

THE SECOND SCHEDULE—
PLAN 1.

THE THIRD SCHEDULE.
PLAN 2.

THE FOURTH SCHEDULE—
PLAN 3.

LEGAL PRACTITIONERS.

No. 72 of 1970.

AN ACT to amend the *Legal Practitioners Act 1959.*
[23 December 1970.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and citation.

1—(1) This Act may be cited as the *Legal Practitioners Act 1970.*

(2) The *Legal Practitioners Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.

2 Section three of the Principal Act is amended by inserting in subsection (1), after the definition of “solicitor”, the following definition:—

“ ‘Trust’ means the Solicitors’ Trust constituted under section sixty-one.”.

3 After section thirty-two A of the Principal Act the following Part is inserted:—

“ PART IVA.

“ TRUST ACCOUNTS.

“ 32B—(1) Every firm shall have in a bank a current account for the purposes of this section, that shall be used only for those purposes and shall be and be called a trust account.

“(2) All moneys received for or on behalf of any person by a firm or a member of a firm shall be held by it or him exclusively for that person, to be paid to that person or to be disbursed as he directs, and until so paid or disbursed the moneys shall be paid into the firm’s trust account, kept as provided in subsection (1) of this section.

“(3) Moneys standing to the credit of a trust account kept as provided in subsection (1) of this section are not available for the payment of the debts of the firm to any other creditor of the firm or liable to be attached or taken in execution under the order or process of any court at the instance of any other such creditor.

“(4) Nothing in this section shall be construed to take away or affect any just claim or lien that a firm or a member thereof may have against or upon any moneys in the firm’s trust account.

“(5) Nothing in this section applies to moneys receivable by a firm or a member thereof for or on account of legal costs, whether already due or to accrue due.

- “32c—(1) Subject to the provisions of this section a bank—^{Relief to bankers. Ibid., s. 44.}
- (a) does not, in connection with any transaction on any account of a firm kept with it or with any other bank, incur any liability;
 - (b) is not under any obligation to make any inquiry; and
 - (c) shall not be deemed to have any knowledge of any right of any person to any money paid or credited to any such account,

which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it.

“(2) Nothing in subsection (1) of this section relieves a bank from any liability or obligation under which it would be apart from this Act.

“(3) Notwithstanding anything in subsection (1) of this section, a bank at which a firm keeps a trust account under section thirty-two B does not, in respect of any liability of the firm to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge, or otherwise, against moneys standing to the credit of that account.

“(4) Nothing in subsection (3) of this section deprives a bank of any right existing at the time of the commencement of the *Legal Practitioners Act 1970*.”.

4 After section fifty-eight of the Principal Act the following Part is inserted:—

“ PART VIA.

“ SOLICITORS’ GUARANTEE FUND.

- “ 59—(1) In this Part, unless the contrary intention appears—^{Interpretation and application.}
- ‘ chairman ’ means the chairman of the Trust;

'lowest balance' means the lowest daily balance in a trust account, or where a firm keeps more than one trust account the lowest daily sum of the daily balances in a firm's trust accounts, occurring during the preceding three months;

'member' means a member of the Trust;

'trust account' means a trust account kept for the purposes of Part IVA;

'trust deposit account' means an account kept under paragraph (b) of subsection (1) of section sixty-five;

'year' means a year commencing on the first day of January.

"(2) Where a firm has more than one office in respect of the business of which a trust account is kept that is separate from the trust account kept in respect of its other office or offices, this Part applies as if the first-mentioned office and trust account were the office and trust account of a separate firm.

Purpose
of Part.

"60 Because most firms have in their trust accounts balances which though always varying seldom fall below a substantial amount, the purpose of this Part is to provide for the investment of part of the normally undrawn amounts in such trust accounts and to make the income of such investment available to guarantee payment of clients' moneys held by firms and for other useful purposes.

The
Solicitors'
Trust.

"61—(1) For the purposes of this Part there shall be a board, which shall be a body corporate with perpetual succession and a common seal by the name of 'The Solicitors' Trust'.

