

House of Representatives  
**Supplementary Order Paper**

**Wednesday, 17 October 2012**

**Lawyers and Conveyancers Amendment Bill**

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*Proposed amendments*

Hon Judith Collins, in Committee, to move the following amendments:

**Preliminary clauses**

*Clause 2*

In *clause 2(1)*, replace “**1 July 2011**” (line 5 on page 2) with “**3 December 2012**”.

**Part 1**

**Amendments relating to Queen’s Counsel**

*Clause 4*

In *clause 4(a)*, replace “**30 June 2011**” (line 16 on page 2) with “**2 December 2012**”.

*Clause 6: new section 118*

In *clause 6, new section 118*, replace “**30 June 2011**” (line 13 on page 3) with “**2 December 2012**”.

In *clause 6, new section 118*, replace “**1 July 2011**” (line 15 on page 3) with “**3 December 2012**”.

*Clause 6: new section 118C*

In *clause 6, new section 118C(1)*, replace “**30 June 2011**” (line 20 on page 5) with “**2 December 2012**”.

In *clause 6, new section 118C(2)*, replace “**30 June 2011**” (line 27 on page 5) with “**2 December 2012**”.

In *clause 6, new section 118C(4)*, replace “**30 June 2011**” (line 37 on page 5) with “**2 December 2012**”.

In *clause 6, new section 118C(6)*, replace “**30 June 2011**” (line 25 on page 6) with “**2 December 2012**”.

*Clause 6: new section 118D*

In *clause 6, heading to new section 118D*, replace “**1 July 2011**” (line 29 on page 6) with “**3 December 2012**”.

In *clause 6, new section 118D(1)*, replace “**30 June 2011**” (line 31 on page 6) with “**2 December 2012**”.

In *clause 6, new section 118D(2)*, replace “**30 June 2011**” (line 34 on page 6) with “**2 December 2012**”.

In *clause 6, new section 118D(4)*, replace “**30 June 2011**” (line 4 on page 7) with “**2 December 2012**”.

In *clause 6, new section 118D(5)*, replace “**30 June 2011**” (line 22 on page 7) with “**2 December 2012**”.

In *clause 6, new section 118D(6)*, replace “**30 June 2011**” (line 27 on page 7) with “**2 December 2012**”.

## Part 2

### Amendments relating to other matters

*Clause 7*

After *clause 7(d)* (after line 20 on page 10), insert:

- (e) make clear the Disciplinary Tribunal’s and the High Court’s powers in respect of a person enrolled as a barrister and solicitor but not practising as a barrister, a barrister and solicitor, or a solicitor:
- (f) reduce requirements to notify and report to certain related persons:
- (g) reduce the quorum for the making of interim name suppression orders (to align it with the quorum for the making of interim suspension from practice orders) by the Disciplinary Tribunal:
- (h) make clear the Disciplinary Tribunal’s jurisdiction over former lawyers and former conveyancing practitioners:
- (i) make the Dean of the Law School at the Auckland University of Technology a member of the New Zealand Council of Legal Education:
- (j) repeal spent transitional provisions relating to the Disciplinary Tribunal.

*New heading and clauses 9A and 9B*

After *clause 9* (after line 31 on page 11), insert:

*Disciplinary Tribunal's and High Court's powers  
in respect of persons enrolled*

**9A Striking off and restoration of names by order of  
Disciplinary Tribunal or High Court**

Section 58(1) is amended by omitting “a barrister and solicitor” and substituting “a person enrolled as a barrister and solicitor of the High Court under or by virtue of this Act”.

**9B Removal from roll if deemed registration ceases in some  
circumstances**

Section 59(1) is amended by omitting “a barrister and solicitor” and substituting “a person enrolled as a barrister and solicitor of the High Court under or by virtue of this Act”.

*New headings and clauses 11 to 25*

After *clause 10* (after line 17 on page 12), insert:

*Reducing requirements to notify and report  
to certain related persons*

**11 Notice of determination**

Section 158 is amended by inserting the following subsection after subsection (2):

“(2A) A duty under subsection (1) (read with sections 6 and 193 to 197) to forthwith give written notice to each member of a class (of related persons) in column 1 of a row of the following table is performed sufficiently by forthwith giving written notice only to the individual or smaller class (of related persons) in column 2 of that row:

	<b>Column 1 Class</b>	<b>Column 2 Individual or smaller class</b>
1	All persons who practise in partnership with the practitioner	Any 1 of those persons who practise in partnership with the practitioner
2	All directors of an incorporated law firm or incorporated conveyancing firm in which the practitioner practises	Any 1 of those directors of that firm
3	All shareholders of an incorporated law firm or incorporated conveyancing firm in which the practitioner practises	All shareholders of that firm who are shareholders of that firm in respect of shares that confer voting rights

