

LEGAL PROFESSION PRACTICE (SOLICITORS' DISCIPLINARY TRIBUNAL) BILL.

NOTES ON CLAUSES.

CLAUSE 1 is a provision in the usual form as to the short title, citation of the *Legal Profession Practice Act* 1958 as the Principal Act, and commencement of the provisions of the Act to be fixed by one or more proclamations.

CLAUSE 2.

Sub-clause (1) proposes the insertion of a new section 2A in the Principal Act. This is a general interpretation provision which will replace definitions of limited application in various provisions of the Act. In view of new provisions in the Bill, it includes new definitions of "president", "tribunal", and "vice-president".

Sub-clause (2) makes consequential amendments of sections 13 and 14 of the Principal Act, which deal with the Council of Legal Education. The former definition of "council" did not apply to these provisions, and because of the change proposed by clause 2 (1) it is necessary to distinguish between the Council of Legal Education and the Council of the Law Institute of Victoria.

CLAUSE 3.

Sub-clause (1) amends section 15 (1) of the Principal Act in three ways.

Paragraph (a) extends the existing definition of "misconduct" to include various acts or omissions by a solicitor, as follows :—

- (i) breaches of the Act or rules or regulations made under section 88A ;
- (ii) charging of excessive costs ;
- (iii) making of certain statements of fact known to be false ;
- (iv) failure in performing any work in connexion with his practice which constitutes a gross breach of his duty to his client or the court ;
- (v) failure to comply with undertakings given to the secretary, council or Tribunal ;
- (vi) failure to apply for a practising certificate not later than three months after the statutory time where the solicitor intends to practise during the following year ;
- (vii) failure to lodge a report of the annual audit of trust accounts not later than three months after the statutory time ;
- (viii) failure to comply within the statutory time with a requirement by the secretary in relation to proceedings for misconduct.

Paragraph (b) repeals interpretations included in proposed section 2A (clause 2 (1)), together with the definition of "chairman" which is unnecessary for the purposes of the amending provisions in the Bill.

Paragraph (c) inserts a new interpretation of "solicitor". Proceedings before the Tribunal constituted by proposed section 27 (clause 7) are confined to solicitors, and it is necessary to define what the word "solicitor" means.

Sub-clause (2) proposes the re-enactment, as sub-section (2) of section 15, of the existing provisions of section 28 (4) of the Principal Act—this provides that it shall be misconduct for a practitioner to agree with his client to accept part of any amount received by the client in proceedings instituted or conducted by the practitioner for the client.

CLAUSE 4 inserts a new section 17A in the Principal Act. This makes it an object of the Law Institute to promote and encourage the use by solicitors of efficient methods of accounting and office management and confers power on the institute to take various steps to carry that object into effect.

CLAUSE 5 deals with membership and qualifications for membership of the Council of the Law Institute.

Sub-clause (1) proposes three amendments of section 21 of the Principal Act. This section provides, amongst other things, that the council shall consist of the Attorney-General, the presidents of various law associations and 18 other elected members of the institute.

Paragraph (a) of the sub-clause substitutes, for the existing provisions of section 21 (1) (c) for the election of 18 "other" members, a provision which will allow the number of elected members to be determined by the by-laws of the institute.

Paragraph (b) amends section 21 (2) which allows the by-laws to provide for a casual vacancy in the office of elected members of the council to be filled by the council. This does not allow the filling of casual vacancies in relation to law associations, and so this paragraph of clause 5 (1) substitutes for the words "elected member of the council" the words "member of the council other than the Attorney-General".

Paragraph (c) amends section 21 (3) which requires seven members for a quorum of the council. In the light of the proposal in paragraph (a) that the number of elected members be fixed by the by-laws, the present paragraph proposes that the number of members required for a quorum be also fixed by the by-laws.

Sub-clause (2) proposes the amendment of section 24, which enables the Law Institute in general meeting to make by-laws.

Paragraph (a) of the sub-clause substitutes for the existing provisions of section 24 (1) (e), in relation to the election of members of the council and related matters, three paragraphs (e), (ea) and (eb). The substantive changes proposed are in respect of the nomination of members of the council, and the fixing of the number of the quorum, and are in line with the amendments contained in sub-clause (1) of the present clause.

