

Approved for Reprint 15th August, 1974.

WESTERN AUSTRALIA.

LEGAL CONTRIBUTION TRUST.

No. 74 of 1967.¹

[As amended by Acts

No. 60 of 1969, assented to 29/9/69;

No. 10 of 1972, assented to 25/5/72;

No. 8 of 1973,² assented to 25/5/73;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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.

[Assented to 11th December, 1967.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Legal Contribution Trust Act, 1967-1973*.

Short
title.
Amended by
No. 8 of
1973, s. 1.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.

(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.

¹ Proclaimed to come into operation (except Part V) on 29th March, 1968; G.G. 29/3/68, p. 805; Part V came into operation on 30th July, 1971; G.G. 30/7/71, p. 2897.

² Came into operation (except Section 4) on 25th May, 1973; Section 4 came into operation on 31st August, 1973; G.G. 31/8/73, p. 3277.

Arrangement.

3. This Act is divided into Parts, as follows—

PART I.—PRELIMINARY, Ss. 1-4.

PART II.—LEGAL CONTRIBUTION TRUST, Ss. 5-9.

PART III.—LEGAL CONTRIBUTIONS, Ss. 10-15.

PART IV.—SOLICITORS' GUARANTEE FUND, Ss. 16-32.

PART V.—LEGAL ASSISTANCE, Ss. 33-50.

PART VI.—MISCELLANEOUS, Ss. 51-56.

Interpretation.
Amended by
No. 10 of
1972, s. 2;
No. 8 of
1973, s. 3.

4. In this Act, unless a contrary or other intention appears—

“assisted person” means a person to whom legal aid is given pursuant to Part V and “unassisted person” has the contrary meaning;

“Board” means The Barristers’ Board, constituted under the Legal Practitioners Act, 1893;

“financial year” means the period of twelve months ending on the thirtieth day of June;

“Guarantee Fund” means the Solicitors’ Guarantee Fund established by section sixteen;

“legal advice” means advice on matters of law given pursuant to Part V by a practitioner employed or engaged by the Society and includes assistance in preparing an application for legal aid and in furnishing information required in that connection;

“legal aid” means representation by a practitioner or practitioners, pursuant to Part V, and includes—

(a) assistance ordinarily given by a solicitor or counsel or both in the steps preliminary or incidental to

proceedings or in arriving at, or giving effect to, a compromise to avoid or terminate a proceeding;

- (b) assistance in taking steps to assert a claim or resist a demand, where the question of taking, defending or being a party to any proceeding before a court or tribunal does not arise or has not then arisen; and
- (c) assistance in such matters, other than those mentioned in paragraphs (a) and (b) of this interpretation, as the Society may, from time to time, determine under the provisions of section thirty-seven;

“legal assistance” means legal advice, legal aid or both of those services;

“Minister” means the Minister of the Crown for the time being holding office as Attorney General;

“order for costs” means a judgment, order, decree, award or direction for the payment of the costs of one party to a proceeding by another or others, whether given or made in that proceeding or not;

“Part” means Part of this Act;

“prescribed percentage”, in relation to a practitioner’s trust account, means a percentage, not exceeding sixty-five per centum, from time to time prescribed for the purposes of Part III;

“practitioner” means a person admitted as, and entitled to practise as, a barrister, solicitor and proctor of the Supreme Court of Western Australia or any one or more of those capacities; and, for the purposes of Parts III and IV, where a practitioner practises in partnership, the expression includes the partnership;

“professional defalcation” means the stealing or fraudulent conversion, by a practitioner, by any one or more of his clerks or servants

Legal Contribution Trust.

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;

"section" means section of this Act;

"Society" means the Law Society of Western Australia, a body incorporated under the Associations Incorporation Act, 1895;

"the Court" means the Supreme Court of Western Australia;

"Trust" means the Legal Contribution Trust established by section five;

"trust account" means a bank account maintained pursuant to the provisions of the Legal Practitioners Act, 1893, 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.

PART II.—LEGAL CONTRIBUTION TRUST.

Trust
established.

5. (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. (1) The Trust shall consist of three trustees appointed by the Governor of whom—

Constitu-
tion of
Trust.

- (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) of this section.

