

Lawyers and Conveyancers Amendment Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Lawyers and Conveyancers Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to reinstate the name of Queen's Counsel for the rank re-titled Senior Counsel by the Lawyers and Conveyancers Act 2006. The bill would also return the eligibility criteria for this rank to those before 1 August 2008. Under those eligibility criteria, in general only lawyers practising as barristers sole could be appointed Queen's Counsel. The bill would also make minor changes to provisions of the Act as it relates to lawyers and conveyancers holding shares in incorporated law firms or conveyancing firms, powers of attorney to be given by lawyers or conveyancing practitioners in sole practice, and the time for lodging with the Legal Complaints Review Officer applications for the review of decisions or actions by Standards Committees.

Eligibility for the rank of Queen’s Counsel

We recommend amending clause 6 of the bill as introduced for purposes of clarity. Clause 6 would insert new sections 118 to 119C. New section 118 would reinstate the name Queen’s Counsel for the rank.

We recommend that proposed new section 118A be amended to specify more precisely the standard eligibility criteria for appointment as Queen’s Counsel. This would ensure the legislation was focused on people practising in particular forms of practice, who are providing regulated services. During our consideration of this bill we heard varying opinions about restricting Queen’s Counsel appointments to lawyers practising as barristers sole. We consider limiting most appointments to barristers sole to be the best way of protecting the traditionally independent status of the rank.

We also recommend deleting proposed new subsection 118A(2), as we believe the clarification it provides is redundant, and replacing it with new subsection 118A(2). This new subsection would make it clear that nothing in the section, or in new sections 118B and 119, would affect or limit appointments under the Royal prerogative to the rank of Queen’s Counsel of people who, when appointed,

- would not meet the standard eligibility criteria for appointment specified in new section 118A or
- were appointed, or recommended for appointment, otherwise than in accordance with the regulations or guidelines or
- did not possess the qualifications and experience envisaged by the guidelines.

Restrictions on the practice of certain rank-holders

We recommend amending proposed new section 118B, which sets out the practice restrictions that would apply to Queen’s Counsel who, when appointed to that rank, were in the standard eligibility category. The purpose of the practice restrictions is to preserve the independence of the rank. We believe the restrictions set out in this section should be worded more precisely. For example, we understand that the practice restrictions in the bill as introduced could prevent a Queen’s Counsel from lecturing at a university. We recommend that section 118B(1) be amended to apply only to employment involving work regulated by the Act, such as legal services and conveyancing.

We also recommend deleting proposed new section 118B(2), since we believe the clarification that it provides is redundant. We also recommend amending new section 118B(3) to omit words made unnecessary by the amendments we recommend to new section 119(1) and (2).

Savings and transitional provisions

We recommend amending new sections 118C and 118D, which contain savings and transitional provisions preserving and making clear the position of Queen's Counsel appointed before 1 August 2008 and Senior Counsel appointed on or after 1 August 2008 and before 1 July 2011.

New section 118C(5) ensures that a Queen's Counsel would not be subject to the practice restrictions in new section 118B, and could practise in any of the ways stated in new section 118D(4), if he or she was appointed before the Lawyers and Conveyancers Act 2006 came into force on 1 August 2008 and, after that Act came into force, practised not as a barrister sole, but in another way permitted by the Act, for example in a partnership.

We recommend that section 118C(5) be amended to also apply to a Queen's Counsel who, after his or her appointment to the rank, but before 1 August 2008, worked in another way (for example, as an employee providing regulated services, or as a statutory officer) that did not contravene an earlier Act corresponding to the Lawyers and Conveyancers Act 2006.

We also recommend that section 118D(4) be amended to specify more precisely the forms of practice permitted by the bill for lawyers appointed as Senior Counsel under the Lawyers and Conveyancers Act. We recommend that section 118D be amended to refer to the provision of regulated services specifically, and to ensure that all forms of practice currently permitted will continue to be available to Senior Counsel.

Royal prerogative

We recommend replacing new section 119C. The replacement section 119C would align with proposed new section 118A(2), and would clearly reflect the intention to retain the discretion to appoint as Queen's Counsel, under the Royal prerogative, lawyers who were

outside the standard eligibility category, or who were appointed or recommended for appointment otherwise than under the regulations or guidelines, or who did not possess the qualifications and experience envisaged by the guidelines.

