



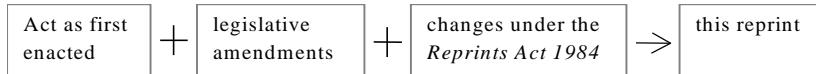
Western Australia

# **Legal Contribution Trust Act 1967**

**Reprint 3: The Act as at 20 January 2006**

## **Guide for using this reprint**

### ***What the reprint includes***



### ***Endnotes, Compilation table, and Table of provisions that have not come into operation***

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### ***Notes amongst text (italicised and within square brackets)***

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).  
Notes of this kind may also be at the foot of Schedules or headings.
2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### ***Reprint numbering and date***

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

**Reprinted under the  
*Reprints Act 1984* as  
at 20 January 2006**

Western Australia

## **Legal Contribution Trust Act 1967**

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Western Australia

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## Legal Contribution Trust Act 1967

**An Act to establish a Legal Contribution Trust, to provide for the application to public purposes of moneys resulting to that Trust and for incidental and other purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Legal Contribution Trust Act 1967*<sup>1</sup>.

### **2. Commencement**

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.
- (2) It is not necessary that the whole of this Act be proclaimed to come into operation on the one day; and the several Parts or sections may be proclaimed to come into operation on such respective days as are fixed by proclamation.

[3. *Repealed by No. 10 of 1998 s. 76.*]

### **4. Interpretation**

- (1) In this Act, unless a contrary or other intention appears —  
**“bank”** means —
  - (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
  - (b) a bank constituted by a law of a State or the Commonwealth;  
**“financial year”** means the period of 12 months ending on 30 June;  
**“Guarantee Fund”** means the Solicitors’ Guarantee Fund established by section 16;  
**“Minister”** means the Minister of the Crown for the time being holding office as Attorney General;  
**“practitioner”** has the same meaning as “legal practitioner” in the *Legal Practice Act 2003* and, for the purposes of Parts III and IV, where a practitioner practises in

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partnership with other practitioners, and no other person, the expression includes the partnership;

**“prescribed”** means prescribed by the regulations;

**“professional defalcation”** means the stealing or fraudulent conversion, by a practitioner, by any one or more of his employees or by a practitioner with whom he shares remuneration (other than as principal and agent), of money or other property at any time entrusted to him, them or any of them, for or on behalf of another person, in the course of the practitioner’s practice;

**“Society”** means the Law Society of Western Australia, a body incorporated under the *Associations Incorporation Act 1895*<sup>2</sup>;

**“the Court”** means the Supreme Court of Western Australia;

**“Trust”** means the Legal Contribution Trust established by section 5;

**“trust account”** means a bank account maintained pursuant to the provisions of the *Legal Practice Act 2003*, for the purposes of a trust account within the meaning of that Act; but the expression does not include a bank account so maintained for the exclusive benefit of a specific person or specific persons.

- (2) A word or expression used in this Act has the same meaning as it has in the *Legal Practice Act 2003* unless —

  - (a) this Act gives it another meaning; or
  - (b) the contrary intention appears.

[Section 4 amended by No. 10 of 1972 s. 2; No. 8 of 1973 s. 3; No. 136 of 1976 s. 4; No. 86 of 1990 s. 7; No. 65 of 2003 s. 75.]

#### **4A. Application of Act to multi-disciplinary partnerships and incorporated legal practices**

- (1) Subject to subsections (2) and (3) and any regulations that provide otherwise, this Act applies to incorporated legal practices and multi-disciplinary partnerships in the same way as

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it applies to practitioners, as if a reference in this Act to “practitioner” included a reference to “incorporated legal practice” and “multi-disciplinary partnership”.

- (2) For the purposes of the application of this Act to incorporated legal practices, unless the regulations provide otherwise, a reference in this Act to “professional defalcation” is taken to include the stealing or fraudulent conversion, by —
- (a) an incorporated legal practice;
  - (b) any one or more of the officers or employees of the incorporated legal practice; or
  - (c) a person with whom the incorporated legal practice shares receipts (other than as principal and agent),

of money or other property at any time entrusted to the incorporated legal practice, a person referred to in paragraph (b) or (c), or any of them, but only if the defalcation occurs in the course of the provision of legal services.

- (3) For the purposes of the application of this Act to multi-disciplinary partnerships, unless the regulations provide otherwise, a reference in this Act to “professional defalcation” is taken to include the stealing or fraudulent conversion, by —
- (a) a multi-disciplinary partnership;
  - (b) any one or more of the partners or employees of the multi-disciplinary partnership; or
  - (c) a person with whom the multi-disciplinary partnership shares receipts (other than as principal and agent),

of money or other property at any time entrusted to the multi-disciplinary partnership, a person referred to in paragraph (b) or (c), or any of them, but only if the defalcation occurs in the course of the provision of legal services.

