

No. 4 of 1972

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## AN ORDINANCE

To amend the *Legal Practitioners Ordinance 1970-1971*.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this third day of February, 1972.

PAUL HASLUCK  
Governor-General.

By His Excellency's Command,

IVOR J. GREENWOOD  
Attorney-General, acting for and on behalf of the  
Minister of State for the Interior.

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### LEGAL PRACTITIONERS ORDINANCE 1972

1.—(1.) This Ordinance may be cited as the *Legal Practitioners Ordinance 1972*.<sup>\*</sup> Short title  
and citation.

(2.) The *Legal Practitioners Ordinance 1970-1971*<sup>†</sup> is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Legal Practitioners Ordinance 1970-1972*.

2. Section 4 of the Principal Ordinance is repealed and the following section inserted in its stead:—

- “ 4. This Ordinance is divided into Parts, as follows:— Parts.
- Part I.—Preliminary (Sections 1-5).
  - Part IA.—The Law Society (Section 6).
  - Part IB.—Her Majesty's Counsel (Section 6A).
  - Part IC.—Precedence of Barristers and Solicitors (Section 6B).
  - Part II.—The Admission Board (Sections 7-9).
  - Part III.—Barristers and Solicitors of the Supreme Court (Sections 10-15A).
  - Part IIIA.—Practising Certificates (Sections 15B-15Q).

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\* Notified in the *Commonwealth Gazette* on 10 February 1972.

† Ordinance No. 43, 1970; as amended by Ordinance No. 51, 1970 and No. 9, 1971.

Part IV.—Articles of Clerkship (Sections 16-24).

Part V.—Discipline.

Division 1.—The Disciplinary Committee (Sections 25-28).

Division 2.—Inquiries by the Disciplinary Committee (Sections 29-40).

Division 3.—Proceedings before the Court (Sections 41-42D).

Division 4.—General (Section 42E).

Part VII.—Trust Moneys and Trust Accounts.

Division 1.—Preliminary (Sections 43-45).

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).

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

Division 7.—Deposits with the Law Society (Sections 70-74A).

Part VIII.—The Fidelity Fund.

Division 1.—General (Sections 75-79).

Division 2.—Claims against the Fund (Sections 80-89).

Division 3.—Levies (Section 90).

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)."

3. Sections 5 and 6 of the Principal Ordinance are repealed and the following section is inserted in their stead:—

**Definitions.**

" 5. In this Ordinance, unless the contrary intention appears—

' barrister and solicitor ' means a person whose name is on the Roll of Barristers and Solicitors;

' restricted practising certificate ' means a practising certificate certifying to the entitlement of the holder to perform the functions of a solicitor whilst in the employ of another person;

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

' the Court ' means the Supreme Court;

' the Disciplinary Committee ' means the Barristers and Solicitors Disciplinary Committee of The Law Society of the Australian Capital Territory;

- ‘ the Fidelity Fund ’ means the Solicitors’ Fidelity Fund of the Australian Capital Territory established by section 76 of this Ordinance;
- ‘ the Judge ’ has the meaning that the expression ‘ the senior Judge ’ has in the *Australian Capital Territory Supreme Court Act 1933-1971*;
- ‘ the Law Society ’ means The Law Society of the Australian Capital Territory as constituted by section 6 of this Ordinance;
- ‘ the Registrar ’ means the Registrar of the Supreme Court;
- ‘ the Roll of Barristers and Solicitors ’ means the roll kept in pursuance of section 13 of this Ordinance;
- ‘ 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;
- ‘ unrestricted practising certificate ’ means a practising certificate certifying to the entitlement of the holder to practise as a solicitor on his own account or in partnership with another barrister and solicitor.”.

4. After Part I. of the Principal Ordinance the following Parts are inserted:—

“ PART IA.—THE LAW SOCIETY.

“ 6.—(1.) The Law Society of the Australian Capital Territory is hereby constituted a body corporate by the name ‘ The Law Society of the Australian Capital Territory ’. Incorporation  
of Law  
Society.

“ (2.) The Law Society—

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

“ (3.) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Law Society affixed to a document and shall presume that it was duly affixed.

“ (4.) The first members of the Law Society shall be the persons who, immediately before the commencement of this Part, were members of The Law Society of the Australian Capital Territory.

“ (5.) The Constitution of the Law Society is, subject to this Ordinance, the Constitution of The Law Society of the Australian Capital Territory as in force immediately before the commencement of this Ordinance.

“ (6.) An amendment of the Constitution of the Law Society shall not take effect unless it is approved by the Governor-General.

“(7.) An amendment of the Constitution of the Law Society that is approved by the Governor-General takes effect—

- (a) where the amendment specifies a day on which it is to take effect, being a day not earlier than the day on which the Governor-General approves the amendment—on the day so specified; and
- (b) in any other case—on the day on which the Governor-General approves the amendment.

“(8.) Any property held, immediately before the commencement of this Part, by a person, in trust or otherwise, for or on behalf of The Law Society of the Australian Capital Territory is, subject to any charge or liability affecting the property, vested in the Law Society.

“(9.) A person is not entitled to be a member of the Law Society at any time after the thirtieth day of June, 1972, unless his name is on the Roll of Barristers and Solicitors.

“(10.) A person who holds a practising certificate is entitled, on application to the Law Society, to be admitted to membership of the Society without paying a fee for his admission.

“(11.) A member of the Law Society is not, while he holds a practising certificate, liable to pay to the Society any annual subscription to the Society’s funds.

#### “ PART IB.—HER MAJESTY’S COUNSEL.

Her Majesty’s  
Counsel.

“6A.—(1.) The Governor-General may, by commission, appoint a person who is a barrister and solicitor to be one of Her Majesty’s Counsel for the Territory.

“(2.) A person so appointed has, in and in relation to the Territory, the same status, rights, privileges and responsibilities as he would have had if he had been appointed by Her Majesty as one of Her Majesty’s Counsel for the Territory.

“(3.) There is payable to the Commonwealth by a barrister and solicitor appointed as one of Her Majesty’s Counsel a fee, in respect of his appointment, of Ten dollars.

#### “ PART IC.—PRECEDENCE OF BARRISTERS AND SOLICITORS.

Precedence  
of barristers  
and solicitors.

“6B.—(1.) Subject to the rights of precedence of the Attorney-General and of the Solicitor-General, Her Majesty’s Counsel for the Commonwealth or for the Territory, have, in and in relation to the Territory—

- (a) precedence over other barristers and solicitors; and
- (b) precedence amongst themselves according to the respective dates of their appointment as Her Majesty’s Counsel for the Commonwealth or for the Territory.

“(2.) If, on the date of his appointment as one of Her Majesty’s Counsel for the Territory, a person is one of Her Majesty’s Counsel for a State, the date on which that person was first appointed as one of

Her Majesty's Counsel for a State shall, for the purposes of this section, be deemed to be the date on which that person was appointed one of Her Majesty's Counsel for the Territory.

