

SOUTH AUSTRALIA

LEGAL PRACTITIONERS ACT 1981

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 27 March 1997.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 August 1990.

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LEGAL PRACTITIONERS ACT 1981

being

Legal Practitioners Act 1981 No. 59 of 1981
[Assented to 25 June 1981]¹

as amended by

Legal Practitioners Act Amendment Act 1982 No. 8 of 1982 [Assented to 25 February 1982]²
Legal Practitioners Act Amendment Act 1985 No. 3 of 1985 [Assented to 7 March 1985]³
Legal Practitioners Act Amendment Act (No. 2) 1985 No. 119 of 1985 [Assented to 10 November 1985]
Legal Practitioners Act Amendment Act 1986 No. 50 of 1986 [Assented to 11 September 1986]⁴
Legal Practitioners Act Amendment Act 1987 No. 84 of 1987 [Assented to 27 November 1987]⁵
Legal Practitioners Act Amendment Act (No. 2) 1987 No. 90 of 1987 [Assented to 10 December 1987]
Strata Titles Act 1988 No. 13 of 1988 [Assented to 7 April 1988]⁶
Legal Practitioners Act Amendment Act 1989 No. 70 of 1989 [Assented to 29 October 1989]⁷
Statute Law Revision Act 1990 No. 23 of 1990 [Assented to 26 April 1990]⁸
Statute Law Revision Act (No. 2) 1990 No. 54 of 1990 [Assented to 22 November 1990]⁹
Legal Practitioners (Miscellaneous) Amendment Act 1991 No. 25 of 1991 [Assented to 18 April 1991]¹⁰
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]¹¹
Legal Practitioners (Litigation Assistance Fund) Amendment Act 1992 No. 27 of 1992 [Assented to 14 May 1992]¹²
Legal Practitioners (Reform) Amendment Act 1993 No. 22 of 1993 [Assented to 8 April 1993]¹³
Statutes Amendment (Attorney-General's Portfolio No. 2) Act 1993 No. 92 of 1993 [Assented to 4 November 1993]
State Bank (Corporatisation) Act 1994 No. 17 of 1994 [Assented to 12 May 1994]¹⁴
Legal Practitioners (Miscellaneous) Amendment Act 1996 No. 10 of 1996 [Assented to 11 April 1996]¹⁵
Statutes Amendment (Community Titles) Act 1996 No. 38 of 1996 [Assented to 9 May 1996]¹⁶
Legal Practitioners (Miscellaneous No. 2) Amendment Act 1996 No. 88 of 1996 [Assented to 12 December 1996]¹⁷
Legal Practitioners (Membership of Board and Tribunal) Amendment Act 1997 No. 13 of 1997 [Assented to 27 March 1997]¹⁸

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

- ¹ Came into operation 1 March 1982: *Gaz.* 25 February 1982, p. 508.
- ² Came into operation 1 March 1982: s. 2.
- ³ Came into operation 6 June 1985: *Gaz.* 23 May 1985, p. 1690.
- ⁴ Came into operation 1 October 1986: *Gaz.* 25 September 1986, p. 1083.
- ⁵ Came into operation (except s. 4) 3 December 1987; s. 4 came into operation 1 February 1988: *Gaz.* 3 December 1987, p. 1733.
- ⁶ Came into operation 1 September 1988: *Gaz.* 21 July 1988, p. 420.
- ⁷ Came into operation 9 November 1989: *Gaz.* 9 November 1989, p. 1452.
- ⁸ Came into operation (except Scheds. 4-7) 29 June 1990: *Gaz.* 14 June 1990, p. 1606; Scheds. 4 and 5 came into operation 1 August 1990: *Gaz.* 12 July 1990, p. 257.
- ⁹ Came into operation (except Scheds. 2, 3 and 4) 22 November 1990: s. 2(1); Sched. 2 came into operation 1 August 1990: s. 2(2).
- ¹⁰ Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1774.
- ¹¹ Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.
- ¹² Came into operation 28 May 1992: *Gaz.* 28 May 1992, p. 1510.
- ¹³ Came into operation (except s. 10) 6 May 1993; s. 10 came into operation 1 January 1994: *Gaz.* 6 May 1993, p. 1576.
- ¹⁴ Came into operation 1 July 1994: *Gaz.* 23 June 1994, p. 1784.
- ¹⁵ Came into operation (except s. 6) 9 May 1996: *Gaz.* 9 May 1996, p. 2396; s. 6 came into operation 13 June 1996: *Gaz.* 13 June 1996, p. 2918.
- ¹⁶ Came into operation 4 November 1996: *Gaz.* 31 October 1996, p. 1460.
- ¹⁷ Came into operation 1 January 1997: *Gaz.* 19 December 1996, p. 1923.
- ¹⁸ **Came into operation (except ss. 4 and 6) 1 March 1982: s. 2(1); s. 6 came into operation 9 May 1996: s. 2(2); s. 4 came into operation on assent: s. 2(3).**

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An Act to regulate the practice of law; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Legal Practitioners Act 1981*.

* * * * *

Interpretation

5. In this Act, unless the contrary intention appears—

"**approved auditor**" means an auditor approved by the Registrar of the Supreme Court;

"**Australian Government Solicitor**" means the Australian Government Solicitor constituted under the *Judiciary Act 1903* of the Commonwealth and includes any person authorised by or under that Act to act in the name of the Australian Government Solicitor;

"**banking account**" means an account maintained at a bank;

"**Board**" means the *Legal Practitioners Conduct Board* continued in existence under this Act;

"**the combined trust account**" means the *Legal Practitioners Combined Trust Account* maintained by the Society under Part 4;

"**community legal centre**" means a body established on a non-profit basis to provide legal services to the community, or a section of the community;

"**company**" means a company incorporated under the law of this State;

"**the Council**" means the council of the Law Society;

"**director**" of a company includes any person occupying or acting in the position of director of the company whether validly appointed to occupy or duly authorised to act in that position or not, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"**document**" means book, file, account, paper (including a security or any instrument) or any record of information, whether in writing or accessible only through the use of a computer or other device;

"**elective officer**" of the Society means an officer of the Society elected by the members of the Society in accordance with its rules;

"**the Executive Director**" of the Society means the principal executive officer employed by the Society and includes any person who is, for the time being, discharging the duties of that officer;

"**fiduciary or professional default**" in relation to a legal practitioner means—

- (a) any defalcation, misappropriation or misapplication of trust money in the charge of the legal practitioner or of a firm of which the legal practitioner is a member; or

- (b) any wrongful or negligent act or omission occurring in the course of the practice of the legal practitioner, or a firm of which the legal practitioner is a member,

whether committed by the legal practitioner, an employee of the legal practitioner or any other person;

"the guarantee fund" means the Legal Practitioners' Guarantee Fund maintained by the Society under Part 4;

"the Law Society" or **"the Society"** means *The Law Society of South Australia*;

"legal costs" includes disbursements;

"legal practitioner" or **"practitioner"** means—

- (a) a person duly admitted and enrolled as a barrister and solicitor of the Supreme Court; or
- (b) a company that holds a practising certificate;

"Master" means a master of the Supreme Court;

"money" includes any instrument for the payment of money that may be negotiated by a bank;

"practising certificate" means a practising certificate issued under Part 3;

"solicitor" includes attorney and proctor;

"the statutory interest account" means the Statutory Interest Account maintained by the Society under Part 4;

"the Tribunal" means the *Legal Practitioners Disciplinary Tribunal* established under Part 6;

"trust account" means a banking account that is maintained by a legal practitioner under Part 3;

"trust money" means money received by a legal practitioner to which the practitioner is not wholly entitled both at law and in equity;

"unprofessional conduct" in relation to a legal practitioner includes—

- (a) an illegal act of any kind committed in the course of practice by the legal practitioner; and
- (b) any offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law;

"unqualified person" means a person (including a body corporate) who is not entitled to practise the profession of the law.

Fusion of the legal profession

6. (1) It is Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors.

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(2) The voluntary establishment of a separate bar is not, however, inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners voluntarily to confine themselves to practice as solicitors.

(3) An undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void (but this subsection does not extend to an undertaking contained in or implied by a contract or professional engagement to provide legal services of a particular kind for or on behalf of another person).

(4) Despite this section, an association of legal practitioners may be lawfully constituted on the basis that membership is confined to legal practitioners who practise solely in a particular field of legal practice or in a particular way.

(5) No contractual or other requirement may be lawfully imposed on a legal practitioner to join an association of legal practitioners.

PART 2
THE LAW SOCIETY OF SOUTH AUSTRALIA

DIVISION 1—ESTABLISHMENT AND ADMINISTRATION OF THE SOCIETY

Incorporation and powers of Society

7. (1) The society formerly known as the "Law Society of South Australia Incorporated" continues in existence as a body corporate under the name *The Law Society of South Australia*.

(2) The Society—

(a) has perpetual succession and a common seal; and

(b) is capable of suing and being sued.

(2a) Where an apparently genuine document purports to bear the common seal of the Society, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Society was duly affixed to that document.

(2b) The Society has the powers of a natural person.

(3) The membership of the Society consists of all persons who have been admitted to membership of the Society, and who, for the time being, continue to be members of the Society, in accordance with the rules of the Society.

Officers and employees of Society

8. (1) The following officers of the Society will be elected in accordance with the rules of the Society:

(a) the President; and

(b) the Vice-Presidents (the number of whom will be determined by the rules); and

(c) such other elective officers as may be stipulated by the rules.

(2) There will be an Executive Director of the Society.

(3) The Executive Director and any other employees of the Society will be appointed and hold office on such terms and conditions as the Society may determine.

Council of Society

9. (1) There will be a council of the Society.

(2) The Council consists of—

(a) the Attorney-General; and

(b) the President of the Society; and

(c) the Vice-Presidents of the Society; and

(d) the other elective officers of the Society; and

(e) any persons who are, in accordance with the rules of the Society, members of the Council *ex officio*; and

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- (f) any persons who are co-opted in accordance with the rules of the Society to membership of the Council; and
- (g) such other persons as are elected, in accordance with the rules of the Society, to be members of the Council.

Validation of acts of Council

10. No act or proceeding of the Council is invalid by virtue of any vacancy in its membership or any defect in the appointment or election of any member of the Council.

Management of Society's affairs

11. (1) Subject to this Act, and to the rules of the Society, the Council has the management of all the affairs of the Society, and may exercise all the powers of the Society.

(2) Subject to this Act, the Council may delegate any of its powers to—

- (a) a committee consisting of such persons as the Council thinks fit; or
- (ab) a company that is a subsidiary of the Society within the meaning of section 46 of the *Corporations Law*; or
- (b) any officer or employee of the Society.

(3) A delegation under this section is revocable at will and does not derogate from the power of the Council to act itself in any matter.

Minutes of proceedings

12. (1) The Society must cause minutes of the proceedings of—

- (a) all general meetings of the members of the Society; and
- (b) all meetings of the Council,

to be entered in a book or books kept for the purpose.

(2) An apparently genuine document purporting to be verified by the Executive Director and—

- (a) purporting to be—
 - (i) minutes entered in pursuance of this section; or
 - (ii) an extract from any such minutes; or
- (b) purporting to be—
 - (i) minutes of the proceedings of any committee established by the Council; or
 - (ii) an extract from any such minutes,

will be accepted in any legal proceedings as evidence of the proceedings to which the document relates.

(3) Subject to subsection (4), the Society must at the request of any member of the Society produce for inspection the minutes of—

- (a) any general meeting of the Society; and
- (b) any meeting of the Council; and
- (c) any meeting of any committee established by the Council.

(4) The Society is not required to produce minutes for inspection under subsection (3) if the minutes are of a confidential nature and have been entered in a minute book kept specifically for the purpose of recording minutes of such a nature.

(5) In any legal proceedings it will be presumed, in the absence of proof to the contrary, that any meeting of—

- (a) the members of the Society; or
- (b) the Council; or
- (c) any committee established by the Council,

was duly convened and constituted, and that the proceedings of any such meeting were regularly conducted.

(6) An apparently genuine document purporting to be under the hand of the President, a Vice-President, or the Executive Director, of the Society and to certify that a person named in the document has been duly elected or appointed to a specified office in the Society, or in the employment of the Society, will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

Society's right of audience

13. (1) The Society may appoint a legal practitioner to appear before any court, commission or tribunal in any matter affecting the interests of the Society or the members of the Society, or in which the Society is directly or indirectly concerned or interested.

(2) Without limiting the generality of subsection (1), a practitioner so appointed is entitled to appear—

- (a) in any proceedings instituted by the Society; or
- (b) in any proceedings in which a person seeks admission as a legal practitioner; or
- (c) in any proceedings in which it is alleged that a practitioner is guilty of unprofessional conduct; or
- (d) in any proceedings under this Act.

Rules of Society

14. (1) The Society, in general meeting, may make rules—

- (a) to define the objects of the Society; or
- (b) to provide for the election of a President, Vice-Presidents and other elective officers of the Society and to define the conditions on which they hold office; or

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- (c) to provide for the election of members of the Council, and to define the conditions on which they hold office; or
- (d) to provide for the filling of casual vacancies occurring in elective offices of the Society and in the membership of the Council; or
- (e) to regulate the meetings and proceedings of, and the conduct of business by, the Council, or any committee to which it has delegated any of its powers; or
- (f) to provide for the execution of documents by or on behalf of the Society; or
- (g) to define the terms and conditions on which a person may be admitted to membership of the Society and to provide for the resignation, expulsion and re-admission of members of the Society; or
- (h) to prescribe, and provide for the payment of, subscriptions by members of the Society; or
- (i) to provide for the administration of any fund or banking account under the control of the Society; or
- (j) to make any other provision relating to the administration of the Society.

(2) A member of the Society, or a legal practitioner, is entitled, on payment of such fee as may be prescribed by rules under this section, to receive a printed copy of the rules in force for the time being under this section.

(3) The Attorney-General may, by instrument in writing, certify that a rule made by the Society under this section relates only to the internal administration of the Society and where such a certificate has been given under this section, section 10 of the *Subordinate Legislation Act 1978* does not apply in respect of the rule.

DIVISION 2—THE LITIGATION ASSISTANCE FUND**The Litigation Assistance Fund**

14A. (1) The Society is authorised and required to administer the Litigation Assistance Fund in accordance with the Deed of Trust.

(2) The Society may, despite any other law, enter into an agreement with a party to legal proceedings to whom assistance is provided in accordance with the Deed of Trust, under which the party is required to make a payment to the Society, for the credit of the Litigation Assistance Fund, if those legal proceedings are resolved in favour of that party.

(3) In this section—

"Deed of Trust" means the Deed of Trust dated 2 April 1992 under which the Litigation Assistance Fund is established, and includes that Deed as amended from time to time.

(4) Any—

- (a) communication between the Society, or any officer, employee or agent of the Society, and an applicant for assistance from the Litigation Assistance Fund; or

- (b) document in the possession of the Society concerning the affairs of an applicant for assistance from the Fund,

is privileged from production or disclosure in the same way and to the same extent as if it were a communication between legal practitioner and client.

