

LEGAL PRACTITIONERS (WAR SERVICE) AMENDMENT ACT.

Act No. 38, 1940.

George VI. An Act to make certain provisions with respect
No. 38, 1940. to solicitors who are members of His Majesty's Naval, Military or Air Forces; for this purpose to amend the Legal Practitioners Act, 1898-1936, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 26th November, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title and construction. **1.** (1) This Act may be cited as the "Legal Practitioners (War Service) Amendment Act, 1940."

(2)

(2) This Act shall be read and construed with the ^{No. 38, 1940.}
Legal Practitioners Act, 1898-1936.

2. In this Act unless the context or subject matter ^{Definitions.}
otherwise indicates or requires—

“Solicitor” includes a conveyancer.

“Solicitor soldier” means a solicitor who—

- (a) (i) was the holder of an annual practising certificate at the date upon which he became a member of His Majesty’s naval, military or air forces bound to continuous service as referred to in paragraph (b) of this definition; or
- (ii) was the holder of an annual practising certificate on the thirtieth day of June, one thousand nine hundred and forty, or was admitted as a solicitor after that day; and
- (b) being a member of His Majesty’s naval, military or air forces, is bound to continuous service with such forces for the duration of the present war between His Majesty and Germany and her allies, whether or not he has agreed to serve or does serve beyond the limits of the Commonwealth of Australia and those of any Territory under the authority of the Commonwealth.

“Period of war service” in its application to any particular solicitor means the period commencing on the first day of July, one thousand nine hundred and forty, or on the first day of July next preceding the date upon which the solicitor becomes a solicitor soldier, whichever is the later date, and ending on the thirtieth day of June in the year next following the declaration of peace in the present war between His Majesty and Germany and her allies, or on the thirtieth day of June in the year next following the date upon which the solicitor soldier ceases to be bound to continuous service as a member of His Majesty’s naval, military or air forces, whichever is the earlier.

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Contributions to Solicitors' Fidelity Guarantee Fund, etc.

3. (1) A solicitor soldier shall be relieved of any obligation, to which he would, but for this subsection, have been subject, to pay the prescribed contribution to and any levy imposed in respect of the Solicitors' Fidelity Guarantee Fund for any year during his period of war service.

(2) A solicitor soldier shall, subject to section five of this Act, be deemed, for all purposes of or relating to the Legal Practitioners Act, 1898-1936, to be the holder of an annual practising certificate as a solicitor who, for the time being, is engaged in the practice of his profession, either on his own account or in partnership with any other solicitor or, as the case may require, as a solicitor who is not so engaged, and to have paid the appropriate annual practising fee in respect of each year during his period of war service.

(3) The amount of any annual practising fee or any annual contribution to or levy imposed in respect of the Solicitors' Fidelity Guarantee Fund which has been paid by any solicitor soldier for any year during his period of war service shall, upon application made in writing to the secretary, be refunded to the solicitor soldier in such manner as he may direct.

This subsection shall extend to payments made before as well as to payments made after the commencement of this Act.

Management and conduct of practice of solicitor soldier.

4. (1) (a) A solicitor soldier may, from time to time, by instrument in writing, authorise any other solicitor to manage and conduct the practice of such solicitor soldier during his period of war service: Provided that not more than one such authorisation shall be made to take effect at any one time.

Any such authorisation is in this section hereinafter referred to as a "delegation" and the solicitor authorised is in this section hereinafter referred to as a "delegate."

(b) A solicitor soldier who has made a delegation under this section may, by instrument in writing, revoke the delegation.

(c) A delegate may, by instrument in writing, resign his office as delegate.

(d)

(d) Every such instrument in writing shall be registered at the office of the Prothonotary by filing the original instrument or a verified copy thereof.

(e) Any such instrument in writing shall take effect as from the date upon which it is so registered or from a later date to be specified in the instrument.

(f) Rules of court of the Supreme Court may be made prescribing all matters necessary or convenient to be prescribed for carrying this section into effect.

(2) Where the solicitor soldier who makes a delegation under this section is—

(a) an attorney solicitor and proctor of the court—the delegate shall be an attorney solicitor and proctor of the court entitled to practise as a solicitor either on his own account or in partnership with some other solicitor;

(b) a conveyancer—the delegate shall be either an attorney solicitor and proctor of the court entitled to practise as a solicitor either on his own account or in partnership with some other solicitor, or a conveyancer entitled to practise as such either on his own account or in partnership with some other conveyancer.

