

Queensland



**QUEENSLAND LAW
SOCIETY LEGISLATION
AMENDMENT ACT 1997**

Act No. 13 of 1997

Queensland



QUEENSLAND LAW SOCIETY LEGISLATION AMENDMENT ACT 1997

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MINOR AMENDMENTS OF THE QUEENSLAND LAW SOCIETY ACT 1952

Queensland



**Queensland Law Society Legislation
Amendment Act 1997**

Act No. 13 of 1997

An Act to amend the *Queensland Law Society Act 1952*, and for other purposes

[Assented to 15 May 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Queensland Law Society Legislation Amendment Act 1997*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF QUEENSLAND LAW SOCIETY ACT 1952

Act amended in pt 2

3. This part and the schedule amend the *Queensland Law Society Act 1952*.

Amendment of s 3 (Definitions)

4.(1) Section 3, definition “statutory committee”—
omit.

(2) Section 3—

insert—

‘ “legal ombudsman” see section 6AE.

“solicitors complaints tribunal” see section 6.

“State” includes Territory.

“unprofessional conduct or practice” see section 3B.’.

(3) Section 3, definition **“tribunal”**, ‘Solicitors Disciplinary Tribunal established under this Act’—

omit, insert—

‘solicitors complaints tribunal’.

Insertion of new s 3B

5. In part 1, after section 3A—

insert—

‘Meaning of “unprofessional conduct or practice”

‘3B.(1) A practitioner commits **“unprofessional conduct or practice”** if the practitioner, in relation to the practitioner’s practice, is guilty of—

- (a) serious neglect or undue delay; or
- (b) the charging of excessive fees or costs; or
- (c) failure to maintain reasonable standards of competence or diligence.

‘(2) Subsection (1) does not, by implication, limit the type of conduct or practice that may be regarded as unprofessional for this Act.’.

Amendment of s 5 (Council of the society)

6. Section 5(7), ‘section 18’—

omit, insert—

‘sections 5N and 18’.

Insertion of new ss 5E–5J and 5N

7. After section 5D—

insert—

‘Complaints against practitioners, their clerks and employees

‘5E.(1) A person (**“complainant”**) may make a written complaint to the

council about the conduct of a practitioner or a practitioner's clerk or employee.

‘(2) If a complainant claims to have suffered pecuniary loss because of a practitioner's conduct, the complainant when making the written complaint or at a later time before the complaint is finally dealt with—

- (a) may give notice of a claim for compensation against the practitioner¹ to the council; and
- (b) if notice of the claim is given—must state, to the best of the complainant's knowledge, the pecuniary loss suffered.

‘(3) The council may require the complainant, within a reasonable stated time—

- (a) to provide further details of the complaint, including any notice about a claim for compensation, in the way the council reasonably directs; and
- (b) to verify the complaint by statutory declaration; and
- (c) if the complaint alleges overcharging by the practitioner—to pay a stated reasonable fee to cover the cost of a costs assessor's report on the reasonableness of the practitioner's bill.

‘(4) A complainant who fails to comply with a requirement under subsection (3) is taken to have withdrawn the complaint immediately after the reasonable stated time ends.

‘(5) A complaint under this section must be made to the council within 3 years after the conduct complained of happens.

‘(6) In this section—

“**conduct**” means—

- (a) for a practitioner—alleged malpractice, professional misconduct, or unprofessional conduct or practice; or
- (b) for a practitioner's clerk or employee—alleged misconduct or default in relation to the practitioner's practice.

¹ Notice of a claim for compensation does not affect the complainant's rights to pursue the claim at law (but see section 6R(6)) and, in particular, does not affect the running of time for the *Limitation of Actions Act 1974*.

‘Council to investigate conduct

‘5F.(1) The council must investigate a complaint made under section 5E.

‘(2) The council may also investigate the conduct of a practitioner or a practitioner’s clerk or employee at any time if it considers the conduct may amount to—

- (a) for a practitioner—malpractice, professional misconduct, or unprofessional conduct or practice; or
- (b) for a practitioner’s clerk or employee—misconduct or default in relation to the practitioner’s practice.

