This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 19 *March,* 1970.

New South Wales

ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1970.

An Act relating to claims against the Solicitors' Fidelity Guarantee Fund, the amount payable therefrom in respect of any such claim, solicitors' trust accounts, practising certificates, and the taking and receiving of affidavits by solicitors; for these and other purposes to amend the Legal Practitioners Act, 1898, and the Oaths Act, 1900; and for purposes connected therewith.

BE

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:—

1. This Act may be cited as the "Legal Practitioners and Oaths (Amendment) Act, 1970". Short title.

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

(a) by inserting in subsection one of section forty-one after the word "received" the words "in New South Wales"; Sec. 41. (Payment into bank.)

(b) (i) by omitting from subsection three of section 42A the words ", or such lesser fraction as may be prescribed by regulations made by the Governor under section eighty-seven of this Act"; Sec. 42A. (Solicitors to deposit part of trust account with Society.)

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

(3A) Notwithstanding anything in subsection three of this section—

(a) the prescribed part of an amount, as referred to in paragraph (a) of subsection one of this section, shall, in any case where the commencing date, as so referred to, is the first day of April, in the year one thousand nine hundred and seventy, or in any subsequent year; or

(b) the prescribed part of the aggregate of amounts, as referred to in paragraph (b) of subsection one of this section,

shall,

shall, in any case where a period of twelve months, as so referred to, during which a sum is required to be kept deposited with the Society, ends on the thirty-first day of March, in the year one thousand nine hundred and seventy-one, or in any subsequent year,

be one-half 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.

(3B) Nothing in this section requires a solicitor to cause—

(a) to be deposited with the Society a sum that is the prescribed part of the lowest balance, as referred to in paragraph (a) of subsection one of this section; or

(b) to be kept deposited with the Society a sum that is the prescribed part of the aggregate of the amounts, as referred to in paragraph (b) of subsection one of this section,

if that lowest balance or aggregate, as the case may be, is less than three thousand dollars.

(c) by inserting next after section forty-three the following new section :— New sec. 43A.

43A. Where the report of an accountant, which is made in respect of accounts required to be kept by or under this Act by a solicitor, and which is forwarded pursuant to the regulations under this Act to the Society, appears to the council to be false in any material particular, the council may, notwithstanding the provisions of subsection ten of section 82A of this Act, publish, to such person as the council may by resolution approve, any Information relating to audit of trust account.

information

information disclosed in a report furnished to the council pursuant to that section in so far as that information relates to the falsity of the first-mentioned report.

5 (d) (i) by inserting in subsection one of section fifty-six after the word "applies" the words ", or by reason of the failure (in this Part referred to as a "failure to account") by the solicitor to account to a client, which failure occurred 10 through the theft or fraudulent misapplication by a servant of the solicitor";

Sec. 56. (Application of fund.)

(ii) by omitting from the same subsection the words "him, or to his servant or agent" and by inserting in lieu thereof the words "the solicitor, or 15 to any servant or agent of the solicitor";

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

The council may receive and determine any claim made under this Part for the purpose 20 of any such reimbursement.

(iv) by omitting from paragraph (b) of subsection two of the same section the words "after such commencement" and by inserting in lieu thereof the words "by a solicitor after the 25 commencement of the Legal Practitioners (Amendment) Act, 1935";

(v) by inserting next after the same subsection the following new subsection:—

(2A) (a) No person shall have any claim 30 against the fund in respect of a failure to account if the failure first occurred before the commencement of the Legal Practitioners (Amendment) Act, 1967.

(b) In respect of a failure to account 35 first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967,

and

and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of the failure has been given to the council before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, or if not so given, has been given to the council before the expiration of three months after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970.

(c) In respect of a failure to account first occurring after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of that failure is given to the council as soon as reasonably practicable after the claimant has become aware of the failure, but in any event within three months after having become so aware unless the Court or a judge thereof grants further time.

(vi) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) No person shall, unless the council otherwise determines, be entitled to claim against the fund in respect of any loss, as referred to in subsection one of this section, unless and until—

(a) the person who committed the theft or fraudulent misapplication giving rise to the loss or failure to account, as the case may be, has been convicted for the theft or fraudulent misapplication; or

(b)

(b) the Court or a judge thereof, for reasons which in the opinion of the Court or judge are good and sufficient, has ordered that the person claiming to have suffered the loss should be permitted to claim against the fund notwithstanding that there has been no such conviction.

Sec. 57. (Claims against the fund.)

(e) (i) by omitting from subsection one of section fifty-seven the words "Subject to the provisions of section fifty-six of this Act, the council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which such claim arose, but no" and by inserting in lieu thereof the word "No";

(ii) by omitting from subsection (3A) of the same section the words "from the solicitor or out of his estate" and by inserting in lieu thereof the words "from any source other than the fund,";

(iii) by omitting from subsection four of the same section the words "through theft or fraudulent misapplication by the same solicitor or firm of solicitors" and by inserting in lieu thereof the words ", as referred to in subsection one of section fifty-six of this Act, in respect of the same solicitor or firm of solicitors";

(iv) by inserting in subsection six of the same section after the word "committed" the words "by a solicitor";

(v) by omitting from subsection seven of the same section the words "any theft or fraudulent misapplication committed";

(vi) by omitting from paragraph (a) of the same subsection the words "on or after" and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after";

(vii) by omitting from paragraph (b) of the same subsection the words "on or after the commencement of the Legal Practitioners (Amendment) Act, 1967," and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after or any failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967, and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970,";

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

(8) In respect of any theft or fraudulent misapplication committed by a solicitor after, or in respect of any failure to account first occurring after, the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, the provisions of this section shall be read as though—

(a) subsections three, six and seven were omitted therefrom; and

(b) the words "ten thousand pounds" were omitted from subsection four and the words "two hundred thousand dollars" were inserted in lieu thereof.

(f) by omitting from section 57A the words "or seven" and by inserting in lieu thereof the words ", seven or eight"; Sec. 57A. (Additional payments to claimants.)

(g)

(g) (i) by omitting from section fifty-eight the words "The council" and by inserting in lieu thereof the words "In respect of any theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the solicitor, the council"; Sec. 58. (Advertisement.)

(ii) by omitting from the same section the word "defaulting";

(h) (i) by inserting in section sixty after the word "fund" the words "under this Part arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor"; Sec. 60. (Defences.)