Paragraph (b) proposes the insertion of new sub-sections (3) to (9) of section 24, to ensure the laying before Parliament of by-laws made under proposed section 24 (1) (e), and to provide for their disallowance by Parliament.

Sub-clauses (3) and (4) are transitory provisions designed to ensure the legal continuance of the Council of the Law Institute despite any reconstitution under the amending provisions, and to ensure the continuance in office of the persons constituting the council.

CLAUSE 6 proposes the insertion of a new section 21A to make provision for absences of the president or secretary of the institute. In the absence of the president, the vice-president, or in his absence a person nominated in writing by the president, is to exercise the powers and perform the duties of the president. In the absence of the secretary, his powers and duties shall be exercised and performed by the person acting as secretary.

CLAUSE 7 substitutes for sections 27 to 32 of the Principal Act a new set of provisions dealing with disciplinary matters. The new provisions, sections 27 to 32F, provide as follows:—

PROPOSED SECTION 27 :

Sub-section (1) provides for the constitution of the Solicitors' Disciplinary Tribunal.

Sub-section (2) provides for the Tribunal to be appointed from a panel consisting of the members of the Council of the Institute, such number of solicitors appointed by the council as it thinks fit and not more than three persons (not being practitioners) appointed in the public interest by the Attorney-General.

Sub-section (3) provides for the term of office, re-appointment and removal from office of solicitors appointed under sub-section (2).

Sub-section (4) contains provisions, in relation to lay persons appointed by the Attorney-General under sub-section (2), similar to the provisions of sub-section (3).

Sub-sections (5), (6) and (7) deal with the procedure for assigning persons from the panel specified in sub-section (2) to constitute the Tribunal. In the case of a preliminary hearing the president is to assign one person, being a member of the council or a solicitor appointed by the council.

In the case of a summary hearing, the president is to assign three persons, being members of the council or solicitors appointed by the council. In the case of a full hearing, the president is to assign five persons from the panel, one of whom shall be a person appointed by the Attorney-General.

Sub-sections (8) and (9) provide for the case where a member of the Tribunal is unable to perform his duties. In that event the president may assign from the panel another person who has the same qualifications as the member in whose place he acts.

Sub-section (10) provides for the members present at a meeting of the Tribunal to elect a chairman.

Sub-section (11) provides that the Tribunal shall not determine a question at a hearing unless all of the members required to constitute the Tribunal for that hearing are present.

Sub-sections (12) to (16) deal with matters of procedure at hearings of the Tribunal—the chairman to preside ; questions to be determined by a majority of votes ; voting rights of the chairman ; the discretion of the Tribunal to regulate its own procedure subject to the provisions of the section and rules of the Supreme Court.

Sub-section (17) applies to proceedings of the Tribunal certain provisions of the Evidence Act and rules or orders made under section 20 (4) of that Act, as if the Tribunal were a board appointed by the Governor in Council.

Sub-section (18) requires a minute book of hearings of the Tribunal to be kept.

Sub-section (19) protects members of the Tribunal from actions in respect of decisions or acts under the authority of the Act.

Sub-section (20) requires a member of the panel who has a pecuniary or other interest in a matter referred to the Tribunal to declare his interest to the president of the Law Institute and provides that he shall not be assigned to be a member of the Tribunal hearing the matter.

Sub-section (21) provides that an act or decision of the Tribunal is not invalid by reason only of a defect or irregularity in the appointment or assignment of a member.

Sub-section (22) applies in relation to the Tribunal section 4 of the *Wrongs Act* 1958, which protects from legal action a person publishing a fair and accurate report of certain legal proceedings, except matters of an obscene or blasphemous nature or proceedings which the presiding officer pronounces it improper to publish at some stage before they are concluded.

PROPOSED SECTION 28 sets out the procedure in relation to a complaint of misconduct of a solicitor.

Sub-section (1) provides that a person aggrieved by reason of alleged misconduct of a solicitor may make a written complaint to the secretary of the Law Institute.

