



ANNO DECIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1969

No. 40 of 1969

An Act to amend the Legal Practitioners Act, 1936-1964; to repeal the Poor Persons Legal Assistance Act, 1936; and for other purposes.

[Assented to 13th November, 1969.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short titles.

1. (1) This Act may be cited as the "Legal Practitioners Act Amendment Act, 1969".

(2) The Legal Practitioners Act, 1936-1964, as amended by this Act, may be cited as the "Legal Practitioners Act, 1936-1969".

(3) The Legal Practitioners Act, 1936-1964, is hereinafter referred to as "the principal Act".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Repeal of
Act.

3. The Poor Persons Legal Assistance Act, 1936, is repealed.

Amendment of
principal Act,
s. 3—
Arrangement.

4. Section 3 of the principal Act is amended by striking out therefrom the passage "Trust Accounts: sections 22-24" and inserting in lieu thereof the passage "Trust Accounts, the Combined Trust Account, Legal Assistance, and the Legal Practitioners Guarantee Fund: sections 22-24zd."

5. Section 6 of the principal Act is amended—

Amendment of
principal Act,
s. 6—
Interpretation.

(a) by inserting before the definition of "Chairman" the following definitions :—

"assisted person" means a person for whom legal assistance is, or has been, provided or arranged by the Society pursuant to Part IV of this Act or otherwise :

"bank" means a bank that has, pursuant to section 5 of the Trustee Act, 1936-1967, been proclaimed by the Governor as a bank in which deposits may be made by trustees, and includes the Savings Bank of South Australia:

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

(b) by inserting before the definition of "legal practitioner" the following definition :—

"legal assistance" means professional legal work of any kind, whether of a litigious nature or not : ;

(c) by inserting after the definition of "Master" the following definition :—

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

and

(d) by inserting after the definition of "Supreme Court" the following definitions :—

"the assistance fund" means the fund established under section 24e of this Act :

"the combined trust account" means the banking account or accounts established by the Society under section 24a of this Act and entitled, or collectively entitled, the Legal Practitioners Combined Trust Account :

"the guarantee fund" means the fund established under section 24p of this Act :

"the statutory interest account" means the banking account established by the Society under section 24c of this Act :

"trust account" means a banking account which is maintained by a legal practitioner separately from any other banking account,

and in which trust moneys are, or are to be held pursuant to Part IV of this Act :

“trust moneys” means moneys received by a legal practitioner to which the legal practitioner is not wholly entitled both at law and in equity.

Repeal of heading and s. 22 of principal Act and enactment of new heading and new ss. 22-22a of principal Act—

6. The heading “TRUST ACCOUNTS” immediately preceding section 22 of the principal Act is struck out, section 22 of the principal Act is repealed and the following new headings and sections are enacted and inserted in their place :—

TRUST ACCOUNTS, THE COMBINED TRUST ACCOUNT, LEGAL ASSISTANCE, AND THE LEGAL PRACTITIONERS GUARANTEE FUND.

DIVISION I.

Trust Accounts.

Disposition of trust moneys.

22. (1) A legal practitioner who receives moneys for or on behalf of any person shall, subject to any lien or lawful claim of the legal practitioner upon those moneys, hold them in trust for that person and, subject to the terms of the trust, pay or disburse those moneys as that person directs.

(2) The legal practitioner shall, as soon as practicable after his receipt of any trust moneys, deposit those moneys in a trust account and shall not withdraw or permit them to be withdrawn except as authorized by this Part, or for the purpose of satisfying any lien or lawful claim of the legal practitioner upon those moneys.

(3) The trust moneys shall not be appropriated, attached or taken in execution to satisfy any debt of, or claim against, the legal practitioner (other than a claim of the person for or on whose behalf the moneys are held in trust).

(4) This section does not prevent or render unlawful the withdrawal from the trust account of trust moneys in accordance with the order of a court of competent jurisdiction, or of trust moneys that are subject to an express trust for the purpose of compliance with the terms of the trust.

(5) A legal practitioner shall keep detailed accounts of all trust moneys received by him, and of any disbursement or other dealing with those moneys, in such a manner

as accurately to disclose the state of the trust account and the disposition of and any dealing with the moneys deposited therein and to enable the accounts to be conveniently and properly audited.

(6) A person who contravenes this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(7) It shall be a defence to a charge under subsection (6) of this section that there was proper and reasonable excuse for the contravention.