(ii) by omitting from the same section the words "in relation to whom the claim arose";

(i) (i) by inserting in section sixty-one after the word "Part" the words "arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor"; Sec. 61. (Subrogation.)

(ii) by omitting from the same section the words "in relation to whom the claim arose" and by inserting in lieu thereof the words ", the servant";

(j) by omitting from section sixty-two the words "against any defaulting solicitor" and by inserting in lieu thereof the words "against or in respect of any solicitor or servant of a solicitor"; Sec. 62. (Council may require production, etc., of documents.)

(k)

(k) by inserting in section sixty-four after the word "whom" wherever occurring the words ", or in respect of any of whose servants,"; Sec. 64. (Refund to representatives of deceased solicitor or to retiring solicitor.)

(l) by inserting next after section seventy-one the following new section:— New sec. 71A.

Refusal or cancellation of certificate on ground of infirmity, etc.

71A. (1) Notwithstanding any other provision of this Act, where the council is satisfied on such evidence as to it seems proper that—

(a) an applicant for or a holder of a certificate, being a person who is in practice as a solicitor, is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice; and

(b) it is in the interests of his clients or of the public that the certificate should not be issued or that the certificate should be cancelled,

the council may refuse to issue, or may cancel, the certificate, as the case may be.

(2) For the purposes of subsection one of this section, the council—

(a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the council; and

(b) may hold such inquiry as the council thinks fit.

(3) A failure or refusal by any person required by the council to undergo a medical examination in accordance with a requirement of the council made under paragraph (a) of subsection

two of this section may be regarded by the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice.

(4) Nothing in this section affects the powers of the council under any other provision of this Act to—

(a) refuse to issue a certificate; or

(b) cancel a certificate.

(m) by inserting in section seventy-two after the words "disposal of the appeal." the words "In the case of an appeal against a refusal or cancellation under the provisions of section 71A of this Act, the foregoing provisions of this paragraph shall not apply to or in respect of that appeal unless the Court or a judge thereof directs that they shall apply.". Sec. 72. (Appeal.)

3. The Oaths Act, 1900, is amended— Amendment of Act No. 20, 1900.

(a) by inserting in subsection one of section twenty-one after the word "affidavits" the words ", solicitor authorised by subsection one of section twenty-seven of this Act to take and receive any affidavit"; Sec. 21. (Declarations in cases not specifically provided for.)

(b) by omitting section twenty-seven and by inserting in lieu thereof the following section :— Subst. sec. 27.

27. (1) A solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898, shall, except in so far as the Chief Justice of the Supreme Court by order under his hand otherwise directs, be authorised to take and receive, subject to subsection four of this section, affidavits concerning any matter within the jurisdiction of any court. Authority to take and receive affidavits.

(2)

(2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.

(3) A person (not being a solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898) who was, immediately before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, authorised under the section which this section replaces to take and receive affidavits, shall be deemed to have been authorised under subsection two of this section to do so.

(4) The authorisation of a solicitor by subsection one of this section has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1970
[10c]

No. , 1970.

A BILL

Relating to claims against the Solicitors' Fidelity Guarantee Fund, the amount payable therefrom in respect of any such claim, solicitors' trust accounts, practising certificates, and the taking and receiving of affidavits by solicitors; for these and other purposes to amend the Legal Practitioners Act, 1898, and the Oaths Act, 1900; and for purposes connected therewith.

[MR MCCAW—17 *March*, 1970.]

BE

8731 232—A

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:—

1. This Act may be cited as the "Legal Practitioners and Oaths (Amendment) Act, 1970". Short title.

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

(a) by inserting in subsection one of section forty-one after the word "received" the words "in New South Wales"; Sec. 41. (Payment into bank.)

(b) (i) by omitting from subsection three of section 42A the words ", or such lesser fraction as may be prescribed by regulations made by the Governor under section eighty-seven of this Act"; Sec. 42A. (Solicitors to deposit part of trust account with Society.)

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

(3A) Notwithstanding anything in subsection three of this section—

(a) the prescribed part of an amount, as referred to in paragraph (a) of subsection one of this section, shall, in any case where the commencing date, as so referred to, is the first day of April, in the year one thousand nine hundred and seventy, or in any subsequent year; or

(b) the prescribed part of the aggregate of amounts, as referred to in paragraph (b) of subsection one of this section,

shall,

shall, in any case where a period of twelve months, as so referred to, during which a sum is required to be kept deposited with the Society, ends on the thirty-first day of March, in the year one thousand nine hundred and seventy-one, or in any subsequent year,

be one-half 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.

(3B) Nothing in this section requires a solicitor to cause—

(a) to be deposited with the Society a sum that is the prescribed part of the lowest balance, as referred to in paragraph (a) of subsection one of this section; or

(b) to be kept deposited with the Society a sum that is the prescribed part of the aggregate of the amounts, as referred to in paragraph (b) of subsection one of this section,

if that lowest balance or aggregate, as the case may be, is less than three thousand dollars.

(c) by inserting next after section forty-three the following new section:— New sec. 43A.

43A. Where the report of an accountant, which is made in respect of accounts required to be kept by or under this Act by a solicitor, and which is forwarded pursuant to the regulations under this Act to the Society, appears to the council to be false in any material particular, the council may, notwithstanding the provisions of subsection ten of section 82A of this Act, publish, to such person as the council may by resolution approve, any Information relating to audit of trust account.

information

information disclosed in a report furnished to the council pursuant to that section in so far as that information relates to the falsity of the first-mentioned report.

Sec. 56. (Application of fund.)

(d) (i) by inserting in subsection one of section fifty-six after the word "applies" the words ", or by reason of the failure (in this Part referred to as a "failure to account") by the solicitor to account to a client, which failure occurred through the theft or fraudulent misapplication by a servant of the solicitor";

(ii) by omitting from the same subsection the words "him, or to his servant or agent" and by inserting in lieu thereof the words "the solicitor, or to any servant or agent of the solicitor";

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

The council may receive and determine any claim made under this Part for the purpose of any such reimbursement.

(iv) by omitting from paragraph (b) of subsection two of the same section the words "after such commencement" and by inserting in lieu thereof the words "by a solicitor after the commencement of the Legal Practitioners (Amendment) Act, 1935";

(v) by inserting next after the same subsection the following new subsection:—

(2A) (a) No person shall have any claim against the fund in respect of a failure to account if the failure first occurred before the commencement of the Legal Practitioners (Amendment) Act, 1967.