Sub-section (2) empowers the secretary to investigate any question concerning alleged misconduct of a solicitor, either upon receiving a complaint or of his own motion. The sub-section empowers the secretary to obtain reports, and

(a) require the solicitor to furnish an explanation within a specified time ;

(b) require the solicitor to produce within a specified time documents the secretary believes relate to the alleged misconduct ;

(c) require the solicitor, subject to the written approval of a member of the Council of the Institute, to attend before him and furnish an explanation.

Sub-section (3) provides that a person shall not be required by reason of sub-section (2) to produce documents which he would not be compellable to produce to a court.

Sub-section (4). Where after investigation and consideration of any explanation the secretary is of opinion that the solicitor is guilty of misconduct he may refer the matter to a preliminary hearing, summary hearing or full hearing of the Tribunal.

Sub-section (5) provides that the secretary may refer to the Tribunal any matter of misconduct by a solicitor described in section 84 (1) instead of cancelling or suspending the practising certificate of the solicitor or refusing the solicitor's application for a practising certificate, as he is empowered to do under section 84 (1) of the Act ; and he may also refer to a full hearing of the Tribunal an application for a practising certificate, where it appears to him that the application should be refused pursuant to section 81 (2). Section 81 (2) provides that a practising certificate shall not be issued to a solicitor who has not lodged a report in relation to his trust account (that obligation is imposed by section 81 (1)) or has lodged the report but the report discloses a deficiency in his trust account. *Sub-section (5)* provides that, where any of the above matters are referred to a full hearing of the Tribunal, the secretary shall give to the solicitor concerned notice of the referral and of the grounds for it.

Sub-section (6) provides, in effect, that the secretary does not have to refer an application for a practising certificate to a full hearing of the Tribunal, although section 81 (2) of the Act operates to prevent the issue of a certificate, if paragraph (b) of section 81 (2) applies ; that is to say if the reason why the certificate cannot be issued is that the solicitor has failed to lodge a report in relation to his trust account.

Sub-section (7) provides that—

- (a) where a person has been served with a notice under section 84 (3) of the proposed refusal, cancellation or suspension of a practising certificate ; and
- (b) the matter is not one in which the certificate has been refused under section 81 (2) and it has not already been referred to a full hearing of the Tribunal—

if the person makes a request within seven days after posting of the notice or any extended time allowed by the secretary for the matter to be referred to a full hearing of the Tribunal, the secretary shall so refer it.

Sub-section (8) deals with cases where an application is made for a practising certificate under section 85 (by a person whose practising certificate has been suspended) or section 86 (by a person whose practising certificate has been cancelled or who has been refused a certificate).

The following provisions apply in such cases :—

- (a) In the case of an application under section 86 the secretary is required to refer the application to a full hearing of the Tribunal and in other cases has a discretion to do so ;
- (b) The secretary is to give notice to the applicant that the matter has been referred to a full hearing of the Tribunal ;
- (c) An applicant under section 85 who has not been served with such a notice may require the application to be referred to a full hearing of the Tribunal.

Sub-section (9) empowers the council of its own motion to refer to a full hearing of the Tribunal a question as to the misconduct of a solicitor and may appoint some person to act on its behalf in respect of the hearing.

PROPOSED SECTION 29 deals with matters relating to preliminary hearings of the Tribunal. The paragraphs of the section provide as follows :—

- (a) The secretary is to determine the time and place of the hearing ;
- (b) The secretary is to give to the solicitor and to each other party to the proceedings (including the complainant, if any) at least fourteen days' notice of the time and place of the hearing and particulars of the matter to be heard ;
- (c) The secretary may of his own motion or at the request of the Tribunal appoint a practitioner to investigate the matter and present it before the Tribunal ;

- (d) All parties to the proceedings and their counsel solicitors and agents shall be entitled to be heard by the Tribunal ;
- (e) The Tribunal may adjourn any hearing and summon the solicitor concerned before it ;
- (f) The Tribunal shall inquire into the matter and if all parties are present shall attempt to achieve a settlement acceptable to them ;
- (g) Where a settlement is made at a hearing—
 - (i) the settlement is final and binding on all parties and no appeal shall lie ;
 - (ii) the Tribunal on request of a party shall make an order giving effect to the settlement ;
 - (iii) an order by the Tribunal may require the solicitor concerned to pay money or to perform any thing or remedy any breach of an obligation, or may provide that no further action shall be taken against the solicitor ;
- (h) Where any party is not present or it appears to the Tribunal to be impossible to reach a settlement acceptable to all parties, the Tribunal may refer the matter to the secretary with such recommendations as it thinks fit and shall report any findings of fact it makes in relation to any proceedings against the solicitor which it recommends ;
- (i) The secretary is to consider any recommendations by the Tribunal and may take no further action or refer the matter to a summary hearing or full hearing of the Tribunal.