‘Council’s powers for investigations

‘5G. The council may, for an investigation—

- (a) require a practitioner to give the council, in writing or personally, within a stated reasonable time an explanation of the matter being investigated; or
- (b) require a practitioner to appear before the council at a stated reasonable time and place; or
- (c) require a practitioner to produce to the council within a stated reasonable time any document in the practitioner’s custody, possession or control that the practitioner is entitled at law to produce; or
- (d) engage a costs assessor to report on the reasonableness of a practitioner’s bill of costs.

‘Practitioners to comply with council’s requirements

‘5H.(1) A practitioner must comply with a council requirement under section 5G.

‘(2) If the practitioner fails to comply with the requirement, the council may give the practitioner written notice that if the failure continues for a further 14 days after the notice is given the practitioner may be dealt with for professional misconduct.

‘(3) If notice under subsection (2) is given and the failure continues for

the 14 day period—

- (a) the practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period; and
- (b) the council may bring a charge of professional misconduct against the practitioner.

‘(4) In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (2) and any enclosures with the notice is evidence of the matters in the notice and the enclosures.

‘(5) A practitioner may refuse to give the council an explanation of a matter being investigated if the practitioner satisfies the council that to give the explanation would contravene, or invalidate, a policy for professional indemnity insurance held by the practitioner.

‘Council may facilitate mediation process if parties agree

‘5L.(1) If the council considers that the matter of a complaint is capable of resolution by mediation, the council may suggest to the complainant and the person complained about (the “**parties**”) that they enter into a process of mediation to resolve the matter of the complaint.

‘(2) If the parties agree to enter into a mediation process, the council may facilitate the mediation to the extent it considers appropriate.

‘Things council may do following investigation

‘5J. The council may do any of the following things after conducting an investigation—

- (a) censure or admonish a practitioner;
- (b) seek and obtain undertakings from a practitioner about the complaint;
- (c) if the complaint was an allegation of overcharging—recommend to a practitioner that the practitioner—
 - (i) reduce the practitioner’s bill of costs or refund an amount to the complainant; and

- (ii) if the practitioner's bill of costs was assessed by a costs assessor at the complainant's expense—pay to the complainant an amount equal to the amount of the costs assessor's fee;
- (d) bring a charge of malpractice, professional misconduct or unprofessional conduct or practice against a practitioner;
- (e) bring a charge of misconduct or default in relation to a practitioner's practice against a clerk or employee employed in relation to that practice;
- (f) dismiss the complaint and take no action in relation to the notice of the claim for compensation.

'Delegation under pt 2

'5N.(1) The council may delegate its powers under this part to—

- (a) a committee established under this Act; or
- (b) an officer or employee of the society; or
- (c) a practitioner.

'(2) However, the council may delegate its powers under subsection (1) only if, in the council's opinion, the committee, officer or employee, or practitioner is appropriately qualified to exercise the power.'

Replacement of heading

8. Heading before section 6—

omit, insert—

**'PART 2A—SOLICITORS COMPLAINTS
TRIBUNAL'**

Replacement of ss 6–6S

9. Sections 6 to 6S—

omit, insert—

Division 1—The tribunal and its functions**Solicitors complaints tribunal**

6. The solicitors complaints tribunal (the “**tribunal**”) is established.

Functions of tribunal

6A. The tribunal’s functions are—

- (a) to hear and decide charges of malpractice, professional misconduct or unprofessional conduct or practice brought against a practitioner; and
- (b) to hear and decide charges of misconduct or default in relation to a practitioner’s practice brought against a clerk or employee employed in relation to that practice.

Division 2—Membership of tribunal**Membership of tribunal**

6B.(1) The tribunal consists of the following 12 members—

- (a) 9 practitioners, 1 of whom is to be appointed as the tribunal’s chairperson;
- (b) 3 lay members.

(2) A practitioner is eligible for appointment if the practitioner—

- (a) has been in actual practice in Queensland for at least 5 years; and
- (b) is selected from a panel of 18 practitioners nominated by the council.