"(2) The Trust shall consist of three persons appointed by the Governor, of whom—

(a) two shall be persons nominated by the Law Society being members of that Society by virtue of paragraph (b) of subsection (2) of section six of the *Law Society Act 1962*; and

(b) one shall be a person who is a member of—

(i) the Australian Society of Accountants; or

(ii) the Institute of Chartered Accountants in Australia,

and is nominated by the Law Society to the Minister and approved by him.

"(3) Of the first two persons appointed under subsection (2) of this section, one shall be appointed to hold office for four years and the other for three.

"(4) Subject to subsection (3) of this section, members shall hold office for five years and may be appointed or nominated again and again.

"(5) If a vacancy occurs in the membership of the Trust it may be filled in the same manner as formerly, and the new member shall hold office for the balance of the term of the member whom he replaces.

"(6) The Trust may continue to act notwithstanding one vacancy in its number.

“(7) Each member shall, out of the income of the Trust, be paid such remuneration as the Law Society, with the approval of the Minister, determines.

“62—(1) The office of a member becomes vacant if the holder thereof— Vacation of office.

- (a) dies;
- (b) resigns his office by writing under his hand to the Secretary of the Law Society;
- (c) becomes bankrupt, makes an assignment or arrangement for the benefit of his creditors, or otherwise takes advantage of a law relating to bankruptcy;
- (d) becomes of unsound mind;
- (e) ceases to have the qualification required by section sixty-one for his appointment or nomination; or
- (f) is removed from office under subsection (2) of this section.

“(2) The Law Society may, in its absolute discretion and without giving reasons, recommend to the Governor the removal from office—

- (a) of a member appointed under paragraph (a) of subsection (2) of section sixty-one; and
- (b) with the approval of the Minister, of a member appointed under paragraph (b) of that subsection,

and the Governor may act thereon.

“(3) Removal under subsection (2) of this section shall take effect on the delivery of notification thereof by the Law Society addressed to the person removed at his last known place of business.

“63—(1) The Trust shall, before or as soon as possible after the beginning of every year, choose one of its members to be its chairman and a member so chosen shall hold office for the year for which he is chosen, if he so long remains a member and unless he sooner resigns by notice to the other members. Proceedings of the Trust.

“(2) The Trust shall meet at such times and places as it determines or the chairman calls it to meet.

“(3) On the written request of another member the chairman shall call a meeting of the Trust to begin within fourteen days of his receiving the request.

“(4) The chairman shall preside at all meetings of the Trust at which he is present.

“(5) In the absence of the chairman from a meeting of the Trust, the deputy chairman appointed under section sixty-four shall preside at the meeting.

“(6) Two members constitute a quorum of the Trust.

“(7) Any question arising at a meeting of the Trust shall be determined as any two members agree.

“(8) The Trust shall keep minutes of its meetings in a book to be kept for that purpose.

Powers and duties of chairman and deputy chairman.

“64—(1) The chairman shall appoint another member to be deputy chairman.

“(2) The chairman shall cause the common seal, the minute book, the deeds and securities, and the cheque book, records, and books of account or other accounting records of the Trust to be kept safe.

“(3) The deputy chairman appointed under this section may, if the chairman—

- (a) is absent from the city of Hobart;
- (b) is unable to transact business; or
- (c) so requires,

perform any function of the chairman.

Powers and duties of the Trust.

“65—(1) The Trust shall—

- (a) employ such officers, clerks, and servants as are necessary for the execution of this Part;
- (b) open and keep such and so many accounts as it thinks fit at branches of banks, which accounts shall be called trust deposit accounts, with such distinguishing additions as may be prescribed;
- (c) cause so much of the moneys paid into the trust deposit accounts as it thinks proper to be deposited at interest—
 - (i) with the consent of the Treasurer in the Treasury; or
 - (ii) in a bank or banks approved by the Law Society;
- (d) apply the interest on moneys so deposited and any other revenue received by it—
 - (i) in remuneration of the members as provided in subsection (7) of section sixty-one;
 - (ii) in payment of its officers, clerks, and servants and of its other administrative expenses, including auditor’s fees;
 - (iii) in creating and maintaining the Solicitors’ Guarantee Fund as provided in section seventy; and
 - (iv) as provided in paragraph (b) of subsection (5) of that section;
- (e) keep in such form as its auditor may, subject to the regulations, require, full books of account or other accounting records and submit them, together with such statements as he may require, at the prescribed times for audit by a company auditor registered under section nine of the *Companies Act* 1962 and appointed by the Law Society;
- (f) deposit with the Law Society and the Registrar copies of statements submitted to its auditor under paragraph (e) of this subsection and certified by him within one month of his certification thereof;

(g) report to the Law Society by the thirty-first day of January and the fifteenth days of April, July, and October in every year on the operation of section sixty-six; and

(h) report to the Law Society as at the last days of June and December in every year and within one month of those dates, and at other times as required by the Law Society on the financial position of the Trust and on its operation generally.

