

Queensland Law Society Act 1952

QUEENSLAND LAW SOCIETY RULES 1987

**Consolidation as at 24 August 2001
(includes amendments up to SL No. 132 of 2001)**

Consolidation No. 2

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Information about this consolidation

This document sets out the Queensland Law Society Rules 1987 as at 24 August 2001. It shows the law as amended by all amendments that commenced on or before that day.

The document includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Also see endnotes for information about when provisions commenced.

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[as amended by all amendments that commenced on or before 24 August 2001]

PART A—INTERPRETATION

Short title

1A. These rules may be cited as the *Queensland Law Society Rules 1987*.

PART B—OBJECTS

2. The objects of the Society are—

- (1) To represent generally the views and wishes of the members.
- (2) To afford greater opportunities for the acquirement and diffusion of legal knowledge among members, persons employed by members and the public.
- (3) To preserve and maintain the integrity and status of the legal profession.
- (4) To consider and recommend improvements in the law and to consider proposed alterations in the law.
- (5) To take such action as may be necessary to suppress dishonourable, improper, or unprofessional conduct or practices on the part of practitioners.
- (6) To promote good feeling and encourage proper conduct among members.
- (7) To afford means of reference for the amicable settlement or adjustment of professional disputes or differences.

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- (8) To promote and encourage the use by members of efficient methods of accounting and offence management in relation to their practices;
- (9) To assist and encourage members to maintain and increase their competence in the practice of law;
- (10) To engage in any activity calculated to improve the quality of legal services given by members;
- (11) To form and maintain a law library and reading-room.
- (12) To promote and encourage the establishment and maintenance of law libraries;
- (13) To promote and encourage the availability of legal services to all sections of the community, including the provision of legal aid;
- (14) To form and maintain a club and clubroom for the use and benefit of members.
- (15) Generally to consider and determine, subject to the Act, matters which in the opinion of the Council affect the interests of the professional generally.
- (16) To purchase, take on lease or in exchange, hire and otherwise acquire any real and personal property and any rights or privileges which the Council may think necessary or convenient for the purposes of the objects set out in this Rule or in the exercise of powers given to the Society by any Act, and in particular any land, buildings, easements, machinery and plant.
- (17) To construct, improve, maintain, repair, develop, work, manage, carry out, or control any buildings and other works and conveniences which may seem calculated directly or indirectly to advance the Society's interests; and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, repair, development, working, management, carrying out, or control thereof; and, if thought fit by the Council, to enter into such arrangements as may be appropriate with respect to the use and/or occupation of any part of such buildings or other works or conveniences by any lessee, licensee or other party.
- (18) To invest and deal with the money of the Society not immediately

required in such manner as from time to time be thought fit.

- (19) For the purposes of the objects of the Society to lend and advance money or give credit to any person or corporation; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or corporation; to secure or undertake in any way the repayment of monies lent or advanced to or the liabilities incurred by any person or corporation, and otherwise to assist any person or corporation.
- (20) To borrow or raise or secure the payment of money in such manner as the Council may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Society in any way and to redeem or pay off any such securities.
- (21) For the purposes of the objects of the Society to draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, and other negotiable instruments.
- (22) To enter into arrangements with any bank for the payment to the Society of moneys related to the balances standing to the credit of members in general trust accounts within the meaning of the *Trust Accounts Act 1973-1978* which moneys may be applied only in the pursuit of the foregoing objects or in the exercise of powers given to the Society by any Act.
- (23) To provide services to members and their employees and to promote and procure the welfare of members and their employees both directly and indirectly.

PART C—MEMBERSHIP OF THE SOCIETY

Membership

3. The membership of the Society shall be in accordance with the Act and may consist of such classes of members as the council may by

resolution from time to time create; provided that if the Council creates a class of honorary members, such members—

- (a) shall not be obliged to pay any subscriptions or levies;
- (b) shall be entitled to notice of and to attend but not to speak or vote at any meetings of the Society;
- (c) shall not be eligible to hold office as President, Deputy President, Vice-President or as a member of the Council; and
- (d) shall not be entitled to nominate any candidate for election, to receive any voting papers or to cast any vote.

Application for enrolment

4. An application for enrolment as a member must be made to the secretary in the approved form and be accompanied by the subscription payable to the Society.

Enrolment

5.(1) On receipt of such application and subscription as aforesaid, the secretary, after verification of such application, shall, subject to subrule (2) of this Rule, enrol such practitioner as a member of the Society.

(2) The Council shall be entitled by resolution to refuse the application of any person whom the Council considers unfit to be a member and upon the Council so resolving the secretary shall return such application and subscription to the applicant.

Subscription

6.(1) Members of the Society shall pay in advance annual subscriptions to be determined and prescribed by resolution of the Council from time to time.

(2) The subscription is for a financial year.

(2A) However, a practitioner applying for enrolment as a member must pay as subscription for a financial year an amount equal to the following percentage of the subscription for the year—

- (a) if the application is made no later than 30 September of the financial year—100%;
- (b) if the application is made after 30 September of the financial year but no later than 31 December of the financial year—75%;
- (c) if the application is made after 31 December of the financial year but no later than 31 March of the financial year—50%;
- (d) if the application is made after 31 March of the financial year but no later than 30 June of the financial year—25%.

(2B) Existing members must pay the subscription no later than 31 May before the start of the financial year.

(3) The Council may by resolution waive all or any part of the annual subscription payable by any member.

Levies

7. The Council may by resolution impose upon members or practising practitioners or classes of members or practising practitioners a levy for payment into the funds of the Society and the amount of such levy shall become payable on a date and in a manner to be fixed by resolution of the Council.

Failure to Pay Subscription or Levy

8. If any member fails to pay his annual subscription or any practitioner being a member fails to pay any levy forthwith after it has become due, the secretary shall notify him in writing of the fact; and if such subscription is not paid within one month from the date of such notice, or within such further time as the Council may allow, the Council may, by resolution, suspend such member from membership of the Society for such period as the Council shall then and there resolve; provided that no such suspension shall prejudice or affect the right of the Society to recover such subscription or levy.

Recovery of subscriptions

9. If any member fails to pay such annual subscription or any practitioner

fails to pay any levy after it has become due, the Society may forthwith sue for and recover such annual subscription or levy in a summary manner under the provisions of the *Justices Act 1886-1987* or by action as for a civil debt due to the Society.

Resignation of members

10. A member may resign from the Society provided he has paid all subscriptions levies and fees due by him as provided by these Rules, by sending his resignation in writing the secretary.

Overdue subscriptions

11. A member whose subscription or levy is overdue shall not be allowed to vote at any meeting of the Society or at any election of members of the Council.

Roll of members

12.(1) The name and place of business and residence of every member together with his post office box, telex and facsimile numbers, if any, shall be entered in a book to be kept by the secretary for that purpose; and such book shall be called the roll of members.

(2) Any member who shall at any time change his place of business or residence or his post office box, telex or facsimile numbers shall immediately give notice thereof in writing to the secretary, who shall amend the entry in the roll of members accordingly.

(3) The roll of members for the time being shall for all the purposes of the Society and as between each member and the Society be deemed to contain a correct list of the members and of their respective places of business and residence and of their respective post office box, telex and facsimile numbers.

Service of notices

13.(1) Every letter or notice relating to any matter arising under the Act or Rules which may or must be sent by the secretary or by the Council to a

member or practitioner shall be deemed to have been properly sent and delivered if—

- (a) it is sent by post addressed to him by his name and his place of business or residence or at his or his firm's post office box as entered in the Roll of Members or the Roll of Practising Practitioners;
- (b) it is delivered by hand addressed to him by his name and his place of business or residence referred to in paragraph (a); or
- (c) it is sent to him by telex or facsimile transmission addressed to him by his name at his telex or facsimile number as entered in the Roll of Members or the Roll of Practising Practitioners.

(2) Every such member or practitioner shall be deemed to have received and to have sufficient notice of the contents of such letter or notice, where such letter or notice—

- (a) was sent by post, at and from the time at which it would be delivered in the ordinary course of post;
- (b) was delivered by hand, at and from the time of such delivery;
- (c) was sent by telex, at and from receipt by the machine on which such telex was transmitted, at the end of such transmission, of the answer back code of the person to whom it was sent or of that person's firm;
- (d) was sent by facsimile transmission, at the end of such transmission;

provided that no telex or facsimile shall be deemed to have been sent and received for the purposes of this Rule where the transmission of such telex or facsimile is not fully intelligible. Transmissions shall be deemed to have been fully intelligible unless retransmission is requested within two working hours (being hours between 9:00 a.m. and 5.00 p.m. on a working day) after completion of transmission.

Readmission

14. Any practitioner who has been deprived of membership of the Society may apply to the Council to be readmitted as a member and any

such application may be granted by the Council with or without special conditions.

Place for Payment

15. All fees, subscriptions, fines and levies shall be payable at the office of the Society in Brisbane or at such other places as the Council may from time to time designate by notice in writing to all persons by whom such amount is payable and shall, save for levies imposed pursuant to section 21 of the Act, be the property of the Society.

Notice on relinquishing practice

16. Any practising practitioner who ceases to practise shall within one month thereafter notify the secretary in writing accordingly.

Liability for fees, etc., until notification

17. Any practising practitioner who ceases to practise and who fails to notify the secretary accordingly within one month thereafter and any practitioner who after becoming a practising practitioner fails to pay any practising fee, levy or contribution to the Fund and who has not notified the secretary in writing that he has ceased to practise as a practitioner shall remain liable for the payment of practising fees, levies and contributions to the Fund up to and including the date on which he so notifies the secretary.

Suspension from exercise of privileges

18. The Council may suspend any member from the exercise of any right or privilege of a member during such period as the Council may think fit (but not extending beyond the next general meeting) for any cause which shall in its opinion render such suspension necessary or expedient, subject to the following requirements—

- (a) the Council shall give to such member a statement in writing of the matters which it proposes to take into account in considering a resolution for such suspension, and shall afford him an opportunity of giving an explanation in writing or in person as he may elect;

- (b) thirteen members at least of the Council shall be present at the meeting at which the suspension shall be resolved upon and at the time when such resolution is passed, and such resolution shall be carried by a majority of at least two-thirds of the members of the Council present and voting thereon.

Expulsion

19.(1) Subject to Rule 20, if it shall appear to the Council or if it shall be represented to the Council by a requisition in writing signed by a member that there is reason to believe that any member has been guilty of conduct which in the absence of a satisfactory explanation would render a member unfit to remain a member, the Council shall give to such member a statement in writing of the conduct imputed to him and shall afford him an opportunity of giving an explanation in writing or in person as he may elect.

(2) If on consideration of such explanation or in the absence of any explanation the Council shall, by resolution carried by a two-thirds majority at a meeting at which thirteen members at least are present, declare that such member ought to be expelled from the Society, such resolution shall be set out in a report to be laid before a general meeting of the Society for consideration, and upon a resolution adopting such report and carried by a two-thirds majority of the members present at such general meeting such member shall be expelled from the Society and shall thereupon cease to be a member.

