

new rights and obligations under this Act, until the end of the current year in respect of that orchard or part, notwithstanding any new registration or amendment of a registration under section three.

(2) Where the parties to an assignment of an orchard give a notice of assignment in the prescribed form to the General Manager, he may notify the parties that he will as from the date of the notice treat the assignee as the fruit grower occupying the orchard in place of the assignor, and, if he does so, the assignee has the rights and obligations of the assignor under this Act in respect of that orchard on that date to the exclusion and exoneration of the assignor.

Saving.

Ibid., s. 24G.

14 Except as expressly provided, this Act does not affect the operation of any provisions of the *Tasmanian Government Insurance Act 1919*.

Regulations.

15 The Governor may make regulations for the purposes of this Act.

LEGAL PRACTITIONERS.

No. 92 of 1957.

AN ACT to amend the *Legal Practitioners Act 1896*.
[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled as follows:—

Short title and citation.

1—(1) This Act may be cited as the *Legal Practitioners Act 1957*.

(2) The *Legal Practitioners Act 1896*, as subsequently amended, is in this Act referred to as the Principal Act.

2 After Part IV of the Principal Act the following Part is inserted:—

“PART IVA.

SOLICITORS’ GUARANTEE FUND.

“47A In this Part, unless the contrary intention appears—

‘Commencing date’ means the first day of January in any year declared by proclamation to be the commencing date for the purposes of this Part:

Interpretation.

1931, No. 46
(N.Z.), ss.
71, 72.

‘Committee of management’ means the committee of management to which the powers of the Council in relation to the fund may be delegated pursuant to this Act or, if there is no committee of management, the council:

‘Council’ means the United Law Council of Tasmania:

‘Fund’ means the Solicitors’ Guarantee Fund established under this Part:

‘Practising solicitor’ means a solicitor practising as an attorney, solicitor, or proctor either solely on his own account or in partnership with any other practitioner or upon terms of sharing with any other practitioner the remuneration for any business:

‘Solicitor’ means a practitioner holding an annual certificate issued and in force under section twenty-six:

‘Theft’ means stealing contrary to the *Criminal Code* and includes any fraudulent dealing or other act that is a crime in relation to money or other property.

“47B—(1) The Council shall establish a fund to be known as the ‘Solicitors’ Guarantee Fund’.

Establishment of Solicitors’ Guarantee Fund.

(2) The fund shall be the property of the Council and shall be held in trust for the purposes of this Part.

Ibid., s. 73.

“47C All moneys belonging to the fund shall, pending the investment or application thereof in accordance with this Part, be paid into a bank for the time being carrying on business in this State to the credit of a separate account to be called the ‘Solicitors’ Guarantee Fund Account’.

Fund to be kept in separate bank account.

Ibid., s. 74.

“47D The fund shall consist of—

Moneys payable into fund.

I All sums paid to or on account of the fund by solicitors either as annual contributions or as levies, in accordance with this Part:

Ibid., s. 75.

II The interest from time to time accruing from the investment of the fund:

III All moneys recovered by or on behalf of the Council in the exercise of any right of action conferred by this Part: and

IV. Any other moneys that may be lawfully paid into the fund.

“47E There shall from time to time be paid out of the fund, as required—

Expenditure from fund.

I The amount of all claims, including costs, allowed or established against the fund:

Ibid., s. 76.

II All legal expenses incurred in defending claims made against the fund, or otherwise incurred in relation to the fund:

- III All premiums payable in respect of contracts of insurance entered into by the Council pursuant to section forty-seven S:
- IV All refunds made to practitioners or to their personal representatives pursuant to section forty-seven U:
- V The expenses involved in the administration of the fund, including allowances to members of the Council or the committee of management in respect of their services and their reasonable travelling expenses incurred in connection with the management of the fund: and
- VI Any other moneys payable out of the fund in accordance with this Part or with rules made under this Part.

Audit of accounts.
Ibid., s. 77.

“47F—(1) The accounts of the fund shall be audited annually by an accountant appointed for the purpose by the Council.

(2) A person acting as auditor under this section has, in respect of the fund, the same powers and duties and is subject to the same responsibilities and obligations, with such modifications as may be necessary, as he would have in respect of the audit of solicitors' trust accounts, if he were authorized to audit such accounts under the rules for the time being in force under section twelve of the *Tasmanian Law Societies Act* 1887.

Council to administer fund, but may delegate its powers in relation to the fund to a committee of management.
Ibid., ss. 73, 79.

“47G—(1) Subject to the provisions of subsection (2) of this section, the fund shall be administered by the Council.

(2) The Council may by resolution delegate its powers in relation to the fund or any of such powers to a committee of management, consisting of not less than three nor more than five persons being members of the Southern Law Society or the Northern Law Society.