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**PART 3
THE PRACTICE OF THE LAW**

DIVISION 1—ADMISSION AND ENROLMENT OF LEGAL PRACTITIONERS

Entitlement to admission

15. A person who satisfies the Supreme Court—

- (a) that he or she is of good character; and
- (b) that he or she is resident in Australia; and
- (c) that—
 - (i) he or she has complied with the rules of the Supreme Court relating to the admission of barristers and solicitors of the Supreme Court; or
 - (ii) insofar as there has been non-compliance with those rules, he or she should be exempted from such compliance,

is entitled to be admitted and enrolled as a barrister and solicitor of the Supreme Court.

DIVISION 2—PRACTISING CERTIFICATES

Issue of practising certificate

16. (1) Where a legal practitioner (not being a legal practitioner who has been suspended from practice) applies to the Supreme Court for a practising certificate, the Court will, subject to this Act, issue a practising certificate in the practitioner's name.

(2) Where a company applies to the Supreme Court for a practising certificate, and satisfies the Court—

- (a) that the memorandum and articles of association of the company contain stipulations to the following effect:
 - (i) the sole object of the company must be to practise the profession of the law; and
 - (ii) the director of the company (or, if there is more than one director, each of them) must be a natural person who is a legal practitioner holding a current practising certificate (but if the company only has two directors they may consist of a legal practitioner holding a current practising certificate and a person who is not a legal practitioner holding a current practising certificate but is a prescribed relative of that practitioner); and
 - (iii) no share issued by the company, and no right to participate in the distribution of the profits of the company, is to be owned beneficially otherwise than by a legal practitioner who is a director or employee of the company, or a prescribed relative of such a legal practitioner; and
 - (iv) the total voting rights exercisable at a meeting of the members of the company must be held by legal practitioners who are directors or employees of the company; and
 - (v) no director of the company may, without the approval of the Supreme Court, be a director of any other company that holds a practising certificate; and

- (vi) the shares of a legal practitioner and of the practitioner's prescribed relatives must, on the legal practitioner ceasing to be a director or employee of the company, be redeemed by the company, distributed amongst the remaining members of the company, or transferred to a legal practitioner who is to become a director or employee of the company, in accordance with the memorandum and articles of association of the company; and
- (vii) the shares of a person who is a shareholder by virtue of being the spouse of a legal practitioner must—
 - (A) on dissolution or annulment of marriage with the legal practitioner; or
 - (B) in the case of a putative spouse, on cessation of cohabitation with the legal practitioner,

be redeemed by the company, or distributed amongst the remaining members of the company, in accordance with the memorandum and articles of association of the company; and

- (b) that the memorandum and articles of association are otherwise appropriate to a company formed for the purpose of practising the profession of the law,

the Court may issue a practising certificate in the name of the company.

(3) Where a company holds a practising certificate and the stipulations contained in the memorandum and articles of association are, in any respect, not complied with, the company must, within 14 days, report the non-compliance to the Supreme Court, and the Court may give such directions (if any) as may be necessary to secure compliance with those stipulations.

(4) If a direction of the Supreme Court under subsection (3) is not complied with within the time allowed by the Court, the practising certificate of the company is, by virtue of this subsection, suspended during the period of non-compliance.

(5) An application for a practising certificate must be accompanied by the prescribed fee and levy.

(6) In this section—

"**prescribed relative**" in relation to a legal practitioner means a parent, brother, sister, spouse, putative spouse, child or grandchild of the legal practitioner;

"**putative spouse**" includes a putative spouse in relation to whom a declaration under the *Family Relationships Act 1975* has not been made.

Restriction on issue of practising certificates in certain cases

17. (1) If, for a period exceeding one month, a legal practitioner has not held a practising certificate, the Supreme Court may, on application for a practising certificate, require the practitioner to furnish evidence satisfying it that the practitioner—

- (a) has not practised the profession of the law without holding a practising certificate; or
- (b) has not committed any other act that might constitute a proper ground for disciplinary action.

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(2) Where an applicant for a practising certificate has, without lawful excuse, practised the profession of the law while not holding a practising certificate, the Supreme Court may require the applicant to pay a prescribed fine before it issues a practising certificate to the applicant.

(3) The Supreme Court may, in any case that it considers appropriate, issue a practising certificate that has effect from a date prior to the date of issue of the certificate.

Conditions as to training, etc., to be imposed on issue of new practising certificates

17A. (1) A practising certificate will, if the rules of the Supreme Court so require, be issued subject to conditions—

- (a) requiring the holder of the certificate to undertake such further training and to obtain such further experience as may be prescribed by the rules or by determination of the Board of Examiners of the Supreme Court; and
- (b) limiting the rights of practice of the holder of the certificate until that further training and experience is completed or obtained,

(but the rules may only require the imposition of such conditions on the issue of a practising certificate to a practitioner who has not previously held a practising certificate).

(2) The Board of Examiners may, on such terms as it thinks fit, exempt any practitioner, or practitioners of a particular class, from any such conditions either wholly or in part.

(3) If a person to whom a practising certificate was issued subject to conditions under subsection (1) fails to satisfy the Board of Examiners, in accordance with the rules, of compliance with the conditions, the Board may determine—

- (a) that further conditions are to be imposed; or
- (b) that the practising certificate is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the previous holder of the certificate until stipulated conditions have been complied with,

(and, subject to any order of the Supreme Court to the contrary, a determination under this subsection takes effect on a date fixed by the Board).

(4) Subject to the rules of the Supreme Court, a person dissatisfied with a determination or decision of the Board of Examiners under this section, or the rules made for the purposes of this section, or the Society, may appeal against the determination or decision to the Supreme Court.

(5) On such an appeal, the Supreme Court—

- (a) may confirm, vary or reverse the determination or decision of the Board of Examiners; and
- (b) may make any consequential or ancillary order.

Term and renewal of practising certificates

18. (1) Subject to this Act, a practising certificate remains in force until 1 January next ensuing after the day on which it was issued.

(2) Subject to this Act, the Supreme Court will, on receipt of due application for the renewal of a practising certificate made before the date of expiration of the practising certificate, renew the practising certificate and the practising certificate then, subject to this Act, remains in force for a further period of 12 months.

(3) The practising certificate of a legal practitioner who is required to submit a copy of an auditor's report to the Supreme Court under Division 5 will not be renewed until the practitioner complies with that requirement.

Evidence of insurance to be produced to Court

19. (1) Where a scheme under section 52 is in force requiring legal practitioners to be insured against liabilities that may arise in the course of, or in relation to, legal practice, the Supreme Court cannot issue or renew a practising certificate unless the applicant produces evidence to the satisfaction of the Court that, throughout the term for which the certificate is to be issued or renewed, the applicant will be insured to the extent required by the scheme against such liabilities.

(2) This section does not apply in relation to a legal practitioner of a class excluded by regulation from the provisions of this section.

Register of practising certificates

20. (1) The Supreme Court must cause a register of practising certificates to be kept.

(2) A member of the public may inspect the register of practising certificates kept under this section.

Registrar to exercise functions related to practising certificates

20A. The powers, discretions, functions and duties of the Supreme Court under this Division will, subject to any rule, order or direction of the Court to the contrary, be exercised or discharged by the Registrar of the Supreme Court.

DIVISION 3—ENTITLEMENT TO PRACTISE, ETC.

Entitlement to practise

21. (1) A person must not practise the profession of the law, or hold himself or herself out, or permit another to hold him or her out, as being entitled to practise the profession of the law unless—

(a) in the case of a natural person, the person—

(i) is enrolled as a barrister and solicitor of the Supreme Court; and

(ii) holds a practising certificate issued and in force under this Act; or

(b) in the case of a company, it holds a practising certificate issued and in force under this Act.

Maximum penalty: \$10 000.

(2) Without limiting the generality of subsection (1), but subject to subsection (3), a person practises the profession of the law, if acting for fee or reward on behalf of some other person he or she—

(a) prepares any will or other testamentary instrument; or

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- (b) prepares an instrument creating, transferring, assigning, modifying or extinguishing any estate or interest in real or personal property; or
 - (c) prepares any instrument relating to the formation of a body corporate, any amendment to the memorandum or articles of association, rules or regulations of a body corporate, any prospectus or take-over scheme relating to a body corporate, or any instrument affecting the rights of shareholders or debenture holders in a body corporate or any scheme of arrangement in respect of a body corporate; or
 - (d) prepares any other instrument creating, transferring, assigning, modifying or extinguishing any right, power or liability at law or in equity; or
 - (e) represents any party to proceedings in a court or tribunal.
- (3) This section does not prevent—
- (a) an employee whose employer is a party to an instrument or otherwise entitled to prepare an instrument and who is acting in the ordinary course of employment from preparing the instrument provided that no separate charge is made by the employer or the employee for the preparation of the instrument; or
 - (b) an unqualified person from charging a fee for the preparation of a bill of sale, stock mortgage or lien over wool or fruit to which the person is the party in whose favour the security is given or an instrument varying or discharging a bill of sale, stock mortgage or lien over wool or fruit to which the person is such a party; or
 - (c) an unqualified person from charging a fee for the preparation of a mortgage over land to which the person is the party in whose favour the security is given, or an instrument varying or discharging a mortgage over land to which the person is such a party, provided that the mortgage or other instrument is prepared by a legal practitioner or licensed land broker; or
 - (d) an unqualified person from charging a fee for the preparation of an instrument provided that—
 - (i) the instrument is prepared by a legal practitioner in the employment of that unqualified person; and
 - (ii) the legal practitioner has been in the employment of that unqualified person continuously since 1 July, 1980; or
 - (e) an agent who has been commissioned to sell goods or let them out on hire, or to contract for the performance of services from preparing a contract for the sale or hire of goods or the provision of services provided that the agent is remunerated only by salary or commission and no separate charge is made by the agent or the principal for the preparation of the contract; or
 - (f) an unqualified person from engrossing an instrument for fee or reward; or
 - (g) an unqualified person from representing a party to proceedings in a court or tribunal for fee or reward, if the person is authorised by or under the Act by which the court or tribunal is constituted, or any other Act, to do so; or

- (h) a person licensed or registered under the *Land Agents, Brokers and Valuers Act 1973* from representing, for fee or reward, a party to proceedings before an assessment revision committee constituted under the *Local Government Act 1934*; or
- (i) an unqualified person who is an employee or officer of an association of employers or employees from representing the association or any of its members in proceedings brought pursuant to an Act relating to industrial conciliation or arbitration provided that the unqualified person (as distinct from the association of which the person is an employee or officer) makes no charge for providing the representation; or
- (j) an unqualified person who is an employee of a body corporate that is a party to proceedings brought pursuant to an Act relating to industrial conciliation or arbitration from representing the body corporate in the proceedings; or
- (k) an unqualified person who was on 2 March, 1981, carrying on the business of representing parties to proceedings brought pursuant to an Act relating to industrial conciliation and arbitration from continuing to carry on that business; or
- (l) an unqualified person from preparing, for fee or reward, any instrument relating to the transfer of shares or securities issued, or made available, by a body corporate; or
- (m) an agent licensed under the *Land Agents, Brokers and Valuers Act 1973* from preparing an instrument (other than an instrument registrable under the *Real Property Act 1886*) relating to the sale and purchase of any land or business that the agent has been commissioned to sell or buy, provided that the instrument is prepared by the agent personally or by a registered manager or registered salesman in the agent's employment and no charge (apart from the commission payable to the agent in respect of the transaction) is made for the preparation of the instrument; or
- (n) an agent licensed under the *Land Agents, Brokers and Valuers Act 1973* from preparing for fee or reward—
 - (i) a tenancy agreement—
 - (A) relating to residential premises; and
 - (B) under which a rental not exceeding a maximum prescribed for the purposes of this subparagraph is payable; or
 - (ii) a tenancy agreement—
 - (A) arising from a transaction in respect of which the agent has acted as agent; and
 - (B) relating to non-residential premises; and
 - (C) under which a rental not exceeding a maximum prescribed for the purposes of this subparagraph is payable,provided that the instrument is prepared by the agent personally or by a registered manager or registered salesman in the agent's employment; or
- (o) a licensed land broker from preparing for fee or reward an instrument registrable under the *Real Property Act 1886*, the *Community Titles Act 1996*, the *Strata Titles Act 1988*, the *Bills of Sale Act 1886*, the *Stock Mortgages and Wool Liens Act 1924* or the *Liens on Fruit Act 1923*; or

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- (p) a licensed land broker from preparing for fee or reward—
- (i) a contract for the sale and purchase of land or a business;
 - (ii) a tenancy agreement;
 - (iii) an assignment of the benefit of a contract for the sale and purchase of land or a business or of a tenancy agreement;
 - (iv) an instrument that arises from, and is incidental to, a contract, agreement or assignment of the kind mentioned in subparagraph (i), (ii) or (iii); or
- (q) an agent licensed under the *Land Agents, Brokers and Valuers Act 1973*, being the employer of a legal practitioner or licensed land broker from charging a fee for the preparation of an instrument of a kind mentioned in paragraph (o) or (p) where—
- (i) the instrument is prepared by the legal practitioner or licensed land broker; and
 - (ii) the agent is authorised by the *Land Agents, Brokers and Valuers Act 1973* to charge a fee for the preparation by the legal practitioner or licensed land broker of instruments registrable under the *Real Property Act 1886*; or
- (r) a public notary acting in the ordinary course of business from preparing an instrument for fee or reward; or
- (s) a body corporate authorised by a special Act of Parliament of this State to administer the estates of deceased persons from preparing a will or other testamentary instrument where the body corporate is named as the executor, or one of the executors, of the will or other testamentary instrument and the body corporate does not seek to recover any fee or reward in respect of the preparation of the will or testamentary instrument beyond the commission or other remuneration allowed under the special Act; or
- (t) a body corporate authorised by a special Act of Parliament of this State to administer the estates of deceased persons from preparing a will or other testamentary instrument for fee or reward where the will or other testamentary instrument is prepared by a legal practitioner employed by the body corporate; or
- (u) an unqualified person from serving any process for fee or reward where the person is authorised or permitted by statute to do so; or
- (v) a clerk employed by a legal practitioner from serving any process for fee or reward; or
- (w) the preparation for fee or reward of an opinion on a question of law by a member of the faculty of law of a university provided that the opinion is prepared at the request of a legal practitioner, the Attorney-General of the State or of the Commonwealth, the Crown Solicitor or the Australian Government Solicitor or the Director of Public Prosecutions; or
- (x) the preparation for fee or reward of any prescribed instrument or the performance for fee or reward of any prescribed service.
- (4) For the purposes of this section—
- (a) a person practises the profession of the law, or holds himself or herself out as entitled to practise the profession of the law, if the person does so personally, or through the agency or instrumentality of some other person;

- (b) a person acts for fee or reward if the person acts for, or in expectation of, a pecuniary benefit or material advantage;
- (c) a person represents a party to proceedings before a court or tribunal if the person—
 - (i) prepares, on behalf of that party, any legal process relating to the proceedings; or
 - (ii) gives advice to that party in relation to the conduct of the proceedings; or
 - (iii) takes, on behalf of that party, any other step in the proceedings;
- (d) an employed legal practitioner who provides legal advice, or legal services of a kind mentioned in subsection (2), for or on behalf of his or her employer or clients of his or her employer practises the profession of the law.

