

LAW PRACTITIONERS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Law Practitioners Act 1955.

Clause 1 relates to the Short Title.

Clause 2 amends section 25 of the principal Act relating to the issue of a practising certificate in any case where the applicant—

- (a) Has not held a practising certificate at any time within the preceding period of 2 years; or
- (b) Is an undischarged bankrupt; or
- (c) Has been suspended from practice since a practising certificate was last issued to him; or
- (d) Has, since the date of his admission or the date on which a practising certificate was last issued to him (whichever is the later), been detained in a hospital under the Mental Health Act 1969.

In any case to which this section applies the applicant must give to the Registrar at least 2 months' notice of his intention to apply for a practising certificate. The effect of this amendment is to allow the relevant District Law Society to reduce this period, either generally or in a particular case.

Clause 3 amends various financial limits relating to the Solicitors' Fidelity Guarantee Fund.

Subclause (1) amends section 85 of the principal Act relating to the annual fee payable by solicitors in respect of the Fund. The minimum fee that may be fixed for any year is raised from \$10 to \$20, and the maximum from \$20 to \$50.

Subclause (2) amends section 86, which provides that while the Fund exceeds \$300,000 the annual fee payable under section 85 may be fixed at any amount under \$20. This subclause raises the first figure to \$500,000, and the second to \$50.

Subclause (3) amends section 87 of the principal Act, which empowers the Council of the New Zealand Law Society to impose a levy on solicitors if the Fund is insufficient to meet its liabilities. The section prescribes a maximum of \$20 and this is raised to \$50 by this subclause.

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Subsection (3) provides that no more than \$20 may be required of a solicitor under this section in any one year, and no more than \$100 during the whole period of his practice as a solicitor. *Subclause (3)* repeals this subsection.

Clause 4 inserts a new Part VIA in the principal Act providing for the establishment and operation of a fund to be called the Partners Protection Fund. The purpose of the fund is to indemnify practitioners who suffer financial loss as a result of claims brought against them in respect of the wrongful acts of their partners.

Section 100A defines certain terms used in the new Part.

Section 100B provides that the new Part is to apply to every solicitor who is for the time being practising in partnership with any other solicitor.

Section 100C provides for the constitution of the fund, which is to be the property of the New Zealand Law Society.

Section 100D specifies the moneys that are to be paid into the fund.

Section 100E specifies the moneys that are to be paid out of the fund.

Section 100F provides for the administration of the fund. It is to be administered by the Council of the New Zealand Law Society, but the Council may delegate its powers in relation to the fund to any committee that is for the time being constituted under section 84 of the principal Act to administer the Solicitors' Fidelity Guarantee Fund.

Section 100G requires every solicitor to whom the new Part applies to pay an annual fee to the fund. The amount of the fee is to be fixed from time to time by rules made under this Part, but shall not exceed \$20.

Section 100H provides that solicitors to whom the new Part applies may also be required from time to time to pay a levy to the fund. The Council of the New Zealand Law Society may impose such a levy if it is satisfied that the fund is insufficient to satisfy the Society's liabilities in respect of the fund. The amount levied on each solicitor shall not exceed \$20.

Section 100I provides that the fund is to be applied in reimbursing any solicitor to whom this Part applies who suffers pecuniary loss as a result of defalcation by one of his partners in the course of their business as solicitors. No claim may be made in respect of any defalcation committed before the 1st day of January 1976, and notice of a claim must be given within 12 months after the cause of the claim has arisen.

Section 100J provides that the fund is to be a fund of last resort. Further, the first \$5,000 of any loss to which the provisions of this Part apply must usually be borne by the claimant, but in exceptional cases that amount may be reduced to a sum of not less than \$2,000.

Section 100K provides that the Council of the New Zealand Law Society may from time to time make rules for any of the purposes specified in *subsection (1)*. Such rules will not come into force unless approved by the Governor-General in Council.

Clause 5 inserts a new section 103A in the principal Act to authorise any two or more district law societies, with the prior approval of the New Zealand Law Society, to amalgamate their districts.