Solicitors to pay prescribed fees into fund.
No. 5182
(Vict.), s. 11.
Cf. 1931 No. 46 (N.Z.), s. 80.

“47H—(1) Subject to section forty-seven J, every solicitor on making application for an annual certificate under section twenty-six in respect of the year commencing on the commencing date or any subsequent year shall, in addition to all other fees then payable by him, pay as a contribution to the fund—

I In the case of a practising solicitor—

- (a) If he commenced to practise less than four years before the date on which the annual certificate will cease to be in force and has not become a partner of another practising solicitor or taken over an established practice, the sum of five pounds: and
- (b) In any other case, the sum of five pounds or such other sum not being more than ten pounds as may from time to time be prescribed as the contribution to be paid to the fund: and

II In the case of a solicitor other than a practising solicitor, the sum of five pounds, and no annual certificate shall be issued to the solicitor until he has paid the contribution.

(2) If a practitioner intends to commence to practise as a practising solicitor, he shall before commencing so to practise give notice of his intention to the secretary of the Council and shall—

I If he is a solicitor pay to the fund any sum in excess of five pounds for which he would be liable under sub-paragraph (b) of paragraph I of subsection (1) of this section if he were practising in accordance with his intention at the beginning of the calendar year in which he intends so to commence: or

II If he is not a solicitor, on making application for an annual certificate under section twenty-six become liable to pay to the fund the amount of the contribution for the calendar year in which it is to be in force, and no annual certificate shall be issued to him until he has paid the contribution.

(3) If an annual certificate will be issued under section twenty-six after the last day of June in any year the contribution to be paid by the applicant for that year shall be half the contribution payable under paragraph II of subsection (2) of this section.

(4) Contributions payable—

I Under this section, otherwise than under paragraph I of subsection (2), shall be paid in the same manner as fees paid under section twenty-six are paid: and

II Under paragraph I of subsection (2) shall be paid to the secretary of the Council,

and the persons receiving them shall forthwith pay them into the fund.

(5) No contribution is payable under this section by a solicitor—

I In the service of the Crown:

II Employed by a statutory authority having the privileges and immunities of the Crown in respect of its revenue: or

III In the public service of the Commonwealth,

who is not a practising solicitor, but such a solicitor, if he intends to practise as a practising solicitor, shall pay to the fund the sum of five pounds in addition to any sum payable under paragraph I of subsection (2) of this section.

“47J—(1) While the fund exceeds the sum of fifteen thousand pounds a solicitor who has made twenty annual contributions to the fund under section forty-seven H and in respect of whom no payment from the fund has been made or,

Provision where fund exceeds £15,000. No. 5182 (Vic.), s. 12.

if any such payment has been made, the fund has been reimbursed shall be freed and discharged from further annual contributions to the fund.

(2) If at any time the fund ceases to exceed the sum of fifteen thousand pounds the Council shall determine to what extent, if any, a solicitor who has been freed and discharged under subsection (1) of this section shall again be required to pay annual contributions.

Levy in addition to annual contributions.
Ibid., s. 13.

“47K—(1) If at any time the fund is not sufficient to satisfy the liabilities that are then ascertained of the Council in relation thereto, the Council may impose on every solicitor who first obtained an annual certificate under section twenty-six two years or more before the date for payment and who is liable to pay contributions under section forty-seven H, a levy of such amount as it thinks fit, not exceeding ten pounds, for payment into the fund.

(2) The amount of a levy under this section shall become payable on such date, and shall be paid in such manner, as is fixed by the Council, who may in any special case allow further time for payment of the levy or part thereof, in which event the levy or that part of it shall not become payable until the expiration of that time.

(3) No person may be required to pay by way of levy under this section more than ten pounds in the aggregate in any period of twelve months or more than fifty pounds during the whole period for which he holds certificates issued under section twenty-six.

(4) In fixing the amount of a levy under this section the council may differentiate between practising solicitors and other solicitors.

Investment of fund.
1931, No. 46
(N.Z.), s. 83.

“47L Any moneys in the fund that are not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorized to invest trust funds.

Application of fund.
Cf. 1936, No. 46 (N.Z.), s. 84 and No. 5122 (Vict.), s. 16 (1) and (2).

