

Lawyers and Conveyancers Amendment Bill (No 2)

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 (No 2) and recommends that it be passed with the amendments shown.

Introduction

The Lawyers and Conveyancers Amendment Bill (No 2) amends the Lawyers and Conveyancers Act 2006, which has not yet come into force. At present, unions and employer organisations employ lawyers to provide legal services to their members. The Act provides explicitly that lawyers employed by unions and employer organisations will be guilty of misconduct if they provide such services. The purpose of this bill is to allow lawyers employed by unions and employer organisations to continue to provide legal services to their members.

Committee process

The bill was referred to us on 25 June 2008, for report to the House by 10 July 2008. We were advised that the timeframe for our consideration of the bill was short because the Act is expected to come into force on 1 August 2008. The Government's intention is to pass this amending legislation before that date.

Given the short time available for considering the bill, we sought a briefing from officials at our meeting on 26 June 2008, and decided to invite submissions from the three organisations that represent the main interests in this bill: Business New Zealand, the New Zealand Council of Trade Unions, and the New Zealand Law Society. We heard evidence from these three organisations at our meeting on 3 July 2008.

In addition to these submissions, we received correspondence from the New Zealand College of Midwives, the New Zealand Educational Institute, and the New Zealand Nurses Organisation.

Issues raised by submitters

Business New Zealand and the New Zealand Council of Trade Unions both support the bill. Both noted that the provision of legal services was essential to their role in assisting their members with advice, representation, and dispute resolution services, particularly in relation to employment matters.

The New Zealand Law Society does not support the bill, arguing that it is inconsistent with the consumer protection provisions of the Act, could create conflicts between employed lawyers' duties to their employers and to their clients, raises issues about income sharing, and is unnecessary as a person representing an employer or employee in proceedings before the Employment Relations Authority or Employment Court does not have to be a lawyer. The society told us that it believes the current law does not allow unions and employer associations to provide legal services. The society is also concerned that the bill could create a precedent, encouraging others to seek further exceptions.

In addition to these submissions, the New Zealand College of Midwives approached us seeking coverage in the bill. The college provides professional indemnity insurance for individual midwives, and employs a lawyer to manage such cases on their behalf. The college

is concerned that if it can no longer provide this service, the costs of indemnity insurance would be too high for many midwives to afford.

Committee consideration

We considered carefully the issues raised by the submitters. We also asked our advisers for a summary of the non-legislative ways that lawyers employed by employer organisations and unions could adapt their current practice so that they could continue giving legal advice to union or organisation members under the Act.

We agreed with the New Zealand College of Midwives that organisations such as theirs should be included in the coverage of this bill. We therefore recommend that health professional organisations be included in the bill.

The New Zealand Law Society also proposed an amendment to section 107 of the Act. The proposed amendment was outside the scope of the bill, but we expect the Ministry of Justice to consider this issue carefully, and propose a legislative amendment if this is required.

Conclusion

We consider that the bill should proceed, to ensure the organisations covered by it can continue to provide legal services to their members. We believe our recommended amendment will assist in achieving this aim.

New Zealand National members noted that they might wish to introduce a Supplementary Order Paper at the committee of the whole House stage of the bill if, after careful consideration of matters raised in oral submissions to the committee, they consider there are further matters to be addressed.

Appendix

Committee process

The Lawyers and Conveyancers Amendment Bill (No 2) was referred to us on 25 June 2008. We invited submissions from Business New Zealand, the New Zealand Council of Trade Unions, and the New Zealand Law Society, and heard evidence from those organisations. We received advice from the Ministry of Justice.

Committee membership

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole

Charles Chauvel

Hone Harawira (non-voting member)

Nandor Tanczos (until 27 June 2008)

Mētīria Tūrei (from 2 July 2008)

Nicky Wagner

Louisa Wall

Dail Jones was a non-voting member of the committee for this item of business.

Lawyers and Conveyancers Amendment
Bill (No 2)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

Hon Annette King

Lawyers and Conveyancers Amendment Bill (No 2)

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Lawyers and Conveyancers Amendment Act (No 2) **2008**.

2 Commencement

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This Act comes into force on the commencement of section 9 of the principal Act.

**Part 1
Preliminary provisions**

3 Principal Act amended

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This Act amends the Lawyers and Conveyancers Act 2006.

4 Purpose

The purpose of this Act is to enable lawyers who are employed by employer organisations or unions to provide legal services to persons who are members of their respective employers.

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**Part 2
Amendments to principal Act**

5 Interpretation

Section 6 is amended by inserting the following definitions in their appropriate alphabetical order:

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“**employer organisation** means an organisation—

“(a) whose members consist of employers; and

“(b) whose purpose is or includes the promotion of the interests of its members as employers

“**health professional organisation** means an organisation—

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“(a) whose members consist of health practitioners within the meaning of the Health Practitioners Competence Assurance Act 2003; and

“(b) whose purpose is or includes the promotion of—

“(i) the professional standards of its members; and

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“(ii) the interests of its members in their capacity as health practitioners

“union—

“(a) has the same meaning as in section 5 of the Employment Relations Act 2000; and

“(b) includes an organisation—

“(i) whose members consist of unions; and 5

“(ii) whose purpose is or includes the promotion of the interests of its members as unions; and

“(c) includes a health professional organisation”.

6 Misconduct defined in relation to provision of regulated services by employees 10

(1) Section 9(1) is amended by adding “; or” and also by adding the following paragraphs:

“(i) by an employer organisation; or

“(j) by a union.”

(2) Section 9 is amended by inserting the following subsection after subsection (1): 15

“(1A) Despite subsection (1), a lawyer is guilty of misconduct if, in the course of his or her employment—

“(a) by an employer organisation, he or she provides—

“(i) legal services to a person other than the organisation or a member of the organisation; or 20

“(ii) regulated services that are not legal services to any person; or

“(b) by a union, he or she provides—

“(i) legal services to a person other than the union or a member of the union; or 25

“(ii) regulated services that are not legal services to any person.”

7 Exceptions to section 9

Section 10(1)(a), (1)(c), and (4) are amended by omitting “(a) to (h)” and substituting in each case “(a) to **(j)**”. 30

8 Reserved areas of work for lawyers and incorporated law firms

Section 24 is amended by inserting the following subsection after subsection (1): 35

- “(1A) For the purposes of subsection (1), an employer organisation or a union does not carry out work of the kind referred to in paragraph (a) or (b) of that subsection merely because—
- “(a) the employer organisation employs a lawyer who carries out work of that kind for members of the organisation, whether or not the organisation receives any gain or reward for that work: 5
 - “(b) the union employs a lawyer who carries out work of that kind for members of the union, whether or not the union receives any gain or reward for that work.” 10

9 Lawyers to whom, and incorporated law firms to which, this Part applies

Section 307(4) is amended by adding “; or” and also by adding the following paragraphs:

- “(e) provides, in his or her capacity as an employee of an employer organisation, regulated services to that organisation or to a member of that organisation; or 15
- “(f) provides, in his or her capacity as an employee of a union, regulated services to that union or to a member of that union.” 20

Legislative history

18 June 2008
25 June 2008

Introduction (Bill 222–1)
First reading and referral to Justice and Electoral
Committee