“(3.) The last preceding sub-section applies whether the date on which a person was first appointed as one of Her Majesty's Counsel for a State is a date before or after the date of commencement of this Part.

“(4.) Where the date on which one person is, or is to be deemed to have been, appointed as one of Her Majesty's Counsel for the Territory is the same date as the date on which another person is, or is to be deemed to have been, appointed as one of Her Majesty's Counsel for the Territory, those persons have, in and in relation to the Territory, precedence amongst themselves according to the respective dates of their first admission to practise in Australia, either as a barrister or solicitor, or both.

“(5.) Barristers and solicitors referred to in paragraph (a) of sub-section (1.) of this section have, in and in relation to the Territory, precedence amongst themselves according to the respective dates of their first admission to practise in Australia, whether as a barrister or solicitor, or both.”.

5. Section 7 of the Principal Ordinance is amended by omitting sub-sections (2.), (3.) and (4.) and inserting in their stead the following sub-sections:—

Barristers  
and solicitors  
Admission  
Board.

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

- (a) holds office for the period commencing on the first day of January in the year next following the date of his appointment and ending on the next succeeding thirty-first day of December; and
- (b) is eligible for re-appointment.

“(3.) The first members of the Admission Board, other than the Judge, appointed after the commencement of this sub-section hold office until the thirty-first day of December, One thousand nine hundred and seventy-two.

“(4.) In the event of there being a vacancy in the office of a member of the Admission Board, the Judge may appoint a barrister and solicitor to hold the vacant office, and a person so appointed holds office from the date of his appointment to the next succeeding thirty-first day of December.”.

6. After section 10 of the Principal Ordinance the following section is inserted:—

“10A.—(1.) A person whose name is on a roll referred to in sub-section (1.) of section 55D of the *Judiciary Act* 1903-1969 is entitled, notwithstanding that he resides or practises in a State or another Territory, to apply to the Court to be admitted to practise as a barrister and solicitor of the Court.

Admission of  
State and  
Territory  
practitioners.

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

- (a) the name of the applicant is on a roll referred to in the last preceding sub-section;
- (b) the applicant is of good fame and character; and
- (c) the applicant’s right to practise in federal courts or in a State or in another Territory is not suspended or has not been cancelled,

the Court shall admit the applicant to practise as a barrister and solicitor of the Court.”.

Admission Board to report to Court on applicant’s qualifications.

7. Section 12 of the Principal Ordinance is amended by inserting, after the figures “10”, the figures “10A”.

8. After section 12 of the Principal Ordinance the following section is inserted:—

Law Society may object to admission.

“12A. The Law Society is entitled to object to an application for admission made under section 10, 10A or 11 of this Ordinance and to be heard on the hearing of the application.”.

Roll of Barristers and Solicitors.

9. Section 13 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

“(2.) On and after the commencement of this sub-section, the Registrar shall not enter the name of a person referred to in paragraph (b) of the last preceding sub-section unless the application for the entry of that person’s name was made to the Registrar before that commencement.”.

10. After section 15 of the Principal Ordinance the following section is inserted in Part III.:—

Right to practise.

“15A. Subject to this Ordinance, a person whose name is on the Roll of Barristers and Solicitors—

- (a) is entitled to practise in the Territory—
  - (i) as a barrister and solicitor;
  - (ii) as a barrister; or
  - (iii) as a solicitor; and

(b) has the right of audience in any court of the Territory.”.

11. After Part III. of the Principal Ordinance the following Part is inserted:—

“PART IIIA.—PRACTISING CERTIFICATES.

Certain practitioners to hold practising certificates.

“15B.—(1.) A barrister and solicitor shall not, after the expiration of the period of three months commencing on the date of commencement of this Part, practise in the Territory as a solicitor on his own account or in partnership with another barrister and solicitor unless he holds, or is, in pursuance of section 15K of this Ordinance, to be deemed to hold, a current unrestricted practising certificate.

“(2.) For the purpose of the last preceding sub-section, a person shall not be taken to practise as a solicitor in the Territory by reason only that he is a member of a partnership whose practice in the Territory is conducted by another member or other members of the partnership.

“(3.) A barrister and solicitor shall not, after the expiration of a period of three months after the date of commencement of this Part, be employed in the Territory by another barrister and solicitor who is practising as a solicitor unless the first-mentioned barrister and solicitor holds, or is, in pursuance of section 15K of this Ordinance, to be deemed to hold, a current practising certificate.

“(4.) A barrister and solicitor is not entitled to recover any costs or disbursements in respect of any work of a professional nature done by him as a solicitor after the expiration of the period of three months commencing on the date of commencement of this Part if at the time at which the work was done he was not the holder of a current unrestricted practising certificate.

“15C. An application for the issue of a practising certificate may be made only by a person whose name is on the Roll of Barristers and Solicitors, shall be in writing addressed to the Law Society and shall state—

Applications  
for  
practising  
certificates.

(a) in the case of an application for an unrestricted practising certificate—

- (i) the address at which the person practises or proposes to practise; and
- (ii) where a person practises, or proposes to practise, in partnership with other persons—the names of those persons and the name under which the partnership is, or will be, carried on; or

(b) in the case of an application for a restricted practising certificate—the name and address of his employer or proposed employer.

“15D.—(1.) Subject to the next four succeeding sections, the Law Society shall, upon payment of the fee and the contribution and levy (if any) referred to in section 15M of this Ordinance, issue to the applicant a practising certificate of the kind sought by the applicant.

Issue of  
practising  
certificates.

“(2.) Where, in pursuance of one of the next three succeeding sections, the Law Society refuses to issue a practising certificate of the kind sought by the applicant, it shall forthwith give to the applicant notice of the refusal and of the ground on which it has refused to issue the practising certificate.

“15E.—(1.) An unrestricted practising certificate shall not be issued to a barrister and solicitor unless, during the period of five years immediately preceding the date of his application for a practising certificate—

Limitations on  
issue of  
unrestricted  
practising  
certificates.

(a) he has, for a period of not less than two years or for periods which, in the aggregate, are not less than two years—

- (i) served in a State or Territory under articles of clerkship;

- (ii) served as an employee of a solicitor in a State or Territory in the performance of work of a legal nature;
  - (iii) served as an officer or employee of the Attorney-General's Department in the performance of work of a legal nature;
  - (iv) practised in a State or Territory as a solicitor, either on his own account or in partnership with another person; or
  - (v) served or practised, as the case may be, in any two or more of the capacities referred to in the last four preceding sub-paragraphs; or
- (b) in addition to completing a course of legal education, being a course prescribed for the purposes of sub-paragraph (ii) of paragraph (b) of sub-section (2.) of section 10 of this Ordinance or for the purposes of this paragraph, he has served or practised for a period of not less than twelve months, or for periods which, in the aggregate, are not less than twelve months, in any one or more of the capacities referred to in the last preceding paragraph.