- (4) Nothing in this section limits the application of this Act to a person who is a practitioner.

*[Section 4A inserted by No. 65 of 2003 s. 76.]*

**4B. Application of this Act to interstate practitioners and practitioners who engage in legal practice outside the State**

- (1) In this section —

**“contributing interstate practitioner”** means an interstate practitioner within the meaning of the *Legal Practice Act 2003* who —

- (i) has complied with sections 91 and 93 of that Act; and  
(ii) maintains a trust account in this State.

- (2) Subject to subsection (3) and any regulations that provide otherwise, this Act applies to contributing interstate practitioners in the same way as it applies to practitioners, as if a reference in this Act to “practitioner” included a reference to “contributing interstate practitioner”.
- (3) Subject to this Act and any regulations that provide otherwise, a claim lies against the Guarantee Fund —
- (a) in relation to a pecuniary loss occurring wholly in this State from a professional defalcation by a local practitioner (whether or not in the course of engaging in legal practice in this State);
  - (b) in relation to a pecuniary loss occurring wholly in this State from a professional defalcation by a contributing interstate practitioner (whether or not in the course of engaging in legal practice in this State);
  - (c) in relation to a pecuniary loss from a professional defalcation by a local practitioner (whether or not in the course of engaging in legal practice in this State), if —
    - (i) the loss occurred both in this State and in another State; or
    - (ii) the loss occurred in this State or another State or both, but it cannot be determined precisely where the loss occurred;

or

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- (d) in the circumstances where an agreement or arrangement under subsection (4) provides that a claim is payable.
- (4) The Legal Contribution Trust may make agreements or arrangements with a regulatory authority of another State for the payment of claims arising from professional defalcations by local practitioners or interstate practitioners who are required to contribute to a fidelity fund in this State and in that other State.
- (5) This section applies despite anything to the contrary in this Act.

*[Section 4B inserted by No. 65 of 2003 s. 76.]*

## **Part II — Legal Contribution Trust**

### **5. Trust established**

- (1) A body known as the “Legal Contribution Trust” is established.
- (2) The Trust —
  - (a) is a body corporate, with perpetual succession, and shall have a common seal;
  - (b) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued in that name; and
  - (c) is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) All courts and persons acting judicially shall take notice of the seal of the Trust affixed to a document and shall presume that it was duly affixed.

### **6. Constitution of Trust**

- (1) The Trust shall consist of 3 trustees appointed by the Governor of whom —
  - (a) one shall be a practitioner nominated in writing by the Society;
  - (b) one shall be a practitioner nominated in writing by the Board; and
  - (c) one shall be a person, not being a practitioner, nominated in writing by the Minister.
- (2) A trustee shall hold office during the pleasure of the person by whom or the body by which he was nominated and the Governor may, at the requirement of the nominator of a trustee, remove that trustee from office and appoint a duly nominated person to hold office in his stead.
- (3) A vacancy occurs in the office of trustee where a trustee dies, resigns his office by writing under his hand to his nominator and to the Trust or is removed from office pursuant to subsection (2).

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- (4) The Minister shall, as the occasion requires, by notice in writing to the secretary of the Society or of the Board, require the nomination of a practitioner for the purposes of this section, within such period, being not less than one month, as may be stipulated in the notice and if, upon the expiration of the period so stipulated or any extension of that period that the Minister may grant, he has not received the required nomination, the Minister shall nominate such person as, having regard to the body the nominee is to represent, he thinks fit.
- (5) The provisions of subsection (2) apply to a trustee nominated by the Minister pursuant to subsection (4), as though he had been nominated by the body that he is appointed to represent on the Trust.
- (6) The trustee nominated by the Society shall be Chairman of the Trust, but, during any period in which no such trustee holds office, the Minister shall appoint a trustee to act as Chairman.
- (7) Persons nominated in accordance with the provisions of subsection (1) may be appointed by the Governor as deputies, to act in the respective offices of trustee, in the absence of the occupants of those offices.

**7. Meetings of Trust**

- (1) The Chairman shall —
  - (a) convene such meetings of the Trust as he considers necessary for the efficient conduct of its business; and
  - (b) on the written request of a trustee, convene a meeting of the Trust.
- (2) A person appointed under section 6(7), as a deputy, is entitled, in the absence from a meeting of the Trust of the trustee for whom he is the deputy, to attend that meeting and, when so attending, is deemed to be a trustee and is authorized to carry out any function that the trustee for whom he is the deputy could, if present, carry out or would be required to carry out, under this Act.

