

*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.*

**R. E. WARD,**  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 29 August, 1974.*

## **New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. , 1974.**

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

**BE**

*Legal Practitioners and Other Acts (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Legal Practitioners and Other Acts (Amendment) Act, 1974". Short title.

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

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

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

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

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

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

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

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

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

"report"



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“report” means a report furnished by an inspector under this section.

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

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

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

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

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

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

(8)

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

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

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

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

35 (12) A person whose services are retained under subsection (7) shall not communicate the fact of any appointment under this section, or any matter which may come to his knowledge in the course of the examination of any accounts, to any

person



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5 person except the inspector who retained his services or, if so required, to the council or to members of the council or to the solicitors, officers or agents of the Society, or to the Court, the Statutory Committee or any member of the police force.

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

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

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

30 (b) by omitting from section 43 the word "forty-two" and by inserting instead the figures "42 (2)"; Sec. 43. (Professional misconduct.)

(c) by inserting after section 43A the following section :— Sec. 43B.

35 43B. (1) Where the person on whose behalf any moneys are held in a trust account of any solicitor cannot be found by the solicitor and has no agent known to the solicitor with authority to receive the moneys, Unclaimed moneys.

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

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

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

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

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

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



*Legal Practitioners and Other Acts (Amendment).*

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

Further amendment of Act No. 22, 1898.

(a) by omitting from section 44A (2) (b) the word "Guarantee";

Sec. 44A. (Statutory Interest Account.)

5 (b) by omitting from the heading to Part VIII the word "Guarantee";

(c) by omitting section 45 and by inserting instead the following section :—

Sec. 45.

10 45. (1) All moneys forming part of the Solicitors' Fidelity Guarantee Fund established by section 46, as in force immediately before the commencement of section 5 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall, on and after that commencement, form part of the fund.

Moneys forming part of the fund.

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

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

(d)

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- (d) by omitting from section 46 (1) the word "Guarantee"; Sec. 46.  
(The fund.)
- (e) by omitting from section 47 the word "Guarantee"; Sec. 47.  
(Separate  
bank  
account.)
- 5 (f) (i) by inserting in section 49 (b) after the word "including" the words "interest and"; Sec. 49.  
(Expendi-  
ture.)
- (ii) by omitting section 49 (c);
- (iii) by inserting in section 49 (e) after the words "Council by" the words "section 42 or";
- 10 (g) by omitting section 51 and by inserting instead the following section :— Sec. 51.
51. (1) The fund shall be administered by the council on behalf of the Society. Adminis-  
tration.
- (2) The council may from time to time by resolution delegate all or any of its powers in relation to the fund to a committee of management consisting of not less than three nor more than eight persons, being members of the Society, of whom not less than three shall be members of the council for the time being.
- 15 (3) The council may from time to time by resolution rescind or vary any resolution made under subsection (2).
- 20 (4) The council may at any time remove any member of the committee of management, and may fill any vacancy in that committee however arising.
- 25 (5) A quorum of the committee of management shall be formed by three members of that committee if one of them is a member of the council.

(6)



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(6) The council shall from time to time appoint a member of the committee of management to be chairman of that committee, and that chairman shall preside at any meeting of the committee at which he is present.

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

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

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

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

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

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

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

(3)

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

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

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

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

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

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

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

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

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



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(k) by omitting section 56 and by inserting instead the Sec. 56.  
following section :—

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

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

15 (a) with respect to which the solicitor  
or his partner, servant or agent has  
been convicted of any offence  
involving dishonesty; or

20 (b) which the council determines under  
subsection (2) to be dishonest,

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

25 “pecuniary loss” includes—

(a) all costs (including the legal costs  
and disbursements of making and  
proving a claim), charges and  
expenses which a claimant has  
30 suffered or incurred as a direct con-  
sequence of a failure to account; and

(b) all interest on moneys or other  
valuable property which a claimant  
would have received but for a failure  
to account for the moneys or other  
35 property, calculated to the date on

which

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

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

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

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

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

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

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date



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date on which notice of the claim was lodged with the Society until the date on which the claim is allowed or the judgment recovered.

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

(a) has not been wholly disallowed shall be assessed by agreement between the claimant and the Society, and in default of agreement shall be taxed as though referred for taxation under Part V; or

(b) has been wholly disallowed may be paid from the fund if, and to the extent that, the council in its absolute discretion so decides.

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

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

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

his

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

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

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

(b) the person has a judgment against the Society in relation to a claim against the fund,

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

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

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

equal to the amount by which the amount of the payment or judgment, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

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

(a) shall not exceed the sum of \$200,000 or such greater sum as may be prescribed; and

(b) where the first claim against the fund or judgment against the Society in respect of any such failure to account is made or recovered before the commencement of section 5 (1) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall

not



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*Legal Practitioners and Other Acts (Amendment).*

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not exceed the appropriate amount prescribed for that purpose by section 57 as in force immediately before that commencement.

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

(a) all claims against the fund other than claims under this subsection have been determined;

10 (b) the solicitor, former solicitor or personal representative of a deceased solicitor has paid moneys to any person by way of compensation for pecuniary loss suffered or incurred by the person by reason of the failure to account; and

15 (c) the solicitor, former solicitor or personal representative of a deceased solicitor has in the opinion of the council acted honestly and reasonably in all the circumstances of the case,

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

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

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

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(8)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

57A. Notwithstanding any other provision of this Part—

Additional  
payments to  
claimants.

(a) if in the opinion of the council the state of the fund is such, after taking into account all ascertained or contingent liabilities of the fund, that it would be reasonable to make from the fund a payment which could not otherwise be made solely because of the operation of section 57 (4), the council may, in its absolute discretion, make the payment; and

(b) where a claim against the fund is for an amount not exceeding \$1,000, or such other sum as may be prescribed, the council may, in its absolute discretion, determine and pay the claim on the production of such evidence as to entitlement as the council may deem sufficient.

(n)



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- (n) (i) by omitting from section 58 the words "theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the" and by inserting instead the words "failure to account by a";
- (ii) by inserting at the end of section 58 the following subsection :—
- (2) The publication bona fide of any notice for the purposes of this subsection shall not subject—
- (a) the Society;
- (b) the council;
- (c) the committee of management;
- (d) any member, employee or agent of the Society, the council or the committee of management; or
- (e) the proprietor, editor or publisher of any newspaper,
- to any liability to any person.
- (o) by omitting section 59 and by inserting instead the following section :—
59. The council shall, in respect of a failure to account, be at liberty—
- (a) after the date fixed by a notice published under section 58 (1); or
- (b) if no notice is so published, after such date as the council may fix,
- to distribute the sum from time to time available to be applied in compensation under this Part, having regard only to judgments recovered against the Society in respect of claims made against the fund and claims allowed against the fund.
- (p)

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*Legal Practitioners and Other Acts (Amendment).*

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

5           60. (1) No person shall be entitled, without <sup>Proceedings</sup>  
leave of the council, to commence any proceedings <sup>against</sup>  
against the Society in relation to the fund except as <sup>Society.</sup>  
in this section provided.

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

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

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

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

(6)



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(6) On hearing a case stated under subsection (4) the Court shall determine the question or questions set forth in the case, and any question of costs, and shall make such order as it thinks fit.

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

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

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

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

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

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

of

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

- 5 (r) (i) by omitting from section 62 the word "servant" Sec. 62.  
and by inserting instead the words "partner, (Council  
servant or agent"; may require  
production,  
etc., of  
documents.)
- (ii) by omitting from section 62 the word "reject"  
and by inserting instead the word "disallow";
- 10 (s) by omitting from section 63 (3) the words "reim- Sec. 63.  
bursement under section fifty-seven of this Act" and (In-  
by inserting instead the words "compensation under sufficiency  
this Part"; of the fund.)
- (t) by omitting section 64. Sec. 64.  
(Refund to  
representa-  
tives of  
deceased  
solicitor  
or to  
retiring  
solicitor.)

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

- (a) by omitting from section 65A the definition of Sec. 65A. 22  
"Defalcation"; (Inter-  
pretation.)
- 20 (b) by omitting from section 65B (a) the words Sec. 65B.  
"defalcation has been or may have been committed" (Power of  
and by inserting instead the words "failure to Court to  
account has or may have occurred"; appoint  
receiver  
in certain  
cases.)
- (c) by inserting after section 65G the following Sec. 65GA.  
section :—
- 25 65GA. (1) Where any property has been taken Further  
by, or paid or transferred to, any person (in this powers of  
section referred to as the "transferee") in breach of receiver.  
trust



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

appointed

*Legal Practitioners and Other Acts (Amendment).*

appointed receiver under section 65B or might have been so appointed but for the payment or transfer the receiver shall be entitled—

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

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

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

- 20 (a) the receipt of property by the solicitor or firm of solicitors of which the solicitor is or was a partner from any person, the nature and value of the property, the date of the receipt and the identity of the person;
- 25 (b) the taking by, or payment or transfer to, any person of property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person;
- 30 (c) the entries made in the accounts and other books, ledgers, statements, journals and other records of the solicitor or firm of solicitors
- 35



*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

(8)

*Legal Practitioners and Other Acts (Amendment).*

(8) This section has effect whether the appointment of the receiver, or any breach of trust or taking, payment or transfer of any property, occurred before or after the commencement of section 6 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974.