(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) of this section apply to a trustee nominated by the Minister pursuant to subsection (4) of this section, 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.

Legal Contribution Trust.

(7) Persons nominated in accordance with the provisions of subsection (1) of this section 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.

Meetings
of Trust.

7. (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 subsection (7) of section six, 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 authorised 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 two 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. 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 two trustees.

Use of
common
seal.

9. (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.

Functions
of Trust.
Amended by
No. 60 of
1969, s. 2.

(2) For the purpose of carrying out its functions, the Trust may engage and employ such officers and servants as may reasonably be required.

PART III.—LEGAL CONTRIBUTIONS.

10. Nothing in this Part affects the rights and remedies of claimants against a practitioner or *inter se*, in the event of professional defalcation; and, for the purpose of determining rights as between claimants, moneys deposited by a practitioner with the Trust pursuant to this Part are deemed to be moneys held by him in a trust account.

Rights of
claimants
not affected.

11. (1) Subject to subsection (3) of this section, every practitioner shall, within fourteen days after the conclusion of the financial year during which this section comes into operation, deposit to the credit of the Trust an amount, being not less than the prescribed percentage of the lowest balance of his trust account, or, where he maintains more than one, of the lowest sum of the balances of his trust accounts, occurring on a day during that financial year.

Practi-
tioners to
deposit
certain
trust
moneys with
Trust.

Legal Contribution Trust.

(2) Subject to subsection (3) of this section, every practitioner shall maintain on deposit to the credit of the Trust an amount that is not less than the prescribed percentage of the sum of—

- (a) the lowest balance of his trust account, or where he maintains more than one, the lowest sum of the balances of his trust accounts, occurring on a day during the current financial year or during the last preceding financial year; and
- (b) the amount standing on deposit by him to the credit of the Trust on the day on which the lowest balance, or the lowest sum of the balances, mentioned in paragraph (a) of this subsection occurred.

(3) The provisions of this section do not apply to a practitioner, while, during the relevant period, the lowest balance of his trust account, or, where he maintains more than one, the lowest sum of the balances of his trust accounts, together with the amount (if any) then standing on deposit by him with the Trust, is less than two thousand dollars.

(4) Where the Trust has reasonable grounds for believing that a practitioner has not deposited with the Trust part or all of the moneys required to be deposited with the Trust under the provisions of this section, it may require the practitioner to, and a practitioner so required shall, attend before it and produce documentary evidence of the amount or amounts in his trust account or accounts for such preceding period, not exceeding two years, as the Trust thinks fit.

(5) A practitioner who fails to comply with the provisions of this section commits an offence.

Deposits
with Trust
repayable
on demand.
Amended by
No. 60 of
1969, s. 3.

12. (1) Subject to his compliance with subsection (2) of section eleven, and with the regulations, and subject to subsections (2) and (3) of this section, a practitioner may, at any time, withdraw moneys deposited by him to the credit of the Trust.

(2) A person in respect of whose bank account or accounts an order, other than an order for revocation, has been made under section fifty-eight B of the Legal Practitioners Act, 1893 shall not, during the currency of the order, withdraw moneys deposited by him to the credit of the Trust unless he is authorised to do so by a further order of a Judge.

(3) If moneys deposited by a practitioner to the credit of the Trust are the subject of an order made under section fifty-eight C of the Legal Practitioners Act, 1893, the Trust shall apply those moneys for the purposes of the order.

13. (1) Pending the withdrawal or application of those moneys under the provisions of section twelve, the Trust shall invest all moneys deposited with it by a practitioner—

Investment of moneys deposited with Trust. Repealed and re-enacted by No. 8 of 1973, s. 4.

- (a) on deposit with a bank in the State, bearing interest at a rate agreed between the bank and the Trust; or
- (b) on loan to the Treasurer of the State at a rate of interest not less than the maximum rate of interest for the time being payable, pursuant to Division 2A of Part VI of the Rural and Industries Bank Act, 1944, to a depositor within the meaning of that Division.

(2) Any moneys lent to the Treasurer of the State pursuant to subsection (1) of this section shall be repayable by him on demand.

14. (1) The Trust shall pay all moneys resulting from investments made pursuant to section thirteen to the credit of an account called the "Trust Interest Account"; and moneys in that account shall, subject to subsection (2) of this section, from time to time, as may be prescribed—

Application of moneys resulting from investments.