PROPOSED SECTION 30 deals with matters relating to summary hearings of the Tribunal. The substance of the provisions is as follows :—

Paragraphs (a), (b) and (e) contain provisions as to the time and place of the hearing, giving of notice to the solicitor and other parties to the proceedings, the assignment of a practitioner to investigate and present the matter to the Tribunal, and the entitlement of parties to be heard by the Tribunal. These provisions are similar to paragraphs (a) to (d) of proposed section 29, but in this instance the notice to the solicitor requires him to show cause why he should not be dealt with by the Tribunal.

Paragraphs (c) and (d) make provision for a solicitor being afforded an opportunity by the Tribunal of giving an explanation and raising relevant matters ; in reaching its decision the Tribunal is to consider an explanation given or matters raised by the solicitor.

Paragraph (f) requires the Tribunal to inquire into and decide upon the matter before it and empowers it to make an order of one of the kinds specified in the paragraph. The secretary and the parties to the proceedings are to give effect to the decision of the Tribunal.

Paragraph (g) empowers the Tribunal to decline to proceed with a matter and direct that it be referred to a full hearing of the Tribunal.

PROPOSED SECTION 31.

Sub-section (1) deals with matters relating to full hearings of the Tribunal.

Paragraphs (a), (b) and (c) contain provisions consistent with proposed sections 29 and 30 in relation to the time and place of hearing, giving of notice to the solicitor and other parties to the proceedings, the assignment of a practitioner to investigate and present the matter to the Tribunal, and the entitlement of parties to be heard by the Tribunal. In this case, where the conduct is alleged to fall within certain provisions of the Principal Act, particulars of the relevant provision are to be given in the notice.

Paragraph (d) requires the Tribunal to inquire into and decide upon the matter, and empowers the Tribunal to make such order as it thinks fit. Without affecting the discretion of the Tribunal, the paragraph specifies a variety of provisions that may be contained in an order—these range from payment of a sum not exceeding \$5,000 to a direction that no further action be taken against the solicitor.

Sub-sections (2) to (5) contain provisions relating to practising certificates.

Sub-section (2) applies to two classes of persons—

- (a) persons whose certificates are cancelled or suspended by the secretary or by order of the Tribunal ;

(b) persons whose applications for a certificate are refused by the secretary or by order of the Tribunal and who immediately before the application either had a practising certificate that was in operation or was deemed under the section to hold a practising certificate.

A person in either class is deemed to hold a practising certificate pending the determination of an appeal against the cancellation, suspension or refusal, or (if he does not appeal) pending the expiration of the time limited by the Act for an appeal unless the person or body which made the cancellation suspension or refusal, or the Supreme Court on the appeal, otherwise orders.

Sub-section (3) provides that, in the case of a person to whom sub-section (2) applies, where he does not appeal within the time limited by the Act or where his appeal is unsuccessful, he shall thereafter be deemed not to hold a practising certificate, unless the Supreme Court on determining the appeal, or (where there is no appeal) the Council of the Law Institute or the secretary, otherwise orders.

Sub-section (4) provides that a person or body making an order that a person shall be deemed to hold, or not to hold, a practising certificate shall have regard to whether or not the prescribed fee, if any, the contribution to the Solicitors' Guarantee Fund in respect of the application for a practising certificate and any levy payable by the person concerned have been paid.

Sub-section (5) requires that the practising fee and contribution paid upon an application for a practising certificate that is refused by order of the Tribunal shall be returned to the applicant.

PROPOSED SECTION 32 sets out the procedure relating to appeals from summary hearings of the Tribunal.

Sub-section (1) enables a person aggrieved by an order of the Tribunal at a summary hearing to appeal to a full hearing of the Tribunal within 21 days after receiving from the secretary a copy of the order.