(3) A person is eligible for appointment as a lay member only if the person—

- (a) is nominated by the Minister; and
- (b) is not—
 - (i) a lawyer; or

- (ii) legally qualified; or
- (iii) a public service officer.

‘(4) The members, including the chairperson, are to be appointed by the Governor in Council by gazette notice.

‘Division 3—Hearings

‘Constitution of tribunal for hearing

‘6C. A tribunal is constituted for a hearing by 3 members, 1 of whom must be a lay member, sitting together.

‘Conduct of hearings

‘6D.(1) The chairperson presides at all tribunal hearings at which the chairperson is present.

‘(2) If the chairperson is absent, the member chosen by the members present is to preside.

‘(3) The decision of the tribunal is the decision of the majority of its members.

‘Who may bring charges

‘6E. A charge against a practitioner or a practitioner’s clerk or employee may be brought only by—

- (a) the council; or
- (b) the legal ombudsman.

‘Tribunal rules

‘6F.(1) A hearing before the tribunal must be started and conducted under its rules.

‘(2) The tribunal may make rules for regulating its practice and procedure.

‘(3) A rule is subordinate legislation, and must be approved by the Governor in Council.

‘Notice of hearing

‘6G.(1) If the hearing of a charge is brought by the council or legal ombudsman against a practitioner, clerk or employee, the tribunal must give the prescribed period of notice of the time and place of the hearing to the following persons—

- (a) the council;
- (b) the legal ombudsman;
- (c) the person charged;
- (d) if the charge arose out of a complaint by a person (the “**complainant**”)—the complainant.

‘(2) The tribunal must also give a copy of the charge and any notice of a claim for compensation to—

- (a) the person charged; and
- (b) if the charge was brought by the council—the legal ombudsman; and
- (c) if the charge was brought by the legal ombudsman—the council.

‘(3) The prescribed period of notice is the period prescribed under the tribunal’s rules for this section.

‘Right of appearance and representation

‘6H. The following persons are entitled to appear before the tribunal at the hearing—

- (a) the person charged;
- (b) the person’s lawyer;
- (c) if the charge is brought by the council—
 - (i) the council; and
 - (ii) the council’s lawyer;

- (d) if the charge is brought by the legal ombudsman—
 - (i) the ombudsman; and
 - (ii) the ombudsman’s lawyer;
- (e) another person to whom the tribunal gives leave to appear.

‘Non-appearance of person charged

‘6I. If the person charged has been given notice of the hearing under section 6G and does not appear at the hearing, the tribunal may hear and decide the charge in the person’s absence.

‘Notice of claims for compensation to be given to tribunal

‘6J.(1) This section applies if the hearing of a charge by the tribunal is one in which notice of a claim for compensation against a practitioner has been given by a complainant to—

- (a) the council under section 5E(2); or
- (b) the legal ombudsman.

‘(2) The council or, if the charge was brought by the legal ombudsman, the ombudsman must give the tribunal a copy of the particulars of loss received from the complainant.

‘Hearings involving allegations of overcharging

‘6K.(1) This section applies if a hearing is concerned with an allegation of overcharging by a practitioner and the council has not already engaged a costs assessor to report on the reasonableness of the practitioner’s bill of costs.

‘(2) The tribunal may—

- (a) require the complainant to pay a stated reasonable fee to cover the cost of a costs assessor’s report on the reasonableness of the practitioner’s bill; and
- (b) engage a costs assessor to report on the reasonableness of the practitioner’s bill.

‘(3) The tribunal may adjourn the hearing until the fee is paid and the costs assessor’s report is available.

‘Hearings to be in public unless tribunal orders otherwise

‘6L.(1) Tribunal hearings must be held in public, unless the tribunal orders otherwise.

‘(2) The tribunal may make an order under subsection (3) if it is satisfied that it is desirable to do so—

- (a) because of the confidential nature of the evidence or other matter; or
- (b) for another appropriate reason.

‘(3) The tribunal may, by order—

- (a) direct that a hearing, or part of a hearing, is to be held in private; and
- (b) give directions about the persons who may be present at a hearing held in private.