- (a) be applied, firstly, in payment of the costs and expenses, other than those mentioned in section nineteen of administering the Trust;

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- (b) be paid, secondly, to the Guarantee Fund, until the Fund is in credit in such amount of not less than one hundred thousand dollars as the Minister and the Society may, from time to time, by agreement, determine; and
- (c) finally, once the Guarantee Fund has been in credit in the amount provided by paragraph (b) of this subsection, be paid—
 - (i) in maintaining the Fund in credit in that amount;
 - (ii) as to fifty per centum of the balance, to the Society, for the establishment and maintenance of the Legal Assistance Fund; and
 - (iii) as to the remainder, either to the Society, to be applied to the Legal Assistance Fund, in the furtherance of law reform, legal research and legal education, or any of those things, or 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, in such amounts or in such proportions as the Minister may, after consultation with the Society, from time to time, approve or determine.

(2) Notwithstanding the provisions of subsection (1) of this section, if the Trust effects a policy or policies of insurance indemnifying the Guarantee Fund in the amount of one hundred thousand dollars 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 one hundred thousand dollars, the moneys in the Trust Interest Account shall, from time to time, as may be prescribed,—

- (a) be applied, firstly, as provided by paragraph (a) of subsection (1) of this section;

- (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 subparagraphs (ii) and (iii) of paragraph (c) of subsection (1) of this section.

(3) The costs and expenses of administering the Trust include such fees and allowances to the trustees, or any of them, as may be prescribed.

(4) Notwithstanding any provision of the State Government Insurance Office Act, 1938, the State Government Insurance Office is authorised to undertake liability under a policy or policies of insurance, for the purposes of subsection (2) of this section.

15. (1) The Trust shall maintain accounts of all moneys deposited with, and by, it and those accounts shall—

Trust to maintain accounts.

- (a) be so maintained as to disclose their true position and enable their being readily and conveniently audited; and
- (b) be audited, as provided by subsection (2) of this section, at the expense of the Trust, by an accountant who is registered as a company auditor under section nine of the Companies Act, 1961, and appointed by the Trust.

(2) The Trust shall cause receipts and disbursements accounts and balance sheets to be prepared and audited for the periods ending on the thirtieth day of June and the thirty-first day of December, in every year, and shall deliver a copy of those accounts and balance sheets to the Minister, the Society and the Board and the Minister shall have them presented to both Houses of Parliament.

PART IV—SOLICITORS' GUARANTEE FUND.

Guarantee
Fund
established.

16. (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 fourteen;
- (b) moneys resulting from the investment of the Guarantee Fund, pursuant to section seventeen;
- (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 pursuant to section forty-two of the Legal Practitioners Act, 1893; and
- (e) such other moneys as may lawfully be paid to the Guarantee Fund.

(3) Pending their investment pursuant to section seventeen, moneys comprised in the Guarantee Fund shall be deposited in a bank account or bank accounts in the State.

Invest-
ment of
Guarantee
Fund.

17. The Trust may, with the approval of the Minister, invest such portion of the Guarantee Fund as is not immediately required for the purposes of this Part in the manner provided by section thirteen or in the manner authorised by law for the investment of trust moneys, and shall apply the moneys resulting from any such investment in the manner provided by section fourteen.

Applica-
tion of
Guarantee
Fund.
Amended by
No. 60 of
1969, s. 5.

18. (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 paragraph (b) of section fifty-eight D of the Legal Practitioners Act, 1893.

(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.

19. 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—

Moneys payable out of 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;
- (c) the premiums, not being such as are mentioned in section fourteen, 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.

Claims
against
Guarantee
Fund.

20. (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.

Trust may
call for
claims by
notice.

21. (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) of this section shall specify a period, being not less than three 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) of this section, within the period limited by the notice; and
- (b) where notice calling for claims was not published, within six 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) of this section.

22. (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.

Settlement
of claims.

(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

Legal Contribution Trust.

- (b) interest, at the rate of five per centum per annum, 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.

Power of Trust to require delivery up of documents.

23. 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.

Proceedings against Trust restrained.

