

## LEGAL PRACTITIONERS (NO. 2)

No. 43 of 1970

### An Ordinance relating to Legal Practitioners.

#### PART I.—PRELIMINARY.

- Short title.** 1. This Ordinance may be cited as the *Legal Practitioners Ordinance (No. 2) 1970*.\*
- Commencement.** 2. This Ordinance shall come into operation on the fourteenth day of December, 1970.
- Administration.** 3. This Ordinance shall be administered by the Attorney-General.
- Parts.** 4. This Ordinance is divided into Parts, as follows:—
- Part I.—Preliminary (Sections 1-6).
  - Part II.—The Admission Board (Sections 7-9).
  - Part III.—Barristers and Solicitors of the Supreme Court (Sections 10-15).
  - Part IV.—Articles of Clerkship (Sections 16-24).
  - Part V.—Discipline.
    - Division 1.—The Disciplinary Board (Sections 25-27).
    - Division 2.—Inquiries by the Disciplinary Board (Sections 28-38).
    - Division 3.—Appeals to the Court (Sections 39-41).
    - Division 4.—Professional Misconduct before Commencement of this Ordinance (Section 42).
  - Part VI.—The Inspector of Solicitors' Trust Accounts (Section 43).
  - Part VII.—Trust Moneys and Trust Accounts.
    - Division 1.—Preliminary (Sections 44-45).
    - Division 2.—Trust Moneys (Section 46).
    - Division 3.—Trust Bank Accounts (Sections 47-54).
    - Division 4.—Solicitors' Records (Sections 55-57).
    - Division 5.—Audit (Sections 58-65).

\* Made on 26 November 1970; notified in the *Commonwealth Gazette* on 27 November 1970.

Division 6.—Examination of Solicitors' Records (Sections 66-68).

Division 7.—Deposits with the Inspector (Sections 69-74).

Part VIII.—Claims in respect of Defalcations by Solicitors and their Employees (Sections 75-91).

Part IX.—Appointment of Receivers (Sections 92-108).

Part X.—Costs (Sections 109-121).

Part XI.—Offences by Unqualified Persons (Sections 122-125).

Part XII.—Transitional Provisions (Section 126).

Part XIII.—Miscellaneous (Sections 127-133).

5.—(1.) The *Legal Practitioners Ordinance* 1970 is repealed.

Repeal.

(2.) The *Legal Practitioners Act, 1898* of the State of New South Wales shall cease to be in force in the Territory.

6. In this Ordinance, unless the contrary intention appears—

Definitions.

“barrister and solicitor” means a person who, being entitled so to do, is practising as a barrister and solicitor in the Territory;

“the Admission Board” means the Barristers and Solicitors Admission Board of the Australian Capital Territory;

“the Court” means the Supreme Court;

“the Disciplinary Board” means the Barristers and Solicitors Disciplinary Board of the Australian Capital Territory;

“the Inspector” means the Inspector of Solicitors' Trust Accounts appointed under section 43 of this Ordinance;

“the Judge” means the Judge appointed under sub-section (1.) of section 7 of the *Australian Capital Territory Supreme Court Act 1933-1969*;

“the Registrar” means the Registrar of the Supreme Court;

“trust moneys” means moneys that are, by virtue of section 46 of this Ordinance, to be deemed to be held by a solicitor in trust for a client of that solicitor.

## PART II.—THE ADMISSION BOARD.

7.—(1.) There shall be a Barristers and Solicitors Admission Board of the Australian Capital Territory consisting of the Judge and four members, being barristers and solicitors, appointed by the Judge.

Barristers and  
Solicitors  
Admission  
Board.

(2.) Subject to this section and the next succeeding section, a member of the Admission Board other than the Judge—

(a) holds office for the period of twelve months commencing on the first day of January next following the date of his appointment; and

(b) is eligible for re-appointment.

(3.) The first members of the Admission Board other than the Judge hold office until the thirty-first day of December, One thousand nine hundred and seventy-one.

(4.) In the event of a member of the Admission Board ceasing to hold office before the expiration of his term of office, the Judge may appoint a barrister and solicitor to hold the vacant office for the balance of that term.

(5.) The Attorney-General may appoint a person to be the Secretary to the Admission Board.

Vacation of office of members of Admission Board.

8.—(1.) The Court may, on the application of the Attorney-General, remove a member of the Admission Board, other than the Judge, from office for misbehaviour or incapacity.

(2.) If a member of the Admission Board, other than the Judge—

(a) becomes bankrupt;

(b) ceases to be a barrister and solicitor; or

(c) is absent, except on leave granted by the Admission Board, from three consecutive meetings of the Board,

the Court may remove him from office.

Meetings of Admission Board.

9.—(1.) At a meeting of the Admission Board, three members constitute a quorum.

(2.) The Judge shall preside at all meetings of the Admission Board at which he is present.

(3.) In the absence of the Judge from a meeting of the Admission Board, the members present at the meeting shall elect one of their number to preside at that meeting.

(4.) The Admission Board shall hold meetings at such times and places as the Judge directs or the Board determines.

### PART III.—BARRISTERS AND SOLICITORS OF THE SUPREME COURT.

Admission as barrister and solicitor.

10.—(1.) For the purposes of this section, a person has the educational qualifications prescribed for admission as a barrister and solicitor of the Court if—

(a) he has been admitted to the degree of Bachelor of Laws at an Australian university;

- (b) he has received from the Barristers Admission Board of New South Wales, the Solicitors Admission Board of New South Wales, the Council of Legal Education of Victoria, the Barristers Admission Board of Queensland, the Solicitors Admission Board of Queensland or the Board of Examiners constituted by the *Legal Practitioners Act* 1959 of the State of Tasmania a certificate issued by that Board that he has successfully completed the course of study conducted by that Board; or
- (c) he has been awarded the Final Certificate of Law by the University of Adelaide.

(2.) Subject to the succeeding provisions of this section, a person is entitled to apply to the Court to be admitted to practise as a barrister and solicitor of the Court if—

- (a) he has the educational qualifications prescribed for admission as a barrister and solicitor of the Court;
- (b) he has—
  - (i) rendered satisfactory service under articles of clerkship entered into by him in accordance with this Ordinance for the period that those articles require him to render service; or
  - (ii) completed, after obtaining the prescribed educational qualifications for admission as a barrister and solicitor, a course of legal education of not less than six months' duration prescribed for the purposes of this sub-paragraph; and
- (c) he is a British subject.

(3.) A person shall be deemed not to have completed a course of legal education referred to in sub-paragraph (ii) of paragraph (b) of the last preceding sub-section unless the appropriate officer of the university or other institution by which the course was conducted has certified in writing that the person has completed the course.

(4.) If, on an application under sub-section (2.) of this section, the Court is satisfied that the applicant is a person entitled to apply to be admitted to practise under this section and that he is of good fame and character, the Court shall admit the applicant to practise as a barrister and solicitor of the Court and direct that his name be entered on the Roll of Barristers and Solicitors referred to in section 13 of this Ordinance.

(5.) On an application for an order under this sub-section by a person who satisfies all the requirements of this section except the requirement of sub-paragraph (i) or (ii) of paragraph (b) of sub-section (2.) of this section, the Court may, if it is of the opinion that, notwithstanding the failure of the applicant to satisfy that requirement, special circumstances exist that justify the making of an order under this sub-section, order that the person be regarded as a person entitled to apply, under this section, to be admitted to practise, and, upon the making of the order, the person shall be deemed to be a person who is entitled so to apply.

Admission of  
overseas  
practitioners.

**11.—(1.) A person—**

(a) who has been admitted to practise as a legal practitioner (however described) in England, Scotland, Northern Ireland or New Zealand and whose right so to practise is not suspended or has not been cancelled; and

(b) who is a British subject,

is entitled to apply to the Court to be admitted to practise as a barrister and solicitor of the Court.

(2.) If, on an application under the last preceding sub-section, the Court is satisfied that—

(a) the applicant is a person entitled to apply to be admitted to practise under this section;

(b) the applicant is of good fame and character; and

(c) the applicant's right to practise as a legal practitioner in a country referred to in paragraph (a) of the last preceding sub-section is not suspended or has not been cancelled,

the Court shall admit the applicant to practise as a barrister and solicitor of the Court and direct that his name be entered on the Roll of Barristers and Solicitors referred to in section 13 of this Ordinance.

Admission  
Board to  
report to  
Court as to  
applicants'  
qualifications.

**12.** The Admission Board shall, in respect of each application for admission to practise under section 10 or 11 of this Ordinance, make a report in writing to the Court stating whether, in the opinion of the Board, the applicant is entitled to apply to be admitted and whether, in the opinion of the Board, there are any grounds upon which the Court might be satisfied that the applicant is not of good fame and character and shall, before the application is heard, furnish a copy of the report to the applicant.

Roll of  
Barristers and  
Solicitors.

**13.** The Registrar shall cause to be kept a roll to be known as the Roll of Barristers and Solicitors of the Supreme Court of the Australian Capital Territory on which the Registrar shall enter—

(a) the name of each person admitted to practise in pursuance of this Part;

(b) the name of each person whose name is on a roll referred to in sub-section (1.) of section 55D of the *Judiciary Act* 1903-1969 and who applies in writing to the Registrar to have his name entered on the Roll; and

(c) the date on which the entry is made.

Oaths or  
affirmations  
by barristers  
and solicitors.

**14. A person—**

(a) shall, before being admitted to practise as a barrister and solicitor in pursuance of this Part, take or make before the Court; and

(b) whose name is, in pursuance of paragraph (b) of the last preceding section, entered on the Roll referred to in that section, shall, at the time when his name is so entered, take or make before the Registrar,

an oath or affirmation in accordance with the form in the Schedule to the Constitution of the Commonwealth and also an oath or affirmation in accordance with the form in the Schedule to this Ordinance.

15. A person whose name is entered on the Roll of Barristers and Solicitors referred to in section 13 of this Ordinance shall sign the Roll. Signature  
on Roll.

#### PART IV.—ARTICLES OF CLERKSHIP.

16.—(1.) Subject to this section, a person may, with the approval of the Admission Board, enter into articles of clerkship with a person who is— Entry into  
articles of  
clerkship.

- (a) a barrister and solicitor practising in the Territory as a solicitor; or
- (b) the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory.

(2.) An application for the approval of the Admission Board shall be in writing in accordance with a form approved by the Board.

(3.) Where application is made in accordance with this section, the Admission Board shall give its approval if the Board is satisfied—

- (a) that the applicant satisfies the requirement of the next succeeding sub-section;
- (b) that the applicant is of good fame and character; and
- (c) that the person with whom the applicant proposes to enter into articles of clerkship is a person referred to in sub-section (1.) of this section.

(4.) The approval of the Admission Board under this section shall not be given unless—

- (a) the applicant has the educational qualifications specified in sub-section (1.) of section 10 of this Ordinance for admission as a barrister and solicitor of the Court or has become eligible for admission to the degree of Bachelor of Laws at an Australian university; or
- (b) the applicant is undertaking the course of study conducted by the Barristers Admission Board of New South Wales or the Solicitors Admission Board of New South Wales.

17.—(1.) An application under the last preceding section shall be accompanied by— Documents to  
accompany  
application for  
approval.