“(2) The Trust may, with the approval of the Treasurer, instead of depositing moneys as provided in paragraph (c) of subsection (1) of this section, invest such moneys in such of the securities mentioned or referred to in section five of the *Trustee Act 1898* as the Treasurer may in his approval specify.

“(3) A person having a claim on a firm’s trust account has no right to any particular sum deposited as provided in paragraph (c) of subsection (1) of this section or invested as provided in subsection (2) thereof, and no right to any interest received on any such deposit, or to the income of any such investment.

“66—(1) During the month of January 1971 every firm shall out of its trust account pay into the trust deposit account designated for that purpose by the Trust half the lowest daily balance in its trust account, or where it keeps more than one trust account half the lowest daily sum of the daily balances in its trust accounts, occurring during the preceding six months. Deposit of trust moneys.

“(2) Every firm shall on or before the last days of January, April, July, and October in every year pay out of its trust account into the designated trust deposit account an amount that, taken together with any amount already paid by it into that account and not repaid, is not less than half its lowest balance.

“(3) Where on a day mentioned in subsection (2) of this section the amount paid by a firm into the designated trust deposit account and not repaid exceeds half its lowest balance it becomes entitled to be repaid such amount as will reduce the amount first in this subsection mentioned to half its lowest balance, and may apply to the Trust for such repayment.

“67—(1) Where the Law Society or a firm considers that the amount of a lowest balance occurred in circumstances that render it unjust or inexpedient that it should be used for the purposes of section sixty-six, the Law Society and that firm may agree upon a sum that shall be deemed to be the lowest balance in respect of any day to which that section refers. Variation of deposit.

“(2) If agreement is not reached under subsection (1) of this section either party may apply to a judge in chambers to determine what sum should be so deemed, having regard to any unusual transactions during the relevant period.

“68—(1) If it appears to the Law Society that a firm has failed to comply with section sixty-six, the Law Society may in its discretion, after inquiring into the apparent failure and the reason therefor and giving the firm an opportunity to explain, if it finds that the firm has so failed, notify the Registrar of its failure. Non-compliance with section 66.

“(2) When the Registrar receives a notification under this section the current practising certificate of the firm under Part III shall be deemed to be void.

“(3) If the Registrar is satisfied that a failure notified to him under this section has been rectified, he shall so certify in writing and subsection (2) of this section will then cease to affect the relevant practising certificate.

Withdrawals
by firms.

“69—(1) When a firm requires for the purposes of its trust account money paid thereout in a trust deposit account it may draw bills of exchange on the Trust up to the full amount that it has at the relevant time on deposit in that account without regard to any withdrawal therefrom by the Trust, and the Trust shall so conduct its affairs as to meet such bills on demand.

“(2) It is the duty of a firm—

- (a) not to draw on the Trust unnecessarily under this section;
- (b) to recoup the relevant trust deposit account at the first reasonable opportunity; and
- (c) to give the Trust all reasonable assistance in carrying out this Part.

“(3) If in the opinion of the Trust a firm has abused its rights under subsection (1) of this section or has kept the amount on deposit in the relevant trust deposit account too small, it shall so report to the Law Society.

“(4) On a report under subsection (3) of this section the Council of the Law Society may call on the firm concerned to explain why it has drawn on the Trust under this section or why it has not recouped the relevant trust deposit account and, if from the firm's answer there appears to have been misconduct, the Council shall take such action as that misconduct requires.

Solicitors'
Guarantee
Fund.

“70—(1) The Trust shall, with payments as provided in subparagraph (iii) of paragraph (d) of subsection (1) of section sixty-five, create and maintain a fund to be known as ‘the Solicitors' Guarantee Fund’.