Sub-section (2) requires notice of the appeal to be in writing and to state the grounds of appeal.

Sub-section (3) requires the appellant within two days after lodging the notice of appeal to serve a copy of the notice upon each other party who appeared at the summary hearing.

Sub-section (4) requires the secretary, upon receiving notice of the appeal, to refer the matter forthwith to a full hearing of the Tribunal.

Sub-section (5) sets out the procedure in relation to a full hearing under this section.

Paragraphs (a), (b) and (c) contain provisions as to determining the time and place of hearing, notices in respect thereof and the right of parties to be heard similar to provisions in proposed section 30 in relation to summary hearings of the Tribunal.

Paragraph (d) enables the Tribunal to proceed with the appeal in the absence of the appellant.

Paragraph (e) provides for the appeal to be by way of a re-hearing and empowers the Tribunal to make such order, including an order as to costs, as it thinks fit.

Paragraph (f) makes the decision of the Tribunal final and conclusive.

PROPOSED SECTION 32A deals with appeals from an order made by the Tribunal at a full hearing, other than an order under proposed section 32.

Sub-sections (1) and (2) entitle a person aggrieved by an order made by the Tribunal at a full hearing (other than an order under section 32) to appeal to a judge of the Supreme Court within 21 days after receiving a copy of the order. The appellant is to serve a copy of the notice of appeal on the secretary of the Law Institute and on each party (other than the institute) who appeared at the full hearing within two days after lodging the appeal with the court,

Sub-section (3) provides for the appeal to be in the nature of a re-hearing, gives to the judge all the powers of the Tribunal at a full hearing and provides that his decision shall be final and without appeal.

PROPOSED SECTION 32B contains miscellaneous provisions affecting hearings of the Tribunal.

Sub-section (1) excludes from preliminary or summary hearings any person other than the members of the Tribunal, the parties to the proceedings and their counsel solicitors and agents, and any other persons authorized by the Tribunal to be present.

Sub-section (2) provides that full hearings are to be held in public unless the Tribunal considers that in the interests of justice a hearing or part of it should be held in private.

Sub-section (3) gives the Tribunal power (which it must exercise if so required by any party to the proceedings) to order all witnesses, other than the complainant, the practitioner concerned and any witness under examination, to remain outside the hearing until required to give evidence.

Sub-sections (4) and (5) deal with orders prohibiting publication of a report of the whole or part of proceedings at a full hearing of the Tribunal.

Sub-section (4) empowers the Tribunal to make such an order on the application of any party.

Sub-section (5) sets out the periods during which such an order is to continue in force.

Sub-section (6) creates an offence, with a maximum penalty of \$500, of knowingly disobeying an order under sub-section (3) or sub-section (4).

PROPOSED SECTION 32C contains general provisions relating to decisions and orders of the Tribunal.

Sub-section (1) provides for the publication of a notice in the official journal of the Law Institute of specified particulars where the Tribunal makes an order at a full hearing or summary hearing.

Sub-section (2) requires the secretary, unless the Tribunal otherwise orders, to file in the office of the institute a copy of any order made by the Tribunal.

Sub-section (3) requires the service on each party to proceedings before the Tribunal of a copy of any order made in the proceedings.

Sub-section (4) enables an order of the Tribunal to be enforced as if it were an order of the Supreme Court.

Sub-section (5) requires penalties paid or recovered by the institute to be paid into the Solicitors' Guarantee Fund.

PROPOSED SECTION 32D empowers the judges of the Supreme Court to make rules with respect to the practice and procedure of the Tribunal, appeals against its orders and enforcement of them. Section 27 of the *Supreme Court Act 1958* (which provides for disallowance of rules of court by Parliament) is applied to rules made under section 32D.

PROPOSED SECTION 32E provides for immunity of the Secretary from action in respect of anything done by or under authority of Part III. of the Act.

PROPOSED SECTION 32F.

Sub-section (1) enables the Attorney-General to appoint a lay observer to examine and report to him and the Law Institute upon written allegations by or on behalf of members of the public as to the manner in which complaints against solicitors are dealt with by the institute, its council, the secretary or the Tribunal, and to advise in relation to any matter referred to him by the Attorney-General.