(b) In respect of a failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967,

and

and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of the failure has been given to the council before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, or if not so given, has been given to the council before the expiration of three months after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970.

(c) In respect of a failure to account first occurring after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of that failure is given to the council as soon as reasonably practicable after the claimant has become aware of the failure, but in any event within three months after having become so aware unless the Court or a judge thereof grants further time.

(vi) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) No person shall, unless the council otherwise determines, be entitled to claim against the fund in respect of any loss, as referred to in subsection one of this section, unless and until—

(a) the person who committed the theft or fraudulent misapplication giving rise to the loss or failure to account, as the case may be, has been convicted for the theft or fraudulent misapplication; or

(b)

(b) the Court or a judge thereof, for reasons which in the opinion of the Court or judge are good and sufficient, has ordered that the person claiming to have suffered the loss should be permitted to claim against the fund notwithstanding that there has been no such conviction.

Sec. 57. (Claims against the fund.)

(e) (i) by omitting from subsection one of section fifty-seven the words "Subject to the provisions of section fifty-six of this Act, the council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which such claim arose, but no" and by inserting in lieu thereof the word "No";

(ii) by omitting from subsection (3A) of the same section the words "from the solicitor or out of his estate" and by inserting in lieu thereof the words "from any source other than the fund,";

(iii) by omitting from subsection four of the same section the words "through theft or fraudulent misapplication by the same solicitor or firm of solicitors" and by inserting in lieu thereof the words ", as referred to in subsection one of section fifty-six of this Act, in respect of the same solicitor or firm of solicitors";

(iv) by inserting in subsection six of the same section after the word "committed" the words "by a solicitor";

(v) by omitting from subsection seven of the same section the words "any theft or fraudulent misapplication committed";

(vi)

(vi) by omitting from paragraph (a) of the same subsection the words "on or after" and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after";

(vii) by omitting from paragraph (b) of the same subsection the words "on or after the commencement of the Legal Practitioners (Amendment) Act, 1967," and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after or any failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967, and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970,";

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

(8) In respect of any theft or fraudulent misapplication committed by a solicitor after, or in respect of any failure to account first occurring after, the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, the provisions of this section shall be read as though—

(a) subsections three, six and seven were omitted therefrom; and

(b) the words "ten thousand pounds" were omitted from subsection four and the words "two hundred thousand dollars" were inserted in lieu thereof.

(f) by omitting from section 57A the words "or seven" and by inserting in lieu thereof the words ", seven or eight"; Sec. 57A. (Additional payments to claimants.)

(g)

(g) (i) by omitting from section fifty-eight the words "The council" and by inserting in lieu thereof the words "In respect of any theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the solicitor, the council"; Sec. 58. (Advertisement.)

(ii) by omitting from the same section the word "defaulting";

(h) (i) by inserting in section sixty after the word "fund" the words "under this Part arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor"; Sec. 60. (Defences.)

(ii) by omitting from the same section the words "in relation to whom the claim arose";

(i) (i) by inserting in section sixty-one after the word "Part" the words "arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor"; Sec. 61. (Subrogation.)

(ii) by omitting from the same section the words "in relation to whom the claim arose" and by inserting in lieu thereof the words ", the servant";

(j) by omitting from section sixty-two the words "against any defaulting solicitor" and by inserting in lieu thereof the words "against or in respect of any solicitor or servant of a solicitor"; Sec. 62. (Council may require production, etc., of documents.)

(k)

(k) by inserting in section sixty-four after the word "whom" wherever occurring the words ", or in respect of any of whose servants,"; Sec. 64. (Refund to representatives of deceased solicitor or to retiring solicitor.)

(l) by inserting next after section seventy-one the following new section :— New sec. 71A.

Refusal or cancellation of certificate on ground of infirmity, etc.

71A. (1) Notwithstanding any other provision of this Act, where the council is satisfied on such evidence as to it seems proper that—

(a) an applicant for or a holder of a certificate, being a person who is in practice as a solicitor, is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice; and

(b) it is in the interests of his clients or of the public that the certificate should not be issued or that the certificate should be cancelled,

the council may refuse to issue, or may cancel, the certificate, as the case may be.

(2) For the purposes of subsection one of this section, the council—

(a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the council; and

(b) may hold such inquiry as the council thinks fit.

(3) A failure or refusal by any person required by the council to undergo a medical examination in accordance with a requirement of the council made under paragraph (a) of subsection

two of this section may be regarded by the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice.

(4) Nothing in this section affects the powers of the council under any other provision of this Act to—

(a) refuse to issue a certificate; or

(b) cancel a certificate.

(m) by inserting in section seventy-two after the words "disposal of the appeal." the words "In the case of an appeal against a refusal or cancellation under the provisions of section 71A of this Act, the foregoing provisions of this paragraph shall not apply to or in respect of that appeal unless the Court or a judge thereof directs that they shall apply.". Sec. 72. (Appeal.)

3. The Oaths Act, 1900, is amended— Amendment of Act No. 20, 1900.

(a) by inserting in subsection one of section twenty-one after the word "affidavits" the words ", solicitor authorised by subsection one of section twenty-seven of this Act to take and receive any affidavit"; Sec. 21. (Declarations in cases not specifically provided for.)

(b) by omitting section twenty-seven and by inserting in lieu thereof the following section :— Subst. sec. 27.

27. (1) A solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898, shall, except in so far as the Chief Justice of the Supreme Court by order under his hand otherwise directs, be authorised to take and receive, subject to subsection four of this section, affidavits concerning any matter within the jurisdiction of any court. Authority to take and receive affidavits.

(2)

(2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.

(3) A person (not being a solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898) who was, immediately before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, authorised under the section which this section replaces to take and receive affidavits, shall be deemed to have been authorised under subsection two of this section to do so.

