

LAW PRACTITIONERS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Law Practitioners Act 1955.

Clause 1 relates to the Short Title to the Bill.

Clause 2: Section 18 of the principal Act makes it an offence for an unqualified person to act as a conveyancer. The recent case of *McCulloch v. Anderson* [1962] N.Z.L.R. 130 shows that the effect of the section needs to be clarified, and the section has been redrafted accordingly.

Clause 3 clarifies the period for which an annual practising certificate remains in force.

Clause 4: Section 34 of the principal Act was amended last year so as to give the Disciplinary Committee of the New Zealand Law Society jurisdiction over legal practitioners charged with conduct unbecoming a barrister or a solicitor. The clause makes a corresponding amendment to section 35, and adds such conduct to the grounds on which a practitioner may be struck off the roll or suspended from practice.

Clause 5 inserts new sections 97A and 97B in the principal Act.

The new *section 97A* provides that, in the event of the exercise by the Council of the New Zealand Law Society or a District Council in respect of any solicitor of any of the powers conferred by section 97 of the principal Act (which section authorises any such Council to take possession of the books and documents of a solicitor believed to be guilty of theft or under mental disability, etc.), the solicitor's right to a lien shall enure for the benefit of that Council in respect of any deeds or documents in the possession of that Council.

The new *section 97B* provides that the reasonable expenses of the Council in investigating or conducting the affairs of a solicitor under any of the provisions of sections 73, 74, 97, 98, and 99 of the principal Act shall be recoverable from that solicitor.

Clause 6: Section 99 of the principal Act provides for the appointment of an authorised person to investigate the affairs of a solicitor. The clause imposes a penalty of £100 for obstructing such a person in the execution of his powers and duties, or for failing to produce documents as required.

Clause 7 amends section 116 of the principal Act so as to give the Canterbury District Law Society the right to elect one additional member to the Council of the New Zealand Law Society.

Clause 8 amends section 117 of the principal Act so as to provide that one of the three Vice-Presidents of the New Zealand Law Society may be elected by the Council from the members of the Council elected by the Wellington District Law Society, one may be elected by the Council from the members of the Society practising in the North Island who are not members of the Wellington District Law Society, and one may be elected by the Council from the members of the Society practising in the South Island.

Clause 9: Section 22 of the Law Practitioners Amendment Act 1961 provides that the liability of an agent conducting a solicitor's practice under Part II of that Act is not terminated until the agent is released by resolution of the Council of the District Law Society in each district in which the practice of the solicitor was conducted. The clause provides that, upon any such Council passing any such resolution, its secretary shall forthwith give notice thereof to—

- (a) The auditor of the solicitor's trust account; and
- (b) The bank with which the solicitor's trust account is kept.

Clause 10: Section 23 of the Law Practitioners Amendment Act 1961 provides that, where the bank with which a solicitor's trust account is kept has notice that an agent is conducting that solicitor's practice, it must notify the secretary of the District Law Society of the closing of the solicitor's trust account. The clause makes it clear—

- (a) That the bank need not give the notice if it has received notice under the new subsection (2A) of section 22 that the donee of the power of attorney has been released from his duties in connection with the practice; and
 - (b) That the required notice is to be given upon the bank being requested to close or closing the trust account or any trust account of that solicitor.
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Hon. Mr Hanan

LAW PRACTITIONERS AMENDMENT

ANALYSIS

Title	
1. Short Title	
2. Qualified persons only to act as conveyancers	97B. Expenses of Council in investigating or conducting affairs of solicitor
3. Currency of practising certificates	6. Appointment of authorised person to investigate affairs of solicitor
4. Orders for striking off roll or for suspension from practice	7. Council
5. New sections inserted	8. Vice-Presidents
97A. Solicitor's lien to enure for benefit of Council in certain cases	9. Termination of agency to conduct solicitor's practice
	10. Bank to notify closing of trust account

A BILL INTITULED

An Act to amend the Law Practitioners Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Law Practitioners Amendment Act 1962, and shall be read together with and deemed part of the Law Practitioners Act 1955 (hereinafter referred to as the principal Act).
- 10 2. **Qualified persons only to act as conveyancers**—The principal Act is hereby amended by repealing section 18, and substituting the following section:

- “18. (1) Except as provided in subsection (2) of this section, no person, other than the holder of a practising certificate as a barrister or as a solicitor which is then in force, or a person acting under the supervision of such a holder, shall draw or prepare for or on behalf of any other person— 5
- “(a) Any conveyance within the meaning of the Property Law Act 1952 of any real or personal property:
- “(b) Any deed within the meaning of the Property Law Act 1952 relating to any real or personal property:
- “(c) Any tenancy agreement or agreement evidencing a tenancy, if— 10
- “(i) The tenancy is for a term of more than twelve months; or
- “(ii) Any right of renewal is conferred on the tenant by the agreement; or 15
- “(iii) Any charge is made directly or indirectly for the drawing or preparation of the agreement or for any other service incidental thereto.
- “(2) Subsection (1) of this section shall not apply to—
- “(a) Any agreement for sale and purchase of land or any interest in land or of the goodwill of a business or of chattels prepared by a land agent holding a licence in force under the Land Agents Act 1953: 20
- “(b) Any transfer of shares, stocks, debentures, or chattels containing no trust or limitation thereof: 25
- “(c) Any business transacted by the holder of a licence as a landbroker under the Land Transfer Act 1952 pursuant to his licence:
- “(d) Any conveyance, deed, or agreement that is drawn or prepared by filling in a printed form, if— 30
- “(i) The printed form was drawn or prepared by a person who, at the time when the form was drawn or prepared, was the holder of a practising certificate as a barrister or as a solicitor which was then in force; and 35
- “(ii) It could reasonably be expected that the form could be properly completed by the persons likely to complete it, whether or not they were holders of such certificates; and
- “(iii) No charge is made directly or indirectly for the drawing or preparation of the conveyance, deed, or agreement or for any other service incidental thereto. 40