Sub-section (2) ;

Paragraph (a) deals with the appointment, removal, and remuneration of the lay observer, performance of his functions, and related matters. Provision is made for him to be furnished with information by the institute, a member of its council, the secretary or the Tribunal. The lay observer is required to report annually to the Attorney-General.

Paragraph (b) requires any person or body referred to in paragraph (a) to consider any report or recommendations received from the lay observer and notify him of action taken.

Paragraph (c) requires the provision of information sought by the lay observer within the time he specifies.

Paragraph (d) deals with the remuneration of officers appointed to assist the lay observer and related matters.

Paragraph (e) provides for the remuneration of the lay observer and his staff and the expenses of performing his functions to be met initially from the Consolidated Fund and ultimately to be repaid from the Solicitors' Guarantee Fund to the Consolidated Fund.

Paragraph (f) provides for the presentation to Parliament by the Attorney-General of copies of reports from the lay observer.

CLAUSE 8 makes a series of amendments of the Principal Act.

Paragraph (a) repeals various provisions of the Principal Act which will be replaced by the disciplinary provisions in the Bill.

Paragraph (b) makes a consequential amendment of the Table in section 1 of the Principal Act.

Paragraph (c) substitutes a new section 33 in the Principal Act. The existing section provides for application to be made to the Supreme Court to strike the name of a practitioner off the roll or to require a practitioner to answer allegations contained in an affidavit.

The substantive changes made by the new section are—

1. Substitution of references to the Tribunal established by proposed section 27 for references to the "Statutory Committee" (created by the existing section 27), which is abolished by the Bill.
2. The new provision in proposed section 33 (1) (c), which deals specifically with practitioners who act or practise solely as barristers or whose names appear on the Bar roll.
3. The new provisions in proposed sections 33 (2) (c) and 33 (3) to (7), which provide for a Special Disciplinary Tribunal in relation to barristers. They set out the relevant procedure, and apply to hearings of the Special Disciplinary Tribunal various provisions relating to the Solicitors' Disciplinary Tribunal.

Paragraph (d) makes amendments of section 38 (2) in consequence of the abolition of the Statutory Committee.

Paragraph (e) repeals certain interpretations in section 51 (1), having regard to the interpretations in proposed section 2A (clause 2 of the Bill) and the abolition of the Statutory Committee.

Paragraphs (f) and (g) amend section 53 of the Principal Act. This section (which was inserted in the Act in 1976 by Act No. 8954) established in the Solicitors' Guarantee Fund several accounts, including the Income Suspense Account. This account meets, *inter alia*, expenses of administration of the existing provisions relating to the Statutory Committee.

Paragraph (f) of this clause of the Bill inserts in section 53 (3) of the Act a new paragraph (ba). This will require any penalties paid or recovered under the new disciplinary provisions to be paid to the credit of the Income Suspense Account.

Paragraph (g) amends section 53 (4) which deals with debits against the Income Suspense Account. The amendments consist of—

1. The insertion of a new *paragraph (ba)* which will debit to the account the amount to be repaid to the Consolidated Fund from the Solicitors' Guarantee Fund in respect of salary and expenses of the lay observer and his staff under proposed section 32F.

2. The insertion of a new *paragraph (bb)* which will debit to the account the expenses incurred by the institute or its council in implementing proposed section 17A which is designed to improve solicitors' methods of office management and accounting—the new paragraph is proposed on the basis that the scheme of proposed section 17A will reduce the risk of loss to clients by reason of mismanagement.
3. The replacement of the existing paragraph (c) by a provision which is consistent with the new disciplinary provisions in the Bill.

Paragraphs (h) and (i) amend section 80 of the Act which requires a solicitor who intends to practise in the following year to apply for a practising certificate.

Under *proposed section 31*, the Tribunal may make orders affecting the entitlement of a person to apply for a practising certificate or limiting the capacity in which he may practise as a solicitor.

Paragraph (j) amends section 82 of the Act, which also deals with applications for practising certificates. The paragraph inserts a reference in this section to any order of the Tribunal for the reason mentioned in the notes relating to paragraphs (h) and (i).