Removal or exclusion

20. The Council may in its discretion remove or exclude from the Society any member who is a bankrupt or insolvent or who has made any arrangement or composition with his creditors. The Council may likewise in its discretion remove or exclude from the Society any member who has been convicted on not less than two occasions of an offence under the *Trust Accounts Act 1973-1978*.

PART D—GENERAL MEETINGS

Annual General Meeting

21.(1) The annual general meeting of the Society shall be held at such time and place as the Council may from time to time by resolution determine; provided that not more than fifteen months shall elapse between the holding of any two consecutive annual general meetings.

(2) Notice of such annual general meeting shall be advertised in a Journal or newsletter, published by the Society, and failing such publication then in the *Gazette*, and shall be given to each member by the secretary, at least thirty days before the day appointed for the holding thereof.

Business of annual general meetings

22.(1) The business of any such annual general meeting shall be—

- (a) confirmation of the minutes of the preceding annual general meeting and of the minutes of all intermediate special general meetings;
- (b) the election of auditors;
- (c) the reception of accounts;
- (d) the reception of the annual report and financial statement of the Council; and
- (e) the disposal of business introduced by the Council and of any business which may consistently with the Act and Rules be introduced at such meeting.

(2) Notice in writing of any motion to be moved at such meeting must be given to the secretary at least twenty-one days before the day appointed for the holding thereof. The secretary shall give a copy of such notice of motion to every member at least seven days before the day appointed for the holding of such meeting.

PART E—SPECIAL GENERAL MEETINGS

23.(1) A special general meeting of members may be called by the Council at any time of its own motion.

(2) Fifteen or more members may at any time by writing under their hands require the Council to call a special general meeting to consider any matter which may be dealt with by the Society under the Act and the Rules.

Requisition to Council

24.(1) Every requisition to the Council to call a special general meeting shall be given to the secretary and shall state concisely the purpose of such meeting; and the Council shall, not later than fourteen days from the date of receipt of such requisition, call a meeting pursuant to these Rules on a date not later than sixty days from the receipt by the secretary of such requisition.

(2) If the Council does not call such special general meeting within the time above prescribed, any ten members who signed the requisition may give to the secretary a notice specifying a day and an hour for holding such meeting, not being earlier than twenty-one days from the receipt by the secretary of such notice, and it shall be his duty to call such meeting accordingly.

Notice of special general meetings

25. Notice of every special general meeting, specifying the general nature of the business and the requisition (if any) on which it is called, shall be given to each member by the secretary fourteen days at least before the day for holding such meeting. No business shall be transacted at a special general meeting other than business of which such notice has been given.

PART F—PROVISIONS COMMON TO ALL GENERAL MEETINGS

Place

26. All general meetings shall be held at the rooms of the Society or at such other place in Brisbane or elsewhere as the Council shall appoint.

Quorum

27. A quorum for a general meeting shall be fifteen members present in person or by proxy.

Default of quorum

28. If within fifteen minutes after the time appointed for a general meeting a quorum is not present, the meeting, if called on requisition, shall lapse; but if not so called the meeting shall stand adjourned to a day and an hour to be fixed by a majority of the members present, and if within fifteen minutes after the hour so fixed a quorum is not present at the adjourned meeting then such meeting shall lapse.

Chairman

29. At all general meetings, the president, or in his absence the deputy president, or in the absence of both the president and the deputy president the vice-president, shall be chairman. If no office bearer of the Council be present within fifteen minutes of the hour fixed for holding the meeting, some other member of the Council, or if none be present some other member of the Society, shall be chosen by the members present to act as chairman.

Adjournment

30.(1) Every duly constituted general meeting shall have power to adjourn from time to time.

(2) Whenever a general meeting shall lapse for want of a quorum or,

being duly constituted, shall be adjourned by resolution of the members present, notice thereof shall be sent to every member.

Conduct of meetings

31. In all matters of debate, procedure or order the decision of the chairman shall be final and conclusive.

Proxies

32.(1) At all general meetings the right to vote may be exercised in person or by proxy, such proxy to be a member and appointed according to the form prescribed by the Council from time to time, or to the like effect; and every such appointment shall continue in force for the particular meeting for which it purports to be given and for every adjournment thereof and no longer.

(2) Every proxy paper shall be delivered to the secretary not less than forty-eight hours before the time appointed for the holding of the meeting at which the same is to be used. Upon the chairman of the meeting taking the chair he shall thereupon announce the proxies to the meeting.

Minutes

33. Minutes of the proceedings of every general meeting shall be taken by the secretary or in his absence by some other person appointed by the chairman, and shall be entered in proper form in the minute-book of the Society.

PART G—PRESIDENT, DEPUTY PRESIDENT AND VICE-PRESIDENT OF THE SOCIETY

34. The president, deputy president and vice-president of the Council for the time being shall also be and be deemed to be the president, deputy president and vice-president, respectively, of the Society.

PART H—VACANCIES IN THE COUNCIL

35. In the event of a vacancy—

- (a) in the office of president, the deputy president, or if there be no deputy president, the vice-president, shall become president;
- (b) in the office of president, whilst there is a vacancy in the office of deputy president and in the office of vice-president a member of the Council appointed by the Council shall become president;
- (c) in the office of deputy president, (other than a vacancy occasioned by the operation of Rule 67) the vice-president, or if there be no vice-president a member of the Council appointed by the Council, shall become deputy president;
- (d) in the office of vice-president, a member of the Council appointed by the Council, shall become vice-president;
- (e) in the office of a member of the Council (other than an office-bearer or the appointed member), a member of the Society—
 - (i) shall, if the case so requires, be appointed or elected; and
 - (ii) may, if the case so permits, be appointed, in accordance with the provisions of this Part, to be a member of the Council.

Notification of Vacancy

36. Where a vacancy in the office of a member of the Council (other than president, deputy president, vice-president or member appointed by the Minister) occurs before the expiration of a period of one year and six months after the date on which the elected members of the Council then in office (other than the president, deputy president and vice-president) were declared elected at an election held under the provisions of Part J of these Rules, the secretary shall, on or before such date as shall be appointed by the Council, give notice of the vacancy to members.

Contents of Notice

37. The notice given pursuant to Rule 36 may contain such information in addition to the notification of the vacancy as the Council thinks fit.

Election to be held on requisition

38. If, before the expiration of the period of twenty-eight days next after the date appointed by the Council under Rule 36, applications in writing have been received by the secretary from members aggregating not less than one-tenth in number of members on the roll of members immediately before the expiration of that period requisitioning the holding of an election to fill the vacancy in respect whereof notice has been given pursuant to Rule 36, an election of a member to fill the vacant office shall be held and the person so elected shall hold office for the residue of the term of office of members of the Council current at the time of his election.

Election to fill a casual vacancy

39.(1) The provisions of Rules 48 to 50 (both inclusive) and Rules 52 to 65 (both inclusive) shall with all necessary adaptations and with such modifications as the Council may deem expedient be applicable to an election held under Rule 38.

(2) In so far as the provisions referred to in subrule (1) of this Rule do not extend, the Council may give such directions, not inconsistent with these Rules, as it deems expedient for the purpose of facilitating and enabling the holding of an election under Rule 38 and such directions shall have effect as if they were provisions of the Rules referred to in the said subrule.

When Council to fill casual vacancy

40. Where in respect of the filling of a vacancy to which Rule 36 refers—

- (a) an election is not required to be held under Rule 38; or
- (b) an election required to be held under the last-mentioned Rule is not held by reason that no person was nominated as a candidate for election to fill the vacancy in question;

the Council shall appoint a member of the Society to be a member of the Council in place of the member whose office is vacant and the person so appointed shall hold office for the residue of the term of office of members of the Council current at the time of his appointment.

Filling of other casual vacancies

41.(1) Where a vacancy in the office of a member of the Council (other than president, deputy president, vice-president or member appointed by the Minister) occurs after the expiration of the period specified in Rule 36, the said office shall unless a further such vacancy occurs after the expiration of that period, remain vacant until the expiration of the term of office of the members of the then subsisting Council.

(2) Where more than one vacancy in the office of a member of the Council (other than president, deputy president, vice-president or member appointed by the Minister) has occurred after the expiration of the period referred to in subrule (1) of this rule, the Council may appoint a member or members of the Society to such of the vacant offices as the Council deems proper in the circumstances but, where the number of vacancies is such that the number of members of the Council in office is less than the number prescribed by the Act to constitute a quorum of the Council, the remaining members of the Council shall appoint such number of members of the Society to be members of the Council as is necessary to enable a quorum of the Council to be constituted.

(3) A person appointed to be a member of the Council under subrule (2) of this rule shall hold office for the residue of the term of office of members of the Council current at the time of his appointment.

42. For the purposes of this Part a reference to a vacancy in the office of a member of the Council (other than the president, deputy president, vice-president or member appointed by the Minister) includes a vacancy occurring by reason of any increase in the maximum number of members of the Council pursuant to section 5(2) of the Act.

PART I—THE COUNCIL

Meetings

43. The Council shall be summoned to meet once in each of eleven months of each year, and at such other times as may be determined by the council or the president, and such meetings shall be held at the offices of the society or at such other place as the council or president may direct.

Special Meetings

44. The secretary shall, if required by five or more members of the Council by writing under their hands, call a special meeting of the Council for a time and a place to be appointed by the president or, failing the president, by the secretary. The president may at any time call a meeting of the Council.

Chairman

45. At all meetings of the Council the president, or in his absence the deputy president, or in the absence of both the president and the deputy president the vice-president, shall be chairman. If no office-bearer of the council be present at the hour appointed for the holding of the meeting, then some member of the council to be chosen by the members present shall take the chair.

Resignation from office

46. Any member of the Council desirous of resigning from office may send his resignation in writing under his hand to the Council, and on the acceptance of such resignation by the Council (but not before) his office shall become vacant.

Vacation of office

47. The office of a member of the Council shall be vacated by disqualification if such member—

- (a) dies; or

- (b) becomes of unsound mind; or
- (c) ceases to be a member of the Society; or
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his creditors; or
- (e) is convicted on not less than two occasions of an offence under the *Trust Accounts Act 1973-1978* or Regulations; or
- (f) fails without leave from the Council, to attend the meetings of the Council for a period of three consecutive months;

or if the Statutory Committee, the Solicitors Disciplinary Tribunal or any court, by a final decision, finds that the member of the Council has committed any act of malpractice, professional misconduct, unprofessional conduct or practice and a resolution of the Council declaring him disqualified as aforesaid shall be conclusive as to the fact and grounds of disqualification stated in the resolution.