- (a) a certificate or other document showing that the applicant satisfies the requirements of sub-section (4.) of the last preceding section; and
- (b) certificates with respect to the fame and character of the applicant given by not less than two persons.

(2.) A certificate referred to in paragraph (b) of the last preceding sub-section shall state—

- (a) the name, address and occupation of the person giving the certificate;

- (b) the period during which, and the circumstances in which, the person giving the certificate has known the applicant; and
- (c) whether, in the opinion of that person, the applicant is a person of good fame and character.

Board may require further evidence of good character.

**18.** The Admission Board may, in any case in which it considers the circumstances so warrant, require a further certificate as to the fame and character of an applicant for the Board's approval under section 16 of this Ordinance.

Period for which articles are to be entered into.

**19.—(1.)** Articles of clerkship shall, in a case where the person entering into the articles is a person referred to in paragraph (a) of sub-section (4.) of section 16 of this Ordinance, contain a provision requiring the person to undertake to render service in accordance with those articles for a period of twelve months.

(2.) Articles of clerkship shall, in a case where the person entering into the articles is a person referred to in paragraph (b) of sub-section (4.) of section 16 of this Ordinance, contain a provision requiring the person to undertake to render service in accordance with those articles for a period of three years.

(3.) Where—

- (a) a person has entered into articles of clerkship containing a provision requiring him to render service in accordance with those articles for a period exceeding one year;
- (b) the person has, more than twelve months before the expiration of that period, obtained the educational qualifications specified in sub-section (1.) of section 10 of this Ordinance for admission as a barrister and solicitor; and
- (c) the person has rendered service under those articles for the period of twelve months commencing on the day on which he obtained those educational qualifications,

the provision requiring that person to render service in accordance with those articles shall be read as if it were a provision requiring him to render service for the period ending on the date on which that last-mentioned period of twelve months ends.

Articles to be lodged with Admission Board.

**20.** A person who enters into articles of clerkship shall, within fourteen days after the execution of the articles or within such further time as the Admission Board allows, lodge the articles with the Secretary to the Admission Board.

Assignment articles.

**21.—(1.)** Articles of clerkship may, by consent of the parties and with the approval of the Admission Board, be assigned to a person referred to in sub-section (1.) of section 16 of this Ordinance.

(2.) Where articles of clerkship are assigned, the person serving under the articles shall, within fourteen days after the execution of the assignment or within such further time as the Admission Board allows, lodge the assignment with the Secretary to the Admission Board.

## 22.—(1.) Where—

- (a) the person to whom a person is articted as a clerk dies or ceases to practise as a solicitor; or
- (b) articles of clerkship are discharged otherwise than by effluxion of time,

New articles where legal practitioners dies, &c.

the person formerly articted may, with the approval of the Admission Board, enter into articles of clerkship with another person referred to in sub-section (1.) of section 16 of this Ordinance.

(2.) Articles of clerkship entered into in pursuance of the last preceding sub-section shall contain a provision requiring the person to undertake to render service in accordance with those articles for a period equal to the unexpired period for which he was required to serve under the original articles.

(3.) A person who enters into articles of clerkship in pursuance of sub-section (1.) of this section shall, within fourteen days after the execution of the articles or within such further time as the Admission Board allows, lodge the articles with the Secretary to the Admission Board.

23. A barrister and solicitor, not being the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory, shall not have more than two persons articted to him as clerks at the same time.

Solicitor not to have more than two articted clerks.

24.—(1.) A person to whom a person has been articted as a clerk shall, at his request, give to him a certificate stating whether, in the opinion of the person giving the certificate, the service of the person as an articted clerk was satisfactory throughout the period of his service.

Certificate of completion of clerkship.

(2.) Where, in a certificate given under the last preceding sub-section, a person states that the service of a person under articles of clerkship has not been satisfactory throughout the whole of the period mentioned in that sub-section, he shall state in the certificate the reasons why the service has not been satisfactory throughout the whole of that period.

## PART V.—DISCIPLINE.

*Division 1.—The Disciplinary Board.*

25.—(1.) There shall be a body to be known as the Barristers and Solicitors Disciplinary Board of the Australian Capital Territory.

Disciplinary Board.

(2.) The Disciplinary Board shall consist of five members appointed by the Judge.

(3.) A person is not eligible for appointment as a member of the Disciplinary Board in pursuance of the last preceding sub-section or of sub-section (6.) of this section unless—

- (a) he is a barrister and solicitor; and
- (b) not less than five years have elapsed since he was first admitted to practise as a legal practitioner in a State or Territory.



(4.) Subject to the next succeeding sub-section and to the next succeeding section, the members of the Disciplinary Board shall hold office for a period of three years and are eligible for re-appointment.

(5.) The first members of the Disciplinary Board shall be appointed within three months after the commencement of this Ordinance and shall hold office until the thirty-first day of December, One thousand nine hundred and seventy-two.

(6.) In the event of a member of the Disciplinary Board ceasing to hold office before the expiration of his term of office, the Judge may appoint a person to hold the vacant office for the balance of that term.

(7.) The members of the Disciplinary Board shall elect one of their members to be Chairman of the Board.

(8.) The Attorney-General may appoint a person to be the Secretary to the Disciplinary Board.

Vacation of  
office of  
member of  
Disciplinary  
Board.

26.—(1.) The Court may, on application by the Attorney-General, remove a member of the Disciplinary Board from office for misbehaviour or incapacity.

(2.) If a member of the Disciplinary Board—

(a) becomes bankrupt;

(b) ceases to be a barrister and solicitor; or

(c) is absent, except on leave granted by the Disciplinary Board, from three consecutive meetings of the Board,

the Court may remove him from office.

Meetings of  
Disciplinary  
Board.

27.—(1.) At a meeting of the Disciplinary Board, three members constitute a quorum.

(2.) The Chairman of the Disciplinary Board shall preside at all meetings of the Board at which he is present.

(3.) In the absence of the Chairman from a meeting of the Disciplinary Board, the members present at the meeting shall elect one of their number to preside at the meeting and, in relation to that meeting, a reference in this Ordinance to the Chairman shall read as a reference to the person so elected.

#### *Division 2.—Inquiries by the Disciplinary Board.*

Complaints  
concerning  
conduct  
of certain legal  
practitioners.

28. The Attorney-General may refer to the Disciplinary Board for determination the question whether or not a barrister and solicitor has been guilty of professional misconduct in his practice as a barrister and solicitor in the Territory.

Inquiry by  
Disciplinary  
Board.

29.—(1.) The Disciplinary Board shall inquire into a question referred to it under the last preceding section.

(2.) An inquiry under this Division shall not be open to the public.

(3.) The regulations may make provision for or in relation to the procedure at inquiries under this Division but, except as provided by the regulations, the procedure at an inquiry under this Division is within the discretion of the Disciplinary Board.

**30.—**(1.) The Chairman of the Disciplinary Board may, by writing under his hand, summon a person to attend at an inquiry under this Division at a time and place specified in the summons to give evidence and to produce any books or documents in his custody or control that are specified in the summons.

Disciplinary Board may summon witnesses, &c.

(2.) A person served with a summons under sub-section (1.) of this section shall not fail, without reasonable excuse, to comply with the summons.

Penalty: Fifty dollars.

(3.) The barrister and solicitor to whose conduct an inquiry relates is not compellable to give evidence at the inquiry.

**31.** The Chairman of the Disciplinary Board may administer an oath or affirmation to a person appearing as a witness at an inquiry under this Division.

Power to examine on oath, &c.

**32.—**(1.) Subject to the next succeeding sub-section, a record of the evidence of a witness at an inquiry under this Division shall be made—

Record of proceedings at inquiry.

- (a) by means of sound-recording apparatus;
- (b) if the Disciplinary Board so directs, by means of shorthand or any similar means; or
- (c) if the Disciplinary Board so directs, partly by means of sound-recording apparatus and partly by means of shorthand or any similar means.

(2.) Where the Disciplinary Board so directs, the evidence of a witness at an inquiry under this Division shall not be recorded in accordance with the last preceding sub-section, but shall be taken down in writing, and, after being read over to the witness or given to him to read, shall be signed by the witness and the Chairman of the Disciplinary Board.

(3.) The Secretary to the Disciplinary Board shall have the custody of any record of evidence made in accordance with either of the last two preceding sub-sections.

(4.) The Secretary to the Disciplinary Board shall give such directions as he considers necessary for ensuring that, in any case where a transcript of the record of any evidence made in accordance with sub-section (1.) of this section is or may be required, a transcript is prepared.

(5.) Where a transcript of a record is prepared in accordance with the directions of the Secretary to the Disciplinary Board given under the last preceding sub-section, the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Secretary.

(6.) Subject to sub-section (13.) of this section, the Secretary to the Disciplinary Board shall, upon application made to him by a person and payment by that person of the fee payable on the application, furnish to that person a copy of any transcript prepared in accordance with the directions of the Secretary of a record made in accordance with sub-section (1.) of this section of any evidence, or, where evidence was taken down in writing in accordance with sub-section (2.) of this section, a copy of the evidence as so taken down, and may, upon payment of such further fee as is payable, certify, by writing under his hand, that the copy is a true copy of the transcript as so taken down.

(7.) Where a record made by means of sound recording apparatus, shorthand or similar means is produced out of the custody of the Secretary to the Disciplinary Board and the record purports to be a record made in accordance with sub-section (1.) of this section of the evidence of a witness at an inquiry under this Division, the record is evidence that that person gave that evidence at that inquiry.

(8.) Where—

- (a) a sound-recording is produced out of the custody of the Secretary to the Disciplinary Board; and
- (b) the sound-recording contains a record of comments that purport—
  - (i) to have been made during the course of a sound-recording made in accordance with sub-section (1.) of this section of the evidence of a witness at an inquiry under this Division; and
  - (ii) to have been made for the purpose of identifying the proceedings, a voice recorded on the last-mentioned sound-recording or any other matter or thing so recorded,

the first-mentioned sound-recording is evidence of the identity of the proceedings, of the voice or of that other matter or thing, as the case may be.

(9.) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with sub-section (1.) of this section of evidence given by a witness at an inquiry under this Division; and
- (b) the document bears a certificate that purports to be a certificate given in accordance with sub-section (5.) or (6.) of this section,

the document is evidence that the witness gave the evidence of which the document purports to be a transcript at that inquiry.

(10.) Where a document—

- (a) purports to be the evidence of a witness at an inquiry under this Division as taken down in writing and signed in accordance with sub-section (2.) of this section; or

- (b) purports to be a copy of the evidence of a witness at such an inquiry as so taken down in writing and signed and bears a certificate that purports to be a certificate given in accordance with sub-section (6.) of this section,

the document is evidence that the witness gave the evidence appearing in the document at that inquiry.

(11.) Where a record of any part of the proceedings at an inquiry under this Division, not being a record of the evidence of a witness, has been made by means of sound-recording apparatus or by any other means, the Secretary to the Disciplinary Board may, upon application made to him by a person and payment by that person of the fee payable on the application, but subject to sub-section (13.) of this section, furnish to that person a copy of a transcript of that record.