Clause 6 amends section 114 (2) of the principal Act which relates to the functions and powers of the New Zealand Law Society. The clause adds a power to facilitate the provision of adequate legal services in particular localities by the subsidising of law offices or legal advice bureaux. By virtue of section 108 (1) of the principal Act this power will also be exercisable by the District Law Societies within their respective districts.

Clause 7 confers on the New Zealand Law Society a general power to impose levies on its members.

Hon. Dr Finlay

LAW PRACTITIONERS AMENDMENT

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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,
5 as follows:

1. **Short Title**—This Act may be cited as the Law Practitioners Amendment Act 1975, and shall be read together with and deemed part of the Law Practitioners Act 1955* (hereinafter referred to as the principal Act).

*Reprinted 1968, Vol. 2, p. 1621
Amendments: 1969, No. 88; 1970, No. 74; 1974, No. 94

2. Withholding of practising certificate—Section 25 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding anything in subsection (1) of this section, the Council of the District Law Society may allow such lesser notice to be given to the Registrar under that subsection as it thinks fit, whether generally or in any particular case.” 5

3. Limits relating to Solicitors’ Fidelity Guarantee Fund increased—(1) Section 85 (1) of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended— 10

(a) By ~~omitting the expression “ten dollars”, and substituting the expression “\$20”:~~

(b) By omitting the expression “twenty dollars”, and substituting the expression “\$50”. 15

(2) Section 86 of the principal Act (as substituted by section 8 of the Law Practitioners Amendment Act 1968) is hereby amended—

(a) By omitting the expression “three hundred thousand dollars”, and substituting the expression “\$500,000”: 20

(b) By omitting the expression “twenty dollars”, and substituting the expression “\$50”.

(3) Section 87 of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended— 25

(a) By omitting from subsection (1) the expression “twenty dollars”, and substituting the expression “\$50”:

(b) By repealing subsection (3).

4. Inserting new Part relating to Partners Protection Fund— 30
The principal Act is hereby amended by inserting, after Part VI, the following Part:

“PART VIA

“THE PARTNERS PROTECTION FUND

“100A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,— 35

“‘Committee’ or ‘committee of management’ means the committee to which the powers of the Council in relation to the fund may be delegated under section 100F of this Act: 40

“Fund’ means the Partners Protection Fund established under this Part of this Act:

“Prescribed’ means prescribed by this Part of this Act or by rules made under this Part of this Act.

5 “100B. **Application of this Part of this Act**—This Part of this Act applies to every solicitor who is for the time being engaged in the practice of his profession in partnership with any other person or persons, but it shall not apply to any solicitor who is not so engaged.

10 “100c. **Establishment of Partners Protection Fund**—
(1) There is hereby established a fund to be known as the Partners Protection Fund.

 “(2) The fund shall be the property of the New Zealand Law Society, and shall be held in trust for the purposes
15 specified in this Part of this Act.

 “100D. **Money payable into fund**—The fund shall consist of—

 “(a) All sums paid to or on account of the fund by solicitors,
20 either as annual contributions or as levies, in accordance with the provisions of this Part of this Act in that behalf:

 “(b) The interest from time to time accruing from the investment of the fund in accordance with rules made under this Part of this Act:

25 “(c) All money recovered by or on behalf of the New Zealand Law Society in the exercise of any right of action conferred by this Part of this Act:

 “(d) Any other money that may be lawfully paid into the fund.

30 “100E. **Expenditure from fund**—There shall from time to time be paid out of the fund, as required,—

 “(a) The amount of all claims, including costs, allowed or established against the fund in accordance with the provisions of this Part of this Act:

35 “(b) All legal expenses incurred in defending claims made against the fund, or otherwise incurred in relation to the fund:

 “(c) All premiums payable in respect of contracts of insurance entered into by the Council pursuant to rules
40 made under this Part of this Act:

“(d) All refunds made to solicitors or to their personal representatives pursuant to rules made under this Part of this Act:

“(e) The expenses involved in the administration of the fund including allowances to members of the Council or the committee of management in respect of their services and their reasonable travelling expenses incurred in connection with the management of the fund: 5

“(f) All other money payable in respect of any matter for which payment is required or deemed necessary by the Council for the purposes of this Part of this Act or the rules made under this Part, including the cost of investigations directed by the committee of management or a District Law Society. 10 15

“100F. **Administration of fund**—(1) Subject to subsection (2) of this section, the fund shall be administered by the Council on behalf of the New Zealand Law Society.