**12 Obligation to report outcomes and recommendations**

Section 213 is amended by inserting the following subsection after subsection (2):

“(2A) A duty under subsection (1)(a)(iii) (read with sections 6 and 193 to 197) to report the outcome of a review to each member of a class (of related persons) in column 1 of a row of the following table is performed sufficiently by reporting that outcome only to the individual or smaller class (of related persons) in column 2 of that row:

	<b>Column 1 Class</b>	<b>Column 2 Individual or smaller class</b>
1	All persons who practise in partnership with the practitioner	Any 1 of those persons who practise in partnership with the practitioner
2	All directors of an incorporated law firm or incorporated conveyancing firm in which the practitioner practises	Any 1 of those directors of that firm
3	All shareholders of an incorporated law firm or incorporated conveyancing firm in which the practitioner practises	All shareholders of that firm who are shareholders of that firm in respect of shares that confer voting rights

*Quorum for Disciplinary Tribunal  
interim name suppression orders, etc*

### 13 Quorum

Section 235 is amended by repealing subsection (4) and substituting the following subsections:

“(4) Subsection (1) is subject to **subsection (5)** (which permits a reduced, specified 3-member quorum for specified purposes) and section 244(2) (which specifies minimum attendance and voting requirements for the making of certain orders).

“(5) For the purposes specified in **section 240(4)** (which relates to interim name suppression orders), and for the purposes of section 245 (which relates to interim suspension from practice), the quorum at any sitting of the Disciplinary Tribunal or a division of the Disciplinary Tribunal is (not only compliance with subsection (2)(b) of this section, but also) the following 3 members of the Disciplinary Tribunal:

“(a) the chairperson of the Disciplinary Tribunal; and

“(b) a lay member of the Disciplinary Tribunal; and

“(c) either—

“(i) a member of the Disciplinary Tribunal appointed under section 228(d) (if the practitioner to whom the charge relates is a lawyer); or

“(ii) a member of the Disciplinary Tribunal appointed under section 228(e) (if the practitioner to whom the charge relates is a conveyancing practitioner).”

#### **14 Restrictions on publication**

- (1) Section 240(1)(c) is amended by omitting “subject to subsection (3),”.
- (2) Section 240 is amended by inserting the following subsection after subsection (2):  
“(2A) Subsections (1)(c) and (2) are subject to **subsection (4)**.”
- (3) Section 240 is amended by adding the following subsection:  
“(4) For the purposes of exercising the Disciplinary Tribunal’s powers under subsections (1)(c) and (2) to make or revoke, before the start of the hearing of the charge, an order prohibiting the publication of the name or any particulars of the affairs of the person charged or any other person, the quorum at any sitting of the Disciplinary Tribunal or a division of the Disciplinary Tribunal is, despite section 235(1), the 3-member quorum specified in **section 235(5)**.”

#### *Disciplinary Tribunal’s jurisdiction over former practitioners*

#### **15 Orders that may be made where charge proved**

Section 242(1) is amended by repealing paragraphs (c) to (g) and substituting the following paragraphs:

- “(c) if the person is a lawyer or former lawyer, an order that the person’s name be struck off the roll:
- “(d) if the person is a conveyancing practitioner or former conveyancing practitioner, an order that the person’s registration as a conveyancer be cancelled:
- “(e) if the person is a lawyer or former lawyer, an order that the person be suspended from practice as a barrister or as a solicitor, or as both, for such period, not exceeding 36 months, as the Disciplinary Tribunal thinks fit:
- “(f) if the person is a conveyancing practitioner or former conveyancing practitioner, an order that the person be suspended from practice as a conveyancing practitioner for such period, not exceeding 36 months, as the Disciplinary Tribunal thinks fit:
- “(g) if the person is a practitioner or former practitioner, an order prohibiting the person from practising on his or her own account, whether in partnership or otherwise, until authorised by the Disciplinary Tribunal to do so.”

#### **16 Making of order for striking off roll, cancellation of registration, or suspension from practice**

- (1) Section 244(1) is amended by inserting “or former practitioner” after “practitioner” in the first, second, and third places where it appears.

- (2) Section 244(2)(a), (b), and (c) are amended by inserting “or former practitioner” after “practitioner”.
- (3) Section 244(3) is amended by inserting “or former practitioner” after “practitioner” in the first, second, and third places where it appears.

*Quorum for Disciplinary Tribunal  
interim name suppression orders, etc*

**17 Interim suspension from practice**

Section 245 is amended by repealing subsection (7) and substituting the following subsection:

- “(7) For the purposes of exercising the Disciplinary Tribunal’s powers under this section, the quorum at any sitting of the Disciplinary Tribunal or a division of the Disciplinary Tribunal is, despite section 235(1), the 3-member quorum specified in **section 235(5)**.”