PART J—ELECTION OF MEMBERS OF THE COUNCIL

Returning officer

48. The secretary shall be the returning officer for the election of members of the Council.

Roll of electors

49. For every election the secretary shall prepare a roll of electors, which shall consist of the names alphabetically arranged of practitioners duly enrolled as members of the Society up to the date of publication of notice of election as hereinafter provided.

Certification

50. Such roll of electors shall be certified by the secretary by writing

under his hand to be correct, and when so certified shall be the roll of electors to be used at such election, and shall, subject to these Rules, be conclusive evidence of the right of all such persons to vote thereat.

51.(1) The election of members of the Council shall be conducted in respect of the following sections—

- (a) election of president;
- (b) election of deputy president;
- (c) election of vice-president;
- (d) election of 13 members (being members other than the office-bearers mentioned in this Rule and the appointed member).

(2) Subject to Rule 55, a person may be a candidate in one or more than one or all of those sections.

(3) No person shall be eligible for nomination as a candidate or for election to any position if, at the date of such nomination or election (as the case may be), such person—

- (a) is of unsound mind;
- (b) is not a member of the Society;
- (c) is bankrupt or insolvent or has made any arrangement or composition with his creditors which is still on foot;
- (d) in the period of five years immediately preceding such date was convicted of two offences under the *Trust Accounts Act 1973-1978* or regulations; or
- (e) in the period of five years immediately preceding such date, was found to have committed an act of malpractice, professional misconduct, unprofessional conduct or practice by a final decision of the Statutory Committee, the Solicitors Disciplinary Tribunal or any court

and a resolution of the council declaring him ineligible as aforesaid shall be conclusive as to the facts and grounds of ineligibility stated in the resolution.

Notice of election

52.(1) On or before the first day of June in every alternate year, commencing with the first day of June 1988, or on or before such other date as may be appointed by the Council, the returning officer shall give notice to members of intention to hold an election of members of the Council and shall forward a nomination paper to each member.

(2) Such notice shall specify a day not less than fourteen nor more than twenty-eight days after the giving of such notice as the day for the nomination of candidates which day shall be the last day for the receipt of nomination of candidates.

(3) The notice shall also specify the address of the office of the returning officer at which the returning officer will be in attendance between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon on the day specified in the notice given pursuant to this Rule as the day for the nomination of candidates.

Nomination

53. In order that any eligible person may become a candidate for election, he shall be nominated by not less than six persons entitled to vote at such election, in manner following, that is to say:—A nomination paper signed by the persons nominating him shall be received in the hands of the returning officer at the address of his office specified in the notice given pursuant to Rule 52 before 4 o'clock in the afternoon of the day specified in accordance with Rule 52 as the day for nomination of candidates. Such nomination paper shall exhibit on the face of it the consent in writing under the hand of the person so nominated and shall be in the form prescribed by the Council, or to the like effect.

Deputy of the returning officer

54. If the returning officer is unable by reason of illness or other sufficient cause to be present at his office during the appointed hours on the day specified in accordance with Rule 52, a nomination paper shall be deemed to have been duly received by the returning officer if that paper is received into the hands of, a person appointed for that purpose in writing

under the hand of the president, deputy president or vice-president, before the expiration time limited by Rule 53 for receipt of nomination papers.

55. Where a person is a candidate for election in more than one of the sections specified in Rule 51, the election for the various sections shall be determined in the order in which the sections are specified in that Rule so that the election of president shall be determined before the elections for all other sections, the election of deputy president shall be determined before the elections under section (c) and (d) and the election for vice-president shall be determined before the election under section (d). Where such a person is declared duly elected in any section, then that person shall be deemed to have withdrawn his nomination as a candidate in any other section for which he was previously nominated.

Where exact number to be elected nominated

56.(1) If at the expiration of the time limited for the nomination of candidates there is only one person nominated as president, the returning officer shall declare such person duly elected president accordingly.

(2) If likewise there is only one person nominated as deputy president, the returning officer shall declare such person duly elected deputy president accordingly.

(3) If likewise there is only one person nominated as vice-president, the returning officer shall declare such person duly elected vice-president accordingly.

(4) If likewise the number of persons who are duly nominated as members (other than president, deputy president or vice-president) does not exceed the number of members to be so elected the returning officer shall declare such person duly elected members accordingly.

(5) If at the conclusion of an election under Part J of the Rules there is a vacancy in the office of any of the president, deputy president, or vice-president of the Council, or in the office of a member of the council to which sub-rule (4) applies, by reason of lack of nominations or by the death of a candidate for election or be reason of any candidate becoming ineligible pursuant to Rule 51(3) the vacancy shall be filled as prescribed by Part H of these Rules.

Closing of Poll

57. If at the expiration of the time limited for the nomination of candidates—

- (a) there are two or more person nominated for the office of president;
- (b) there are two or more persons nominated for the office of deputy president;
- (c) there are two or more persons nominated for the office of vice-president;
- (d) the number of candidates for the office of member (other than president, deputy president and vice-president) exceeds the number of members to be elected—

the returning officer shall appoint a day (not being less than fourteen nor more than twenty-eight days from day of nomination) on which the poll shall close as hereinafter provided and the result of the election shall be ascertained.

Every such poll shall close at the hour of 4 o'clock in the afternoon of the day so appointed.

Voting papers

58.(1) If a poll is required to be taken the returning officer shall forthwith, after the day of nomination, transmit by post a voting paper to every person entitled to vote at the election.

(2) Every voting paper shall contain the names in full in alphabetical order of all candidates for election, arranged respectively in such of the following sections as the case requires, namely—

President;

Deputy President;

Vice-President;

Members,

and shall be initialled by the returning officer, and shall be in the form prescribed by the Council or to the like effect.

(3) The returning officer shall compile or cause to be compiled and shall certify in writing under his hand an alphabetical list of all persons to whom he shall have so transmitted voting papers.

(4) Every voting paper so transmitted to a voter shall be accompanied by an unsealed envelope addressed to the returning officer and endorsed "Queensland Law Society Incorporated. Voting Paper."

Method of voting

59. The voter shall mark the voting paper by placing across in the square opposite to the name of the candidate or as the case requires, the names of the candidates in each section for which the election is held for whom he wishes to vote, and then shall sign such paper and place it in the envelope hereinbefore described and shall seal and transmit the same to the returning officer.

Scrutineers

60. Each candidate may appoint one member to be his scrutineer at the place appointed for the examination of voting papers.

Scrutiny of votes and declaration

61.(1) The returning officer shall, at 4 o'clock in the afternoon of the day appointed for closing the poll and at his office, in the presence of such candidates and scrutineers as may attend, proceed to examine and count the number of the votes received by each candidate in each section, and shall make out a written statement signed by himself and countersigned by any scrutineers who are present and consent to sign the same, containing the numbers in words as well as figures of the votes cast for each candidate as counted aforesaid, and shall at the same time and place declare the names of the candidates elected in each section, and shall forthwith thereafter certify to the Minister, by writing under his hand, the names of the candidates so elected and the date of the declaration of the result of election.

(2) Subject as provided in these Rules—

- (a) the candidate in any of the first, second or third sections mentioned in Rule 58(2) who secures the greatest number of

votes in the section shall be the candidate elected for that section;

- (b) in the fourth section mentioned in Rule 58(2) if there remain in the poll more than thirteen candidates the candidate who secures the lowest number of votes shall be eliminated from the poll, if more than thirteen candidates then remain in the poll the candidate who secures the next lowest number of votes shall be eliminated and so on until there remain in the poll thirteen candidates only and the candidates so remaining shall be candidates elected for that section.

(3) At the time of the counting of such votes the returning officer shall produce, for the information of the scrutineers (if any), an alphabetical list signed by him of all persons to whom he has posted voting papers.

Informal votes

62. At the examination of the voting papers every voting paper which—

- (a) does not bear the initials of the returning officer; or
- (b) is not signed by the voter; or
- (c) is manifestly irregular; or
- (d) contains, in respect of any section in which a poll is being held greater or less number of crosses marked thereon in squares opposite the names of candidates than the number of candidates to be elected in the section in question; or
- (e) is so imperfectly executed that the intention of the voter cannot with certainty be ascertained—

shall be rejected but in relation to a defect referred to in subparagraphs (c) (d) or (e) the voting paper shall be rejected only in respect of the section or sections affected by the defect.

Marking of name of voters on list

63. Upon the examination of the voting papers the returning officer shall make a checkmark against the name of the respective voters upon the alphabetical list aforesaid.

Casting vote

64. If the number of votes for two or more candidates in the same section is found to be equal, the returning officer shall decide by lot which shall be elected.

Disposal of voting papers

65.(1) The returning officer shall forthwith after declaring the result of the election enclose in one packet all the voting papers, together with the alphabetical list of voters signed by him as aforesaid, and shall securely fasten and seal up the packet, and shall endorse upon it when so sealed a concise description of the contents thereof and the date of the closing of the poll, and shall sign such endorsement with his name, and shall cause such sealed packet to be delivered to the president of the Queensland Law Society Incorporated. The president shall keep the same for twelve months after the receipt thereof by him; at the expiration of such period he shall cause the voting papers to be destroyed.

(2) If any question at any time arises touching the votes alleged to have been given at such election, the voting papers contained in such sealed packet shall be received in evidence as proof of such votes in any court of justice upon production thereof, and upon proof that the same were transmitted to the president in due course by the returning officer.

Publication of names of successful candidates

66. The name of the persons elected as president, deputy president, vice-president, and members of the Council shall be published promptly in the gazette and in any journal or newsletter published by the Society, and failing such publication then in such other newspaper as the president may determine.

Mid-term change in officer bearers of council

67.(1) At the conclusion of the annual general meeting in the year next after the declaration of the election of the Council of which he was elected president the president shall vacate his office as president and shall thereupon be deemed to be an elected member of the council (other than an officer bearer) and shall continue as such an elected member for the

remainder of the term for which the Council in question was elected.

(2) Upon the vacation by the president of his office as president pursuant to subrule (1) the deputy president, or if the office of deputy president is vacant the vice-president, shall by virtue of this subrule become the president for the remainder of the term for which the Council of which he has become president was elected.

Suspension of members of the Council

68. The council may, if it shall see occasion so to do, by resolution suspend any member thereof from service in his office of member during such period as the Council may deem expedient, subject to the following requirements—

- (a) the Council shall give reasonable notice of the meeting of the Council at which his suspension will be moved and shall give to such member a statement in writing of the matters which it proposes to take into account in considering such resolution for suspension, and shall afford him an opportunity of giving an explanation in writing or in person at the said meeting, as he may elect, provided that such member shall not be entitled to vote upon such resolution;
- (b) thirteen member at least of the Council shall be present at the meeting at which the suspension shall be resolved upon and at the time when such resolution is passed, and such resolutions shall be carried by a majority of at least two-thirds of the members of the council present and voting thereof.