“(2.) Notwithstanding the last preceding sub-section, the Law Society may issue an unrestricted practising certificate to a barrister and solicitor if it is satisfied—

- (a) that he has, during the period of five years immediately preceding the date of his application for a practising certificate—
- (i) practised in a State or Territory as a barrister for a period of not less than two years;
  - (ii) practised in a State or Territory as a barrister for a period of not less than one year and served or practised, as the case may be, in any one or more of the capacities referred to in paragraph (a) of the last preceding sub-section for a period of not less than one year or for periods which, in the aggregate, are not less than one year; or
  - (iii) after completing a course of legal education referred to in paragraph (b) of the last preceding sub-section, practised in a State or Territory as a barrister for a period of not less than one year; and
- (b) that he has gained such experience that an unrestricted practising certificate should be issued to him.

“(3.) This section does not apply in relation to a person who was, immediately before the commencement of this Part, practising in the Territory as a solicitor on his own account or in partnership with another barrister and solicitor if, within the period of three months after the commencement of this Part, he applies for an unrestricted practising certificate.

“ 15F. An unrestricted practising certificate shall not be issued to a barrister and solicitor (not being a person referred to in sub-section (3.) of the last preceding section) unless he has satisfied the Law Society by passing examinations or otherwise that he has an adequate knowledge of accounts and legal ethics.

Practising certificates not to be issued unless certain examinations taken.

“ 15G.—(1.) The Law Society shall not issue an unrestricted practising certificate to a person, and shall cancel an unrestricted practising certificate issued to a person, if—

Person to whom practising certificates not to be issued and cancellation of practising certificates.

- (a) the person is undergoing imprisonment;
- (b) the person fails to comply with sub-section (4.) of section 61 of this Ordinance or, if section 63 is applicable to him, with that section;
- (c) a report of an audit under Division 5 of Part VII. or an examination under Division 6 of that Part discloses a deficiency in the trust moneys held by the solicitor, except where the deficiency was excusable and was made good before the date of the report; or
- (d) the person fails to pay a fine imposed on him under this Ordinance or any costs, fees and expenses ordered to be paid by him to, or recoverable from him by, the Law Society under this Ordinance.

“ (2.) The Law Society shall not issue a restricted practising certificate to a person, and shall cancel a restricted practising certificate issued to a person, if—

- (a) that person is undergoing imprisonment; or
- (b) that person fails to pay a fine imposed on him under this Ordinance or any costs, fees and expenses ordered to be paid by him to, or recoverable from him by, the Law Society under this Ordinance.

“ (3.) Where the Law Society cancels a practising certificate held by a person, it shall cause to be given to that person notice in writing of the cancellation and of the ground of the cancellation.

“ 15H.—(1.) Where a barrister and solicitor who holds an unrestricted practising certificate becomes bankrupt, the practising certificate held by that barrister and solicitor is, by force of this sub-section, cancelled.

Effect of bankruptcy on unrestricted practising certificate.

“ (2.) The Law Society shall not issue an unrestricted practising certificate to a barrister and solicitor who is bankrupt.

“ 15J.—(1.) Where the Law Society has refused to issue a practising certificate of the kind sought by a person, that person may, within fourteen days after he is given notice of the refusal, apply to the Court for an order under sub-section (4.) of this section.

Court may direct issue of certificate or revoke cancellation.

“ (2.) A person whose practising certificate has been cancelled by the Law Society may apply to the Court for an order under sub-section (5.) of this section.

“ (3.) The Law Society shall be the respondent to an application under this section.

“(4.) On an application under sub-section (1.) of this section, the Court may direct the Law Society to issue to the applicant a practising certificate of the kind sought by him or, if the applicant sought the issue of an unrestricted practising certificate, the issue to the applicant of a restricted practising certificate.

“(5.) Where, on an application under sub-section (2.) of this section, the Court is satisfied that the circumstances are such that the cancellation of the applicant’s practising certificate ought to be revoked, the Court may, subject to such terms and conditions (if any) as it thinks fit, by order revoke the cancellation of the applicant’s practising certificate.

“(6.) Where the Court makes an order under the last preceding sub-section, the revocation of the cancellation of the applicant’s practising certificate shall take effect on and from the date of the order or such other date as is specified in the order.

Persons to be deemed to hold practising certificates.

“15K.—(1.) Where the Law Society has refused to issue a practising certificate to a person or has cancelled a practising certificate held by a person, and the person has made application to the Court for an order under sub-section (4.) or (5.) of the last preceding section, the Court, on an application made by the person for an order under this section, may in its discretion, order that that person shall, until the determination of that first-mentioned application, be deemed to be a person who holds a practising certificate of the kind specified in the order.

“(2.) The Law Society shall be the respondent to an application under this section.

Expiry, &c., of certificate.

“15L.—(1.) A practising certificate takes effect on the date on which the certificate is expressed to take effect.

“(2.) A practising certificate expires on the thirtieth day of June next following the date on which the certificate takes effect.

“(3.) Where the name of a person is removed from the Roll of Barristers and Solicitors, a practising certificate held by that person is, by force of this section, cancelled.

“(4.) Where the right of a barrister and solicitor to practise in the Territory is suspended, a practising certificate held by the barrister and solicitor is, by force of this section, cancelled.

Fees for practising certificates.

“15M.—(1.) The fee payable on an application for the issue of an unrestricted practising certificate or a restricted practising certificate is that fixed by the Law Society as the fee payable for that type of practising certificate.

“(2.) Where an application for the issue of a practising certificate is made after the first day of July in any year and before the next succeeding thirtieth day of June, the fee payable for the issue of the practising certificate is an amount that bears to the fee applicable under the last preceding sub-section the same proportion as the number of months in the period between the date of the application and the next succeeding thirtieth day of June bears to twelve.

“(3.) Where the Law Society issues a practising certificate to a person who has, within the period of twelve months immediately preceding the date of issue of the certificate, had his practising certificate cancelled—

- (a) the fee payable in respect of the application for the issue of the practising certificate may be reduced or payment of the fee may be waived by the Society; and
- (b) where the person has already paid a contribution to the Fidelity Fund in respect of a period including the period for which the certificate will be in force, the person is not required to pay a contribution to the Fidelity Fund.

“15N. The Law Society shall keep a register of the names of all persons holding current unrestricted practising certificates and a register of the names of all persons holding current restricted practising certificates.

Register of holders of practising certificates.

“15P. Subject to sub-section (2.) of section 15M of this Ordinance, the Law Society shall not issue a practising certificate unless the applicant for the certificate has paid to the Law Society—

Fidelity Fund contributions, &c., to be paid before issue of practising certificate.