(4) The authorisation of a solicitor by subsection one of this section has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1970
[10c]

PROOF

LEGAL PRACTITIONERS AND OATHS (AMENDMENT) BILL, 1970

EXPLANATORY NOTE

THE objects of this Bill are—

(a) to limit (to money received in New South Wales) the requirement that money received by a solicitor on behalf of a person be paid into a trust account in a bank in New South Wales;

(b) to vary (from one-third to one-half, or a lesser sum prescribed by regulation) the portion of the lowest balance, during a certain period, in a solicitor's trust account (together with any amount already deposited) to be deposited with the Law Society;

(c) to enable the release, to certain persons or authorities, of certain confidential information relating to an accountant's report on a trust account;

(d) to provide for the reimbursement, from the Solicitors' Fidelity Guarantee Fund, of persons suffering pecuniary loss arising from a defalcation committed by the servant of a solicitor, and to extend this provision to certain persons who so suffered loss before the commencement of this Bill;

(e) to increase (to $200,000) the maximum amount payable, in respect of any case, from the fund referred to in paragraph (d) hereof;

(f) to provide machinery for the refusal or cancellation of practising certificates applied for or held by solicitors who are unfit to practise because of infirmity, injury or illness (whether mental or physical);

(g) to authorise any solicitor who holds a practising certificate to take and receive affidavits; and

(h) to make other provisions of a minor or ancillary character.

8731 232—

PROOF

No. , 1970.

A BILL

Relating to claims against the Solicitors' Fidelity Guarantee Fund, the amount payable therefrom in respect of any such claim, solicitors' trust accounts, practising certificates, and the taking and receiving of affidavits by solicitors; for these and other purposes to amend the Legal Practitioners Act, 1898, and the Oaths Act, 1900; and for purposes connected therewith.

[MR MCCAW—17 *March*, 1970.]

BE

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:—

1. This Act may be cited as the "Legal Practitioners and Oaths (Amendment) Act, 1970". Short title.

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

(a) by inserting in subsection one of section forty-one after the word "received" the words "in New South Wales"; Sec. 41. (Payment into bank.)

(b) (i) by omitting from subsection three of section 42A the words ", or such lesser fraction as may be prescribed by regulations made by the Governor under section eighty-seven of this Act"; Sec. 42A. (Solicitors to deposit part of trust account with Society.)

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

(3A) Notwithstanding anything in subsection three of this section—

(a) the prescribed part of an amount, as referred to in paragraph (a) of subsection one of this section, shall, in any case where the commencing date, as so referred to, is the first day April, in the year one thousand nine hundred and seventy, or in any subsequent year; or

(b) the prescribed part of the aggregate of amounts, as referred to in paragraph (b) of subsection one of this section,

shall,

shall, in any case where a period of twelve months, as so referred to, during which a sum is required to be kept deposited with the Society, ends on the thirty-first day of March, in the year one thousand nine hundred and seventy-one, or in any subsequent year,

be one-half 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.

(3B) Nothing in this section requires a solicitor to cause—

(a) to be deposited with the Society a sum that is the prescribed part of the lowest balance, as referred to in paragraph (a) of subsection one of this section; or

(b) to be kept deposited with the Society a sum that is the prescribed part of the aggregate of the amounts, as referred to in paragraph (b) of subsection one of this section,

if that lowest balance or aggregate, as the case may be, is less than three thousand dollars.

(c) by inserting next after section forty-three the following new section :— New sec. 43A.

43A. Where the report of an accountant, which is made in respect of accounts required to be kept by or under this Act by a solicitor, and which is forwarded pursuant to the regulations under this Act to the Society, appears to the council to be false in any material particular, the council may, notwithstanding the provisions of subsection ten of section 82A of this Act, publish, to such person as the council may by resolution approve, any Information relating to audit of trust account.

information

information disclosed in a report furnished to the council pursuant to that section in so far as that information relates to the falsity of the first-mentioned report.

5 (d) (i) by inserting in subsection one of section fifty-six after the word "applies" the words ", or by reason of the failure (in this Part referred to as a "failure to account") by the solicitor to account to a client, which failure occurred 10 through the theft or fraudulent misapplication by a servant of the solicitor"; Sec. 56. (Application of fund.)

(ii) by omitting from the same subsection the words "him, or to his servant or agent" and by inserting in lieu thereof the words "the solicitor, or 15 to any servant or agent of the solicitor";

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

The council may receive and determine any claim made under this Part for the purpose 20 of any such reimbursement.

(iv) by omitting from paragraph (b) of subsection two of the same section the words "after such commencement" and by inserting in lieu thereof the words "by a solicitor after the 25 commencement of the Legal Practitioners (Amendment) Act, 1935";

(v) by inserting next after the same subsection the following new subsection :—

(2A) (a) No person shall have any claim 30 against the fund in respect of a failure to account if the failure first occurred before the commencement of the Legal Practitioners (Amendment) Act, 1967.

(b) In respect of a failure to account 35 first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967,

and

and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of the failure has been given to the council before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, or if not so given, has been given to the council before the expiration of three months after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970.

(c) In respect of a failure to account first occurring after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of that failure is given to the council as soon as reasonably practicable after the claimant has become aware of the failure, but in any event within three months after having become so aware unless the Court or a judge thereof grants further time.

(vi) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) No person shall, unless the council otherwise determines, be entitled to claim against the fund in respect of any loss, as referred to in subsection one of this section, unless and until—

(a) the person who committed the theft or fraudulent misapplication giving rise to the loss or failure to account, as the case may be, has been convicted for the theft or fraudulent misapplication; or

(b)

(b) the Court or a judge thereof, for reasons which in the opinion of the Court or judge are good and sufficient, has ordered that the person claiming to have suffered the loss should be permitted to claim against the fund notwithstanding that there has been no such conviction.

Sec. 57. (Claims against the fund.)

(e) (i) by omitting from subsection one of section fifty-seven the words "Subject to the provisions of section fifty-six of this Act, the council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which such claim arose, but no" and by inserting in lieu thereof the word "No";

(ii) by omitting from subsection (3A) of the same section the words "from the solicitor or out of his estate" and by inserting in lieu thereof the words "from any source other than the fund,";

(iii) by omitting from subsection four of the same section the words "through theft or fraudulent misapplication by the same solicitor or firm of solicitors" and by inserting in lieu thereof the words ", as referred to in subsection one of section fifty-six of this Act, in respect of the same solicitor or firm of solicitors";

(iv) by inserting in subsection six of the same section after the word "committed" the words "by a solicitor";

(v) by omitting from subsection seven of the same section the words "any theft or fraudulent misapplication committed";

(vi)

(vi) by omitting from paragraph (a) of the same subsection the words "on or after" and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after";

(vii) by omitting from paragraph (b) of the same subsection the words "on or after the commencement of the Legal Practitioners (Amendment) Act, 1967," and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after or any failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967, and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970,";

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

(8) In respect of any theft or fraudulent misapplication committed by a solicitor after, or in respect of any failure to account first occurring after, the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, the provisions of this section shall be read as though—

(a) subsections three, six and seven were omitted therefrom; and

(b) the words "ten thousand pounds" were omitted from subsection four and the words "two hundred thousand dollars" were inserted in lieu thereof.

