

Western Australia

**Law Society Public Purposes Trust Act
1985**

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Western Australia

Law Society Public Purposes Trust Act 1985

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Law Society Public Purposes Trust Act 1985

An Act to authorise The Law Society of Western Australia (Inc.) to receive certain moneys from banks upon the trusts declared by that Society in a Deed of Trust dated 22 August 1985.

1. Short title

This Act may be cited as the *Law Society Public Purposes Trust Act 1985*¹.

2. Interpretation

(1) In this Act —

bank means an authorised deposit-taking institution as defined in the *Banking Act 1959* of the Commonwealth;

Law Society means The Law Society of Western Australia (Inc.) a body established under the *Associations Incorporation Act 1895*²;

Trust Deed means the Deed of Trust dated 22 August 1985 a copy of which is set out in the Schedule.

(2) A word or expression used in this Act has the same meaning as it has in the *Legal Profession Act 2008* unless —

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

[Section 2 amended by No. 65 of 2003 s. 46(2); No. 21 of 2008 s. 673(2) and (3).]

s. 3

3. The Law Society Public Purposes Trust

- (1) The Law Society may make arrangements with banks for the payment by the banks to the Law Society of amounts equivalent in amount to or representing interest on trust moneys held under the *Legal Profession Act 2008*, in trust accounts with the banks in this State.
- (2) The Law Society may receive from banks any moneys that may be paid to the Law Society in accordance with arrangements made under subsection (1) and shall, subject to section 5, hold, stand possessed of, and apply all such moneys upon the trusts declared by the Trust Deed a copy of which is set out in the Schedule.

[Section 3 amended by No. 86 of 1990 s. 4; No. 65 of 2003 s. 46(3); No. 21 of 2008 s. 673(4).]

4. Variation of Law Society Public Purposes Trust

If any of the trusts declared by the Trust Deed, or declared by that Deed as it may at any time be varied, is in any respect revoked, added to or otherwise varied in accordance with the terms of the Trust Deed, the Law Society shall within 14 days of the variation submit a copy of the instrument by which the variation was effected to the Attorney General who shall cause a copy of that instrument to be laid before each House of Parliament without delay.

[5. Expired 30 Jun 1994³.]

Schedule

[Section 3]

THIS DEED is made the 22nd day of August 1985 BY THE LAW SOCIETY OF WESTERN AUSTRALIA (INC.) of 8th Floor, Exchange House, 68 St. George's Terrace, Perth ("the Trustee")

WHEREAS:

- A. Legal practitioners in Western Australia are obliged pursuant to the provisions of the *Legal Practitioners Act 1893* to keep trust accounts with banks to which are paid all moneys held by the practitioner on behalf of persons other than the practitioner ("trust moneys").
- B. Legal practitioners are obliged pursuant to the provisions of the *Legal Contribution Trust Act 1967* to pay a certain proportion of trust moneys to the Legal Contribution Trust.
- C. Banks have hitherto not paid interest on trust moneys (other than moneys paid to the Legal Contribution Trust) held in trust accounts.
- D. Certain banks have agreed with the Trustee that they will pay to the Trustee moneys equivalent in amount to interest on trust moneys held in trust accounts kept with the banks.
- E. The Trustee wishes to establish with the approval of the Attorney General a trust into which all such money and any other money received by the Trustee as the result of agreements with the said banks and further agreements with other Banks will be paid from time to time ("the Trust") and to hold as Trustee of the Trust all moneys comprising the Trust Fund for public charitable purposes upon the trusts hereinafter declared.

NOW THIS DEED WITNESSES:

Interpretation.

