may be made only by a unanimous decision of the trustees. A unanimous decision is a decision supported unanimously at a meeting of the trustees at which all the trustees for the time being are present and vote. 30
- (6) This section does not require the trustees to distribute all of the income or any of the capital of the Public Purpose Fund. 35

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- (7) In this section:

Law Foundation Fund means the Law Foundation Fund established under the *Law Foundation Act 1979*.

Legal Aid Fund means the Legal Aid Fund established under the *Legal Aid Commission Act 1979*.

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69J Special audits

- (1) The Auditor General may conduct a special audit under Division 2A of Part 3 of the *Public Finance and Audit Act 1983* of:
- (a) the activities of the Commissioner and the Councils for which costs and expenses may be paid from the Public Purpose Fund, and 10
- (b) the present and future liability of that Fund for the payment of those costs and expenses.
- (2) The special audit is to be conducted whenever the Auditor General considers it appropriate. 15
- (3) For the purposes of the special audit, Division 2A of Part 3 of the *Public Finance and Audit Act 1983* applies as if the Attorney General were the head of the relevant authority. 20

69K Information about Fund to be included in Law Society Council report

- (1) As soon as practicable after 30 June in each year, the trustees are to provide the Law Society Council with a report about the income and expenditure of the Public Purpose Fund for the period of 12 months ending on 30 June in that year. 25
- (2) The Law Society Council is to include a copy of the report of the trustees in its annual report for the same period under section 57. 30

[11] Section 70 Solicitors' Fidelity Fund

Omit "Statutory Interest Account" from section 70 (1) (d).
Insert instead "Public Purpose Fund".

[12] Section 73 Payments from Fidelity Fund

Omit section 73 (2) (b). Insert instead: 5

- (b) may enter into an agreement or arrangement with the trustees of the Public Purpose Fund to secure the repayment of the money borrowed by creating a charge over money in the Public Purpose Fund.

[13] Section 73 (3) 10

Insert after section 73 (2):

- (3) The trustees of the Public Purpose Fund may create a charge over the money in the Public Purpose Fund pursuant to an agreement or arrangement with the Law Society under this section. 15

[14] Section 114F Manager may be reimbursed for damages

Omit section 114F (2).

[15] Section 114G Payment of expenses of management

Omit "(in accordance with section 67) from the Statutory Interest Account" from section 114G (1). 20

[16] Section 114G (3)

Insert after section 114G (2):

- (3) If the Law Society recovers such a debt, it is to reimburse the Public Purpose Fund for any amount paid from the Fund in satisfaction of the expenses of the management of the solicitor's practice. 25

[17] Section 114K Termination of management

Omit "paid out of the Statutory Interest Account".
Insert instead "paid by the Law Society or out of the Public Purpose Fund".

[18] Section 171E Award of costs by Tribunal

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Omit "Statutory Interest Account" from section 171E (2).
Insert instead "Public Purpose Fund".

[19] Section 171I Payment of fines

Omit "to the Law Society for credit of the Statutory Interest Account".
Insert instead "to the trustees of the Public Purpose Fund for credit of that Fund".

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[20] Sections 171MA and 171MB

Insert after section 171M:

171MA Information about complaints procedure

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Each Council and the Commissioner must produce information about the procedure for dealing with complaints under this Act and ensure that such information is made available to members of the public on request.

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171MB Performance criteria relating to handling of complaints by Councils and Commissioner

- (1) Each Council and the Commissioner must develop performance criteria relating to the handling of complaints under this Part.
- (2) The criteria may be developed jointly or independently by each of the Councils and the Commissioner.

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- (3) Each Council is to include the relevant criteria in its annual report under section 57, together with an assessment of its performance against the criteria in the period to which the report relates.
- (4) The Commissioner is to include the relevant criteria in the Commissioner's annual report under section 171N, together with an assessment of the Commissioner's performance against the criteria in the period to which the report relates. 5

[21] Section 171T 10

Omit the section. Insert instead:

171T Costs of administering Part

Any amount payable from the Public Purpose Fund for the purpose of meeting the costs of the Commissioner or the Tribunal is to be paid, in accordance with section 69G, to the Treasurer for credit of the Consolidated Fund. 15

[22] Section 208JB

Insert after section 208JA:

208JB Correction of error in determination 20

- (1) At any time after making a determination, a costs assessor may, for the purpose of correcting an inadvertent error in the determination:
 - (a) make a new determination in substitution for the previous determination, and 25
 - (b) issue a certificate under section 208J that sets out the new determination.
- (2) Such a certificate replaces any certificate setting out the previous determination of the costs assessor that has already been issued by the costs assessor, and any judgment that is taken to have been effected by the filing of that previously issued certificate is varied accordingly. 30

[26] Section 208SA Protection from liability

Insert “the Chief Justice of New South Wales, the proper officer of the Supreme Court or” before “a costs assessor”.