(5) In this section—

"**business**" means a business as defined by the *Land Agents, Brokers and Valuers Act 1973*;

"**member**" in relation to an association whose members include another association includes a member of that other association;

"**tribunal**" includes a royal commission and an arbitrator who is a judge, special magistrate or legal practitioner.

Practising while under disqualification, etc.

22. If a legal practitioner—

- (a) practises the profession of the law while his or her right to do so is under suspension; or
- (b) contravenes an order of the Tribunal or the Supreme Court under which he or she is prohibited from practising the profession of the law otherwise than in accordance with conditions stipulated in the order,

the practitioner is guilty of an offence.

Maximum penalty: \$10 000.

Unlawful representation

23. (1) If any person (whether or not a legal practitioner) with a view to attracting business, falsely pretends to be the holder of any degree, diploma or certificate in law or adopts any style that leads reasonably to the false inference that the person holds any degree, diploma or certificate in law, the person is guilty of an offence.

Maximum penalty: \$10 000.

(2) If a person (whether or not a legal practitioner) holds out an unqualified person as being entitled to practise the profession of the law, the person is guilty of an offence.

Maximum penalty: \$10 000.

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(3) If a legal practitioner—

- (a) permits or aids an unqualified person to practise the profession of the law, or acts in collusion with an unqualified person so as to enable that person to practise the profession of the law; or
- (b) enters into an agreement or an arrangement with an unqualified person under which the unqualified person is entitled to share in the profits arising from the practice of the law (otherwise than as permitted by this Act, or as may be authorised by the Society),

the practitioner is guilty of an offence.

Maximum penalty: \$10 000.

DIVISION 4—PROVISIONS REGULATING LEGAL PRACTICE BY COMPANIES

Returns by companies

24. (1) Every company that is a legal practitioner must—

- (a) within one month after any person becomes or ceases to be a director or member of the company lodge with the Supreme Court a notice stating the full name and usual residential address of that person and the fact that the person has become or ceased to be such a director or member; and
- (b) in the month of July in each year lodge with the Supreme Court a return in the prescribed form.

Maximum penalty: \$2 500.

(2) The annual return must state—

- (a) the full name and usual residential address of every person who on 30 June preceding the lodging of the return was a director or member of the company; and
- (b) the number of shares in the company held by each such person and the number of votes that the person is entitled to cast at a meeting of members of the company; and
- (c) in relation to each member, the qualification by virtue of which the person is entitled to be a member of the company; and
- (d) any other prescribed matters.

Companies not to practise in partnership

25. A company that is a legal practitioner must not practise as a legal practitioner in partnership with any other person unless it has been authorised to do so by the Supreme Court.

Maximum penalty: \$1 250.

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Criminal liability of directors

27. Where a company that is a legal practitioner commits an offence against this Act, or any other Act, each person who was a director of the company at the time of commission of the offence by the company is guilty of an offence and liable to the same penalty as that prescribed for the principal offence, unless that person proves that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the company.

Joint and several liability

28. Any civil liability incurred by a company that is a legal practitioner is enforceable jointly and severally against the company and the persons who were directors of the company at the time the liability was incurred.

Alteration to memorandum or articles of association

29. (1) No alteration to the memorandum or articles of association of a company that is a legal practitioner may be made unless the proposed alteration has been submitted to, and approved by, the Supreme Court.

(2) The Supreme Court's power of approval under this section may, subject to any rule, order or direction of the Court, be exercised by the Registrar of the Court.

(3) Subject to the rules of the Supreme Court, an appeal lies to a judge against a decision of the Registrar pursuant to subsection (2).

Exemption from certain provisions of Companies Code

30. The provisions of Division 3 of Part 6 and of Part 11 of the *Companies (South Australia) Code* do not apply in respect of a company that is a legal practitioner.

DIVISION 5—TRUST ACCOUNTS AND AUDIT

Disposition of trust money

31. (1) Subject to subsection (2), a legal practitioner must, as soon as practicable after receipt of any trust money in the course of practice, deposit the money in a trust account and must not withdraw or permit it to be withdrawn except as authorised by this Part.

(2) Where at or before the time that a legal practitioner receives trust money the practitioner is given a written direction by the person entitled to the money to dispose of it in a manner specified in the direction, it is lawful for the legal practitioner to act in accordance with that direction.

(3) A legal practitioner may withdraw trust money from a trust account—

- (a) for payment to the person entitled to the money or in accordance with the direction of that person; and
- (b) for satisfaction of a claim that the practitioner has against the person on behalf of whom the money is held for legal costs; and
- (c) to satisfy the order of a court of competent jurisdiction against the person on behalf of whom the practitioner is holding the money; and
- (d) if the money is subject to an instrument of trust, for making a payment in compliance with the terms of that instrument; and
- (e) for dealing with any unclaimed money in accordance with the *Unclaimed Moneys Act 1891*; and
- (f) for making payments to the Society under Part 4 for the credit of the combined trust account; and
- (g) or making any other payment authorised by law.

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(4) The legal practitioner must keep detailed accounts of all trust money received, and of any disbursement or other dealings with the money in a manner—

- (a) that accurately discloses the state of any trust accounts maintained by the legal practitioner; and
- (b) that enables the receipt and disposition of trust money to be conveniently and properly audited.

(5) The legal practitioner must keep detailed records of any trust money received that is, by virtue of a direction to which subsection (2) relates, not paid into the practitioner's trust account, and of any disbursement, or dealing, affecting that money.

(6) A legal practitioner—

- (a) must not, without the approval of the Supreme Court, permit trust money to be intermixed with other money; and
- (b) must not, without the approval of the Supreme Court, keep a trust account at a bank, or a branch of a bank, outside the State; and
- (c) must, unless approval has been given under paragraph (b) to keep a trust account outside the State, keep it at a bank that is prepared to pay interest on the account at a rate equal to or above the rate determined by the Society.

(6a) The Society may make a determination for the purposes of subsection (6)(c) and may revoke or vary a determination made by it under that subsection.

(7) An approval under subsection (6) may be given on such conditions as the Supreme Court thinks fit.

(7a) A legal practitioner who receives trust money in the course of acting in a matter must provide the person who instructed him or her in the matter with trust account statements in accordance with the regulations.

(8) A person who contravenes this section or a condition imposed by the Supreme Court under this section, is guilty of an offence.

Maximum penalty: \$10 000.

(9) A legal practitioner who fails to deposit trust moneys in a trust account as required by this section is (apart from any penalty incurred under subsection (8)) liable to pay the Society interest on the amount of those trust moneys at the prescribed rate for the period of the default.

(10) The Society may, for proper reasons, remit interest payable under subsection (9) wholly or in part.

(11) Any interest received or recovered by the Society under subsection (9) must be paid into the statutory interest account.

Protection to banks

32. (1) Subject to subsection (2), a bank will not be regarded as affected with notice of any specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money.

(2) This section does not relieve a bank of any liability for negligence.

Audit of trust accounts, etc.

33. (1) A legal practitioner who maintains a trust account must in each year—

- (a) have the accounts and records kept by the legal practitioner under this Division (made up to 30 June in that year) audited by an approved auditor; and
- (b) submit a copy of the auditor's report to the Supreme Court on or before 31 October in that year or such later date as the Supreme Court may allow.

Maximum penalty: \$10 000.

(2) The Supreme Court's power to extend the time within which a copy of a report may be submitted under subsection (1)(b) may, subject to any rule, order or direction of the Court, be exercised by the Registrar of the Court.

(3) Subject to the rules of the Supreme Court, an appeal lies to a judge against a decision of the Registrar pursuant to subsection (2).

Appointment of inspector

34. (1) The Attorney-General or the Society may at any time appoint a competent inspector—

- (a) to examine, either generally or in a particular case, the accounts kept pursuant to this Division by a legal practitioner or firm of legal practitioners; and
- (b) to examine, either generally or in a particular case, the audit programme and documents used or prepared by any auditor in the course of auditing the trust accounts of a legal practitioner or firm of legal practitioners; and
- (c) to confer with any such auditor in relation to audits of the trust accounts of a legal practitioner or firm of legal practitioners.

(2) An inspector may if the inspector thinks fit, and must if required by the Attorney-General or the Society to do so, furnish the Attorney-General or the Society with a confidential report as to the state of any accounts or other documents the inspector is appointed to examine.

(3) The Attorney-General or the Society must, as soon as practicable, cause a copy of any report furnished by an inspector as to the state of the accounts examined by the inspector to be given or sent by post to the relevant legal practitioner or firm of legal practitioners.

(4) In this section—

"legal practitioner" includes a former legal practitioner.

Obtaining information for purposes of audit or examination

35. (1) An approved auditor employed by a legal practitioner or firm of legal practitioners to make an audit of the trust accounts of the practitioner or firm, or an inspector appointed under this Division, may require the practitioner or firm or any of the clerks, servants or agents of the practitioner or firm—

- (a) to produce to the auditor or inspector all the accounts (including accounts other than trust accounts) relating to the practice of the practitioner or firm and all other documents relating to those accounts; and

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(b) to give all relevant information and to furnish all authorities and orders to bankers and others that may be reasonably required.

(2) An inspector appointed under this Division may require an approved auditor employed by a legal practitioner or firm of legal practitioners as an auditor of the trust account of the practitioner or firm to produce to the inspector all documents that are in the possession or control of the auditor and that relate to that trust account or an audit of that trust account (but the auditor cannot be required to produce the auditor's own working papers).

(3) The manager of any financial institution with which a legal practitioner or firm of legal practitioners has deposited or invested money must, on being required to do so by an approved auditor or inspector employed or appointed to make an audit or examination under this Division (who must, if the manager so requires, produce a copy of the instrument under which he or she is employed or appointed to make the audit or examination)—

(a) provide full details of the deposit or investment and of any dealings with the money deposited or invested; and

(b) provide copies of accounts and other documents in the financial institution's possession relevant to the deposit or investment.

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(4) A person who refuses or fails to comply forthwith with a requirement made under this section is guilty of an offence.

Maximum penalty: \$10 000.

(5) In this section—

"**account**" includes any record required to be kept under this Division in relation to the receipt and disposition of trust money;

"**financial institution**" means a bank, building society, credit union, insurance company, trustee company, broker or other body or person that carries on a business involving the acceptance of money on deposit or by way of investment;

"**legal practitioner**" includes a former legal practitioner.

Bank to report deficiencies in trust account

36. A bank with which a trust account has been established by a legal practitioner or firm of legal practitioners must report any deficiency in that account to the Attorney-General and the Society.

Maximum penalty: \$750.

Confidentiality

37. (1) An approved auditor or inspector employed or appointed to make any audit or examination of any accounts of a legal practitioner or firm of legal practitioners for the purposes of this Division must not (otherwise than is permitted or required by or under this Act) communicate any matter of which he or she is informed or which comes to his or her knowledge in the course of the audit or examination to any person except in the course of the report.

(1a) A person who contravenes subsection (1) is (in addition to the penalty provided by this section and in addition to any liability the person may incur to the legal practitioner or firm of legal practitioners) subject to the same liabilities to a client or *cestui que trust* of the practitioner or firm as those to which the practitioner or firm would be subject if the practitioner or firm divulged such matters.

(2) Neither the Society, nor any officer or employee of the Society, may divulge any information disclosed in a report furnished to the Society under this Division except—

- (a) for the purpose of confidential consideration of the report by the Council; or
- (b) in the performance of a duty.

(3) A person who contravenes or fails to comply with a provision of this section is, in addition to any other penalty or punishment to which the person may be liable, guilty of an offence.

Maximum penalty: \$10 000.

(4) The duty of confidentiality imposed by this section does not prevent the Society, an officer or employee of the Society, or an auditor or inspector from divulging information arising out of an audit or inspection—

- (a) to a member of a law enforcement or prosecution authority of a State or Territory, or of the Commonwealth, relating to a matter referred to the authority by the Attorney-General or reported to the authority by the Board, to which the information is relevant; or
- (b) to the Board; or
- (c) to a court in which criminal proceedings arising from matters subject to the audit or examination have been brought.

(5) If an auditor divulges information under subsection (4), the auditor may inform the Society and the practitioner or firm of practitioners by which he or she was employed to make the audit of that fact.

Regulations

38. The Governor may make regulations for the purposes of this Division—

- (a) prescribing and providing for the payment of fees for an audit or examination under this Division; and
- (b) generally ensuring that trust accounts are properly kept and audited and that persons beneficially entitled to money and securities held by legal practitioners on trust are properly informed of the investment and disposition of the money and securities; and
- (c) exempting legal practitioners from this Division, or specified provisions of this Division, in respect of transactions of a specified class; and
- (d) prescribing fines not exceeding a fine of \$10 000 for contravention of any regulation under this Division.

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DIVISION 6—DELIVERY UP OF LEGAL PAPERS

Delivery up of legal papers

39. (1) The Supreme Court may, on the application of any person, order a legal practitioner or former legal practitioner to deliver up documents—

- (a) held by the practitioner or former practitioner on behalf of the applicant; or
- (b) relating to proceedings taken or work done by the practitioner or former practitioner on behalf of the applicant.

(2) The powers conferred by subsection (1) may be exercised notwithstanding the existence of a lien on the documents.

(3) An order may be made under this section on such terms and conditions as the Supreme Court thinks fit and, in particular, on conditions protecting the rights of the legal practitioner or former legal practitioner to costs for legal work done by the practitioner on behalf of the applicant.

**DIVISION 7—AUTHORITY OF A LEGAL PRACTITIONER TO ACT
ON BEHALF OF A PERSON OF UNSOUND MIND**

Authority of legal practitioner to act on behalf of person of unsound mind

40. (1) The authority of a legal practitioner to act on behalf of a person is not abrogated by reason only of the fact that that person becomes of unsound mind.

(2) When the mental unsoundness of a person on behalf of whom a legal practitioner is acting comes to the knowledge of the practitioner, the practitioner's authority to act on behalf of that person ceases, subject to subsection (3), and determines.

(3) Where it is necessary for the purpose of protecting the interests of a person of unsound mind in any legal proceedings or other business, the authority of a legal practitioner, notwithstanding that the practitioner knows of the mental unsoundness of the person on behalf of whom the practitioner is acting, continues for the purpose of completing those proceedings or that business.

DIVISION 8—RECOVERY OF LEGAL COSTS

Bill of costs to be delivered

41. (1) A person cannot bring an action for the recovery of legal costs or appropriate money in or towards satisfaction of a claim for legal costs unless a bill specifying the total amount of those costs, and describing the legal work to which the costs relate, has been delivered to the person liable to the costs either personally, or by post addressed to the person at the person's last known place of business or residence.