- (d) by inserting in section 65o (2) after the word “pro- Sec. 65o.  
perty” where firstly occurring the words “other than (Property  
moneys”. not dealt  
with by  
receiver.)

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

- (a) (i) by omitting from section 69 the words “pre- Sec. 69.  
scribed by regulations made under the (Fee.)  
authority of this Act” wherever occurring and  
by inserting instead the words “determined by  
the council, with the consent of the Attorney-  
General”;

- (ii) by omitting from section 69 the words “further  
fee or subscription” and by inserting instead the  
words “amount other than the annual prac-  
tising fee and the annual contribution required  
under section 52”;

- (b) (i) by omitting from section 70 (1) the words Sec. 70.  
“prescribed practising fee” and by inserting (Application  
instead the words “practising fee determined for and  
under section 69”; issue of  
certificate.)

- (ii) by omitting from section 70 (1) the words  
“prescribed contribution to the fund” and by  
inserting instead the words “contribution to the  
fund determined under section 52 (3)”;

(c)



*Legal Practitioners and Other Acts (Amendment).*

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

Sec. 71.  
(Grounds  
for refusing  
certificate.)

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

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

Sec. 75.  
(Statutory  
Committee.)

15 (8A) If the resignation of a member of the  
Statutory Committee pursuant to subsection (8)  
takes effect during the hearing of any charge, ques-  
tion or matter before more than three members of  
the Statutory Committee the hearing may be con-  
20 tinued and an order made thereon by not less than  
three of the remaining members of the Statutory  
Committee before whom such hearing was com-  
menced and continued prior to such resignation.

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

Further  
amendment  
of Act No.  
22, 1898.

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

Sec. 82A.  
(Investiga-  
tion of  
accounts,  
transac-  
tions and  
affairs of  
solicitors.)

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

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

39—C (1)

(iv)

*Legal Practitioners and Other Acts (Amendment).*

(iv) by omitting section 82A (10) and by inserting instead the following subsections :—

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

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

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

25 83A. No matter or thing done or suffered by the Society or the council or any member or employee or agent of the Society or the council or person appointed under section 42 or 82A bona fide in the execution or purported execution of this Act or  
30 discharge of any of its or his powers, authorities, duties or functions whether under this Act or otherwise shall subject the Society or the council or any such member, employee, agent or person to any liability in respect thereof.

35 (c) by omitting from section 84 (2) the word "Guarantee";

(d)

Protection  
of council,  
etc.

Sec. 84.  
(Recovery  
of moneys.)



*Legal Practitioners and Other Acts (Amendment).*

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

Sec. 86.  
(Council may make regulations.)

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

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

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

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

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

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

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

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

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

10.

*Legal Practitioners and Other Acts (Amendment).*

**10.** The Legal Practitioners (Legal Aid) Act, 1970, is amended by omitting from section 15 (3) (a1) the words "salaries (including professional fees)" and by inserting instead the words "professional fees".

Amendment  
of Act No.  
37, 1970.  
Sec. 15.  
(Legal  
Aid  
Fund.)

**BY AUTHORITY**

**D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974**  
**[25c]**



No. , 1974.

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## A BILL

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

[Mr McCaw—27 August, 1974.]

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BE

*Legal Practitioners and Other Acts (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Legal Practitioners and Other Acts (Amendment) Act, 1974". Short title.

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

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

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

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

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

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

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

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

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

"report"



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*Legal Practitioners and Other Acts (Amendment).*

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“report” means a report furnished by an inspector under this section.

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

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

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

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

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

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

(8)

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

35 (12) A person whose services are retained under subsection (7) shall not communicate the fact of any appointment under this section, or any matter which may come to his knowledge in the course of the examination of any accounts, to any

person



*Legal Practitioners and Other Acts (Amendment).*

5 person except the inspector who retained his services or, if so required, to the council or to members of the council or to the solicitors, officers or agents of the Society, or to the Court, the Statutory Committee or any member of the police force.

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

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

25 (15) Any person who commits a breach of subsection (11), (12) or (13) is, in addition to any other proceeding, penalty or punishment to which he may be liable, guilty of an offence and liable to a penalty not exceeding \$100.

30 (b) by omitting from section 43 the word "forty-two" and by inserting instead the figures "42 (2)"; Sec. 43.  
(Professional misconduct.)

(c) by inserting after section 43A the following Sec. 43B.  
section :—

35 43B. (1) Where the person on whose behalf any moneys are held in a trust account of any solicitor cannot be found by the solicitor and has no agent known to the solicitor with authority to receive the moneys,  
moneys.

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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



*Legal Practitioners and Other Acts (Amendment).*

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

Further amendment of Act No. 22, 1898.

(a) by omitting from section 44A (2) (b) the word "Guarantee";

Sec. 44A. (Statutory Interest Account.)

5 (b) by omitting from the heading to Part VIII the word "Guarantee";

(c) by omitting section 45 and by inserting instead the following section :—

Sec. 45.

10 45. (1) All moneys forming part of the Solicitors' Fidelity Guarantee Fund established by section 46, as in force immediately before the commencement of section 5 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall, on and after that commencement, form part of the fund.

Moneys forming part of the fund.

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

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

(d)

*Legal Practitioners and Other Acts (Amendment).*

- (d) by omitting from section 46 (1) the word "Guarantee"; Sec. 46.  
(The fund.)
- (e) by omitting from section 47 the word "Guarantee"; Sec. 47.  
(Separate  
bank  
account.)
- 5 (f) (i) by inserting in section 49 (b) after the word "including" the words "interest and"; Sec. 49.  
(Expendi-  
ture.)
- (ii) by omitting section 49 (c);
- (iii) by inserting in section 49 (e) after the words "Council by" the words "section 42 or";
- 10 (g) by omitting section 51 and by inserting instead the following section : — Sec. 51.
51. (1) The fund shall be administered by the council on behalf of the Society. Adminis-  
tration.
- (2) The council may from time to time by resolution delegate all or any of its powers in relation to the fund to a committee of management consisting of not less than three nor more than eight persons, being members of the Society, of whom not less than three shall be members of the council for the time being.
- 15
- (3) The council may from time to time by resolution rescind or vary any resolution made under subsection (2).
- 20
- (4) The council may at any time remove any member of the committee of management, and may fill any vacancy in that committee however arising.
- 25
- (5) A quorum of the committee of management shall be formed by three members of that committee if one of them is a member of the council.



*Legal Practitioners and Other Acts (Amendment).*

5 (6) The council shall from time to time appoint a member of the committee of management to be chairman of that committee, and that chairman shall preside at any meeting of the committee at which he is present.

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

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

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

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

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

30 52. (1) This section applies to a solicitor, other than a solicitor engaged in the practice of a solicitor solely in the employment of the Crown, or of a corporation prescribed for the purposes of this section.

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

(3)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

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

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

(k) (Failure to pay contribution or levy.)



*Legal Practitioners and Other Acts (Amendment).*

(k) by omitting section 56 and by inserting instead the Sec. 56. following section :—

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

5 “failure to account” means a failure by a solicitor to whom section 52 applies to account for moneys or other valuable property entrusted to the solicitor, or to any partner, servant or agent of the solicitor, in the course of his practice as a solicitor (including any 10 moneys or other valuable property entrusted to him as a solicitor-trustee), arising from any act or omission of the solicitor or of his partner, servant or agent—

15 (a) with respect to which the solicitor or his partner, servant or agent has been convicted of any offence involving dishonesty; or

20 (b) which the council determines under subsection (2) to be dishonest,

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

25 “pecuniary loss” includes—

(a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses which a claimant has 30 suffered or incurred as a direct consequence of a failure to account; and

(b) all interest on moneys or other valuable property which a claimant would have received but for a failure 35 to account for the moneys or other property, calculated to the date on

which

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

date



*Legal Practitioners and Other Acts (Amendment).*

date on which notice of the claim was lodged with the Society until the date on which the claim is allowed or the judgment recovered.

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

(a) has not been wholly disallowed shall be assessed by agreement between the claimant and the Society, and in default of agreement shall be taxed as though referred for taxation under Part V; or

(b) has been wholly disallowed may be paid from the fund if, and to the extent that, the council in its absolute discretion so decides.

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

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

Claims  
against  
the fund.

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

his

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

- 15 (c) the person shall repay to the Society an amount; or
- (d) the Society's liability under the judgment shall be reduced by an amount,

20 equal to the amount by which the amount of the payment or judgment, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

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

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

not



*Legal Practitioners and Other Acts (Amendment).*

not exceed the appropriate amount prescribed for that purpose by section 57 as in force immediately before that commencement.

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

(a) all claims against the fund other than claims under this subsection have been determined;

10 (b) the solicitor, former solicitor or personal representative of a deceased solicitor has paid moneys to any person by way of compensation for pecuniary loss suffered or incurred by the person by reason of the failure to account; and

15 (c) the solicitor, former solicitor or personal representative of a deceased solicitor has in the opinion of the council acted honestly and reasonably in all the circumstances of the case,

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

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

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

(8)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

57A. Notwithstanding any other provision of this Part— Additional payments to claimants.

