

Queensland



SOLICITORS ACT 1891

**Reprinted as in force on 22 December 1994
(includes amendments up to Act No. 18 of 1908)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 22 December 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use standard punctuation consistent with current drafting practice (s 27)
- use expressions consistent with current drafting practice (s 29)
- reorder definitions consistent with current drafting practice (s 30)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit historical notes (s 42)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

Also see Endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
 - **Table of obsolete and redundant provisions**
 - **Table of renumbered provisions**
 - **Table of comparative legislation.**

Queensland



SOLICITORS ACT 1891

TABLE OF PROVISIONS

Section		Page
PRELIMINARY		
1	Short title	3
2	Interpretation of terms	3
PART 1—AGREEMENTS BETWEEN SOLICITORS AND THEIR CLIENTS		
3	The remuneration of solicitors may be fixed by agreement	3
3A	Amount payable under agreement not to be paid until allowed by taxing officer	4
4	Saving of interests of third parties	4
5	Agreements shall exclude further claims	5
6	Reservation of responsibility for negligence	5
7	Examination and enforcement of agreements	5
8	Improper agreements may be set aside	5
9	Agreements may be reopened after payment in special cases	6
10	Prohibition of certain stipulations	7
11	Not to give validity to contracts etc. which may be void in insolvency ...	7
12	Provision in case of death or incapacity of the solicitor	7
13	As to change of solicitor after agreement	8
14	Agreement to be disclosed by solicitor	8
15	Agreements shall be exempt from taxation	8
PART 2—GENERAL PROVISIONS		
16	Security may be taken for future costs	9
17	Interest may be allowed on taxation in respect of disbursements and advances	9
18	Taxing officer to have regard to character of services	9

19 Revival of order for payment of costs 9

ENDNOTES

1 Index to Endnotes 10
2 Date to which amendments incorporated 10
3 List of legislation 10
4 List of annotations 11
5 Table of obsolete and redundant provisions 11
6 Table of renumbered provisions 12
7 Table of comparative legislation 12

SOLICITORS ACT 1891

[as amended by all amendments that commenced on or before 22 December 1994]

An Act to amend the law relating to the remuneration of solicitors

PRELIMINARY

Short title

1. This Act may be cited as the *Solicitors Act 1891*.

Interpretation of terms

2. In the construction of this Act, the words following have the significations hereinafter respectively assigned to them, that is to say—

“**client**” includes any person who as a principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay the bill of a solicitor for any services, fees, costs, charges, or disbursements.

“**solicitor**” includes a solicitor, a barrister practising as a solicitor, or a conveyancer lawfully practising in Queensland.

PART 1—AGREEMENTS BETWEEN SOLICITORS AND THEIR CLIENTS

The remuneration of solicitors may be fixed by agreement

3. A solicitor may make an agreement in writing with his or her client respecting the amount and manner of payment for the whole or any part of

any past or future services, fees, charges, or disbursements in respect of business done or to be done by such solicitor in any capacity, either by a gross sum or by commission or percentage or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which the solicitor would otherwise be entitled to be remunerated subject to the provisions and conditions in this Part of this Act contained.

Amount payable under agreement not to be paid until allowed by taxing officer

3A. However, when any such agreement is made in respect of business done or to be done in any action in the Supreme Court of Queensland, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by the taxing officer, and if it appears to the taxing officer that the agreement is not fair and reasonable, the officer may require the opinion of the court or a Judge to be taken thereon by motion or petition, and such court or Judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made.

Saving of interests of third parties

4.(1) Such an agreement shall not affect the amount of or any rights or remedies for the recovery of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by him or her to or from the client to be taxed according to the rules for the time being in force for the taxation of such costs, unless such person has otherwise agreed.

(2) However, the client who has entered into such agreement shall not be entitled to recover from any other person, under any order for the payment of any costs which are the subject of such agreement, more than the amount payable by the client to his or her own solicitor under the same.