(2) The person liable to legal costs may at any time within six months after delivery of a bill of costs under subsection (1) request the person claiming to be entitled to the costs to provide a statement showing in detail how the amount of the costs to which the bill relates is made up.

(3) A person of whom a request is made under subsection (2) must comply with the request.

Maximum penalty: \$750.

(4) Where the defendant to an action for the recovery of legal costs has made a request of the plaintiff under subsection (2), and the plaintiff has not complied with the request, the court must, at the request of the defendant, stay the action until the plaintiff has complied with the request.

Costs

42. (1) On the application—

- (a) of a person claiming to be entitled to legal costs; or
- (b) of a person who is liable to pay, or who has paid, any legal costs,

the Supreme Court may tax and settle the bill for those costs.

(1a) The Supreme Court's power to tax and settle a bill of costs (but no other power of the Supreme Court under this section) may, subject to any rule, order or direction of the Court, be exercised by the Registrar of the Court.

(1b) Subject to the rules of the Supreme Court, an appeal lies to a judge against a decision of the Registrar pursuant to subsection (1a).

(2) Where an application has been made under subsection (1), the Supreme Court may—

- (a) restrain a person claiming to be entitled to the costs from commencing an action for recovery of the costs; or
- (b) stay any proceedings for recovery of the costs.

(3) The Court may, on taxation of a bill of costs under this section—

- (a) order the refund of any amount overpaid; or
- (b) where the proceedings have been instituted by the person seeking recovery of the costs—order payment of legal costs in accordance with the taxed bill.

(4) The Board may institute proceedings for the taxation of legal costs under this section on behalf of a person who is liable to pay, or has paid, the legal costs.

(5) Any court in which proceedings for the recovery of legal costs have been instituted may order the plaintiff to apply to have the legal costs taxed in accordance with this section, and may adjourn the proceedings until the taxation has been completed.

(6) A legal practitioner may make an agreement in writing with a client for—

- (a) payment of a specified amount by way of legal costs (which may—but need not—consist of a daily, hourly or other time-related rate for professional work carried out by the legal practitioner on the client's behalf); or
- (b) payment of legal costs in accordance with a specified scale; or
- (c) subject to any limitations imposed by the Society's professional conduct rules or the regulations—payment of a contingency fee to be calculated on a basis set out in the agreement on fulfilment of a condition stated in the agreement.

(7) The Supreme Court may, in proceedings under this section, rescind or vary an agreement under subsection (6) if it considers that any term of the agreement is not fair and reasonable.

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Application of this Division

43. This Division applies to costs for any business done by a legal practitioner in his or her professional character whether the business is of a litigious nature or not.

DIVISION 9—APPOINTMENT OF SUPERVISORS AND MANAGERS

Control over trust accounts of legal practitioners

44. (1) If the Society knows, or suspects on reasonable grounds, that—

- (a) a legal practitioner has died (or in the case of a company, has been dissolved or is being wound up); or
- (b) a legal practitioner is for any reason not attending properly, or unable to attend properly, to the affairs of his or her practice; or
- (c) a legal practitioner has committed a serious irregularity in the course of practice, or a serious irregularity has occurred in the course of practice; or
- (d) a person has ceased to be a legal practitioner without making proper provision for winding up the affairs of his or her practice; or
- (e) any other proper cause exists for the appointment of a supervisor under this section,

the Society may, by resolution of the Council, appoint a supervisor to exercise the powers conferred by this section.

(2) A person appointed under subsection (1) has power to dispose of trust money to persons entitled to the money and may execute any cheque or other instrument for that purpose.

(3) As soon as practicable after any such resolution has been passed, the Society must cause a written copy of the resolution to be served on—

- (a) the legal practitioner, former legal practitioner or his or her personal representative; and
- (b) any other person authorised to operate on the trust account of the legal practitioner; and
- (c) the auditor (if any) of the trust account of the legal practitioner; and
- (d) the manager or other principal officer of the office or branch of the bank at which the trust account is maintained.

(4) After service of the notice on the bank, and until the resolution ceases to be effective—

- (a) no payment may be made by the bank of any cheque or other instrument drawn on the trust account to which the resolution relates unless it bears the signature of the person appointed pursuant to this section; and
- (b) if it bears the signature of the person so appointed (whether or not it bears the signature of any other person) it is lawful for the bank to make a payment in accordance with the cheque or other instrument.

(5) A person on whom a copy of the resolution has been served must not sign any cheque or other instrument drawn on the trust account to which the resolution relates unless that cheque or instrument is signed by the person appointed pursuant to this section.

(6) A person who contravenes this section is guilty of an offence.

Maximum penalty: \$1 250.

(7) A resolution under this section is effective for a term of 12 months or such lesser term as may be fixed by the Society but the Society may, from time to time, renew the resolution for a term not exceeding 12 months.

(8) The Society may, at any time, revoke an appointment under this section.

(9) A notice under this section may be served personally or by post addressed to the last known place of business or residence of the person to whom it relates.

(10) In this section—

"**bank**" includes any institution in which trust money has been deposited.

Appointment of manager

45. (1) If the Society knows or suspects on reasonable grounds that—

- (a) a legal practitioner has died (or in the case of a company, has been dissolved or is being wound up); or
- (b) a legal practitioner is for any reason not attending properly, or unable to attend properly, to the affairs of his or her practice; or
- (c) a legal practitioner has committed a serious irregularity in the course of practice, or a serious irregularity has occurred in the course of practice; or
- (d) a person has ceased to be a legal practitioner without making proper provision for winding up the affairs of his or her practice; or
- (e) any other proper cause exists for the appointment of a manager under this section,

the Society may, by resolution of the Council, appoint a legal practitioner as a manager in respect of the practice of the practitioner or former practitioner.

(2) As soon as practicable after any such resolution has been passed, the Society must cause notice of the resolution to be served on—

- (a) the legal practitioner or former legal practitioner or his or her personal representative; and
- (b) any partner of the legal practitioner or former legal practitioner; and
- (c) the auditor (if any) of the trust account of the legal practitioner.

(3) A manager appointed under this section has full power—

- (a) to transact any urgent business of the legal practitioner or former legal practitioner; and
- (b) with the approval of clients of the legal practitioner, or former legal practitioner, to transact any other business on their behalf; and

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(c) to perform any other act relating to the practice of the legal practitioner or former legal practitioner that the manager may be authorised to perform by the Society.

(4) A manager may take possession of any documents relating to the practice and for that purpose may enter any place or premises where the manager reasonably suspects any such documents to be, using such force as may be necessary to enter that place or those premises.

Appeal against appointment of supervisor or manager

46. (1) A legal practitioner or former legal practitioner may, within 28 days after the appointment of a supervisor or manager, appeal to the Supreme Court against the appointment.

(2) On an appeal under this section the Supreme Court may confirm or annul the appointment.

Application for directions

47. (1) A supervisor or manager appointed under this Division may apply to the Supreme Court for directions in relation to any matter affecting his or her duties or functions under this Division.

(2) The costs of any application under subsection (1) are payable out of the guarantee fund.

Remuneration, etc., of persons appointed to exercise powers conferred by this Division

48. (1) A supervisor or manager appointed under this Division is, subject to subsection (3), entitled to such remuneration, allowances and expenses as may be determined by the Society.

(2) Any such remuneration, allowances and expenses will be paid out of the guarantee fund.

(3) The account of a supervisor or manager for remuneration, allowances and expenses may, on the application of the Attorney-General or the Society, be taxed and settled by the Supreme Court.

(4) The Society may recover, as a debt due to it, the costs, charges and disbursements appropriate to legal work performed by a manager appointed under this Division.

(5) The Society may recover as a debt from a legal practitioner or former legal practitioner any expenditure (other than expenditure recouped under subsection (4)) from the guarantee fund in consequence of the appointment of a supervisor or manager for the practice of that practitioner or former practitioner.

(6) Any amount recovered by the Society under subsection (4) or (5) must be paid into the guarantee fund.

(7) A supervisor or manager incurs no liability by reason of an act or omission in good faith and in the exercise of powers or functions under this Division.

DIVISION 10—RESTRICTION ON PRACTICE BY BANKRUPTS, ETC.

Supreme Court may grant authority permitting insolvent persons to practise

49. (1) A legal practitioner—

(a) who has become bankrupt or subject to a composition or deed of arrangement or assignment with or for the benefit of creditors; or

- (b) who is or has been a director of an incorporated legal practitioner during the winding up of the company for the benefit of creditors,

must not, without the authority of the Supreme Court, practise the profession of the law.

Maximum penalty: \$10 000.

(1a) Authority may be granted under this section on the application of a legal practitioner who is or is about to become bankrupt or subject to a composition or deed of arrangement or assignment with or for the benefit of creditors or who is or has been a director of an incorporated legal practitioner that is being or is about to be wound up for the benefit of creditors.

(2) The Supreme Court may grant an authority under this section on such conditions as it thinks fit.

(3) A legal practitioner must not contravene or fail to comply with any condition of an authority granted by the Supreme Court under this section.

Maximum penalty: \$10 000.

DIVISION 11—RIGHT OF PERSONAL REPRESENTATIVE, ETC., TO CARRY ON LEGAL PRACTICE

Supreme Court may authorise personal representative, etc., to carry on legal practice

50. (1) The personal representative of a deceased legal practitioner may, with the authority of the Supreme Court, carry on the practice of the deceased legal practitioner for a period not exceeding 12 months (or such longer period as the Supreme Court may allow) from the date of death.

(2) The trustee in bankruptcy of a legal practitioner may, with the authority of the Supreme Court, carry on the practice of the legal practitioner for a period not exceeding 12 months, or such longer period as the Supreme Court may allow.

(3) A receiver or liquidator appointed in respect of a company that is a legal practitioner may, with the authority of the Supreme Court, carry on the practice of the company for a period not exceeding 12 months, or such longer period as the Supreme Court may allow.

(4) An authority under this section will be subject to such conditions as the Supreme Court considers appropriate.

(5) A person to whom an authority has been granted under this section must not contravene, or fail to comply with, any condition of the authority.

Maximum penalty: \$10 000.

DIVISION 12—RIGHT OF AUDIENCE

Right of audience

51. (1) Subject to this Act and any other Act, the following persons are entitled to practise before any court or tribunal established under the law of the State:

- (a) the Attorney-General and the Solicitor-General of the State or of the Commonwealth, the Crown Solicitor and the Australian Government Solicitor and the Director of Public Prosecutions; and

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- (b) a legal practitioner acting on the instructions of—
 - (i) the Attorney-General of the State; or
 - (ii) the Attorney-General of the Commonwealth; or
 - (iii) the Crown Solicitor; or
 - (iv) the Australian Government Solicitor; or
 - (v) the Director of Public Prosecutions; and
- (c) a legal practitioner acting on the instructions of the Corporate Affairs Commission; and
- (ca) a legal practitioner acting on the instructions of the Australian Securities Commission; and
- (d) a legal practitioner employed by the Legal Services Commission and acting in the course of that employment; and
- (da) a legal practitioner employed by a community legal centre and acting in the course of that employment; and
- (e) a legal practitioner who is practising the profession of law as a principal or a legal practitioner who is acting in the course of employment by such a legal practitioner; and
- (f) a legal practitioner employed by the Society.

(2) A legal practitioner who is an employee of another legal practitioner who is practising the profession of law as a principal is not entitled to appear on instructions from the principal before a court or tribunal as counsel or solicitor for any other person by whom the practitioner is employed or for any client of that other person.

(3) Where a legal practitioner who is an employee appears as counsel or solicitor before a court or tribunal, any undertaking given by the practitioner in the course of the proceedings is binding on the employer.

DIVISION 13—PROFESSIONAL INDEMNITY INSURANCE SCHEME

Professional indemnity insurance scheme

52. (1) The Society may, with the approval of the Attorney-General, establish a scheme providing professional indemnity insurance, to an extent provided by the scheme, for the benefit of legal practitioners.

- (2) The scheme—
 - (a) will operate for the benefit of a class, or classes, of legal practitioners defined in the scheme;
 - (b) will provide for insurance indemnity partially under a master policy negotiated between the Society and insurers participating in the scheme and partially from a professional indemnity fund to be established, administered and applied in accordance with the scheme;

- (c) may provide for the determination and settlement of claims against legal practitioners covered by the scheme;
- (d) may impose on legal practitioners obligations to pay premiums, levies, fees or other charges (which may vary according to factors stipulated in the scheme);
- (e) may impose, or provide for the imposition of, civil or criminal sanctions or penalties against legal practitioners who fail to comply with their obligations under the scheme;
- (f) may confer discretionary powers on the Society in relation to the administration or enforcement of the scheme;
- (g) may make any other provision reasonably necessary for, or incidental to, the administration or enforcement of the scheme.

(3) The scheme, and any amendment to the scheme made by the Society with the approval of the Attorney-General, have the force of law and are binding on—

- (a) the Society;
- (b) the legal practitioners covered by the scheme;
- (c) the insurers and other persons to whom the scheme applies.

(4) The Society must keep a copy of the scheme and of any amendment to the scheme available for inspection at its public office and must, on request for a copy of the scheme or amendment and payment of a reasonable fee fixed by the Society, provide such a copy.

(5) In this section—

"legal practitioner" includes—

- (a) a member of a faculty of law in a university;
- (b) a person who has ceased to be a legal practitioner but who was a legal practitioner when a liability covered by the scheme arose;

"professional indemnity insurance" means insurance against—

- (a) civil liability arising in connection with legal practice (whether the liability arises from an act or omission on the part of the insured legal practitioner or some other person);
- (b) civil liability incurred by a legal practitioner in connection with the administration of a trust of which the practitioner is a trustee.

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PART 4
THE COMBINED TRUST ACCOUNT AND OTHER RELATED ACCOUNTS

DIVISION 1—THE COMBINED TRUST ACCOUNT

Duty to deposit trust money in combined trust account

53. (1) A legal practitioner must, within 14 days after 31 May, and within 14 days after 30 November, in each year, out of trust money held in the practitioner's trust account, deposit the appropriate amount in the combined trust account.

(1a) The appropriate amount is the amount (if any) necessary to ensure that the following formula is satisfied:

$$A_1 \geq \frac{2}{3} A_2$$

Where—

A_1 is the amount held on the practitioner's behalf in the combined trust account

A_2 is the lowest aggregate (determined by reference to the relevant bank statements) of the amount held in the practitioner's trust account and the amount (if any) simultaneously held in the combined trust account on the practitioner's behalf during the period of six months ending on 31 May or 30 November (as the case requires).

(2) The combined trust account is a composite account consisting of separate accounts established by the Society at each approved bank.

(3) Where a legal practitioner maintains two or more trust accounts, those accounts will, for the purposes of this section, be taken to be a single trust account the balance of which is the aggregate of the respective balances of each of those trust accounts but where a legal practitioner maintains, on the instructions of a client, a separate trust account for the exclusive benefit of that client, the balance of that account will, for the purposes of this section, be disregarded.