- (a) the fee payable in respect of the application;
- (b) any contribution payable by him to the Fidelity Fund in respect of the period for which the practising certificate will be in force; and
- (c) any levy payable by him under section 90 of this Ordinance.

“15Q.—(1.) Subject to the next succeeding sub-section, a barrister and solicitor who is given notice of the cancellation of his practising certificate shall forthwith deliver the certificate to the Law Society.

Cancelled certificate to be delivered to Law Society.

“(2.) Where—

- (a) a practising certificate has been cancelled;
- (b) an order has been made under section 15K of this Ordinance; and
- (c) on an application under section 15J of this Ordinance, the Court refuses to make an order under sub-section (5.) of that section,

the person who held the practising certificate shall, forthwith after the refusal, deliver the certificate to the Law Society.

“(3.) Where the cancellation of a practising certificate is revoked before the expiry of the certificate under sub-section (2.) of section 15L of this Ordinance, the Law Society shall forthwith cause the certificate to be returned to the barrister and solicitor concerned.”.

12.—(1.) Section 16 of the Principal Ordinance is amended by omitting paragraph (a) of sub-section (1.) and inserting in its stead the following paragraph:—

Entry into articles of clerkship.

- “(a) a barrister and solicitor who holds an unrestricted practising certificate and is practising on his own account or in partnership; or”.

(2.) Where, before the commencement of this Ordinance, a person has, with the approval of the Barristers and Solicitors Admission Board of the Australian Capital Territory entered into articles of clerkship with a barrister and solicitor practising in the Territory as a solicitor, that person shall, for the purposes of Part IV. of the Principal Ordinance as amended by this Ordinance, be deemed to have entered into articles of clerkship with a barrister and solicitor who holds an unrestricted practising certificate.

13.—(1.) Part V. of the Principal Ordinance is repealed and the following Part inserted in its stead:—

“PART V.—DISCIPLINE.

“Division 1.—*The Disciplinary Committee.*

Disciplinary  
Committee.

“25.—(1.) There shall be a body to be known as the Disciplinary Committee of The Law Society of the Australian Capital Territory.

“ (2.) Until the thirty-first day of December, One thousand nine hundred and seventy-two, the Disciplinary Committee shall, subject to sub-section (6.) of this section, consist of the five persons who were, immediately before the commencement of the *Legal Practitioners Ordinance* 1972, the members of the Barristers and Solicitors Disciplinary Board of the Australian Capital Territory.

“ (3.) The members of the Disciplinary Committee referred to in the last preceding sub-section are eligible for re-appointment as members of that Committee after the date referred to in that sub-section.

“ (4.) On and after the first day of January, One thousand nine hundred and seventy-three, the Disciplinary Committee shall consist of five members who shall, as occasion requires, be appointed by the Council of the Law Society.

“ (5.) The members of the Disciplinary Committee appointed under the last preceding sub-section shall hold office for a period of three years and are eligible for re-appointment.

“ (6.) A person is not eligible for appointment as a member of the Disciplinary Committee in pursuance of sub-section (4.) of this section or the next succeeding sub-section unless not less than five years have elapsed since he was first admitted to practise as a legal practitioner (however described) in a State or Territory and—

- (a) he holds a current unrestricted practising certificate; or
- (b) he is a barrister and solicitor practising as a barrister.

“ (7.) In the event of a member of the Disciplinary Committee ceasing to hold office before his term of office has expired, the Law Society may appoint a person to hold the vacant office for the balance of that term.

“ (8.) The members of the Disciplinary Committee shall elect one of their members to be Chairman of the Committee.

“ 26. There shall be a Secretary to the Disciplinary Committee who shall be appointed by the Council of the Law Society. Secretary to Disciplinary Committee.

“ 27.—(1.) The Court may, on the application of the Law Society, remove a member of the Disciplinary Committee from office for misbehaviour or incapacity. Removal of members of Disciplinary Committee.

“ (2.) If a member of the Disciplinary Committee—

- (a) becomes bankrupt;
- (b) ceases to be a person referred to in paragraph (a) or (b) of sub-section (6.) of section 25 of this Ordinance; or
- (c) is absent, except on leave granted by the Disciplinary Committee, from three consecutive meetings of the Committee,

the Court may remove him from office.

“ 28.—(1.) At a meeting of the Disciplinary Committee, three members constitute a quorum. Meetings of Disciplinary Committee.

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

“ (3.) In the absence of the Chairman from a meeting of the Disciplinary Committee, 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 be read as a reference to the person so elected.

“ *Division 2.—Inquiries by the Disciplinary Committee.*

“ 29.—(1.) The Council of the Law Society may make a complaint in writing to the Disciplinary Committee regarding the professional behaviour, whether before or after the commencement of this Part, of a barrister and solicitor who— Complaints concerning conduct of certain legal practitioners.

- (a) is a member of the Law Society; or
- (b) holds, or, at the relevant time, held, a practising certificate.

“ (2.) Where the Council of the Law Society makes a complaint to the Disciplinary Committee, it shall forward to the Committee—

- (a) any documents received by the Law Society in relation to the complaint; and
- (b) particulars of any statement relating to the complaint made to the Law Society by the barrister and solicitor concerned.

“ 30.—(1.) The Disciplinary Committee shall meet and inquire into a complaint made to it under the last preceding section. Inquiry by Disciplinary Committee.

“ (2.) At an inquiry under this Division, the Law Society and the barrister and solicitor to whose behaviour the inquiry relates are each entitled to be represented by a barrister and solicitor who may examine witnesses and address the Disciplinary Committee.

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

“ (4.) 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 Committee.

Disciplinary Committee to fix date for inquiry and give notice to persons concerned.

“ 31. Where a complaint is made to the Disciplinary Committee, the Committee shall fix a time and place for the commencement of its inquiry and shall give notice of the time and place so fixed to—

- (a) the barrister and solicitor to whose behaviour the inquiry will relate; and
- (b) the Law Society.

Disciplinary Committee may summon witnesses, &c.

“ 32.—(1.) The Chairman 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 the books or documents in his custody or control specified in the summons.

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

Penalty: One hundred dollars.

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

Power to examine on oath, &c.

“ 33. The Chairman of the Disciplinary Committee may administer an oath or affirmation to a person appearing as a witness at an inquiry under this Division.

Record of proceedings at inquiry.

“ 34.—(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—

- (a) by means of sound-recording apparatus; or
- (b) by means of shorthand or any similar means.

“ (2.) Where the Disciplinary Committee 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 Committee.

“ (3.) The Secretary to the Disciplinary Committee shall have the custody of any record of evidence made in accordance with sub-section (1.) or (2.) of this section.

“ (4.) The Secretary to the Disciplinary Committee 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 Committee 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.) 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 Committee 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.