Regulations relating to Queen’s Counsel

We also recommend amendments to the power in new section 119 to make regulations relating to Queen’s Counsel or issue guidelines as to candidates’ qualifications and experience or the process for recommending them for appointment. In particular, we recommend that section 119 be amended so as to ensure that the regulations must be not inconsistent with the Act; and the guidelines must not be inconsistent with the Act or the regulations.

Interpretation

Clause 8(1) and (2) of the bill as introduced contain amendments to the definitions of “incorporated conveyancing firm” and “incorporated law firm” in section 6 of the Act. We recommend that these amendments be reworded to make it clear that any one or more, or all, non-voting shareholders could hold their shares in the firm as trustees of a qualifying trust.

New Zealand Labour Party minority view

The last Labour-led Government ended a number of links to our colonial past. These include a final right of appeal to the Judicial Committee of the Privy Council, comprising mostly British judges and sitting in London; the award of knighthoods and other honours of English origin; and the annual practice of appointing a small number of barristers to the rank of Queen’s Counsel.

This last reform was accomplished by the Lawyers and Conveyancers Act 2006. It provided for the replacement of the rank of Queen’s Counsel with that of Senior Counsel; allowed for the appointment of Senior Counsel from lawyers other than those practising as barristers; permitted existing Queen’s Counsel to either retain their titles or to convert them to that of Senior Counsel; and made the appointment process for Senior Counsel more transparent and less amenable to political interference. These changes brought

New Zealand law and practice into line with that of Canada and of most of the Australian states. They would all be reversed by Part 1 of the Lawyers and Conveyancers Amendment bill 2010.

Part 2 of the Amendment bill contains some sensible changes. But because we regard the provisions of Part 1 to be such a regrettable step backwards, we continue to oppose the entire bill.

Justification Advanced for Part 1

The three arguments that the National-led Government puts forward to justify the reversion to the *status quo ante* 2006 simply do not stack up. They are as follows:

- the value of our historical connection with the United Kingdom
- the independence and objectivity of the bar is enhanced
- the selection process put in place by the 2006 Act is excessively rigid.

We deal with each of these arguments in turn below.

Historical link

According to the Government, the restoration of the title Queen's Counsel recognises the "historical link between Queen's Counsel and the Crown". The link between Queen's Counsels and the Crown derives from the rank's ancient English origins, when it denoted barristers who were commanded to assist the Attorney-General in carrying out the Crown's legal business. For many centuries now, and in all jurisdictions where the rank has spread, Queen's Counsels have acted for a wide variety of clients, including private individuals and businesses. Most Queen's Counsels practising in New Zealand today have acted only occasionally, if at all, on instruction from the Solicitor-General or from Crown Solicitors. The original notion of a special relationship between the Crown and Queen's Counsels is redundant.

Some submitters in support of the reinstatement of the rank of Queen's Counsel argued that while New Zealand continues to recognise the Queen as head of state and to award royal honours such as knighthoods, it is logical that the rank should be retained. We do not accept that one bad policy—such as the restoration of knighthoods—justifies putting in place another.

Independence

The Government asserts that its reversion to the title Queen's Counsel, and restricting its appointment in normal circumstances to lawyers practising as barristers, will enhance the independence of the legal profession. It is never quite made clear, when this argument is advanced, whence the threat to the independence of the profession comes. If it is from the Crown, then the assertion would contradict the first argument in favour of reversion above: that there is a special link between the Crown and Queen's Counsels. If it is from commercial interests, this would overlook the strict rules as to conflict of interest that bind all practitioners—whether practising law in firms, on their own, or at the bar—in New Zealand's fused legal profession.

In the United Kingdom (as well as in Canada and in most States in Australia) Queen's Counsels may practise law in firms. Even under the bill, certain highly meritorious practitioners who are not barristers sole will be entitled to appointment to the rank. Frankly, the exception appears to give the lie to the asserted rule.

Finally, restricting general eligibility to the rank to barristers sole grants a commercial advantage to a limited number of competitors in the legal services market, and creates an unnecessary and unhelpful division between those few favoured with the rank and the rest of the profession who are relegated to junior status. For nearly 90 years only a fraction of New Zealand's advocates have been eligible to apply for the rank of Queen's Counsel—the vast majority having practised in our fused profession as barristers and solicitors. It is an odd and anti-competitive practice, as well as being incompatible with trans-Tasman occupational harmonisation.

Selection process

Before the enactment of the Lawyers and Conveyancers Act, the selection process for Queen's Counsels was shrouded in secrecy. Minimal published criteria for appointment existed. The system perpetuated the appointment of a senior bar that was largely unrepresentative of the legal profession, let alone of society itself.