22a. A bank shall be deemed not to be affected with notice of any specific trust to which moneys deposited in a trust account are subject, and shall not be bound to satisfy itself of the due application of those moneys but this section does not relieve a bank of any liability for negligence or arising otherwise at common law or by statute.

Protection to
banks.

7. Section 24 of the principal Act is amended by striking out therefrom the word "Part" wherever it occurs and inserting in lieu thereof, in each case, the word "Division".

Amendment of
principal Act,
s. 24—
Summary
jurisdiction of
Supreme Cour t.

8. The following headings and new sections are enacted and inserted in the principal Act after section 24 thereof :—

Enactment of
Divisions II
to V of Part IV
of principal
Act—

DIVISION II.

The Combined Trust Account.

24a. (1) A legal practitioner shall, out of moneys paid into his trust account pursuant to this Act (whether so paid before or after the commencement of the Legal Practitioners Act Amendment Act, 1969)—

Duty to
deposit trust
moneys with
Society.

(a) on or before the prescribed day, deposit with the Society a sum that is not less than the prescribed proportion of the lowest balance of the trust account during the period of twelve months last preceding the prescribed day;

and

(b) not later than the last day of each successive period of twelve months after the prescribed day, make such further deposits with the

Society as may be necessary in order that the amount received and held on deposit on his behalf by the Society is not less than the prescribed proportion of the lowest aggregate of the amount of the balance of the trust account and the amount held on deposit on his behalf by the Society during that period.

(2) The Society shall pay the moneys deposited with it pursuant to subsection (1) of this section into a banking account or banking accounts entitled, or collectively entitled, the "Legal Practitioners Combined Trust Account".

(3) Where a legal practitioner maintains two or more trust accounts, those accounts shall, for the purposes of this section, be deemed 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 shall not be taken into account for the purposes of this section.

(4) If during the whole of the period of twelve months ending upon the thirtieth day of June in any year the balance of the trust account of a legal practitioner and the amount (if any) deposited by him, and then remaining on deposit, with the Society, amount in aggregate to less than two thousand dollars, the legal practitioner shall, during the succeeding period of twelve months, be exempt from the obligations of this section.

(5) If a trust account is maintained by a firm of legal practitioners, the trust account shall, for the purposes of this section, be deemed to be the trust account of each member of the firm, and the members of the firm shall each be liable to perform the obligations imposed by this section but the discharge by one member of the firm of his obligations under this section in relation to the trust account shall 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 upon the legal practitioner, require him to attend before it and to produce evidence of the trust moneys received by him, the amount from time to time standing to the credit of his trust account, and such other relevant matters as may be specified in the notice.

(7) The moneys deposited with the Society shall be repaid by the Society upon the demand of the legal practitioner by whom they were paid but a legal practitioner shall not demand the repayment of the moneys so deposited except where he is required to pay or disburse the moneys in accordance with section 22 of this Act.

(8) Where moneys are repaid to a legal practitioner by the Society, the legal practitioner shall pay them forthwith into his trust account.

(9) In this section—

“the prescribed day”, in relation to a legal practitioner whose trust account was established before the commencement of the Legal Practitioners Act Amendment Act, 1969, means the first day of July, 1970, and in relation to a legal practitioner whose trust account was not established before the commencement of that Act, means the first day of July next ensuing after the establishment of that trust account :

“the prescribed proportion” means a proportion of one-half or such lesser proportion as may be prescribed.

24b. The Society shall invest moneys deposited with it by a legal practitioner pursuant to this Part— Investment
by Society.

(a) with such bank as may, from time to time, be specified by the legal practitioner, being a bank that will pay interest upon moneys invested in accordance with this section at a rate not less than the maximum rate, fixed by the Reserve Bank of Australia, appropriate to the term for which the Society proposes to invest the moneys;

or

(b) if the legal practitioner fails to specify such a bank at the time of deposit, or within such period as the Society may allow, with a bank decided upon by the Society, until the legal practitioner does specify such a bank.

24c. (1) The Society shall establish and maintain a banking account entitled the “Statutory Interest Account”, which shall be operated in a manner determined by the Society. The statutory
interest
account.

(2) The Society shall pay into the statutory interest account all income and accretions realized from the investment of moneys pursuant to this Division.