“(2) The Solicitors' Guarantee Fund shall be built up to and kept built up to—

- (a) the amount of five hundred thousand dollars; or
- (b) such greater amount as is determined by the Minister and the Law Society.

“(3) The Solicitors' Guarantee Fund shall be kept in the form of such deposits and investments as are lawful under section sixty-five for moneys withdrawn by the Trust from a trust deposit account.

“(4) The income of the Solicitors' Guarantee Fund shall, subject to meeting such expenses of administration, as the Trust and its auditor agree to be proper, be added to the Fund.

“(5) The Trust shall—

- (a) make payments out of the Solicitors’ Guarantee Fund as provided in section seventy-one; and
- (b) where the Fund exceeds the relevant amount referred to in subsection (2) of this section, pay any surplus to the Law Society upon such one or more of the trusts specified in subsection (6) of this section and in such proportions, if more than one, as the Law Society recommends and the Minister approves.

“(6) The trusts for the purposes of paragraph (b) of subsection (5) of this section are—

- (a) defraying the cost of administration of an approved scheme under the *Legal Assistance Act 1962*;
- (b) defraying the cost of legal research;
- (c) defraying the cost of preparing proposals for law reform; and
- (d) for any other object approved by the Law Society.

“71—(1) Where a bond lodged under section fifty-four becomes forfeited on breach of condition and the proceeds thereof are insufficient to meet all claims payable thereout under subsection (3) of section fifty-five, the Law Society may require the Trust to pay into court, into the fund constituted by the proceeds, the amount of the insufficiency, and the Trust shall comply so far as the Solicitors’ Guarantee Fund extends, but not beyond the amount of the Solicitors’ Guarantee Fund at the close of business on the day on which the Registrar first demanded payment of the bond. Meeting default.

“(2) Where the Trust makes a payment under this section, the court shall on the application of the Trust give it the benefit of subsection (8) of section fifty-five, so that the Trust and the obligor of the bond share that benefit in proportion to their respective payments into court.

“72—(1) Subject to subsection (2) of this section, the Registrar shall permit inspection of the statements deposited with him under paragraph (e) of subsection (1) of section sixty-five— Inspection of accounts.

- (a) by any member of the Law Society, free of charge; and
- (b) by any other person, on payment of the prescribed fee.

“(2) The Registrar shall not permit inspection under this section of a part of a statement that discloses the amounts deposited by individual firms under section sixty-six.

“73—(1) The Trust and the Law Society are not liable to any duty under the *Stamp Duties Act 1931* in respect of payments received by either of them under this Act. Exemption from stamp duty.

“(2) A firm is not liable to any duty under that Act in respect of a bill of exchange drawn by it on the Trust under this Act.

Exemption.

“ 73A If it appears to the Law Society that except in unusual circumstances the balance of a firm’s trust account has not in the first six months or the second six months of any year exceeded three thousand dollars, the Law Society may give that firm a certificate of exemption from this Part in respect of the next succeeding six months, and this Part shall not apply to that firm accordingly.

Rules.

“ 73B The Law Society may, with the approval of the Attorney-General, make rules for the purposes of this Part and in particular may—

- (a) regulate the procedure in connection with—
 - (i) payments into and out of trust deposit accounts; and
 - (ii) drawing on the Trust under section sixty-nine;
- (b) regulate the opening and keeping of trust deposit accounts and provide for firms to be informed of the state of such of them as concern only themselves; and
- (c) regulate the Trust’s system of accounts.

Secrecy.

“ 73c A member, auditor, officer, clerk, or servant of the Trust shall not, except in the course of duty, disclose any information about the amounts in an individual firm’s trust account or from which any such amount could be calculated or inferred.

Penalty: Five hundred dollars.”

SUPERANNUATION (No. 2).

No. 73 of 1970.

AN ACT to amend the *Superannuation Act 1938*
and the *Superannuation Act (No. 2) 1968.*

[23 December 1970.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title,
citation, and
commence-
ment.

1—(1) This Act may be cited as the *Superannuation Act (No. 2) 1970.*

(2) The *Superannuation Act 1938*, as subsequently amended, is in this Act referred to as the Principal Act.