Paragraphs (k) and (l) amend section 84 of the Act, which sets out the grounds on which the secretary may refuse to issue, cancel or suspend a practising certificate, and also deals with certain related matters. The amendments proposed by these paragraphs are either drafting amendments or are consequential upon other amendments made by the Bill ; the details are—

Paragraph (k) amends section 84 (1)—by substituting for paragraphs (e) and (f) new paragraphs consistent with the disciplinary provisions contained in the Bill. The paragraph also amends section 84 (3) to require the secretary to give to a solicitor whose application for a practising certificate is refused pursuant to section 81 (2) notice of that fact.

Paragraph (l) repeals certain words in section 84 (10) of the Act in consequence of the repeals effected by paragraph (a) of this clause of the Bill.

Paragraphs (m) and (n). Section 84 of the Act provides that a person whose practising certificate has been cancelled or suspended may apply for a new practising certificate. For the same reason as other practising certificate provisions of the Act have been made subject to any order of the Tribunal, paragraph (m) makes a like amendment to section 85.

Paragraph (n) re-enacts section 85 (2) of the Act, omitting only references to the council, in the light of the powers in relation to practising certificates conferred upon the Tribunal by the Bill.

Paragraph (o) amends section 86 of the Act by making the provisions of that section subject to any order of the Tribunal. This is another amendment consequential upon the conferring of power on the Tribunal to make orders in relation to practising certificates.

Paragraphs (p) and (q) make amendments to section 87 of the Act consequential upon earlier provisions of the Bill relating to disciplinary matters.

Paragraph (r) makes several amendments to section 95A (1) (b) of the Act. The amendments are consequential upon the new disciplinary provisions contained in earlier clauses of the Bill.

Paragraph (s) increases from \$1,000 to \$5,000 the maximum monetary penalty which may be imposed by the Supreme Court on practitioners guilty of misconduct. The amendment is to section 99 of the Act.

CLAUSE 9 makes several amendments to section 84 of the Act which sets out grounds on which the secretary may refuse to issue, cancel or suspend a practising certificate, and also deals with certain related matters. The amendments proposed are either drafting amendments or are consequential upon other amendments made by the Bill in relation to professional indemnity insurance ; the details are—

Sub-clause (1) amends section 84 (1) by substituting a new paragraph (*a*) to make better provision in relation to bankruptcy or the like of a person who holds or has applied for a practising certificate.

Sub-clause (2) inserts in section 84 (1) of the Act a new paragraph (*ga*) consistent with the provisions in clause 10 of the Bill relating to professional indemnity insurance.

Sub-clause (3) amends section 84 (1) (*i*) of the Act by omitting from that paragraph the words “ pattern of ”. The combined effect of this amendment and the amendment contained in sub-clause (4) is to redefine the kind of conduct referred to in section 84 (1) (*i*).

Sub-clause (4) inserts a new sub-section (1A) in section 84 of the Act describing the type of conduct referred to in section 84 (1) (*i*).

CLAUSE 10 proposes the insertion of a new section 88A in the Act in relation to a compulsory scheme of professional indemnity insurance. The main features of the *proposed section 88A* are—

Sub-section (1) authorizes the institute to enter into an arrangement with authorized insurers to provide for solicitors and former solicitors professional indemnity insurance.

Sub-sections (2) and (3) provide for matters to be included in an arrangement under sub-section (1), and for an arrangement under sub-section (1) to be rescinded or varied.

Sub-section (4) empowers the Governor in Council on the recommendation of the council of the institute to make regulations with respect to various aspects of the insurance scheme.

Sub-section (5) defines “ authorized insurers ” and “ professional indemnity insurance ” for the purposes of *proposed section 88A*.

Sub-section (6) provides in effect that the *proposed section 88A* is not to impair the operation of section 71, which enables the council of the institute to obtain indemnity insurance against liability to pay claims under Part V. of the Act.

CLAUSE 11 amends section 90 of the Act which prohibits a person from practising as a solicitor unless he is a “ practitioner ” (defined in effect by section 51 (1) of the Act as a person who has been admitted to practise and continues to be on the roll of practitioners of the Supreme Court) and holds an appropriate practising certificate.

