

Defalcations and falling rates cause fund crisis

Recent defalcations on trust accounts are a sobering reminder of how vulnerable an apparently "healthy" fidelity fund can be.

Such defalcations can, and do on occasions, result in the profession being levied to cover the dishonesty of others.

Claims on Fidelity and Solicitors Guarantee funds are adding to the funding crisis faced by Law Societies and Legal Aid Commissions.

Undoubtedly, New Zealand's situation is the worst in the region.

That Society experienced a \$NZ 25m problem which has rendered that Society's fidelity fund insolvent.

Of that amount, \$22m is the result of two solicitors, and \$3m is the work of others.

The Executive Director of the NZ Law Society, Alan Ritchie, said that in addition, there are further claims under consideration and the Fund has contingent liabilities of about \$30m.

The result is a levy of \$10,000 per practitioner which may be paid in instalments of \$2,000 on 31 January of each year from 1993 up to and including 1997.

The President of the New Zealand Law Society, Judith Potter, told the Conference of the Law Society of England and Wales that New Zealand had the dubious honour of being the first society to have two partners in the same firm misappropriating clients' funds (one to support a gambling habit and other trying to cover investment losses), each unknown to the other.

She also said she was called upon to speak at that Conference because the English members would feel better

about their 1,045 pound (\$A2,350) levy and increased professional indemnity premiums.

Fortunately, legal aid in New Zealand does not receive any funding from the Fidelity Fund.

Victoria's Solicitor's Guarantee Fund is looking decidedly wobbly following defalcations of \$2m, \$5m and \$10m respectively.

The Law Institute's Executive Director, Rob Cornall, said that if the full amount of all claims were to be paid out now, the fund would be deficient by \$9 million.

There is provision, however, for equity payments over several financial years to preserve the fund.

This is not good news for legal aid in Victoria.

\$1.5m on 1 July 1994, and that is the extent of the Guarantee Fund's annual contribution for 1993-94.

Other sources of funding have not been guaranteed, and the Kennett government has ordered the Legal Aid Commission to cut costs.

The SGF's contribution to legal aid in Victoria is based on a formula of five per cent up front. The fund may hold back a discretionary figure of \$3-4m and whatever is needed to cover all known claims.

Some of the balance then goes to legal aid.

The circumstances of the Victorian defalcations vary from money being taken by solicitors for personal gain to using money to set up risky or inadequately secured loans.

Over the past six years legal aid has received, on average, \$15m per annum from the fund.

Legal aid will receive a payment of

Mr Cornall said in one case \$3m was loaned on a property that would realise about \$300,000.

To recover, the Law Institute of Victoria may impose a levy, but is

STATE OF THE REGION'S FUNDS AT A GLANCE. *This table cites Income Source as sources other than income derived from investments.

	NAME OF FUND	AMOUNT IN FUND	INCOME SOURCE*	% TO LEGAL AID	CURRENT CLAIMS
NZ	FF	Nil	Trust Accs	Nil	\$30m
Vic	SGF	notional \$29m	Levy \$10pp Trust Accs	Formula	\$49m
NSW	FF	\$40m	Levy \$315pp	Nil	\$20m
Qld	LPGF	\$2.7m	\$20pp/ann Trust Accs	50%	\$400,000
WA	SGF	\$5m	Trust Accs	Nil	\$7,000
Tas	SGF	\$4.5m	Trust Accs	55%	\$300,000
SA	SGF	\$16m	Trust Accs	Formula	\$10,000
ACT	FF	\$2.5m	Levy \$50/UPC	Nil	Nil+
NT	FF	\$3m	Levy \$100/UPC	Nil	Nil+

limited by statute to \$20 per Unrestricted Practising Certificate.

At present the levy is \$10 per Unrestricted Practising Certificate per annum.

New South Wales suffered what initially appeared to be two major defalcations last year.

One will result in massive a claim which the Law Society believes may amount to \$20m.

The Allens affair apparently poses much less of a threat than was initially splashed across the papers because "the firm has provided security for the protection of the Fidelity Fund," according to Lindsay Maynard, the NSW Fidelity Fund Manager.

The NSW Fidelity Fund has around \$40m in it so the \$20m in claims, while painful, is not disastrous.

The Attorney-General must approve the contribution for solicitors which was \$315 per practitioner (with the exception of government employees) this financial year.

Legal aid in New South Wales is funded from the interest on solicitors trust accounts and has nothing to do with the Fidelity Fund.

penses) is paid direct to the Legal Aid Office with the balance going to the Fidelity Guarantee Fund.

Once the balance in the Fund reaches or is in excess of \$5m, all interest earned on the Special Account is paid to Legal Aid.

Legal Aid in Queensland is in crisis.

Eligibility criteria has been significantly tightened, brief-out fees have been reduced substantially, and mediation is a pre-requisite to continuing eligibility for aid in family law matters.

The Solicitor's Guarantee Fund (funded by interest on minimum balances of trust accounts) in WA is healthy.

Seven years ago the fund was worth \$400,000. Today it is worth \$5m.

It used to provide about 90 per cent of its total pool for legal aid; now legal aid receives 60 per cent of the interest earned by that Society's Public Purposes Trust. Presently, that equates to about \$400,000 per annum but was \$700,000 when interest rates were higher.

Q ueensland's Legal Practitioners Fidelity Guarantee Fund is healthier, although it has dropped from \$5m to about \$2.7m in the last couple of years.

This is the result of a combination of defalcations and falling interest rates.

Under Queensland's *Legal Assistance Act*, solicitors must deposit a certain proportion of the moneys held in their trust accounts each year in an account called the Society's Special Account.

Fifty per cent of the interest earned on investment of the Special Account (after deduction of administration ex-

W estern Australia has had no major defalcations.

The Executive Director of the WA Law Society, Peter Fitzpatrick, said that about four to five years ago there were two claims in the order of \$150,000-200,000 but since that time there have been only relatively minor claims on the fund.

South Australia's Guarantee Fund is in the best shape in the country.

That fund is worth \$16m and there have been no significant claims on it for several years.

Legal aid in South Australia receives some funding in the event that the fund holds more than \$7,500 per practising certificate.

The manager of South Australia's fund, David Milne, said that ceiling

has been exceeded for the past three years because of high interest rates.

Legal aid has received over \$3m in the last two years.

"As rates come down, obviously our income is being eroded as well," Mr Milne said.

H e said that a lack of claims has contributed to the overall health of the fund; the last claim in excess of \$10,000 in South Australia was in 1988.

Tasmania, too, is healthy. That fund is sitting on about \$4.5 million with the last defalcation being in 1987.

The Solicitor's Guarantee Fund may have to pay out between \$250,000-300,000 in interest in relation to the 1987 defalcation if retrospective legislation goes through the House.

The Tasmanian Fund divides its interest thus: 55 per cent to Legal Aid, 15 per cent to the Law Foundation and 35 per cent to the Law Society.

The fund is financed by interest on solicitors trust accounts.

The ACT has a very healthy fund of \$2.5 million with a possible contingent liability of \$100,000 if a beneficiary can be located.

Legal aid in the ACT is funded by interest on statutory accounts and the ACT Treasury.

T he Northern Territory's Fidelity Fund is currently worth about \$3m.

Like the ACT, whilst we have no current claims, there is a contingent liability in the vicinity of \$100,000.

That liability arises from the appointment by the Court of a Receiver to the trust property of a legal practitioner.

Legal aid in the Northern Territory receives no funding from the Fidelity Fund.