20 (a) if in the opinion of the council the state of the fund is such, after taking into account all ascertained or contingent liabilities of the fund, that it would be reasonable to make from the fund a payment which could  
25 not otherwise be made solely because of the operation of section 57 (4), the council may, in its absolute discretion, make the payment; and

30 (b) where a claim against the fund is for an amount not exceeding \$1,000, or such other sum as may be prescribed, the council may, in its absolute discretion, determine and pay the claim on the production of such  
35 evidence as to entitlement as the council may deem sufficient.

(n)



*Legal Practitioners and Other Acts (Amendment).*

- (n) (i) by omitting from section 58 the words "theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the" and by inserting instead the words "failure to account by a";
- (ii) by inserting at the end of section 58 the following subsection :—
- (2) The publication bona fide of any notice for the purposes of this subsection shall not subject—
- (a) the Society;
- (b) the council;
- (c) the committee of management;
- (d) any member, employee or agent of the Society, the council or the committee of management; or
- (e) the proprietor, editor or publisher of any newspaper,
- to any liability to any person.
- (o) by omitting section 59 and by inserting instead the following section :—
59. The council shall, in respect of a failure to account, be at liberty—
- (a) after the date fixed by a notice published under section 58 (1) ; or
- (b) if no notice is so published, after such date as the council may fix,
- to distribute the sum from time to time available to be applied in compensation under this Part, having regard only to judgments recovered against the Society in respect of claims made against the fund and claims allowed against the fund.

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*Legal Practitioners and Other Acts (Amendment).*

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

5           60. (1) No person shall be entitled, without leave of the council, to commence any proceedings against the Society in relation to the fund except as in this section provided.

Proceedings  
against  
Society.

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

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

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

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

(6)



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*Legal Practitioners and Other Acts (Amendment).*

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(6) On hearing a case stated under subsection (4) the Court shall determine the question or questions set forth in the case, and any question of costs, and shall make such order as it thinks fit.

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

10 61. (1) Subject to subsection (3), on payment Subroga-  
out of the fund of any moneys in settlement in whole tion.  
or in part of any claim under this Part arising from  
the act or omission of a solicitor or of his partner,  
servant or agent, the Society shall be subrogated, to  
15 the extent of the payment, to all the rights and  
remedies of the claimant against the solicitor, or  
the partner, servant or agent, or any other person  
(including any person entitled to administer the  
estate of any such solicitor, partner, servant or agent  
who is insolvent or dies) in respect of the act or  
omission.

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

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

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

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

*Legal Practitioners and Other Acts (Amendment).*

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

- 5 (r) (i) by omitting from section 62 the word "servant" and by inserting instead the words "partner, servant or agent";  
(ii) by omitting from section 62 the word "reject" and by inserting instead the word "disallow";
- 10 (s) by omitting from section 63 (3) the words "reimbursement under section fifty-seven of this Act" and by inserting instead the words "compensation under this Part";
- (t) by omitting section 64.

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

Sec. 63.  
(Insufficiency of the fund.)

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

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

- (a) by omitting from section 65A the definition of "Defalcation";
- 20 (b) by omitting from section 65B (a) the words "defalcation has been or may have been committed" and by inserting instead the words "failure to account has or may have occurred";
- (c) by inserting after section 65G the following section :—
- 25 65GA. (1) Where any property has been taken by, or paid or transferred to, any person (in this section referred to as the "transferee") in breach of trust

Further amendment of Act No. 22, 1898.

Sec. 65A.  
(Interpretation.)

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

Sec. 65GA.

Further powers of receiver.



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*Legal Practitioners and Other Acts (Amendment).*

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

10 (a) if the transferee knew or believed at the time of the taking, payment or transfer that it was done in breach of trust or unlawfully, or if the transferee did not provide any consideration for the taking, payment or transfer, be entitled to recover from the transferee the amount of the payment or the value of the property;

15 (b) if the transferee provided inadequate consideration for the taking, payment or transfer, be entitled to recover from the transferee the amount of the inadequacy; or

20 (c) if the transferee by reason of the taking, payment or transfer became indebted, or otherwise liable, in any amount to the solicitor or the firm of solicitors of which the solicitor is or was a partner, or a client of the solicitor or firm, be entitled to recover that amount from the transferee.

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

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

appointed

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*Legal Practitioners and Other Acts (Amendment).*

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appointed receiver under section 65B or might have been so appointed but for the payment or transfer the receiver shall be entitled—

- 5 (a) subject to subsection (4), to recover the property from the prospective plaintiff; and
- (b) to the extent that he does not recover the property in full take in the name of the prospective plaintiff such proceedings in relation to the cause of action against the other person as the prospective plaintiff might have taken.
- 10

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

15

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

20

- 25 (a) the receipt of property by the solicitor or firm of solicitors of which the solicitor is or was a partner from any person, the nature and value of the property, the date of the receipt and the identity of the person;
- (b) the taking by, or payment or transfer to, any person of property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person;
- 30
- (c) the entries made in the accounts and other books, ledgers, statements, journals and other records of the solicitor or firm of
- 35
- solicitors



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

- (a) where the amount received from the fund is by way of compensation for the whole pecuniary loss, the amount subsequently  
30 received; or

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

(8)

*Legal Practitioners and Other Acts (Amendment).*

(8) This section has effect whether the appointment of the receiver, or any breach of trust or taking, payment or transfer of any property, occurred before or after the commencement of section 6 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974.

- (d) by inserting in section 65o (2) after the word “pro- Sec. 65o.  
perty” where firstly occurring the words “other than (Property  
moneys”. not dealt  
with by  
receiver.)

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

- (a) (i) by omitting from section 69 the words “pre- Sec. 69.  
scribed by regulations made under the (Fee.)  
authority of this Act” wherever occurring and  
by inserting instead the words “determined by  
the council, with the consent of the Attorney-  
General”;

- (ii) by omitting from section 69 the words “further  
fee or subscription” and by inserting instead the  
words “amount other than the annual prac-  
tising fee and the annual contribution required  
under section 52”;

- (b) (i) by omitting from section 70 (1) the words Sec. 70.  
“prescribed practising fee” and by inserting (Application  
instead the words “practising fee determined for and  
under section 69”; issue of  
certificate.)

- (ii) by omitting from section 70 (1) the words  
“prescribed contribution to the fund” and by  
inserting instead the words “contribution to the  
fund determined under section 52 (3)”;

(c)



*Legal Practitioners and Other Acts (Amendment).*

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

Sec. 71.  
(Grounds  
for refusing  
certificate.)

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

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

Sec. 75.  
(Statutory  
Committee.)

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

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

Further  
amendment  
of Act No.  
22, 1898.

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

Sec. 82A.  
(Investiga-  
tion of  
accounts,  
transac-  
tions and  
affairs of  
solicitors.)

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

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

*Legal Practitioners and Other Acts (Amendment).*

(iv) by omitting section 82A (10) and by inserting instead the following subsections :—

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

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

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

83A. No matter or thing done or suffered by the Society or the council or any member or employee or agent of the Society or the council or person appointed under section 42 or 82A bona fide in the execution or purported execution of this Act or discharge of any of its or his powers, authorities, duties or functions whether under this Act or otherwise shall subject the Society or the council or any such member, employee, agent or person to any liability in respect thereof.

Protection  
of council,  
etc.

(c) by omitting from section 84 (2) the word "Guarantee";

Sec. 84.  
(Recovery  
of moneys.)

(d)



*Legal Practitioners and Other Acts (Amendment).*

- (d) (i) by omitting section 86 (1) (a) (ia) and by inserting instead the following subparagraph :— (Council may make regulations.)
- 5 (ia) as to the method of operating on such accounts and specifying the persons, or providing for the authorisation by solicitors (subject to such restrictions and conditions as may be prescribed) of persons, who may operate on such
- 10 accounts ;
- (ii) by omitting section 86 (1) (b) (i) ;
- (iii) by inserting after section 86 (1) (b) (iii) the following subparagraph :—
- 15 (iiia) empowering the council to require a solicitor to inform the council if he becomes bankrupt or makes any arrangement or composition with his creditors and, where he becomes
- 20 bankrupt or makes such an arrangement or composition, to comply with any directions of the council in relation to his practice as a solicitor ;
- (iv) by inserting in section 86 (1) (b) (iv) after the word "section" the matter "42 or" ;
- 25 (v) by inserting after section 86 (5) the following subsection :—
- 30 (6) Section 53 of the Trustee Act, 1925, shall not apply to or in respect of any person who, pursuant to the regulations or an authorisation by a solicitor thereunder, may operate on an account for clients' moneys kept by a solicitor at a bank.

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

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

10.

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*Legal Practitioners and Other Acts (Amendment).*

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**10.** The Legal Practitioners (Legal Aid) Act, 1970, is amended by omitting from section 15 (3) (a1) the words "salaries (including professional fees)" and by inserting instead the words "professional fees".

Amendment  
of Act No.  
37, 1970.  
Sec. 15.  
(Legal  
Aid  
Fund.)