- (3) A meeting of the Trust is duly constituted by the attendance of all trustees or their deputies but, in the event of a vacancy in the office of trustee, a meeting is duly constituted by the attendance of 2 trustees.
- (4) The Chairman shall preside at all meetings of the Trust at which he is present and, in the event of his absence, his deputy shall preside.
- (5) All questions arising at a meeting of the Trust shall be decided by a majority of trustees present and voting and, in the event of an equality of votes on any question, the question shall be resolved in the negative.
- (6) Subject to the preceding provisions of this section, the Trust shall regulate its own procedure.

**8. Use of common seal**

The common seal of the Trust shall not be affixed to a document, except on the authority of the Trust, and the execution of a document so sealed shall be attested by 2 trustees.

**9. Functions of Trust**

- (1) The functions of the Trust are —
  - (a) to receive and invest moneys paid to it pursuant to this or any other Act;
  - (b) to apply moneys resulting from investments in the manner and for the purposes provided by this Act;
  - (c) to administer and control the Guarantee Fund; and
  - (d) to exercise and discharge the powers, authorities, duties and obligations conferred or imposed on it by this Act or any other Act.
- (2) For the purpose of carrying out its functions, the Trust may engage and employ such officers and servants as may reasonably be required.

*[Section 9 amended by No. 60 of 1969 s. 2.]*

## **Part III — Interest on trust accounts paid to Fund**

*[Heading inserted by No. 65 of 2003 s. 77.]*

*[10-12. Repealed by No. 65 of 2003 s. 78(1).]*

### **13. Bank to pay interest on trust accounts to Trust**

(1) In this section —

“relevant period” means —

- (a) the 6 months ending on 31 December; and
  - (b) the 6 months ending on 30 June,
- in each financial year, or such other period as is prescribed.

(2) Each bank with which a trust account is maintained shall pay to the Trust the prescribed percentage of the interest earned on the moneys in the trust account during the relevant period.

(3) The interest shall be paid to the Trust by the bank at such times as prescribed.

(4) The rate of interest payable on moneys in the trust account shall be —

- (a) the rate prescribed by, or determined in accordance with, the regulations; or
- (b) if no regulations are made as to such a rate, the rate agreed between the bank and the Trust.

(5) This section does not apply in respect of a trust account if, during the relevant period, the lowest balance of the trust account, or where more than one trust account is maintained by the same practitioner, the lowest sum of the balance of the trust accounts is less than \$500.

*[Section 13 inserted by No. 65 of 2003 s. 79.]*

**14. Application of interest**

- (1) The Trust shall pay all moneys received under section 13 to the credit of an account called the “Trust Interest Account”.
- (2) Moneys in the Trust Interest Account shall, subject to subsection (4)—
  - (a) be applied, firstly, in payment of the costs and expenses, other than those mentioned in section 19, of administering the Trust; and
  - (b) be paid, secondly, to the Guarantee Fund, until the Fund is in credit in such amount of not less than \$100 000 as the Minister and the Society may, from time to time, by agreement determine.
- (3) Once the Guarantee Fund has been in credit in the amount provided by subsection (2)(b), the moneys in the Trust Interest Account shall, subject to subsection (4) be paid—
  - (a) in maintaining the Fund in credit in that amount;
  - (b) as to 50% of the balance, to the Legal Aid Commission to be applied to the Legal Aid Fund; and
  - (c) as to the remainder—
    - (i) to the Legal Aid Commission, to be applied to the Legal Aid Fund;
    - (ii) to the Society, to be applied in the furtherance of law reform, legal research and legal education, or any of those things;
    - (iii) to a body, whether corporate or not, for the purposes of which moneys have been appropriated by Parliament and which is charged with the functions of law reform;
    - (iv) to any prescribed community legal centre, to be substantially applied to funding the provision by that centre of legal services or community legal education; or

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- (v) to any prescribed peak organisation, to be substantially applied to funding the provision by that organisation of representation, coordination or support services to advance the purposes of community legal centres,
- in such amounts or in such proportions as the Minister may, after consultation with the Society, from time to time, approve or determine.
- (4) Despite subsections (2) and (3), if the Trust effects a policy or policies of insurance indemnifying the Guarantee Fund in the amount of \$100 000 or such lesser amount as may, taking into account the amount in which the Fund is in credit, be required to indemnify the Fund in the balance of the amount of \$100 000, the moneys in the Trust Interest Account shall —
- (a) be applied, firstly as provided by subsection (2)(a);
  - (b) be applied, secondly, in payment of the premiums payable under the policy or policies of insurance;
  - (c) be paid, thirdly, to the credit of the Guarantee Fund in such amounts as the Minister and the Society may, from time to time, by agreement, determine; and
  - (d) be paid, finally, and applied as provided in subsections 3(b) and (c).
- (5) The costs and expenses of administering the Trust include such fees and allowances to the trustees, or any of them, as may be prescribed.
- (6) In this section —
- “community legal centre”** means a not-for-profit body, one of the main functions of which is the delivery of free or substantially subsidised legal services to disadvantaged sections of the community or community legal education;
- “Legal Aid Commission”** means the Legal Aid Commission of Western Australia established under section 6 of the *Legal Aid Commission Act 1976*;

**“Legal Aid Fund”** means the Legal Aid Fund of Western Australia established under section 52 of the *Legal Aid Commission Act 1976*; and

**“peak organisation”** means an incorporated body that provides representation, coordination or support services to advance the purposes of community legal centres.