General meeting following suspension

69. Whenever the Council shall have suspended any member thereof from service in his office as aforesaid, it shall immediately convene a special general meeting of the members of the Society, to be held within twenty-eight clear days after such suspension, which meeting shall have full power to remove from office the member so suspended if it shall consider such a course expedient:

Provided that the suspended member of the Council shall be given

reasonable notice of such special general meeting and shall be entitled to be present thereat and to be heard thereon.

Minutes

70. Minutes of the proceedings of every meeting of the Council and the proceedings of any committee thereof shall be taken by a minute secretary appointed by the chairman; and such minutes shall in the case of meetings of the Council be entered in proper form in the minute-book of the Society and in the case of meetings of any committee be held in the records of the Society and shall be signed in either case by the chairman of the same or of the next succeeding meeting.

Committees

71.(i) The council may from time to time appoint committees for such purposes as the Council may think fit and may prescribe the quorum of an such committees.

(ii) The appointment of any such committee shall imply the delegation of the whole of the powers of the Council in respect of the purposes for which such committee was appointed except such powers as the Council shall from time to time by resolution reserve to itself.

(iii) Notwithstanding the appointment of any committee the Council may itself exercise any of the powers delegated to any committee.

(iv) The Council may from time to time, in the event of a vacancy in a committee so appointed, appoint another person to be a member of such committee to fill such vacancy.

(v) The council may from time to time, in the event of the temporary absence of any member so appointed, appoint another person to be a member of such committee during the absence of such member.

(vi) The Council may from time to time in its absolute discretion by resolution terminate the membership by any person of any committee without the necessity of assigning any reason therefor.

PART K—ACCOUNTS AND AUDIT

72. The Council shall cause proper accounts to be kept of the income and expenditure of the Society and of its property, assets and liabilities.

Auditor

73. An auditor, who is registered as a public accountant under the *Public Accountants Registration Act 1946*, shall be elected at each annual meeting of the Society.

Any auditor shall be eligible for re-election.

A casual vacancy in the office of auditor shall be filled by the Council.

Annual audit

74. The accounts of the income and expenditure of the Society, and any funds (other than the Legal Practitioners' Fidelity Guarantee Fund) controlled by it, for the year ending on the thirtieth day of April immediately preceding (or such other date as the council may be resolution appoint) shall in each year be produced together with the accounts of the property, assets and liabilities of the Society to the auditor to be examined, audited, certified and signed by him.

The accounts so certified and signed shall be printed and issued to members.

Annual submission of accounts

75. The accounts so certified and signed as aforesaid shall also be signed by the secretary and treasurer (if any), and shall be open for inspection at the secretary's office, and shall be submitted to the annual general meeting for approval; and after approval shall be signed by the chairman in testimony of such approve.

PART L—OFFICERS

76. The Council may from time to time appoint and remove a secretary and deputy secretaries, a clerk to the Statutory Committee and a deputy clerk to the Statutory Committee, a Clerk to the Solicitors Disciplinary Tribunal and a Deputy Clerk to the Solicitors Disciplinary Tribunal, and such other officers as the Council may deem necessary, and may pay to such secretary or deputies or other officers such salary or salaries or other remuneration as it may think proper.

PART M—COMMON SEAL

77. The Council shall select and have the custody of the common seal of the Society. The seal shall not be affixed to any instrument until such instrument shall have been approved by a resolution of the council or of a committee of the Council. Every such sealing shall be authorised by a resolution of the council or of a committee of the Council in that behalf and shall be attested by any two members of the Council.

PART N—DISCIPLINE

78.(1) A practising practitioner shall not share with any unqualified person receipts from his practice except in the following cases—

- (a) He may pay an annuity or other sum out of profits to a retired partner or the dependants or legal personal representatives of a deceased partner.
- (b) He may pay an annuity or other sum out of profits to a retired solicitor or conveyancer or the dependants or legal personal representatives of a deceased solicitor or conveyancer, from whom he has purchased the goodwill of the practice formerly

carried on by such retired or deceased solicitor or conveyancer:

Provided that the contract of purchase is in writing and that the provisions of such contract relating to payments of an annuity or other sum as aforesaid have been approved by the Council.

- (c) In a case where at the request of the dependants or legal personal representatives of a deceased solicitor or conveyancer he conducts the practice formerly carried on by such deceased solicitor or conveyancer pending the sale of the goodwill thereof, he may pay to such dependants or legal personal representatives a sum out of the profits of such practice:

Provided that the period for which he so conducts such practice shall not exceed one year, or such longer period as the Council may approve.

- (d) Where the Council has approved of his doing so and he complies with any conditions subject to which the approval was given.

(2) The Council may by writing under the hand of the secretary require any practising practitioner suspected of contravening subrule (1) hereof to show cause by affidavit or otherwise why he should not be called upon to appear before the Statutory Committee to be dealt with according to law.

Business names

79.(1) A practitioner may carry on business under a business name.

(2) The name must indicate that the business being carried on is a legal practice.

Example 1—

Jones & Co, Solicitors.

Example 2—

Blackacre Legal Practice.

(3) However, a practitioner whose business name does not comply with subsection (2) does not contravene the subsection if each time the name is published or displayed the publication or display also uses words indicating that the business is a legal practice.

Advertising

80.(1) A practitioner may advertise or promote the practitioner's expertise or practice in any way the practitioner considers appropriate.

(2) However, a practitioner must not advertise or promote the practitioner's expertise or practice in a way that—

- (a) is false, misleading or deceptive; or
- (b) would contravene the *Fair Trading Act 1989*; or
- (c) if done by a corporation, would contravene the *Trade Practices Act 1974* (Cwlth).

(3) A practitioner who advertises or promotes the practitioner's expertise or practice in a way that is false, misleading or deceptive or would contravene the *Fair Trading Act 1989* or *Trade Practices Act 1974* (Cwlth) commits unprofessional conduct.

Practising certificates, holding out

81.(2) A practitioner who is a member or is held out as a member with any other person of a partnership of solicitors shall not do or permit any act or thing which could reasonably be regarded as holding out that such partnership or any member thereof acting in that capacity is entitled to act or practice as a practitioner in Queensland unless such other person holds a certificate issued pursuant to Part IV of the Act.

Duty to give explanation

82.(1) In any case where a complaint in writing against a practitioner is received by the Society, or where the Council so resolves, the secretary may—

- (a) write to that practitioner a letter requesting him to furnish to the Council within the time specified in the said letter a sufficient and satisfactory explanation in writing of the matters referred to in the complaint;
- (b) write to the practitioner further or other letters for the purpose of obtaining such explanation and shall refer the complaint to the Council or to the Complaints Committee thereof.

(2) A practitioner shall after being called upon by the Council so to do provide to the Council a sufficient and satisfactory explanation of any matter relating to his conduct or to his practice as a practitioner. Such explanation shall be provided, at the discretion of the Council—

(a) in writing; or

(b) at an attendance before the Council or a committee thereof at a time and place appointed by the Council or by that Committee,

and shall if necessary or required by the Council or by that Committee include the production by the practitioner of books, papers, files, securities, other documents or any other record of information of any type whatsoever, or copies thereof which are in the custody, possession or control of the practitioner and which he is entitled at law so to produce.

(3) A practitioner shall after being called upon by notice in writing under the hand of the secretary or any other duly authorised officer of the Society pursuant to subrule (1) hereof give to the Council in the manner specified in such notice a sufficient and satisfactory explanation of any matter in respect of which he has been requested to furnish such explanation under subrule (1) hereof.

(4) The Council or a committee thereof after consideration of any explanation furnished pursuant to subrule (1) or (2) hereof may, in addition to the exercise of any other power contained in these Rules, as it thinks fit, censure or admonish the practitioner and seek and obtain undertakings from him in respect of the complaint or conduct to which the explanation relates.

(5) A practitioner shall after being called upon by the Council or a committee thereof or the secretary so to do produce all books, papers, files, securities, other documents or any other record or information of any type whatsoever or copies thereof which are in the custody, possession or control of the practitioner and which he is entitled at law so to produce, which the Council or a committee thereof or the secretary so requires.

83.(1) Where any practitioner fails to furnish a sufficient and satisfactory reply in writing or fails if requested by the Council to attend before the Council or a committee thereof and provide such explanation and/or to produce material as required by the Council or that Committee, the secretary or any other duly authorised officer of the Society may notify the practitioner in writing that if such failure continues for a period of fourteen

days from the date of his receiving such notification he will be liable to be dealt with for professional misconduct.

(2) If such failure so continues for a period of fourteen days from the date of his receiving such notification, such failure shall be deemed to be professional misconduct and the practitioner shall be liable to be dealt with by the Statutory Committee or the Solicitors Disciplinary Tribunal accordingly unless he furnishes a reasonable explanation to the Statutory Committee or the Solicitors Disciplinary Tribunal for such failure, and on any such proceedings before the Statutory Committee or the Solicitors Disciplinary Tribunal the tendering of a communication or request from the Council or the secretary or other duly authorised officer to which the practitioner has failed to furnish a sufficient and satisfactory reply in writing or upon attendance before the Council or a committee thereof, together with proof of the due service of such communication pursuant to Rule 13, shall be prima facie evidence of the truth of the matters contained in any such communication and of any enclosures therewith or annexures thereto.

Duty to render costs

84.(1) A practitioner shall within a reasonable time after being so requested in writing by a client render to the client a bill of costs covering all work for that client to which such request relates or for which he has not already rendered a bill of costs or been paid.

(2) If such practitioner fails or neglects to render such bill of costs within one month after receiving such request or within such further period as the client in writing allows or as may in the circumstances be reasonable he shall if requested by the client forthwith pay to the client all moneys and if so requested shall deliver to the client all documents which he is holding on behalf of that client, notwithstanding that he might otherwise be entitled to a lien upon those moneys or documents for payment of his bill of costs.

85. A practitioner, or a firm of practitioners, engaged by a person to negotiate or otherwise act in respect of a contract or mortgage under or upon which that person has provided or agrees to provide credit to any other person shall not during the course of such engagement act for such other person in respect of the same matter or in respect of any other matter in which the credit (or any part of it) has been or is intended to be applied

unless the provider of the credit shall be an excepted person.

An excepted person for the purpose of this rule shall be—

- (i) a member of the family of the said other person or any corporation, partnership, syndicate, joint venture or trust in which the whole of the beneficial interest is presently vested in one or more of such persons;
- (ii) a related corporation of such other person as aforesaid;
- (iii) a person or a company of the kind described hereunder—
 - (a) a corporation authorised to carry on banking business in Australia or a related corporation thereof,
 - (b) a corporation authorised to carry on insurance business in Australia or a related corporation thereof,
 - (c) a company registered under the *Life Insurance Act 1945*,
 - (d) a building society registered under the *Building Societies Act 1985* or under corresponding legislation of any State or Territory of Australia,
 - (e) a credit society registered under the *Credit Societies Act 1986* or under corresponding legislation of any State or Territory of Australia,
 - (f) a trustee company specified in the Second Schedule to the *Trustee Companies Act 1968* or authorised to carry on business under corresponding legislation of any State or Territory of Australia,
 - (g) a registered corporation in terms of the *Financial Corporations Act 1974* or a related corporation thereof,
 - (h) a company listed on any stock exchange in Australia or a related corporation thereof,
 - (i) a government instrumentality, or
- (iv) the vendor of any property the subject of such credit transaction.