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

[25c]



**LEGAL PRACTITIONERS AND OTHER ACTS  
(AMENDMENT) ACT, 1974**

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**EXPLANATORY NOTE**

THE objects of this Bill are—

- (a) to make further provision for the inspection of solicitors' trust accounts by an inspector and to require the inspector to report confidentially to the council of the Law Society of New South Wales if he thinks fit or is required by that council to do so;
- (b) to make provision allowing a solicitor to pay unclaimed money in a trust account to the Treasurer where the solicitor is unable to locate the person entitled to the money;
- (c) to rename the Solicitors' Fidelity Guarantee Fund as the Solicitors' Fidelity Fund;
- (d) to make further provision with respect to the payment by solicitors of annual contributions to that fund;
- (e) to make further provision with respect to claims against that fund including provision for the payment by the council of the Law Society of New South Wales, in its discretion, of claims up to \$1,000 on such evidence as to entitlement as that council thinks fit;
- (f) to make provision allowing a receiver appointed by the Supreme Court to trace and recover trust moneys paid out by a defaulting solicitor to any person in breach of trust;
- (g) to make other provisions of a consequential or ancillary character.







PROOF

No. , 1974.

## A BILL

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

[MR McCaw—27 August, 1974.]

BE

*Legal Practitioners and Other Acts (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Legal Practitioners and Other Acts (Amendment) Act, 1974". Short title.

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

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

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

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

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

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

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

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

42. (1) In this section—

"inspector" means a person appointed as an inspector under subsection (3); Keeping of  
accounts.

"report"



*Legal Practitioners and Other Acts (Amendment).*

“report” means a report furnished by an inspector under this section.

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

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

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

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

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

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

(8)

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

35 (12) A person whose services are retained under subsection (7) shall not communicate the fact of any appointment under this section, or any matter which may come to his knowledge in the course of the examination of any accounts, to any

person



*Legal Practitioners and Other Acts (Amendment).*

5 person except the inspector who retained his services or, if so required, to the council or to members of the council or to the solicitors, officers or agents of the Society, or to the Court, the Statutory Committee or any member of the police force.

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

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

15 (15) Any person who commits a breach of subsection (11), (12) or (13) is, in addition to any other proceeding, penalty or punishment to which he may be liable, guilty of an offence and liable to a penalty not exceeding \$100.

30 (b) by omitting from section 43 the word "forty-two" and by inserting instead the figures "42 (2)"; Sec. 43. (Professional misconduct.)

(c) by inserting after section 43A the following section :— Sec. 43B.

35 43B. (1) Where the person on whose behalf any moneys are held in a trust account of any solicitor cannot be found by the solicitor and has no agent known to the solicitor with authority to receive the moneys, Unclaimed moneys.

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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



*Legal Practitioners and Other Acts (Amendment).*

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

Further amendment of Act No. 22, 1898.

(a) by omitting from section 44A (2) (b) the word "Guarantee";

Sec. 44A. (Statutory Interest Account.)

5 (b) by omitting from the heading to Part VIII the word "Guarantee";

(c) by omitting section 45 and by inserting instead the following section :—

Sec. 45.

10 45. (1) All moneys forming part of the Solicitors' Fidelity Guarantee Fund established by section 46, as in force immediately before the commencement of section 5 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall, on and after that commencement, form part of the fund.

Moneys forming part of the fund.

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

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

(d)

*Legal Practitioners and Other Acts (Amendment).*

- (d) by omitting from section 46 (1) the word "Guarantee"; Sec. 46.  
(The fund.)
- (e) by omitting from section 47 the word "Guarantee"; Sec. 47.  
(Separate  
bank  
account.)
- 5 (f) (i) by inserting in section 49 (b) after the word "including" the words "interest and"; Sec. 49.  
(Expendi-  
ture.)
- (ii) by omitting section 49 (c);
- (iii) by inserting in section 49 (e) after the words "Council by" the words "section 42 or";
- 10 (g) by omitting section 51 and by inserting instead the following section : — Sec. 51.
51. (1) The fund shall be administered by the council on behalf of the Society. Adminis-  
tration.
- (2) The council may from time to time by resolution delegate all or any of its powers in relation to the fund to a committee of management consisting of not less than three nor more than eight persons, being members of the Society, of whom not less than three shall be members of the council for the time being.
- 15
- (3) The council may from time to time by resolution rescind or vary any resolution made under subsection (2).
- 20
- (4) The council may at any time remove any member of the committee of management, and may fill any vacancy in that committee however arising.
- 25
- (5) A quorum of the committee of management shall be formed by three members of that committee if one of them is a member of the council.

(6)



*Legal Practitioners and Other Acts (Amendment).*

5 (6) The council shall from time to time appoint a member of the committee of management to be chairman of that committee, and that chairman shall preside at any meeting of the committee at which he is present.

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

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

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

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

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

30 52. (1) This section applies to a solicitor, other than a solicitor engaged in the practice of a solicitor solely in the employment of the Crown, or of a corporation prescribed for the purposes of this section.

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

(3)

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

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

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

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



*Legal Practitioners and Other Acts (Amendment).*

(k) by omitting section 56 and by inserting instead the Sec. 56. following section :—

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

5 “failure to account” means a failure by a solicitor to whom section 52 applies to account for moneys or other valuable property entrusted to the solicitor, or to any partner, servant or agent of the solicitor, in the course of his practice as a solicitor (including any 10 moneys or other valuable property entrusted to him as a solicitor-trustee), arising from any act or omission of the solicitor or of his partner, servant or agent—

15 (a) with respect to which the solicitor or his partner, servant or agent has been convicted of any offence involving dishonesty; or

20 (b) which the council determines under subsection (2) to be dishonest,

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

25 “pecuniary loss” includes—

30 (a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses which a claimant has suffered or incurred as a direct consequence of a failure to account; and

35 (b) all interest on moneys or other valuable property which a claimant would have received but for a failure to account for the moneys or other property, calculated to the date on

which

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*Legal Practitioners and Other Acts (Amendment).*

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

5

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

10

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

15

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

20

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

25

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

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date



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*Legal Practitioners and Other Acts (Amendment).*

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date on which notice of the claim was lodged with the Society until the date on which the claim is allowed or the judgment recovered.

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

(a) has not been wholly disallowed shall be assessed by agreement between the claimant and the Society, and in default of agreement shall be taxed as though referred for taxation under Part V; or

(b) has been wholly disallowed may be paid from the fund if, and to the extent that, the council in its absolute discretion so decides.

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

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

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

his

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

(b) the person has a judgment against the Society in relation to a claim against the fund,

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

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

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

equal to the amount by which the amount of the payment or judgment, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

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

(a) shall not exceed the sum of \$200,000 or such greater sum as may be prescribed; and

(b) where the first claim against the fund or judgment against the Society in respect of any such failure to account is made or recovered before the commencement of section 5 (1) of the Legal Practitioners and Other Acts (Amendment) Act, 1974, shall

not



*Legal Practitioners and Other Acts (Amendment).*

not exceed the appropriate amount prescribed for that purpose by section 57 as in force immediately before that commencement.

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

(a) all claims against the fund other than claims under this subsection have been determined;

10 (b) the solicitor, former solicitor or personal representative of a deceased solicitor has paid moneys to any person by way of compensation for pecuniary loss suffered or incurred by the person by reason of the failure to account; and

15 (c) the solicitor, former solicitor or personal representative of a deceased solicitor has in the opinion of the council acted honestly and reasonably in all the circumstances of the case,

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

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

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

(8)

*Legal Practitioners and Other Acts (Amendment).*

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

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

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

57A. Notwithstanding any other provision of this Part— Additional payments to claimants.

20 (a) if in the opinion of the council the state of the fund is such, after taking into account all ascertained or contingent liabilities of the fund, that it would be reasonable to make from the fund a payment which could not otherwise be made solely because of the  
25 operation of section 57 (4), the council may, in its absolute discretion, make the payment; and

30 (b) where a claim against the fund is for an amount not exceeding \$1,000, or such other sum as may be prescribed, the council may, in its absolute discretion, determine and pay the claim on the production of such evidence as to entitlement as the council  
35 may deem sufficient.

(n)



*Legal Practitioners and Other Acts (Amendment).*

- 5 (n) (i) by omitting from section 58 the words "theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the" and by inserting instead the words "failure to account by a";
- (ii) by inserting at the end of section 58 the following subsection :—
- 10 (2) The publication bona fide of any notice for the purposes of this subsection shall not subject—
- 15 (a) the Society ;
- (b) the council ;
- (c) the committee of management ;
- (d) any member, employee or agent of the Society, the council or the committee of management ; or
- 20 (e) the proprietor, editor or publisher of any newspaper,
- to any liability to any person.
- 20 (o) by omitting section 59 and by inserting instead the following section :—
59. The council shall, in respect of a failure to account, be at liberty—
- 25 (a) after the date fixed by a notice published under section 58 (1) ; or
- (b) if no notice is so published, after such date as the council may fix,
- 30 to distribute the sum from time to time available to be applied in compensation under this Part, having regard only to judgments recovered against the Society in respect of claims made against the fund and claims allowed against the fund.
- 39—B (p)



*Legal Practitioners and Other Acts (Amendment).*

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

5           60. (1) No person shall be entitled, without leave of the council, to commence any proceedings against the Society in relation to the fund except as in this section provided. Proceedings  
against  
Society.

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

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

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

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

(6)



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*Legal Practitioners and Other Acts (Amendment).*

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(6) On hearing a case stated under subsection (4) the Court shall determine the question or questions set forth in the case, and any question of costs, and shall make such order as it thinks fit.