(3) The Society may from time to time invest any moneys contained in the statutory interest account in any manner in which trustees are authorized to invest trust funds and shall 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 the payment of the costs, charges and expenses incurred by the Society in administering this Part, the payment of which from the statutory interest account is specifically authorized under this Part, or for the payment of which no specific provision is made under this Part.

(5) After making such provision for the payment of the costs, charges and expenses referred to in subsection (4) of this section as the Society thinks fit, the Society shall pay the balance of the moneys comprised in the statutory interest account (excepting moneys advanced upon loan to the statutory interest account), as to one-half, to the assistance fund, and subject to subsection (6) of this section, as to one-half, 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 moneys have been invested) exceeds an amount calculated by multiplying the sum of two thousand five hundred dollars by the number of legal practitioners who held practising certificates on the last preceding thirtieth day of June, the Society shall hold the excess in the statutory interest account, to be paid or applied by the Society to the assistance fund, or for any purpose approved by the Attorney-General and the Society.

Immunity from liability.

24d. (1) No action at law or in equity shall lie against the Society or a legal practitioner for any action done in compliance with this Part.

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

DIVISION III.

Legal Assistance.

Establishment of assistance fund.

24e. (1) The Society shall establish and maintain a fund entitled the "Legal Assistance Fund".

(2) The assistance fund shall be held in trust by the Society for the purposes of this Division.

(3) The moneys constituting the assistance fund shall be paid into a separate banking account entitled the "Assistance Fund Account" which shall be operated in a manner determined by the Society.

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

(5) The assistance fund shall consist of—

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

(b) all moneys paid to the Society for the provision of legal assistance by the Government of the State or the Commonwealth ;

(c) all moneys paid to, or recovered by, the Society pursuant to any provision of this Division ;

(d) any moneys that the Society thinks fit to include in the assistance fund ;

and

(e) the income and accretions arising from the investment of any of the moneys constituting the assistance fund.

24f. (1) The Society may delegate all or any of its powers, authorities and discretions in relation to the management of the assistance fund (except this power of delegation) to a committee consisting of not less than three, nor more than five, members of the Society, a majority of whom shall be members of the Council.

Delegation by
Society.

(2) The Society may delegate all or any of its powers, authorities or discretions in relation to the provision of legal assistance (except this power of delegation) to such committees, consisting of members of the Society, as it thinks fit.

(3) A decision of a committee must be concurred in by a majority of the total number of the members of the committee.

(4) A committee shall, in the exercise of any power, authority or discretion delegated to it by the Society, observe a procedure determined by the Society, and be subject to the direction of the Society.

(5) The members of a committee shall be appointed and hold office subject to such terms and conditions as may be determined by the Society.

(6) The Society may, in its absolute discretion, remove a member of a committee from office, and may appoint a suitable person to a vacancy on a committee howsoever arising.

Employment
of legal
practitioners.

24g. (1) The Society may provide legal assistance by legal practitioners engaged and employed by it at a salary whether with or without other duties.

(2) Where a legal practitioner is so employed by the Society, the legal assistance provided by him shall be confined to advice upon legal matters.

(3) A person who receives legal assistance from a legal practitioner employed by the Society under this section shall be liable to pay to the Society such costs as may be determined by the Society, and the Society may recover those costs, as a debt due to it, in any court of competent jurisdiction.

(4) The Society shall not provide legal assistance pursuant to this section unless it is satisfied that the assisted person is unable to afford, or without undue hardship to afford, to obtain the legal assistance otherwise than from the Society.

(5) The salary of a legal practitioner employed by the Society pursuant to this section may be paid, wholly or in part, from the assistance fund.

Panels of
legal
practitioners.

24h. (1) The Society may prepare and maintain panels of the legal practitioners who have notified the Society of their willingness to provide legal assistance in accordance with this Division.

(2) The panels may be arranged according to the preferences expressed by the legal practitioners for the several branches of the law, the various types of practice, and the areas of the State in which they practise.

(3) The Society may, in such manner as it thinks fit, where it has decided to arrange legal assistance for any person under this Division, select a legal practitioner from the panels and assign the legal practitioner to provide legal assistance for that person.

24i. (1) A person who desires to obtain legal assistance under this Division shall make application therefor in a manner determined by the Society.

Provision
of legal
assistance.

(2) Subject to subsection (3) of this section, the Society may, in its absolute discretion, arrange, or decline to arrange, legal assistance, or terminate such an arrangement previously made.