*[Section 14 inserted by No. 38 of 2000 s. 4; amended by No. 65 of 2003 s. 80.]*

**15. Application of *Financial Administration and Audit Act 1985***

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Trust and its operations.
- (2) Notwithstanding the *Financial Administration and Audit Act 1985*, references in that Act to “financial year” and “annual report” shall be construed in relation to the Trust (but not in relation to the Guarantee Fund) so that every period from 1 January to 30 June and from 1 July to 31 December shall be taken to be a financial year and “annual report” shall be construed accordingly, except that the obligation to prepare a report on the operations of the Trust imposed by section 66 of the *Financial Administration and Audit Act 1985* shall be satisfied by preparing a report for the 12 month period ending on 30 June each year and submitting that report at the same time as the financial statements for the 6 month period ending 30 June are submitted.
- (3) The requirement imposed on the Trust by section 69 of the *Financial Administration and Audit Act 1985* to submit an annual report to the Minister shall be taken to impose also a similar requirement to submit within the same period a copy of each such report to the Board and the Society.

*[Section 15 inserted by No. 98 of 1985 s. 3.]*

## **Part IV — Solicitors' Guarantee Fund**

### **16.      Guarantee Fund established**

- (1) A fund known as the “Solicitors’ Guarantee Fund” is established.
- (2) There shall be paid to the Guarantee Fund and that fund shall comprise —
  - (a) moneys paid out of the Trust Interest Account to the Guarantee Fund, pursuant to section 14;
  - (b) moneys resulting from the investment of the Guarantee Fund, pursuant to section 17;
  - (c) moneys paid to, or recovered by or on behalf of, the Trust in respect of fees, costs and expenses, whether under the right of action conferred on the Trust by this Part or otherwise;
  - (d) moneys paid to the Trust under section 93 or 146 of the *Legal Practice Act 2003*; and
  - (e) such other moneys as may lawfully be paid to the Guarantee Fund.
- (3) Pending their investment pursuant to section 17, moneys comprised in the Guarantee Fund shall be deposited in a bank account or bank accounts in the State.

*[Section 16 amended by No. 65 of 2003 s. 81.]*

### **17.      Investment of Guarantee Fund**

- (1) The Trust may, with the approval of the Minister, invest that portion of the Guarantee Fund that is not immediately required for the purposes of this Part —
  - (a) on deposit with a bank in the State, bearing interest at a rate agreed between the bank and the Trust;
  - (b) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or
  - (c) as trust funds may be invested under Part III of the *Trustees Act 1962*.

- (2) The Trust shall apply the moneys resulting from investment under subsection (1) in the manner provided by section 14.

*[Section 17 inserted by No. 65 of 2003 s. 82.]*

**18. Application of Guarantee Fund**

- (1) The Trust shall hold and apply the Guarantee Fund for the purpose of compensating persons who suffer pecuniary loss by reason of professional defalcation occurring after the conclusion of the financial year during which this section comes into operation and for advancing money under and for the purposes of section 151(1)(b) of the *Legal Practice Act 2003*.
- (2) The Trust may, with the approval of the Minister, from time to time, determine the maximum amount by which the Guarantee Fund is to be applied in compensating a person or all the persons suffering pecuniary loss by reason of professional defalcation, in respect of any one practitioner, and may, in like manner, determine the period during which the maximum is to apply.

*[Section 18 amended by No. 60 of 1969 s. 5; No. 65 of 2003 s. 83.]*

**19. Moneys payable out of Guarantee Fund**

Subject to the succeeding provisions of this Part, the Trust shall, from time to time, as the occasion may require and in such priority as it thinks fit, pay out of the Guarantee Fund —

- (a) the amount of any claim, including costs, expenses, and interest allowed or established against the Trust, or allowed by the Trust, in respect of the Guarantee Fund;
- (b) the legal and other expenses incurred in investigating or defending claims against the Trust in respect of, or otherwise incurred in relation to, the Guarantee Fund or in the exercise by the Trust of the rights, powers and authorities, conferred upon it by this Part;

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- (c) the premiums, not being such as are mentioned in section 14, in respect of any contract of indemnity or insurance entered into by the Trust under the provisions of this Part;
- (d) the costs and expenses incurred in the administration of the Guarantee Fund; and
- (e) such other moneys as may be payable out of the Guarantee Fund in accordance with this Part.