The Government claims that in sweeping away this anachronistic system and replacing it with a more transparent one, the previous administration introduced excessive rigidity into the appointments

process. No evidence is produced to support this assertion; nor could it be, given that only one appointment round occurred under it.

Under the bill, we return to an opaque process where the Government of the day can confer upon preferred senior members of the bar a significant income-augmenting and status-enhancing rank, all behind closed doors. So much for the much-vaunted benefits of independence.

Conclusion

Under the bill, only New Zealand, the United Kingdom and a handful of tiny former colonies will retain the rank of Queen's Counsel. Of the major common law jurisdictions, only New Zealand will retain the substantially anti-competitive practice of restricting the appointment of Queen's Counsels to the bar. It will be alone in moving to reverse transparency in the appointments process for the senior bar.

This legislation is retrogressive in every conceivable way. It is a victory for those who prefer the bland comforts of the past to the exciting challenges of the future. It is a deplorable attempt to move New Zealand backwards. It will be reversed by the next Labour-led Government at the earliest opportunity.

Appendix

Committee process

The Lawyers and Conveyancers Amendment Bill was referred to the committee on 13 October 2010. The closing date for submissions was 26 November 2010. We received and considered six submissions from interested groups and individuals. We heard five submissions. We received advice from the Ministry of Justice and the Crown Law Office.

Committee membership

Chester Borrowes (Chairperson)

Jacinda Ardern (until 9 February 2011)

Kanwaljit Singh Bakshi

Carol Beaumont (from 9 February 2011)

Simon Bridges

Charles Chauvel (from 9 February 2011)

Dr Kennedy Graham

Hon Hekia Parata

Hon David Parker (until 9 February 2011)

Lynne Pillay (until 9 February 2011)

Paul Quinn

Carmel Sepuloni (from 9 February 2011)

Lawyers and Conveyancers Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nathan Guy

Lawyers and Conveyancers Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Lawyers and Conveyancers Amendment Act **2010**.

2 Commencement

- (1) **Part 1** comes into force on ~~4 July 2010~~ **1 July 2011**. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Lawyers and Conveyancers Act 2006.

Part 1

10

Amendments relating to Queen's Counsel

4 Purpose of this Part

The purpose of this Part is to amend the principal Act to—

- (a) end the renaming as Senior Counsel of the office or rank that before 1 August 2008 was, and after ~~30 June 2010~~ **30 June 2011** is again to be, known in New Zealand as Queen's Counsel; and 15
- (b) restrict standard eligibility for appointment, under the Royal prerogative, to that office or rank to a specified category of lawyers practising independently as barristers sole; and 20

- (c) require people who hold that rank, and who when appointed to it were lawyers in that specified category, to practise in ways that maintain its independence.

5 Heading above section 117 amended

The heading above section 117 is amended by omitting “, *Senior Counsel*,”. 5

6 New sections 118 to 119C substituted

Sections 118 and 119 are repealed and the following sections substituted:

“118 Office or rank of Queen’s Counsel 10

The office or rank that before 1 August 2008 was known in New Zealand as Queen’s Counsel, and that from the close of 31 July 2008 to the close of ~~30 June 2010~~ **30 June 2011** was renamed as Senior Counsel, is on and after ~~4 July 2010~~ **4 July 2011** again to be known in New Zealand as Queen’s Counsel. 15

“118A Eligibility for appointment

“(1) A person who holds a current practising certificate authorising him or her to practise as a barrister and not as a barrister and solicitor is eligible for appointment, under the Royal prerogative, as a Queen’s Counsel if he or she (whether or not he or she is a statutory officer)— 20

“(a) practises, and in the course of his or her practice provides regulated services, alone (that is, not in partnership with any other lawyer); and 25

“(b) is not actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal regulated services; and

“(c) ~~(whether or not he or she is a statutory officer)~~ is not an employee (other than an employee of an incorporated law firm in which he or she is the only voting shareholder) who, in the course of his or her employment, provides regulated services. 30

“(2) A person practising as a barrister and not as a barrister and solicitor is not actively involved in the provision by an incorporated law firm of legal services for the purposes of **subsec-** 35

tion (1)(b) by reason only of the fact that he or she provides legal services on the instructions of a barrister and solicitor actively involved in the provision by that firm of legal services.