(3) The Society shall not arrange legal assistance for an applicant for legal assistance unless, in the opinion of the Society—

(a) the applicant is unable to pay in full for the legal assistance, or such payment would place an excessive financial burden upon the applicant;

and

(b) it is reasonable in all the circumstances of the case to make such an arrangement.

(4) An arrangement for the provision of legal assistance may be made upon terms that the assisted person shall make such payments to the legal practitioner to whom he is assigned, on account of costs and disbursements, as may be determined by the Society.

(5) A document purporting to be signed by the secretary or other authorized officer of the Society shall be admissible in any legal proceedings as *prima facie* evidence of an amount payable to a legal practitioner by an assisted person under the terms of an arrangement for the provision of legal assistance and the legal practitioner may, in respect of legal assistance provided by him, recover that amount, or so much thereof as is unsatisfied, as a debt due to him in any court of competent jurisdiction.

(6) The Society shall determine the amount of the costs that would ordinarily have been recoverable by a legal practitioner in respect of legal assistance provided by him if the person for whom the legal assistance was provided had not been an assisted person.

(7) The Society shall, at such times or periodic intervals as it thinks fit (being not less than twice in any year), pay to a legal practitioner who has provided legal assistance for any assisted person—

(a) the disbursements and out-of-pocket expenses (so far as those expenses are unsatisfied by payments made by or on behalf of the assisted person directly to the legal practitioner) approved by the Society ;

and

(b) such proportion of the remainder of the costs determined by the Society under subsection (6) of this section as the Society thinks fit.

(8) The Society may determine that legal practitioners assigned to provide legal assistance shall be so assigned upon condition that they shall pay all moneys recovered from assisted persons, in excess of disbursements and out-of-pocket expenses, to the Society for the credit of the assistance fund, and thereafter, until the Society otherwise determines, all such assignments shall be made upon that condition.

(9) In this section the expression "disbursements and out-of-pocket expenses" does not include payments to any other legal practitioner as counsel fees, or for work undertaken as agent for the legal practitioner who was assigned to provide legal assistance for the assisted person.

Orders for costs.

24j. (1) A court or tribunal, in making an order for costs, or security for costs in favour of, or against, an assisted person, shall not take into account the fact that that person is an assisted person and is thereby relieved wholly or in part from liability to pay the costs awarded.

(2) A legal practitioner who has provided legal assistance for an assisted person shall be subrogated to the right of the assisted person to costs in respect of that legal assistance and any such costs received or recovered by the legal practitioner shall be held by him in trust, to be paid and applied at the direction of the Society, to himself, the assisted person or the Society.

Disclosure of information.

24k. (1) A legal practitioner shall disclose to the Society any fact or information relating to an assisted person that the Society may require, and may disclose any such information that the legal practitioner considers relevant to the provision of legal assistance for that person, and the assisted person shall be deemed to have waived any right or privilege that might prevent such disclosure.

(2) Except as provided in subsection (1) of this section, the relation of legal practitioner and client, and the privileges arising therefrom, are unaffected by the fact that the client is an assisted person.

24l. (1) No officer or employee of the Society shall, Preservation of confidence.
without the consent of the Society—

(a) produce in any court any document received by the Society, or any officer or employee of the Society, in relation to an application for legal assistance whether made before or after the commencement of the Legal Practitioners Act Amendment Act, 1969 ;

or

(b) communicate or permit to be communicated to any person, or give in evidence in any court any information received by the Society, or any officer or employee of the Society, in relation to an application for legal assistance whether made before or after the commencement of the Legal Practitioners Act Amendment Act, 1969.

(2) No court shall have power to compel any such officer or employee to produce any such document or to communicate or give in evidence any such information, unless the Society has consented thereto.

24m. (1) A person who applies to the Society for legal Offence.
assistance and with intent to deceive or mislead the Society, withholds any relevant information that he is required by the Society to furnish, or makes any statement or representation that is false or misleading in any material particular, shall be guilty of an offence.

(2) If the Society has made any payment for the provision of legal assistance for a person who has been convicted of an offence against subsection (1) of this section, the Society may recover the amount of that payment, as a debt due to the Society, in any court of competent jurisdiction.

24n. (1) The Attorney-General may, by a special or Remission of fees.
general direction, reduce, remit or postpone, or provide for the conditional or unconditional reduction, remission or postponement of any fees that would, if no such direction were given, be payable to the Crown in connection with any act, transaction or matter arising in the course of legal professional work carried out for an assisted person.