“(7.) Where—

- (a) a sound-recording is produced out of the custody of the Secretary to the Disciplinary Committee; and
- (b) the sound-recording contains a record of comments that purport—
  - (i) to have been made at the same time as 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, voices recorded on the last-mentioned sound-recording or any other matter or things so recorded,

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

“(8.) 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.) 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.

“(9.) 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 by the Secretary to the Disciplinary Committee that it is a copy of the evidence so taken and signed, the document is evidence that the witness gave the evidence appearing in the document at that inquiry.

“(10.) On an application made by—

- (a) the barrister and solicitor to whose behaviour the inquiry relates; or
- (b) a person who satisfies the Disciplinary Committee that he has good reason for requiring a copy of a transcript or of any evidence recorded in accordance with this section,

the Disciplinary Committee shall, upon payment by the applicant of such fees as are fixed by the Law Society, furnish to the applicant a copy of the transcript or evidence so recorded.

“(11.) Where a person makes application to the Secretary to the Disciplinary Committee 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.

Refusal to  
be sworn or  
to give  
evidence.

“35.—(1.) Subject to sub-section (3.) of section 32, and to sub-section (4.) of section 38, 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.

Penalty: One hundred 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.

Powers of  
Disciplinary  
Committee.

“36.—(1.) Where, after an inquiry under this Division, the Disciplinary Committee finds that the professional behaviour of the barrister and solicitor has been such as to justify it in so doing, the Disciplinary Committee may, by order—

- (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 Committee makes an order referred to in the last preceding sub-section, it shall order the barrister and solicitor to pay to the Law Society the costs or such part of the costs of the inquiry as are specified in the order.

“(3.) The amount of the costs shall be as assessed by the Disciplinary Committee or, if the Disciplinary Committee 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 Committee.

“(5.) The amount of costs ordered to be paid by a barrister and solicitor under this section is recoverable as a debt due by him to the Law Society.

“(6.) A document certified by the Chairman of the Disciplinary Committee 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.

“37.—(1.) If, on the evidence given at an inquiry before it, the Disciplinary Committee forms the opinion that there are reasonable grounds for believing that the conduct of the barrister and solicitor to whom the inquiry relates has been such that the matter should be dealt with by the Court, the Committee shall prepare a report to the Court stating—

In serious cases, Disciplinary Committee may report to Court.

- (a) particulars of the conduct; and
- (b) the evidence upon which its opinion is based.

“(2.) Where the Disciplinary Committee prepares a report under the last preceding sub-section, it shall, as soon as practicable—

- (a) deliver the report to the Registrar, together with a transcript of the evidence given before the Committee; and
- (b) deliver a copy of its report to the barrister and solicitor to whom the report relates and to the Law Society.

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

Protection of members of Disciplinary Committee and witnesses appearing before it.

“(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 Committee 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 as a witness in proceedings in the Supreme Court has.

Fees and allowances to witnesses.

“39.—(1.) A person who attends for the purpose of giving evidence at an inquiry under this Division 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 at the relevant time under the *Public Works Committee Act 1969* as the Chairman directs.

“ (2.) Fees and allowances payable to a person in accordance with the last preceding sub-section are payable—

- (a) if the person attended at the inquiry, whether on summons or not, by reason of a request by a person other than the Chairman or a member of the Committee—by the person at whose request the first-mentioned person attended; or
- (b) in any other case—by the Law Society.

Disciplinary Committee may inspect books, &c.

“40. The Disciplinary Committee 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 copy such parts of them as are relevant to the subject-matter of the inquiry.

“ *Division 3.—Proceedings before the Court.*

Powers of Court to discipline.

“41.—(1.) Where it is proved to the satisfaction of the Court that the conduct of a barrister and solicitor has been such as to justify it in so doing, the Court may, by order—

- (a) reprimand the barrister and solicitor;
- (b) impose on the barrister and solicitor a fine not exceeding One thousand dollars;
- (c) suspend the right of the barrister and solicitor to practise in the Territory for such period as the Court thinks proper; or
- (d) direct that the name of the barrister and solicitor be removed from the Roll of Barristers and Solicitors.

“ (2.) The Law Society is entitled to be represented in proceedings for an order under this section.

“ (3.) Where, in proceedings before the Court arising out of the furnishing by the Disciplinary Committee of a report in relation to the professional behaviour of a barrister and solicitor, the Court makes an order under sub-section (1.) of this section against the barrister and solicitor, the Court may, in addition to any order that it makes in relation to the costs of the proceedings before the Court, order the barrister and solicitor to pay to the Law Society the costs of the inquiry before the Disciplinary Committee or such part of those costs as are specified in the order.

“ (4.) Subject to the order of the Court, sub-sections (3.), (4.), (5.), (6.) and (7.) of section 36 of this Ordinance apply to and in relation to an order for payment of costs of an inquiry before the Disciplinary Committee in the same manner as they apply to an order made by the Disciplinary Committee under sub-section (2.) of that section.

“ 42.—(1.) Where the Disciplinary Committee has made an order under sub-section (1.) of section 36 of this Ordinance, the barrister and solicitor against whom the order has been made may, within twenty-one days after the date on which the order was made, appeal to the Court from the decision of the Committee.

Appeal against decision of Disciplinary Committee.

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

“ (3.) The Law Society shall be the respondent on the hearing of an appeal under this section.

“ 42A. In any proceedings before the Court concerning the professional behaviour of a barrister and solicitor, evidence given before the Disciplinary Committee concerning the professional behaviour the subject-matter of the proceedings may, with the consent of the barrister and solicitor, be read as evidence.

Evidence before Disciplinary Committee may be read before Court.

“ 42B. Where the Court—

- (a) imposes a fine on a barrister and solicitor; or
- (b) makes an order for the payment by the barrister and solicitor of the costs of the proceedings before the Court or the costs of the inquiry before the Disciplinary Committee, or both,

Suspension from practice.

the Court may, if it thinks fit, suspend the right of the barrister and solicitor to practise in the Territory while the fine or costs remain unpaid.

“ 42C. Where the Court makes an order directing that the name of a barrister and solicitor be removed from the Roll of Barristers and Solicitors, the Registrar shall make such entries in the Roll as are necessary to give effect to the order.

Removal from the Roll of Barristers and Solicitors.

“ 42D. The provisions of this Division are in addition to, and do not restrict or limit in any way, the jurisdiction and power that the Court has, apart from this Ordinance, in relation to the control and discipline of barristers and solicitors.

Other jurisdiction and power of Court not affected.

#### “ Division 4.—General.

“ 42E. A failure by a barrister and solicitor to comply with, or a contravention by a barrister and solicitor of, a provision of this Ordinance or of any other law in force in the Territory that imposes duties and obligations on barristers and solicitors is a matter—

Failure to comply with, or contravention of, laws in force in the Territory by barristers and solicitors.