(12.) Where a person makes application to the Secretary to the Disciplinary Board to furnish to him under this section a copy of any transcript and a copy of the transcript is not available, the Secretary may, before causing a copy of the transcript to be prepared, require the applicant to deposit with the Secretary on account of the fee payable on the application such amount as the Secretary determines, being an amount that does not, in the opinion of the Secretary, exceed the amount of the fee that will become so payable.

(13.) Nothing in sub-section (6.) or (11.) of this section requires the Secretary to the Disciplinary Board to furnish a copy of a transcript or of any evidence to a person, not being a person who was represented at the inquiry to which the transcript relates or at which the evidence was given, unless the person applying for the copy satisfies the Secretary or the Chairman of the Disciplinary Board that he has good reason for so applying.

(14.) The fees payable on applications under this section are as prescribed.

**33.—**(1.) Subject to sub-section (3.) of section 30, and to section 36, of this Ordinance, a person appearing as a witness at an inquiry under this Division shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him.

Refusal to be sworn or to give evidence.

Penalty: Fifty dollars.

(2.) A statement made by a witness at an inquiry under this Division is not, except in proceedings under this Ordinance or in a prosecution for giving false evidence at the inquiry, admissible in evidence against him in criminal proceedings in a court.

**34.—**(1.) Where, after an inquiry under this Division, the Disciplinary Board finds that a barrister and solicitor has been guilty of professional misconduct, it may, by order—

Powers of Disciplinary Board.

(a) reprimand the barrister and solicitor; or

(b) impose on the barrister and solicitor a fine not exceeding Five hundred dollars.

(2.) Where the Disciplinary Board makes an order referred to in the last preceding sub-section, it shall order the barrister and solicitor to pay to the Commonwealth the costs of the inquiry including any fees and expenses paid or payable by the Commonwealth in pursuance of section 37 of this Ordinance.

(3.) The amount of the costs shall be as assessed by the Disciplinary Board or, if the Disciplinary Board directs that the costs be taxed by the Registrar, as assessed by the Registrar on the taxation.

(4.) An order under this section shall be in writing under the hand of the Chairman of the Disciplinary Board.

(5.) The amount of a fine and costs ordered to be paid to the Commonwealth under this section is payable to the Secretary to the Disciplinary Board and is recoverable as a debt due by the barrister and solicitor to the Commonwealth.

(6.) A document certified by the Chairman of the Disciplinary Board by writing under his hand to be a true copy of an order under this section is evidence of the order.

(7.) For the purpose of the last preceding sub-section, a document purporting to be a document referred to in that sub-section shall, in the absence of evidence to the contrary, be deemed to be such a document.

In serious cases, Disciplinary Board may report to the Attorney-General.

**35.—**(1.) If, at any time during an inquiry under this Division, the Disciplinary Board is of the opinion that the evidence given before the Board discloses reasonable grounds for believing that the barrister and solicitor to whom the inquiry relates has been guilty of professional misconduct of such a nature that the matter should be dealt with by the Court, the Board shall not proceed further with the inquiry but shall prepare a report to the Attorney-General stating—

(a) particulars of that misconduct; and

(b) in what respects the evidence given before the Board provides reasonable grounds for believing that the barrister and solicitor to whom the inquiry relates has been guilty of that misconduct.

Protection of members of Disciplinary Board and of persons and witnesses appearing before it.

**36.—**(1.) An action or proceeding, civil or criminal, does not lie against a member of the Disciplinary Board for or in respect of an act or thing done in good faith by the member in his capacity as a member.

(2.) An act or thing shall be deemed to have been done in good faith unless it is shown that the member of the Disciplinary Board by whom the act or thing was done was actuated by ill-will to the person affected or by any other improper motive.

(3.) A barrister and solicitor appearing at an inquiry under this Division for a person entitled to be heard at the inquiry has the same protection and immunity as a barrister and solicitor has in appearing for a party in proceedings in the Supreme Court.

(4.) A witness who gives evidence at an inquiry under this Division has the same protection and privileges as a witness in proceedings in the Supreme Court.

37. A person who is summoned to attend for the purpose of giving evidence at an inquiry under this Division or gives evidence at an inquiry is entitled to receive such fees and travelling expenses in accordance with the scale in the Second Schedule to the Public Works Committee Regulations as in force for the time being under the *Public Works Committee Act 1969* as the Chairman of the Disciplinary Board directs.

Fees and allowances to witnesses.

38. The Disciplinary Board may inspect books or documents produced at an inquiry under this Division, and may retain them for such reasonable period as it thinks fit and may make copies of such portions of them as are relevant to the subject-matter of the inquiry.

Disciplinary Board may inspect books, &c.

#### *Division 3.—Appeals to the Court.*

39.—(1.) Where the Disciplinary Board has made an order under sub-section (1.) of section 34 of this Ordinance, the barrister and solicitor found guilty of professional misconduct may, within twenty-one days after the date on which the order was made, appeal to the Court from the decision of the Board on the ground that he was not guilty of professional misconduct or on the ground that the fine imposed on him was too severe or on both those grounds.

Appeal against decision of Disciplinary Board.

(2.) An appeal under this section shall be by way of re-hearing.

40. On an appeal under the last preceding section, evidence given before the Disciplinary Board may, if the Court so directs, be read as evidence on the appeal before the Court.

Evidence before Disciplinary Board may be read before Court.

41.—(1.) Where, on an appeal under section 39 of this Ordinance, the Court is satisfied that a barrister and solicitor has been guilty of professional misconduct, the Court may, if it does not exercise the powers conferred by sub-section (3.) of section 55D of the *Judiciary Act 1903-1969*—

Powers of Court.

- (a) reprimand the barrister and solicitor; or
- (b) impose on the barrister and solicitor a fine not exceeding One thousand dollars.

(2.) A fine imposed on a barrister and solicitor under this section by the Court is payable to the Registrar and, if not paid, is recoverable as a debt due by the barrister and solicitor to the Commonwealth.

#### *Division 4.—Professional Misconduct before commencement of this Ordinance.*

42. This Part applies to and in relation to professional misconduct by a barrister and solicitor notwithstanding that the misconduct occurred before the commencement of this Ordinance.

Misconduct before commencement of Ordinance.

## PART VI.—THE INSPECTOR OF SOLICITORS' TRUST ACCOUNTS.

Inspector  
of Solicitors'  
Trust Accounts.

43.—(1.) The Governor-General shall appoint a person to be, for the purposes of this Ordinance, the Inspector of Solicitors' Trust Accounts.

(2.) Any proceedings by or against the Inspector may be taken in the name of "The Inspector of Solicitors' Trust Accounts", and the death or resignation of or the revocation of the appointment of, the person holding office as the Inspector of Solicitors' Trust Accounts at the time when any proceedings were commenced and the appointment of another person in his place does not abate the proceedings and the proceedings may be continued and concluded as if the person had not died or resigned or as if his appointment had not been revoked.

## PART VII.—TRUST MONEYS AND TRUST ACCOUNTS.

*Division 1.—Preliminary.*

Definitions.

44. In this Part, unless the contrary intention appears—

"solicitor" means a barrister and solicitor who practises, either on his own account or as a member of a partnership, as a solicitor or as both a barrister and solicitor;

"trust bank account" means a general trust bank account and includes a special trust bank account;

"year" means a period of twelve months commencing on the first day of April.

Non-compliance  
with this Part  
to constitute  
professional  
misconduct.

45.—(1.) A solicitor who, without reasonable cause, contravenes, fails to comply with, or fails to carry out any obligation imposed on him by, a provision of this Part is guilty of professional misconduct.

(2.) A provision of Division 4, Division 5 or Division 7 of this Part that requires a solicitor to do, or requires a solicitor to refrain from doing, an act or to carry out an obligation shall, in a case where two or more solicitors practise in partnership in the Territory, be read as imposing jointly and severally on those solicitors a like requirement to do, or as requiring each of those solicitors to refrain from doing, the act or to carry out the obligation, as the case may be, and, if there is a contravention of or a failure to comply with such a provision or to carry out the obligation by the members of the partnership or by one of those members, each of the members of the partnership is guilty of professional misconduct unless he proves that the contravention of, or the failure to comply with, the provision or to carry out the obligation took place without his knowledge and that he took reasonable steps to prevent the contravention of, or the failure to comply with, the provision or to carry out the obligation.

*Division 2.—Trust Moneys.*

46.—(1.) All moneys received by a solicitor, in connexion with his practice in the Territory, from, or on behalf of, a client of the solicitor shall, for all purposes, be deemed to be held in trust for that client to be disbursed, or otherwise dealt with, by the solicitor in accordance with the instructions of the client.

Moneys received by solicitor to be held in trust.

(2.) The last preceding sub-section does not apply to moneys received by a solicitor for or on account of his legal costs, whether already due or to become due.

(3.) Sub-section (1.) of this section does not apply to or in relation to a cheque, bank cheque, bank draft or money order made payable to or to the order of a specified person, or to a specified person or bearer, (not being a cheque, bank cheque, bank draft or money order in which the payee is the solicitor, a partner of the solicitor or his firm) received from or on behalf of a client with instructions, express or implied, that the cheque is to be delivered to the person to whom it is payable.

(4.) Nothing in this Part affects a lien that a solicitor would, apart from the provisions of this Part, have over moneys held by him.

*Division 3.—Trust Bank Accounts.*

47. A solicitor, shall, for the purposes of his practice, open and maintain a trust bank account at a bank in the Territory under a title which includes the name or style under which the solicitor practises and words that indicate that it is the general trust bank account of the solicitor.

General trust accounts.

48. Subject to the next succeeding section, a solicitor shall cause all trust moneys received by him, in connexion with his practice in the Territory, from, or on behalf of, a client of the solicitor to be paid into the general trust bank account maintained by him or, if the solicitor maintains two or more general trust bank accounts, into one of those accounts, not later than the next day on which the bank at which the account is maintained is open for business after the day on which the money is received by the solicitor.

Payment into trust bank account.

49.—(1.) If a client of a solicitor has given instructions to the solicitor that all trust moneys or specified trust moneys received or to be received by the solicitor in connexion with his practice in the Territory from, or on behalf of, the client are to be paid into a special trust bank account maintained or to be maintained by the solicitor for the client, the solicitor—

Special trust accounts.

- (a) if such an account is already maintained by him for the client, shall pay trust moneys to which the instructions relate into that account; or
- (b) if such an account is not already maintained by him for the client, shall open such an account and shall pay trust moneys to which the instructions relate into the account so opened,



not later than the next day on which the bank at which the account is maintained or has been opened is open for business after the day on which the trust moneys are received by the solicitor.

(2.) The title under which a trust bank account referred to in the last preceding sub-section is maintained shall, after the expiry of one month after the commencement of this Ordinance, include the name or style under which the solicitor practices, the words "trust account" and the name of the client for whom the account is maintained.

Duties of solicitor in relation to amounts of trust moneys exceeding \$1,000 likely to be held for more than three months.

#### 50. Where—

- (a) a solicitor receives from, or on behalf of, a client trust moneys that exceed One thousand dollars or that, together with other trust moneys held by him for or on behalf of that client, exceed One thousand dollars;
- (b) at the time when those trust moneys are received, the solicitor has reason to believe that, having regard to the disbursements likely to be made in accordance with the directions of the client out of those trust moneys in the period of three months next ensuing, the amount of the trust moneys held on behalf of the client by the solicitor at the end of that period will be not less than One thousand dollars,

the solicitor shall request the client to furnish him with instructions whether the client desires that those trust moneys or any part of those trust moneys be paid by the solicitor into a special trust bank account maintained or to be maintained by the solicitor for the client or be otherwise invested.