(4) A legal practitioner—

(a) may withhold money from deposit under subsection (1) if—

- (i) the money is necessary to meet an immediate claim on the practitioner's trust account or to establish or maintain a reasonable balance in the trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future; and
- (ii) the practitioner has, on or before the day on which a deposit under subsection (1) is required to be made, given written notice to the Society accordingly; and

(b) is not obliged to deposit money under subsection (1) in relation to a particular period of six months if the lowest aggregate referred to in subsection (1a) was, during that period, less than \$1 000 (or some other sum fixed by regulation for the purposes of this subsection).

(5) If a trust account is maintained by a firm of legal practitioners, the trust account will, for the purposes of this section, be taken to be the trust account of each member of the firm, and the members of the firm are each liable to perform the obligations imposed by this section, but the discharge by one member of the firm of the obligations under this section in relation to the trust account will be taken as a discharge by all the members of the firm of their obligations in relation to that trust account.

(6) If the Council has reasonable cause to suspect that a legal practitioner has not complied with the obligations of this section, it may, by notice in writing served personally or by post on the legal practitioner, require the practitioner to attend before it and to produce evidence of the trust money received by the practitioner, the amount from time to time standing to the credit of the trust account, and such other relevant matters as may be specified in the notice.

(7) Where a legal practitioner establishes a trust account and has, at the time of establishing the account, no other trust account, the balance of the trust account during the first month after its establishment is, for the purposes of this section, to be ignored.

(8) A legal practitioner who fails to make the appropriate deposit by the last date for payment is personally liable to pay the Society, for the credit of the statutory interest account, interest on the outstanding amount at the prescribed rate for the period of the default but, if the appropriate deposit is made within seven days after that date, no liability for interest arises under this subsection.

(9) A legal practitioner may withdraw money held on the practitioner's account in the combined trust account if, and only if, the withdrawal is necessary to meet an immediate claim on the practitioner's trust account or to establish a reasonable balance in the trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future.

(10) If a legal practitioner withholds money from deposit under subsection (4)(a) or withdraws money under subsection (9), the auditor must, in the report on the audit for the relevant year, express an opinion on whether the withholding or withdrawal was justified, and if the amount exceeds the amount that could, in the auditor's opinion, be reasonably justified, on the amount of the excess (but before the auditor includes a statement expressing such an opinion in the report, the auditor must allow the legal practitioner a reasonable opportunity to comment on the proposed statement and may make any modification to the proposed statement that the auditor considers justified in the light of the legal practitioner's comments).

(11) If the withholding or withdrawal of money is not justified, or exceeds an amount that could be reasonably justified, the legal practitioner is personally liable to pay to the Society, for the credit of the statutory interest account, interest on the amount withheld or withdrawn, or the amount of the excess, (as the case requires), from the date of the withholding or withdrawal until the amount on deposit in the combined trust account is restored to the level required by this section.

(12) The Society may, for any proper reason, remit interest payable under subsection (8) or (11) wholly or in part.

(13) The Society—

(a) may approve a bank for the purposes of this section if satisfied that the bank is prepared to pay a reasonable rate of interest on money deposited in the combined trust account; and

(b) may revoke an approval previously given under this subsection.

(14) If the Society revokes the approval of a bank under subsection (13) the combined trust account, so far as it was kept at that bank, must be transferred to a bank that continues as an approved bank.

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Immunity from liability

55. (1) No action at law or in equity lies against the Society or a legal practitioner for any action done in compliance with this Division.

(2) This Division does not affect the interest or claim of any person beneficially entitled to trust money and any such interest or claim may be asserted and enforced as effectually as if this Division had not been enacted.

DIVISION 2—THE STATUTORY INTEREST ACCOUNT

Statutory interest account

56. (1) The Society must continue to maintain the statutory interest account.

(2) The Society must pay into the statutory interest account all interest earned from deposits in the combined trust account.

(3) The Society may invest any money contained in the statutory interest account in any manner in which trustees are authorised by statute to invest trust funds and must pay the income derived from any such investment into the statutory interest account.

(4) The amount held in the statutory interest account may be applied to defraying any management fee or other expenditure relating to the management or administration of the combined trust account and the statutory interest account.

(5) After making such provision for defraying expenditure under subsection (4) as the Society thinks fit, the Society must pay the balance of the money comprised in the statutory interest account (excepting money advanced to the statutory interest account for the purpose of investment), as to five-eighths to the Legal Services Commission, and, subject to subsection (6), as to three-eighths, to the guarantee fund.

(6) If at any time the amount of the guarantee fund (including the value of any investments in which any of its money has been invested) exceeds an amount calculated by multiplying \$7 500 by the number of legal practitioners who held practising certificates on the last preceding 30 June, the Society must hold the excess in the statutory interest account, to be paid or applied by the Society to the Legal Services Commission, or for any purpose approved by the Attorney-General and the Society.

DIVISION 3—THE LEGAL PRACTITIONERS' GUARANTEE FUND

Guarantee fund

57. (1) The Society must continue to maintain the legal practitioners' guarantee fund.

(2) The Society may from time to time invest any of the money constituting, or forming part of, the guarantee fund in any manner in which trustees are authorised by statute to invest trust funds, and may advance, on such terms and conditions as the Society thinks fit, money from the guarantee fund to the statutory interest account.

(3) The guarantee fund consists of—

(a) the money paid into it from the statutory interest account; and

(b) all money recovered by the Society under Part 5; and

(c) a prescribed proportion of the fees paid in respect of the issue or renewal of practising certificates; and

- (d) costs recovered by the Attorney-General, the Board or the Society in disciplinary proceedings against legal practitioners or former legal practitioners; and
- (da) any fee paid to the Board; and
- (e) any money that the Society thinks fit to include in the guarantee fund; and
- (f) the income and accretions arising from the investment of the money constituting the guarantee fund.

(4) Subject to subsection (5), money in the guarantee fund may be applied for any of the following purposes:

- (a) the costs of investigating complaints against legal practitioners or former legal practitioners and of disciplinary proceedings against legal practitioners or former legal practitioners; and
- (b) the costs of prosecutions for offences against this Act; and
- (c) costs consequent on the appointment of a supervisor or manager under this Act; and
- (d) the costs of an examination conducted at the direction of the Attorney-General or the Society under Division 5 of Part 3; and
- (e) the payment of honoraria, approved by the Attorney-General, to members of the Board and the Tribunal; and
- (ea) the legal costs payable by—
 - (i) a member of the Board in relation to any action against the member arising from an honest act or omission in the performance or purported performance of a duty imposed by or under this Act; or
 - (ii) any person in relation to any action arising from an honest act or omission in the exercise or purported exercise of powers or functions under Division 5 of Part 3 or delegated by the Board; and
- (f) the payment of money towards the costs of an arrangement under Division 13 of Part 3 to the extent that those costs are, in accordance with the terms of the scheme and with the approval of the Attorney-General, to be paid from the guarantee fund; and
- (g) the costs of processing claims under Part 5 and of paying out those claims to the extent authorised by that Part; and
- (h) defraying any management fee or other expenditure relating to the management or administration of the guarantee fund; and
- (i) educational or publishing programs conducted for the benefit of legal practitioners or members of the public.

(5) No payment may be made from the guarantee fund except with the authorisation of the Attorney-General.

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(6) The Attorney-General may, before authorising a payment from the guarantee fund, require the Society, the Tribunal, the Board or any person engaged in the administration of this Act to provide such information and explanations as to the reason for the proposed payment as the Attorney-General may reasonably require.

DIVISION 4—MISCELLANEOUS

Payment of interest accruing on trust accounts

57A. (1) Interest accruing on a trust account (other than a separate trust account maintained by a legal practitioner for the exclusive benefit of a particular client) must be paid by the bank concerned to the Society.

(2) Subject to subsection (3), the Society must deal with money received by it pursuant to subsection (1) as follows:

- (a) 50 per cent of the money must be paid to one or more of the Legal Services Commission or one or more community legal centres in such shares and subject to such conditions as the Attorney-General directs; and
- (b) 40 per cent of the money must be paid to the guarantee fund; and
- (c) 10 per cent of the money must be paid to a person nominated by the Attorney-General subject to such conditions as the Attorney-General directs.

(3) The Attorney-General may, from time to time, vary or revoke the conditions subject to which money is paid under subsection (2) and may, from time to time, with the approval of the Society, vary the portion of the money allocated for payment pursuant to each paragraph of that subsection.

(4) The Attorney-General may, from time to time, without the approval of the Society, vary the shares in which money allocated for payment pursuant to subsection (2)(a) is distributed under that paragraph.

(5) Money paid to a person pursuant to subsection (2)(c) must be applied in, or in relation to, the provision of legal services to the community, or to a section of the community, or must be applied for the purposes of legal research and education.

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Accounts and audit

58. (1) The Society must keep proper accounts of all money received, disbursed, invested and otherwise dealt with under this Part.

(2) The Society must cause the combined trust account, the statutory interest account, and the guarantee fund to be audited at least once in every calendar year by a public accountant approved by the Attorney-General and must send copies of the duly audited accounts to the Attorney-General.

Power to borrow for purposes of this Part

59. The Society may borrow money for the purposes of any account or fund maintained under this Part and may defray the interest and other expenditure resulting from the borrowing from the appropriate account or fund.

**PART 5
CLAIMS AGAINST GUARANTEE FUND**

Claims

60. (1) Subject to this Part, where—

- (a) a person suffers loss as a result of a fiduciary or professional default; and
- (b) there is no reasonable prospect of recovering the full amount of that loss (otherwise than under this Part),

the person may, by instrument in writing served personally or by post on the Society, claim compensation under this Part.

(2) The amount of a claim cannot exceed—

- (a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary or professional default (including the reasonable costs of making the claim); less
- (b) any amount that the claimant has received, or may reasonably be expected to recover (otherwise than under this Part) in reduction of that loss.

(3) If a valid claim has not been satisfied as provided by this Part at the expiration of 12 months from the day on which it was lodged with the Society it is then, to the extent to which it has not been satisfied, increased by interest at a prescribed rate calculated from the expiration of that period.

(4) No claim can be made under this Part—

- (a) in respect of a fiduciary or professional default occurring before 4 December, 1969; or
- (ab) in respect of a fiduciary or professional default occurring outside this State unless it occurs in the course of, or incidentally to—
 - (i) legal work arising from instructions given in this State; or
 - (ii) legal work substantially carried out in this State; or
- (b) in respect of a liability for which indemnity is provided under a scheme of professional indemnity insurance under Division 13 of Part 3.

Limitation of claims

61. (1) The Society may, by notice published in a newspaper circulating generally throughout the State, fix a day, not earlier than three months after the publication of the notice, on or before which claims in respect of a fiduciary or professional default, or a series of professional or fiduciary defaults, referred to in the notice, must be made.

(2) Where a notice is published under subsection (1), a claim that is not made within the time prescribed by the notice is barred unless the Society otherwise determines.

(3) No action in defamation lies in respect of the publication, in good faith, of a notice under this section.

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Power to require evidence

62. (1) The Society may, in considering any claim made under this Part, by notice in writing served personally or by post on any person, require that person, within the time specified in the notice, to deliver up any document in his or her possession or power relevant to the determination of the claim.

(2) A person must not fail duly to comply with a notice served on him or her pursuant to subsection (1).

Maximum penalty: \$1 250.

Establishment of validity of claims

63. (1) Where a claim is made under this Part, the Society must determine—

- (a) whether the claim is a valid claim; and
- (b) the amount payable under this Part in, or towards, satisfaction of the claim.

(2) The Society must, by notice in writing, inform the claimant of any determination made by it under subsection (1).

(3) A notice under subsection (2) must be served—

- (a) personally or by post on the claimant or the claimant's personal representative; or
- (b) where the claimant is dead and has not left a personal representative known to the Society, or where the whereabouts of the claimant is unknown—by publication in the *Gazette*.

(4) A claimant who is aggrieved by a determination of the Society under this section may appeal to the Supreme Court against the determination.

(5) On an appeal under subsection (4), the Supreme Court may reverse or vary the determination of the Society and may make such further orders as it considers just in the circumstances.

(6) An appeal against a determination of the Society under this section must be instituted within three months after the day on which notice of the determination is served under this section but the Court may, if satisfied that proper cause to do so exists, dispense with the requirement that the appeal be so instituted.

(7) In any proceedings under this section, evidence of an admission or confession is admissible to prove a fiduciary or professional default, notwithstanding that the person by whom the admission or confession was made is not a party to the proceedings.

(8) If in any proceedings under this section the Society is satisfied, on the balance of probabilities, that a fiduciary or professional default has been committed, it may determine the claim accordingly notwithstanding that the fiduciary or professional default constitutes a criminal offence and the evidence would not be sufficient to establish the guilt of a person charged with that offence.

Satisfaction of claims

64. (1) The Society must satisfy any valid claim under this Part, to the extent determined by the Society or the Supreme Court, out of the guarantee fund.

(2) Where the Society has published a notice under this Part in respect of a specified fiduciary or professional default, or a specified series of fiduciary or professional defaults, the maximum amount that may be applied towards satisfaction of all claims to which the notice relates is the prescribed percentage of the balance of the guarantee fund (calculated to the nearest \$1 000) as disclosed in the accounts of the guarantee fund last audited before the proposed application of money towards satisfaction of the claims.

(3) Where the maximum amount that may be applied to satisfy claims made in respect of a fiduciary or professional default, or a series of fiduciary or professional defaults, does not permit the full satisfaction of the claims, the Society must apportion that amount between the various claims in such manner as it thinks just.

(4) The Society, in apportioning payments under this section, must take into account the relative degrees of hardship suffered or likely to be suffered by the various claimants as a result of non-payment of the full amount of the claim for compensation.

(5) Where the Society apportions payments under this section, the claims in respect of which the payments are made are discharged notwithstanding that they may not have been satisfied in full.

(6) The Society may, with the approval of the Attorney-General, make further payments to any person—

(a) whose claim has not been satisfied in full by reason of the operation of subsection (2), or for any other reason; or

(b) whose claim is barred,

but any payment so made does not revive or reinstate a claim.

Rights of the Society

65. (1) Subject to this section, where the Society has made any payment to a claimant under this Part, the Society is, to the extent of the payment, subrogated to the rights of the claimant against any person liable at law or in equity for the fiduciary or professional default in respect of which the payment was made.

(2) This section does not confer on the Society any right to recover money from a person whose liability in respect of a fiduciary or professional default does not arise from a wrongful or negligent act or omission on that person's part.

Claims by legal practitioners

66. Where all legal or equitable claims in respect of a fiduciary or professional default committed by a partner, clerk or employee of a legal practitioner have been fully satisfied and—

(a) the legal practitioner has paid compensation to any person for pecuniary loss suffered in consequence of the fiduciary or professional default; and

(b) the Society is satisfied that the legal practitioner has acted honestly and reasonably in all the circumstances of the case,

the Society may, if it is satisfied that it is just and reasonable so to do, accept a claim under this Part from the legal practitioner in respect of that payment.