For the purpose of this rule and the following rule the words “related corporation” have the meaning ascribed to them by the Companies (Queensland) Code.

For the purpose of this and the following Rule “member of the family” includes a child, grandchild, sibling, parent, grandparent, spouse of any of the foregoing, and for the purpose of this definition a person who lives with another person as a spouse, although not legally married to that other person, shall be deemed to be a member of the family of that other person in the same manner as he would be if he were married to that other person.

Limitation on borrowings and guarantees etc.

86.(1) A practitioner shall not borrow money from a client unless such client is—

- (i) a person or company listed in subclauses (a) to (i) inclusive of subrule (iii) of the preceding rule;
- (ii) a member of the family of the practitioner or any corporation, partnership, syndicate, joint venture or trust in which or the shares in which the whole of the beneficial interest is presently vested or is capable only of being vested in the practitioner, one or more members of the family of such practitioner or in a person or company to whom or to which subrules (i) or (iii) of this Rule apply; of
- (iii) such other person or categories of persons as the Council may determine from time to time.

(2) A practitioner must not, without the council’s written consent—

- (a) guarantee the performance of a third party’s obligation in relation to an amount borrowed from a client; or
- (b) indemnify a client against loss because of the non-performance of a third party’s obligation in relation to an amount borrowed from the client.

(3) A practitioner must not act for a client who wants to invest an amount if—

- (a) the amount to be invested is to be borrowed by a related person;
or
- (b) without the council’s consent, a related person is to guarantee the performance of a third party’s obligation in relation to an amount.

(4) In this section—

“amount borrowed”, from a client, includes interest and any other costs payable in relation to the amount.

“client” means a person (save and except a person advised by another practitioner independently employed and instructed in respect of that transaction) between whom and a practitioner (or partner at any time of a practitioner or employer of a practitioner) any relationship of solicitor and client exists and also includes any person seeking to invest money through a practitioner or approached by or on behalf of a practitioner for that purpose.

“related person”, of a practitioner, means—

- (a) the practitioner’s employee, employer or partner; or
- (b) a member of—
 - (i) the practitioner’s family; or
 - (ii) the family of a person mentioned in paragraph (a); or
- (c) a corporation, joint venture, partnership, syndicate or trust in which the practitioner or a person mentioned in paragraph (a) or (b) has shares or a beneficial interest, whether or not vested in the person;

other than a person or company mentioned in subsection (1)(i).¹

Mortgage practices

87.(1) This rule does not apply to any mortgage of which a practitioner is the beneficial owner or to any mortgage held by a practitioner or a corporation in his or its capacity as the trustee of any will or settlement or to any mortgage which when executed or transferred will be so held.

(2) For the purpose of this rule—

“contact request form”, for a contributory mortgage, means a written form stating that, if a contributor requires the contributor’s contact details to be given to other contributors, the contributor must complete the form as to what contact details are to be given and sign it and return

¹ See section 85 for the meaning of “member of the family”.

it to the responsible practitioner within 14 days of the date the default notice issued.

“contributor” means any person who provides or proposes to provide moneys on the security of a contributory mortgage arranged by a practitioner.

“contributory mortgage” means a mortgage to secure moneys provided by two or more persons. Two or more persons providing moneys on joint account shall for the purpose of this rule be regarded as a single person.

“default notice”, for a contributory mortgage, means a written notice to a contributor that—

- (a) gives full particulars of a material default; and
- (b) states the date the notice is issued; and
- (c) advises that the contributor may request a meeting of contributors by signing and returning the meeting request form to the responsible practitioner within 14 days of the date the notice issued; and
- (d) advises that the contributor may request that the contributor’s contact details be given to all other contributors by signing and returning the contact request form to the responsible practitioner within 14 days of the date the notice issued.

“material default”—

1. A “material default”, for a contributory mortgage, is—

- (a) a default by the borrower in payment under the mortgage of interest so that interest is owing for a period of not less than 3 months; or
- (b) a default by the borrower in repayment under the mortgage of part or all of the principal so that the part or all of the principal is owing for a period of not less than 3 months after the date for repayment.

2. For this definition, payment of interest by or on behalf of the responsible practitioner does not remedy a default mentioned in item 1(a).

“meeting request form”, for a contributory mortgage, means a written

form stating that, if a contributor requires a meeting of contributors because of a material default, the contributor must sign the form and return it to the responsible practitioner within 14 days of the date the default notice issued.

“mortgage” means a mortgage, charge, security, bill of sale, loan contract or any document purporting to secure or regulate the payment of moneys.

“lender” and **“borrower”** means as the context requires the person to whom and the person by whom any moneys are payable pursuant to any mortgage.

“mortgage register” means a register maintained for the purpose of this rule containing the particulars specified in schedule 2.

“nominee” means a practitioner or practitioner’s nominee company in whose name a mortgage or contributory mortgage is held.

“practitioner’s nominee company” means a corporation each of the members and each of the directors of which is a practitioner or other person first approved by the Council.

“principal”, for a contributory mortgage, means the moneys provided to the borrower under the mortgage.

“report about a mortgage”, for a contributory mortgage, means a written report that—

- (a) states the amount of principal outstanding for the mortgage; and
- (b) gives details of any reports and proposals obtained by the responsible practitioner about property against which the mortgage is secured, including valuation reports and marketing proposals; and
- (c) states the responsible practitioner’s opinion about the period of time the property against which the mortgage is secured may take to sell; and
- (d) states the responsible practitioner’s opinion about the extent to which it is likely that there will be a deficiency in the principal and interest paid under the mortgage.

“responsible practitioner”, for a contributory mortgage, means—

- (a) the practitioner who acts as trustee of the mortgage; or
- (b) if a practitioner's nominee company acts as trustee of the mortgage, each practitioner who is a member or director of the company.

“trustee company” means a trustee company specified in the second schedule to the *Trustee Companies Act 1968* or authorised to carry on business under corresponding legislation of any State or Territory of Australia.

(3) Where a practitioner's nominee company holds any property as a nominee or trustee for another person a practitioner who is a member or director of that company shall not—

- (a) permit any person to become a member or director of that company unless that person is a practitioner or other person first approved by the Council; or
- (b) permit that company to undertake any other activity.

(4)(a) Every practitioner who—

- (i) prepares a mortgage, payments pursuant to which are to be collected by that practitioner; or
- (ii) is authorised to collect moneys payable under any mortgage, except on any discharge or partial discharge of the mortgage; or
- (iii) takes a transfer of mortgage to himself or prepares a transfer thereof to a practitioner's nominee company of which he is a member or director;

shall keep a mortgage register and shall enter in that mortgage register the particulars specified in schedule 2 within one month after—

- (iv) the date on which moneys are first provided under the mortgage; or
- (v) the date on which the mortgage becomes one to which this subrule applies;

whichever date last occurs.

(b) For every other mortgage held in the name of a nominee the same particulars as are required to be entered in such register by paragraph (a) of this subrule shall be entered in the mortgage register of—

- (i) the practitioner who is such nominee; or
- (ii) the practitioner who is the director or one of the directors of the practitioner's nominee company which is such nominee;

as the case requires.

(c) Every practitioner who prepares a variation of any mortgage to which paragraph (a) or (b) of this subrule applies shall, within one month thereafter, enter in the mortgage register such of the particulars specified in schedule 2 as may in the circumstances be necessary, in consequence of such variation, to maintain the accuracy of the mortgage register.

(5)(a) Except in the case of a mortgage to be held by a practitioner's nominee company a practitioner shall not arrange or agree to arrange a mortgage which is intended to be held in the name of a corporation (other than a trustee company) of which that practitioner is a member or director where the mortgage will be held by that corporation as trustee for the beneficial owner thereof.

(b) If a practitioner shall, notwithstanding the provisions of paragraph (a) of this subrule, arrange or agree to arrange a mortgage which is intended to be held in the name of a corporation (other than a trustee company) of which that practitioner is a member or director where the mortgage will be held by that corporation as trustee for the beneficial owner thereof, the other provisions of this rule shall apply to such practitioner in relation to such mortgage in the same way as if such mortgage was or was intended to be held in the name of a practitioner's nominee company.

(6)(a) A practitioner shall not prepare a transfer of any mortgage to any company of which he is a member or director other than to a solicitor's nominee company or a trustee company where such mortgage will be held by the company as trustee for the beneficial owner thereof.

(b) If a practitioner shall, notwithstanding the provisions of paragraph (a) of this subrule, prepare a transfer of any mortgage to any company of which he is a member or director other than to a solicitor's nominee company or a trustee company where such mortgage will be held by the company as trustee for the beneficial owner thereof, the other provisions of this rule shall apply to such practitioner in relation to such transfer and mortgage in the same way as if such transfer was or was intended to be in favour of a practitioner's nominee company.

(7) A practitioner—

- (a) shall obtain the prior written authority of the lender or of each contributor, as the case requires, in or to the effect of the form in Part A or B of schedule 1 before any moneys are provided to a borrower under a mortgage to which subrule (4)(a)(i) applies;
- (b) shall not without the consent in writing of each contributor arrange any contributory mortgage under which moneys to be provided to a borrower are to be made available otherwise than in a lump sum;
- (c) shall not arrange any contributory mortgage under which it is proposed that progressive payments will be made to any borrower unless the practitioner at the date of the first payment to a borrower to be made pursuant to such mortgage has received from all contributors the full amount being contributed by each contributor; or at such date holds and enforceable unconditional agreement given by a bank (as defined by the *Banking Act 1959-1984*) to provide the difference between the maximum amount to be provided to the borrower under such contributory mortgage and the amounts contributed by the contributors and such agreement is not revocable except upon the full amount to be provided under such contributory mortgage being received from the contributors or on the discharge of the mortgage.

(8) A practitioner shall not arrange a mortgage to which subrule (4)(a)(i) applies where the mortgage—

- (a) will be subject to any prior mortgage; or
- (b) is not intended to be registered, if registration of mortgages of the kind of property referred to therein is permitted by any Act;

unless the express written consent of the lender or, in the case of a contributory mortgage, of each contributor has first been obtained by the practitioner.

(9)(a) Whenever any moneys to be provided on mortgage are received by a practitioner from a lender or a contributor an account in the name of that lender or that contributor shall be established in the practitioner's trust account ledger and the moneys received credited to that account.