(2) The Attorney-General may by a special or general direction require any officer in the employment of the State to supply, free of cost, or for such fees as the Attorney-General fixes, to the Society, or any legal practitioner acting for an assisted person, a certified or other copy of any document in the possession, custody or control of that officer, if that copy is required in connection with any legal professional work carried out for an assisted person.

(3) In this section "document" includes any transcript or notes of evidence or arguments in any court.

(4) Any general or special direction given under this section shall prevail over any other enactment or regulation inconsistent therewith.

(5) Any general or special direction in force immediately before the commencement of the Legal Practitioners Act Amendment Act, 1969, under the Poor Persons Legal Assistance Act, 1936, shall continue in force and shall be deemed to be a general or special direction given pursuant to the provisions of this Act.

Exemption
from stamp
duty.

24o. No stamp duty shall be chargeable on any statutory declaration made by any person in connection with an application to the Society for legal assistance.

DIVISION IV.

The Legal Practitioners Guarantee Fund.

The guarantee
fund.

24p. (1) The Society shall establish and maintain a fund entitled the "Legal Practitioners Guarantee Fund".

(2) The guarantee fund shall be held in trust by the Society for the purposes of this Division.

(3) The moneys constituting the guarantee fund shall be paid into a separate banking account entitled the "Guarantee Fund Account" which shall be operated in a manner determined by the Society.

(4) The Society may from time to time invest any of the moneys constituting, or forming part of, the guarantee fund in any manner in which trustees are authorized to invest trust funds, and may advance, upon such terms and conditions as the Society thinks fit, moneys from the guarantee fund to the statutory interest account or the assistance fund.

- (5) The guarantee fund shall consist of—
- (a) the moneys paid into it from the statutory interest account ;
 - (b) all moneys recovered by the Society in the exercise of a right or power conferred on the Society under this Division ;
 - (c) any moneys that the Society thinks fit to include in the guarantee fund ;
 - (d) the income and accretions arising from the investment of the moneys constituting the guarantee fund ;
- and
- (e) any moneys received by the Society in pursuance of a contract of insurance made pursuant to section 24r of this Act.

24q. (1) The Society may delegate all or any of its powers, authorities and discretions under this Division (except this power of delegation) to a committee consisting of not less than three, nor more than five, members of the Society, a majority of whom shall be members of the Council.

Delegation of authority.

(2) A decision of a committee must be concurred in by at least three members of the committee present at a meeting of the committee.

(3) A committee shall, in the exercise of any power, authority or discretion delegated to it by the Society, observe a procedure determined by the Society, and be subject to the direction of the Society.

(4) The members of the committee shall be appointed and hold office subject to such terms and conditions as may be determined by the Society.

(5) The Society may, in its absolute discretion, remove a member of the committee from office and may appoint a suitable person to a vacancy on the committee howsoever arising.

24r. (1) The Society may, on such terms as it thinks fit, enter into any contract with any person, or body of persons, whether corporate or unincorporate, carrying on the business of insurance in Australia, whereby the Society will be insured to the extent, and in the manner, provided in the contract, against liability to satisfy claims under this Division.

Society may insure against claims.

(2) Any such contract may be entered into in relation to legal practitioners generally, or in relation to any legal practitioner or class of legal practitioners.

Application of
guarantee
fund.

24s. (1) In this Division "fiduciary or professional default" means—

(a) any defalcation, misappropriation or misapplication of trust moneys in the charge of a legal practitioner or firm of legal practitioners ;

or

(b) any wrongful or negligent act or omission in the course of the practice of a legal practitioner,

whether committed by, or attributable to, the legal practitioner or firm of legal practitioners, his or their clerk or servant, or any other person.

(2) Subject to the provisions of this Division, the guarantee fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from a fiduciary or professional default.

(3) Where all legal or equitable claims in respect of a fiduciary or professional default committed by a partner, clerk or servant of a legal practitioner have been fully satisfied and—

(a) the legal practitioner, being under a legal or equitable obligation to do so, has made payment to any person in compensation for pecuniary loss suffered by him 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 Division from the legal practitioner in respect of that payment.

(4) The guarantee fund shall not be applied in respect of any fiduciary or professional default occurring before the commencement of the Legal Practitioners Act Amendment Act, 1969.