Payments out of trust bank accounts.

51.—(1.) A solicitor shall not pay money out of a trust bank account maintained by him for the purposes of his practice except by means of a cheque that is payable to, or to the order of, a specified person, or to a specified person or bearer, and is crossed and marked "Not Negotiable".

(2.) Subject to the next succeeding sub-section and to Division 7 of this Part, a solicitor shall not withdraw any money from a trust bank account except for the purposes of payment to, or disbursement according to the direction of, the person for whom the money is, by virtue of section 46 of this Ordinance, to be deemed to be held in trust.

(3.) The last preceding sub-section does not prevent a solicitor enforcing any lien held by him in respect of, or any other lawful claim that the solicitor has against, moneys standing to the credit of a trust bank account maintained by the solicitor for the purposes of this Part.

Solicitor to notify Inspector of situation and title of trust account.

52.—(1.) A person who is practising as a solicitor in the Territory on the date of commencement of this Ordinance shall, within fourteen days after that date, inform the Inspector in writing of the names and addresses of the banks at which trust bank accounts are maintained by the solicitor in connexion with his practice in the Territory and of the titles under which those accounts are maintained.

(2.) A solicitor who opens a trust bank account in connexion with his practice in the Territory shall, within seven days after the account is opened, inform the Inspector in writing of the name and address of the bank at which the account is maintained and of the title under which the account is maintained.

(3.) If a change is made in the title under which a trust bank account referred to in either of the last two preceding sub-sections is kept, the solicitor by whom the account is maintained shall, within seven days after the change, inform the Inspector in writing of the title as so changed.

53. Moneys standing to the credit of a trust bank account maintained by a solicitor are not available for the payment of debts of the solicitor by whom it is maintained (other than debts payable out of those moneys) and those moneys are not liable to be attached or taken in execution for the purpose of satisfying a judgment against the solicitor other than a judgment for a debt so payable.

Protection of trust moneys.

54.—(1.) A bank at which a trust bank account is maintained in accordance with this Division is not under any obligation to control or supervise transactions in relation to the trust bank account or to see to the application of money paid out of the account.

Provision applicable to banks.

(2.) A bank at which a trust bank account is maintained in accordance with this Division does not have, in respect of any liability of the solicitor to the bank, any recourse or right, whether by way of set-off, counter claim, charge or otherwise, against money standing to the credit of the account.

(3.) Nothing in this section relieves a bank from any liability to which it is subject apart from this Ordinance.

#### *Division 4.—Solicitors' Records.*

55.—(1.) A solicitor shall keep such accounting and other records as disclose particulars of all trust moneys received or paid by him.

Accounting records.

(2.) A solicitor shall—

(a) keep those records—

(i) at the place at which he carries on business in the Territory;

(ii) if he carries on business at more than one place of business in the Territory, at his principal place of business; or

(iii) with the approval of the Inspector, at another place in the Territory;

(b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and

(c) preserve those records for a period of seven years.

(3.) It is sufficient compliance with sub-section (1.) of this section if a solicitor, within seven days after the day on which any trust moneys are received or paid by him, enters in the records referred to in that sub-section the particulars of those moneys.

Receipts for trust moneys.

**56.**—(1.) A solicitor shall give to a person from whom he receives trust money a receipt for the money specifying briefly the subject matter or purpose in respect of which the money was received.

(2.) A solicitor shall in the records referred to in the last preceding section keep particulars of each receipt issued by him.

(3.) A solicitor shall keep a register of receipts.

Quarterly statements of trust moneys.

**57.**—(1.) Within fourteen days after the end of the period of three months ending on the last day of June, September or March in each year, and within one month after the end of the period of three months ending on the last day of December in each year, a solicitor shall prepare a statement setting out, as at the close of business on the last day of the period—

(a) the name of each person on behalf of whom the solicitor held trust moneys;

(b) the amount shown in the records kept by the solicitor in accordance with this Division as the amount of trust money held by the solicitor on behalf of each of those persons;

(c) the amount of trust money held by the solicitor and not paid into a general trust bank account maintained by the solicitor in accordance with section 48 of this Ordinance; and

(d) the amount standing to the credit of each trust bank account kept by the solicitor in accordance with this Part.

(2.) For the purpose of the last preceding sub-section, in ascertaining the amount standing to the credit of a trust bank account, cheques drawn on the account but not presented for payment shall be regarded as having been paid.

#### Division 5.—Audit.

Audit of trust accounts.

**58.** A solicitor shall, not later than seven days after the end of each year, engage an auditor to audit his records in respect of trust moneys held in that year.

Qualifications of auditors.

**59.** A person shall not be engaged to conduct an audit under this Division if—

(a) he is not a registered company auditor within the meaning of the *Companies Ordinance 1962-1969*;

(b) he is an employee of the solicitor by whom the records are kept;

(c) he is the spouse of the solicitor by whom the records are kept; or

(d) he is an employee of another solicitor.

**60.**—(1.) An auditor engaged by a solicitor may, for the purposes of an audit under this Division, require the solicitor—

Solicitor to furnish documents, &c., to auditor.

- (a) to produce forthwith to the auditor the books, papers, accounts, registers of receipts, securities and documents in his possession that relate to trust moneys received or paid by the solicitor during the period to which the audit relates; and
- (b) to furnish to the auditor such information as the auditor requires and to answer all questions put to him by the auditor, in relation to—
  - (i) books and other documents referred to in the last preceding paragraph; and
  - (ii) all transactions by the solicitor in the course of his practice in the period to which the audit relates; and
- (c) to give to the auditor such authorities as are necessary to enable the auditor to inspect and make copies of documents or records kept at the bank at which the solicitor maintains a trust bank account in accordance with this Part and relating to that trust bank account.

(2.) A solicitor shall comply with a requirement under this section.

(3.) For the purposes of an audit under this Division, other than the first audit after the commencement of this Ordinance, the solicitor shall furnish to the auditor a copy of the auditor's report in respect of the last preceding audit.

**61.**—(1.) For the purposes of this Division, an auditor engaged by a solicitor is only required to examine such of the accounting and other records of the solicitor relating to trust moneys as he considers necessary for the purpose of ascertaining whether the preceding Divisions of this Part have been complied with.

Auditor to report.

(2.) The auditor shall prepare a report in writing of the audit and shall state in the report—

- (a) whether, in his opinion, the solicitor has kept accounting and other records of the kind that he is required by this Part to keep;
- (b) whether the solicitor has complied, within a reasonable time, with all requirements made by the auditor, being requirements that the auditor is authorized by this Part to make; and
- (c) any matter or thing in relation to those records of which the solicitor, or the Inspector, should, in the opinion of the auditor, be informed.

(3.) The auditor shall, as soon as practicable after the preparation of the report deliver the report in duplicate to the solicitor to whose records the report relates.

(4.) A solicitor shall, within seven days after a report is delivered to him in accordance with the last preceding sub-section, send the duplicate of the report to the Inspector together with the prescribed fee.

Interim  
report by  
auditor.

**62.** If the auditor engaged by a solicitor to examine and report on the accounting and other records of the solicitor relating to trust moneys considers that the records of the solicitor have not been kept in such a manner as to enable him to audit them conveniently and properly or the auditor has reason to believe—

- (a) that there is any loss or deficiency of trust moneys;
- (b) that there has been any failure to pay or account for trust moneys; or
- (c) that there has been a failure to comply with any provision of this Part,

the auditor shall, as soon as practicable, report in writing accordingly to the solicitor and shall, immediately after furnishing the report to the solicitor, forward a copy of the report to the Inspector.

Penalty: Two hundred and fifty dollars.

Provisions  
applicable  
in case of  
default by  
auditor.

**63.—(1.)** Where—

- (a) the provisions of this Division apply to a solicitor in respect of the period of twelve months that ended on the immediately preceding thirty-first day of March; and
- (b) a report in respect of that period under section 61 of this Ordinance has not been delivered to the solicitor by the thirtieth day of June next following,

the solicitor shall send to the Inspector not later than the fifteenth day of July next following a statutory declaration by him stating—

- (c) the name and address of the auditor whom he has engaged to audit his records of trust moneys in respect of the period referred to in paragraph (b) of this sub-section;
- (d) the date on which the auditor was so engaged; and
- (e) that a report under section 61 of this Ordinance has not been delivered to him.

(2.) A solicitor who has furnished a statutory declaration in accordance with the last preceding sub-section shall take such steps as are necessary to ensure that a report by an auditor in respect of the period referred to in the statutory declaration is obtained by him and a copy of the report furnished to the Inspector as soon as practicable after the furnishing of the declaration.

Statutory  
declaration  
that no trust  
moneys held.

**64.** The provisions of this Division do not apply to a solicitor in respect of a year if he did not, at any time during the year, receive or hold any trust moneys and the solicitor, within fourteen days after the end of that year, makes and delivers to the Inspector a statutory declaration to that effect.

**65.** A person who conducts an audit under this Part shall not, except Secrecy. in accordance with this Ordinance or in, or for the purpose of, any proceedings in a court or at an inquiry before the Disciplinary Board, communicate to any person any matter that comes to his knowledge in the course of the audit.

Penalty: Two hundred and fifty dollars.

*Division 6.—Examination of Solicitors' Records.*

**66.—(1.)** The Inspector may, at any time, appoint a person to Appointment of examiner. examine the records of trust moneys kept by a solicitor or by two or more solicitors practising in partnership in respect of a period specified by the Inspector.

(2.) A person shall not be appointed under the last preceding subsection unless he is a registered company auditor within the meaning of the *Companies Ordinance* 1962-1969.

(3.) A person who makes an examination under this section shall furnish to the Inspector a report of the examination and, in particular, shall state in the report—

- (a) whether or not, in his opinion, the records of the solicitor have been kept in such a manner as to enable him to examine them conveniently and properly;
- (b) whether or not, in his opinion, there is any loss or deficiency of trust moneys;
- (c) whether or not, in his opinion, there has been any failure to pay or account for trust moneys;
- (d) whether or not, in his opinion, there has been any failure to comply with any provision of this Part.

(4.) The costs of an examination under this section shall be paid by the Commonwealth.

(5.) Where, as a result of an examination of records under this section, a solicitor is—

- (a) convicted of an offence against this Ordinance or any other law in force in the Territory; or
- (b) adjudged guilty of professional misconduct by the Court or the Disciplinary Board in relation to trust moneys or the keeping of records,

the Inspector may recover the costs of the examination from that solicitor as a debt due to the Inspector.

**67.—(1.)** For the purposes of this Division, section 60 of this Ordinance applies as if— Production of books, &c.

- (a) a reference in that section to an auditor were a reference to a person appointed under sub-section (1.) of the last preceding section; and
- (b) a reference to an audit were a reference to an examination under the last preceding section.