“(2) The Council may by resolution delegate all or any of its powers in relation to the fund to any committee of management for the time being constituted under section 84 of this Act. Any such resolution may be at any time in like manner rescinded or varied. 20

“100G. **Solicitors practising in partnership to pay prescribed fees into fund**—(1) Every solicitor to whom this Part of this Act applies, on making application in any year for a practising certificate, shall, in addition to all other fees then payable by him, pay such fee as may from time to time be prescribed for the purposes of this Part of this Act, being not more than \$20 in any year, and no such certificate shall be issued unless and until the prescribed fee is paid. 25 30

“(2) If any solicitor to whom this Part of this Act is not applicable at the time of his application for a practising certificate thereafter but before the 30th day of June in the year for which that certificate is issued commences to practise as a solicitor in partnership with any other person or persons, he shall thereupon become liable to pay to the fund the amount of the prescribed fee for that year. 35

“100H. **Solicitors may be required to pay levy**—(1) If at any time the fund is not sufficient to satisfy the liabilities of the New Zealand Law Society in relation to the fund the 40

Council may by resolution impose on every solicitor to whom this Part of this Act applies, for payment into the fund, a levy of such amount as it thinks fit, not exceeding \$20.

5 “(2) The amount of every such levy shall become payable on a date and in a manner to be fixed by the Council, and, if not sooner paid, shall be paid together with the next annual fee payable to the fund under section 100G of this Act.

10 “100r. **Application of fund**—(1) Subject to the provisions of this Part of this Act, the fund shall be held and applied for the purpose of reimbursing any solicitor to whom this Part of this Act applies who suffers pecuniary loss by reason of a claim brought against him arising out of the theft by any person with whom the solicitor was, at the time of the theft, practising in partnership, of any money or other valuable property entrusted to that person in the course of his practice as a solicitor, including any money or other valuable property entrusted to him as a solicitor-trustee.

15 “(2) No person shall have any claim against the fund in respect of any claim arising out of any theft committed before the 1st day of January 1976, and, in respect of any claim arising out of any theft committed after that date, no person shall have a claim against the fund unless notice of the claim is given in writing to the Council or committee of management within 12 months after the claimant has suffered pecuniary loss.

25 “100j. **Claims against fund**—(1) The Council may receive and settle any claim against the fund at any time after the cause of the claim has arisen, but no solicitor shall be entitled, without leave of the Council, to commence any action in relation to the fund unless and until he has exhausted all relevant rights of action and other legal remedies available against his defaulting partner or any other person in respect of the loss suffered by him.

30 “(2) No right of action shall lie in relation to the fund in respect of any loss suffered by any solicitor by reason of any theft committed by any of his partners if the solicitor was a party to that theft.

35 “(3) No solicitor shall be entitled to recover from the fund an amount greater than the balance of the loss suffered by him after deducting from the total amount of his loss the amount or value of all money or other benefits received or receivable by him from any source other than the fund in reduction of his loss.

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“(4) No amount shall be paid or payable out of the fund as interest on the amount of any judgment obtained or of any claim admitted against the fund.