24t. (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 the fiduciary or professional default of, or in relation to, any legal practitioner must be made. Limitation upon claims.

(2) A claim for compensation from the guarantee fund must be in writing and lodged with the Society on or before the day fixed by a notice under subsection (1) of this section.

(3) A claim that is not made within the time prescribed by subsection (2) of this section shall be barred unless the Society otherwise determines.

(4) No action shall lie against the Society, any officer or employee of the Society, or a publisher, in respect of the contents of a notice *bona fide* published under this section.

24u. (1) Subject to this Division, the Society may allow and settle out of the guarantee fund any proper claim against the Society under this Division. Establishment of claims.

(2) If any person suffers pecuniary loss in consequence of any fiduciary or professional default, and the Society disallows his claim in whole or in part, he may take action in the Supreme Court against the Society by originating summons (in which summons the defendant shall be cited as the "Legal Practitioners Guarantee Fund" and not as the Society) to establish the validity of his claim.

(3) If the claimant satisfies the Supreme Court that he has a valid unsatisfied claim against a legal practitioner in respect of any fiduciary or professional default, and he has taken all reasonable steps to obtain satisfaction of that claim, the Supreme Court may declare the validity of the claim, and order the Society to deal with it pursuant to this Division.

(4) No proceedings shall be brought under this section, without the consent of the Society, after the expiration of three months from the day on which a notice is served by the Society, personally or by post, upon the claimant notifying him of the disallowance or partial disallowance of his claim, and informing him of the effect of this subsection or, in the case of a claimant whose whereabouts is unknown to the Society, or who has died and has no personal representative known to the Society, after the expiration of three months from the day on which such a notice is published in the *Gazette*.

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

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

(7) Any three Judges of the Supreme Court may make Rules of Court as to the procedure in any proceedings under this section.

Power to
require
production of
evidence.

24v. (1) The Society may, in considering any claim made pursuant to this Division, by notice in writing served personally or by post upon any person, require that person, within the time specified in the notice, to deliver up any document in his possession or power relevant to the determination of the claim.

(2) A person shall not fail duly to comply with a notice served upon him pursuant to subsection (1) of this section.

Penalty : Two hundred dollars.

Amount and
apportionment
of claims.

24w. (1) The amount of a claim made pursuant to this Division shall not exceed the actual pecuniary loss suffered by the claimant in consequence of the fiduciary or professional default less any amount that the claimant has received, or may reasonably be expected to receive, otherwise than from the assistance fund, in reduction of that loss.

(2) If a valid claim made pursuant to this Division has not been satisfied as provided by this Division at the expiration of twelve months from the day on which it was lodged with the Society it shall then, to the extent to which it has not been so satisfied, be increased by interest at the rate of five per centum per annum calculated from the expiration of that period.

(3) Subject to this section, the amount that may be applied by the Society towards the satisfaction of all claims made in respect of the fiduciary or professional defaults of, or relating to, a legal practitioner committed prior to the day fixed by notice under section 24t of this Act, shall not exceed five per centum of the balance of the guarantee fund, calculated to the nearest amount of one thousand dollars, as disclosed in the accounts of the guarantee fund last audited before the proposed application of moneys towards satisfaction of the claims.

(4) Where the amount available to satisfy claims made under this Division does not permit the full satisfaction of the claims, the Society shall, subject to subsection (5) of this section, apportion that amount between the various claimants in such manner as it thinks just.

(5) The Society, in apportioning payments pursuant to this Division—

(a) shall take into account the relative degrees of hardship suffered or likely to be suffered by the several claimants from the non-payment of the full amount of the claim for compensation ;

and

(b) may satisfy claims to the extent of five hundred dollars before making any payment in excess of that sum to a claimant.

(6) Where the Society makes a payment pursuant to this section for the purpose of discharging a claim under this section, the claim in respect of which the payment is made shall be discharged notwithstanding that it may not have been satisfied in full by the payment.

(7) The Society may, with the approval of the Attorney-General, make further subsequent payments to any person whose claim is not satisfied in full, or may make a payment to a person whose claim is barred, but any payment so made does not revive or re-instate a claim.

24x. Where the Society has made any payment in compensation for loss suffered by any person in consequence of a fiduciary or professional default, the Society may recover, in any court of competent jurisdiction, the amount of that payment, as a debt due to it, from the person who would be liable at law, or in equity, for that fiduciary or professional default.

Rights of
Society.

DIVISION V.