“(3) Neither this section nor **section 119** limits or affects appointments, under the Royal prerogative (as preserved by **section 119C**), to the office of Queen’s Counsel of people outside the category in **subsection (1)**: 5

“(4) This section does not limit or affect any qualifications and experience guidelines of the kind specified in **section 119(2)(a)**: 10

“(2) Nothing in this section, **section 118B**, or **section 119** limits or affects appointments, under the Royal prerogative (as preserved by **section 119C(1) and (2)**), to the office of Queen’s Counsel of a person who, when appointed to that office, is all or any of the following: 15

“(a) a person who is not in the category in **subsection (1)**:

“(b) a person who is appointed otherwise than in accordance with regulations under **section 119(1)(a) and (b)**, guidelines of the kind specified in **section 119(2)(b)**, or both: 20

“(c) a person who does not possess all or any of the qualifications and experience that guidelines of the kind specified in **section 119(2)(a)** indicate should be possessed by candidates for appointment as Queen’s Counsel.

“**118B Restrictions on practice of specified category of lawyers who hold rank** 25

“(1) A person who holds the rank of Queen’s Counsel, and who when appointed to that rank was in the category in **section 118A(1)**,—

“(a) must not practise, or in the course of his or her practice provide regulated services, as a barrister and solicitor, or in partnership with any other lawyer; and 30

“(b) must not be actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal regulated services; and 35

“(c) must not be an employee (other than an employee of an incorporated law firm in which he or she is the only

- voting shareholder) who, in the course of his or her employment, provides regulated services; but
- “(d) is not precluded, by reason only of the fact that he or she holds that rank, from being a statutory officer.
- “(2) A person practising as a barrister and not as a barrister and solicitor is not actively involved in the provision by an incorporated law firm of legal services for the purposes of **subsection (1)(b)** by reason only of the fact that he or she provides legal services on the instructions of a barrister and solicitor actively involved in the provision by that firm of legal services. 5
- “(3) **Subsection (1)** is subject to **sections 118C(5) and 118D(4)**, but overrides anything in other provisions of this Act or in (or in any guidelines issued under) any regulations made under **section 119(1)**. 10
- “(4) A person who is subject to, and who contravenes, **subsection (1)** must be treated as having surrendered at the time of the contravention the rank of Queen’s Counsel. 15
- “**118C Queen’s Counsel appointed before 1 August 2008**
- “(1) This section applies to a person who at the close of 31 July 2008 held, and at the close of ~~30 June 2010~~ **30 June 2011** continued to hold, the rank of Queen’s Counsel for New Zealand. 20
- “(2) If, after 31 July 2008 and under section 118(5) (as repealed by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**), the person used, in relation to himself or herself, the words Senior Counsel and the abbreviation SC, then after ~~30 June 2010~~ **30 June 2011** he or she— 25
- “(a) may continue to use, in relation to himself or herself, those words and that abbreviation; or
- “(b) may use instead, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC. 30
- “(3) The precedence to which the person is entitled is not affected by **sections 118 to 119C** (as substituted by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**).
- “(4) The following apply to the person in the same way as they apply to a Queen’s Counsel appointed to that rank after ~~30 June 2010~~ **30 June 2011**: 35

- “(a) **sections 118B, 119A, and 119B** (as so substituted):
- “(b) any regulations made under **section 119(1)(c) and (e) to (g)** (as so substituted).
- “(5) Despite **subsection (4)(a), section 118B** (as so substituted) does not apply, but **section 118D(4)** (as so substituted) does 5
 apply, to the person if after ~~31 July 2008~~ his or her appointment as a Queen’s Counsel and before or on 1 April 2010 and under section 118(2)(b) of this Act (as repealed by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**) or not inconsistently with an enactment in or under an earlier Act that corresponds to this Act he or she— 10
- “(a) practised, or in the course of his or her practice provided regulated services, as a barrister and solicitor, or in partnership with any other lawyer; or
- “(b) was actively involved in the provision by an incorporated 15
 law firm (other than one in which he or she is the only voting shareholder) of ~~legal~~ regulated services; or
- “(c) ~~(whether or not he or she was a statutory officer)~~ was an employee (other than an employee of an incorporated law firm in which he or she is the only voting shareholder) who, in the course of his or her employment, provided regulated services; or 20
- “(d) was a statutory officer.
- “(6) **Subsections (3), (4), and (5)** apply to the person whether or not after ~~30 June 2010~~ 30 June 2011 and under **subsection (2)** he or she uses, in relation to himself or herself, the words Senior Counsel and the abbreviation SC. 25
- “**118D Senior Counsel appointed after 31 July 2008 and before 1 July 2010** 1 July 2011
- “(1) This section applies to a person who after 31 July 2008 was 30
 appointed to, and at the close of ~~30 June 2010~~ 30 June 2011 continued to hold, the rank of Senior Counsel for New Zealand.
- “(2) After ~~30 June 2010~~ 30 June 2011, the person—
- “(a) may continue to use, in relation to himself or herself, 35
 the words Senior Counsel and the abbreviation SC; or
- “(b) may instead use, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.