**20. Claims against Guarantee Fund**

- (1) Subject to this Part, a person who suffers pecuniary loss by reason of professional defalcation is entitled to claim compensation from the Guarantee Fund and to take proceedings in the Court, in accordance with this Act, against the Trust to establish the claim.
- (2) A person has no claim against the Guarantee Fund in respect of a professional defalcation that —
  - (a) occurred before the conclusion of the financial year during which this Part comes into operation; or
  - (b) occurs after the money or property affected has ceased, in the due course of administration, to be under the sole control of the practitioner in respect of whom the claim would, but for this subsection, be made.
- (3) Subject to this Part, the amount that a person is entitled to claim as compensation from the Guarantee Fund is the amount of the actual pecuniary loss suffered by him by reason of the professional defalcation, less the amount of any moneys or the value of any benefit received, or certified by the Society as capable of being recovered, in reduction of the loss so suffered, from any source, other than from the practitioner in respect of whom the claim is made or from the Guarantee Fund.

**21. Trust may call for claims by notice**

- (1) The Trust may call for claims against the Guarantee Fund, in respect of a practitioner, by notice in, or in accordance with, the prescribed form, published in a daily newspaper circulating throughout the State or in a newspaper circulating in the district where the practitioner to whom it relates has or has had his practice.
- (2) A notice published pursuant to subsection (1) shall specify a period, being not less than 3 months after the date of publication, during which claims may be made.
- (3) A claim for compensation from the Guarantee Fund for pecuniary loss by reason of professional defalcation shall be made to the Trust, in writing,—
  - (a) where a notice calling for claims has been published pursuant to subsection (1), within the period limited by the notice; and
  - (b) where notice calling for claims was not published, within 6 months after the claimant first becoming aware of the professional defalcation,

and a claim that is not made within the time limited by this subsection is barred, unless the Trust, in its absolute discretion, determines otherwise or subsequently publishes a notice, or another notice, calling for claims.
- (4) An action shall not lie against the Trust, a member or servant of the Trust or the proprietor, editor or publisher of a newspaper, by reason only of the publication, in good faith, of a notice pursuant to subsection (1).

**22. Settlement of claims**

- (1) The Trust may allow and settle any proper claim against the Guarantee Fund at any time after the occurrence of the professional defalcation to which the claim relates.

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- (2) Where the Trust is satisfied that a professional defalcation to which a claim relates has in fact occurred, it may allow the claim, notwithstanding the absence of any prosecution or conviction, or that the evidence by which it is satisfied would be insufficient to sustain a conviction, in respect of the defalcation.
- (3) In allowing a claim pursuant to this section, the Trust may pay to the claimant, out of the Guarantee Fund, —
  - (a) the reasonable costs and expenses incurred by the claimant in respect of the claim; and
  - (b) interest, at the rate of 5% per annum or, where some other rate is prescribed, at that prescribed rate, on the amount allowed, for the period commencing on the day the claim is lodged with the Trust and ending on the day the claim is satisfied.

*[Section 22 amended by No. 86 of 1990 s. 9.]*

**23. Power of Trust to require delivery up of documents**

The Trust may, at any time, require a claimant to produce and deliver up to it such documents in his possession as may be necessary and available to support a claim or to enable the Trust to exercise its rights against, or to facilitate the bringing of criminal proceedings against, a person in respect of a professional defalcation; and, in default of the production and delivery up of the documents the Trust may postpone settlement of, or disallow, a claim.

**24. Proceedings against Trust restrained**

- (1) Subject to subsection (2), a claimant may not, without leave of the Trust, bring any proceeding against it in respect of the Guarantee Fund, until —
  - (a) the Trust has disallowed his claim, in whole or in part; and
  - (b) he has exhausted every other remedy that may be available to him, against the practitioner in respect of whom the claim arose or against such other persons as

may be liable in respect of the loss suffered by the claimant, for the recovery (including any rights that he may have to follow assets and any money or property into which it may have been converted) of the money or property in respect of which the claim is made.

- (2) A person who has been refused leave by the Trust to bring a proceeding against it may apply to the Court, by way of originating summons, for an order enabling him to bring such a proceeding and the Court may, as it thinks fit, grant the application, either subject to conditions or unconditionally, or may dismiss the application.

## **25. Proceedings to establish claims**

- (1) Where, in any proceedings brought to establish a claim against the Trust, in respect of the Guarantee Fund, the Court is satisfied that the professional defalcation to which the claim relates in fact occurred and that the claimant has a valid claim, it shall, by order —
  - (a) declare the occurrence, and the date of the occurrence, of the professional defalcation and the amount of the pecuniary loss thereby sustained by the claimant;
  - (b) direct the Trust to deal with the claim in accordance with the provisions of this Part; and
  - (c) award such costs and direct the payment of interest on the claim in accordance with section 22, as it thinks fit.
- (2) An order made pursuant to subsection (1) does not affect the powers of the Trust to apportion or apply moneys in the Guarantee Fund, as provided by section 26 or 26A.
- (3) In any proceeding brought under this section, evidence of an admission or confession by, or other evidence that would be admissible against, a person alleged to be guilty of professional defalcation is admissible to prove the occurrence of professional defalcation, notwithstanding that the person is not a defendant in, or a party to, the proceeding; and every defence that would

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be available to that person, if he were a defendant in, or a party to, the proceeding, is available to the Trust.