(f) by omitting from section 57A the words "or seven" and by inserting in lieu thereof the words ", seven or eight"; Sec. 57A. (Additional payments to claimants.)

(g)

(g) (i) by omitting from section fifty-eight the words "The council" and by inserting in lieu thereof the words "In respect of any theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the solicitor, the council"; Sec. 58. (Advertisement.)

(ii) by omitting from the same section the word "defaulting";

(h) (i) by inserting in section sixty after the word "fund" the words "under this Part arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor"; Sec. 60. (Defences.)

(ii) by omitting from the same section the words "in relation to whom the claim arose";

(i) (i) by inserting in section sixty-one after the word "Part" the words "arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor"; Sec. 61. (Subrogation.)

(ii) by omitting from the same section the words "in relation to whom the claim arose" and by inserting in lieu thereof the words ", the servant";

(j) by omitting from section sixty-two the words "against any defaulting solicitor" and by inserting in lieu thereof the words "against or in respect of any solicitor or servant of a solicitor"; Sec. 62. (Council may require production, etc., of documents.)

(k)

(k) by inserting in section sixty-four after the word "whom" wherever occurring the words ", or in respect of any of whose servants,"; Sec. 64. (Refund to representatives of deceased solicitor or to retiring solicitor.)

(l) by inserting next after section seventy-one the following new section:— New sec. 71A.

Refusal or cancellation of certificate on ground of infirmity, etc.

71A. (1) Notwithstanding any other provision of this Act, where the council is satisfied on such evidence as to it seems proper that—

(a) an applicant for or a holder of a certificate, being a person who is in practice as a solicitor, is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice; and

(b) it is in the interests of his clients or of the public that the certificate should not be issued or that the certificate should be cancelled,

the council may refuse to issue, or may cancel, the certificate, as the case may be.

(2) For the purposes of subsection one of this section, the council—

(a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the council; and

(b) may hold such inquiry as the council thinks fit.

(3) A failure or refusal by any person required by the council to undergo a medical examination in accordance with a requirement of the council made under paragraph (a) of subsection

two of this section may be regarded by the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice.

(4) Nothing in this section affects the powers of the council under any other provision of this Act to—

(a) refuse to issue a certificate; or

(b) cancel a certificate.

(m) by inserting in section seventy-two after the words "disposal of the appeal." the words "In the case of an appeal against a refusal or cancellation under the provisions of section 71A of this Act, the foregoing provisions of this paragraph shall not apply to or in respect of that appeal unless the Court or a judge thereof directs that they shall apply.". Sec. 72. (Appeal.)

3. The Oaths Act, 1900, is amended— Amendment of Act No. 20, 1900.

(a) by inserting in subsection one of section twenty-one after the word "affidavits" the words ", solicitor authorised by subsection one of section twenty-seven of this Act to take and receive any affidavit"; Sec. 21. (Declarations in cases not specifically provided for.)

(b) by omitting section twenty-seven and by inserting in lieu thereof the following section :— Subst. sec. 27.

27. (1) A solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898, shall, except in so far as the Chief Justice of the Supreme Court by order under his hand otherwise directs, be authorised to take and receive, subject to subsection four of this section, affidavits concerning any matter within the jurisdiction of any court. Authority to take and receive affidavits.

(2)

(2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.

(3) A person (not being a solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898) who was, immediately before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, authorised under the section which this section replaces to take and receive affidavits, shall be deemed to have been authorised under subsection two of this section to do so.

(4) The authorisation of a solicitor by subsection one of this section has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1970

(k) by inserting in section sixty-four after the word "whom" wherever occurring the words ", or in respect of any of whose servants,"; Sec. 64. (Refund to representatives of deceased solicitor or to retiring solicitor.)

(l) by inserting next after section seventy-one the following new section:— New sec. 71A.

Refusal or cancellation of certificate on ground of infirmity, etc.

71A. (1) Notwithstanding any other provision of this Act, where the council is satisfied on such evidence as to it seems proper that—

(a) an applicant for or a holder of a certificate, being a person who is in practice as a solicitor, is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice; and

(b) it is in the interests of his clients or of the public that the certificate should not be issued or that the certificate should be cancelled,

the council may refuse to issue, or may cancel, the certificate, as the case may be.

(2) For the purposes of subsection one of this section, the council—

(a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the council; and

(b) may hold such inquiry as the council thinks fit.

(3) A failure or refusal by any person required by the council to undergo a medical examination in accordance with a requirement of the council made under paragraph (a) of subsection

two of this section may be regarded by the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice.

(4) Nothing in this section affects the powers of the council under any other provision of this Act to—

(a) refuse to issue a certificate; or

(b) cancel a certificate.

(m) by inserting in section seventy-two after the words "disposal of the appeal." the words "In the case of an appeal against a refusal or cancellation under the provisions of section 71A of this Act, the foregoing provisions of this paragraph shall not apply to or in respect of that appeal unless the Court or a judge thereof directs that they shall apply.". Sec. 72. (Appeal.)

3. The Oaths Act, 1900, is amended— Amendment of Act No. 20, 1900.

(a) by inserting in subsection one of section twenty-one after the word "affidavits" the words ", solicitor authorised by subsection one of section twenty-seven of this Act to take and receive any affidavit"; Sec. 21. (Declarations in cases not specifically provided for.)

(b) by omitting section twenty-seven and by inserting in lieu thereof the following section :— Subst. sec. 27.

27. (1) A solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898, shall, except in so far as the Chief Justice of the Supreme Court by order under his hand otherwise directs, be authorised to take and receive, subject to subsection four of this section, affidavits concerning any matter within the jurisdiction of any court. Authority to take and receive affidavits.

(2)

(2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.

(3) A person (not being a solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898) who was, immediately before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, authorised under the section which this section replaces to take and receive affidavits, shall be deemed to have been authorised under subsection two of this section to do so.

(4) The authorisation of a solicitor by subsection one of this section has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1970

New South Wales

ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 20, 1970.