- (b) Before any moneys are provided on a mortgage in the name of a

nominee an account in respect of that mortgage shall be established in the practitioner's trust account ledger in the name of such nominee and the amount to be provided by the lender or, in the case of a contributory mortgage, by each contributor shall be paid to the nominee's account.

(c) A separate account in the trust account ledger in the name of the nominee shall be established in respect of each mortgage loan held or intended to be held in the name of the nominee.

(d) In the case of any mortgage held in the name of a nominee any payments received from or on account of the borrower shall be paid into the practitioner's trust account and first credited to the nominee's account in the trust account ledger relating to such mortgage. As soon as practicable thereafter the amount credited to such nominee's account less any amounts properly debited against such account shall be paid to the lender or in the case of a contributory mortgage to the contributors in the proportions to which such contributors are respectively entitled or in such other manner as all of the contributors shall agree and direct.

(10)(a) In respect of every mortgage to which subrule (4) applies the practitioner shall within one month after the date of—

- (i) the first payment to the borrower under the mortgage; or
- (ii) the transfer of the mortgage; or
- (iii) being authorised to collect payments from or on account of the borrower except on any discharge or partial discharge of the mortgage; or
- (iv) any variation of such mortgage;

prepare and execute a summary of mortgage containing the particulars specified in schedule 2. The original summary of mortgage shall be retained by the practitioner and within the said period of one month copies shall be forwarded to the lender and in the case of a contributory mortgage to each contributor.

(b) Where there is any change of contributors the practitioner shall within one month after that change prepare and supply to any new contributors a summary of mortgage containing the particulars specified in schedule 2. The original summary of mortgage required by this paragraph shall be retained by the practitioner and within the said period of one month copies shall be forwarded to each new contributor.

(11) Every practitioner who prepares, or in whose name is held, or who is a director of a practitioner's nominee company in whose name is held, a mortgage to which subrule (4) applies shall ensure that the provisions of any Acts regulating or controlling such mortgage or creating duties, obligations or restrictions in relation thereto are complied with in respect of that mortgage.

(12) All mortgages, certificates of title, insurance policies and any other deeds or documents relating to any security in respect of which any mortgage has been given shall be retained by the practitioner unless directed in writing by the lender or, in the case of a contributory mortgage, by all contributors, to hand the same to some other person.

(13) If for any substantial reason it is not possible to complete any part of the mortgage register or the summary of mortgage within the times specified by subrules (4) and (10), the practitioner shall complete the register and the summary as required omitting the particulars not then available.

(14) If there is a material default in a contributory mortgage, the responsible practitioner must, as soon as reasonably practicable but not more than 28 days after the material default happens, give each contributor—

- (a) a default notice; and
- (b) a copy of subrule (2) and subrules (14) to (28); and
- (c) a report about the mortgage; and
- (d) a meeting request form; and
- (e) a contact request form.

(15) At the written request of—

- (a) contributors whose interests represent not less than 25% of the moneys secured by the contributory mortgage; or
- (b) not less than 25% of the total number of contributors for the contributory mortgage;

the responsible practitioner must call a meeting of all contributors with the responsible practitioner for a date not more than 28 days after the date the default notice issued.

(16) The time and place of the meeting must be reasonable in all the circumstances.

(17) A contributor may, by signed notice, give any person a power to vote for the contributor by way of proxy vote at the meeting.

(18) The responsible practitioner is to preside at the meeting and is to put the following question to the meeting—

‘That [name of the responsible practitioner *or* name of the practitioner’s nominee company] continue to act as trustee of the contributory mortgage.’.

(19) At the meeting, the question is decided in the affirmative if either—

- (a) contributors whose interests represent more than 50% of the moneys secured by the contributory mortgage vote in the affirmative; or
- (b) a majority of the total number of contributors for the contributory mortgage vote in the affirmative.

(20) The responsible practitioner is to have a vote only if the responsible practitioner is a contributor.

(21) Contributors are able to take part in the meeting by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between contributors taking part in the meeting.

(22) The responsible practitioner must—

- (a) keep a record of the minutes of the meeting and its decision on the question; and
- (b) give the ASIC a copy of the record within 7 days after the meeting.

(23) A trustee’s functions in relation to a contributory mortgage continue, despite the question mentioned in subrule (18) not being answered in the affirmative, until a new trustee is appointed by a court.

(24) If the responsible practitioner fails to comply with subrule (14), (15), (27) or (28), the Society—

- (a) may comply with the subrule as if it were the responsible practitioner; and

- (b) may require the responsible practitioner to give the Society a list of the names and addresses of all contributors for the contributory mortgage.

(25) A failure of the responsible practitioner to comply, without reasonable excuse, with any of the following requirements is professional misconduct—

- (a) a requirement under subrule (14), (15), (16), (18), (24)(b), (27) or (28);
- (b) continuation of a trustee's functions under subrule (23).

(26) Strict compliance with the notice, report and forms mentioned in subrule (14) is not necessary and substantial compliance, including the use of a combined document, is sufficient.

(27) The responsible practitioner must, at the request of a contributor, give the contributor's contact details to all other contributors for the contributory mortgage.

(28) The contact details must be given—

- (a) if the responsible practitioner issued a default notice and the contributor returns a completed contact request form within 14 days of the date the default notice issued—within 21 days of the date the default notice issued; or
- (b) otherwise—as soon as practicable after the responsible practitioner receives the request.

SCHEDULE 1

PART A—MORTGAGE INVESTMENT AUTHORITY

(To be completed and obtained for each mortgage except where a general mortgage authority is applicable.)

To: *(Insert name and address of Lenders Solicitor(s))*

- (1) Total moneys to be provided \$ in one lump sum (or by a first payment of \$ and further payments on the following terms—
- (2) My contribution \$.
- (3) Estimated value of security \$ established by (e.g. last same price and date or valuation of *(name)* and brief details).
- (4) Address of security—
- (5) Borrower—*(name and address)*.
- (6) Term of facility months/years.
- (7) Interest rate/yield % per annum payable (quarterly/yearly etc.) \$.
- (8) Lender— the funds are to be provided in the name of—*(name and address)*.
- (9) The total sum provided is to be made available upon the security of a first mortgage (or upon the security of a mortgage the amount(s) of \$ being secured by prior mortgage(s)).
- (10) All correspondence is to be sent to me/us at my/our above address until further notice.
- (11) (Insert any other special conditions or circumstances and additional instructions).

(Where this authority is provided in relation to a second or subsequent mortgage the following additional paragraph must be inserted and underlined.)

SCHEDULE 1 (continued)

I ACCEPT THAT ANY RIGHTS OF THE LENDER UNDER THIS MORTGAGE (WHICH INCLUDES MY RIGHTS) ARE SUBJECT TO AND SECONDARY TO THE RIGHTS OF THE LENDER(S) UNDER THE PRIOR MORTGAGE(S) SECURED ON THIS SECURITY AS NOTED ABOVE.

(Signatures)

Lender(s)

PART B—GENERAL MORTGAGE INVESTMENT AUTHORITY

(To be obtained only where a continuing instruction is to be given to a solicitor to advance moneys on freehold first mortgage investments without the lender previously specifying any particular first mortgage security.)

I/We (*name and address*) confirm my/our instructions to you to provide at your discretion the sum of \$ now held by you on my/our behalf on freehold first mortgage security to be held in the name of (*name and address of nominee*) and I/We acknowledge that the moneys to be made available under any such first mortgage may be provided by two or more contributors (including myself/ourselves) but will not exceed per centum of the valuation obtained by you and that within one month of each such provision of funds you will forward a summary of the mortgage.

All correspondence is to be sent to me/us at my/our above address until further notice.

I/We may cancel this authority at any time by written instructions to you.

(Signatures)

Lender(s)

SCHEDULE 2

Particulars to be specified in mortgage register and in summary of mortgage.

- (1) Name and address of lender.
- (2) Name and address of borrower.
- (3) Total sum of the loan.
- (4) Date on which the sum was made available.
- (5) A summary of the methods and/or periodic rate of payments of moneys pursuant to the mortgage.
- (6) The rate of interest, a summary of the method of variation of interest, if applicable, and a summary of the method and periodic rate of payment of interest, if not included within (5).
- (7) The security for the payment of moneys payable pursuant to the mortgage in sufficient detail to enable the security to be readily identified, and where applicable, title particulars, or alternatively that there is no security.
- (8) The registration, dealing or certificate number or other relevant identification.
- (9) Where relevant, insurance particulars.
- (10) Any other desired information.

Excluded mortgages

87A.(1) A practitioner may practise in excluded mortgages only if the practitioner holds current mortgage fidelity insurance.

(2) A practitioner who practises in excluded mortgages must—

- (a) advise the secretary that the practitioner practises in excluded mortgages; and
- (b) give the secretary details of the practitioner's mortgage fidelity insurance.

(3) A practitioner must provide the advice and give the details mentioned in subsection (2) to the secretary as soon as practicable after—

- (a) the commencement of this section; or
- (b) if the practitioner is not practising in excluded mortgages at the commencement—the practitioner starts practising in excluded mortgages.

(4) In this section—

“mortgage fidelity insurance”, of a practitioner, means insurance that provides fidelity insurance cover of at least \$950 000 for each claim arising out of an excluded mortgage² in relation to whose preparation the practitioner accepts instructions to negotiate or otherwise act.

“practise”, in excluded mortgages, means accept instructions to negotiate, or otherwise act, in relation to the preparation of an excluded mortgage.

“practitioner” includes a firm of practitioners.

Offices

88. Except to the extent that he may have been exempted by the Council, a practitioner shall ensure and, if so required by the Council, shall furnish such evidence as the Council may require, that he or another practitioner entitled to practise and having a current practising certificate is at all times in charge of any office at which the practice of the first mentioned practitioner is conducted and ordinarily gives reasonable attendance at such office during each day on which such office is open.

² See the Act, section 124A for the meaning of “excluded mortgage”.

Employment of convicted persons

89. A practitioner shall not, without leave of the Council, employ as a clerk or assistant in or about his practice any person who has been convicted of any indictable offence.

Employment of persons struck off or suspended from practising

90.(1) A practitioner shall not, without the leave of the Council, employ or continue to employ as a clerk or assistant or in any other capacity in or about his practice, or in the conduct thereof, any person who has—

- (a) been struck off the Roll of persons entitled to practise as a barrister or solicitor in Queensland or been suspended from practising as such; or
- (b) in any other jurisdiction, been struck off the Roll of barristers or solicitors, or debarred or suspended from legal practice, by a court or other competent authority within such jurisdiction;

during any period such person remains so struck off, suspended or debarred.

(2) A practitioner shall not, without the leave of the Council, employ or continue to employ as a clerk or assistant or in any other capacity in or about his practice, or in the conduct thereof, any practitioner to whom the issue of a practising certificate has been refused or whose practising certificate has been suspended or cancelled during any period such refusal, suspension or cancellation shall remain in force.