(2.) The Inspector may, by demand in writing delivered personally to the manager, or other person in charge, of a bank, require the manager or that other person to permit a person specified in the demand, being a person appointed under sub-section (1.) of the last preceding section, to inspect and make copies of the documents or records of the bank relating to a trust bank account kept in accordance with this Part by the solicitor or solicitors specified in the demand.

(3.) The manager, or other person in charge, of a bank shall comply with a requirement made in accordance with the last preceding sub-section.

Penalty: Two hundred and fifty dollars.

Secrecy.

**68.** A person who conducts an examination under section 66 of this Ordinance shall not, except in accordance with this Ordinance or in, or for the purposes of, any proceedings in a court or at an inquiry before the Disciplinary Board, communicate to any person any matter that comes to his knowledge in the course of the examination.

Penalty: Two hundred and fifty dollars.

*Division 7.—Deposits with the Inspector.*

Statutory  
Deposits Trust  
Account.

**69.** In this Division, a reference to the Statutory Deposits Trust Account shall be read as a reference to the Australian Capital Territory Solicitors' Statutory Deposits Trust Account established under section 62A of the *Audit Act* 1901-1969.

Interpretation.

**70.—(1.)** In this Division, a reference to the notional amount standing to the credit of the general trust bank account of a solicitor on the day immediately preceding the commencement of this Ordinance shall be read as a reference to the lowest amount that stood to the credit of that account at any time during the period of six months immediately preceding the commencement of this Ordinance.

(2.) In this Division, a reference to the notional amount standing to the credit of the general trust bank account of a solicitor on the last day of a year shall be read as a reference to the lowest amount that stood to the credit of that account at any time during that year.

(3.) In relation to the period commencing on the date of commencement of this Ordinance and ending on the next succeeding thirty-first day of March, the provisions of this Division apply as if that period were a year.

(4.) In the application of this Division to two or more solicitors carrying on practice in partnership with one another, a reference to a solicitor shall be read as a reference to those solicitors.

(5.) Where a solicitor maintains more than one general trust bank account in accordance with this Part, a reference in this Division to a general trust bank account maintained by the solicitor shall be read as a reference to the general trust bank accounts maintained by the solicitor.

(6.) Where a solicitor has—

(a) in the period of six months immediately before the commencement of this Ordinance; or

(b) in any year,

maintained two or more general trust bank accounts, the solicitor shall, for the purposes of this Division, be deemed to have maintained, during the period for which he maintained those general trust bank accounts, only one general trust bank account and the amount that stood, on any day during that period, to the credit of the general trust bank account that the solicitor is to be so deemed to have maintained shall be deemed, for the purposes of this Division, to be the total of the amounts that stood to the credit of the bank accounts that were in fact maintained by him on that day.

(7.) For the purposes of this Division, in ascertaining the amount standing to the credit of a general trust bank account on any day, cheques drawn on the account and not presented to the bank for payment shall be regarded as having been paid.

(8.) For the purposes of this Division, the amount of any trust moneys paid into the general trust bank account maintained by a solicitor and subsequently paid by the solicitor into a special trust bank account in accordance with the instructions of the client from, or on whose behalf, those moneys were received shall not be taken into account in ascertaining the lowest amount that stood to the credit of that general trust bank account at any time.

71.—(1.) Subject to this Division, where the notional amount standing to the credit of the general trust bank account kept by a solicitor on the day immediately preceding the commencement of this Ordinance is not less than Three thousand dollars, the solicitor is under an obligation to deposit, within three months after the date of commencement of this Ordinance, with the Inspector for the purposes of the Statutory Deposits Trust Account an amount which is equal to one-half of that notional amount.

Solicitor to  
deposit portion  
of trust moneys  
with Inspector.

(2.) Subject to this Division, where, on the last day of a year—

- (a) the notional amount standing to the credit of the general trust bank account kept by a solicitor is not less than Three thousand dollars; and
- (b) no trust moneys of the solicitor are on deposit with the Inspector,

the solicitor is under an obligation to deposit, within three months after that day, with the Inspector for the purposes of the Statutory Deposits Trust Account an amount which is equal to one-half of the notional amount referred to in paragraph (a) of this sub-section.

(3.) Subject to this Division, where, on the last day of a year—

- (a) trust moneys of a solicitor are on deposit with the Inspector; and
- (b) the amount of those moneys is less than one-half of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that solicitor,

the solicitor is under an obligation to deposit, within three months after that day, with the Inspector for the purposes of the Statutory Deposits



Trust Account such an amount as will bring the amount of the moneys on deposit with the Inspector to an amount equal to one-half of the aggregate referred to in paragraph (b) of this sub-section.

Repayment of deposits.

**72.—(1.)** Subject to the next succeeding sub-section, moneys on deposit with the Inspector in accordance with this Division are repayable on demand to the solicitor by whom they were deposited.

(2.) A solicitor shall not make a demand for the repayment of moneys under the last preceding sub-section unless—

- (a) the repayment of the moneys is required to enable necessary payments to be made out of his general trust bank account; and
- (b) the solicitor has reasonable grounds for believing that the payment is to be made within seven days after the day on which the demand is made.

(3.) Where, on the last day of a year—

- (a) trust moneys of a solicitor are on deposit with the Inspector; and
- (b) the amount of those moneys exceeds one-half of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that solicitor,

the solicitor is entitled to be repaid an amount equal to the amount of the excess.

(4.) Where, on the last day of a year—

- (a) trust moneys of a solicitor are on deposit with the Inspector; and
- (b) the aggregate of the amount of those moneys and the notional amount standing to the credit of the general trust bank account kept by that solicitor on that day is less than Three thousand dollars,

the solicitor is entitled to have repaid to him the amount that he has on deposit.

Obligation to deposit subject to availability of trust funds.

**73.—(1.)** Where—

- (a) a solicitor has not, before the expiration of a period within which he is required to discharge an obligation imposed on him by this Division, discharged that obligation; and
- (b) on the last day of that period, the moneys standing to the credit of his general trust bank account are not sufficient for the discharge of the obligation,

the period within which the solicitor is required to discharge the obligation is extended until there is standing to the credit of his general trust bank account on a subsequent quarter day occurring in the year in which the end of that period occurs an amount sufficient for the discharge of the obligation.

(2.) In the last preceding sub-section, “quarter day” means the thirtieth day of September, the thirty-first day of December or the thirty-first day of March.

**74.**—(1.) Where the Inspector is during a year satisfied, on an application made by a solicitor who is under an obligation to deposit, or has on deposit, with the Inspector moneys in accordance with this Division, that, having regard to the amount of trust moneys standing, on the date of the application, to the credit of the general trust bank account of the solicitor, it is appropriate that the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the year preceding that year should be reduced, the Inspector may determine that that notional amount be reduced to such amount as is specified by him in the determination.

Variation of notional amount by Inspector.

(2.) Where the Inspector has made a determination referred to in the last preceding sub-section in relation to a solicitor—

(a) this Division, in its application to and in relation to the obligations imposed on the solicitor, shall apply, during the remainder of the year in which the determination is made, as if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the preceding year; and

(b) if, on the date on which the determination is made, the solicitor has on deposit with the Inspector moneys exceeding the amount that he would have been required to have on deposit with the Inspector if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the preceding year, the solicitor is entitled to be re-paid an amount equal to the amount of the excess.

#### PART VIII.—CLAIMS IN RESPECT OF DEFALCATIONS BY SOLICITORS AND THEIR EMPLOYEES.

**75.** In this Part, a reference to the Fidelity Trust Account shall be read as a reference to the Australian Capital Territory Solicitors' Fidelity Trust Account established under section 62A of the *Audit Act* 1901-1969.

The Fidelity Trust Account.

**76.**—(1.) In this Part, “solicitor” has the same meaning as in the last preceding Part.

Interpretation.

(2.) In this Part, a reference to a defalcation committed by a solicitor includes a reference to a defalcation committed by an employee of the solicitor or, in the case of solicitors practising in partnership, of those solicitors.

**77.** For the purposes of this Part, the pecuniary loss in respect of which compensation may be paid to an applicant under this Part is the amount of the pecuniary loss suffered by the applicant less any amount which the applicant has recovered in respect of the loss.

Amount of pecuniary loss.

Annual contributions.

**78.** A solicitor shall, not later than the thirtieth day of June in each year, pay to the Inspector for the purposes of the Fidelity Trust Account the amount that is prescribed as the contribution payable by a solicitor to that account in respect of the year commencing on the following first day of July.

Persons who may apply for compensation.

**79.** Subject to this Part, a person who suffers pecuniary loss arising out of a defalcation of trust moneys committed by a solicitor after the date fixed for the purposes of this section by the Attorney-General by notice published in the *Gazette* may apply to the Inspector for compensation under this Part in respect of that loss.

Inspector may call for claims.

**80.—(1.)** The Inspector may cause to be published in a daily newspaper published in the Territory a notice requiring persons entitled to apply for compensation under this Part in respect of losses arising out of a defalcation committed by a solicitor named in the notice to make their applications within the period specified in the notice.

(2.) The period to be specified in a notice published under this section shall be not less than three months commencing on the date of publication of the notice.

Protection of Inspector.

**81.** No action for damages lies against the Inspector in respect of the publication in good faith of a notice under the last preceding section.

Time for making applications.

**82.—(1.)** Subject to the next succeeding sub-section, an application for compensation under this Part shall not be accepted unless it is made within a period of six months after the applicant becomes aware of the defalcation or within such further time as the Inspector, in his discretion and either before or after the expiration of that period, allows.

(2.) Where a notice is published under section 80 of this Ordinance, an application for compensation under this Part in respect of a defalcation committed before the publication of the notice by the solicitor named in the notice shall be made before the expiration of the period specified in the notice or within such further time as the Inspector, in his discretion and either before or after the expiration of that period, allows.

Manner of making claims.

**83.** An application for compensation under this Part shall be made by the delivery to the Inspector of full particulars of the claim supported by a statutory declaration.

Inspector may require further information.

**84.—(1.)** The Inspector may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant—

- (a) to give to the Inspector information in the possession of the applicant with regard to any matter relating to the application; and
- (b) to deliver to the Inspector any documents in the possession of the applicant which tend to establish the fact of the defalcation and the amount of the loss to which the application relates.

(2.) The Inspector may retain a document delivered to him in accordance with a requirement under the last preceding sub-section for as long as is necessary for the purposes of this Part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy certified by the Inspector to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.

(3.) Where the Inspector makes a requirement under sub-section (1.) of this section he is not required to take any further steps in relation to the application until the requirement is satisfied.

**85.—**(1.) Subject to sub-section (3.) of the last preceding section, the Inspector shall consider each application made in accordance with this Part and shall determine—

Inspector to consider applications.

- (a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
- (b) that there is no pecuniary loss in respect of which compensation may be so paid.

(2.) Before making a determination under the last preceding sub-section, the Inspector may, if the Inspector is of the opinion that the circumstances so warrant, require the applicant to institute against the solicitor to whose defalcation the claim relates or any other person considered to be liable in respect of the loss arising out of the defalcation, or both, proceedings for the recovery of the money the subject of the defalcation, including proceedings to follow assets and any property into which the money may have been converted.

(3.) The Inspector shall give to an applicant for compensation under this Part notice in writing stating—

- (a) the amount that the Inspector has determined to be the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
- (b) that the Inspector has determined that there is no pecuniary loss in respect of which compensation may be so paid.