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Insurance in respect of claims against guarantee fund

67. (1) The Society may, with the approval of the Attorney-General, insure the guarantee fund to such extent as the Society thinks fit against claims under this Part.

(2) The premium on a policy of insurance entered into under this section must be paid out of the guarantee fund.

Annual report

67A. (1) The Society must, on or before 31 October in each year, report to the Attorney-General on the administration of this Part during the preceding financial year.

(2) The report must state the amount of the payments from the guarantee fund during the financial year and the nature of the claims in respect of which payments were made.

(3) The Attorney-General must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.

PART 6
INVESTIGATIONS, INQUIRIES AND DISCIPLINARY PROCEEDINGS

DIVISION 1—THE LEGAL PRACTITIONERS CONDUCT BOARD

Establishment of the Legal Practitioners Conduct Board

68. (1) The Legal Practitioners Complaints Committee continues in existence as the *Legal Practitioners Conduct Board*.

(1a) The Board—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued.

(1b) Where an apparently genuine document purports to bear the common seal of the Board, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to that document.

(1c) The Board has the powers of a natural person.

(2) The Board consists of seven members appointed by the Governor of whom—

- (a) three will be persons nominated by the Attorney-General of whom one will be a legal practitioner and two will be persons who are not legal practitioners; and
- (b) four will be persons nominated by the Society (at least one of whom will, at the time of nomination, be a practitioner of not more than seven years standing and at least one will be a person who is not a legal practitioner).

(3) A member of the Board, nominated by the Attorney-General after consultation with the President of the Society, will be appointed by the Governor to be the presiding member of the Board for such term and on such conditions as may be fixed in the instrument of appointment.

* * * * *

(5) A member is not eligible for appointment as presiding member of the Board unless the member is a legal practitioner.

(6) The Governor may appoint a suitable person to be a deputy of a member of the Board.

(7) A deputy of a member—

- (a) must be qualified for membership of the Board in the same way as the member of whom he or she is appointed deputy; and
- (b) must be nominated for the appointment by the Attorney-General or the Society according to whether that member was nominated by the Attorney-General or the Society.

(8) If a member of the Board is absent, or unable, because of a conflict of interest or for any other reason, to act as a member of the Board, the deputy may act in his or her place.

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Conditions upon which members of the Board hold office

69. (1) Subject to this Act, a member of the Board will be appointed for a term of office of three years and, on the expiration of a term of office, is eligible for reappointment.

(2) The Governor may remove a member of the Board from office for—

(a) mental or physical incapacity to carry out official duties satisfactorily; or

(b) neglect of duty; or

(c) dishonourable conduct.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office; or

(c) resigns by written notice addressed to the Attorney-General; or

(d) in the case of a member who is a legal practitioner—ceases to be a legal practitioner or is disciplined under this Act or by the Supreme Court or under an Act or law of another State or Territory of the Commonwealth for regulating the conduct of persons practising the profession of the law; or

(e) is removed from office by the Governor pursuant to subsection (2).

(4) On the office of a member of the Board becoming vacant, a person will be appointed in accordance with this Act to the vacant office but where the office of a member of the Board becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

Quorum, etc.

70. (1) Four members of the Board (of whom not less than two are legal practitioners) constitute a quorum of the Board, and no business may be transacted at a meeting of the Board unless a quorum is present.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board is a decision of the Board.

(3) Each member of the Board is entitled to one vote on any matter arising from the decision of the Board and, in the event of an equality of votes, the person presiding at the meeting is entitled to a second or casting vote.

(4) The presiding member will preside at any meeting of the Board at which the member is present, and, in the absence of the presiding member, the members present will decide who is to preside at that meeting.

(5) Subject to this Act, the business of the Board will be conducted in such a manner as the Board determines.

(6) The Board must not meet to transact business on premises of the Society except with the approval of the Attorney-General.

Validity of acts of the Board and immunity of its members

71. (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability attaches to a member of the Board for any act or omission by the member, or by the Board, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.

Director and staff of Board

72. (1) There will be a Director appointed by the Board with the approval of the Attorney-General.

(2) The Director is the chief administrative officer of the Board.

(3) The Board may appoint other staff to assist in carrying out its functions.

Confidentiality

73. (1) Subject to subsection (2), a member of the Board or a person employed or engaged on work related to the affairs of the Board must not divulge information that comes to his or her knowledge by virtue of that office or position except—

(a) in the course of carrying out the duties of that office or position; or

(b) as may be authorised by or under this Act; or

(c) in evidence before a court in which criminal proceedings arising from matters subject to a report of the Board have been brought.

Maximum penalty: \$10 000.

(2) A person referred to in subsection (1) may divulge information referred to in that subsection to—

(a) the Council; and

(ab) the Attorney-General; and

(ac) a member of a law enforcement or prosecution authority of a State or Territory, or of the Commonwealth, relating to a matter referred to the authority by the Attorney-General or reported to the authority by the Board, to which the information is relevant; or

* * * * *

(b) a committee or person to whom the Council has delegated its power to appoint an inspector pursuant to Division 5 of Part 3; and

(c) an inspector appointed pursuant to that Division.

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DIVISION 2—FUNCTIONS OF THE BOARD

Functions of Board

74. (1) The functions of the Board are as follows:

- (aa) to investigate suspected unprofessional conduct by legal practitioners of the Board's own motion, or at the direction of the Attorney-General or the Society;
- (a) to receive, consider and investigate complaints of unprofessional conduct or overcharging by legal practitioners;
- (b) where the subject matter of a complaint is, in the opinion of the Board, capable of resolution by conciliation—to attempt to resolve the matter by conciliation;
- (c) where, in the opinion of the Board, a complaint of unprofessional conduct has substance but may be adequately dealt with by admonishing the legal practitioner against whom the complaint was made—to admonish the legal practitioner accordingly;
- (d) to lay charges of unprofessional conduct before the Tribunal.

(2) The Board may, with the approval of the Attorney-General, fix, and require the payment of, fees in connection with the performance of functions of the Board under this Act.

Power of delegation

75. (1) Subject to subsection (2), the Board may delegate any of its powers or functions under this Act to any person.

(2) The power to admonish and lay charges before the Tribunal cannot be delegated.

(3) A delegation under this section is revocable at will and does not derogate from the power of the Board to act itself in any matter.

INVESTIGATION OF UNPROFESSIONAL CONDUCT

Investigations by Board

76. (1) The Board may, of its own motion, make an investigation into the conduct of a legal practitioner who the Board has reasonable cause to suspect has been guilty of unprofessional conduct.

(1a) The Board must make an investigation into the conduct of a legal practitioner where—

- (a) the Board has been directed to make the inquiry by the Attorney-General or the Society;
or
- (b) a complaint has been received in relation to the conduct of the legal practitioner.

(1b) Despite subsection (1a), the Board may determine not to commence or continue an investigation that would otherwise be required as a result of receipt of a complaint if it is apparent to the Board that the complaint is frivolous or vexatious or if the Board is satisfied that the subject matter of the complaint has been resolved prior to commencement or completion of an investigation.

(2) No direction may be given to the Board under this section unless the Attorney-General or the Society (as the case may require) has reasonable cause to suspect that the legal practitioner to whom the proposed investigation relates has been guilty of unprofessional conduct.

(3) For the purposes of an investigation the Board, or a person authorised by the Board to exercise the powers conferred by this subsection, may—

- (a) by notice in writing, require specified documents, or documents of a specified class, in the custody or control of a prescribed person to be produced at a time and place specified in the notice; and
- (b) at any time during ordinary business hours, inspect any documents in the custody or control of a prescribed person; and
- (c) seize or make notes or copies of any documents produced in accordance with this subsection, or take extracts from them.

(4) A person who—

- (a) wilfully delays or obstructs the Board or an authorised person in the exercise of powers conferred by subsection (3); or
- (b) being a prescribed person, refuses without reasonable excuse to produce a document when required to do so in accordance with subsection (3),

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for one year.

(4a) The Board may, by notice in writing, require a legal practitioner whose conduct is under investigation to make a detailed report to the Board, within the time specified in the notice, in relation to any matters relevant to the investigation.

(4b) A legal practitioner must comply with a requirement under subsection (4a).

Maximum penalty: \$10 000 or imprisonment for one year.

(5) In this section—

"**financial institution**" means a bank, building society, credit union, insurance company or other body that carries on a business involving the acceptance of money on deposit or by way of investment;

"**prescribed person**" means—

- (a) the legal practitioner whose conduct is under investigation; or
- (b) a person who is, or was formerly, the employer, employee or partner of the legal practitioner; or
- (c) the person (including a legal practitioner or the Legal Services Commission) who instructed the legal practitioner whose conduct is under investigation in the matter in relation to which that conduct occurred or a servant or agent of the person who instructed the legal practitioner; or
- (d) a financial institution with which the legal practitioner has deposited or invested money; or

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- (e) an auditor or inspector employed or appointed to make an audit or examination of accounts of the legal practitioner under Division 5 of Part 3.

Report on investigation

77. (1) Subject to subsection (2), if, in the course or in consequence of an investigation by the Board, the Board is satisfied that evidence of unprofessional conduct on the part of a legal practitioner exists, it must make a report on the matter to the Attorney-General and the Society.

(2) A report need not be made under subsection (1) where the subject matter of a complaint has been successfully resolved by conciliation.

* * * * *

(4) If, in the course or in consequence of an investigation by the Board, the Board is satisfied that there are reasonable grounds to suspect that a legal practitioner has committed a criminal offence (against the law of this State or the Commonwealth or against some other law) the Board must immediately report the matter to the Attorney-General and to all relevant law enforcement and prosecution authorities.

(5) The Board must, at the request of the Attorney-General, furnish the Attorney-General with any material in its possession relevant to the investigation or prosecution of the suspected offence.

(6) If it appears to the Attorney-General from a report or material furnished under this section that criminal proceedings should be taken against any person, the Attorney-General may take any action that may be appropriate for that purpose.

COMPLAINTS OF OVERCHARGING

Investigation of allegation of overcharging

77A. (1) Subject to subsection (2), if a complaint of overcharging is made against a legal practitioner, the Board must, unless the Board is of the opinion that the complaint is frivolous or vexatious, investigate the complaint.

(2) The Board may require a complainant to pay a reasonable fee, fixed by the Board, for investigation of the complaint and decline to proceed with the investigation unless the fee is paid.

(3) For the purposes of an investigation the Board may, by notice in writing—

- (a) require the legal practitioner to make a detailed report to the Board, within the time specified in the notice, on the work carried out for the complainant;
- (b) require the legal practitioner to produce to the Board, within the time specified in the notice, documents relating to the work.

(4) A legal practitioner must comply with a requirement under subsection (3).

Maximum penalty: \$10 000 or imprisonment for 1 year.

(5) At the conclusion of the investigation the Board—

- (a) must report to the complainant and the legal practitioner on the results of the investigation; and
- (b) may recommend that the legal practitioner reduce a charge or refund an amount to the claimant.

DIVISION 3—THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Establishment of Tribunal

78. (1) The *Legal Practitioners Disciplinary Tribunal* is established.

(2) There will be 15 members of the Tribunal appointed by the Governor on the nomination of the Chief Justice.

(3) A person is not eligible for appointment as a member of the Tribunal unless that person is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State).

(4) One member of the Tribunal will be appointed, on the nomination of the Chief Justice, to be the presiding member of the Tribunal, and another member will be appointed by the Governor, on the nomination of the Chief Justice, to be the deputy of that member.

(5) The deputy may, in the absence of the presiding member, exercise any powers conferred by this Act on the presiding member.

Conditions of membership

79. (1) Subject to this Act, a member of the Tribunal will be appointed for a term of office of three years and, on the expiration of a term of office, is eligible for reappointment.

* * * * *

(3) The Governor may remove a member of the Tribunal from office for—

(a) mental or physical incapacity to carry out official duties satisfactorily; or

(b) neglect of duty; or

(c) dishonourable conduct.

(4) The office of a member of the Tribunal becomes vacant if the member—

(a) dies; or

(b) completes a term of office; or

(c) resigns by written notice addressed to the Attorney-General; or

(d) ceases to be a legal practitioner or is disciplined under this Act or by the Supreme Court or under an Act or law of another State or Territory of the Commonwealth for regulating the conduct of persons practising the profession of the law; or

(e) is removed from office by the Governor pursuant to subsection (3).

(5) On the office of a member of the Tribunal becoming vacant a person will be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Tribunal becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

(6) A member of the Tribunal who completes his or her term of office and is not reappointed may continue to act as a member of the Tribunal for the purpose of completing the hearing and determination of proceedings part-heard at completion of the term.

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Constitution and proceedings of the Tribunal

80. (1) In relation to any proceedings instituted before the Tribunal, the Tribunal consists of a panel of three of its members chosen by the presiding member to constitute the Tribunal for the purposes of those proceedings (one of whom may be the presiding member).

(2) Where the presiding member is a member of a panel chosen under subsection (1), the member will preside at the proceedings, and in any other case a member of the panel nominated by the presiding member will preside.

(3) The Tribunal separately constituted under this section in respect of separate proceedings may sit contemporaneously to hear and determine those separate proceedings.

(4) If, before proceedings are finalised, a member of a panel chosen under subsection (1) dies or is otherwise unable to continue acting, the two remaining members of the panel may continue to hear and determine the proceedings.

(4a) Subject to subsection (4b), the Tribunal may decide matters by majority decision of its members.

(4b) If the Tribunal is completing the hearing and determination of proceedings in relation to a charge with two members only under subsection (4), a decision of the Tribunal must be arrived at unanimously (and if a decision cannot be arrived at unanimously the charge may be relaid).

(5) Subject to this Act, the proceedings of the Tribunal will be conducted in such manner as the Tribunal determines.

Validity of acts of the Tribunal and immunity of its members

81. (1) An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability attaches to a member of the Tribunal for any act or omission by the member, or by the Tribunal, in good faith and in the exercise or purported exercise of functions, or in the discharge or purported discharge of duties under this Act.

DIVISION 4—PROCEEDINGS BEFORE THE TRIBUNAL

Inquiries

82. (1) A charge may be laid under this section alleging unprofessional conduct—

- (a) on the part of any legal practitioner; or
- (b) on the part of any former legal practitioner who was at the time of the alleged unprofessional conduct a legal practitioner.

(2) A charge may be laid under this section by—

- (a) the Attorney-General; or
- (b) the Board; or
- (c) the Society; or
- (d) a person claiming to be aggrieved by reason of the alleged unprofessional conduct.

(3) A charge laid under this section must be in the form prescribed by rules under this Division.

(4) Where a charge has been laid under this section, the Tribunal must, subject to subsection (5), inquire into the conduct of the legal practitioner or former legal practitioner to whom the charge relates.

(5) The Tribunal may summarily dismiss any charge that it considers frivolous or vexatious.