(3) A delegation under this section shall determine if—

(a) the solicitor soldier who made the delegation ceases to be, or to be deemed to be, the holder of an annual practising certificate; or

(b) the delegate ceases to hold the qualifications referred to in subsection two of this section.

Where a delegation is determined by operation of this subsection, the Prothonotary shall enter notice of such determination in the register kept by him under subsection one of this section.

(4) A delegate, when acting within the scope of his authority as such, may exercise, in or in relation to the management and conduct of the practice, all or any of the powers and functions which the solicitor soldier might have exercised if personally present and, in the exercise of those powers and functions, shall act in the name and on behalf of the solicitor soldier.

(5)

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(5) A delegate shall, when acting within the scope of his authority as such, be deemed for all purposes to be the solicitor soldier whose practice he has been authorised to manage and conduct.

(6) The solicitor soldier and the delegate shall be jointly and severally liable for and with respect to all matters arising in or in connection with the management and conduct by the delegate, when acting within the scope of his authority as such, of the practice of the solicitor soldier.

The delegate shall be personally liable for and with respect to all matters arising in or in connection with the management and conduct by him, when acting outside the scope of his authority as delegate, of the practice of the solicitor soldier.

The delegate shall, for and with respect to all matters arising in or in connection with the management and conduct by him of the practice of the solicitor soldier, be subject to the jurisdiction, powers and authorities of the court and of the statutory committee in all respects as if he were the solicitor soldier.

(7) Nothing in this section shall render the solicitor soldier liable to any disciplinary or punitive action by the court or the statutory committee for any professional misconduct of the delegate.

cf. Act No.
6, 1919,
s. 160.

(8) (a) A delegation under this section shall remain in force until notice of the death of the solicitor soldier or until notice of other revocation of the delegation is received by the delegate.

(b) Every act or thing done or suffered in good faith by the delegate in or in connection with the management and conduct of the practice of the solicitor soldier, after the death or other revocation as aforesaid, and before notice thereof has been received by the delegate, shall be as effectual in all respects as if such death or other revocation had not happened or been made.

(c) A statutory declaration by the delegate in or to the effect of the form in the Schedule to this Act, if made at the time such act or thing was done or suffered or at any time thereafter, shall be taken to be conclusive proof of such non-revocation at the time when such act

or

or thing was so done or suffered, in favour of all persons dealing with the delegate in good faith without notice of such death or revocation.

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(d) A solicitor soldier who has made a delegation pursuant to this section shall, for the purposes of this Act, be deemed to remain alive until definite news of his death has been received, or until such death has been presumed by a court of competent jurisdiction, and the fact that he is reported "missing" or "missing and believed to be killed" or any similar report shall not be construed as giving to persons having knowledge of such report actual notice of his death, although in fact it has occurred.

(9) In this section "revocation" includes the determination of the delegation otherwise than by the expiration of the period for which it was made.

5. (1) Nothing in this Act contained shall prejudice, diminish or affect the jurisdiction, powers and authorities which are exercisable by the court over solicitors or the jurisdiction, powers and authorities which are conferred on the statutory committee by the Legal Practitioners Act, 1898-1936.

Jurisdiction
of court
over
solicitors.

(2) Without prejudice to the generality of subsection one of this section, the council may exercise, in relation to any solicitor soldier, any of the powers or authorities conferred on it by section seventy-one of the Legal Practitioners Act, 1898-1936.

Where, in the exercise of those powers or authorities, the council determines that an annual practising certificate should not be issued to a solicitor soldier or that an annual practising certificate issued or deemed to have been issued to a solicitor soldier should be cancelled, then, subject to any appeal under section seventy-two of that Act, such solicitor soldier shall no longer be deemed to be the holder of an annual practising certificate.

6. This Act shall continue in force for the duration of the present war between His Majesty and Germany and her allies and until the thirtieth day of June in the year next following the year in which peace is declared and no longer.

Duration of
this Act.

SCHEDULE.

Sec. 4.

DECLARATION OF NON-REVOCATION OF DELEGATION.

I (*name*).....of.....(*address*)
(*occupation*) do solemnly and sincerely
 declare that:—

(1) I am the delegate appointed by.....(*name of solicitor
 soldier*) pursuant to the Legal Practitioners (War Service)
 Amendment Act, 1940.

(2) I have not received any notice or information of the revocation
 of the delegation by death, lunacy, unsoundness of mind, bank-
 ruptcy, act of the person making the delegation, or otherwise.

(3) I have not ceased to hold the qualification in virtue of which
 I was appointed delegate.

AND I make this solemn declaration conscientiously believing the
 same to be true and by virtue of the provisions of the Oaths Act,
 1900.