(1) In this Deed the following terms where the context admits shall have the following meanings: —

- (a) "Accounting Period" means the period from the date hereof to the next ensuing thirtieth day of June and thereafter each period of twelve months ending on the thirtieth day of June in each year and if the date of termination of the Trust is not the thirtieth day of June in any year the last Accounting Period shall be the period

commencing on the first day of July next preceding the date of termination of the Trust and terminating on the date of termination of the Trust;

- (b) “Allocations Committee” means the Committee established under Clause 6;
- (c) “Attorney General” means the Attorney General or Minister for Justice for the State of Western Australia;
- (d) “Bank” means any bank with which legal practitioners may lawfully deposit funds held by them on trust;
- (e) “Bank Agreement” means an agreement made by the Trustee with a Bank of a kind referred to in Clause 14(5);
- (f) “cash” includes cheque and bank cheque;
- (g) “Investment” means any one of the assets or investments forming for the time being part of the Trust Fund;
- (h) “person” includes a public body, company or association or body of persons corporate or unincorporate;
- (i) “present” in relation to a meeting means present in person;
- (j) “the State” means the State of Western Australia;
- (k) “the Trust” means the Trust hereby established and which shall be called the Law Society Public Purposes Trust Fund;
- (l) “Trustee” means the Law Society of Western Australia (Inc.) or other trustee or trustees for the time being of this Trust whether original additional or substituted;
- (m) “Trust Fund” means: —
 - (i) all moneys or other benefits received by the Trustee pursuant to a Bank Agreement;
 - (ii) all moneys or other property which may at any time hereafter in any other manner accrue to the capital of the Trust Fund;
 - (iii) all such accumulations of income as are hereinafter or by law directed to be held as additions to the capital of the Trust Fund; and

- (iv) the moneys investments and other property from time to time representing the capital of the Trust Fund and accumulations thereto.

1. (2) In this Deed: —

- (a) the singular shall include the plural and vice versa and any gender shall mean and include all other genders;
- (b) a reference to any statutory enactment shall be construed as a reference to such enactment as amended and modified from time to time;
- (c) a reference to any clause, sub-clause or paragraph is a reference to a clause, sub-clause or paragraph, as the case may be, in this Deed;
- (d) the headings contained in this Deed shall not be taken into account in the construction hereof.

2. Proper Law. This Deed shall be construed and take effect in accordance with the laws of the State.

3. Objects of Trust. The objects of the Trust shall be:

- (1) To advance the education of the community, and any section of it, with respect to the law;
- (2) To advance the collection, assessment and dissemination to the community, and any section of it, of information relating to the law; and
- (3) To improve the access of the community, and any section of it, to legal services.

Without limiting the generality of the foregoing, the objects shall include, to the extent that they are in aid of any of the principal objects, any of the following:

- (a) To advance the education with respect to the law of persons desiring to study law, law students, law graduates, legal practitioners, and persons having responsibility for legal education and for the administration of the law and the legal system;

- (b) To establish and advance law libraries and legal information services, including computerised legal information retrieval services; and
- (c) To advance the examination of the law, the legal system, the legal profession, legal education, legal services and the effect of any of them on the community, or any section of it.

The objects of the Trust shall also include:

- (d) To promote and establish any body having objects altogether or in part similar to any of the objects set out in this clause 3 and to sponsor or otherwise support activities of any such body insofar as the same shall be incidental or conducive to any of the objects set out in this Clause 3; and
- (e) To carry out, encourage and support any act, matter or thing which is or may be incidental or conducive to any of the above objects or which may be conveniently done in connection therewith.

4. Restrictions on Objects. Notwithstanding anything in this Deed the Trustee shall not expend in excess of three tenths of the expenditure of the Trustee on behalf of the Trust in any one Accounting Period in grants to persons whose primary object is the provision of legal aid.

5. No Profit from Trust Fund. No portion of the Trust Fund shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to the Trustee, a member of the Allocations Committee, the Secretary or a member of the Trustee but this prohibition shall not apply to payments in good faith of the proper expenses and outgoings of the Trust Fund, the Trustee, the members of the Allocations Committee and the Secretary under the terms hereof and shall not apply to payments in good faith to members of the Trustee in connection with the proper carrying out of the objects of the Trust.

6. Establishment of Allocations Committee. A committee to be known as the Allocations Committee shall be established by the Trustee for the purposes of deciding on the allocation of moneys pursuant to this Deed.

7. Constitution of Allocations Committee. The Allocations Committee shall consist of the following persons: —

- (1) two members nominated from time to time by the Trustee each of whom shall hold office in the Allocations Committee for a

maximum of two years and may be removed from office without notice by the Trustee;

- (2) one member nominated from time to time by the Attorney General and who may be removed from office without notice by the Attorney General.