- (4) The provisions of section 22(2) apply *mutatis mutandis* to the Court.

*[Section 25 amended by No. 10 of 1972 s. 3.]*

**26. Apportionment of Guarantee Fund in satisfaction of claims**

- (1) The Guarantee Fund is the only property of the Trust to be applied in satisfaction of a claim allowed or directed to be dealt with under this Part.
- (2) Where, at any time, the amount by which the Guarantee Fund is in credit is insufficient to satisfy all claims then allowed or directed to be dealt with under this Part, that amount shall be apportioned between the claimants in such manner as the Trust, having regard to the provisions of subsection (4), thinks equitable; and the payment of the claims in accordance with this subsection has the effect of discharging them, absolutely.
- (3) Where the sum of all claims received in respect of any one practitioner and allowed or directed to be dealt with under this Part exceeds the maximum amount then payable under a determination made pursuant to section 18(2), the maximum amount shall be apportioned among the claimants in such manner as the Trust, having regard to the provisions of subsection (4), thinks equitable; and the payment of the claims in accordance with this subsection has the effect of discharging them absolutely and of barring any other claims that might otherwise have been made in respect of that practitioner during the period to which the maximum amount applies.
- (4) In apportioning amounts pursuant to subsection (2) or (3), the Trust shall —
- (a) take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants, in the event of their claims not being wholly or partly satisfied; and

- (b) subject to paragraph (a), satisfy, in full, claims not exceeding an amount of \$600, before satisfying any claims exceeding that amount by any payment in excess of it.
- (5) Without limiting the operation of subsections (2) and (3), the Trust may, with the approval of the Minister at any time after an apportionment has been made under those subsections, make a further payment or further payments to a claimant whose claim was not satisfied by payment in full or make a payment to a person whose claim is barred; but a payment made pursuant to this subsection does not have the effect of reviving or reinstating a claim against the Trust or of nullifying the absolute discharge or the exclusion of a claim.

**26A. Interim payment of claims**

- (1) Where it appears to the Trust, taking into consideration all relevant claims that have been made against the Guarantee Fund, that an apportionment pursuant to section 26(2) or (3) will or may be necessary, the Trust may if it thinks fit, at any time before such an apportionment is made or is found to be unnecessary, as the case may be, make an interim payment or interim payments to any claimant whose claim has been allowed or directed to be dealt with under this Part.
- (2) An interim payment made pursuant to subsection (1) discharges the claim in respect of which it is made to the extent of the amount so paid but does not have the effect of discharging the balance of that claim or of barring any other claim.

*[Section 26A inserted by No. 10 of 1972 s. 4.]*

**27. Trust subrogated to claimants to extent of payments made by it**

Where the Trust has made a payment in respect of a claim, it is, to the extent of the payment, subrogated to all or any of the rights and remedies of the claimant against the person in respect of whom the claim arose or against the personal representative

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of, or a person administering the estate of, the person in respect of whom the claim arose.

**28. Practitioners may claim in certain cases**

- (1) Where all the claims of persons suffering pecuniary loss by reason of professional defalcation involving a partnership are fully satisfied and a person who is, or was at the time of the defalcation, a member of the partnership has made payment to a person as compensation for pecuniary loss suffered by reason of the defalcation, then, if the Trust is satisfied that the person was in no way privy to the defalcation and has acted honestly and, in all the circumstances of the case, reasonably, the Trust may accept from the person a claim for the amount of the payment so made and deal with it, as though it were that of a person who has suffered pecuniary loss by reason of professional defalcation.
- (2) A person aggrieved by a refusal of the Trust to accept and deal with a claim pursuant to subsection (1) of this section may apply to the State Administrative Tribunal for a review of the decision.

*[Section 28 amended by No. 65 of 2003 s. 84; No. 55 of 2004 s. 602.]*

**29. Trust may insure Guarantee Fund**

- (1) Notwithstanding any other provision of this Act, the Trust may, from time to time, effect a policy or policies of insurance for the purpose of indemnifying the Guarantee Fund against loss in satisfying claims pursuant to this Part; and such a policy may relate to claims in respect of practitioners, generally, or to claims against a practitioner named in the policy, only.
- (2) An action shall not lie against the Trust or a member or servant of the Trust, by reason only of the publication, in good faith, of the fact that a policy has been effected by the Trust relating to claims against a practitioner named in the policy, only.