An Act relating to claims against the Solicitors' Fidelity Guarantee Fund, the amount payable therefrom in respect of any such claim, solicitors' trust accounts, practising certificates, and the taking and receiving of affidavits by solicitors; for these and other purposes to amend the Legal Practitioners Act, 1898, and the Oaths Act, 1900; and for purposes connected therewith. [Assented to, 31st March, 1970.]

BE

P 12711—A [10c]

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.

1. This Act may be cited as the "Legal Practitioners and Oaths (Amendment) Act, 1970".

Amendment of Act No. 22, 1898.

2. The Legal Practitioners Act, 1898, is amended—

Sec. 41. (Payment into bank.)

(a) by inserting in subsection one of section forty-one after the word "received" the words "in New South Wales";

Sec. 42A. (Solicitors to deposit part of trust account with Society.)

(b) (i) by omitting from subsection three of section 42A the words ", or such lesser fraction as may be prescribed by regulations made by the Governor under section eighty-seven of this Act";

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

(3A) Notwithstanding anything in subsection three of this section—

(a) the prescribed part of an amount, as referred to in paragraph (a) of subsection one of this section, shall, in any case where the commencing date, as so referred to, is the first day of April, in the year one thousand nine hundred and seventy, or in any subsequent year; or

(b) the prescribed part of the aggregate of amounts, as referred to in paragraph (b) of subsection one of this section,

shall,

shall, in any case where a period of twelve months, as so referred to, during which a sum is required to be kept deposited with the Society, ends on the thirty-first day of March, in the year one thousand nine hundred and seventy-one, or in any subsequent year,

be one-half 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.

(3B) Nothing in this section requires a solicitor to cause—

(a) to be deposited with the Society a sum that is the prescribed part of the lowest balance, as referred to in paragraph (a) of subsection one of this section; or

(b) to be kept deposited with the Society a sum that is the prescribed part of the aggregate of the amounts, as referred to in paragraph (b) of subsection one of this section,

if that lowest balance or aggregate, as the case may be, is less than three thousand dollars.

(c) by inserting next after section forty-three the following new section :— New sec. 43A.

43A. Where the report of an accountant, which is made in respect of accounts required to be kept by or under this Act by a solicitor, and which is forwarded pursuant to the regulations under this Act to the Society, appears to the council to be false in any material particular, the council may, notwithstanding the provisions of subsection ten of section 82A of this Act, publish, to such person as the council may by resolution approve, any Information relating to audit of trust account.

information

information disclosed in a report furnished to the council pursuant to that section in so far as that information relates to the falsity of the first-mentioned report.

Sec. 56. (Application of fund.)

(d) (i) by inserting in subsection one of section fifty-six after the word "applies" the words ", or by reason of the failure (in this Part referred to as a "failure to account") by the solicitor to account to a client, which failure occurred through the theft or fraudulent misapplication by a servant of the solicitor";

(ii) by omitting from the same subsection the words "him, or to his servant or agent" and by inserting in lieu thereof the words "the solicitor, or to any servant or agent of the solicitor";

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

The council may receive and determine any claim made under this Part for the purpose of any such reimbursement.

(iv) by omitting from paragraph (b) of subsection two of the same section the words "after such commencement" and by inserting in lieu thereof the words "by a solicitor after the commencement of the Legal Practitioners (Amendment) Act, 1935";

(v) by inserting next after the same subsection the following new subsection :—

(2A) (a) No person shall have any claim against the fund in respect of a failure to account if the failure first occurred before the commencement of the Legal Practitioners (Amendment) Act, 1967.

(b) In respect of a failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967,

and

and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of the failure has been given to the council before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, or if not so given, has been given to the council before the expiration of three months after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970.

(c) In respect of a failure to account first occurring after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of that failure is given to the council as soon as reasonably practicable after the claimant has become aware of the failure, but in any event within three months after having become so aware unless the Court or a judge thereof grants further time.

(vi) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) No person shall, unless the council otherwise determines, be entitled to claim against the fund in respect of any loss, as referred to in subsection one of this section, unless and until—

(a) the person who committed the theft or fraudulent misapplication giving rise to the loss or failure to account, as the case may be, has been convicted for the theft or fraudulent misapplication; or

(b)

(b) the Court or a judge thereof, for reasons which in the opinion of the Court or judge are good and sufficient, has ordered that the person claiming to have suffered the loss should be permitted to claim against the fund notwithstanding that there has been no such conviction.

Sec. 57. (Claims against the fund.)

(e) (i) by omitting from subsection one of section fifty-seven the words "Subject to the provisions of section fifty-six of this Act, the council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which such claim arose, but no" and by inserting in lieu thereof the word "No";

(ii) by omitting from subsection (3A) of the same section the words "from the solicitor or out of his estate" and by inserting in lieu thereof the words "from any source other than the fund,";

(iii) by omitting from subsection four of the same section the words "through theft or fraudulent misapplication by the same solicitor or firm of solicitors" and by inserting in lieu thereof the words ", as referred to in subsection one of section fifty-six of this Act, in respect of the same solicitor or firm of solicitors";

(iv) by inserting in subsection six of the same section after the word "committed" the words "by a solicitor";

(v) by omitting from subsection seven of the same section the words "any theft or fraudulent misapplication committed";

(vi)

(vi) by omitting from paragraph (a) of the same subsection the words "on or after" and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after";

(vii) by omitting from paragraph (b) of the same subsection the words "on or after the commencement of the Legal Practitioners (Amendment) Act, 1967," and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after or any failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967, and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970,";

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

(8) In respect of any theft or fraudulent misapplication committed by a solicitor after, or in respect of any failure to account first occurring after, the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, the provisions of this section shall be read as though—

(a) subsections three, six and seven were omitted therefrom; and

(b) the words "ten thousand pounds" were omitted from subsection four and the words "two hundred thousand dollars" were inserted in lieu thereof.

(f) by omitting from section 57A the words "or seven" and by inserting in lieu thereof the words ", seven or eight"; Sec. 57A. (Additional payments to claimants.)

(g)

Sec. 58. (Advertisement.)

(g) (i) by omitting from section fifty-eight the words "The council" and by inserting in lieu thereof the words "In respect of any theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the solicitor, the council";

(ii) by omitting from the same section the word "defaulting";

Sec. 60. (Defences.)

(h) (i) by inserting in section sixty after the word "fund" the words "under this Part arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor";

(ii) by omitting from the same section the words "in relation to whom the claim arose";

Sec. 61. (Subrogation.)