8. Meetings of Allocations Committee.

- (1) The Trustee or any member of the Allocations Committee or the Attorney General may require a meeting of the Allocations Committee. Seven (7) days notice at the least (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given) of all meetings specifying the place the day and the hour of meeting and in case of special business the general nature of that business shall be given to the members of the Allocations Committee.
- (2) No business shall be transacted at any meeting of the Allocations Committee unless at the time when the meeting proceeds to business there are present at least two members one of whom is the member nominated by the Attorney General.
- (3) If within fifteen minutes from the time appointed for the meeting a quorum is not present it shall stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting the meeting shall be dissolved.
- (4) The members present at any meeting shall choose someone of their number to be Chairman.
- (5) The Chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place and save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (6) A recommendation by the Allocations Committee may be made unanimously or by majority.
- (7) A resolution in writing signed by all the members of the Allocations Committee shall be as valid and effectual as if it has

been passed at a duly called and constituted meeting of the Allocations Committee. Any such resolution may consist of duplicate copies of one document one of which copies shall have been signed by each member.

9. Secretary. The Trustee shall appoint a Secretary of the Trust who shall have the custody of the books papers and other records of the Trust. The Secretary shall give notice of meetings of the Allocations Committee and shall keep the minutes and accounting records of the Trust. The Trustee shall be entitled to remove the Secretary and appoint a replacement. The Secretary may be a member of the Allocations Committee.

10. Application of Trust Fund. The Trustee shall pay or apply the income and capital of the Trust Fund to or for the objects of the Trust and in accordance with recommendations from time to time of the Allocations Committee or the determinations of the Attorney General.

11. Disapproval by Attorney General.

- (1) The Allocations Committee shall give to the Attorney General written notice of any recommendation of the Allocations Committee promptly upon the making of the recommendation.
- (2) The Trustee shall not act upon a recommendation of the Allocations Committee unless it has been approved by the Attorney General.
- (3) A recommendation shall be deemed to have been approved by the Attorney General if the Attorney General does not disapprove of the recommendation within the period of twenty eight (28) days or such longer period as the Attorney General and the Allocations Committee may agree.
- (4) The Attorney General may by written notice to the Trustee disapprove in whole or in part of the recommendation within the period of twenty eight (28) days of notice of a recommendation or such longer period as has been agreed upon under sub-clause (3) and upon such disapproval the Attorney General shall state his reasons in writing therefor.
- (5) In the event that the Attorney General disapproves in whole or in part of a recommendation pursuant to sub-clause (4) hereof, the recommendation shall be reconsidered by the Allocations

Committee in the light of the Attorney General's reasons for disapproval and the Attorney General and the Allocations Committee shall endeavour to agree on a recommendation. In any event, a further recommendation shall be made by the Allocations Committee to the Attorney General.

- (6) If the Attorney General does not approve of the further recommendation of the Allocations Committee he shall have the power to determine the allocation of the moneys in respect of which the Allocations Committee submitted the recommendation of which the Attorney General disapproves.

12. Income of Trust Fund.

- (1) The Trustee shall collect all dividends interest rents and other income from the Investments of the Trust Fund.
- (2) The Trustee shall pay out of the gross income of the Trust Fund all costs and disbursements commissions fees rates taxes (including land tax and income tax) management charges and other proper outgoings in respect of the Investments and administration of the Trust Fund.

13. Investments. The Trustee shall apply and invest moneys at any time forming part of the Trust Fund in any of the following: —

- (1) on deposit with any Bank on such terms as the Trustee may agree from time to time;
- (2) in any investment being an authorised trustee investment; and
- (3) with the prior approval of the Attorney General in the purchase acquisition sale or lease of any real or personal property upon such terms and such security as the Trustee may think fit and in the improvement development or other dealing with respect to such property as if the Trustee were the absolute beneficial owner thereof.