(4.) In a notice given under this section, the Inspector shall state the grounds on which it has made the determination referred to in the notice.

**86.** The last preceding section does not require the Inspector to be satisfied—

Conviction, &c., not required.

- (a) that the solicitor specified in the application or an employee of the solicitor has been convicted of an offence; or
- (b) that there is evidence upon which the solicitor or an employee of the solicitor might be convicted of an offence.

Review of  
determination.

**87.**—(1.) An applicant for compensation under this Part to whom the Inspector gives notice under sub-section (3.) of section 85 of this Ordinance may, within twenty-one days after the date on which notice is so given, make application to the Court for an order under this section.

(2.) The Court, on application under this section, may, if it thinks fit, by order vary a determination of the Inspector under sub-section (1.) of section 85 of this Ordinance.

Payment of  
compensation.

**88.**—(1.) Subject to this section, where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this Part, the Commonwealth shall pay to the applicant an amount equal to the amount so determined.

(2.) The amounts paid under the last preceding sub-section to applicants for compensation in respect of defalcations by the same solicitor shall not exceed, in the aggregate, Fifty thousand dollars.

(3.) Where the aggregate of the amounts that the Commonwealth would, but for this sub-section, be required by sub-section (1.) of this section to pay to applicants for compensation in respect of defalcations by the same solicitor exceeds the amount available under the last preceding sub-section, the amount available under that sub-section shall be divided amongst those applicants in proportion to the amounts otherwise payable to those applicants.

(4.) Where, at any time, the amount standing to the credit of the Fidelity Trust Account is insufficient for the payment of all amounts that the Commonwealth would, but for this sub-section, be required by this section to pay, the amount standing to the credit of the Fidelity Trust Account shall be divided amongst the persons to whom it would be required to pay those amounts in proportion to those amounts.

Subrogation.

**89.** Where the Commonwealth has paid compensation to a person under this Part, the Commonwealth is, to the extent of the payment, subrogated to the rights of that person against the solicitor in respect of whose defalcation the compensation was paid.

Solicitors may  
claim in  
certain cases.

**90.**—(1.) Where—

- (a) the Commonwealth has paid all the amounts of compensation required to be paid in respect of defalcations committed by a solicitor; and
- (b) the sum of those amounts is less than Fifty thousand dollars,

a solicitor who was, at the time at which any of those defalcations was committed, a partner of the first-mentioned solicitor and has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of those defalcations may apply to the Inspector for compensation under this Part in respect of that payment.

(2.) Section 82 of this Ordinance does not apply in relation to an application made under this section.

(3.) Where—

(a) an application is made under this section; and

(b) the Inspector is satisfied that—

(i) the solicitor by whom the application is made is entitled to make an application under this section; and

(ii) in relation to the defalcation to which the claim relates, the solicitor acted in good faith,

the Commonwealth shall pay compensation to that solicitor.

(4.) The amount to be paid under the last preceding sub-section is such an amount, not exceeding the difference between the amount of Fifty thousand dollars and the sum of the amounts referred to in paragraph (a) of sub-section (1.) of this section, as the Inspector thinks proper.

**91.**—(1.) Where, in relation to an application made under this Part (other than an application under the last preceding section), the Inspector has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant, the Commonwealth may make an interim payment of compensation to the applicant.

Interim payments of compensation.

(2.) An amount paid to a person under this section shall be set-off against the compensation that the Commonwealth is required by section 85 of this Ordinance to pay to the person.

#### PART IX.—APPOINTMENT OF RECEIVERS.

**92.**—(1.) In this Part—

“solicitor” has the same meaning as in Part VII.;

“trust bank account” has the same meaning as in Part VII.

Interpretation.

(2.) In this Part, a reference to trust property of a solicitor or of solicitors practising in partnership shall be read as a reference to personal property that has been entrusted to, or received on behalf of any other person by, the solicitor or those solicitors in the course of, or in connexion with, the practice of the solicitor or those solicitors other than personal property that has been delivered by the solicitor or solicitors in accordance with directions of the person entitled to give directions with respect to the delivery of the property.

(3.) Without limiting its generality, the term “personal property” includes, for the purposes of this Part—

(a) trust moneys;

(b) documents evidencing the title to land; and

(c) all other documents, instruments, securities and writings.

(4.) For the purposes of this Part, a reference to a solicitor shall, in the case where a person has ceased to be a solicitor, be read as including a reference to such a person.

Appointment  
of receiver.

**93.**—(1.) Where the Court is satisfied—

- (a) that there are reasonable grounds for believing that a defalcation of trust moneys of a solicitor or of solicitors practising in partnership has been committed or that an offence involving fraud or dishonesty has been committed in relation to trust moneys; or
- (b) that, through—
  - (i) the mental or physical infirmity of a solicitor;
  - (ii) the death of a solicitor; or
  - (iii) a solicitor ceasing, for any reason, to practise as a solicitor,
 a person to whom trust moneys of the solicitor or of the partnership of which the solicitor is or was a member are payable is unable to obtain payment of the trust moneys or a person entitled to delivery of trust property of the solicitor or of the partnership of which the solicitor is or was a member is unable to obtain delivery of the trust property,

the Court may by order appoint a person specified in the order to be receiver of the trust property of the solicitor or of the partnership.

(2.) Where the Court makes an order under sub-section (3.) of section 55D of the *Judiciary Act* 1903-1969 that a person is not entitled to practise as a barrister and solicitor in the Territory or that a person's entitlement so to practise is suspended for a specified period, the Court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the solicitor or, if the solicitor carried on practice in partnership with other solicitors, of the partnership.

(3.) An application for an order under sub-section (1.) of this section shall not be made except by the Inspector.

(4.) The Court may give such directions as it thinks fit with respect to the person or persons on whom, and the manner in which, an application for an order under sub-section (1.) of this section and a copy of an order made under sub-section (1.) or sub-section (2.) of this section are to be served.

Powers of  
receiver in  
relation to  
trust moneys  
and trust  
property.

**94.**—(1.) A receiver of the trust property of a solicitor or of solicitors practising in partnership may—

- (a) take possession of all books, accounts and other documents relating to trust moneys of the solicitor or partnership together with all cash representing trust money held by the solicitor or partnership;
- (b) take possession of all trust property of the solicitor or partnership;
- (c) require a person who has in his possession any trust property of the solicitor or partnership or books, accounts or other documents relating to the trust property or trust money of the solicitor or partnership to deliver that

property or those books, accounts or documents to the receiver; and

- (d) require the solicitor or a member of the partnership, or any person whom the receiver believes may be in a position to do so, to give to the receiver information in respect of the trust moneys or trust property of the solicitor or partnership or in respect of the books, accounts or other documents relating to those moneys or that property.

(2.) A requirement under this section shall be in writing and shall be delivered to the solicitor or other person to whom it is directed.

(3.) A solicitor or other person to whom a requirement under this section is delivered shall not, without lawful excuse, fail to comply with the requirement.

Penalty: Five hundred dollars.

**95.—**(1.) A receiver of the trust property of a solicitor or of solicitors practising in partnership may, by instrument in writing— Notice to bank.

- (a) give to the manager, or other person in charge, of the bank at which the solicitor or partnership maintains a trust bank account in accordance with Division 3 of Part VII. notice of his appointment; and
- (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the trust bank account.

(2.) Where a receiver of the trust property of a solicitor or of a partnership has reasonable grounds for believing that there is, in a bank account maintained by the solicitor or a member of the partnership, whether in his own name or any other name, a credit arising from the payment into that account of moneys received for or on behalf of any person by a solicitor or arising from the payment into that bank account of moneys paid out, otherwise than in accordance with the directions of the person or persons on whose behalf the moneys were held, from a trust bank account maintained by the solicitor in accordance with Division 3 of Part VII., the receiver may, by instrument in writing—

- (a) give to the manager, or other person in charge, of the bank at which the account is maintained notice of his appointment; and
- (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the bank account.

(3.) A copy of an instrument given by a receiver under this section shall, except where the receiver has been appointed after the death of a solicitor, be delivered to the solicitor.

(4.) The receiver may withdraw all the moneys in an account referred to in this section, or from time to time withdraw any of such moneys, and pay them into a trust bank account opened for the purpose and may operate on and otherwise deal with the account in accordance with directions given under section 102 of this Ordinance.



Examination of solicitor and other persons as to trust moneys and trust property.

**96.**—(1.) The Court may, on application by a receiver of the trust property of a solicitor, by order direct that the solicitor, or a person to whom a requirement under paragraph (c) of sub-section (1.) of section 94 of this Ordinance has been delivered, appear before the Court for examination in relation to the trust moneys and trust property of the solicitor.

(2.) On an examination under this section, the receiver and the solicitor or other person are each entitled to be represented by a barrister and solicitor.

(3.) The examination of a solicitor or other person under this section shall be conducted on oath or affirmation.

(4.) On an examination under this section, the solicitor or other person shall answer all questions that the Court allows to be put to him.

(5.) On an examination under this section, a solicitor or other person is not excused from answering a question on the ground that the answer might tend to incriminate him, but his answer is not admissible against him in any criminal proceedings other than—

- (a) proceedings for an offence arising out of the falsity of the answer; or
- (b) proceedings under this Ordinance.

Power of Court to order delivery of trust property to receiver.

**97.**—(1.) Where the Court is satisfied, on application made by the receiver of the trust property of a solicitor or a partnership of solicitors, that a person who has in his custody or under his control trust property of the solicitor or of the solicitors practising in the partnership has failed to deliver the trust property to the receiver in accordance with a requirement under sub-section (1.) of section 94 of this Ordinance, the Court may by order direct that person to deliver the trust property to the receiver.

(2.) A failure by a person to comply with an order made by the Court under the last preceding sub-section is punishable as a contempt of the Court.

Power of receiver to take delivery of property receivable by solicitor after appointment of receiver.

**98.**—(1.) Where—

- (a) a receiver of the trust property of a solicitor or of solicitors practising in partnership has been appointed under this Part; and
- (b) the receiver has reason to believe that another person is under an obligation, or will, at some future date, be under an obligation to deliver to the solicitor or to the partnership personal property to be received by the solicitor or the partnership on behalf of some other person,

the receiver may, by notice in writing given to the first-mentioned person, require that person to deliver the personal property to the receiver.

## (2.) Where—

- (a) a person has knowledge of the appointment of a receiver of the trust property of a solicitor or of solicitors practising in partnership; and
- (b) that person is under an obligation to deliver personal property to the solicitor or to the partnership to be received by the solicitor or the partnership on behalf of some other person,

that first-mentioned person may deliver the personal property to the receiver.

(3.) A document signed by the receiver of the trust property of a solicitor or solicitors practising in partnership acknowledging the receipt of personal property delivered to him in accordance with either of the last two preceding sub-sections is as valid and effectual as if it had been given by the solicitor or the solicitors practising in partnership.

(4.) Personal property delivered to a receiver in accordance with this section shall be dealt with and disposed of by the receiver as if it were trust property of which he has taken possession under this Part.