“(3) Every person who acts in contravention of subsection (1) of this section commits an offence, and is liable on summary conviction to a fine not exceeding one hundred pounds.”

5 **3. Currency of practising certificates**—Section 24 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Subject to the provisions of this section, every such certificate shall be in force,—

10 “(a) If it is issued before the date of the expiry of a current certificate held by the applicant, from the thirty-first day of January next after the date of its issue until the thirty-first day of January next following:

15 “(b) In any other case on and after the date of its issue until the thirty-first day of January next following.”

4. Orders for striking off roll or for suspension from practice—Section 35 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (1), after the words “professional capacity”, the words “or of conduct un-
20 becoming a barrister or a solicitor”.

5. New sections inserted—The principal Act is hereby amended by inserting, after section 97, the following sections:

25 “97A. **Solicitor’s lien to enure for benefit of Council in certain cases**—In the event of the exercise by the Council or a District Council in respect of any solicitor of any of the powers conferred by section 97 of this Act, any lien or right to a lien which, but for the provisions of that section, could be exercised by that solicitor, shall enure for the benefit of
30 the Council or District Council to the exclusion of that solicitor during such period as any deeds or documents are in the possession of the Council or District Council pursuant to that section.

35 “97B. **Expenses of Council in investigating or conducting affairs of solicitor**—(1) The reasonable expenses of the Council or any District Council acting in the exercise of any of the powers conferred by sections 73, 74, 97, 98, and 99 of this Act in respect of any solicitor shall be recoverable from that solicitor.

“(2) The Council or any such District Council may, subject to the provisions of this section, apply any money belonging to that solicitor or to which he may be entitled, being money which comes into the possession of the Council or District Council, in satisfaction or partial satisfaction of its reasonable expenses as aforesaid, but nothing in this subsection shall affect any other remedy available to any such Council. 5

“(3) No such money shall be so applied until a notice giving particulars of the expenses claimed has been served on that solicitor or his personal representatives. 10

“(4) Any such notice may be served personally on that solicitor or may be forwarded to him by registered letter addressed to his last known place of business or residence.

“(5) Within fourteen days after any such notice has been so served or posted, the solicitor or his personal representatives may apply to the Court for a review of the expenses claimed. On the hearing of any such application the Court may make such order as it thinks fit.” 15

6. Appointment of authorised person to investigate affairs of solicitor—Section 99 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection: 20

“(3A) If the person required to produce any such books, papers, accounts, securities, or other documents or to give any such information as aforesaid, without lawful justification or excuse, the proof whereof shall lie on him, refuses or fails to do so, or otherwise hinders, obstructs, or delays the person so appointed in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.” 25 30

7. Council—Section 116 of the principal Act is hereby amended by omitting from paragraph (d) of subsection (1) the words “Two members”, and substituting the words “Three members”.

8. Vice-Presidents—Section 117 of the principal Act is hereby amended by repealing paragraph (b) of subsection (1), and substituting the following paragraph: 35

“(b) Not more than three Vice-Presidents of the Society, of whom one may be elected by the Council from the members of the Council elected by the Wellington District Law Society, one may be elected by the Council from the members of the 40

5 Society practising in the North Island who are not members of the Wellington District Law Society, and one may be elected by the Council from the members of the Society practising in the South Island.”

9. Termination of agency to conduct solicitor's practice—Section 22 of the Law Practitioners Amendment Act 1961 is hereby amended by inserting, after subsection (2), the following subsection:

- 10 “(2A) Forthwith upon any such Council passing any such resolution its secretary shall give notice thereof to—
- “ (a) The auditor of the trust account of the solicitor to whose practice the power of attorney relates; and
- 15 “ (b) The bank with which that solicitor's trust account is kept.”

10. Bank to notify closing of trust account—Section 23 of the Law Practitioners Amendment Act 1961 is hereby amended—

- 20 (a) By inserting, after the words “that power of attorney”, the words “if any such notice has not been followed by a notice under subsection (2A) of section 22 of this Act of the release of the donee of the power of attorney”:
- 25 (b) By omitting the words “receiving advice that the trust accounts or any trust account of that solicitor is closed or is about to be closed”, and substituting the words “being requested to close or closing the trust account or any trust account of that solicitor”.