“47 M—(1) Subject to the provisions of this Part, the fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss—

I By reason of theft committed after the commencing date by a solicitor, including a practitioner who would be a practising solicitor if he had continued to obtain an annual certificate under section twenty-six, or by his clerks or servants, or by any practitioner with whom the solicitor shares remuneration for any business, or in relation to any money or other property which, whether before or after the commencement of this Part, in the course of or in connection with the solicitor's practice or any act done by him as a practitioner—

(a) Has been entrusted to or received by the solicitor or any of his clerks or servants or any such practitioner for or on behalf of any person: or

- (b) (The solicitor being in respect of the money or other property either the sole trustee or a trustee with another person) has been entrusted to or received by him or any of his clerks or servants or any such practitioner for or on behalf of the trustees of the said money or property: or

II. By reason of theft committed after the commencing date by the members or by any of the members of a firm of practising solicitors including practitioners who would be practising solicitors if they had continued to obtain annual certificates under section twenty-six, or by any of the clerks or servants of any such firm or of any of the members thereof, or by any practitioner with whom the members of any such firm or any of them share remuneration for any business, or in relation to any money or other property which, whether before or after the commencement of this Part, in the course of or in connection with the firm's practice—

- (a) Has been entrusted to or received by the members of the firm or any of them or any of their clerks or servants or any such practitioner for or on behalf of any other person: or
- (b) (The members of the firm of solicitors or any of them being in respect of the money or other property either the sole trustee or trustees or trustees with another person) has been entrusted to or received by the firm or any of its members or any of their clerks or servants or any such practitioner for or on behalf of the trustees of the said money or property,

and such persons may obtain such compensation by action against the council.

(2) The total amount that may be applied in the compensation of all persons who suffer loss—

I By reason of thefts by—

- (a) A solicitor who is not in partnership with any other practising solicitor:
- (b) Any of his clerks or servants: or
- (c) A practitioner with whom he shares the remuneration for any business: or

II By reason of theft by—

- (a) The members or any of the members of any firm of practising solicitors:
- (b) Any of their clerks or servants: or

- (c) A practitioner with whom they or any of them share the remuneration of any business,

shall not in any event exceed in respect of that solicitor or that firm of practising solicitors the appropriate sum prescribed in subsection (3) of this section or, where the council has a contract of insurance under section forty-seven S, the sum payable thereunder in respect of losses included in that total amount, whichever sum is the greater.

(3) For the purposes of subsection (2) of this section the appropriate sum is—

- I As to thefts committed in the period of five years beginning on the commencing date, the sum of two thousand five hundred pounds:
- II As to thefts committed in the year beginning on the fifth anniversary of the commencing date or partly in that year and partly before that year, the sum of three thousand pounds:
- III As to thefts committed in the year beginning on the sixth anniversary of the commencing date or partly in that year and partly before that year, the sum of three thousand five hundred pounds:
- IV As to thefts committed in the year beginning on the seventh anniversary of the commencing date or partly in that year and partly before that year, the sum of four thousand pounds:
- V As to thefts committed in the year beginning on the eighth anniversary of the commencing date or partly in that year and partly before that year, the sum of four thousand five hundred pounds: and
- VI As to thefts committed in or after the year beginning on the ninth anniversary of the commencing date or partly in or after that year and partly before that year, the sum of five thousand pounds,

but for the purposes of this subsection any amount paid from the fund, shall, to the extent to which the fund has been subsequently reimbursed therefor, otherwise than under a contract of insurance entered into under section forty-seven S, be disregarded.

(4) No person has any claim against the fund in respect of any theft committed before the commencing date, and, in respect of any theft that may be committed after the commencing date, no person has a claim against the fund unless notice of the claim is given in writing to the Council or committee of management within twelve months after the claimant has become aware of the theft.

(5) No compensation shall be paid under this section by reason of theft committed by a solicitor who is not liable to pay contributions under section forty-seven H.

“ 47 N—(1) The Council may receive and settle any claim against the fund at any time after the commission of the theft in respect of which the claim arose, but no person is entitled, without leave of the Council, to commence an action in relation to the fund unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting practitioner or any other person in respect of the loss suffered by him.

Claims against the fund.
1934, No. 46 (N.Z.), s. 85 and No. 5182 (Vic.), s. 18 (3) and (4).

(2) No person is entitled to recover from the fund by action an amount greater than the balance of the loss suffered by him after deducting from the total amount of his loss the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of his loss.

(3) No amount shall be paid or is payable out of the fund as interest on the amount of any judgment obtained, or of any claim admitted, against the fund.

(4) No right of action lies in relation to the fund in respect of any loss suffered by any person by reason of any theft that may be committed by a practitioner at any time after the claimant or his privies have received a notification in writing from the council or committee of management warning him or them against the employment or continued employment of that practitioner.

(5) No action for damages lies against the Council or any member or servant of the Council or committee of management for—

- I Any notification given in good faith and without malice for the purposes of subsection (4) of this section: or
- II Giving any notice or information in accordance with a contract of insurance entered into under section forty-seven S with regard to any theft or dishonesty or suspicion thereof committed or practised by a practitioner.