**99.—(1.)** Where—

- (a) a receiver of the trust property of a solicitor or of solicitors practising in partnership has been appointed; and
- (b) the receiver has taken into his possession property which he claims to be trust property,

the solicitor, any member of the partnership, the personal representative, in the case where a solicitor has died, of a deceased solicitor or any other person who has delivered the property to the receiver may apply to the Court for an order under this section.

(2.) The Court may, if it is satisfied that the property referred to in the application is not trust property of the solicitor or of the solicitors practising in partnership, order the receiver to return the property to the person making the application or to such other person as the Court directs.

Right of solicitor, partnership or person to apply to Court for an order in respect of property.

**100.—(1.)** Where—

- (a) a receiver of trust property of a solicitor or solicitors practising in partnership has been appointed under this Part; and
- (b) the solicitor or the partnership claims a lien for costs on personal property held by the receiver,

the receiver may, by notice in writing, require the solicitor or the partnership to give to the receiver, within a period specified in the notice (being a period of not less than thirty days after the date upon which the notice is given), particulars of the property on which a lien is claimed together with a detailed bill of costs in respect of each lien claimed.

Lien for costs on property held by receiver.

(2.) The receiver may, by the same or a subsequent notice in writing, require the solicitor or the partnership claiming the lien to lodge, within a time specified in the notice or within such further time as the receiver or the Court on an application made for the purpose allows, such a bill for taxation.

(3.) If the solicitor or the partnership fails to comply with a requirement contained in a notice given under either of the last two preceding sub-sections, the lien is discharged.

(4.) The receiver of the trust property of a solicitor or solicitors practising in partnership shall, if requested so to do, give to the solicitor or those solicitors or a person authorized for the purpose by the solicitor or those solicitors such access to all documents and books as is reasonably necessary to enable a bill of costs referred to in sub-section (1.) of this section to be prepared and, where such a request is made, time does not, for the purposes of this section, run in the period commencing on the day on which access is requested and ending on the day on which access as requested is given.

Receiver to report to Court.

**101.**—(1.) A receiver of the trust property of a solicitor or of solicitors practising in partnership shall, as soon as is practicable, make a report to the Court setting out—

- (a) the amount of trust moneys held by the solicitor or solicitors on the appropriate date;
- (b) the amount of moneys on deposit with the Inspector by the solicitor or solicitors on the appropriate date;
- (c) the amounts of money paid to the receiver which, if paid to the solicitor or solicitors, would have been trust moneys;
- (d) the liabilities of the solicitor or solicitors in respect of trust moneys on the appropriate date and in respect of moneys referred to in the last preceding paragraph;
- (e) if moneys are held by the receiver, the manner in which the receiver recommends that those moneys be dealt with; and
- (f) particulars of all other trust property held by the receiver.

(2.) In this section, “the appropriate date” means the date of the appointment of the receiver or, in a case where a solicitor has died, the date of death of the solicitor.

Power of Court to give directions.

**102.** Subject to the next succeeding section, where—

- (a) a receiver has made a report to the Court in accordance with the last preceding section; and
- (b) that report discloses that moneys or trust property is held by the receiver,

the Court may, from time to time, give to the receiver directions as to the manner in which those moneys or that trust property are to be dealt with.

**103.**—(1.) Where it appears to the Court that—

(a) a person is entitled to moneys or trust property held by a receiver; and

(b) that person cannot be found,

Unclaimed  
moneys.

the Court shall direct the receiver to pay those moneys to the Inspector or to deliver that property to the Inspector.

(2.) Moneys paid in pursuance of a direction under the last preceding sub-section shall be paid to the Inspector for the purposes of the Statutory Deposits Trust Account referred to in Division 7 of Part VII.

(3.) Where trust property is delivered to the Inspector in accordance with this section, the Inspector shall deal with the property in such manner as the Court, on the application of the Inspector, directs, and, if, in accordance with the directions of the Court, the property is sold, the proceeds shall be paid to the Inspector for the purposes of the Statutory Deposits Trust Account referred to in Division 7 of Part VII.

(4.) Where the Court is satisfied that a person is entitled to moneys paid, or property delivered, to the Inspector in accordance with a direction given under sub-section (1.) of this section, it shall, on application by that person, by order direct the Inspector to repay the moneys, or to deliver the property to that person.

**104.**—(1.) Where, for any reason, a receiver appointed under this Part is unable to continue to perform his functions as receiver, the Court may by order terminate his appointment and appoint another person to be receiver in his place.

Termination of  
receivership.

(2.) The Court may, before making an order under the last preceding sub-section, require the receiver to submit a full report of his conduct of the receivership.

(3.) Where a receiver appointed under this Part has—

(a) complied with the directions of the Court;

(b) filed with the Registrar accounts of all moneys received or paid by him in his capacity as receiver; and

(c) filed with the Registrar a report showing the manner in which trust property (other than money) received by him has been disposed of,

the Court may, by order, terminate the appointment of the receiver.

(4.) The Registrar shall cause a copy of an order made under the last preceding sub-section together with copies of the accounts and reports filed by a receiver to be delivered to the solicitor or the solicitors practising in partnership in respect of whose trust property the receiver was appointed and to the Inspector.

(5.) Where the Court makes an order under sub-section (3.) of this section, the Court may give directions with respect to the disposal by the receiver of any books, accounts or other documents that have come into his possession in the course of the receivership.

Remuneration  
of receiver.

**105.**—(1.) A receiver appointed under this Part shall be paid by the Commonwealth such fees as are agreed by the receiver and the Inspector or, in default of agreement, as the Court, on the application of the Inspector, determines.

(2.) The amount of the fees and disbursements paid by the Commonwealth in pursuance of this section are recoverable as a debt due to it from the solicitor, or from the solicitors, in respect of whose trust property the receiver was appointed.

(3.) Where an amount is recoverable under the last preceding sub-section from two or more persons, the liability of those persons is joint and several.

(4.) An amount recovered under sub-section (2.) of this section shall be paid to the Inspector for the purposes of the Fidelity Trust Account referred to in Part VIII.

Payments by  
receiver to be  
deemed to be  
made by  
solicitor.

**106.** Moneys paid, or trust property delivered, by a receiver in accordance with a direction of the Court shall, for all purposes, be deemed to have been paid, or delivered, by the solicitor or solicitors in respect of whose trust property the receiver was appointed.

Destroying or  
concealing  
records.

**107.** A person shall not destroy or conceal any book, account or other document relating to trust property received or held by a solicitor or solicitors with the intention of preventing the book, account or other document coming into the possession of a receiver appointed under section 93 of this Ordinance.

Penalty: Five hundred dollars or imprisonment for six months, or both.

Reimburse-  
ment of  
receiver.

**108.** The Commonwealth may pay to a receiver appointed under this Part an amount equal to the amount of any liability incurred by the receiver for costs, charges, expenses or damages for any act or omission done or made in good faith by the receiver, his servants or agents and in the execution or purported execution of powers conferred, or duties imposed, on the receiver by or under this Part.

#### PART X.—COSTS.

Definition.

**109.** In this Part, "solicitor" has the same meaning as in Part VII.

No action by  
solicitor for  
costs until  
detailed  
statement  
delivered.

**110.**—(1.) Subject to the next succeeding sub-section, a solicitor is not entitled to institute proceedings in a court for the recovery of costs or disbursement for, or in respect of, work of a professional nature until the expiration of a period of one month after he delivers to the person from whom he claims the costs or disbursements an itemised statement of those costs or disbursements.

(2.) Where the Supreme Court is satisfied that there are reasonable grounds for believing that a person to whom a statement has been delivered in accordance with the last preceding sub-section is about to leave Australia, the Supreme Court may grant leave to the solicitor by

whom the statement was delivered to institute proceedings for the recovery of the costs or disbursements to which the statement relates, and those proceedings may be instituted notwithstanding that a period of one month has not elapsed since the delivery of the statement.

**111.—(1.)** A person to whom a statement is delivered under this Part may—

- (a) within one month after the delivery of the statement; or
- (b) within such further time as the Registrar allows,

give notice to the Registrar and to the solicitor by whom the statement was delivered that he wishes to have the amount payable by him determined by taxation.

(2.) Notwithstanding the last preceding sub-section, a person is not entitled to give notice under that sub-section after judgment has been entered in proceedings for the recovery of the costs or disbursements, or any part of the costs or disbursements, specified in a statement delivered under this Part.

(3.) Sub-section (1.) of this section applies whether or not the costs or disbursements to which a statement relates have been paid.

(4.) The Registrar shall not allow further time for the giving of notice under sub-section (1.) of this section unless he is satisfied that it was not practicable for notice to be given within one month after the delivery of the statement.

**112.—(1.)** A notice under sub-section (1.) of the last preceding section shall be in writing and shall be accompanied by the statement to be taxed and a copy of the statement.

Application for  
taxation of  
statement of  
costs, &c.

Form of  
notice, &c.

(2.) Where notice is given to the Registrar under sub-section (1.) of the last preceding section, he shall fix a time and place for the taxation and shall give notice of the time and place so fixed to the person requesting the taxation and to the solicitor concerned.

**113.—(1.)** Where a person gives notice under sub-section (1.) of section 111 of this Ordinance and he fails to appear at the time and place fixed by the Registrar in pursuance of sub-section (2.) of the last preceding section, the notice shall be deemed to have been withdrawn.

Taxation in  
absence of  
party.

(2.) Where a person gives notice under sub-section (1.) of section 111 of this Ordinance that he wishes to have a statement taxed and the solicitor who delivered the statement does not appear at the time and place fixed by the Registrar under sub-section (2.) of the last preceding section, the Registrar shall, subject to the last preceding sub-section, proceed with the taxation.

**114.—(1.)** The Registrar shall, in assessing the proper sum to be charged for doing any act in respect of which no charge is provided for in a scale of costs prescribed by or under a law in force in the Territory, allow such sum as is fair and reasonable having regard to all the circumstances of the case.

Matters to be  
considered on  
taxation.

(2.) The Registrar shall not reduce the amount specified in a statement delivered in accordance with this Part in respect of a disbursement unless he is satisfied that the amount of the disbursement is unreasonable.

**Costs of  
taxation.**

**115.**—(1.) Where the amount claimed in a statement delivered under this Part is reduced on taxation by a sixth part or more, the solicitor who delivered the statement is liable to pay to the person to whom the statement was delivered his costs of the taxation.

(2.) Where the amount claimed in a statement delivered under this Part is not reduced on taxation or is reduced by less than a sixth part, the person to whom the statement was delivered is liable to pay to the solicitor who delivered the statement his costs of the taxation.

(3.) The amount to be paid under either of the last two preceding sub-sections shall be assessed by the Registrar forthwith after the completion of the taxation.

**Certificate of  
taxation.**

**116.**—(1.) On the taxation of a statement delivered under this Part, the Registrar shall certify in writing the amount (if any) that, having regard to the result of the taxation and the amount payable under the last preceding section is, in his opinion, due to the solicitor who delivered the statement or, if the solicitor has received payment of the amount specified in the statement, the amount due by the solicitor.

(2.) The Registrar shall deliver a copy of his certificate under the last preceding sub-section to each of the persons who appeared, or was represented, on the taxation.

(3.) In an action by a solicitor for the recovery of any amount as costs, a certificate by the Registrar given under sub-section (1.) of this section is conclusive with respect to the amount due to the solicitor.