24. (1) Subject to subsection (2) of this section, 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. (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—

Proceedings
to establish
claims.
Amended by
No. 10 of
1972, s. 3.

- (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 twenty-two, as it thinks fit.

(2) An order made pursuant to subsection (1) of this section does not affect the powers of the Trust to apportion or apply moneys in the Guarantee Fund, as provided by section twenty-six or twenty-six A.

(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 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 subsection (2) of section twenty-two apply *mutatis mutandis* to the Court.

26. (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.

Apportion-
ment of
Guarantee
Fund in
satisfaction
of claims.

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(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) of this section, 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 subsection (2) of section eighteen, the maximum amount shall be apportioned among the claimants in such manner as the Trust, having regard to the provisions of subsection (4) of this section, 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 sub-section (2) or (3) of this section, 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) of this subsection, satisfy, in full, claims not exceeding an amount of six hundred dollars, before satisfying any claims exceeding that amount by any payment in excess of it.

(5) Without limiting the operation of subsections (2) and (3) of this section, 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. (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 subsection (2) or (3) of section twenty-six 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.

Interim payment of claims. Added by No. 10 of 1972, s. 4.

(2) An interim payment made pursuant to subsection (1) of this section 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.

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

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

28. (1) Where all the claims of persons suffering pecuniary loss by reason of professional defalcation involving a partnership are fully satisfied and a practitioner who is, or was at the time of the defalcation, a member of the partnership has made

Practitioners may claim in certain cases.

payment to a person as compensation for pecuniary loss suffered by reason of the defalcation, then, if the Trust is satisfied that the practitioner 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 practitioner 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 practitioner aggrieved by a refusal of the Trust to accept and deal with a claim pursuant to subsection (1) of this section may, within twenty-eight days after receiving notice of the refusal, apply to the Court, by way of originating summons, for an order directing the Trust to accept and deal with the claim; and the Court may, as it thinks fit, grant the application, either subject to conditions or unconditionally, or may dismiss the application.

Trust may insure Guarantee Fund.

29. (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.

(4) The provisions of subsection (4) of section fourteen apply *mutatis mutandis* to policies of insurance effected for the purposes of this section.

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

Insurance moneys to be paid to Guarantee Fund.

31. (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.

Trust may instigate investigations.

(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) of this section.

32. (1) The Trust shall maintain accounts of all moneys received and payable to the credit of, and paid out of, the Guarantee Fund and those accounts shall—

Trust to maintain accounts of Guarantee Fund.

- (a) be so maintained as to disclose their true position and enable their being readily and conveniently audited; and
- (b) be audited, as provided by subsection (2) of this section, at the expense of the Guarantee Fund, by an accountant who is registered as a company auditor under section nine of the Companies Act, 1961, and appointed by the Trust.

(2) The Trust shall cause receipts and disbursements accounts and a balance sheet for each financial year to be prepared and audited and shall deliver a copy of those accounts and the balance

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sheet to the Minister, the Society and the Board and the Minister shall have them presented to both Houses of Parliament.

PART V.—LEGAL ASSISTANCE.

Legal
Assistance
Fund.

33. (1) A fund to be administered by the Society and known as the "Legal Assistance Fund" is established.

(2) The Society shall pay to the credit of the Legal Assistance Fund, and that fund shall consist of,—

- (a) all moneys paid to the Society pursuant to section fourteen;
- (b) all moneys resulting from investments made pursuant to section thirty-four;
- (c) any moneys that may be made available for legal assistance by the State and the Commonwealth or by one or other of them;
- (d) any other moneys that may lawfully be paid to the Society pursuant to the provisions of this Part.

(3) Pending the investment of any of them pursuant to section thirty-four moneys comprised in the Legal Assistant Fund shall be deposited in a bank account or bank accounts in the State.

Investment
of Legal
Assistance
Fund.

34. The Society may, with the approval of the Minister, from time to time invest such portion of the Legal Assistance Fund as is not immediately required for the purposes of this Part in the manner authorised by law for the investment of trust moneys.

Moneys
payable out
of Legal
Assistance
Fund.