14. Powers of Trustee. In addition to the powers conferred upon the Trustee by law the Trustee shall have the following powers: —

- (1) to pay out of the Trust Fund or the income thereof all costs charges and expenses incidental to the management of the Trust Fund or to the exercise of any power authority or discretion herein contained

or in carrying out or performing the objects hereof which the Trustee may at any time incur including without limitation all taxes, duties and other imports whatsoever levied or payable in respect of this Deed, the Trust, the Trust Fund or the income of the Trust Fund;

- (2) to pay out of the Trust Fund or the income thereof to the Trustee its servants agents or contractors remuneration at reasonable rates for services of whatsoever nature provided from time to time in respect of the proper management and administration of the Trust and all matters incidental thereto;
- (3) to reimburse the Trustee out of the Trust Fund all costs and disbursements of whatsoever nature incurred by the Trustee in the creation of the Trust Fund and the setting up of the Trust;
- (4) to receive moneys from the Banks from time to time as accretions to the Trust Fund;
- (5) (a) from time to time to make Bank Agreements with Banks providing for: —
 - (i) the payment of money or provision of other consideration (whether equivalent to interest or otherwise) to the Trustee of an amount calculated by reference to trust money deposited in the State with the respective Banks by Legal Practitioners; and
 - (ii) such other terms and conditions as the Trustee may agree;
- (b) to ratify and adopt on behalf of the Trust Bank Agreements made by the Trustee prior to the date hereof;
- (6) to open any account or accounts with any bank or banks and to operate by and in all usual ways upon any such account or accounts;
- (7) to give effectual receipts and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts matters and things provided for in these presents and to receive property by gift *inter vivos* or by Will or under the provisions of any other trust or trusts or otherwise and either from the Settlor or from any other person or persons as additions to the Trust Fund

and to hold the same upon the trusts herein set forth and to administer such additions under the provisions hereof;

- (8) to take such action as the Trustee shall think fit for the adequate protection of any part or parts of the Trust Fund and to take any act upon the opinion (given in writing) of Counsel or Queen's Counsel in relation to the interpretation or effect of these presents or any other document or statute or as to the administration of the trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Trustee in accordance with such opinion provided that nothing in this provision shall prohibit or impede the Trustee from applying to any Court if it shall think fit;
- (9) to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by these presents;
- (10) to carry out any of the above objects in conjunction with or by providing assistance to any person body institution or authority whether statutory or otherwise so far as in the opinion of the Allocations Committee may be necessary or desirable from time to time.

15. Trustee may act by servants, agents. The Trustee shall be at full liberty to engage or employ contractors managers solicitors accountants clerks employees or agents to do any act or thing of whatever nature that may lawfully be done by the Trustee pursuant to this Deed.

16. Accounts and Audit.

- (1) The Trustee shall keep a complete and accurate record of all receipts and expenditures on account of the Trust Fund.
- (2) Promptly after the close of each Accounting Period the Trustee shall prepare a written accounting report (prepared in accordance with normally accepted accounting procedures) for such period consisting of a balance sheet and statement of income and expenditure and a list of assets held at the close of such year and a copy thereof shall be furnished to the Attorney General as soon as practicable after the same is prepared.

- (3) The accounting report shall specify the names and addresses of all persons having custody of any of the assets of the Trust Fund.
- (4) The Trustee may appoint an auditor to audit the Accounts of the Trust.

17. Variation of Trusts.

- (1) Subject to sub-clause (2) the Trustee may with the approval of the Attorney General at any time and from time to time by deed revoke add to or amend any provision of this Deed as amended from time to time including without limitation the objects to which the Trust Fund may be applied.
- (2) No addition to or revocation or amendment of this Deed as amended from time to time shall be made if
 - (a) any law against perpetuities would thereby be infringed;
 - (b) any beneficial interest in the Trust Fund would thereby be conferred on the Trustee or any member of the Allocations Committee or the Secretary; or
 - (c) the amendment would be inconsistent with one or more of the objects of the Trust.

18. Termination of Trust. The Trust may be determined at any time if so resolved by the Trustee.

19. Procedure upon Termination. Upon the termination of the Trust the Trustee shall proceed as follows: —

- (1) The Trustee shall get in and stand possessed of all property and investments constituting the Trust Fund, and may in its discretion sell call in and convert into money any such parts of the Trust Fund as shall not consist of money.
- (2) The Trustee shall from time to time and as soon as is practicable divide and distribute in specie the property and investments available in the Trust Fund in accordance with the Objects of the Trust in such proportions as may be determined by the Allocations Committee and approved by the Attorney General and in default of such determination and approval shall be held on trust for the objects of the Trust in such manner and by such Trustee as the Court having jurisdiction may direct PROVIDED ALWAYS that

the Trustee shall retain full provision for all costs disbursements
commissions brokerage fees expenses claims and other costs and
demands incurred or anticipated by the Trustee in the liquidation of
the Trust.