(i) (i) by inserting in section sixty-one after the word "Part" the words "arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor";

(ii) by omitting from the same section the words "in relation to whom the claim arose" and by inserting in lieu thereof the words ", the servant";

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

(j) by omitting from section sixty-two the words "against any defaulting solicitor" and by inserting in lieu thereof the words "against or in respect of any solicitor or servant of a solicitor";

(k)

(k) by inserting in section sixty-four after the word "whom" wherever occurring the words ", or in respect of any of whose servants,"; Sec. 64. (Refund to representatives of deceased solicitor or to retiring solicitor.)

(l) by inserting next after section seventy-one the following new section:— New sec. 71A.

71A. (1) Notwithstanding any other provision of this Act, where the council is satisfied on such evidence as to it seems proper that— Refusal or cancellation of certificate on ground of infirmity, etc.

(a) an applicant for or a holder of a certificate, being a person who is in practice as a solicitor, is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice; and

(b) it is in the interests of his clients or of the public that the certificate should not be issued or that the certificate should be cancelled,

the council may refuse to issue, or may cancel, the certificate, as the case may be.

(2) For the purposes of subsection one of this section, the council—

(a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the council; and

(b) may hold such inquiry as the council thinks fit.

(3) A failure or refusal by any person required by the council to undergo a medical examination in accordance with a requirement of the council made under paragraph (a) of subsection

two of this section may be regarded by the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice.

(4) Nothing in this section affects the powers of the council under any other provision of this Act to—

(a) refuse to issue a certificate; or

(b) cancel a certificate.

Sec. 72. (Appeal.)

(m) by inserting in section seventy-two after the words "disposal of the appeal." the words "In the case of an appeal against a refusal or cancellation under the provisions of section 71A of this Act, the foregoing provisions of this paragraph shall not apply to or in respect of that appeal unless the Court or a judge thereof directs that they shall apply.".

Amendment of Act No. 20, 1900.

3. The Oaths Act, 1900, is amended—

Sec. 21. (Declarations in cases not specifically provided for.)

(a) by inserting in subsection one of section twenty-one after the word "affidavits" the words ", solicitor authorised by subsection one of section twenty-seven of this Act to take and receive any affidavit";

Subst. sec. 27.

(b) by omitting section twenty-seven and by inserting in lieu thereof the following section :—

Authority to take and receive affidavits.

27. (1) A solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898, shall, except in so far as the Chief Justice of the Supreme Court by order under his hand otherwise directs, be authorised to take and receive, subject to subsection four of this section, affidavits concerning any matter within the jurisdiction of any court.

(2)

(2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.

(3) A person (not being a solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898) who was, immediately before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, authorised under the section which this section replaces to take and receive affidavits, shall be deemed to have been authorised under subsection two of this section to do so.

(4) The authorisation of a solicitor by subsection one of this section has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1970

I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 26 *March,* 1970.

New South Wales

ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 20, 1970.

An Act relating to claims against the Solicitors' Fidelity Guarantee Fund, the amount payable therefrom in respect of any such claim, solicitors' trust accounts, practising certificates, and the taking and receiving of affidavits by solicitors; for these and other purposes to amend the Legal Practitioners Act, 1898, and the Oaths Act, 1900; and for purposes connected therewith. [Assented to, 31st March, 1970.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Legal Practitioners and Oaths (Amendment).

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.

1. This Act may be cited as the "Legal Practitioners and Oaths (Amendment) Act, 1970".

Amendment of Act No. 22, 1898.

2. The Legal Practitioners Act, 1898, is amended—

Sec. 41. (Payment into bank.)

(a) by inserting in subsection one of section forty-one after the word "received" the words "in New South Wales";

Sec. 42A. (Solicitors to deposit part of trust account with Society.)

(b) (i) by omitting from subsection three of section 42A the words ", or such lesser fraction as may be prescribed by regulations made by the Governor under section eighty-seven of this Act";

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

(3A) Notwithstanding anything in subsection three of this section—

(a) the prescribed part of an amount, as referred to in paragraph (a) of subsection one of this section, shall, in any case where the commencing date, as so referred to, is the first day of April, in the year one thousand nine hundred and seventy, or in any subsequent year; or

(b) the prescribed part of the aggregate of amounts, as referred to in paragraph (b) of subsection one of this section,

shall,

shall, in any case where a period of twelve months, as so referred to, during which a sum is required to be kept deposited with the Society, ends on the thirty-first day of March, in the year one thousand nine hundred and seventy-one, or in any subsequent year,

be one-half 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.

(3B) Nothing in this section requires a solicitor to cause—

(a) to be deposited with the Society a sum that is the prescribed part of the lowest balance, as referred to in paragraph (a) of subsection one of this section; or

(b) to be kept deposited with the Society a sum that is the prescribed part of the aggregate of the amounts, as referred to in paragraph (b) of subsection one of this section,

if that lowest balance or aggregate, as the case may be, is less than three thousand dollars.

(c) by inserting next after section forty-three the following new section:— New sec. 43A.

43A. Where the report of an accountant, which is made in respect of accounts required to be kept by or under this Act by a solicitor, and which is forwarded pursuant to the regulations under this Act to the Society, appears to the council to be false in any material particular, the council may, notwithstanding the provisions of subsection ten of section 82A of this Act, publish, to such person as the council may by resolution approve, any Information relating to audit of trust account.

information

information disclosed in a report furnished to the council pursuant to that section in so far as that information relates to the falsity of the first-mentioned report.

Sec. 56. (Application of fund.)

(d) (i) by inserting in subsection one of section fifty-six after the word "applies" the words ", or by reason of the failure (in this Part referred to as a "failure to account") by the solicitor to account to a client, which failure occurred through the theft or fraudulent misapplication by a servant of the solicitor";

(ii) by omitting from the same subsection the words "him, or to his servant or agent" and by inserting in lieu thereof the words "the solicitor, or to any servant or agent of the solicitor";

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

The council may receive and determine any claim made under this Part for the purpose of any such reimbursement.

(iv) by omitting from paragraph (b) of subsection two of the same section the words "after such commencement" and by inserting in lieu thereof the words "by a solicitor after the commencement of the Legal Practitioners (Amendment) Act, 1935";

(v) by inserting next after the same subsection the following new subsection:—

(2A) (a) No person shall have any claim against the fund in respect of a failure to account if the failure first occurred before the commencement of the Legal Practitioners (Amendment) Act, 1967.