(4.) A reference in either of the last two preceding sub-sections to a certificate given under sub-section (1.) of this section includes a reference to such a certificate as amended under sub-section (3.) of the next succeeding section.

**Review of  
taxation.**

**117.**—(1.) A person aggrieved by the decision of the Registrar as to any item in a statement delivered under this Part may, within fourteen days after the date on which a copy of the Registrar's certificate under the last preceding section is delivered to him or within such further time as the Court allows, make application to the Court for a review of the decision of the Registrar.

(2.) On an application under this section, the Court may affirm or vary the decision of the Registrar and may give such directions as it thinks necessary in respect of the amendment of the certificate given by the Registrar under the last preceding section.

(3.) The Registrar shall comply with any directions given by the Court under the last preceding sub-section and shall deliver a copy of the amended certificate to each of the persons to whom the certificate was delivered in accordance with sub-section (2.) of the last preceding section.

**118.** Where notice is given under sub-section (1.) of section 111 of this Ordinance in respect of a statement delivered under this Part, any proceedings commenced by the solicitor in relation to costs or disbursements claimed in the statement are, by force of this section, stayed until the expiration of fourteen days after the date of the certificate of the Registrar under section 116 of this Ordinance or, where application is made under the last preceding section, until the determination of the application.

Stay of proceedings.

**119.** Where a certificate of the Registrar under section 116 of this Ordinance, or such a certificate as amended under sub-section (3.) of section 117 of this Ordinance, specifies an amount as the amount that is, in the opinion of the Registrar, due to a person to whom a statement has been delivered under this Part, the amount so specified is recoverable by that person as a debt due to him by the solicitor by whom the statement was delivered.

Amount due by legal practitioner recoverable as a debt.

**120.—(1.)** The preceding provisions of this Part do not apply in respect of the costs to be paid to a solicitor for work to which an agreement under this section relates.

Agreements as to costs.

(2.) A solicitor may make an agreement with a person that the amount of the costs (excluding disbursements) payable, or to be payable, by the person to the solicitor for work of a professional nature already undertaken, or to be undertaken, for the person by the solicitor shall be the amount specified in, or ascertainable in accordance with, the agreement.

(3.) An agreement referred to in the last preceding sub-section is not enforceable unless a note or memorandum containing the terms of an agreement is signed by the person liable to pay the costs to which the agreement relates.

(4.) A note or memorandum of an agreement signed in accordance with the last preceding sub-section is evidence of the terms of the agreement.

(5.) A solicitor who is a party to an agreement under this section is not entitled, in respect of work to which the agreement relates, to receive an amount for his costs (including disbursements) greater than the amount specified in, or ascertainable in accordance with, the agreement.

**121.—(1.)** Where, on an application by a person who has made an agreement with a solicitor under the last preceding section, the Court is satisfied that the agreement is not fair and reasonable, the Court may, by order—

Powers of Court where contract not fair and reasonable.

(a) direct that the amount payable under the agreement be reduced to an amount specified in the order; or



(b) declare that the agreement is not binding on the parties to the agreement.

(2.) Where, under the last preceding sub-section, the Court directs that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order of the Court were specified in the agreement as the amount payable under the agreement.

(3.) Where, under sub-section (1.) of this section, the Court declares that an agreement is not binding on the parties to the agreement—

(a) the Court may make such further orders as it thinks necessary to restore the parties to the agreement to the position in which they would have been if the agreement had not been made; and

(b) the provisions of this Part (other than the last preceding section) apply as if the agreement had not been made.

(4.) Except by leave of the Court, a person is not entitled to make an application under this section in respect of an agreement after the institution of proceedings for the recovery from that person of the amount payable under the agreement.

#### PART XI.—OFFENCES BY UNQUALIFIED PERSONS.

**122.** A person other than a barrister and solicitor shall not—

(a) hold himself out to be, or to be qualified to perform any of the functions of, a barrister and solicitor; or

(b) permit his name to be so used as to suggest that he is, or is qualified to perform any of the functions of, a barrister and solicitor.

Penalty: Five hundred dollars.

**123.—**(1.) Subject to the next succeeding sub-section, a person other than a barrister and solicitor shall not, for reward—

(a) draw or cause to be drawn by an employee a will or other testamentary instrument; or

(b) draw or cause to be drawn by an employee an instrument creating or regulating rights between persons or relating to real or personal property or to a legal proceeding.

Penalty: Five hundred dollars.

(2.) It is not an offence against the last preceding sub-section—

(a) for a public officer to draw an instrument in the course of his employment;

(b) for a person to engross an instrument in the course of his employment;

(c) for a person who is employed to draw an instrument of a kind referred to in the last preceding sub-section as part of his ordinary duties to draw such an instrument if the

Persons other than barristers and solicitors not to hold themselves out to be qualified.

Preparation of certain documents by persons who are not legal practitioners.

employer of the person is a barrister and solicitor and the person drawing the instrument does not receive, in respect of the drawing of the instrument, any fee or reward other than his salary; or

- (d) if the drawing of the instrument is involved in the performance of prescribed work, or of work included in a prescribed class of work.

(3.) In this section—

“draw” includes prepare and fill in and “drawn” has a corresponding meaning;

“public officer” means—

- (a) a person employed under an Act or Ordinance; and  
(b) a member of the Defence Force.

**124.—(1.)** A person other than a barrister and solicitor shall not, for reward—

Preparation of papers relating to application for probate.

- (a) take instructions, either on his own behalf or as agent for another person, for the preparation of papers to be used in support of, or in opposition to, an application for the grant of probate or letters of administration; or  
(b) draw or prepare such papers.

Penalty: Five hundred dollars.

(2.) The last preceding sub-section does not apply to—

- (a) the Curator of Estates of Deceased Persons holding office under the *Administration and Probate Ordinance 1929-1970* or a person performing the duties of the Curator;  
(b) a person employed in the office of the Curator of Estates of Deceased Persons; or  
(c) a corporation that is a trustee company within the meaning of the *Trustee Companies Ordinance 1947-1968* or a person employed by such a corporation acting in the course of his employment.

**125.—(1.)** Where a body corporate does an act which, if done by a natural person, would be an offence against one of the last three preceding sections, the body corporate is guilty of an offence and punishable, upon conviction, by a fine not exceeding Five hundred dollars.

Offences by corporations.

(2.) Where, by virtue of the last preceding sub-section, a body corporate is guilty of an offence, every person who, at the time of the commission of the offence, was a director or officer of the body corporate is also guilty of the offence and punishable as if the offence had been committed by him unless he proves that the offence was committed without his knowledge and that he took reasonable steps to prevent the commission of the offence by the body corporate.

## PART XII.—TRANSITIONAL PROVISIONS.

Application of Ordinance to articles of clerkship executed before commencement of Ordinance.

## 126. Where—

- (a) immediately before the commencement of this Ordinance, a person was serving under articles of clerkship with a barrister and solicitor practising in the Territory or with the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory.
- (b) the period of clerkship provided for by those articles is not less than twelve months; and
- (c) a copy of the articles is lodged with the Secretary to the Admission Board within one month after the commencement of this Ordinance or within such further period as the Admission Board allows,

this Ordinance applies to and in relation to that person and to the articles of clerkship as if this Ordinance had been in force on the date on which the articles were executed and as if the person had entered into those articles under this Ordinance.

## PART XIII.—MISCELLANEOUS.

Solicitor not to share receipts with persons not practising as solicitors.

127.—(1.) Subject to this section, a barrister and solicitor shall not share the receipts from his practice with a person other than a barrister and solicitor.

(2.) A barrister and solicitor who contravenes the last preceding sub-section is guilty of professional misconduct.

(3.) Sub-section (1.) of this section does not apply to a barrister and solicitor to the extent that he shares the receipts from his practice with—

- (a) a person with whom he formerly carried on practice in partnership;
- (b) a dependant or legal personal representative of a person referred to in the last preceding paragraph;
- (c) a person who carries on practice in a State or another Territory and, in the course of his practice, performs work of a professional nature as the agent of the barrister and solicitor; or
- (d) a person who carries on practice in a State or another Territory and for whom the barrister and solicitor, in the course of his practice, performs work of a professional nature as the agent of that person.

Employment of persons who have ceased to be barristers and solicitors.

128.—(1.) Except with the permission of the Disciplinary Board, a barrister and solicitor shall not employ a person in connexion with his practice as a solicitor if he knows that the name of that person has been removed, otherwise than at his own request, from—

- (a) the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act 1903-1969*; or

- (b) the roll of barristers and solicitors, of barristers, of solicitors or of legal practitioners of the Supreme Court of a State, the Territory or another Territory.

(2.) A barrister and solicitor who contravenes the last preceding sub-section is guilty of professional misconduct.

**129.**—(1.) Where, by reason of absence or for any other reason, the Judge is unable to perform the functions vested in him by this Ordinance, those functions shall be performed by an additional Judge of the Supreme Court nominated by the Attorney-General for the purposes of this section. Absence, &c.,  
of Judge.

(2.) An additional Judge of the Supreme Court who, in accordance with the last preceding sub-section, performs the functions vested by this Ordinance in the Judge may exercise the powers conferred, and shall perform the duties imposed, upon the Judge by this Ordinance.

**130.**—(1.) Where any trust moneys held by a barrister and solicitor who practises as a solicitor have become unclaimed moneys, the barrister and solicitor shall, within one month after those moneys become unclaimed moneys, pay those moneys to the Commonwealth by payment to the Secretary to the Attorney-General's Department. Unclaimed  
trust moneys.

(2.) Trust moneys held by a barrister and solicitor who practises as a solicitor are unclaimed moneys for the purposes of this section if—

- (a) the trust moneys have been held, whether before or after the commencement of this Ordinance, by the solicitor for a period of not less than six years, and during that period, the barrister and solicitor has had no knowledge of the existence or the address of the person on whose behalf those trust moneys are held; or
- (b) the person has refused to accept payment of those moneys when tender of payment has been made.

(3.) A person who claims to be entitled to any moneys that have been paid into the Consolidated Revenue Fund in pursuance of the last preceding sub-section may apply to the Court for an order under this sub-section declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.

(4.) Upon receipt by the Attorney-General of an office copy of an order under the last preceding sub-section, the Commonwealth shall pay to the person in whose favour the order was made an amount equal to the amount specified in the order.

**131.** For the purposes of this Ordinance, a document may be given or delivered to a person by— Service of  
documents.

- (a) delivering the document to the person personally; or
- (b) sending the document to the person by post.

**Precedence.**        **132.** Subject to the rights of precedence of the Attorney-General and of the Solicitor-General—

- (a) barristers and solicitors who are Queen's Counsel—
  - (i) have precedence over other barristers and solicitors; and
  - (ii) have precedence among themselves according to the respective dates of their first appointment as Queen's Counsel in Australia; and
- (b) barristers and solicitors who are not Queen's Counsel have precedence among themselves according to the respective dates of their first admission to practise in Australia.

**Regulations.**        **133.** The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters that by this Ordinance are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

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THE SCHEDULE

Section 14.

OATH

I, A.B., do swear that I will well and honestly conduct myself in the practice of a barrister and solicitor of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will well and honestly conduct myself in the practice of a barrister and solicitor of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

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