- (a) that the Council of the Law Society may take into consideration in deciding whether a complaint should be made to the Disciplinary Committee regarding the professional behaviour of the barrister and solicitor;
- (b) that the Disciplinary Committee may take into consideration in determining whether the professional behaviour of the barrister and solicitor has been such as to justify it in making an order against the barrister and solicitor under section 36 of this Ordinance or in forming, in relation to the conduct of the barrister and solicitor, the opinion referred to in section 37 of this Ordinance; and

- (c) that the Court may take into consideration in determining whether an order against the barrister and solicitor should be made under section 41 of this Ordinance.”.

(2.) Where the Attorney-General has, before the commencement of this Ordinance, referred under section 28 of the Principal Ordinance to the Barristers and Solicitors Disciplinary Board of the Australian Capital Territory for determination the question whether or not a barrister and solicitor has been guilty of professional misconduct in his practise in the Territory, Part V. of the Principal Ordinance shall, notwithstanding its repeal by the last preceding sub-section, continue to apply to and in relation to that reference and to all matters arising out of that reference.

Inspector of  
Solicitors'  
Trust Accounts.

**14.—**(1.) Part VI. of the Principal Ordinance is repealed.

(2.) The person who was, immediately before the commencement of this section, the Inspector of Solicitors' Trust Accounts for the purposes of the Principal Ordinance shall, as soon as practicable after the commencement of this section, forward to the Law Society all notices and other documents furnished or lodged with him under the Principal Ordinance, and those notices and documents shall, for the purposes of the Principal Ordinance as amended by this Ordinance, be deemed to have been received by the Law Society at the time when they were received by the Inspector.

Joint and  
several  
responsibility  
of partners.

**15.** Section 45 of the Principal Ordinance is repealed and the following section inserted in its stead:—

“ 45. A provision of Division 4, Division 5 or Division 7 of this Part that requires a solicitor to do, or 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 to refrain from doing, the act or to carry out the obligation, as the case may be.”.

Moneys  
received by  
solicitor  
to be held  
in trust.

**16.** Section 46 of the Principal Ordinance is amended—

- (a) by inserting after sub-section (1.) the following sub-section:—

“ (1A.) Where a solicitor receives, in the course of his practice in the Territory, moneys from a person who is not a client of the solicitor on the condition that the moneys are to be held by the solicitor and are subsequently to be disbursed or otherwise dealt with by the solicitor in accordance with the directions of that person or another person, those moneys shall, for the purposes of this Ordinance, be deemed to be held by the solicitor in trust for that person as if that person were a client of the solicitor and this Part applies to and in relation to those moneys as if that person were a client of the solicitor.”; and

(b) by omitting from sub-section (2.) the words "The last preceding sub-section" and inserting in their stead the words "Sub-section (1.) of this section".

**17. Section 52 of the Principal Ordinance is amended—**

(a) by omitting sub-section (1.); and

(b) by omitting from sub-sections (2.) and (3.) the words "the Inspector" and inserting in their stead the words "the Law Society".

Solicitor to inform Law Society of situation and total of trust account.

**18. Section 55 of the Principal Ordinance is amended by omitting from sub-paragraph (iii) of paragraph (a) of sub-section (2.) the words "the Inspector," and inserting in their stead the words "the Law Society,".**

Accounting records.

**19. Section 58 of the Principal Ordinance is amended by adding at the end thereof the words "and shall, within one month after the date on which he engages an auditor, notify the Law Society of the name of the auditor".**

Audit of trust accounts.

**20. Section 61 of the Principal Ordinance is amended—**

(a) by omitting from paragraph (c) of sub-section (2.) the words "the Inspector" and inserting in their stead the words "the Law Society"; and

(b) by omitting from sub-section (4.) the words "the Inspector together with the prescribed fee" and inserting in their stead the words "the Law Society".

Auditor to report.

**21. Section 62 of the Principal Ordinance is amended by omitting the words "the Inspector" and inserting in their stead the words "the Law Society".**

Interim report of auditor.

**22. Section 63 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—**

Provisions applicable in case of default of auditor.

"(1.) Where—

(a) a solicitor applies for an unrestricted practising certificate;

(b) the provisions of this Division apply to that solicitor in respect of the period of twelve months that ended on the thirty-first day of March immediately preceding the date of the application; and

(c) a report under section 61 of this Ordinance has not been delivered to the solicitor.

he shall send to the Law Society with his application for a practising certificate a statutory declaration by him stating—

(d) 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;

- (e) the date on which the auditor was so engaged; and
- (f) that a report under section 61 of this Ordinance has not been delivered to him.”.

Statutory  
declaration  
that no trust  
moneys held.

**23.** Section 64 of the Principal Ordinance is amended by omitting the words “the Inspector” and inserting in their stead the words “the Law Society”.

**24.** Section 65 of the Principal Ordinance is repealed and the following section inserted in its stead:—

Secrecy.

“65.—(1.) A person who conducts an audit under this Part shall not, except in accordance with this Ordinance or in, or for the purpose of, any proceedings in a court or at an inquiry by the Disciplinary Committee, communicate to any person any matter that comes to his knowledge in the course of the audit.

“(2.) Except in connexion with an inquiry by the Disciplinary Committee under this Ordinance or proceedings before a court, a member or former member of the Council of the Law Society shall not communicate to any person, not being a member of the Council, any matter contained in a report referred to in section 61 or section 62 of this Ordinance.

Penalty: Two hundred and fifty dollars.”.

Appointment  
of examiner.

**25.** Section 66 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words “The Inspector” and inserting in their stead the words “The Law Society”;
- (b) by omitting from that sub-section the words “the Inspector” and inserting in their stead the words “the Law Society”;
- (c) by omitting from sub-section (3.) the words “the Inspector” and inserting in their stead the words “the Law Society”; and
- (d) by omitting sub-sections (4.) and (5.) and inserting in their stead the following sub-sections:—

“(4.) The costs of an examination under this section shall be paid by the Law Society out of the Fidelity Fund.

“(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) an order is made against a solicitor under Part V.,

the Law Society may recover the costs of the examination from that solicitor as a debt due to the Society and any amount so recovered shall be paid into the Fidelity Fund.”.

**26.** Section 67 of the Principal Ordinance is amended by omitting from sub-section (2.) the words "The Inspector may by demand in writing delivered personally to the manager or other person in charge, of a bank, require" and inserting in their stead the words "The President or the Secretary of the Law Society may cause to be served on the Manager, or other person in charge of a bank, a demand in writing signed by the President or the Secretary of the Law Society, requiring".

Production of books, &c.

**27.** Section 68 of the Principal Ordinance is repealed and the following section inserted in its stead:—

"68.—(1.) 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 Committee, communicate to any person any matter that comes to his knowledge in the course of the examination.

Secrecy.

"(2.) Except in connexion with an inquiry by the Disciplinary Committee under this Ordinance or proceedings before a court, a member or former member of the Council of the Law Society shall not communicate to any person, not being a member of the Council, any matter contained in a report referred to in section 66 of this Ordinance.