*Disciplinary Tribunal’s jurisdiction  
over former practitioners*

**18 Order for striking off, cancellation of registration, restoration, or suspension to be filed in High Court**

- (1) Section 255(1)(a) is amended by inserting “or former lawyer” after “lawyer”.
- (2) Section 255(1)(c) is amended by inserting “or former practitioner” after “practitioner”.
- (3) Section 255(3) is amended by inserting “or former practitioner” after “practitioner” in the first place where it appears.

**19 Notice of order for striking off, cancellation of registration, restoration, or suspension to be published in Gazette**

- (1) Section 256(1)(a)(i) is amended by omitting “practitioner” and substituting “lawyer or former lawyer”.
- (2) Section 256(1)(a)(iii) is amended by inserting “or former practitioner” after “practitioner”.
- (3) Section 256(2)(a)(i) is amended by omitting “practitioner” and substituting “lawyer or former lawyer”.
- (4) Section 256(2)(a)(iii) and (iv) are amended by inserting “or former practitioner” after “practitioner”.
- (5) Section 256(3)(a) is amended by omitting “practitioner” and substituting “lawyer or former lawyer”.
- (6) Section 256(3)(d) is amended by inserting “or former practitioner” after “practitioner”.

*Disciplinary Tribunal's and High Court's powers  
in respect of persons enrolled*

**20 Lawyer's name may be struck off on application to High Court**

Section 266 is amended by omitting “a barrister and solicitor” and substituting “a person enrolled as a barrister and solicitor of the High Court under or by virtue of this Act”.

**21 High Court may dismiss application, or reserve case for Court of Appeal**

- (1) Section 267(1) is amended by omitting “a barrister and solicitor” and substituting “a person enrolled as a barrister and solicitor of the High Court under or by virtue of this Act”.
- (2) Section 267(2)(b) is amended by omitting “the barrister and solicitor” and substituting “the person enrolled”.

**22 Inherent jurisdiction of High Court**

- (1) Section 268(1) is amended by omitting “barristers and barristers and solicitors” and substituting “a person enrolled under or by virtue of this Act as a barrister and solicitor of the High Court (whether or not the person is practising as a barrister and solicitor, or as a barrister but not also as a solicitor)”.
- (2) Section 268(2) is amended by omitting “any barrister and any barrister and solicitor from practice” and substituting “from practice a person enrolled under or by virtue of this Act as a barrister and solicitor of the High Court (whether or not the person is practising as a barrister and solicitor, or as a barrister but not also as a solicitor)”.

**23 New section 269 substituted**

Section 269 is repealed and the following section substituted:

**“269 Notice of order for striking off or suspension to be published in *Gazette***

- “(1) This section applies if the Court of Appeal or the High Court makes—
- “(a) an order that the name of a person enrolled as a barrister and solicitor of the High Court under or by virtue of this Act be struck off the roll; or
  - “(b) an order that a person enrolled as a barrister and solicitor of the High Court under or by virtue of this Act be suspended from practice.
- “(2) The Registrar of the court in which the order is made must forthwith cause a notice stating the date and effect of the order to be published in the *Gazette*.”

*New Zealand Council of Legal Education: Membership***24 Membership**

Section 282(1)(d) is amended by inserting “the Auckland University of Technology,” after “the University of Auckland,”.

*Repeal of spent transitional provisions relating to  
Disciplinary Tribunal***25 Heading and sections 391 to 393 repealed**

- (1) Sections 391 to 393 and the heading above section 391 are repealed.
  - (2) Section 234(5) is consequentially repealed.
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**Explanatory note**

This Supplementary Order Paper sets out amendments to the Lawyers and Conveyancers Amendment Bill.

The amendments to *clause 2(1)* and *Part 1* ensure that the Queen’s Counsel amendments (which, in the Bill as reported from the Justice and Electoral Committee on 13 April 2011, come into force on 1 July 2011) come into force on 3 December 2012.

The amendments to *Part 2* adjust the Lawyers and Conveyancers Act 2006 to—

- make clear the Disciplinary Tribunal’s and the High Court’s powers in respect of a person enrolled as a barrister and solicitor but not practising as a barrister, a barrister and solicitor, or a solicitor; and
  - reduce requirements to notify and report to certain related persons; and
  - reduce the quorum for the making of interim name suppression orders (to align it with the quorum for the making of interim suspension from practice orders) by the Disciplinary Tribunal; and
  - make clear the Disciplinary Tribunal’s jurisdiction over former lawyers and former conveyancing practitioners; and
  - make the Dean of the Law School at the Auckland University of Technology a member of the New Zealand Council of Legal Education;
  - repeal spent transitional provisions relating to the Disciplinary Tribunal.
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