Agreements shall exclude further claims

5. Such an agreement shall be deemed to exclude any further claim of the solicitor beyond the terms of the agreement in respect of any services, fees, charges, or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges, or disbursements (if any) as are expressly excepted by the agreement.

Reservation of responsibility for negligence

6. A provision in any such agreement that the solicitor shall not be liable for negligence, or that the solicitor shall be relieved from any responsibility to which he or she would otherwise be subject as such solicitor, shall be wholly void.

Examination and enforcement of agreements

7. No action shall be brought or instituted upon any such agreement, but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a Judge thereof, or if the business was not done in any court, then where the amount payable under the agreement exceeds \$100, by the Supreme Court or a Judge thereof, and where such amount does not exceed \$100 by the Judge of a District Court which would have jurisdiction in an action upon the agreement.

Improper agreements may be set aside

8. Upon any such motion or petition as aforesaid, if it appears to the court or Judge that such agreement is in all respects fair and reasonable between the parties, the same may be enforced by such court or Judge by rule or order in such manner and subject to such conditions (if any) as to the costs of such motion or petition as such court or Judge may think fit, but if the

terms of such agreement are not deemed by the court or Judge to be fair and reasonable, the same may be declared void, and the court or Judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made, and the court or Judge may also make such order as to the costs of and relating to such motion or petition, and the proceedings thereon, as to the said court or Judge may seem fit.

Agreements may be reopened after payment in special cases

9.(1) When the amount agreed for under any such agreement has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any court or Judge having jurisdiction to examine and enforce such an agreement may, upon application by the person who has paid such amount within 12 months after the payment thereof, if it appears to such court or Judge that the special circumstances of the case require the agreement to be reopened, reopen the same and order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the solicitor to be repaid by him or her on such terms and conditions as to the court or Judge may seem just.

(2) Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under such agreement, or with any part of such amount, the agreement shall before payment be laid before the taxing officer of a court having jurisdiction to enforce the agreement, and such officer shall examine the same and may disallow any part thereof, or may require the direction of the court or a Judge to be taken thereon by motion or petition, and if in any such case the client pays the whole or any part of the amount payable under the agreement without the previous allowance of such officer or court or Judge as aforesaid, he or she shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof, for the amount so charged, and if in any such case the solicitor accepts payment without such allowance, any court which would have had jurisdiction to enforce the agreement may, if it thinks fit, order the

solicitor to refund the amount so received by him or her under the agreement.

Prohibition of certain stipulations

10. Nothing in this Act contained shall be construed to give validity to any purchase by a solicitor of the interest or any part of the interest of his or her client in any suit, action, or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which a solicitor retained or employed to prosecute any action stipulates for payment only in the event of success in such action or proceeding.

Not to give validity to contracts etc. which may be void in insolvency

11. Nothing in this Act contained shall give validity to any disposition, contract, settlement, conveyance, delivery, dealing, or transfer, which may be void or invalid against a trustee or creditor in insolvency, arrangement, or comparison under the provisions of the laws relating to insolvency.

Provision in case of death or incapacity of the solicitor

12. Where a solicitor has made an agreement with his or her client in pursuance of the provisions of this Act, and anything has been done by such solicitor under the agreement, and before the agreement has been completely performed by the solicitor, such solicitor dies or becomes incapable to act, an application may be made to any court which would have jurisdiction to examine and enforce the agreement by any party thereto, or by the representatives of any such party, and such court shall thereupon have the same power to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened, and such court, if it deems the agreement to be fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard, so far as may be, to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement has been completely performed by the solicitor.

As to change of solicitor after agreement

13. If, after any such agreement as aforesaid has been made, the client changes his or her solicitor before the conclusion of the business to which such agreement relates (which he or she shall be at liberty to do, notwithstanding such agreement), the solicitor party to such agreement shall be deemed to have become incapable to act under the same within the meaning of section 12, and upon any order being made for taxation of the amount due to such solicitor in respect of the past performance of such agreement, the court shall direct the taxing officer to have regard to the circumstance under which such change of solicitor has taken place, and upon such taxation the solicitor shall not be deemed entitled to the full amount of remuneration agreed to be paid to him or her, unless it appears that there has been no default, negligence, improper delay, or other conduct on the solicitor's part affording reasonable ground to the client for such change of solicitor.