Penalty: Two hundred and fifty dollars."

**28.** The heading to Division 7 of Part VII. of the Principal Ordinance is repealed and the following heading inserted in its stead:—

Heading to Division 7 of Part VII.

*"Division 7.—Deposits with the Law Society"*

**29.** Section 69 of the Principal Ordinance is repealed.

Statutory Deposits Trust Account.

**30.** Section 70 of the Principal Ordinance is amended by omitting from sub-section (3.) the word "Ordinance" and inserting in its stead the word "Division".

Interpretation.

**31.** Section 71 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words "the Inspector for the purposes of the Statutory Deposits Trust Account" and inserting in their stead the words "the Law Society";
- (b) by omitting from paragraph (b) of sub-section (2.) the words "the Inspector," and inserting in their stead the words "the Law Society,";
- (c) by omitting from that sub-section the words "the Inspector for the purposes of the Statutory Deposits Trust Account" and inserting in their stead the words "the Law Society";
- (d) by omitting from paragraph (a) of sub-section (3.) the words "the Inspector" and inserting in their stead the words "the Law Society";

Solicitor to deposit portion of trust moneys with Inspector.

- (e) by omitting from that sub-section the words “ the Inspector for the purposes of the Statutory Deposits Trust Account ” and inserting in their stead the words “ the Law Society ”; and
- (f) by omitting from that sub-section the words “ the Inspector ” (last occurring) and inserting in their stead the words “ the Law Society ”.

Repayment  
of deposits.

**32. Section 72 of the Principal Ordinance is amended—**

- (a) by omitting from sub-section (1.) the words “ the Inspector ” and inserting in their stead the words “ the Law Society ”; and
- (b) by omitting from sub-section (4.) the words “ the Inspector ” and inserting in their stead the words “ the Law Society ”.

Variation of  
notional amount  
by Law Society.

**33. Section 74 of the Principal Ordinance is repealed and the following sections are inserted in its stead:—**

“ 74.—(1.) Where the Law Society is during a year satisfied, on an application made to it by a solicitor who is under an obligation to deposit, or has on deposit, with the Law Society 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 Law Society may determine that that notional amount be reduced to such amount as is specified by it in the determination.

“ (2.) Where the Law Society 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 Law Society moneys exceeding the amount that he would have been required to have on deposit with the Law Society 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.

Investment  
of deposits  
and Statutory  
Interest  
Account.

“ 74A.—(1.) Moneys deposited with the Law Society by a solicitor in accordance with this Division shall be invested by the Law Society on interest-bearing deposit with a bank in the Territory.

“(2.) The Law Society shall open, and shall maintain, an account or accounts at a bank in the Territory the title or each of the titles of which includes the words ‘Statutory Interest Account’.

“(3.) The interest received in respect of moneys invested in accordance with sub-section (1.) of this section shall be paid into the account maintained in accordance with the last preceding sub-section.

“(4.) The Law Society may, with the consent in writing of the Attorney-General given either generally or in a particular case, use moneys standing to the credit of the account maintained in accordance with sub-section (2.) of this section—

- (a) if the Fidelity Fund is insufficient for any purpose for which the moneys in the Fund may be used—to supplement the Fund;
- (b) to assist in the conduct of a scheme for the provision of legal aid;
- (c) to assist and promote post-graduate legal education and legal research; and
- (d) to meet the costs of administering that account.

“(5.) The Law Society shall cause records to be kept showing particulars of all moneys deposited with it in accordance with this Division, of all interest received by it from the investment of those moneys and of all payments made by it out of those moneys, and shall cause those records to be audited annually by an auditor who is a registered company auditor within the meaning of the *Companies Ordinance* 1962-1969.

“(6.) The Law Society shall forward a copy of each audit under this section to the Attorney-General.”.

**34.** Part VIII. of the Principal Ordinance is repealed and the following Part inserted in its stead:—

“PART VIII.—THE FIDELITY FUND.

“Division 1.—General.

“75.—(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.

“76.—(1.) A Fund is hereby established to be known as the Fidelity Fund.  
Solicitors’ Fidelity Fund of the Australian Capital Territory.

“(2.) The Fund shall consist of—

- (a) contributions and levies paid under this Part;
- (b) income derived from the investment of moneys of the Fund;

- (c) moneys paid into the Fund out of an account maintained in accordance with sub-section (2.) of section 74A of this Ordinance;
- (d) moneys recovered by the Law Society under this Part; and
- (e) such other moneys as may lawfully be paid into the Fund.

“(3.) The Law Society shall pay all moneys constituting the Fund into a bank account maintained by it at a bank in the Territory under the title of the ‘Solicitors’ Fidelity Fund of the Australian Capital Territory’.

“(4.) The Law Society shall keep separate accounts in relation to the moneys constituting the Fund.

“(5.) The assets of the Fidelity Fund, and the accounts in connexion therewith, shall be kept separate from other assets and accounts of the Law Society.

“(6.) The costs of discharging the functions, and exercising the powers, of the Law Society under this Part and the costs of enforcing the rights conferred upon the Law Society by this Part shall be paid out of the Fidelity Fund.

Investment of Fund.

“77. The moneys of the Fidelity Fund shall, so far as is practicable, be invested by the Law Society in any manner in which trust funds may for the time being be invested under the *Trustee Ordinance* 1957-1968.

Audit.

“78.—(1.) The Law Society shall cause the accounts of the Fidelity Fund to be audited annually by an auditor who is a registered company auditor within the meaning of the *Companies Ordinance* 1962-1969.

“(2.) The Law Society shall forward a copy of the report of each audit under this section to the Attorney-General.

Annual contributions to Fund.

“79.—(1.) A solicitor shall, not later than each thirtieth day of June, pay to the Law Society such contribution to the Fidelity Fund as is fixed by the Council of the Law Society in respect of the period of twelve months commencing on the following first day of July.

“(2.) A solicitor who applies for a practising certificate for a period of less than twelve months shall, in respect of that period, pay to the Law Society such contribution to the Fidelity Fund as is fixed by the Council of the Law Society.

#### “Division 2.—Claims against the Fidelity Fund.

Persons who may apply for compensation.

“80.—(1.) 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 Law Society for compensation under this Part in respect of that loss.

“ (2.) 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 that the applicant has recovered in respect of the loss.

“ 81.—(1.) The Law Society 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.

Law Society may call for claims.

“ (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.

“ (3.) No action for damages lies against the Law Society in respect of the publication in good faith of a notice under this section.

“ 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 Law Society, in its discretion and either before or after the expiration of that period, allows.

Time for making applications.

“ (2.) Where a notice is published under the last preceding section, 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 Law Society, in its discretion and either before or after the expiration of that period, allows.

“ 83.—(1.) An application for compensation under this Part shall be made by the delivery to the Law Society of full particulars of the claim supported by a statutory declaration.