Books of account to be kept

91. Every practitioner shall keep proper books of account in respect of all moneys coming into his hands in the course of his practice whether such moneys be trust moneys or not, and shall keep in respect of all moneys so received proper serially machine-numbered receipts.

92. Where a practitioner becomes aware whether in the course of his practice or otherwise, of facts or circumstances which give rise in his mind to a reasonable suspicion that the trust funds of some other practitioner are not in order it shall, unless such first-mentioned practitioner is acting for

such other practitioner in a professional capacity, be his duty to report such facts or circumstances in writing to the secretary.

93.(1) The Council may at any time require the auditor of a practitioner's trust account to make a report thereon to the Council.

(2) Without prejudice to the generality of this rule or the matters on which any such auditor may be required to report either particularly or generally the Council may require any such auditor—

- (a) to furnish a list of balances of such practitioner's trust account at any given date together with a bank reconciliation on any such date;
- (b) to report whether at any time during the period of his audit the practitioner had insufficient funds in his trust account to meet all the trust account liabilities of the practitioner;
- (c) to report whether the practitioner has any debit accounts in his trust account and any explanation or reason therefor furnished by the practitioner;
- (d) to report whether the practitioner has drawn from his trust account any sum on account of costs or otherwise without at the time of such drawing allocating such drawings to any specific account;
- (e) to report on any other apparent irregularity in the practitioner's trust account at any given date or by explanation or reason therefor furnished by the practitioner.

(3) Any auditor who, without reasonable excuse, the proof whereof shall lie on him, fails to furnish any such report as aforesaid to the council, within such reasonable time as the Council shall appoint, or who shall furnish a false report to the Council, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding three thousand dollars.

PART O—PRACTISING CERTIFICATES

Annual Practising Fees

94.(1) There shall be payable to the Society in every year by every practising practitioner an annual practising fee, such fee to be determined in accordance with the following provisions of this rule.

(2) The amount of such practising fee shall be determined and prescribed from time to time by resolution of the Council and it is expressly provided that the Council may in its discretion determine different practising fees in respect of—

- (a) practitioners who are engaged in practice either on their own account or in partnership with any other practitioner;
- (b) practitioners who are engaged in practice as employees of persons who are not practising practitioners; and
- (c) practitioners to whom neither paragraph (a) nor (b) of this subrule apply.

(3) The Council may by resolution waive all or any part of the annual practising fee payable by any practising practitioner.

When practising fee payable

95.(1) Such annual practising fee shall be paid in respect of each year being each successive period of twelve calendar months commencing on the first day of July in each and every calendar year and shall be due and payable to the Society on or before the immediately preceding thirty-first day of May in every calendar year or on or before the date on which a practitioner commences practice, whichever time is the later, or within such extended time as the Council may in its discretion allow in any particular case.

(2) The practising fee is for a financial year.

(3) However, a practitioner starting practice must pay as the practising fee for a financial year an amount equal to the following percentage of the fee for the year—

- (a) if the practitioner starts practice no later than 30 September of the

financial year—100%;

- (b) if the practitioner starts practice after 30 September of the financial year but no later than 31 December of the financial year—75%;
- (c) if the practitioner starts practice after 31 December of the financial year but no later than 31 March of the financial year—50%;
- (d) if the practitioner starts practice after 31 March of the financial year but no later than 30 June of the financial year—25%.

(4) Existing practitioners must pay the practising fee no later than 31 May before the start of the financial year.

Recovery of practising fee

96. If any practitioner fails to pay such annual practising fee forthwith after it has become due, the Society may without notice in that behalf sue for and recover such practising fee in a summary manner under the provisions of the *Justices Act 1886-1985* or by action as for a civil debt due to the Society.

Form of application and supply of particulars

97.(1) An application for a practising certificate shall be in the form prescribed by the Council or as near thereto as the circumstances will admit, and shall truly, accurately, and completely set forth the information and particulars required by such form to be supplied, and shall be supported by a statutory declaration as nearly as possible in the form set forth at the foot or end of such application verifying all such information and particulars.

(2) Any practising practitioner who shall, while a practising certificate shall be in force, change his place of business or residence, enter into a partnership in relation to his practice, or dissolve any partnership relating to his practice or change his employment, shall forthwith give notice thereof in writing to the secretary.

98. In special cases the Council may in its absolute discretion accept an application and declaration made on behalf of an applicant by another person who is himself entitled to obtain a practising certificate.

99. The Council or the secretary may from time to time require any further and additional information and particulars in relation to any applicant or any firm of practising practitioners of which the applicant is a member before issuing a practising certificate.

100.(1) Every practising certificate shall be in the form which shall be prescribed by the Council from time to time and in the case where the certificate obtained by the applicant is subject to a condition prescribed by the Act or these rules there shall be endorsed upon the certificate the terms of such condition.

(2) Every practising certificate applied for by a practitioner pursuant to section 40(d) shall, in addition to any other applicable condition, be issued subject to the condition that the holder thereof shall not be entitled to be in charge of any office for the purposes of rule 88 and shall not be authorised as a signatory upon the trust account of any practitioner for the purposes of rule 122 and such conditions shall be endorsed on the certificate unless the Council otherwise resolves pursuant to the said rules 88 or 122.

(3) The production of any certificate purporting to be signed by the secretary shall be prima facie evidence of the contents thereof.

(4) Every practising certificate may be engraved or lithographed or printed as the Council shall from time to time determine and shall be signed by the secretary or by any deputy secretary, which signature may be affixed by autographical or mechanical means, and when so signed shall have full force and validity provided that where a certificate is signed by autographical or mechanical means it shall not be valid unless it is initialled by the secretary or deputy secretary.

101. The Council may at any time cancel any practising certificate that has been obtained by fraud or misstatement, or that has been issued upon an application and supporting declaration that are incorrect or untrue in some material particular.

102. The secretary, on payment of a fee of ten dollars, may at any time and from time to time, on the application of any practitioner, issue to him a

duplicate of his current practising certificate on being satisfied as to the purpose for which the duplicate certificate is required.

103. The annual contribution to the Legal Practitioners' Fidelity Guarantee Fund shall for the purposes of section 19 of the Act be paid in respect of each year being each successive period of twelve calendar months commencing on the first day of July in each and every calendar year and shall become due and payable at the office of the Society in Brisbane on the immediately preceding thirty-first day of May in each and every year; hereof shall until otherwise prescribed be twenty dollars:

Provided that the contribution of any practitioner commencing practice after the thirty-first day of December in any year shall in respect of the period ending on the thirtieth day of June then next ensuing, be ten dollars.

104. The secretary shall notify every practitioner liable to pay the annual contribution and any levy as and when the same or either of them became or becomes due and payable.

105. Failure to give or receive any notice shall not be a defence to any action or proceedings for the recovery of any contribution, levy, or other sum of money; and it shall not be necessary in any proceedings to prove the giving or delivery of any such notice.

106. Where any practitioner is struck off the roll or suspended from practice he shall forthwith and without any demand return to the secretary any and every practising certificate that has been issued to him.

PART P—COMMITTEE OF MANAGEMENT

107. A Committee of Management appointed pursuant to section 18 of the Act may be appointed at any meeting of the Council of which due notice

specifying the intention to consider such appointment shall have been given to members of the Council.

108. The members of the Committee of Management shall hold office during the period commencing on the date of appointment and expiring on the date of the first meeting of the next succeeding Council held after the election of such Council, provided that such members shall hold office until their successors are appointed.

109.(1) A member of such committee may by writing under this hand addressed to the secretary resign his membership thereof and upon acceptance of such resignation by the Council he shall cease to be a member of such committee accordingly.

(2) The Council shall thereupon appoint a successor in place of the member so resigning and such successor shall be deemed to be appointed for the remainder of the said member's term of office.

110. Any resolution appointing such a committee shall imply the delegation of the whole of the powers of the Council in relation to the Legal Practitioner's Fidelity Guarantee Fund except such powers as the Council shall from time to time by resolution reserve to itself.

111. The Council may at any time, and from time to time, by resolution passed at a duly convened meeting—

- (a) revoke all or any of the powers delegated to the committee;
- (b) delegate to the committee further or other powers;
- (c) subject to the Act, increase or diminish the number of members constituting the committee;
- (d) require from the committee periodical or other reports of its proceedings;
- (e) remove any member or members of the committee and appoint another or other qualified person or persons to fill the vacancy or vacancies created by such removal;

(f) fill any casual vacancy occurring in the committee.

Provided that reasonable notice shall have been given of the intention to deal with any such matter or matters.

Any person appointed in lieu of any member removed or appointed to fill any casual vacancy shall hold office for the remainder of the said member's term of office.

PART Q—CLAIMS AGAINST THE FUND

112. The Council or the Committee of Management may authorize the payment of any claim on such evidence as shall seem sufficient to the Council or the Committee of Management (as the case may be) without the publication of any notice, or may proceed in the manner hereinafter set forth.

113. Where default has been alleged against a practitioner the Council or the Committee of Management may cause a notice in the form prescribed by the Council or to the like effect, to be published in a newspaper published and circulating in the district in which the practitioner practised or carried on business, and also in two newspapers published in Brisbane, and in such other newspapers (if any) as the Council or the Committee may determine. Such notice shall fix a time within which claims may be made. Any claim which is not delivered to the secretary within the time fixed by such notice shall be rejected unless the Council or the Committee of Management otherwise determines.

114. All claims against the Fund shall be made in or to the effect of the form prescribed by the Council

115.(1) The Council or the Committee of Management may at any time, and from time to time, require production of documents and delivery up of securities and documents necessary either to support any claim made or for the purpose of enabling the Council or the Committee of Management to

exercise its rights against any defaulting practitioner or any other person, and may in default of delivery up of any such documents, reject any claim.

(2) The Council or the Committee of Management may at any time, and from time to time, require claimants to provide further and better particulars of any claim including, and without limiting the generality thereof, answers to specific questions relevant to any aspect of the claim or the transactions giving rise to the claim, and in addition, may require such further and better particulars or answers to be provided upon statutory declaration, and may in default of producing such further and better particulars or answers in the manner required, reject any claim.

116.(1) Where any practitioner is dead or has ceased to carry on his practice and the Society has paid any claim or claims out of the Fund in respect of such practitioner and there are moneys standing to the credit of the account or accounts of such practitioner with his bank, the Society may require such practitioner's bank to pay over to the Society the whole or part of the moneys standing to the credit of such practitioner's account or accounts to the extent of the amount of any claim or claims paid out of the Fund with respect to such practitioner; and the Society may sign such cheques, orders, authorities or other instruments in respect thereof as any such bank may reasonably require.

(2) The bank with which the aforesaid account or accounts is or are kept shall pay to the Society the amount so required to be paid over by it to the Society and the receipt of the Society for any such amount or the payment of any cheque drawn by the Society as hereinbefore provided shall be a full and sufficient discharge to any bank paying the same, and the bank shall not be required to inquire as to the amount of any claim or claims paid by the Society.