- (3) A person has no right of action against an insurer with whom or with which the Trust effects a policy of insurance, under this section, or any claim against moneys paid to the Trust by such an insurer, by reason only that the person has a claim against the Guarantee Fund.

*[Section 29 amended by No. 38 of 2000 s. 5.]*

**30. Insurance moneys to be paid to Guarantee Fund**

The Trust shall pay to the Guarantee Fund all moneys recovered by it under a policy of insurance effected pursuant to section 29.

**31. Trust may instigate investigations**

- (1) Where the Trust has reasonable grounds for believing that a practitioner holds, or has held, moneys or securities belonging to, or for or on behalf of, another person and has failed to account to that person in respect of them or any of them, the Trust may require the Board to make such investigation and take such action as the Board may think appropriate; and the costs and expenses of any investigation made or action taken by the Board may be paid out of the Guarantee Fund.
- (2) An action shall not lie against the Trust or any member or servant of the Trust by reason only of any action taken, in good faith, under the provisions of subsection (1).

**32. Reports to be copied to Board and Society**

The requirement imposed on the Trust by section 69 of the *Financial Administration and Audit Act 1985* to submit an annual report to the Minister in respect of the Guarantee Fund shall be taken to impose also a similar requirement to submit within the same period a copy of each such report to the Board and the Society.

*[Section 32 inserted by No. 98 of 1985 s. 3.]*

*[Part V (s. 33-50) repealed by No. 136 of 1976 s. 6.]*

## **Part VI — Miscellaneous**

### **51. Limitation of actions**

- (1) No matter or thing done or omitted to be done by the Minister, the Trust, the Society or the Board, or by any member, committee, officer or employee of the Trust, the Society or the Board, in good faith and without malice for the purpose of giving effect to the provisions of this Act or in the exercise of his or its powers and duties under this Act, shall subject them or any of them to any liability in respect of the matter or thing so done or omitted to be done.
- (2) An action shall not lie against a practitioner or a bank by reason of anything done by the bank in compliance with section 13.
- (3) Subject to subsections (1) and (2), nothing in this Act, and no proceeding taken under this Act against a person, affects any right or remedy by civil or criminal proceedings or process that a person aggrieved might have had, had this Act not been passed.

*[Section 51 amended by No. 65 of 2003 s. 85.]*

### **52. Repealed by No. 98 of 1985 s. 3.]**

### **53. Expenditure**

- (1) Where the Minister approves of the payment, under section 14, of moneys from the Trust Interest Account, to the Society or to some other body charged with the functions of law reform, then, if those payments are made by the Trust, the Society or other body, as the case may be, shall maintain accounts of all moneys so received and of their expenditure and shall, at the conclusion of each financial year, cause those accounts to be audited by an accountant who is registered as a company auditor under the *Corporations Act 2001* of the Commonwealth and deliver a copy of them to the Minister, the Trust and the Board and the Minister shall have them presented to both Houses of Parliament.

[(2) *repealed*]

[Section 53 amended by No. 136 of 1976 s. 8; No. 98 of 1985 s. 3; No. 10 of 2001 s. 114.]

## 54. General penalty

- (1) A person who acts in contravention of, or fails to comply with, any provision of this Act commits an offence and is liable, where a penalty is not expressly provided, to a penalty of \$500 and, in the case of a continuing offence, to a further penalty of \$25 for each day during which the offence continues.
  - (2) Where an offence is committed by a person by reason of his failure to comply with a provision of this Act by or under which he is required or directed to do anything within a particular period, that offence is, for the purposes of subsection (1), deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period provided has elapsed.

[Section 54 amended by No. 86 of 1990 s. 10.]

[55. *Repealed by No. 136 of 1976 s. 9.]*

56. Regulations

- (1) The Governor may make regulations for any purpose for which regulations are contemplated and required by this Act and may make all such other regulations as may, in the opinion of the Governor, be necessary or convenient for giving full effect to the provisions of, and for the better and more convenient administration of, this Act.
  - (2) Without limiting the generality of subsection (1), the Governor may make regulations —
    - (a) for the purposes of section 4A, making provision as to the application of this Act to incorporated legal practices and multi-disciplinary partnerships;

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- (aa) for the purposes of section 13, prescribing —
  - (i) the percentage of interest to be paid to the Trust;
  - (ii) the times at which interest is to be paid to the Trust;
  - (iii) the rate at which interest is to be paid, or how the rate is to be determined; and
  - (iv) the relevant period;
- (b) specifying the occasions upon which moneys accruing to the credit of the Trust Interest Account shall be applied as provided by section 14;
- (c) prescribing the manner of making claims for the payment of compensation from the Guarantee Fund;
- (d) prescribing the method of making payments, whether by periodical payments or otherwise, and the amounts of payments, from the Guarantee Fund, by way of compensation;
- (e) prescribing the mode of proof (including a requirement for the furnishing of statutory declarations) of, and the onus of proof in respect of, matters requiring to be proved for the purposes of this Act;
- (f) prescribing the forms, registers and records, their use and the matters to be recorded in them, under and for the purposes of this Act;
- (g) so as to require a matter or thing affected by the regulations to be in accordance with a specified requirement or as approved by a specified person or body and so as to delegate to, and confer upon, a specified person or body a discretionary authority; and
- (h) imposing a penalty not exceeding \$500 for the breach of any of the regulations.