(6) If after conducting an inquiry under this section the Tribunal is satisfied—

(a) that a legal practitioner is guilty of unprofessional conduct it may exercise any one or more of the following powers:

(i) it may reprimand the legal practitioner;

(ia) it may accept an undertaking from the legal practitioner that the legal practitioner will not, during a period specified in the undertaking, practise the profession of the law otherwise than in accordance with conditions stipulated in the undertaking;

(ib) it may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Tribunal (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;

(ii) it may order the legal practitioner to pay a fine not exceeding \$10 000;

(iii) it may, by order, suspend the right of the legal practitioner to practise the profession of the law for a period not exceeding three months;

(iv) it may order that the legal practitioner must not, during a period stipulated in the order (but not exceeding 12 months) practise the profession of the law otherwise than in accordance with conditions stipulated in the order;

(v) it may recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court; or

(b) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of unprofessional conduct, it may order the former legal practitioner to pay a fine not exceeding \$10 000.

(6a) An undertaking entered into by a legal practitioner and accepted by the Tribunal under subsection (6) may be varied or revoked at any time on application by the legal practitioner.

(6b) Any contravention of or non-compliance with an undertaking or order under subsection (6) is itself unprofessional conduct and may be the subject of a charge under this section.

(7) After completing an inquiry under this section, the Tribunal must transmit the evidence taken by the Tribunal on the inquiry together with a memorandum of its findings to the Attorney-General, the Society and, where the charge was laid by the Board, to the Board.

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Notice of inquiry

83. (1) The Tribunal must give to a legal practitioner or former legal practitioner whose conduct is subject to inquiry under this Part, and to any person on whose application an inquiry is to be held, not less than seven days written notice of the time and place at which it intends to conduct the inquiry, and must afford any such person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed with the inquiry in the person's absence.

(3) A person whose conduct is subject to an inquiry under this Part is entitled to be represented at the inquiry by counsel.

Powers of Tribunal

84. (1) For the purposes of an inquiry under this Part, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the attendance before the Tribunal of any person (including a party to the proceedings) whom the Tribunal thinks fit to call before it; or
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the production of documents; or
- (c) inspect any documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents; or
- (d) require any person to make an oath or affirmation to truly answer all questions put by the Tribunal, or by any person appearing before the Tribunal, relevant to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by any member of the Tribunal); or
- (e) require any person appearing before the Tribunal (whether summoned to appear or not) to answer any relevant question put by any member of the Tribunal, or by any other person appearing before the Tribunal; or
- (f) require any person appearing before the Tribunal (whether summoned to appear or not) to prepare a document (including a bill of costs in taxable form) as reasonably directed by the Tribunal, or to comply with any other reasonable direction issued by the Tribunal in furtherance of the inquiry.

(2) A summons may be issued under subsection (1) on the application of a party to proceedings before the Tribunal, notwithstanding that the Tribunal has not met to authorise the issue of the summons.

(3) If a person—

- (a) who has been served with a summons to attend before the Tribunal, neglects or fails without reasonable excuse to attend in obedience to the summons; or
- (b) who has been served with a summons to produce any documents neglects or fails without reasonable excuse to comply with the summons; or
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal; or

- (d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Tribunal; or
- (e) neglects or fails without reasonable excuse to comply with any other reasonable requirement of the Tribunal,

the person is guilty of an offence.

Maximum penalty: \$10 000.

(4) If a person summoned as mentioned in subsection (1) refuses or fails to attend before the Tribunal as required by the summons, or having attended refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal, a certificate of the refusal or failure, signed by a member of the Tribunal, may be filed in the Supreme Court.

(5) Where a certificate has been filed under subsection (4), a party requiring the attendance of the person may apply (either *ex parte* or on notice) to the Supreme Court for an order directing that person to attend, or to be sworn or to affirm, or to answer questions (as the case may require), and on that application the Court may make such orders as it thinks fit (including orders for costs).

* * * * *

- (7) In the course of an inquiry, the Tribunal may—
 - (a) receive in evidence a transcript of evidence taken in proceedings before a court of any State or Territory of the Commonwealth, and draw any conclusions of fact from the evidence that it considers proper;
 - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court that may be relevant to the proceedings.

Proceedings to be generally in public

84A. (1) Subject to subsection (2), an inquiry under this Part must be held in public.

(2) The Tribunal may order that an inquiry or part of an inquiry be conducted in private if satisfied that it is necessary to do so in the interests of justice or in order to protect the privacy of clients of the legal practitioner or former legal practitioner whose conduct is the subject of the inquiry.

(3) If proceedings of the inquiry are held in private, the Tribunal must prepare a summary of the proceedings containing such information as may be disclosed consistently with the interests of justice and the need to protect the privacy of clients.

(4) A copy of any such summary must be made available on request at the Tribunal's public office for inspection by any interested member of the public.

Tribunal's proceedings to be privileged

84B. Anything said or done in the course of the Tribunal's proceedings is protected by absolute privilege.

Costs

85. (1) The Tribunal may make such orders as to costs against any person on whose application an inquiry has been held, or against any legal practitioner or former legal practitioner whose conduct has been subject to inquiry, as the Tribunal considers just and reasonable.

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(2) Costs of proceedings before the Tribunal may be taxed in the Supreme Court.

(3) Where the Tribunal has ordered payment of a fine or costs, a certificate of the fine or costs must be filed in the Supreme Court.

(4) Where a certificate has been filed under subsection (3), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.

Appeal

86. (1) Subject to subsection (2), a right of appeal to the Supreme Court lies against a decision of the Tribunal made in the exercise or purported exercise of powers or functions under this Act.

(2) An appeal must be instituted within one month of the date on which the appellant is notified of the decision unless the Supreme Court is satisfied that there is good reason to dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of an appeal exercise any one or more of the following powers, as the case requires:

- (a) affirm, vary, quash or reverse the decision subject to the appeal and administer any reprimand, or make any order, that should have been administered or made in the first instance;
- (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for rehearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

Operation of order may be suspended

87. (1) Where an order has been made by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order, until the determination of the appeal.

(2) Where the Tribunal has suspended the operation of an order under subsection (1), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

Rules of the Tribunal

88. Any three or more Judges of the Supreme Court may make rules for any of the following purposes:

- (a) regulating the practice and procedure of the Tribunal;
- (b) conferring on the Tribunal any additional powers necessary or expedient for carrying out its functions;
- (c) making any other provision that is necessary or expedient for carrying into effect the provisions of this Part relating to the Tribunal.

DIVISION 5—DISCIPLINARY PROCEEDINGS BEFORE THE SUPREME COURT

Proceedings before Supreme Court

89. (1) Where the Tribunal after conducting an inquiry into the conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, the Attorney-General or the Society may institute disciplinary proceedings in the Supreme Court against the legal practitioner.

(2) In any disciplinary proceedings against a legal practitioner (whether instituted under this section or not) the Supreme Court may exercise any one or more of the following powers:

- (a) it may reprimand the legal practitioner;
- (b) it may suspend the right of the legal practitioner to practise the profession of the law for a specified period, or until further order of the Supreme Court;
- (c) it may order that the legal practitioner must not practise the profession of the law otherwise than in accordance with conditions stipulated in the order;
- (d) it may order that the name of the legal practitioner be struck off the roll of legal practitioners;
- (e) it may make any other order (including an order as to the costs of proceedings before the Court and the Tribunal) that it considers just.

(3) This Part does not derogate from the inherent jurisdiction of the Supreme Court to discipline legal practitioners.

(4) In any disciplinary proceedings the Supreme Court may refer any matter to a Judge or Master, or to the Tribunal, for investigation and report.

(5) In any disciplinary proceedings—

- (a) the Supreme Court may, without further inquiry, accept and act on any findings of the Tribunal or of a Judge or Master to whom a matter has been referred for investigation and report under subsection (4); and
- (b) the Supreme Court may—
 - (i) receive in evidence a transcript of evidence taken in any proceedings before a court of any State or Territory of the Commonwealth and draw any conclusions of fact from the evidence that it considers proper;
 - (ii) adopt, as in its discretion it considers proper, any findings, decision, judgment or reasons for judgment of any such court that may be relevant to the proceedings.

(6) Where the Supreme Court is satisfied, on the application of the Attorney-General or the Society, that a legal practitioner is disqualified or suspended from practice under the law of any other State or a Territory of the Commonwealth, it may, without further inquiry, impose a corresponding disqualification or suspension under the provisions of this section.

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(7) Where the Supreme Court is satisfied that a legal practitioner has been convicted of an offence of sufficient gravity to justify invoking the provisions of this subsection, the Supreme Court may, of its own motion, or on the application of the Attorney-General or the Society, suspend the legal practitioner from practice pending the investigation and determination of disciplinary proceedings or until further order.

DIVISION 6—LAY OBSERVERS

Lay observers

90. (1) The Attorney-General may appoint suitable persons (not being legal practitioners) to be lay observers for the purposes of this Part.

(2) A lay observer is not, as such, subject to the *Government Management and Employment Act 1985*, but holds office on terms and conditions determined by the Attorney-General.

(3) A lay observer is entitled to be present at any proceedings of the Board or the Tribunal and may report to the Attorney-General on any aspect of the proceedings of the Board or the Tribunal.

(4) A complainant in proceedings before the Board or Tribunal who is dissatisfied with the proceedings or the decision of the Board or Tribunal is entitled to make representations directly to the lay observer.

DIVISION 7—ANNUAL REPORTS

Annual reports

90A. (1) The Board and the Tribunal must each, on or before 31 October in each year, prepare and present to the Attorney-General and the Chief Justice a report on their proceedings for the last financial year.

(2) A report must contain—

- (a) a statement of the nature of the matters subject to investigation or inquiry; and
- (b) information as to case management, and the number of uncompleted matters outstanding at the end of the financial year; and
- (c) such other information as the Attorney-General may require.

(3) The Attorney-General must, within 12 sitting days after receiving a report from the Board or the Tribunal under this section, cause copies of the report to be laid before both Houses of Parliament.

**PART 7
PUBLIC NOTARIES**

Appointment of notaries

91. (1) A person who desires to be admitted as a public notary may apply to the Supreme Court for an order admitting the person as such.

(2) The Court has power to admit the applicant as a notary or to dismiss the application as, in its discretion, it thinks fit.

(3) A person admitted as a public notary under this Part must make an oath in the prescribed form before the Registrar of the Supreme Court or a Commissioner authorised to take affidavits in the Supreme Court.

(4) A person admitted as a notary under this Part has all the powers and authorities (including the power to take affidavits) exercisable by law or custom by public notaries.

Roll of notaries

92. (1) The Registrar of the Supreme Court must cause a roll to be kept of all notaries admitted in pursuance of this Part.

(2) On the application of any person whose name appears on the roll, the Registrar must grant a certificate in the prescribed form certifying that that person is a public notary duly authorised and admitted to practise as such in this State.

(3) An apparently genuine document purporting to be a certificate under this section will, in the absence of proof to the contrary, be accepted in any legal proceedings as evidence that the person named in the certificate is a public notary.

Power of Court to strike off name of any notary

93. (1) Where the Supreme Court is satisfied that the name of a public notary should be struck from the roll of public notaries, the Court may, of its own motion, or on the application of the Attorney-General or the Society, strike the name of the public notary from the roll of public notaries.

(2) Any person whose name is struck off the roll of public notaries ceases to be a public notary, but the Court may at any time, if it thinks fit, order the name of that person to be reinstated on the roll.

(3) Where a legal practitioner is admitted as a public notary, and the name of that legal practitioner is struck from the roll of legal practitioners, his or her name must also be struck from the roll of public notaries.

Persons acting as notaries contrary to this Part

94. If any person in his or her own name, or in the name of any other person, acts as a public notary without being admitted under this Part, the person is guilty of an offence.

Maximum penalty: \$10 000.

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**PART 8
MISCELLANEOUS**

Application of certain revenues

95. (1) The Treasurer must in each year pay to the Society, from the money paid by way of practising certificate fees—

- (a) an amount approved by the Attorney-General towards the Society's costs in providing administrative assistance for the issue and renewal of practising certificates under this Act; and
- (b) after deduction of the amount described in paragraph (a)—
 - (i) a prescribed proportion of the balance for the purpose of maintaining and improving the library of the Society;
 - (ii) a prescribed proportion of the balance to be credited by the Society to the guarantee fund.

(1a) The revenue raised from practising certificate levies will be applied for the purpose of maintaining and improving the Supreme Court library.

(2) The Treasurer may, on the recommendation of the Attorney-General, make payments towards defraying the costs of administering Part 6.

(3) This section is, without further appropriation, sufficient authority for the payment of the money to which it relates from the Consolidated Account.

Inspection of documents

95A. A power to inspect or require production of a document includes, in relation to a record of information that is accessible only through the use of a computer or other device, power to produce or require production of the information in an understandable form through the use of that computer or other device.

False or misleading information

95B. A person must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or a record kept, under this Act.

Maximum penalty: \$10 000.

Self-incrimination and legal professional privilege

95C. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce a document as required under this Act on the ground that to do so might tend to incriminate the person, or make the person liable to a penalty, or on the ground of legal professional privilege.

(2) If a person objects to answering a question or to producing a document on the ground that the answer or document might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce a document—the fact of production of the document (as distinct from the contents of the document); or

(b) in any other case—the information furnished in compliance with the requirement,

is not admissible in evidence against the person in proceedings (other than proceedings in respect of the making of a false or misleading statement or perjury) in which the person might be found guilty of an offence or liable to a penalty.

(3) If a person objects to answering a question or to producing a document on the ground of legal professional privilege, the answer or document will not be admissible in civil or criminal proceedings against the person who would, but for this subsection, have the benefit of the legal professional privilege.

Summary offences

96. (1) Offences against this Act are summary offences.

(2) Proceedings for an offence against this Act must not be brought unless the Attorney-General has, by instrument in writing, authorised the institution of the proceedings.

(3) An apparently genuine document purporting to be an authorisation under this section will, in the absence of proof to the contrary, be accepted as such in any legal proceedings.

(4) Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed.

Regulations

97. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of the foregoing, those regulations may—

(a) prescribe, and provide for the recovery of, any fee or levy for the purposes of this Act; and

(b) prescribe any form for the purposes of this Act; and

(c) prescribe requirements to be observed by companies holding practising certificates under this Act; and

(d) prescribe fines not exceeding a fine of \$10 000 for contravention of any regulation.

(3) Regulations may, with the concurrence of the Society, be made under this section—

(a) declaring that in circumstances specified in the regulations the business of a company is to be regarded as being conducted in association with a legal practice; and

(b) making special provision with respect to the keeping and auditing of the accounts of any such company; and

(c) regulating the conduct of business by any such company and restricting the classes of transaction into which any such company may enter.

(4) This section is in addition to, and does not derogate from, any other provision of this Act providing for the making of regulations.