*Miscellaneous.***Accounts and
audit.**

24y. (1) The Society shall keep proper accounts of all moneys received, disbursed, invested and otherwise dealt with under this Part.

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

**Exemption
from duty.**

24z. No stamp duty shall be chargeable upon any receipt, cheque or other instrument—

(a) for or relating to the transfer of moneys between any of the following :—

- (i) the combined trust account ;
- (ii) the statutory interest account ;
- (iii) the assistance fund ;
- (iv) the guarantee fund ;

or

(b) for or relating to any transfer of moneys between the trust account of a legal practitioner or firm of legal practitioners and the combined trust account.

**Officers and
servants.**

24za. (1) The Society may engage and employ such officers and servants as it thinks necessary for the purposes of this Part (whether with or without other duties), and may pay the salaries, wages or other allowances or expenses of those persons, wholly or in part, and in such proportions as it thinks just, from the statutory interest account, the assistance fund and the guarantee fund or from any of those sources.

(2) The members of the Council, and of any committee to which the Society has delegated any power, authority or discretion under this Part shall be entitled to be paid, as the Society thinks just, out of the statutory interest account, the assistance fund, or the guarantee fund, such allowances and expenses as may be determined by the Society.

Offence.

24zb. (1) A person who contravenes or fails to comply with any provision of this Part, or any requirement of the Society lawfully made in pursuance of a provision of this

Part, shall be guilty of an offence and, where no other penalty is provided, liable to a penalty not exceeding two hundred dollars.

(2) Proceedings for offences under this Part shall be disposed of summarily.

24zc. The Society may—

Society may
make rules.

- (a) regulate the administration of the combined trust account and the statutory interest account;
- (b) regulate the manner in which the statutory duties imposed upon legal practitioners under this Part are to be performed ;
- (c) regulate the administration of the assistance fund and the procedures to be followed by legal practitioners assigned to provide legal assistance for assisted persons ;
- (d) regulate the procedures of any committee to which the Society has delegated any power, authority or discretion pursuant to this Part ;
- (e) regulate the administration of the guarantee fund ;
and
- (f) make provision for the Society to perform its statutory duties under this Part more effectively.

24zd. The Governor may, on the recommendation of the Society, make such regulations as he deems necessary or expedient for the purposes of this Part, and, without limiting the generality of the foregoing, those regulations may—

Regulations.

- (a) prescribe any proportion that may be required for the purposes of this Part ;
- (b) prescribe proceedings in respect of which legal assistance shall or shall not be provided ;
- (c) prescribe the persons who are, and the extent to which they are, eligible to receive legal assistance ;
- (d) provide that any matter or thing must be done to the satisfaction of any specified person or body ;

or

- (e) provide for penalties (recoverable summarily) not exceeding one hundred dollars for breach of non-compliance with, a regulation.

Amendment of principal Act, s. 28—
Officers of the Society.

9. Section 28 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “a vice-president” and inserting in lieu thereof the passage “one or more vice-presidents”;
- and
- (b) by striking out subsection (2).

Amendment of principal Act, s. 32—
Council of the Society.

10. Section 32 of the principal Act is amended by inserting after the words “vice-president” the passage “or vice-presidents”.

Amendment of principal Act, s. 35—
Management of Society’s affairs.

11. Section 35 of the principal Act is amended by striking out from subsection (2) the passage “Notwithstanding anything in this Part, the regulations of the Society may” and inserting in lieu thereof the passage “Except where express provision is made in this Act for the delegation of the powers of the Society, and the manner of that delegation, the rules of the Society may, notwithstanding anything in this Part”.

Amendment of principal Act, s. 37—
Rules of Society.

12. Section 37 of the principal Act is amended—

- (a) by inserting after the words “vice-president” in paragraph (c) of subsection (1) the passage “or vice-presidents”;
- and
- (b) by striking out from paragraph (d) of subsection (1) the passage “president, vice-president, and other”.

Amendment of principal Act, s. 39—
Institution of proceedings.

13. Section 39 of the principal Act is amended by striking out from subsection (1) the passage “or vice-president” and inserting in lieu thereof the passage “or a vice-president”.

Amendment of principal Act, s. 59—
Proof of regulations and proceedings.

14. Section 59 of the principal Act is amended by striking out the passage “or vice-president” and inserting in lieu thereof the passage “or a vice-president”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. W. HARRISON, Governor.