*[Section 56 amended by No. 10 of 1972 s. 5; No. 86 of 1990 s. 11; No. 65 of 2003 s. 86; No. 74 of 2003 s. 76.]*

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## Notes

- <sup>1</sup> This reprint is a compilation as at 20 January 2006 of the *Legal Contribution Trust Act 1967* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Legal Contribution Trust Act 1967</i>	74 of 1967	11 Dec 1967	Act other than Pt. V: 29 Mar 1968 (see s. 2 and <i>Gazette</i> 29 Mar 1968 p. 805); Pt. V: 30 Jul 1971 (see s. 2 and <i>Gazette</i> 30 Jul 1971 p. 2897)
<i>Legal Contribution Trust Act Amendment Act 1969</i>	60 of 1969	29 Sep 1969	29 Sep 1969
<i>Legal Contribution Trust Act Amendment Act 1972</i>	10 of 1972	25 May 1972	25 May 1972
<i>Legal Contribution Trust Act Amendment Act 1973</i>	8 of 1973	25 May 1973	Act other than s. 4: 25 May 1973 (see s. 2(1)); s. 4: 31 Aug 1973 (see s. 2(2) and <i>Gazette</i> 31 Aug 1973 p. 3277)
<b>Reprint of the <i>Legal Contribution Trust Act 1967</i> approved 15 Aug 1974 (includes amendments listed above)</b>			
<i>Legal Contribution Trust Act Amendment Act 1976</i>	136 of 1976	13 Dec 1976	17 Apr 1978 (see s. 2 and <i>Gazette</i> 17 Mar 1978 p. 800)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985 (as amended by No. 4 of 1986)	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Contributions to Legal Aid Funding) Act 1990</i> Pt. 3	86 of 1990	17 Dec 1990	1 Jul 1991 (see s. 2(2) and <i>Gazette</i> 15 Mar 1991 p. 1111)
<i>R &amp; I Bank Act 1990</i> s. 45	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Acts Amendment (ICWA) Act 1996</i> s. 38	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<b>Reprint of the Legal Contribution Trust Act 1967 as at 5 Feb 1999</b> (includes amendments listed above)			
<i>Legal Contribution Trust Amendment Act 2000</i>	38 of 2000	10 Oct 2000	23 Oct 2000 (see s. 2 and <i>Gazette</i> 20 Oct 2000 p. 5899)
<i>Corporations (Consequential Amendments) Act 2001 Pt. 34</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 Pt. 4</i> <sup>3,4</sup>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 76</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 71</i> <sup>5</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<b>Reprint 3: The Legal Contribution Trust Act 1967 as at 20 Jan 2006</b> (includes amendments listed above)			

<sup>2</sup> Repealed by the *Associations Incorporation Act 1987*.

<sup>3</sup> The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 78(2) and 87 read as follows:

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**78. Sections 10, 11 and 12 repealed and transitional provision**

- (2) Despite section 11 of *The Criminal Code*, a person may be punished after the commencement of subsection (1) for an offence against repealed section 11.

**87. Transitional provisions**

- (1) In this section —
- “**commencement day**” means the day on which Part 10 of the *Legal Practice Act 2003* comes into operation;
- “**Trust**” means the Legal Contribution Trust established under the *Legal Contribution Trust Act 1967*.
- (2) Moneys that, on the commencement day, are maintained on deposit by a legal practitioner to the credit of the Trust under section 11 of the *Legal Contribution Trust Act 1967* —
- (a) are to be taken on and after that day to be moneys deposited by the legal practitioner to the credit of a trust account under section 137 of the *Legal Practice Act 2003*; and
  - (b) may be dealt with under the *Legal Practice Act 2003* and the *Legal Contribution Trust Act 1967* accordingly.
- (3) If moneys deposited by a legal practitioner to the credit of the Trust under section 11 of the *Legal Contribution Trust Act 1967* are, immediately before the commencement day, the subject of an order made under section 58C of the *Legal Practitioners Act 1893*, the Trust may continue to apply those moneys for the purposes of the order.

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<sup>4</sup> The amendment in the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 86 is not included because the section it sought to amend had been repealed by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 76(2) before the amendment purported to come into operation.

<sup>5</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.