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APPENDIX**LEGISLATIVE HISTORY****Repeals**

The *Legal Practitioners Act 1981* repealed the *Legal Practitioners Act 1936-1979*.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended by 23, 1990, s. 3(1) (Sched. 5)
Sections 2 - 4:	repealed by 23, 1990, s. 3(1) (Sched. 5)
Section 5:	definition of "approved auditor" amended by 10, 1996, s. 3(a) definition of "Australian Government Solicitor" inserted by 119, 1985, s. 2 definition of "bank" amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 17, 1994, Sched. 4 cl. 5 definition of "Board" inserted in 10, 1996, s. 3(b) definition of "the combined trust account" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "the Committee" repealed by 10, 1996, s. 3(c) definition of "community legal centre" inserted by 70, 1989, s. 3 definition of "document" inserted by 10, 1996, s. 3(d) definition of "fiduciary or professional default" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "the guarantee fund" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "moneys" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "the repealed Act" repealed by 23, 1990, s. 3(1) (Sched. 5) definition of "the Secretary" repealed by 10, 1996, s. 3(e) definition of "the statutory interest account" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "trust moneys" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "unprofessional conduct" amended by 23, 1990, s. 3(1) (Sched. 5)
Section 6:	substituted by 22, 1993, s. 3
Part 2 Division 1 heading:	inserted by 27, 1992, s. 3
Section 7(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 7(2):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 4
Section 7(2a) and (2b):	inserted by 10, 1996, s. 4
Section 7(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Sections 8 and 9:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 11(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 11(2):	amended by 88, 1996, s. 3
Section 12(1) - (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 12(5) and (6):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 13(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 14:	amended by 23, 1990, s. 3(1) (Sched. 5)
	Division 2 of Part 2 comprising s. 14A and heading inserted by 27, 1992, s. 4
Section 14A(4):	inserted by 22, 1993, s. 4
Section 15:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 16(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 16(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 5(a)
Section 16(3) and (4):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 16(5):	amended by 90, 1987, s. 2
Section 16(6):	substituted by 23, 1990, s. 3(1) (Sched. 5) definition of "prescribed relative" amended by 10, 1996, s. 5(b)
Section 17(1) and (2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 17A:	inserted by 22, 1993, s. 5
Section 18(1) and (2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 18(3):	inserted by 3, 1985, s. 3; amended by 23, 1990, s. 3(1) (Sched. 5)

Section 19(1):	amended by 23, 1990, s. 3(1) (Sched. 5); 92, 1993, s. 3
Section 20(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 20A:	inserted by 8, 1982, s. 3; amended by 23, 1990, s. 3(1) (Sched. 5)
Section 21(1):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 21(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 21(3):	amended by 119, 1985, s. 3; 13, 1988, Sched. 1; 23, 1990, s. 3(1) (Sched. 5); 49, 1991, Sched. 2; 38, 1996, s. 11
Section 21(4):	amended by 23, 1990, s. 3(1) (Sched. 5); 22, 1993, s. 6
Section 21(5):	definition of "business" amended by 23, 1990, s. 3(1) (Sched. 5)
Section 22:	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 23(1) - (3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 24(1):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 24(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 25:	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 26:	repealed by 50, 1986, s. 3
Sections 27 and 28:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 29:	redesignated as s. 29(1) by 3, 1985, s. 4; amended by 23, 1990, s. 3(1) (Sched. 5)
Section 29(2):	inserted by 3, 1985, s. 4
Section 29(3):	inserted by 3, 1985, s. 4; amended by 23, 1990, s. 3(1) (Sched. 5)
Section 30:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 31(1) - (5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 31(6):	substituted by 3, 1985, s. 5; amended by 23, 1990, s. 3(1) (Sched. 5)
Section 31(6a):	inserted by 3, 1985, s. 5
Section 31(7):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 31(7a):	inserted by 10, 1996, s. 6
Section 31(8):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 31(9) - (11):	inserted by 70, 1989, s. 4
Section 32(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 33:	redesignated as s. 33(1) by 3, 1985, s. 6; amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 33(2):	inserted by 3, 1985, s. 6
Section 33(3):	inserted by 3, 1985, s. 6; amended by 23, 1990, s. 3(1) (Sched. 5)
Section 34(1):	amended by 10, 1996, s. 7(a)
Section 34(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 7(b)
Section 34(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 35(1):	substituted by 23, 1990, s. 3(1) (Sched. 5); amended by 54, 1990, s. 3(1) (Sched. 2); 10, 1996, s. 8(a)
Section 35(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 8(b)
Section 35(3):	amended by 3, 1985, s. 7(a); 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1993, s. 7(a); amended by 10, 1996, s. 8(c)
Section 35(3a):	inserted by 3, 1985, s. 7(b); amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 22, 1993, s. 7(a)
Section 35(4):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 35(5):	definition of "account" amended by 23, 1990, s. 3(1) (Sched. 5) definition of "financial institution" inserted by 22, 1993, 7(b)
Section 36:	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 37(1):	substituted by 23, 1990, s. 3(1) (Sched. 5)
Section 37(1a):	inserted by 23, 1990, s. 3(1) (Sched. 5)
Section 37(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 37(3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 37(4):	inserted by 22, 1993, s. 8; amended by 10, 1996, s. 9
Section 37(5):	inserted by 22, 1993, s. 8
Section 38:	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 39(1):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 10
Section 39(2):	amended by 10, 1996, s. 10
Section 39(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 40(2) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 41(1) and (2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 41(3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 41(4):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 42(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 42(1a):	inserted by 3, 1985, s. 8
Section 42(1b):	inserted by 3, 1985, s. 8; amended by 23, 1990, s. 3(1) (Sched. 5)
Section 42(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 42(4):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 11

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Section 42(6):	substituted by 22, 1993, s. 9
Section 43:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 44(1) - (5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 44(6):	substituted by 23, 1990, s. 3(1) (Sched. 5); amended by 10, 1996, s. 32 (Sched. 2)
Section 44(7):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 44(10):	definition of "bank" amended by 23, 1990, s. 3(1) (Sched. 5)
Section 45(1) - (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 45(4):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 12
Section 46(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 47:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 48(1), (2), (5) - (7):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 49(1):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 13
Section 49(1a):	inserted by 10, 1996, s. 13
Section 49(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 49(3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 50(1) and (4):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 50(5):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 51(1):	amended by 119, 1985, s. 4; 70, 1989, s. 5; 23, 1990, s. 3(1) (Sched. 5); 25, 1991, s. 3; 49, 1991, Sched. 2
Section 51(2) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 52:	amended by 3, 1985, s. 9; substituted by 84, 1987, s. 3
Section 52(3) and (4):	substituted by 22, 1993, s. 10
Section 52(5):	definition of "professional indemnity insurance" amended by 23, 1990, s. 3(1) (Sched. 5)
Section 53(1):	amended by 84, 1987, s. 4(a); 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1992, s. 11(a)
Section 53(1a):	inserted by 22, 1993, s. 11(a)
Section 53(2):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1993, s. 11(a)
Section 53(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 53(4):	substituted by 50, 1986, s. 4(a); amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1993, s. 11(b)
Section 53(5) and (6):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 53(7) and (8):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1993, s. 11(c)
Section 53(9):	substituted by 84, 1987, s. 4(b); 22, 1993, s. 11(c)
Section 53(10):	substituted by 22, 1993, s. 11(c)
Section 53(11) and (12):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1993, s. 11(c)
Section 53(13):	inserted by 50, 1986, s. 4(b); substituted by 22, 1993, s. 11(c)
Section 53(14):	inserted by 22, 1993, s. 11(c)
Section 54:	amended by 3, 1985, s. 10; 23, 1990, s. 3(1) (Sched. 5); repealed by 22, 1993, s. 12
Section 55:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 56(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 56(2):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 22, 1993, s. 13
Section 56(3) and (5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 56(6):	amended by 84, 1987, s. 5; 23, 1990, s. 3(1) (Sched. 5)
Section 57(1) and (2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 57(3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, ss. 14, 31 (Sched. 1)
Section 57(4):	amended by 23, 1990, s. 3(1) (Sched. 5); 22, 1993, s. 14; 10, 1996, s. 31 (Sched. 1); 88, 1996, s. 4
Section 57(5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 57(6):	inserted by 70, 1989, s. 6; amended by 10, 1996, s. 31 (Sched. 1)
Section 57A:	inserted by 3, 1985, s. 11
Section 57A(1) - (5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 57A(6):	repealed by 70, 1989, s. 7
Sections 58 and 59:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 60(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 60(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 15
Section 60(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 60(4):	amended by 3, 1985, s. 12; 23, 1990, s. 3(1) (Sched. 5); 22, 1993, s. 15
Section 61(2) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 62(1):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 62(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)

Section 63(1) - (3), (5) and (7):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 64(1) - (5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Sections 65 and 66:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 67(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 67A:	inserted by 22, 1993, s. 16
Part 6 Division 1 heading:	amended by 10, 1996, s. 31 (Sched. 1)
Section 68(1):	substituted by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 16
Section 68(1a) - (1c):	inserted by 10, 1996, s. 16
Section 68(2) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 68(4):	amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 22, 1993, s. 17
Section 68(5):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 68(6) - (8):	inserted by 27, 1992, s. 5; amended by 10, 1996, s. 31 (Sched. 1)
Section 69(1):	substituted by 23, 1990, s. 3(1) (Sched. 5); amended by 10, 1996, s. 31 (Sched. 1)
Section 69(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 69(3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1); 13, 1997, s. 3
Section 69(4):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 70(1) - (5):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 70(6):	amended by 23, 1990, s. 3(1) (Sched. 5); 25, 1991, s. 4; 10, 1996, s. 31 (Sched. 1)
Section 71(1) and (2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 72:	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 17
Section 73:	amended and redesignated as s. 73(1) by 3, 1985, s. 13; amended by 23, 1990, s. 3(1) (Sched. 5); 22, 1993, s. 8(a), (b); 10, 1996, s. 31 (Sched. 1), s. 32 (Sched. 2)
Section 73(2):	inserted by 3, 1985, s. 13(b); amended by 70, 1989, s. 8; 22, 1993, s. 18(c); 10, 1996, s. 18
Part 6 Division 2 heading:	amended by 10, 1996, s. 31 (Sched. 1)
Section 74(1):	amended by 22, 1993, s. 19; 10, 1996, ss. 19(a), 31 (Sched. 1)
Section 74(2):	substituted by 10, 1996, s. 19(b)
Section 75(1):	amended by 10, 1996, s. 31 (Sched. 1)
Section 75(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 75(3):	amended by 10, 1996, s. 31 (Sched. 1)
Heading preceding section 76:	inserted by 22, 1993, s. 20; amended by 10, 1996, s. 20
Section 76(1):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 21(a)
Section 76(1a) and (1b):	inserted by 10, 1996, s. 21(a)
Section 76(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 76(3):	amended by 3, 1985, s. 14(a); substituted by 10, 1996, s. 21(b)
Section 76(4):	amended by 3, 1985, s. 14(b); 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 21(b)
Section 76(4a) and (4b):	inserted by 10, 1996, s. 21(b)
Section 76(5):	inserted by 3, 1985, s. 14(c)
	definition of "financial institution" inserted by 22, 1993, s. 21(a)
	definition of "prescribed person" amended by 23, 1990, s. 3(1) (Sched. 5); 22, 1993, s. 21(b); 10, 1996, s. 21(c)
Section 77(1):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, ss. 22(a), 31 (Sched. 1)
Section 77(2):	amended by 10, 1996, s. 22(b)
Section 77(3):	amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 10, 1996, s. 22(c)
Section 77(4):	inserted by 70, 1989, s. 9; amended by 10, 1996, ss. 22(d), (e), 31 (Sched. 1)
Section 77(5):	inserted by 70, 1989, s. 9; amended by 10, 1996, s. 31 (Sched. 1)
Section 77(6):	inserted by 70, 1989, s. 9
Section 77A and heading:	inserted by 22, 1993, s. 22
Section 77A(1) and (2):	amended by 10, 1996, s. 31 (Sched. 1)
Section 77A(3):	substituted by 10, 1996, s. 23
Section 77A(4):	amended by 10, 1996, s. 32 (Sched. 2)
Section 77A(5):	amended by 10, 1996, s. 31 (Sched. 1)
Section 78(1):	substituted by 23, 1990, s. 3(1) (Sched. 5)
Section 78(2):	amended by 23, 1990, s. 3(1) (Sched. 5); 22, 1993, s. 23(a); 13, 1997, s. 4(a)
Section 78(3):	amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 22, 1993, s. 23(b); inserted by 13, 1997, s. 4(b)
Section 78(4) and (5):	amended by 23, 1990, s. 3(1) (Sched. 5)

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Section 79(1):	substituted by 23, 1990, s. 3(1) (Sched. 5)
Section 79(2):	amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 22, 1993, s. 24
Section 79(3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 79(4):	amended by 23, 1990, s. 3(1) (Sched. 5); 13, 1997, s. 5
Section 79(5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 79(6):	inserted by 10, 1996, s. 24
Section 80(1) and (2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 80(4):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 25; amended by 13, 1997, s. 6
Section 80(4a) and (4b):	inserted by 10, 1996, s. 25
Section 80(5):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 81:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 82(2):	amended by 10, 1996, s. 31 (Sched. 1)
Section 82(4):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 82(6):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, ss. 26(a), (b), 32 (Sched. 2)
Section 82(6a) and (6b):	inserted by 10, 1996, s. 26(c)
Section 82(7):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
Section 83:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 84(1):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 27(a)-(c)
Section 84(3):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, ss. 27(d), (e), 32 (Sched. 2)
Section 84(6):	amended by 23, 1990, s. 3(1) (Sched. 5); repealed by 10, 1996, s. 27(f)
Section 84A:	inserted by 22, 1993, s. 25
Section 84A(2):	substituted by 10, 1996, s. 28(a)
Section 84A(3):	amended by 10, 1996, s. 28(b)
Section 84B:	inserted by 22, 1993, s. 25
Section 85(1) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 86(1) and (2):	substituted by 84, 1987, s. 6(a)
Section 86(3):	amended by 84, 1987, s. 6(b)
Section 89(2), (5) and (6):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 90(2):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 90(3) and (4):	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 31 (Sched. 1)
	Division 7 of Part 6 comprising s. 90A and heading inserted by 22, 1993, s. 26
Section 90A(1) and (3):	amended by 10, 1996, s. 31 (Sched. 1)
Sections 91 - 93:	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 94:	amended by 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)
Section 95(1):	amended by 23, 1990, s. 3(1) (Sched. 5); substituted by 10, 1996, s. 29
Section 95(1a):	inserted by 90, 1987, s. 3
Section 95(2) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Sections 95A - 95C:	inserted by 10, 1996, s. 30
Section 96(1):	substituted by 23, 1990, s. 3(1) (Sched. 5)
Section 96(2) and (3):	amended by 23, 1990, s. 3(1) (Sched. 5)
Section 96(4):	inserted by 50, 1986, s. 5
Section 97(2):	amended by 90, 1987, s. 4; 23, 1990, s. 3(1) (Sched. 5); 10, 1996, s. 32 (Sched. 2)