[27] Section 208SA

Insert “the Chief Justice of New South Wales, the proper officer or” before “any costs assessor”. 5

[28] Section 211A

Insert after section 211:

211A Delegation of functions of Chief Justice

The Chief Justice of New South Wales may delegate any of his or her functions under this Act (other than this power of delegation) to: 10

- (a) a Judge of the Supreme Court, or
- (b) a committee comprised of 1 Judge of the Supreme Court and such other persons as the Chief Justice may appoint. 15

[29] Schedule 3A

Insert after Schedule 3:

Schedule 3A Trustees of Public Purpose Fund

(Section 69C) 20

Part 1 General

1 Definitions

In this Schedule:

appointed trustee means a person appointed under section 69C (2) (a). 25

trustee means a trustee of the Public Purpose Fund.

Part 2 Constitution

2 Terms of office of trustees

Subject to this Schedule, an appointed trustee holds office for such period (not exceeding 3 years) as is specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 5

3 Remuneration

An appointed trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the trustee. 10

4 Deputies

- (1) The Attorney General may, from time to time, appoint a person to be the deputy of a trustee, and the Attorney General may revoke any such appointment. 15
- (2) In the absence of a trustee, the trustee's deputy may, if available, act in the place of the trustee.
- (3) While acting in the place of a trustee, a person:
 - (a) has all the functions of the trustee and is taken to be a trustee, and 20
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a trustee is taken to be an absence of the trustee. 25

5 Vacancy in office of trustee

- (1) The office of an appointed trustee becomes vacant if the trustee:
 - (a) dies, or 30
 - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by instrument in writing addressed to the Attorney General, or
 - (d) is removed from office by the Attorney General under this clause, or
 - (e) is absent from 4 consecutive meetings of the trustees of which reasonable notice has been given to the trustee personally or by post, except on leave granted by the Attorney General or unless the member is excused by the Attorney General for having been absent from those meetings, or 5
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 10
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or 20
 - (i) in the case of a trustee nominated as provided for by section 69C (2) (a) (i), ceases to be a member of the Law Society Council. 25
- (2) The Attorney General may at any time remove an appointed trustee from office.

6 Filling of vacancy in office of trustee

If the office of an appointed trustee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. 30

7 Chairperson

- (1) The chairperson of the trustees is the person elected to the office of chairperson from time to time by the trustees from among their number. 35

-
- (2) The office of chairperson:
- (a) commences on the day the person elected to the office is declared to be so elected, and
 - (b) becomes vacant when the person's successor is declared to be elected to the office or when the person so elected ceases to hold office as a trustee (whichever happens first). 5

8 Disclosure of pecuniary interests

- (1) If:
 - (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the trustees, and 10
 - (b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter, 15

the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the trustees.
- (2) A trustee is not to be regarded as having a direct or indirect pecuniary interest in a matter merely because he or she is a legal practitioner or a member of the Law Society, the Bar Association or a Council. 20
- (3) A disclosure by a trustee at a meeting of the trustees that the trustee:
 - (a) is a member, or is in the employment, of a specified company or other body, or 25
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 30

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 35

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- (4) Particulars of any disclosure made under this clause must be recorded by the trustees in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the trustees. 5
- (5) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Attorney General or the trustees otherwise determine, take part in any decision of the trustees with respect to the matter.
- (6) For the purposes of the making of a determination by the trustees under subclause (5), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not take part in the making by the trustees of the determination. 10
- (7) If a trustee is prevented from taking part in a decision by virtue of this clause and the determination relates to a matter that requires a unanimous decision of the trustees under section 69I, the decision is unanimous for the purposes of that section if it is supported by all of the trustees who are entitled to take part in the determination. 15
20
- (8) A contravention of this clause does not invalidate any decision of the trustees.

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a trustee. 25
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 30
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a trustee or from accepting and retaining any remuneration payable 35
to the person under this Act as a trustee.

Part 3 Procedure

10 General procedure

The procedure for the calling of meetings of the trustees and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the trustees. 5

11 Quorum

The quorum for a meeting of the trustees is 3 trustees.

12 Presiding member

- (1) The chairperson or, in the absence of the chairperson, a trustee elected by the trustees present at the meeting, is to preside at a meeting of the trustees. 10
- (2) The person presiding at a meeting of the trustees has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 15
- (3) Subclause (2) does not affect the requirement under section 69I that certain decisions of the trustees be unanimous.

13 Voting

- (1) A decision supported by a majority of the votes cast at a meeting of the trustees at which a quorum is present is the decision of the trustees. 20
- (2) This clause does not apply in respect of a decision that is required to be unanimous by section 69I.