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

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

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

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

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

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



*Legal Practitioners and Other Acts (Amendment).*

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

- 5 (r) (i) by omitting from section 62 the word "servant" Sec. 62.  
and by inserting instead the words "partner, (Council  
servant or agent"; may require  
production,  
etc., of  
documents.)
- (ii) by omitting from section 62 the word "reject"  
and by inserting instead the word "disallow";
- 10 (s) by omitting from section 63 (3) the words "reim- Sec. 63.  
bursement under section fifty-seven of this Act" and (In-  
sufficiency  
of the fund.)  
by inserting instead the words "compensation under  
this Part";
- (t) by omitting section 64. Sec. 64.  
(Refund to  
representa-  
tives of  
deceased  
solicitor  
or to  
retiring  
solicitor.)

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

- (a) by omitting from section 65A the definition of Sec. 65A.  
"Defalcation"; (Inter-  
pretation.)
- 20 (b) by omitting from section 65B (a) the words Sec. 65B.  
"defalcation has been or may have been committed" (Power of  
Court to  
appoint  
receiver  
in certain  
cases.)  
and by inserting instead the words "failure to  
account has or may have occurred";
- (c) by inserting after section 65G the following Sec. 65GA.  
section :—
- 25 65GA. (1) Where any property has been taken Further  
by, or paid or transferred to, any person (in this powers of  
section referred to as the "transferee") in breach of receiver.  
trust



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

appointed



*Legal Practitioners and Other Acts (Amendment).*

appointed receiver under section 65B or might have been so appointed but for the payment or transfer the receiver shall be entitled—

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

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

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

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



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

- 30 (a) where the amount received from the fund is by way of compensation for the whole pecuniary loss, the amount subsequently received; or

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

(8)



*Legal Practitioners and Other Acts (Amendment).*

5 (8) This section has effect whether the appointment of the receiver, or any breach of trust or taking, payment or transfer of any property, occurred before or after the commencement of section 6 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974.

- (d) by inserting in section 65o (2) after the word “pro- Sec. 65o.  
perty” where firstly occurring the words “other than (Property  
moneys”; not dealt  
with by  
receiver.)

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

15 (a) (i) by omitting from section 69 the words “pre- Sec. 69.  
scribed by regulations made under the (Fee.)  
authority of this Act” wherever occurring and  
by inserting instead the words “determined by  
the council, with the consent of the Attorney-  
General”;

20 (ii) by omitting from section 69 the words “further  
fee or subscription” and by inserting instead the  
words “amount other than the annual prac-  
tising fee and the annual contribution required  
under section 52”;

25 (b) (i) by omitting from section 70 (1) the words Sec. 70.  
“prescribed practising fee” and by inserting (Application  
instead the words “practising fee determined for and  
under section 69”; issue of  
certificate.)

30 (ii) by omitting from section 70 (1) the words  
“prescribed contribution to the fund” and by  
inserting instead the words “contribution to the  
fund determined under section 52 (3)”;

(c)



*Legal Practitioners and Other Acts (Amendment).*

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

Sec. 71.  
(Grounds  
for refusing  
certificate.)

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

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

Sec. 75.  
(Statutory  
Committee.)

15 (8A) If the resignation of a member of the  
Statutory Committee pursuant to subsection (8)  
takes effect during the hearing of any charge, ques-  
tion or matter before more than three members of  
the Statutory Committee the hearing may be con-  
tinued and an order made thereon by not less than  
20 three of the remaining members of the Statutory  
Committee before whom such hearing was com-  
menced and continued prior to such resignation.

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

Further  
amendment  
of Act No.  
22, 1898.

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

Sec. 82A.  
(Investiga-  
tion of  
accounts,  
transac-  
tions and  
affairs of  
solicitors.)

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

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



*Legal Practitioners and Other Acts (Amendment).*

(iv) by omitting section 82A (10) and by inserting instead the following subsections :—

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

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

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

25 83A. No matter or thing done or suffered by the Society or the council or any member or employee or agent of the Society or the council or person appointed under section 42 or 82A bona fide in the execution or purported execution of this Act or  
30 discharge of any of its or his powers, authorities, duties or functions whether under this Act or otherwise shall subject the Society or the council or any such member, employee, agent or person to any liability in respect thereof.

35 (c) by omitting from section 84 (2) the word "Guarantee";

Sec. 84.  
(Recovery of moneys.)

(d)



*Legal Practitioners and Other Acts (Amendment).*

- (d) (i) by omitting section 86 (1) (a) (ia) and by inserting instead the following subparagraph :— (Council may make regulations.)
- 5 (ia) as to the method of operating on such accounts and specifying the persons, or providing for the authorisation by solicitors (subject to such restrictions and conditions as may be prescribed) of persons, who may operate on such
- 10 accounts ;
- (ii) by omitting section 86 (1) (b) (i) ;
- (iii) by inserting after section 86 (1) (b) (iii) the following subparagraph :—
- 15 (iiia) empowering the council to require a solicitor to inform the council if he becomes bankrupt or makes any arrangement or composition with his creditors and, where he becomes
- 20 bankrupt or makes such an arrangement or composition, to comply with any directions of the council in relation to his practice as a solicitor ;
- (iv) by inserting in section 86 (1) (b) (iv) after the word "section" the matter "42 or" ;
- 25 (v) by inserting after section 86 (5) the following subsection :—
- 30 (6) Section 53 of the Trustee Act, 1925, shall not apply to or in respect of any person who, pursuant to the regulations or an authorisation by a solicitor thereunder, may operate on an account for clients' moneys kept by a solicitor at a bank.

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

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

10.



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*Legal Practitioners and Other Acts (Amendment).*

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**10.** The Legal Practitioners (Legal Aid) Act, 1970, is amended by omitting from section 15 (3) (a1) the words "salaries (including professional fees)" and by inserting instead the words "professional fees".

Amendment  
of Act No.  
37, 1970.  
Sec. 15.  
(Legal  
Aid  
Fund.)



3. MESSAGES FROM THE LEGISLATIVE ASSEMBLY.—The President reported and read the following Messages from the Legislative Assembly:

(1) Glen Davis (Amendment) Bill—

Mr PRESIDENT—

The Legislative Assembly has this day agreed to the amendments made by the Legislative Council in the Bill, intituled "*An Act to provide for owners of lands in the town of Glen Davis to be divested of their estates and interests in those lands without payment of compensation; to enable those lands to be declared Crown lands; for these and other purposes to amend the Glen Davis Act, 1939; and for purposes connected therewith.*"

Legislative Assembly Chamber,  
Sydney, 24 September, 1974.

JIM CAMERON,  
Speaker.

(2) Ombudsman Bill—

Mr PRESIDENT—

The Legislative Assembly having this day passed a Bill, intituled "*An Act to provide for the appointment of an Ombudsman; to define his powers, authorities, duties and functions; and for purposes connected therewith*"—presents the same to the Legislative Council for its concurrence.

Legislative Assembly Chamber,  
Sydney, 25 September, 1974.

JIM CAMERON,  
Speaker.

Bill, on motion of Mr Hewitt, read a first time.

Ordered, That the second reading stand an Order of the Day for next Sitting Day, and that the Bill, in the meantime, be printed.

4. LEGAL PRACTITIONERS AND OTHER ACTS (AMENDMENT) BILL (*Formal Business*).  
—On motion of Sir John Fuller, read a third time.

Whereupon Sir John Fuller moved, That this Bill be returned to the Legislative Assembly with the following Message:

Mr SPEAKER—

The Legislative Council has this day agreed to the Bill, returned herewith, intituled "*An Act to make further provisions for and with respect to the inspection of solicitors' trust accounts; to allow solicitors in certain circumstances to pay unclaimed money in a trust account to the Treasurer; to provide for the disposal of any money so paid; to extend the provisions relating to payments into and claims against the fund formerly known as the Solicitors' Fidelity Guarantee Fund and now to be known as the Solicitors' Fidelity Fund; for these and other purposes to amend the Legal Practitioners Act, 1898; and to amend the Oaths Act, 1900, and the Legal Practitioners (Legal Aid) Act, 1970*"—with the amendment indicated by the accompanying Schedule, in which amendment the Council requests the concurrence of the Legislative Assembly.

Legislative Council Chamber,  
Sydney, 25 September, 1974.

LEGAL PRACTITIONERS AND OTHER ACTS (AMENDMENT) BILL  
*Schedule of the amendment referred to in Message of 25 September, 1974.*

A. W. SAXON,  
Clerk of the Parliaments.

Page 20, clause 6. *After line 21 insert—*

- "(ii) by inserting in section 65B (b) (iii) after the word 'practice;' the word 'or';
- (iii) by omitting from section 65B (b) (iv) (b) the words 'practice; or' and by inserting instead the word 'practice;';
- (iv) by omitting section 65B (b) (v);
- (v) by inserting at the end of section 65B the following subsection—





MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL  
(25 September, 1974)

(2) Where the council has—

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

the Court, on application in that behalf made by the Society not later than twelve months after the date of the refusal, cancellation or resolution, and on being satisfied that the council had reasonable grounds for the refusal, cancellation or resolution, may appoint a receiver of all or any property which is held by the solicitor or the firm of solicitors of which the solicitor is or was a partner or by some other person on his behalf or is recoverable by the solicitor or firm, or, where the solicitor is dead, which by reason of his death is or may be recoverable by his personal representative."

Examined—

T. S. MCKAY,  
Chairman of Committees.

Question put and passed.