(b) In respect of a failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967,

and

and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of the failure has been given to the council before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, or if not so given, has been given to the council before the expiration of three months after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970.

(c) In respect of a failure to account first occurring after the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, no person shall have a claim against the fund unless notice in writing of that failure is given to the council as soon as reasonably practicable after the claimant has become aware of the failure, but in any event within three months after having become so aware unless the Court or a judge thereof grants further time.

(vi) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) No person shall, unless the council otherwise determines, be entitled to claim against the fund in respect of any loss, as referred to in subsection one of this section, unless and until—

(a) the person who committed the theft or fraudulent misapplication giving rise to the loss or failure to account, as the case may be, has been convicted for the theft or fraudulent misapplication; or

(b)

(b) the Court or a judge thereof, for reasons which in the opinion of the Court or judge are good and sufficient, has ordered that the person claiming to have suffered the loss should be permitted to claim against the fund notwithstanding that there has been no such conviction.

Sec. 57. (Claims against the fund.)

(e) (i) by omitting from subsection one of section fifty-seven the words "Subject to the provisions of section fifty-six of this Act, the council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which such claim arose, but no" and by inserting in lieu thereof the word "No";

(ii) by omitting from subsection (3A) of the same section the words "from the solicitor or out of his estate" and by inserting in lieu thereof the words "from any source other than the fund,";

(iii) by omitting from subsection four of the same section the words "through theft or fraudulent misapplication by the same solicitor or firm of solicitors" and by inserting in lieu thereof the words ", as referred to in subsection one of section fifty-six of this Act, in respect of the same solicitor or firm of solicitors";

(iv) by inserting in subsection six of the same section after the word "committed" the words "by a solicitor";

(v) by omitting from subsection seven of the same section the words "any theft or fraudulent misapplication committed";

(vi)

(vi) by omitting from paragraph (a) of the same subsection the words "on or after" and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after";

(vii) by omitting from paragraph (b) of the same subsection the words "on or after the commencement of the Legal Practitioners (Amendment) Act, 1967," and by inserting in lieu thereof the words "any theft or fraudulent misapplication committed by a solicitor after or any failure to account first occurring after the commencement of the Legal Practitioners (Amendment) Act, 1967, and before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970,";

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

(8) In respect of any theft or fraudulent misapplication committed by a solicitor after, or in respect of any failure to account first occurring after, the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, the provisions of this section shall be read as though—

(a) subsections three, six and seven were omitted therefrom; and

(b) the words "ten thousand pounds" were omitted from subsection four and the words "two hundred thousand dollars" were inserted in lieu thereof.

(f) by omitting from section 57A the words "or seven" and by inserting in lieu thereof the words ", seven or eight"; Sec. 57A. (Additional payments to claimants.)

(g)

Sec. 58. (Advertisement.)

(g) (i) by omitting from section fifty-eight the words "The council" and by inserting in lieu thereof the words "In respect of any theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the solicitor, the council";

(ii) by omitting from the same section the word "defaulting";

Sec. 60. (Defences.)

(h) (i) by inserting in section sixty after the word "fund" the words "under this Part arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor";

(ii) by omitting from the same section the words "in relation to whom the claim arose";

Sec. 61. (Subrogation.)

(i) (i) by inserting in section sixty-one after the word "Part" the words "arising from any theft or fraudulent misapplication committed by a solicitor or from any failure to account occurring through a theft or fraudulent misapplication committed by a servant of the solicitor";

(ii) by omitting from the same section the words "in relation to whom the claim arose" and by inserting in lieu thereof the words ", the servant";

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

(j) by omitting from section sixty-two the words "against any defaulting solicitor" and by inserting in lieu thereof the words "against or in respect of any solicitor or servant of a solicitor";

(k)

(k) by inserting in section sixty-four after the word "whom" wherever occurring the words ", or in respect of any of whose servants,"; Sec. 64. (Refund to representatives of deceased solicitor or to retiring solicitor.)

(l) by inserting next after section seventy-one the following new section :— New sec. 71A.

71A. (1) Notwithstanding any other provision of this Act, where the council is satisfied on such evidence as to it seems proper that— Refusal or cancellation of certificate on ground of infirmity, etc.

(a) an applicant for or a holder of a certificate, being a person who is in practice as a solicitor, is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice; and

(b) it is in the interests of his clients or of the public that the certificate should not be issued or that the certificate should be cancelled,

the council may refuse to issue, or may cancel, the certificate, as the case may be.

(2) For the purposes of subsection one of this section, the council—

(a) may require an applicant for or a holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the council; and

(b) may hold such inquiry as the council thinks fit.

(3) A failure or refusal by any person required by the council to undergo a medical examination in accordance with a requirement of the council made under paragraph (a) of subsection

two

two of this section may be regarded by the council as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical), unfit to carry on and conduct his practice.

(4) Nothing in this section affects the powers of the council under any other provision of this Act to—

(a) refuse to issue a certificate; or

(b) cancel a certificate.

Sec. 72. (Appeal.)

(m) by inserting in section seventy-two after the words "disposal of the appeal." the words "In the case of an appeal against a refusal or cancellation under the provisions of section 71A of this Act, the foregoing provisions of this paragraph shall not apply to or in respect of that appeal unless the Court or a judge thereof directs that they shall apply.".

Amendment of Act No. 20, 1900.

3. The Oaths Act, 1900, is amended—

Sec. 21. (Declarations in cases not specifically provided for.)

(a) by inserting in subsection one of section twenty-one after the word "affidavits" the words ", solicitor authorised by subsection one of section twenty-seven of this Act to take and receive any affidavit";

Subst. sec. 27.

(b) by omitting section twenty-seven and by inserting in lieu thereof the following section :—

Authority to take and receive affidavits.

27. (1) A solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898, shall, except in so far as the Chief Justice of the Supreme Court by order under his hand otherwise directs, be authorised to take and receive, subject to subsection four of this section, affidavits concerning any matter within the jurisdiction of any court.

(2)

(2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.

(3) A person (not being a solicitor who has in force a certificate issued pursuant to section sixty-six of the Legal Practitioners Act, 1898) who was, immediately before the commencement of the Legal Practitioners and Oaths (Amendment) Act, 1970, authorised under the section which this section replaces to take and receive affidavits, shall be deemed to have been authorised under subsection two of this section to do so.

(4) The authorisation of a solicitor by subsection one of this section has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 31*st March,* 1970.