“(5) Notwithstanding any of the foregoing provisions of this section, the total amount that would otherwise be payable out of the fund to the partner or partners of a defaulting solicitor shall be reduced by the sum of \$5,000: 5

“Provided that in exceptional cases the Council may determine that the amount shall be reduced by such sum (being not less than \$2,000) as it thinks fit. 10

“(6) Notwithstanding any other provision of this Part of this Act, the Council may set off against the sum that would otherwise be payable out of the fund to any solicitor the amount of any claim that the New Zealand Law Society may be entitled to against that solicitor in respect of the Solicitors Fidelity Guarantee Fund. 15

“100k. Rules for purposes of this Part of Act—(1) For the purposes of this Part of this Act the Council may from time to time make rules for all or any of the following purposes:

“(a) Applying any of sections 79, 82, 86, 88, and 91 to 99 of this Act to the fund, with any necessary modifications and with such other modifications (if any) as may be specified in the rules: 20

“(b) Prescribing the amount of the annual contributions to the fund to be paid by solicitors to whom this Part of this Act applies: 25

“(c) Providing for the investment of so much of the fund as is not immediately required for the purposes of the fund:

“(d) Prescribing forms of notice to be given to the Council in relation to claims against the fund, and the conditions subject to which and the extent to which the Council may settle any such claims without recourse being had to legal proceedings: 30

“(e) Generally, for such other matters as may be considered necessary for the purpose of protecting the fund or of giving full effect to the intent of this Part of this Act. 35

“(2) Rules made under this section shall not come into force unless they are approved by the Governor-General in Council.” 40

5 **5. Amalgamation of two or more districts**—The principal Act is hereby amended by inserting, after section 103, the following section:

“103A. (1) Subject to the succeeding provisions of this section, any two or more District Law Societies may, with the prior consent of the New Zealand Law Society, agree in writing to amalgamate their respective districts.

10 “(2) No such agreement shall come into force unless and until every District Law Society affected thereby has ratified the agreement by a resolution passed at a general meeting of the Society, and thereafter a copy of the agreement, together with notice of every such ratification thereof, has been published in the *Gazette*.

15 “(3) Every such written agreement shall make provision for the following matters:

“ (a) The transfer to one of the Societies affected (in this section referred to as the “continuing Society”) of the property and liabilities of the other or others of such Societies:

20 “ (b) The dissolution, without any further formal act, of each of the Societies affected, other than the continuing Society:

“ (c) The continuation or alteration, as the case may be, of the name of the continuing Society:

25 “ (d) All such incidental, consequential, and supplementary matters as are necessary to ensure that the amalgamation shall be fully and effectively carried out.

30 “(4) For the purposes of this section, the term ‘property’ includes property, rights, powers, and functions of every description, and the term ‘liabilities’ includes duties.

35 “(5) Upon publication of a copy of the agreement and notice of every ratification thereof in the *Gazette* in accordance with subsection (2) of this section, every person who, by virtue of section 105 of this Act, is a member of one of the Societies affected, other than the continuing Society, shall become and be deemed to be a member of the continuing Society, subject to the provisions of that section.”

40 **6. Functions and powers of Society**—Section 114 (2) of the principal Act is hereby amended by adding the following paragraph:

“(i) To provide, whether by way of financial assistance or otherwise, for the establishment, in such localities as the Society may from time to time think fit, of law offices or legal advice bureaux, whether it is intended that such offices or bureaux shall be operated by a practitioner or firm of practitioners on his or their own account or by members of the Society on a voluntary or rostered basis, or otherwise; and, from time to time as the Society may consider necessary or desirable, to subsidise the operation of such offices or bureaux to the intent that as full and proper a legal service as may be practicable shall be provided for members of the public in such localities.”

7. Society may impose annual levy on members—(1) The Society, if authorised by its rules to do so, may by resolution impose on all members of the Society an annual levy, not exceeding in any year such sum as it may from time to time determine in accordance with its rules for each member.

(2) Subject to subsection (1) of this section, any resolution under this section may provide—

- (a) For payment of the levy by all members, or by any specified class or classes of members, or by members practising in any specified part or parts of New Zealand;
- (b) For the payment of different amounts by different classes of members or by members practising in different parts of New Zealand.

(3) The amount of any such levy shall be payable in such manner as the rules of the Society may prescribe or authorise, and shall be recoverable on behalf of the Society as a debt due to it.