5. MINISTERIAL STATEMENT.—Sir John Fuller made a Ministerial Statement concerning the visit to the Houses of Parliament of His Royal Highness The Prince Charles Prince of Wales on 15 October, 1974, and the presentation of a new Black Rod in connection with the Commemoration of the sesqui-centenary of the inauguration of parliamentary institutions in Australia.

6. PAPERS.—Mr Hewitt laid upon the Table the undermentioned Papers:

- (1) Bursary Endowment Act, 1912—Report of Bursary Endowment Board for year ended 30 June, 1973.
- (2) Co-operation Act, 1923—Co-operatives Regulations, 1961—Amendment of Regulations 79, 79A.
- (3) Credit Union Act, 1969—Regulation 27AA.
- (4) Housing Indemnities Act, 1962—Housing Indemnities Regulations, 1972—Amendment of Regulation 3.
- (5) Motor Vehicles (Third Party Insurance) Act, 1942—Amendment of Schedule to Regulations—increases in Third Party Insurance Premium Rates.
- (6) Police Regulation Act, 1899—Police Rules—Amendment of Sections X, XII.
- (7) Police Regulation (Superannuation) Act, 1906—Police Superannuation and Reward Fund—Statement of Receipts and Payments for year ended 30 June, 1974.
- (8) Public Works Act, 1912—Housing Act, 1912—Notification of—
  - (a) Acquisition of land for housing purposes at—
    - Camden
    - Fairfield
    - Narrabri West
    - Orange.
  - (b) Rescission of resumption of land for housing purposes at Berkeley Vale.

7. PAY-ROLL TAX (AMENDMENT) BILL.—

- (1) Upon the Order of the Day being read Sir John Fuller moved, That this Bill be now read a second time.

Debate ensued.

Question put and passed.

Bill read a second time.







# New South Wales



ANNO VICESIMO TERTIO

## ELIZABETHÆ II REGINÆ

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### Act No. 62, 1974.

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

BE

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*Legal Practitioners and Other Acts (Amendment).*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.      1. This Act may be cited as the "Legal Practitioners and Other Acts (Amendment) Act, 1974".

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

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

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

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

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

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

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

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

Keeping of  
accounts.

42. (1) In this section—

"inspector" means a person appointed as an inspector under subsection (3);

"report"



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*Legal Practitioners and Other Acts (Amendment).*

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“report” means a report furnished by an inspector under this section.

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

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

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

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

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

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

(8)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

(12) A person whose services are retained under subsection (7) shall not communicate the fact of any appointment under this section, or any matter which may come to his knowledge in the course of the examination of any accounts, to any

person



*Legal Practitioners and Other Acts (Amendment).*

person except the inspector who retained his services or, if so required, to the council or to members of the council or to the solicitors, officers or agents of the Society, or to the Court, the Statutory Committee or any member of the police force.

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

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

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

- (b) by omitting from section 43 the word "forty-two" and by inserting instead the figures "42 (2)"; Sec. 43.  
(Professional misconduct.)

- (c) by inserting after section 43A the following Sec. 43B.  
section :—

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

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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



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*Legal Practitioners and Other Acts (Amendment).*

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

Further amendment of Act No. 22, 1898.

(a) by omitting from section 44A (2) (b) the word "Guarantee";

Sec. 44A.  
(Statutory Interest Account.)

(b) by omitting from the heading to Part VIII the word "*Guarantee*";

Part VIII.

(c) by omitting section 45 and by inserting instead the following section :—

Sec. 45.

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

Moneys forming part of the fund.

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

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

(d)

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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 46.  
(The fund.)

- (d) by omitting from section 46 (1) the word "Guarantee";

Sec. 47.  
(Separate  
bank  
account.)

- (e) by omitting from section 47 the word "Guarantee";

Sec. 49.  
(Expendi-  
ture.)

- (f) (i) by inserting in section 49 (b) after the word "including" the words "interest and";  
(ii) by omitting section 49 (c);  
(iii) by inserting in section 49 (e) after the words "Council by" the words "section 42 or";

Sec. 51.

- (g) by omitting section 51 and by inserting instead the following section : —

Adminis-  
tration.

51. (1) The fund shall be administered by the council on behalf of the Society.

(2) The council may from time to time by resolution delegate all or any of its powers in relation to the fund to a committee of management consisting of not less than three nor more than eight persons, being members of the Society, of whom not less than three shall be members of the council for the time being.

(3) The council may from time to time by resolution rescind or vary any resolution made under subsection (2).

(4) The council may at any time remove any member of the committee of management, and may fill any vacancy in that committee however arising.

(5) A quorum of the committee of management shall be formed by three members of that committee if one of them is a member of the council.

(6)



*Legal Practitioners and Other Acts (Amendment).*

(6) The council shall from time to time appoint a member of the committee of management to be chairman of that committee, and that chairman shall preside at any meeting of the committee at which he is present.

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

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

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

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

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

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

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

(3)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

Sec. 53.  
(Levies.)

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

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

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

(a) on his own account or in partnership with any other solicitor;

(b) as an employee of another solicitor; or

(c) as an employee of a person who is not a solicitor, or of a corporation.

Sec. 54.  
(Failure to  
pay contri-  
bution or  
levy.)

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

(k)



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*Legal Practitioners and Other Acts (Amendment).*

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- (k) by omitting section 56 and by inserting instead the Sec. 56. following section :—

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

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

(a) with respect to which the solicitor or his partner, servant or agent has been convicted of any offence involving dishonesty; or

(b) which the council determines under subsection (2) to be dishonest,

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

“pecuniary loss” includes—

(a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses which a claimant has suffered or incurred as a direct consequence of a failure to account; and

(b) all interest on moneys or other valuable property which a claimant would have received but for a failure to account for the moneys or other property, calculated to the date on

which

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

date



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*Legal Practitioners and Other Acts (Amendment).*

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date on which notice of the claim was lodged with the Society until the date on which the claim is allowed or the judgment recovered.

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

(a) has not been wholly disallowed shall be assessed by agreement between the claimant and the Society, and in default of agreement shall be taxed as though referred for taxation under Part V; or

(b) has been wholly disallowed may be paid from the fund if, and to the extent that, the council in its absolute discretion so decides.

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

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

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

his

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

- (c) the person shall repay to the Society an amount; or
- (d) the Society's liability under the judgment shall be reduced by an amount,

equal to the amount by which the amount of the payment or judgment, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

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

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

not



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*Legal Practitioners and Other Acts (Amendment).*

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not exceed the appropriate amount prescribed for that purpose by section 57 as in force immediately before that commencement.

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

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

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

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

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

(8)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

Sec. 57A.

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

**Additional  
payments to  
claimants.**

57A. Notwithstanding any other provision of this Part—

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

(n)



*Legal Practitioners and Other Acts (Amendment).*

- (n) (i) by omitting from section 58 the words "theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the" and by inserting instead the words "failure to account by a"; Sec. 58. (Advertisement.)
- (ii) by inserting at the end of section 58 the following subsection :—
- (2) The publication bona fide of any notice for the purposes of this subsection shall not subject—
- (a) the Society;
  - (b) the council;
  - (c) the committee of management;
  - (d) any member, employee or agent of the Society, the council or the committee of management; or
  - (e) the proprietor, editor or publisher of any newspaper,
- to any liability to any person.
- (o) by omitting section 59 and by inserting instead the following section :— Sec. 59.
59. The council shall, in respect of a failure to account, be at liberty— Council may distribute.
- (a) after the date fixed by a notice published under section 58 (1); or
  - (b) if no notice is so published, after such date as the council may fix,
- to distribute the sum from time to time available to be applied in compensation under this Part, having regard only to judgments recovered against the Society in respect of claims made against the fund and claims allowed against the fund.

(p)

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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 60.

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

Proceedings  
against  
Society.

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

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

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

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

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

(6)



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*Legal Practitioners and Other Acts (Amendment).*

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(6) On hearing a case stated under subsection (4) the Court shall determine the question or questions set forth in the case, and any question of costs, and shall make such order as it thinks fit.

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

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

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

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

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

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

of

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

Sec. 63.  
(In-  
sufficiency  
of the fund.)

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

Sec. 64.  
(Refund to  
representa-  
tives of  
deceased  
solicitor  
or to  
retiring  
solicitor.)

- (t) by omitting section 64.

Further  
amendment  
of Act No.  
22, 1898.

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

Sec. 65A.  
(Inter-  
pretation.)

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

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

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

(iv)



*Legal Practitioners and Other Acts (Amendment).*

- (iv) by omitting section 65B (b) (v) ;
- (v) by inserting at the end of section 65B the following subsection:—

(2) Where the council has—

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

the Court, on application in that behalf made by the Society not later than twelve months after the date of the refusal, cancellation or resolution, and on being satisfied that the council had reasonable grounds for the refusal, cancellation or resolution, may appoint a receiver of all or any property which is held by the solicitor or the firm of solicitors of which the solicitor is or was a partner or by some other person on his behalf or is recoverable by the solicitor or firm, or, where the solicitor is dead, which by reason of his death is or may be recoverable by his personal representative.

- (c) by inserting after section 65G the following Sec. 65GA.  
section :—

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

Further powers of receiver.