- “(3) The precedence to which the person is entitled is not affected by **sections 118 to 119C** (as substituted by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**).
- “(4) After ~~30 June 2010~~ **June 2011**, the person is not precluded, by reason only of the fact that he or she holds that rank,—
- “(a) from practising, or in the course of his or her practice providing regulated services, either as a barrister or as a barrister and solicitor, or either alone or in partnership with any other lawyer; or 10
- “(b) from being actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of ~~legal~~ regulated services; or
- “(c) from being an employee ~~or statutory officer~~ (other than an employee of an incorporated law firm in which he or she is the only voting shareholder) who, in the course of his or her employment, provides regulated services; or 15
- “(d) from being a statutory officer.
- “(5) The following apply to the person in the same way as they apply to a Queen’s Counsel appointed to that rank after ~~30 June 2010~~ **June 2011**:
- “(a) **sections 119A and 119B** (as so substituted):
- “(b) any regulations made under **section 119(1)(c) and (e) to (g)** (as so substituted). 25
- “(6) **Subsections (3), (4), and (5)** apply to the person whether or not after ~~30 June 2010~~ **June 2011** and under **subsection (2)** he or she uses, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.
- “**119 Regulations relating to Queen’s Counsel** 30
- “(1) The Governor-General may, by Order in Council, make regulations (not inconsistent with this Act) prescribing—
- “(a) the process by which candidates may be recommended to the Governor-General for appointment, by letters patent, under the Royal prerogative as Queen’s Counsel: 35
- “(b) the fees to be paid by candidates for appointment as Queen’s Counsel:

- “(c) the privileges and duties of Queen’s Counsel:
- “(d) the conditions on or subject to which candidates may be appointed as Queen’s Counsel:
- “(e) the conditions on or subject to which Queen’s Counsel may practise their profession: 5
- “(f) the precedence that Queen’s Counsel are to have in the courts of New Zealand:
- “(g) such other matters as may be necessary in relation to Queen’s Counsel.
- “(2) Regulations made under **subsection (1)** may authorise the Chief Justice and the Attorney-General to issue guidelines (not inconsistent with this Act or any regulations of that kind) in relation to both— 10
- “(a) the qualifications and experience that should be possessed by candidates for appointment as Queen’s Counsel; and 15
- “(b) the process by which such candidates may be recommended for appointment.
- “**119A Other ways of ceasing to hold rank**
- “(1) A person who holds the rank of Queen’s Counsel ceases to hold that rank if— 20
- “(a) he or she is suspended from practice as a barrister or as a solicitor or as both (even if the suspension is only until a charge against the person has been heard and disposed of by the Disciplinary Tribunal); or 25
- “(b) his or her name is struck off the roll.
- “(2) Nothing in **sections 118 to 119C** (as substituted by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**) abrogates the power of the Crown to revoke, under the Royal prerogative, the appointment of any person who was appointed as a Queen’s Counsel for New Zealand. 30
- “**119B Style of rank if Sovereign for time being is King**
- “(1) If the Sovereign for the time being is a King,—
- “(a) every reference to Queen’s Counsel in a provision to which this paragraph applies is, unless the context otherwise requires, to be read as a reference to King’s Counsel; and 35

- “(b) the words and abbreviation that a lawyer who holds the rank of Queen’s Counsel are to use, if he or she wishes, in relation to himself or herself, are King’s Counsel and KC.
- “(2) **Subsection (1)(a)** applies to— 5
- “(a) provisions in this Act (other than in **subsection (1)** or in **section 118C(1)**); and
- “(b) provisions in (or in any guidelines issued under) any regulations made under **section 119(1)**.
- “**119C Royal prerogative power to appoint unaffected** 10
- “(1) ~~Sections 118A and 119 do not derogate from the power to appoint, under the Royal prerogative, people to the office of Queen’s Counsel.~~
- “(1) Sections 118A and 118B do not derogate from the power to appoint under the Royal prerogative to the office of Queen’s Counsel a person who, when so appointed, was not in the category in **section 118A(1)** (and by way of explanation who, after being so appointed, is not subject to **section 118B**, which imposes practice restrictions). 15
- “(2) The powers conferred by **section 119** do not derogate from the power to appoint, under the Royal prerogative, people to the office of Queen’s Counsel.” 20