‘(4) The tribunal may, by order, prohibit or restrict the publication of—

- (a) evidence given before the tribunal, whether the hearing was held in public or in private; or
- (b) matter contained in documents filed with, or received in evidence by, the tribunal.

‘Division 4—Tribunal’s powers

‘Power to require attendance of witnesses etc.

‘6M.(1) The tribunal may, on the application of a party to a hearing or of its own initiative, issue an attendance notice requiring a person to appear before the tribunal at a stated time and place to give evidence or to produce documents.

‘(2) A person served with an attendance notice must not, without reasonable excuse, fail to attend as required by the notice and continue to attend as required by the presiding member until excused from further

attendance.

Maximum penalty for subsection (2)—80 penalty units.

‘(3) In this section—

“party” means—

- (a) the person bringing the charge; or
- (b) the person against whom the charge is brought.

‘Powers of tribunal relating to taking of evidence

‘6N.(1) For the hearing, the tribunal may—

- (a) take evidence on oath; or
- (b) require a person appearing before the tribunal to give evidence to take an oath; or
- (c) administer an oath to a person appearing before the tribunal.

‘(2) A person appearing as a witness at a tribunal hearing must not, without reasonable excuse—

- (a) fail to be sworn; or
- (b) fail to answer a question that the person is required to answer by the tribunal; or
- (c) fail to produce a document that the person was required to produce by an attendance notice served on the person.

Maximum penalty for subsection (2)—80 penalty units.

‘Contempt of tribunal

‘6O. A person must not—

- (a) insult the tribunal or a tribunal member in relation to the performance of the member’s functions as a member; or
- (b) deliberately interrupt a tribunal hearing; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the tribunal is sitting; or

- (d) do anything that would, if the tribunal were a court of record, constitute a contempt of that court.

Maximum penalty—100 penalty units.

‘Institution of proceedings by tribunal

‘**6P.(1)** The tribunal may, in its own name or by its agent, bring a proceeding for the imposition or enforcement of a penalty under this division.

‘**(2)** This section does not, by implication, affect the council’s power under section 5D to bring a proceeding for the imposition or enforcement of a penalty under this division.

‘Protection of members etc.

‘**6Q.(1)** A tribunal member has, in the performance of the member’s duties as a member, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.

‘**(2)** A person representing a person before the tribunal has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

‘**(3)** A person appearing before the tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.

‘**(4)** A document produced at, or used for, a hearing has the same protection during the hearing it would have if produced before the Supreme Court.

‘Division 5—Tribunal orders

‘Orders tribunal may make against a practitioner after charge brought under this part

‘**6R.(1)** The tribunal may make any of the following orders in relation to a practitioner the tribunal finds guilty of a charge brought under this Act—

- (a) an order that the practitioner be struck off the roll of solicitors;

- (b) an order that the practitioner be suspended from practice, with or without conditions;
- (c) an order that the practitioner pay a penalty of not more than \$100 000 to the fund;
- (d) a compensation order directing the practitioner to pay a stated amount to the complainant;
- (e) an order that the practitioner waive or repay the whole or part of any fees or costs paid by or charged to a stated person;
- (f) an order that the practitioner pay to a complainant the amount the complainant paid to—
 - (i) the council under section 5E(3)(c); or
 - (ii) the tribunal under section 6K(2)(a);
- (g) an order that the practitioner carry out stated work for a stated person either free of charge or for a stated fee;
- (h) an order that the practitioner waive any lien in relation to a stated document or class of documents, with or without conditions;
- (i) if an order under paragraph (a) is not made—an order that the practitioner—
 - (i) make the practitioner's practice documents available for inspection at the times and by the persons stated in the order; or
 - (ii) make reports about the practitioner's practice in a way and at the times and to the persons stated in the order; or
 - (iii) comply with stated conditions, including, for example, attendance at legal education programs.

‘(2) The tribunal may also censure a practitioner it finds guilty of a charge under this Act, if it does not order the practitioner to be struck off the roll of solicitors.

‘(3) The tribunal may order that no further action be taken against the practitioner, whether or not the tribunal finds the practitioner guilty of a charge brought under this Act.