35. The Society shall, from time to time as the occasion may require, pay out of the Legal Assistance Fund—

- (a) the costs of administering the Legal Assistance Fund, including the provision of premises, furniture and equipment for, and the salaries and wages of persons employed in, the administration; and

- (b) such moneys as are necessary and payable for the provision of legal assistance pursuant to this Part.

36. (1) The Society is responsible for arranging the provision of, and of providing, legal assistance pursuant to this Part and may, with the approval of the Minister, fix a day, to be notified in the *Government Gazette*¹ and in a daily newspaper circulating in the State, on which it will commence to provide that legal assistance.

Provision of legal assistance by Society.

(2) The Society shall, as the occasion may require, make recommendations to the Minister, for the formulation of such rules² as may be necessary for the administration and control of legal assistance pursuant to this Part.

(3) The powers and functions of the Society under this Part may be exercised and performed by the Council of the Society and the exercise of any power is not affected by reason only of there being a vacancy on the Council or there being any defect or irregularity in, or in connection with, the election of any member of the Council.

(4) The Council may appoint such committees as may be necessary for giving better or more convenient effect to the provisions of this Part.

37. Subject to the provisions of this Part and of the rules, legal assistance shall be provided as determined by the Society.

Legal assistance to be as determined by the Society.

38. (1) The Society may employ such practitioners as may be necessary for the purpose of providing, and may, from time to time, engage a practitioner to provide, legal advice.

Provision of legal advice.

(2) A person is not entitled to obtain legal advice unless he satisfies the Society that he cannot afford to obtain it by other means and pays to the Society such part of the fee that would ordinarily be payable for an attendance of that kind as, in the opinion of the Society, he can afford.

¹ 4th October, 1971 fixed as date of operation; see *Gazette* 24/9/71, p. 3530.

² Legal Assistance Rules published *Gazette* 26/5/71, p. 1761.

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(3) All fees paid pursuant to this section shall be paid to the credit of the Legal Assistance Fund and moneys in that fund may be applied in remunerating practitioners employed or engaged to give legal advice.

Provision
of legal aid.
Amended by
No. 8 of
1973, s. 5.

39. (1) Without limiting the generality of section thirty-seven, the Society may, subject to this Part and the rules, provide legal aid to a person requiring it, for any proceeding before a court or tribunal in the State or, if the person requiring it has a permanent place of abode in the State, before a court or tribunal in another State or a Territory of the Commonwealth.

(2) The Society shall not provide legal aid to a person, unless he satisfies it that—

- (a) he has reasonable grounds for taking, defending, or being a party to, the proceeding, or for engaging in, or embarking on, the matter, in respect of which legal aid is sought;
- (b) it is reasonable, in all the circumstances of the case, that he should be given legal aid.

(3) Subject to the foregoing provisions of this section, the Society may provide legal aid to a person, on such terms and conditions as to contribution by him as the Society thinks fit and agrees with that person.

(4) Nothing in this Part obliges the Society to provide legal aid to any person, whether subject to contribution or not.

Assisted
persons to
have prac-
titioners of
their choice.

40. (1) Subject to the succeeding provisions of this section, an assisted person is entitled to select, from a panel of the names of practitioners, prepared by the Society as provided by this section, a practitioner or, if the Society is of the opinion that the case is such as calls for the engagement of counsel, practitioners whom the assisted person wishes to act for him.

(2) The selection of a practitioner pursuant to subsection (1) of this section does not—

- (a) affect the rights of a practitioner to refuse instructions, to engage a practitioner as agent or, on reasonable grounds, to entrust a case to another practitioner; or
- (b) permit the selected practitioner, if shown on the panel of names as a member of a firm, to act otherwise than in the name of the firm.

(3) The Society shall, out of those practitioners who have notified it of their willingness to act for persons receiving legal aid, prepare and maintain panels of names of practitioners for the purposes of this section and the panels may be so prepared as to give effect to the preferences expressed by practitioners for the several branches of the law, types of practice, courts or areas of the State.

(4) The Society may, after notice to a practitioner setting out its reasons, exclude or remove his name from the panels of names prepared pursuant to this section or may include it with limitations as to the nature of the legal aid the practitioner is permitted to give.