Agreement to be disclosed by solicitor

14. A solicitor shall, upon the taxation of the costs of any action or proceeding payable to his or her client by any other person, be bound to disclose on oath whether any agreement has been made by the solicitor with his or her client under the provisions of this Part of this Act relating to the costs of the action or proceeding, and to produce every such agreement to the taxing officer.

Agreements shall be exempt from taxation

15. Except as in this Part of this Act provided, the bill of a solicitor for the amount due under an agreement made in pursuance of the provisions of this Act shall not be subject to any taxation nor to the provisions of the *Costs Act 1867*.

PART 2—GENERAL PROVISIONS

Security may be taken for future costs

16. A solicitor may take security from his or her client for future fees, charges, and disbursements, to be ascertained by taxation or otherwise.

Interest may be allowed on taxation in respect of disbursements and advances

17. Subject to any general rules or orders hereafter to be made upon every taxation of costs, fees, charges, or disbursements, the taxing officer may allow interest at such rate and from such time as the officer thinks just on moneys disbursed by the solicitor for his or her client, and on moneys of the client in the hands of the solicitor and improperly retained by the solicitor.

Taxing officer to have regard to character of services

18. Upon any taxation of costs the taxing officer may, in determining the remuneration (if any) to be allowed to the solicitor for his or her services, have regard, subject to any general rules or orders hereafter to be made, to the skill, labour, and responsibility involved.

Revival of order for payment of costs

19. Whenever any judgment or order has been made for payment of costs in any action, and such action afterwards becomes abated, it shall be lawful for any person interested under such judgment or order to revive such action, and thereupon to prosecute and enforce such judgment or order, and so on from time to time as often as any such abatement happens.

ENDNOTES

1 **Index to Endnotes**

2	Date to which amendments incorporated	10
3	List of legislation	10
4	List of annotations	11
5	Table of obsolete and redundant provisions	11
6	Table of renumbered provisions	12
7	Table of comparative legislation	12

2 **Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 December 1994. Future amendments of the Solicitors Act 1891 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 **List of legislation**

Solicitors Act 1891 55 Vic No. 22
date of assent 5 November 1891
commenced on date of assent

Statute Law Revision Act 1908 8 Edw 7 No. 18 Sch 1
date of assent 23 December 1908
commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
def	=	definition
Div	=	Division
exp	=	expires/expired
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Preamble

amd 1908 8 Edw 7 No. 18 Sch 1

5 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A

6 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
3, proviso	3A
4, 1st sentence	4(1)
4, proviso	4(2)
9, 1st sentence	9(1)
9, 2nd sentence	9(2)

7 Table of comparative legislation

s 1	33 & 34 Vic. c. 28 s 1
s 2	33 & 34 Vic. c. 28 s 3
s 3	33 & 34 Vic. c. 28 s 4
s 4	33 & 34 Vic. c. 28 s 5
s 5	33 & 34 Vic. c. 28 s 6
s 6	33 & 34 Vic. c. 28 s 7
s 7	33 & 34 Vic. c. 28 s 8
s 8	33 & 34 Vic. c. 28 s 9
s 9	33 & 34 Vic. c. 28 s 10
s 10	33 & 34 Vic. c. 28 s 11
s 11	33 & 34 Vic. c. 28 s 12
s 12	33 & 34 Vic. c. 28 s 13
s 13	33 & 34 Vic. c. 28 s 14
s 15	33 & 34 Vic. c. 28 s 15
s 16	33 & 34 Vic. c. 28 s 16
s 17	33 & 34 Vic. c. 28 s 17
s 18	33 & 34 Vic. c. 28 s 18
s 19	33 & 34 Vic. c. 28 s 19