Part 2

Amendments relating to other matters

- 7 **Purpose of this Part** 25
- The purpose of this Part is to amend the principal Act to—
- (a) enable (but not require) a conveyancing practitioner to hold non-voting shares of an incorporated conveyancing firm, and a lawyer to hold non-voting shares of an incorporated law firm, as a trustee of a trust in which— 30
- (i) each beneficiary is a relative of 1 or more of the trustees; and
- (ii) each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively 35

involved in the provision by the body corporate of regulated services:

- (b) enable grandchildren of a conveyancing practitioner or, as the case may be, a lawyer to be non-voting shareholders of an incorporated conveyancing firm or, as the case may be, an incorporated law firm: 5
- (c) require the power of attorney that a lawyer or conveyancing practitioner in sole practice must give to authorise the donee of that power to conduct that practice as an agent to be given for any periods during which the lawyer or conveyancer is an undischarged bankrupt: 10
- (d) ensure applications for a review by the Legal Complaints Review Officer of a specified decision or action by (or on behalf of, or with the authority of) a Standards Committee must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to the applicant's attention (which is presumed to have occurred on the fifth working day after the decision or action). 15 20

*Incorporated conveyancing firms and
incorporated law firms*

8 Interpretation

- (1) Paragraph (d)(i) of the definition of **incorporated conveyancing firm** in section 6 is amended by inserting “(any ~~one~~ 1 or more or each of whom may, but none of whom is required to, hold those shares as a trustee of a qualifying trust)” after “paragraph (b)”. 25
- (2) Paragraph (d)(i) of the definition of **incorporated law firm** in section 6 is amended by inserting “(any ~~one~~ 1 or more or each of whom may, but none of whom is required to, hold those shares as a trustee of a qualifying trust)” after “paragraph (b)”. 30
- (3) Section 6 is amended by inserting the following definition in its appropriate alphabetical order:

“**qualifying trust** means, for the purposes of the definitions in this section of incorporated conveyancing firm and incorporated law firm, a trust in which—

“(a) each beneficiary is a relative of 1 or more of the trustees; and 5

“(b) each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services”.

- (4) Paragraph (e) of the definition of **relative** in section 6 is amended by inserting “or grandchild” after “child”. 10

*Appointment of agent to conduct sole practice
of lawyer or conveyancing practitioner*

9 Schedule 1 amended

- (1) Clause 7 of Schedule 1 (which states periods for which the power of attorney required by clause 2(1) or 4(1) of that schedule must be given) is amended by inserting the following paragraph after paragraph (b): 15

“(ba) any current or future period or periods during which the donor is an undischarged bankrupt; and”. 20

- (2) **Clause 7(ba)** of Schedule 1 of the principal Act (as inserted by **subsection (1)**)—

(a) applies to a power of attorney that was required by clause 2(1) or 4(1) of that schedule to be given before the commencement of this section; and 25

(b) requires a power of that kind to be amended or replaced within 3 months after the date on which this section comes into force so that, as so amended or replaced, it is given for periods that include the period or periods specified in **clause 7(ba)** of Schedule 1 of the principal Act (as so inserted). 30

Legal Complaints Review Officer

10 Applications for review

- (1) Section 198 is amended by repealing paragraph (b) and substituting the following paragraph: 35

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- “(b) be lodged with the Legal Complaints Review Officer within 30 working days after a copy or notice of the determination, requirement, or order made, or the direction given, or the performance or exercise of the function or power, by the Standards Committee (or by any person on its behalf or with its authority) is served on, given to, or otherwise brought to the attention of, the applicant for review (which, in the absence of proof to the contrary, is presumed to have occurred on the fifth working day after it is made, given, or performed or exercised); and”.
- (2) **Section 198(b)** of the principal Act (as substituted by **subsection (1)**) applies only to applications for review under section 193 of the principal Act—
- (a) made, and not withdrawn or finally determined, before the commencement of this section; or
- (b) made after that commencement.

Legislative history

18 March 2010
13 October 2010

Introduction (Bill 120–1)
First reading and referral to Justice and Electoral Committee