(5) A practitioner aggrieved by any such exclusion, removal or limitation as is mentioned in subsection (4) of this section may, within six months after the receipt, in the ordinary course of post, of the notice mentioned in that subsection, apply to the Court, by way of originating summons, for an order setting aside the exclusion, removal or limitation; and the Court may, as it thinks fit,—

- (a) grant the application, subject to conditions or unconditionally;
- (b) postpone the making of an order, with liberty to apply; or
- (c) dismiss the application;

and, subject to the right, hereby conferred, of the practitioner, where his application is dismissed, to make a further application, at any time after six months from the date of the dismissal, the decision of the Court is final and conclusive.

Relation-
ship
between
practitioner
and client
preserved.

41. (1) The relationship, and any privilege arising out of the relationship, between counsel or solicitor and client is not, and the rights of any of them are not, affected by the circumstance of a practitioner giving his services by way of legal aid.

(2) A practitioner appointed to give legal aid is deemed to be privy to an agreement made, pursuant to subsection (3) of section thirty-nine, between the Society and the assisted person, and, where the agreement is not being observed by the assisted person, the practitioner is not obliged to—

- (a) assert any claim;
- (b) resist any demand; or
- (c) initiate or continue any proceeding,

and having done any of those things, may recover the amount of the contribution or, as the case may require, any part of it due and remaining unpaid, in any court of competent jurisdiction.

Fees pay-
able to
practi-
tioners
acting for
assisted
persons.

42. (1) A practitioner who acts, or has acted, for an assisted person, as such, is entitled to be paid such percentage as may be prescribed of the fees that would be payable to him in ordinary course of practice and are approved by the Society; and, of that percentage,—

- (a) an amount equal to the contribution required to be made by the assisted person under any agreement entered into pursuant to subsection (3) of section thirty-nine shall be paid by the assisted person; and
- (b) the balance shall be paid by the Society out of the Legal Assistance Fund.

(2) Nothing in this section affects the operation of section forty-four or forty-five or of any agreement as to the payment of costs or affects the amount recoverable by virtue of any such agreement; and for the purposes of any order or agreement any counsel fees that are properly payable are deemed to have been paid.

(3) A reference in this section to a practitioner acting for an assisted person shall be read as including a practitioner engaged as the agent of him appointed to act.

43. Except where the Society considers that disbursements should be made directly out of the Legal Assistance Fund, the practitioner acting for an assisted person in connection with any proceeding shall, in the first instance, make all disbursements, other than counsel fees, ordinarily required to be made for the purposes of that proceeding.

Disbursements in connection with legal aid.

44. (1) A court or tribunal may make an order for costs in favour of an assisted person, notwithstanding that costs have not been paid, may not be payable, or that the costs that may be ordered to be paid are in excess of the amount paid or payable, by him.

Costs recoverable by assisted persons.

(2) The costs recoverable by an assisted person, pursuant to any agreement, judgment, order, settlement of an action or otherwise, less any amount of them that relates to a period when he was not assisted, are payable to the Legal Assistance Fund and the Society is subrogated to the right of the assisted person to recover those costs.

(3) Where costs are payable to the Legal Assistance Fund pursuant to subsection (2) of this section and notice in writing of their being so payable is given to the person liable to pay them or to his solicitor (if any), the liability is not discharged

by the payment of the costs to any person other than the Society or the practitioner acting for the assisted person.

(4) On the taxation of costs payable to an assisted person pursuant to a judgment, order or settlement of an action or claim, an item shall not be disallowed by reason only that the assisted person is not obliged, as such, to pay wholly or partly for the service to which the item relates or, in the case of a disbursement (including counsel fees), by reason only that the disbursement was not made prior to taxation.

(5) Where, in relation to any proceeding, the costs paid to the Legal Assistance Fund and the moneys paid to the practitioner, pursuant to this Part, by the assisted person, together exceed the amount that would, in the opinion of the Society, be properly payable as costs between solicitor and client if the assisted person were not assisted, the amount of the excess shall be paid out of the Legal Assistance Fund to the assisted person.

Cost against
assisted
persons.

45. (1) The circumstance of a party to a proceeding being an assisted person does not affect the rights or liabilities of any other party to the proceeding, or affect the principles on which the discretion of a court or tribunal is ordinarily exercised, on the question of costs; and costs may be awarded against an assisted person as though he were not assisted.