‘(4) The tribunal may make a compensation order only if it is satisfied

that—

- (a) a complainant has suffered pecuniary loss because of the practitioner's malpractice, professional misconduct, or unprofessional conduct or practice; and
- (b) the complainant has given notice of a claim for compensation, and particulars of the complainant's loss, to the council or the legal ombudsman.

'(5) The amount payable under a compensation order must not be more than \$7 000 or a higher amount prescribed under a regulation.

'(6) A compensation order made by the tribunal under this section does not affect the claimant's right to recover damages for the same loss in other proceedings, but—

- (a) the amount paid under the compensation order must be taken into account in the other proceedings; and
- (b) the tribunal's findings giving rise to the compensation order are not binding on the court or decision-making body in the other proceedings.

'(7) In this section—

"legal education programs" includes educational programs and seminars relating to legal education, practice management and other related topics in relation to the conduct of a practitioner's practice.

"practice documents", of a practitioner, includes the ledgers, books of account, records, deeds, files and other documents relating to the practitioner's practice.

'Orders tribunal may make against a practitioner's employee after charge brought under this part

'6S.(1) If the tribunal finds a practitioner's employee guilty of a charge brought against the employee under this Act, the tribunal may order that on and from a stated day a person must not employ the employee in relation to a practitioner's practice except on the conditions (if any) stated in the order.

'(2) The tribunal may order that no further action be taken against the employee, whether or not the tribunal finds the employee guilty of a charge

brought under this Act.

‘(3) In this section—

“**employee**”, of a practitioner, includes the practitioner’s clerk.

‘Orders tribunal may make after practitioner struck off or suspended outside Queensland

‘**6T.(1)** This section applies if a practitioner is struck off an interstate roll or suspended from practice in another State.

‘(2) The tribunal may order the practitioner be struck off the roll or suspended for a similar period in this State, unless the practitioner satisfies the tribunal the practitioner should not be struck off or suspended.

‘(3) In this section—

“**interstate roll**” means the roll of barristers or solicitors or barristers and solicitors in another State.

‘Orders about costs

‘**6U.(1)** The tribunal may make an order about costs in a hearing under this part it considers appropriate.

‘(2) Without limiting subsection (1), the tribunal may—

- (a) fix the amount of costs, or any part of the costs; or
- (b) direct that the costs be assessed by a costs assessor and, after assessment, be referred back to the tribunal for further order; or
- (c) direct that the costs be taxed.

‘(3) Costs in relation to a hearing are chargeable as if the matter were before the Supreme Court, unless the tribunal otherwise orders.

‘Form of order

‘**6V.** A tribunal order must—

- (a) be signed by the presiding member; and
- (b) state the tribunal’s findings in relation to the facts of the case.

‘Orders to be filed in Supreme Court and are enforceable as orders of the court

‘6W.(1) A tribunal order—

- (a) must be filed in a Supreme Court registry; and
- (b) on being filed, is taken to be an order of the Supreme Court and may be enforced accordingly.

‘(2) Subsection (1)(b) is subject to section 6R(6)(b).

‘Orders may be inspected

‘6X. A tribunal order filed in the Supreme Court registry may be inspected on payment of the fee (if any) prescribed under the Rules of the Supreme Court.

‘Service of orders

‘6Y.(1) The person bringing a charge must give a copy of a tribunal order relating to the charge to the following persons—

- (a) if a person against whom the order was made was not present at the time the order was made—the person;
- (b) the legal ombudsman, unless the ombudsman brought the charge;
- (c) the council, unless the council brought the charge;
- (d) the Minister.

‘(2) Service may be effected on the Minister by giving a copy of the order to the chief executive.

‘(3) A copy of the order must be served within 7 days after the order is made.

‘Division 6—Appeals**‘Appeal may be made to Court of Appeal**

‘6Z.(1) A party dissatisfied with a tribunal decision may appeal the

decision to the Court of Appeal.

‘(2) An appeal is by way of rehearing, unless all parties to the appeal accept the facts as found by the tribunal.