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

appointed



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*Legal Practitioners and Other Acts (Amendment).*

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appointed receiver under section 65B or might have been so appointed but for the payment or transfer the receiver shall be entitled—

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

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

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

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

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

(8)



*Legal Practitioners and Other Acts (Amendment).*

(8) This section has effect whether the appointment of the receiver, or any breach of trust or taking, payment or transfer of any property, occurred before or after the commencement of section 6 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974.

- (d) by inserting in section 650 (2) after the word “pro- Sec. 650.  
perty” where firstly occurring the words “other than (Property  
moneys”. not dealt  
with by  
receiver.)

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

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

(c)

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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 71.

(Grounds  
for refusing  
certificate.)

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

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

Sec. 75.

(Statutory  
Committee.)

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

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

Further  
amendment  
of Act No.  
22, 1898.

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

Sec. 82A.

(Investiga-  
tion of  
accounts,  
transac-  
tions and  
affairs of  
solicitors.)

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

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

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

(iv)



*Legal Practitioners and Other Acts (Amendment).*

- (iv) by omitting section 82A (10) and by inserting instead the following subsections :—

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

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

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

83A. No matter or thing done or suffered by the Society or the council or any member or employee or agent of the Society or the council or person appointed under section 42 or 82A bona fide in the execution or purported execution of this Act or discharge of any of its or his powers, authorities, duties or functions whether under this Act or otherwise shall subject the Society or the council or any such member, employee, agent or person to any liability in respect thereof.

Protection  
of council,  
etc.

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

(d)

*Legal Practitioners and Other Acts (Amendment).*

Sec. 86.  
(Council  
may make  
regulations.)

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

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

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

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

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

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

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

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

Amendment  
of Act No.  
20, 1900.

Sec. 27.

(Authority  
to take  
and receive  
affidavits.)

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



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*Legal Practitioners and Other Acts (Amendment).*

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**10.** The Legal Practitioners (Legal Aid) Act, 1970, is amended by omitting from section 15 (3) (a1) the words "salaries (including professional fees)" and by inserting instead the words "professional fees".

Amendment  
of Act No.  
37, 1970.  
Sec. 15.  
(Legal  
Aid  
Fund.)

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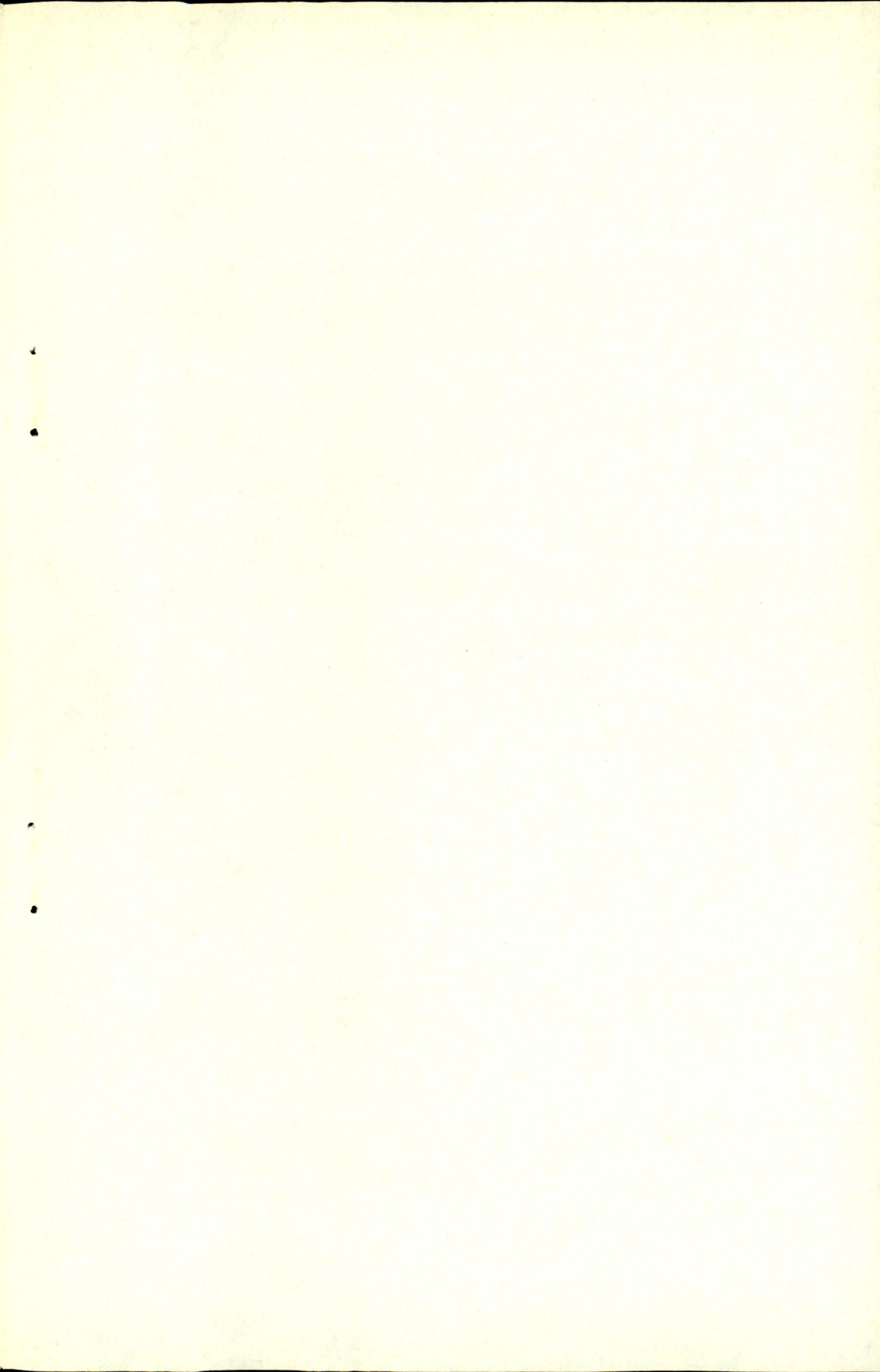
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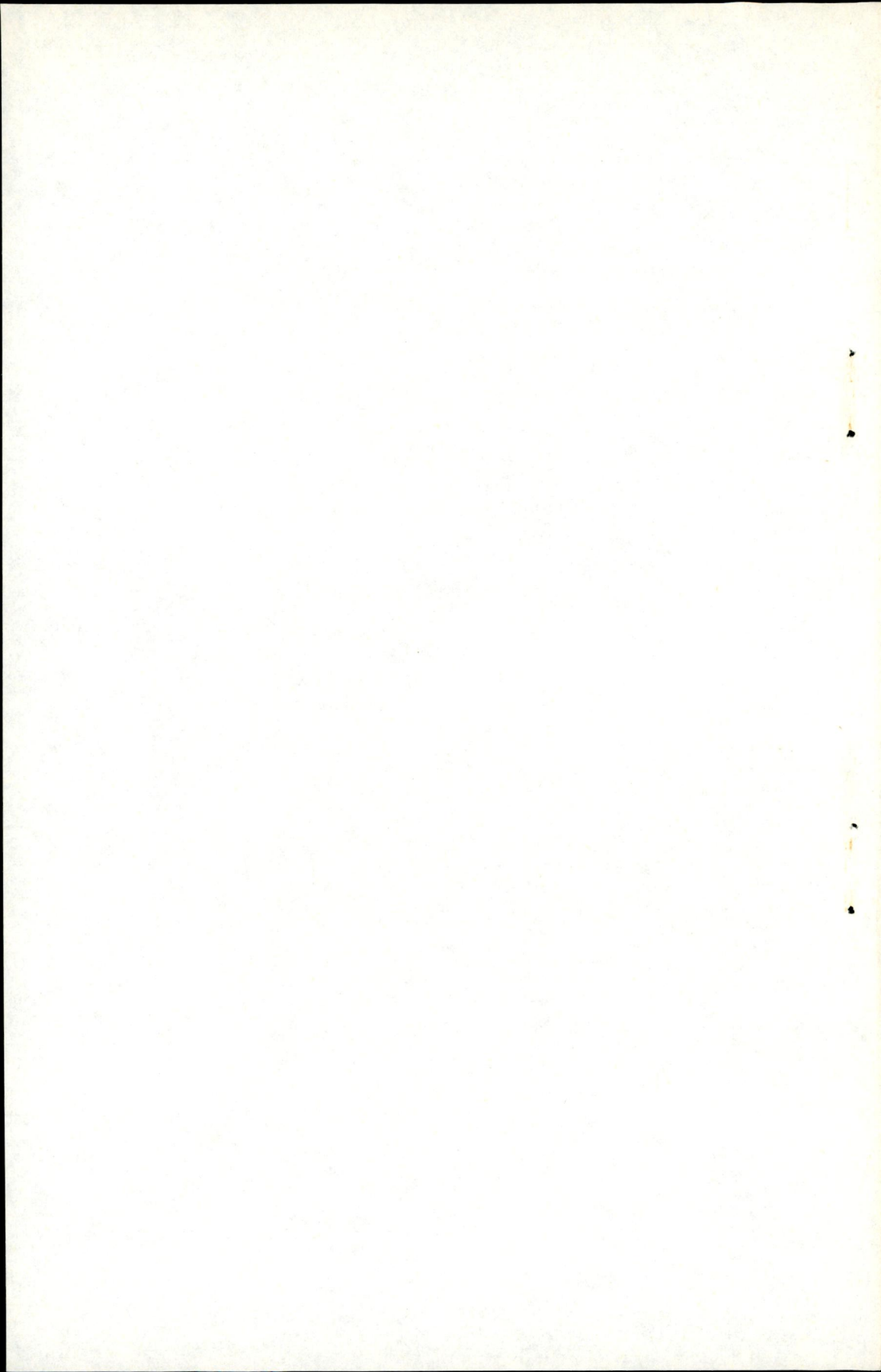
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

Local Board and the Local Government.