Manner of making claims.

“ (2.) The Law Society may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant—

- (a) to give to the Law Society information in the possession of the applicant with regard to any matter relating to the application; and
- (b) to deliver to the Law Society 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.

“ (3.) The Law Society may retain a document delivered to the Society 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 Secretary of the Law Society to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.

“(4.) Where the Law Society makes a requirement under sub-section (2.) of this section, it is not required to take any further steps in relation to the application until the requirement is satisfied.

Law Society  
to consider  
applications.

“84.—(1.) Subject to sub-section (4.) of the last preceding section, the Law Society shall consider each application made in accordance with this Part and shall determine—

- (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.) The last preceding sub-section does not require the Law Society to be satisfied—

- (a) that any person has been convicted of an offence arising out of the defalcation; or
- (b) that there is evidence upon which a person might be convicted of such an offence.

“(3.) Before making a determination under sub-section (1.) of this section, the Law Society may, if it 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.

“(4.) Where the Law Society requires a person to institute proceedings under the last preceding sub-section, the Law Society is liable to pay out of the Fidelity Fund all costs and expenses necessarily incurred by the person by reason of the institution of the proceedings.

“(5.) The Law Society shall give to an applicant for compensation under this Part notice in writing stating—

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

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

Review of Law  
Society's  
determination.

“85.—(1.) An applicant for compensation under this Part to whom the Law Society gives notice under sub-section (4.) of the last preceding section 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 Law Society under sub-section (1.) of the last preceding section.

“ 86.—(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 Law Society shall pay to the applicant an amount equal to the amount so determined. Payment of compensation.

“ (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 Law Society 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 Law Society shall divide the amount available under that sub-section amongst those applicants in proportion to the amounts payable to those applicants.

“ (4.) Where, at any time, the amount of the Fidelity Fund is insufficient for the payment of all amounts that the Law Society would, but for this sub-section, be required by this section to pay, the Law Society shall divide the amount in the Fidelity Fund amongst the persons to whom it would be required to pay those amounts in proportion to those amounts.

“ 87. Where the Law Society has paid compensation to a person under this Part, the Society 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. Subrogation.

“ 88.—(1.) Where—

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

Solicitors may claim in certain cases.

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 Law Society 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 Law Society 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 Law Society may pay compensation out of the Fidelity Fund 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 Law Society thinks proper.

Interim  
payments of  
compensation.

“ 89.—(1.) Where, in relation to an application made under this Part (other than an application under the last preceding section), the Law Society has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant, the Law Society may, if it thinks fit, make an interim payment of compensation to the applicant.

“ (2.) An amount paid to a person under this section shall be set off against the compensation that the Law Society is required by section 86 of this Ordinance to pay to the person.

“ *Division 3.—Levies.*

Levies to  
supplement  
Fund.

“ 90.—(1.) If, at any time, the Council of the Law Society considers that the Fund is not sufficient to satisfy the liabilities of the Law Society in relation to the Fund, the Council may impose a levy of such amount not exceeding Twenty dollars as it thinks fit for payment into the Fund.

“ (2.) Subject to this section—

- (a) a levy imposed under the last preceding sub-section is payable on the date fixed by the Council; and
- (b) a levy imposed under the last preceding sub-section is payable by each solicitor who, on that date, holds an unrestricted practising certificate.

“ (3.) The Council may, if it thinks the circumstances so warrant, extend the time for the payment of a levy by a solicitor, and, in such a case, the levy is payable by that solicitor on the date fixed by the Council under this sub-section.

“ (4.) A solicitor who has paid by way of levies under this section One hundred dollars in the aggregate during the whole period of his practice is not required to pay any further levies under this section.”

Appointment  
of Receiver.

**35. Section 93 of the Principal Ordinance is amended—**

- (a) by omitting sub-paragraphs (ii) and (iii) of paragraph (b) of sub-section (1.) and inserting in their stead the following sub-paragraphs:—
  - “ (ii) the death of a solicitor;
  - (iii) the cancellation of an unrestricted practising certificate issued to a solicitor; or
  - (iv) a solicitor ceasing, for any other reason, to practise as a solicitor;” and

(b) by omitting sub-sections (2.) and (3.) and inserting in their stead the following sub-sections:—

“ (2.) Where the Court makes an order under section 41 of this Ordinance that the name of a solicitor be removed from the Roll of Barristers and Solicitors or that the right of a solicitor to practise be suspended, 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 either of the last two preceding sub-sections shall not be made except by the Law Society.”.

**36.** Section 101 of the Principal Ordinance is amended by omitting from paragraph (b) of sub-section (1.) the words “ the Inspector” and inserting in their stead the words “ the Law Society”.

Receiver to report to court.

**37.** Section 103 of the Principal Ordinance is repealed and the following section inserted in its stead:—

Unclaimed moneys.

“ 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,

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

“ (2.) Moneys paid to the Law Society in pursuance of a direction under the last preceding sub-section shall be held by the Society as if they were moneys deposited with the Society under Division 7 of Part VII.

“ (3.) Where trust property is delivered to the Law Society in accordance with this section, the Law Society shall deal with the property in such manner as the Court, on the application of the Society, directs, and, if, in accordance with the directions of the Court, the property is sold, the proceeds shall be held by the Society as if they were moneys deposited with the Society under Division 7 of Part VII.

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

**38.** Section 105 of the Principal Ordinance is repealed and the following section inserted in its stead:—

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

Remuneration of receiver.

“ (2.) The fees payable to the receiver and his disbursements are payable out of the Fidelity Fund.

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

“ (4.) 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.

“ (5.) An amount recovered under sub-section (3.) of this section shall be paid into the Fidelity Fund.”

**39.** Section 108 of the Principal Ordinance is repealed and the following section inserted in its stead:—

Reimbursement of receiver.

“ 108. The Law Society may pay to a receiver appointed under this Part out of the Fidelity Fund 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.”

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

**40.** Section 127 of the Principal Ordinance is amended by omitting sub-section (2.).

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

**41.** Section 128 of the Principal Ordinance is amended—

(a) by omitting from sub-section (1.) the words “ the Disciplinary Board ” and inserting in their stead the words “ the Council of the Law Society ”; and

(b) by omitting sub-section (2.).

Repeal of section 129.

**42.** Section 129 of the Principal Ordinance is repealed.

Fines to be paid into Fidelity Fund.

**43.** After section 130 of the Principal Ordinance the following section is inserted:—

“ 130A.—(1.) A fine imposed upon a person by the Disciplinary Committee or by the Court under Part V. of this Ordinance shall be paid to the Law Society.

“ (2.) A fine paid to the Law Society in accordance with the last preceding sub-section shall be paid by the Law Society into the Fidelity Fund.”

Precedence.

**44.** Section 132 of the Principal Ordinance is repealed.