‘(3) The appeal must be made—

- (a) if the dissatisfied party is the Minister—within 30 days after a copy of the tribunal’s order is served on the Minister under section 6Y(2); or
- (b) otherwise—within 28 days after the tribunal’s order is made.

‘(4) The appeal must be made and heard in accordance with rules of court made for this Act.

‘(5) Without limiting subsection (4), the rules may provide for the extent to which any record of the proceeding before the tribunal may be used for the appeal.

‘(6) In this section—

“**dissatisfied party**” means—

- (a) the practitioner or the practitioner’s clerk or employee affected by the tribunal’s decision; or
- (b) the Minister; or
- (c) the council; or
- (d) the legal ombudsman.

Division 7—Other jurisdiction not affected

‘Saving of jurisdiction

‘6AA.(1) This Act does not affect the jurisdiction or powers exercisable by the court, the registrar or the department over practitioners.

‘(2) This Act does not affect the entitlement of a person to apply to the court—

- (a) to strike a practitioner off the roll; or
- (b) to require a practitioner to answer allegations contained in an affidavit.

‘(3) Subsection (2) applies whether or not the matter complained of was the subject of a complaint to the council or the legal ombudsman.

‘(4) However, the court may refer any charges arising out of the application to the council for reference to the tribunal in the way provided by this Act.

‘Division 8—Other provisions about tribunal and tribunal members

‘Judicial notice of tribunal and its members

‘6AB. Every court must take judicial notice of the appointment of the members of the tribunal and of the signature of a tribunal’s presiding member.

‘Duration of appointment

‘6AC.(1) The appointment of a member is for the term, not longer than 3 years, decided by the Governor in Council.

‘(2) However, a member may continue to hold office until the member’s successor assumes office, unless the member vacates office under subsection (3) or the member’s appointment is ended under subsection (4).

‘(3) The office of a member becomes vacant if—

- (a) the member dies or resigns by signed notice of resignation given to the secretary; or
- (b) the member is found guilty of an indictable offence or an offence against this Act; or
- (c) the member’s appointment is ended by the Governor in Council under subsection (4).

‘(4) The Governor in Council may, at any time, end the appointment of a member for any reason or none.

‘Fees and expenses of lay members

‘6AD. A lay member of the tribunal is entitled to be paid from department funds—

- (a) fees for attendance at tribunal meetings and the discharge of the member's functions under this Act approved by the Governor in Council; and
- (b) expenses necessarily and reasonably incurred by the member in attending tribunal meetings or discharging the member's functions under this Act and approved by the Minister.

'PART 2B—LEGAL OMBUDSMAN

'Division 1—The legal ombudsman and the ombudsman's functions

'Legal ombudsman

'6AE.(1) The Governor in Council may appoint a person as the legal ombudsman by gazette notice.

'(2) A person is not qualified for appointment as the legal ombudsman if the person—

- (a) is, or has been, entitled to practise as a lawyer or is otherwise qualified in law; or
- (b) is a public service officer.

'Functions of the legal ombudsman

'6AF.(1) The functions of the legal ombudsman are—

- (a) to monitor investigations by the council of—
 - (i) alleged malpractice, professional misconduct or unprofessional conduct or practice by practitioners; and
 - (ii) alleged misconduct or default in relation to practitioners' practices by practitioners' clerks and employees; and
- (b) to investigate complaints of alleged misconduct, improper conduct or neglect of duty by the council about the way in which the council has dealt with complaints or charges against

practitioners and practitioners' clerks and employees; and

(c) to monitor hearings before the tribunal.

'(2) If the legal ombudsman receives a written complaint, including a notice about a claim for compensation, against a practitioner that has not been investigated by the council, the ombudsman must forward the complaint to the council for investigation.

'Department to provide administrative support

'6AG. The department must, at the department's expense, provide the administrative, including secretarial, support services that the department considers appropriate to allow the legal ombudsman to discharge the ombudsman's functions effectively and efficiently.

'Legal ombudsman may refuse to investigate certain complaints

'6AH. The legal ombudsman may refuse to investigate the following complaints—

- (a) a complaint about a decision of the council, a committee or the tribunal made by a person more than 2 months after the person was notified of the council's, committee's or tribunal's decision;
- (b) a complaint the ombudsman considers—
 - (i) is frivolous or vexatious; or
 - (ii) lacks substance.