(6) In any proceedings brought to establish a claim against the fund evidence of any admission or confession by, or other evidence which would be admissible against, the practitioner or other person by whom it is alleged that the theft was committed shall be admissible to prove the commission of the theft, notwithstanding that the practitioner or other person is not the defendant in or a party to those proceedings.

(7) The Council or, where proceedings are brought to establish a claim, the court, if satisfied that the theft on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the theft has not been convicted or prosecuted therefor or that the evidence on which the Council or court (as the case may be) acts would not be sufficient to establish the guilt of that person upon a criminal trial for the theft.

Defences to claims against fund. 1931, No. 46 (N.Z.), s. 86.

Subrogation of rights of action against defaulting solicitor. *Ibid.*, s. 87.

If fund insufficient to satisfy claims such claims to be charged on future accumulations. *Ibid.*, s. 88.

Council may enter into contracts of insurance for purposes of Part. *Ibid.*, s. 89.

“47P In any action brought against the Council in relation to the fund, all defences which would have been available to the defaulting practitioner or firm of practitioners or other person by reason of whose theft the action arises are available to the Council.

“47 Q On payment out of the fund of any moneys in settlement in whole or in part of any claim under this Part the Council is subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the practitioner or the members of the firm of practitioners in relation to whom the claim arose and against the person by whom the theft was committed or, in the event of death or bankruptcy or other disability, against his or their personal representatives or other persons having authority to administer his estate or their estates.

“47 R—(1) No moneys or other property belonging to the Council other than the fund shall be available for the satisfaction of any judgment obtained against the Council in relation to the fund, or for the payment of any claim allowed by the Council; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, and subject to subsection (2) of section forty-seven M, be charged against future accumulations of the fund.

(2) The Council shall, if the fund is not sufficient to satisfy all judgments and claims payable out of it, make payments ratably out of the fund and the future accumulations thereof as they are received to all persons who have recovered judgment against it or whose claims it has allowed subject to subsection (3) of this section.

(3) Where the council make payments ratably under this section, it—

- I Is not bound to make payment to the same person more than once a year: and
- II May, except in the case of a final payment, withhold payment of any sum less than five pounds.

“47 s—(1) Notwithstanding anything to the contrary in this Part, the Council may in its discretion enter into a contract of insurance with any person carrying on fidelity insurance business in this State, whereby the Council will be indemnified to the extent and in the manner provided by the contract against liability to pay claims under this Part.

(2) A contract of insurance under this section may be entered into in relation to practising solicitors generally or in relation to, any practising solicitor or solicitors named therein.

(3) No action lies against the Council, or against any member or servant of the Council, or against any member of the committee of management, for injury alleged to have been suffered by any solicitor by reason of the publication in accordance with fact of a statement that any contract of insurance entered into under this section does or does not apply with respect to that solicitor.

“ 47 T No claimant against the fund has a right of action against a person with whom a contract of insurance is made under this Part in respect of that contract, or has a right to claim any moneys paid by the insurer in accordance with the contract of insurance; but all such moneys shall be paid into the fund and shall be supplied in or towards the settlement of relevant claims.

Application of insurance moneys. *Ibid.*, s. 90.

“ 47 U While the fund exceeds fifteen thousand pounds the Council—

Payment to practitioner on retirement in necessitous case.

I Upon the death of a solicitor shall pay to his personal representative a sum equal to the aggregate amount of his contributions to the fund: and

51 (Vict.), No. 12 (W.A.), s. 28 V.

II Upon the voluntary retirement from practice of a practising solicitor or his voluntary or statutory retirement from legal employment of a solicitor who is not a practising solicitor may in their discretion pay to him a sum not exceeding the aggregate amount of his contributions to the fund in satisfaction *pro tanto* of the amount payable under paragraph I of this section.

“ 47 v For the purposes of this Part the Council may, with the approval of the judges or any three of them, make rules for the purposes of this Part, and in particular for:—

Council may make rules for purposes of this Part. 1931, No. 46 (N.Z.), s. 93.

I Providing for the investment of so much of the fund as is not immediately required for the purpose thereof: and

II Prescribing forms of notice to be given to the Council in relation to claims against the fund, and the conditions subject to which and the extent to which the Council may settle any such claims without recourse to legal proceedings.”

3 Section forty-eight of the Principal Act is amended by adding at the end thereof the words “, Part IV A excluded”.

Judges to make rules to regulate examinations.

MAINTENANCE.

No. 93 of 1957.

AN ACT to amend the *Maintenance Act* 1921.

[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Maintenance Act* 1957.

Short title and citation.