(2) Where a court or tribunal, having finally decided a proceeding in favour of an unassisted person, considers that an order for costs should be made against a party who is an assisted person and determines his liability in that regard, the court or tribunal may order that the whole or any part of the costs of the unassisted person be paid to him out of the Legal Assistance Fund; but such an order shall not be made,—

(a) unless the proceeding is such that an order for costs would be made in favour of the unassisted person, if this section were not enacted;

- (b) in respect of costs incurred by the unassisted person at first instance, unless the proceeding was initiated by the assisted person at first instance; and
- (c) in any event, unless the court or tribunal is satisfied that—
 - (i) in all the circumstances of the case, it is just and equitable that the order should be made; and
 - (ii) the unassisted person would suffer undue financial hardship if the order were not made.

(3) The provisions of subsection (2) of this section relating to costs incurred at first instance apply to a court or tribunal whether sitting at first instance or on appeal or review.

(4) In this section a reference to costs is a reference to costs as between party and party, but the costs in respect of which an order may be made pursuant to subsection (2) of this section include those of applying for the order.

(5) For the purposes of subsection (2) of this section, a proceeding is finally decided in favour of an unassisted person where—

- (a) no appeal lies against the decision in his favour;
- (b) an appeal lies against the decision with leave and the time limited for applications for leave expires without leave being granted; or
- (c) leave to appeal against the decision is granted or is not required and no appeal is brought within the time limited for appeal,

and where an appeal against the decision is brought out of time, the court determining the appeal, or any further appeal, in that proceeding may make an order for the repayment by the unassisted person to the Legal Assistance Fund of the whole or any part of any sum previously paid to him, pursuant to this section, in respect of that proceeding.

(6) Where a court decides any proceeding in favour of an unassisted person and an appeal lies, with or without leave, against that decision, the court may, as it thinks fit, forthwith make, or refuse to make, an order pursuant to subsection (2) of this section, but an order so made shall not take effect—

- (a) where leave to appeal is required, unless and until the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless and until the time limited for appeal expires without an appeal being brought;
- (c) where an appeal is brought, until it is finally decided.

(7) Where a person first receives legal aid in connection with any proceeding after it has been instituted or ceases to receive legal aid before it is finally decided, or otherwise receives legal aid in connection with part only of any proceeding, the reference in subsection (2) of this section to the costs of the unassisted person in that proceeding are a reference to so much of those costs as is attributable to that part.

(8) The rules may—

- (a) prescribe the manner of determining what proceedings are or are not separate proceedings for the purposes of this section or have or have not been initiated by an assisted person;
- (b) modify the provisions of subsection (2) of this section in their application to an unassisted person who is concerned in a proceeding in a fiduciary, representative or official capacity, only; and
- (c) regulate the procedure in connection with applications and orders made pursuant to subsection (2) of this section and provide

for the delegation of the powers of a court or tribunal to an officer of the court or tribunal.

46. Where a provision of this Part requires moneys to be paid to the credit of, or out of, the Legal Assistance Fund, that requirement is satisfied by an allowance in account or otherwise or by a set-off; and a reference in this Part to payments or to moneys paid, payable or received shall be construed accordingly.

Payments may be made by allowance or set-off.

47. (1) The Society shall maintain accounts of all moneys received and payable to the credit of, and paid out of, the Legal Assistance Fund and those accounts shall—

Society to maintain accounts of Legal Assistance Fund.

(a) be so maintained as to—

- (i) reflect receipts and expenditure for the administration of the fund and for legal assistance, separately; and
- (ii) disclose their true position and enable their being readily and conveniently audited;

and

(b) be audited, as provided by subsection (2) of this section, at the expense of the administration of the fund, by an accountant who is registered as a company auditor under section nine of the Companies Act, 1961, and appointed by the Society.

(2) The Society shall cause receipts and disbursements accounts and a balance sheet for each financial year to be prepared and audited and shall deliver a copy of those accounts and the balance sheet to the Minister, the Trust and the Board and the Minister shall have them presented to both Houses of Parliament.

(3) The Minister may, from time to time, and whether or not they have previously been examined and audited, cause the accounts maintained pursuant to this section to be examined and

audited by the Auditor General or his appointee and shall, in that event, cause a copy of the report of the Auditor General on any such examination and audit to be delivered to the Society.