'Division 2—Legal ombudsman's powers

'Legal ombudsman's powers

'6AI.(1) The legal ombudsman may—

- (a) attend any meeting of the council or a committee established under this Act to deal with complaints and take part in its deliberations; or
- (b) require the council to furnish the ombudsman with all

information in its possession or control that will enable the ombudsman to discharge his or her functions; or

- (c) direct the council to take additional steps in the investigation of a complaint; or
- (d) if the ombudsman considers, on reasonable grounds, that the council should have brought a charge against a practitioner, practitioner's clerk or employee before the tribunal—bring the charge before the tribunal; or
- (e) attend any hearing of the tribunal, including a hearing the tribunal orders to be heard in private; or
- (f) appeal a decision of the tribunal the ombudsman is dissatisfied with; or
- (g) appoint a lawyer to bring a charge against a practitioner, practitioner's clerk or employee before the tribunal; or
- (h) appoint a lawyer for an appeal against a tribunal decision.

'(2) The legal ombudsman is not entitled to vote at a meeting mentioned in subsection (1)(a).

'(3) The council must comply with—

- (a) a requirement under subsection (1)(b); or
- (b) a direction under subsection (1)(c).

'(4) Before the legal ombudsman exercises the power mentioned in subsection (1)(d), the ombudsman must tell the council of the ombudsman's intention to exercise the power and the ombudsman's reasons for doing so.

'(5) In this section—

“charge” means—

- (a) for a practitioner—a charge of malpractice, professional misconduct, or unprofessional conduct or practice; or
- (b) for a practitioner's clerk or employee—a charge of misconduct or default in relation to the practitioner's practice.

Division 3—Other provisions about legal ombudsman**‘Duration of appointment**

‘6AJ.(1) The appointment of the legal ombudsman is for the term, not longer than 2 years, decided by the Governor in Council.

‘(2) However, the legal ombudsman may continue to hold office until the ombudsman’s successor assumes office, unless the ombudsman vacates office under subsection (3) or the ombudsman’s appointment is ended under subsection (4).

‘(3) The office of the legal ombudsman becomes vacant if—

- (a) the ombudsman dies or resigns by signed notice of resignation given to the Minister; or
- (b) the ombudsman is found guilty of an indictable offence; or
- (c) the ombudsman’s appointment is ended by the Governor in Council under subsection (4).

‘(4) The Governor in Council may, at any time, end the appointment of the legal ombudsman for any reason or none.

‘Acting legal ombudsman

‘6AK. The Governor in Council may appoint a person, qualified for appointment as the legal ombudsman, to act as legal ombudsman—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the legal ombudsman is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

‘Fees and expenses of legal ombudsman

‘6AL.(1) The legal ombudsman is entitled to be paid—

- (a) the fees for the discharge of the ombudsman’s functions under this Act approved by the Governor in Council; and
- (b) expenses necessarily and reasonably incurred by the ombudsman

in discharging the ombudsman's functions under this Act and approved by the Minister.

'(2) The legal ombudsman's fees and expenses are payable out of the legal practitioners' fidelity guarantee fund.

'Annual report

'6AM.(1) The legal ombudsman must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the discharge of the ombudsman's functions during the year.

'(2) The report may contain any recommendations the legal ombudsman considers appropriate.

'(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

'PART 2C—TRUST ACCOUNTS AND TRUST PROPERTY'.

Amendment of s 8 (Recovery of fees etc.)

10. Section 8(2), after 'penalties'—

insert—

' , other than a penalty payable under section 6R(1)(c),².

Relocation and renumbering of ss 7–9

11. Sections 7, 8 (as amended by this Act) and 9—

relocate to part 2 and *renumber* as sections 5K to 5M respectively.

² Section 6R (Orders tribunal may make against a practitioner after charge brought under this part)

Insertion of new s 50A

11A. After section 50—

insert—

‘Duty of council to report suspected offences

‘50A.(1) This section applies if the council suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law.