10. The Local Board of Health, established in 1970, is an authority for the purpose of the Local Government Act 1970. The Local Board of Health is a body corporate and has the same powers and functions as a local authority. The Local Board of Health is responsible for the health of the community and for the provision of health services. The Local Board of Health is also responsible for the management of the local health services and for the provision of health services to the community.









*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.*

**R. E. WARD,**  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 26 September, 1974.*

## **New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 62, 1974.**

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

BE

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

**J. H. BROWN,**  
*Chairman of Committees of the Legislative Assembly.*

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*Legal Practitioners and Other Acts (Amendment).*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.      **1.** This Act may be cited as the "Legal Practitioners and Other Acts (Amendment) Act, 1974".

Commence-      **2.** (1) This section and section 1 shall commence on the  
ment.                      date of assent to this Act.

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

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

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

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

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

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

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

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

"report"



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*Legal Practitioners and Other Acts (Amendment).*

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“report” means a report furnished by an inspector under this section.

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

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

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

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

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

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

(8)



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

(12) A person whose services are retained under subsection (7) shall not communicate the fact of any appointment under this section, or any matter which may come to his knowledge in the course of the examination of any accounts, to any

person



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*Legal Practitioners and Other Acts (Amendment).*

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person except the inspector who retained his services or, if so required, to the council or to members of the council or to the solicitors, officers or agents of the Society, or to the Court, the Statutory Committee or any member of the police force.

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

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

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

(b) by omitting from section 43 the word "forty-two" and by inserting instead the figures "42 (2)";

Sec. 43.  
(Profes-  
sional  
misconduct.)

(c) by inserting after section 43A the following section :—

Sec. 43B.

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

Unclaimed  
moneys.



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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



*Legal Practitioners and Other Acts (Amendment).*

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

Further amendment of Act No. 22, 1898.

(a) by omitting from section 44A (2) (b) the word "Guarantee";

Sec. 44A.  
(Statutory Interest Account.)

(b) by omitting from the heading to Part VIII the word "Guarantee";

Part VIII.

(c) by omitting section 45 and by inserting instead the following section :—

Sec. 45.

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

Moneys forming part of the fund.

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

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

(d)

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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 46. (d) by omitting from section 46 (1) the word  
(The fund.) "Guarantee";

Sec. 47. (e) by omitting from section 47 the word "Guarantee";  
(Separate bank account.)

Sec. 49. (f) (i) by inserting in section 49 (b) after the word  
(Expenditure.) "including" the words "interest and";  
(ii) by omitting section 49 (c);  
(iii) by inserting in section 49 (e) after the words  
"Council by" the words "section 42 or";

Sec. 51. (g) by omitting section 51 and by inserting instead the  
following section : —

Adminis- 51. (1) The fund shall be administered by the  
tration. council on behalf of the Society.

(2) The council may from time to time by resolution delegate all or any of its powers in relation to the fund to a committee of management consisting of not less than three nor more than eight persons, being members of the Society, of whom not less than three shall be members of the council for the time being.

(3) The council may from time to time by resolution rescind or vary any resolution made under subsection (2).

(4) The council may at any time remove any member of the committee of management, and may fill any vacancy in that committee however arising.

(5) A quorum of the committee of management shall be formed by three members of that committee if one of them is a member of the council.

(6)



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*Legal Practitioners and Other Acts (Amendment).*

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(6) The council shall from time to time appoint a member of the committee of management to be chairman of that committee, and that chairman shall preside at any meeting of the committee at which he is present.

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

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

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

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

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

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

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

(3)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

Sec. 53.  
(Levies.)

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

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

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

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

Sec. 54.  
(Failure to  
pay contri-  
bution or  
levy.)

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

(k)



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*Legal Practitioners and Other Acts (Amendment).*

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(k) by omitting section 56 and by inserting instead the Sec. 56.  
following section :—

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

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

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

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

“pecuniary loss” includes—

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

which

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

date



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*Legal Practitioners and Other Acts (Amendment).*

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date on which notice of the claim was lodged with the Society until the date on which the claim is allowed or the judgment recovered.

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

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

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

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

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

his



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

- (c) the person shall repay to the Society an amount; or
- (d) the Society's liability under the judgment shall be reduced by an amount,

equal to the amount by which the amount of the payment or judgment, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

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

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

not



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*Legal Practitioners and Other Acts (Amendment).*

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not exceed the appropriate amount prescribed for that purpose by section 57 as in force immediately before that commencement.

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

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

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

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

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

(8)

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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

Additional payments to claimants. 57A. Notwithstanding any other provision of this Part—

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

(3)

(n)



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*Legal Practitioners and Other Acts (Amendment).*

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- (n) (i) by omitting from section 58 the words "theft or fraudulent misapplication committed by a solicitor or in respect of any failure to account by the" and by inserting instead the words "failure to account by a";

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

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

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

to any liability to any person.

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

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

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

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

(p)



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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 60.

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

Proceedings  
against  
Society.

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

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

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

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

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

(6)



*Legal Practitioners and Other Acts (Amendment).*

(6) On hearing a case stated under subsection (4) the Court shall determine the question or questions set forth in the case, and any question of costs, and shall make such order as it thinks fit.

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

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

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

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

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

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

of



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

Sec. 63.  
(Insufficiency of the fund.)

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

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

- (t) by omitting section 64.

Further amendment of Act No. 22, 1898.

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

Sec. 65A.  
(Interpretation.)

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

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

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

(iv)



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*Legal Practitioners and Other Acts (Amendment).*

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

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

(2) Where the council has—

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

the Court, on application in that behalf made by the Society not later than twelve months after the date of the refusal, cancellation or resolution, and on being satisfied that the council had reasonable grounds for the refusal, cancellation or resolution, may appoint a receiver of all or any property which is held by the solicitor or the firm of solicitors of which the solicitor is or was a partner or by some other person on his behalf or is recoverable by the solicitor or firm, or, where the solicitor is dead, which by reason of his death is or may be recoverable by his personal representative.

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

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

Further powers of receiver.



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

appointed



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*Legal Practitioners and Other Acts (Amendment).*

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appointed receiver under section 65B or might have been so appointed but for the payment or transfer the receiver shall be entitled—

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

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

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

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

solicitors



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*Legal Practitioners and Other Acts (Amendment).*

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

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

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

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

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

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

(8)



*Legal Practitioners and Other Acts (Amendment).*

(8) This section has effect whether the appointment of the receiver, or any breach of trust or taking, payment or transfer of any property, occurred before or after the commencement of section 6 (c) of the Legal Practitioners and Other Acts (Amendment) Act, 1974.

- (d) by inserting in section 65o (2) after the word “pro- Sec. 65o.  
perty” where firstly occurring the words “other than (Property  
moneys”. not dealt  
with by  
receiver.)

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

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

(c)



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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 71.  
(Grounds  
for refusing  
certificate.)

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

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

Sec. 75.  
(Statutory  
Committee.)

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

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

Further  
amendment  
of Act No.  
22, 1898.

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

Sec. 82A.  
(Investiga-  
tion of  
accounts,  
transac-  
tions and  
affairs of  
solicitors.)

- (a) (i) by inserting in section 82A (7) after the word "except" the words "for the purposes of subsection (5) or";
- (ii) by inserting in section 82A (7) after the word "Society" the words ", or to the Court, the Statutory Committee or any member of the police force";
- (iii) by inserting in section 82A (9) after the word "council" the words ", or to the Court, the Statutory Committee or any member of the police force";

(iv)



*Legal Practitioners and Other Acts (Amendment).*

- (iv) by omitting section 82A (10) and by inserting instead the following subsections :—

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

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

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

83A. No matter or thing done or suffered by the Society or the council or any member or employee or agent of the Society or the council or person appointed under section 42 or 82A bona fide in the execution or purported execution of this Act or discharge of any of its or his powers, authorities, duties or functions whether under this Act or otherwise shall subject the Society or the council or any such member, employee, agent or person to any liability in respect thereof.

Protection  
of council,  
etc.

- (c) by omitting from section 84 (2) the word "Guarantee";

Sec. 84.  
(Recovery  
of moneys.)

- (d)



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*Legal Practitioners and Other Acts (Amendment).*

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Sec. 86.  
(Council  
may make  
regulations.)

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

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

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

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

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

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

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

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

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

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

10.



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*Legal Practitioners and Other Acts (Amendment).*

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**10.** The Legal Practitioners (Legal Aid) Act, 1970, is amended by omitting from section 15 (3) (a1) the words “salaries (including professional fees)” and by inserting instead the words “professional fees”.

Amendment  
of Act No.  
37, 1970.  
Sec. 15.  
(Legal  
Aid  
Fund.)

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

A. R. CUTLER,  
Governor.

Government House,  
Sydney, 16th October, 1974.