Information
not to be
disclosed.

48. (1) Subject to subsection (2) of this section, information furnished to the Society or to a committee or person on its behalf, for the purposes of this Part, in connection with the affairs of a person seeking legal assistance, shall not be disclosed to any person, except for the purpose of—

- (a) facilitating the proper performance by any person or body of persons of his or its functions under this Part; or
- (b) any criminal proceedings, or report of criminal proceedings, for an offence under this Part,

but, for the purposes of this section, information furnished to a practitioner, as such, by or on behalf of a person seeking or receiving legal assistance, is not information furnished to the Society or to a committee or person on its behalf.

(2) Subsection (1) of this section does not prevent the disclosure, for any purpose, of information with the consent of the person in connection with whose affairs it was furnished or, where that person did not furnish it, with the consent of the person who furnished it.

(3) A person who, in contravention of this section, discloses any information obtained by him in the course of his acting for, or employment by, the Society commits an offence.

Offence of
misrepresentation.

49. (1) A person who, seeking or receiving legal aid, with intent to deceive or mislead the Society, withholds information required to be furnished under the rules or, in furnishing information so required, makes a statement or representation that is false in any material particular commits an offence.

Penalty: Two hundred dollars or imprisonment for six months or both.

(2) The amount of any loss sustained by the Legal Assistance Fund by reason of an offence against subsection (1) of this section, may, whether or not the offender has been prosecuted, be recovered by the Society from the offender, in any court of competent jurisdiction.

50. (1) The Governor may make rules for any purpose for which rules are contemplated or required by this Part and may make all such other rules as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the better or more convenient administration of, this Part. Rules.

(2) Without limiting the generality of subsection (1) of this section, the Governor may make rules—

- (a) prescribing proceedings in respect of which legal aid shall or shall not be given, whether by reference to the court or tribunal, to the issues involved, to the capacity of the individual requiring legal aid or otherwise;
- (b) prescribing the persons who are, and the extent to which they are, eligible to receive legal assistance;
- (c) 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;
- (d) so as to require a matter or thing effected by the rules to be in accordance with a specified requirement or as approved by a specified person or body and so as to delegate to, or confer upon, a specified person or body a discretionary authority; and
- (e) imposing a penalty not exceeding one hundred dollars for the breach of any of the rules.

PART VI.—MISCELLANEOUS.

Limitation
of actions.

51. (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 by reason of anything done by him in compliance with section eleven.

(3) Subject to subsections (1) and (2) of this section, 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.

Reports.

52. The Trust and the Society, respectively, shall, in every year not later than the prescribed date, prepare and submit to the Minister a report on the carrying out of their respective functions under this Act, during the preceding financial year and the Minister shall present those reports to both Houses of Parliament.

Expenditure
for purposes
other than
legal aid.

53. Where the Minister approves of the payment, under section fourteen, of moneys from the Trust Interest Account, to the Society, for purposes other than the provision of legal assistance 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 the provisions of section forty-seven apply *mutatis mutandis* to those accounts.

54. (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 one hundred dollars and, in the case of a continuing offence, to a further penalty of five dollars for each day during which the offence continues.

General penalty.

(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) of this section, 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.

55. The powers conferred and the duties imposed by this Act upon the Society are in addition to, and not in derogation of, any other powers conferred and duties imposed upon the Society under or by the Poor Persons Legal Assistance Act, 1928, and, subject to any express provision of this Act, those other powers and duties may be exercised and performed as if this Act had not been passed.

Powers to be cumulative.

56. (1) Without limiting the power to make rules under, and for the purposes of, Part V, 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.

Regulations. Amended by No. 10 of 1972, s. 5.

(2) Without limiting the generality of subsection (1) of this section, the Governor may make regulations—

- (a) prescribing the percentage, not exceeding sixty-five per centum, of the lowest balance of a practitioner's trust account, or of the

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lowest sum of his trust accounts occurring on a day of a financial year, for the purposes of Part III;

- (b) specifying the occasions upon which moneys accruing to the credit of the Trust Interest Account shall be applied as provided by section fourteen;
- (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 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 one hundred dollars for the breach of any of the regulations.