‘(2) The council must—

- (a) report the suspected offence to the commissioner of the police service or other appropriate prosecuting authority; and
- (b) make available to the commissioner or authority the documents and information relevant to the suspected offence in its possession or under its control.

‘(3) The obligation under subsection (2)(b) to make available the documents and information continues while the council holds the relevant suspicion.’.

Insertion of new s 53 and pt 6

12. After section 52—

insert—

‘References to the statutory committee and solicitors disciplinary tribunal

‘53. In an Act or document, a reference to the statutory committee or the solicitors disciplinary tribunal may, if the context permits, be taken to be a reference to the solicitors complaints tribunal.

‘PART 6—TRANSITIONAL

‘Reopening of complaints

‘**54.(1)** If, before the commencement of this part, the council investigated a complaint, the council may refuse to reopen the investigation even though the council has, after the commencement, power to investigate aspects of the complaint it did not have when the investigation was first done.

‘**(2)** If, before the commencement of this part, the lay observer investigated a complaint, the legal ombudsman may refuse to reopen the investigation even though the ombudsman or the council has, after the commencement, power to investigate aspects of the complaint the lay observer or council did not have when the investigation was first done.

‘Charges before the statutory committee or the solicitors disciplinary tribunal

‘**55.(1)** This section applies if, at the commencement of this part, a charge was before the statutory committee or the solicitors disciplinary tribunal, but not fully dealt with.

‘**(2)** The charge may be continued before the statutory committee or the solicitors disciplinary tribunal and dealt with by the committee or tribunal as if the *Queensland Law Society Legislation Amendment Act 1997* had not been enacted.’.

PART 3—AMENDMENT OF LEGAL AID ACT 1978

Act amended in pt 3

13. This part amends the *Legal Aid Act 1978*.

Amendment of s 23 (Rights of officers of commission in respect of legal practice)

14. Section 23(10), *Queensland Law Society Act 1952*, section 6’—

omit, insert—

‘*Queensland Law Society Act 1952*, to the extent parts 2, 2A and 2B regulate the way in which complaints against practitioners for malpractice, professional misconduct, or unprofessional conduct or practice may be investigated and dealt with.’

Amendment of s 81 (Secrecy)

15.(1) Section 81(2A)(c)—

omit.

(2) Section 81(2A)(e), ‘Solicitors Disciplinary Tribunal’—

omit, insert—

‘solicitors complaints tribunal’.

PART 4—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991

Act amended in pt 4

16. This part amends the *Supreme Court of Queensland Act 1991*.

Amendment of sch 1 (Subject matter for rules)

17. Schedule 1, part 1, item 31—

omit.

PART 5—AMENDMENT OF TRUST ACCOUNTS ACT 1973

Act amended in pt 5

18. This part amends the *Trust Accounts Act 1973*.

Amendment of s 25 (As to right of auditors and employees to communicate certain matters)

19. Section 25, ‘statutory committee of the Queensland Law Society Incorporated’—

omit, insert—

‘solicitors complaints tribunal established’.

SCHEDULE**MINOR AMENDMENTS OF THE QUEENSLAND
LAW SOCIETY ACT 1952**

section 3

1. Section 3A, ‘6(4)’—*omit, insert—*

‘6Z’.

2. Section 4(7), ‘statutory committee’—*omit, insert—*

‘tribunal’.

3. Section 5C, ‘(including the statutory committee)’—*omit.***4. Section 5D, heading, after ‘proceedings’—***insert—*

‘by council’.

5. Heading before section 8—*omit.***6. Section 9, ‘(including the statutory committee)’—***omit.*

SCHEDULE (continued)

7. Section 15(c), ‘section 21’—

omit, insert—

‘section 29’.

8. Section 29(1), ‘the insurance commissioner or’—

omit.

9. Section 41(1)(g), ‘the statutory committee or’—

omit.

10. Section 41B(1)(a), ‘statutory committee’—

omit, insert—

‘tribunal’.

11. Section 41B(1)(g), ‘an order made by the statutory committee or’—

omit.

12. Section 48—

omit.