(3) There shall be paid out of the Fund—

- (a) the fees of any public accountant appointed by the Society to examine the accounts of a practitioner;
- (b) any audit fee payable out of the Fund in connection with the examination by an auditor appointed by the Attorney-General pursuant to the provisions of the *Trust Accounts Act 1973-1978*;
- (c) the costs of proceedings before the Statutory Committee and appeals in connection therewith;

- (d) the remuneration of the Clerk to the Statutory Committee;
- (e) such other sums properly payable for the purpose of giving effect to the Act as the Council may by resolution from time to time determine;
- (f) the costs of the Society acting as receiver.

PART R—EVIDENTIARY

117.(1) In any proceedings against any person a certificate under the hand of the secretary that any such person—

- (a) is or was a practitioner or a person practising as a practitioner in Queensland; or
- (b) is or was a member of the Society; or
- (c) is not or was not a practitioner on any date or for any period stated in any such certificate;
- (d) acts or has acted as a practitioner on any date or for any period stated in any such certificate, or has wilfully and falsely pretended to be a practitioner on any date or for any period stated in any such certificate; or
- (e) practises or has practised as a practitioner on any date or for any period stated in any such certificate; or
- (f) has failed to pay to the Society on or before any date specified in any such certificate his annual subscription; or
- (g) has failed to pay to the Society on or before any date specified in any such certificate his annual practising fee; or
- (h) has failed to pay on or before any date specified in any such certificate his contribution or any levy to the Legal Practitioners' Fidelity Guarantee Fund; or
- (i) has failed to pay to the Society on or before any date specified in any such certificate any levy; or

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- (j) has not obtained or has failed to obtain from the secretary in proper form a certificate in force during any period stated in any such certificate to the effect that he is on the Roll of the Court as a practitioner thereof and is authorised to practise as a practitioner; or
- (k) has not or had not on any date or for any period stated in any such certificate a certificate then in force issued by the secretary—

may be tendered to and shall be accepted by the Statutory Committee, the Solicitors Disciplinary Tribunal and all Courts and persons acting judicially within Queensland as prima facie evidence of the facts including any particulars set out therein without proof of the signature or official character of the person appearing to have signed the same as secretary.

(2) In any proceedings a certificate under the hand of the secretary that any resolution (whether a resolution contemplated by this rule or not) has or has not been passed by the Council or by any committee may be tendered and shall be accepted by the Statutory Committee, the Solicitors Disciplinary Tribunal and all Courts and persons acting judicially within Queensland as prima facie evidence of the passing of any resolution set out therein or that a resolution as hereinbefore mentioned has not been passed without proof of the signature or official character of the person appearing to have signed the same as secretary.

(3) The Statutory Committee, the Solicitors Disciplinary Tribunal and every Court and person acting judicially within Queensland shall at all times in all matters brought before it or him take judicial notice of the signature of the secretary.

(4) Acting as a practitioner includes—

- (a) the drawing, preparing or filing of any proceeding in any court on behalf of any other person;
- (b) the drawing, preparing, filing or lodging (whether for registration or otherwise), on behalf of any other person of—
 - (i) any deed; or
 - (ii) any instrument in writing relating to real or personal estate; or
 - (iii) any Memorandum or Articles of Association; or

(iv) any instrument or document having effect as a deed.

(5) A person shall not be deemed to be acting as a practitioner by reason merely of his filing or lodging for registration any lien under the *Liens on Crops of Sugar Cane Act 1931-1981* in any case where no charge direct or indirect is made by or on behalf of such person for such filing or lodging for resignation.

118. In any prosecution and in any proceedings before the Statutory Committee or the Solicitors' Disciplinary Tribunal the averment in the complaint or written charge, or the oral averment of the complainant or applicant or of the counsel or solicitor for the complainant or applicant, that any letter or other writing purports to have been written by the practitioner or other person charged (as the case may be) shall, on production of the letter or other writing before the Court or before the Statutory Committee, be prima facie evidence that the letter or other writing was written by the practitioner or other person so charged.

119. Any letter purporting to have been written by the secretary shall be deemed to have been duly authorized by the Council.

120. Notwithstanding anything contained in the Act or the Rules made thereunder the Council may, in its absolute discretion, remit or refund the whole or any portion of the yearly fees, including the annual contribution to the Fund and any levy payable under the Act payable by a practising practitioner engaged on Naval, Military, or Air Force duties whether on active service or otherwise.

121. Legal process may be issued and proceedings may be taken and carried on in the name of the Society, or by the secretary in the name and on behalf of the Society or the Council.

122. No practitioner or firm of practitioners shall authorise any person to operate on his or their trust account unless—

(a) such person is and remains the holder of a current practising

- certificate during the period of such authority; and
- (b) such practising certificate is not subject to a condition that the holder thereof shall not be authorised as a signatory upon the trust account of a practising practitioner unless the Council in its absolute discretion determines otherwise; and
 - (c) such person is first approved by the Council, which approval may, on reasonable notice to such practitioner or firm, be revoked.

Collection of moneys payable to practitioner

123.(1) The secretary may, by notice in writing (a copy of which shall be served upon the practitioner pursuant to rule 13), require any person (including but without prejudice to the generality of the expression, any partnership and subject to subrule (3) any trustee)—

- (i) from whom any money is due or accruing or may become due to a practitioner or former practitioner;
- (ii) who holds or may subsequently hold money for or on account of a practitioner or former practitioner;
- (iii) who holds or may subsequently hold money on account of some other person for payment to a practitioner or former practitioner;
- (iv) having authority from some other person to pay money to a practitioner or former practitioner—

to pay to the secretary, either forthwith upon the money becoming due or being held, or at or within a time specified in the notice (not being a time before the money becomes due or is held)—

- (a) so much of the money as is sufficient to pay the amount of any claim made on the Fund or paid out of the Fund in respect of any claim in relation to the practitioner or former practitioner or any other monies paid out of the fund in relation to the practitioner or former practitioner or the whole of the money when it is equal to or less than that amount; or
- (b) such amount as is specified in the notice out of each payment or out of such payments as may be selected by the secretary and which payments the person so notified becomes liable from time

to time to make to the practitioner or former practitioner, until the amount of any claim made on or paid out of the Fund in relation to the practitioner or former practitioner is satisfied.

(2) Any person who fails to comply with any notice under this subrule shall be guilty of an offence and shall be liable on summary conviction to a penalty of not more than one thousand dollars.

(3) Subrule (1) does not apply to the Crown or any Corporation or person representing the Crown but on receipt of a written request by the secretary (which may be made in any circumstances similar to those in which a notice might be given under subsection (1) to any person to whom that subsection applies) the Crown or any Corporation or person representing the Crown may pay to the secretary the whole or any part of the money specified in such request.

(4) Any person (and the Crown and any Corporation or person representing the Crown) making any payment in pursuance of this Rule shall be deemed to have been acting under the authority of the practitioner or former practitioner and of all other persons concerned and is hereby indemnified in respect of such payment.

(5) If the secretary receives any payment in respect of the amount due by the practitioner or former practitioner before payment is made by the person so notified he shall forthwith give notice thereof to that person.

General penalty

124. Any person contravening any provision of these Rules shall be guilty of an offence, which, save and except where the Statutory Committee or Solicitors' Disciplinary Tribunal is empowered to deal therewith, may be prosecuted summarily under the provisions of the *Justices Act 1886-1987* and shall be liable (where no other punishment is provided) to a penalty not exceeding one thousand dollars.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This consolidation includes all amendments that commenced operation on or before 24 August 2001.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	reloc	=	relocated
gaz	=	gazette	renum	=	renumbered
hdg	=	heading	rep	=	repealed
ins	=	inserted	s	=	section
lap	=	lapsed	sch	=	schedule
notfd	=	notified	sdiv	=	subdivision
o in c	=	order in council	SIA	=	Statutory Instruments Act 1992
om	=	omitted	SIR	=	Statutory Instruments Regulation 1992
orig	=	original	SL	=	subordinate legislation
p	=	page	sub	=	substituted
para	=	paragraph	unnum	=	unnumbered
prec	=	preceding			
pres	=	present			

4 List of legislation

Queensland Law Society Rules 1987

pubd gaz 27 June 1987 pp 2079–2122

commenced on date of publication

exp 30 June 2002 (see SIA s 56A(2) and SIR s 13 sch 13)

as amended by—

rules published gazette (pre SL series)—

26 December 1987 p 1882

commenced on date of publication

29 July 1989 pp 2873–4

commenced on date of publication

25 August 1990 pp 2731–2

commenced on date of publication

Queensland Law Society Rule Amendment Order 1991 SL No. 213

pubd gaz 21 December 1991 pp 2617–9

commenced on date of publication

Queensland Law Society (Approval of Rules) Regulation 1995 SL No. 105

notfd gaz 21 April 1995 pp 1718–21

commenced on date of notification

Queensland Law Society Amendment Rule (No. 1) 1996 SL No. 218

notfd gaz 23 August 1996 pp 1901–3

commenced on date of notification

Queensland Law Society Amendment Rule (No. 1) 1998 SL No. 40

notfd gaz 20 March 1998 pp 1219–20

commenced on date of notification

Queensland Law Society Amendment Rule (No. 1) 2001 SL No. 132

notfd gaz 3 August 2001 pp 1297–9

commenced on date of notification

5 List of annotations

Short title

r 1A ins 1991 SL No. 213 s 5

r 2 amd rule pubd gaz 29 July 1989 pp 2873–4

Application for enrolment

r 4 sub 1996 SL No. 218 s 3

Subscription

r 6 amd 2001 SL No. 132 s 3

Business names

- r 79** amd rule pubd gaz 29 July 1989 pp 2873–4
 sub 1995 SL No. 105 s 2 sch

Advertising

- r 80** sub rule pubd gaz 26 December 1987 p 1882; rule pubd gaz 25 August
 1990 pp 2731–2; 1995 SL No. 105 s 2 sch

Practising certificates, holding out

- prov hdg** sub 1995 SL No. 105 s 2 sch
r 81 amd rule pubd gaz 29 July 1989 pp 2873–4; 1995 SL No. 105 s 2 sch

Duty to give explanation

- r 82** amd 1991 SL No. 213 s 6
r 85 amd 1991 SL No. 213 s 7

Limitation on borrowings and guarantees etc.

- prov hdg** sub 1996 SL No. 218 s 4(1)
r 86 amd 1996 SL No. 218 s 4(2)–(4); 1998 SL No. 40 s 3

Mortgage practices

- prov hdg** ins 2001 SL No. 132 s 4(1)
r 87 amd 2001 SL No. 132 s 4(2)–(3)

Excluded mortgages

- r 87A** ins 1996 SL No. 218 s 5
 amd 1998 SL No. 40 s 4

When practising fee payable

- r 95** amd 2001 SL No. 132 s 5