The amendment proposed is the insertion of new *sub-sections (7) and (8)* in section 90 to provide a procedure by which the Supreme Court may make orders to restrain an unqualified person from acting or practising as a solicitor or using a name or title implying that he is qualified or holding himself out as qualified to practise as a solicitor.

CLAUSE 12 amends Division 7 of Part V. of the Act to enable the Supreme Court in certain circumstances to authorize a receiver to manage the practice of the solicitor in order that any claims of the solicitor’s clients against the solicitor may be satisfied ; the details of the amendments are—

Sub-clause (1) amends section 104B, which empowers the Supreme Court on the application of the institute to appoint a receiver of property of a solicitor in certain circumstances. At present, paragraph (*b*) of the section deals with the case where through the “ mental or physical infirmity or death ” of a solicitor a person is unable to obtain payment or delivery of money or other property. The amendment made by sub-clause (1) extends this provision to the cases mentioned in the new sub-paragraphs (*ii*), (*iii*) and (*iv*) proposed to be inserted into section 104B. The sub-clause also makes provision, by adding words at the end of section 104B, enabling the court to authorize the receiver to carry on or wind up the practice of the solicitor concerned.

Sub-clause (2) inserts a new section 104GB in the Act. The new section specifies what may be done by a receiver authorized by the court to carry on the practice of a solicitor. In addition, sub-sections (2) and (3) make provision as to how moneys received by the receiver in the course of managing the solicitor's practice are to be expended.

Sub-sections (4) and (5) make provision with respect to the powers of a solicitor who carries on another solicitor's practice on behalf of the receiver, and as to the remuneration of a solicitor who does this.

Sub-clause (3) amends section 58 (1) of the Act, which empowers the Council of the Institute to delegate certain of its powers to the Committee of Management. This committee manages the administration of the Solicitors' Guarantee Fund. The section at present enables the powers conferred on the council by certain provisions relating to receiverships to be exercised by the Committee of Management, and the amendment enables the power conferred on the council by the *proposed section 104GB* to agree upon the remuneration of a solicitor acting on behalf of a receiver, to be delegated to the Committee of Management. The sub-clause, therefore, proposes the addition to section 58 (1) of the Act of a reference to section 104GB.

Sub-clause (4) amends section 104G (1) by inserting the words "practise or" in that sub-section. As the sub-section stands, it relates only to the former practice of a solicitor, and the amendment corrects what appears to have been an accidental omission.

Sub-clause (5) amends section 104P by inserting new sub-sections (3), (4), (5) and (6). At present, the section provides that where, after payment of all claims against a solicitor, there remains a surplus of moneys held by the institute, the institute shall pay the surplus to the solicitor. Problems have arisen where solicitors cannot prove their entitlement to all or part of the surplus. The proposed amendments therefore provide that, to the extent that the solicitor can establish his entitlement to the surplus, it shall be paid to him, and any moneys then remaining are paid to the receiver of revenue and shall be treated as unclaimed moneys for the purposes of Part II. of the *Unclaimed Moneys Act 1962*. That part of the Act empowers the Treasurer to pay out moneys credited to the Unclaimed Moneys Fund to a person who can prove his entitlement thereto. The sub-clause also makes a consequential amendment of section 104P (1) by adding a reference to section 104GB.

CLAUSE 13 contains three transitional provisions.

Sub-clause (1) is a provision in usual form which is designed to preserve anything done under the Principal Act prior to the commencement of the provisions in clause 7.

Sub-section (2) is concerned with disciplinary matters. It provides, in effect, that the Principal Act as in force immediately before the commencement of proposed sections 27 to 32F shall apply to any disciplinary proceedings in relation to charges, questions or matters referred or made to the council or the Statutory Committee before such commencement.

Sub-section (3) deals with the construction of references to misconduct in section 28 of the Principal Act. It provides as follows :—

- (a) where the misconduct is alleged to have been committed before the commencement of the provisions in clause 3 the reference is to be construed as a reference to misconduct within the meaning of section 15 of the Principal Act as in force immediately before such commencement ;
- (b) where the misconduct is alleged to have been committed on or after the said commencement—
the reference is to be construed as a reference to misconduct within the meaning of section 15 as amended by the provisions of clause 3.