14 Transaction of business outside meetings or by telephone 25

- (1) The trustees may, if they think fit, transact any of their business by the circulation of papers among all the trustees for the time being and a resolution in writing has effect as a decision of the trustees if it is approved in writing by a majority of those trustees and, for the purposes of section 69I, has effect as a unanimous decision of the trustees if it is approved in writing by all the trustees for the time being. 30

- (2) The trustees may, if they think fit, transact any of their business at a meeting at which the trustees (or some trustees) participate by telephone, closed-circuit television or other means, but only if any trustee who speaks on a matter before the meeting can be heard by the other trustees. 5
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1),
or
 - (b) a meeting held in accordance with subclause (2), 10the chairperson and each trustee have the same voting rights as they have at an ordinary meeting of the trustees.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the trustees. 15
- (5) Papers may be circulated among the trustees for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 First meeting

The Attorney General may call the first meeting of the trustees in such manner as the Attorney General thinks fit. 20

[30] Schedule 7 Costs assessors

Insert at the end of clause 2:

- (2) A costs assessor may, with the consent of the Chief Justice of New South Wales, continue in office after the expiry of his or her term of office for the purpose of making a determination in respect of, or otherwise completing, any application for costs assessment that was referred to the costs assessor before the expiry of his or her term of office. 25
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[31] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Legal Profession Amendment Act 1998

[32] Schedule 8

Insert in Schedule 8 (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Legal Profession Amendment Act 1998**

Definitions

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In this Part:

Solicitors' Trust Account Fund means the fund known as the "Solicitors' Trust Account Fund" or the "Law Society Solicitors' Trust Accounts Fund", established by the Law Society before the commencement of Division 2 of Part 6 (as inserted by the *Legal Profession Amendment Act 1998*).

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Statutory Interest Account means the fund maintained by the Law Society under section 67 of the Act, as in force immediately before the repeal of that section by the *Legal Profession Amendment Act 1998*.

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Continuation of Statutory Interest Account

The Public Purpose Fund is a continuation of the Statutory Interest Account and accordingly the following provisions have effect:

20

(a) the assets and liabilities of the Statutory Interest Account are the assets and liabilities of the Public Purpose Fund,

(b) a reference in any instrument (other than this Act) to the Statutory Interest Account is taken to be a reference to the Public Purpose Fund.

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Continuation of Solicitors' Trust Account Fund

The Public Purpose Fund is a continuation of the Solicitors' Trust Account Fund and accordingly the following provisions have effect:

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(a) the assets and liabilities of the Solicitors' Trust Account Fund are the assets and liabilities of the Public Purpose Fund,

- (b) a reference in any instrument (other than this Act) to the Solicitors' Trust Account Fund is taken to be a reference to the Public Purpose Fund.

Saving of existing arrangements with respect to general trust accounts

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- (1) Any agreement relating to the payment of interest on general trust accounts kept by solicitors for the purposes of section 61 that had effect immediately before the commencement of section 69E (as inserted by the *Legal Profession Amendment Act 1998*), and that is approved by the trustees of the Public Purpose Fund for the purposes of section 69E (whether before or after the commencement of that section), is taken to be an agreement for the purposes of section 69E. 10
- (2) Any bank, building society or credit union that is a party to such an agreement is taken to be an approved financial institution for the purposes of section 61. 15
- (3) A reference in Division 2 of Part 6, as inserted by the *Legal Profession Amendment Act 1998*, to a general trust account kept by a solicitor for the purposes of section 61 (1) (a) extends to a general trust account kept by a solicitor for the purposes of section 61 (2) (a), as in force before the commencement of Schedule 4 [6] to the *Legal Profession Amendment Act 1996*. 20

Proceedings relating to appointment or removal of costs assessors

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Section 208S (5), as inserted by the *Legal Profession Amendment Act 1998*, does not affect any proceedings instituted before the commencement of that subsection.

Correction of errors in determinations

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- (1) Section 208JB, as inserted by the *Legal Profession Amendment Act 1998*, does not apply to a determination made by a costs assessor before the commencement of that section.
- (2) Section 208KHA, as inserted by the *Legal Profession Amendment Act 1998*, does not apply to a determination made by a panel before the commencement of that section. 35

Schedule 2 Consequential amendment of other Acts

(Section 4)

2.1 Conveyancers Licensing Act 1995 No 57

Section 9 Applications for licences

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Omit subsection (6). Insert instead:

- (6) The prescribed proportion of the application fees received by the Director-General under this section is to be paid by the Director-General to the trustees of the Public Purpose Fund for the credit of the Public Purpose Fund maintained under Division 2 of Part 6 of the *Legal Profession Act 1987*, to be applied as authorised by that Act.

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2.2 Law Foundation Act 1979 No 32

[1] Section 3 Definitions

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Omit the definition of *Statutory Interest Account*.

Insert in alphabetical order:

Public Purpose Fund means the Fund maintained under Division 2 of Part 6 of the *Legal Profession Act 1987*.

[2] Section 17 Composition of Fund

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Omit paragraph (b). Insert instead:

- (b) all money paid to the Foundation out of the Public Purpose Fund,

2.3 Legal Aid Commission Act 1979 No 78

Section 63 Payments into Fund

Omit subsection (1) (a). Insert instead:

- (a) all amounts paid out of the Public Purpose Fund maintained under Division 2 of Part 6 of the *Legal Profession Act 1987* for the purpose of supplementation of the Legal Aid Fund, 5