20. Notices. A notice hereunder may be given either personally or by sending it by post to the person at his registered address or (if he has no registered address within the Commonwealth of Australia) to the address (if any) within the Commonwealth of Australia last known. Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post. A notice may be given by means of telex telegram cablegram or radiogram and service of such notice shall be deemed to be effected if the telex telegram cablegram or radiogram is properly addressed paid for and lodged for transmission with a competent authority or body and to have been effected at the time at which in the ordinary course the telex telegram cablegram or radiogram would be delivered.

THE COMMON SEAL of THE LAW
SOCIETY OF WESTERN
AUSTRALIA INC. was hereunto [C.S.]
affixed by resolution of the
Council in the presence of:

President: H. H. JACKSON
Hal Jackson

Executive
Director: N. ROBERTS
Neil Roberts

Approved by the Honourable J. M. Berinson M.L.C. Attorney General for
the State of Western Australia.

Joe Berinson

Notes

- ¹ This is a compilation of the *Law Society Public Purposes Trust Act 1985* 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>Law Society Public Purposes Trust Act 1985</i> | 60 of 1985 | 28 Oct 1985 | 25 Nov 1985 |
| <i>Acts Amendment (Contributions to Legal Aid Funding) Act 1990 Pt. 2</i> | 86 of 1990 | 17 Dec 1990 | 1 Jul 1989 (see s. 2(1)) |
| <i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 46</i> | 65 of 2003 | 4 Dec 2003 | 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722) |
| Reprint 1: The Law Society Public Purposes Trust Act 1985 as at 6 Feb 2004 (includes amendments listed above) | | | |
| <i>Legal Profession Act 2008 s. 673</i> | 21 of 2008 | 27 May 2008 | 1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511) |

- ² Repealed by the *Associations Incorporation Act 1987*.

- ³ Section 5 expired 30 June 1994. It reads as follows:

“

5. Variation of the effect of the Trust Deed

- (1) On and after the date of the coming into operation of section 5 of the *Acts Amendment (Contributions to Legal Aid Funding) Act 1990*¹ the Law Society, as trustee of the Trust Deed, shall hold, stand possessed of, and apply all moneys received from banks in accordance with arrangements made under section 3(1) —
- (a) without regard to the restriction as to expenditure in grants to persons whose primary object is the provision of legal aid, referred to in clause 4 of the Trust Deed; and
- (b) as though the Allocations Committee had recommended, and the Attorney General had approved, that of the whole of the moneys received in any Accounting Period from banks, as representing interest on trust moneys held in trust accounts kept with the banks —

- (i) in respect of the Accounting Period ending 30 June 1990, \$400 000; and
 - (ii) subject to subsection (2), thereafter 60%, be paid and applied to the credit of the Legal Aid Commission established under section 6 of the *Legal Aid Commission Act 1976* at such time or times as the Attorney General may determine,but in all other respects upon the trusts declared by the Trust Deed.
- (2) To the intent that \$1 000 000 of the aggregate of the amounts accruing to the Trust Fund from all sources in an Accounting Period shall not be subject to any deduction under subsection (1)(b)(ii) —
 - (a) where in any Accounting Period that aggregate does not exceed \$1 000 000, effect shall not be given to subsection (1)(b)(ii); and
 - (b) where in an Accounting Period that aggregate exceeds \$1 000 000, effect shall be given to subsection (1)(b)(ii) only to the extent that after the deduction the balance of that aggregate remaining shall not be less than \$1 000 000.
- (3) In this section, *Accounting Period*, *Allocations Committee* and *Trust Deed* have the meanings respectively ascribed to those terms in the Trust Deed.
- (4) This section expires on 30 June 1994.

[Section 5 inserted by No. 86 of 1990 s. 5.]

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