

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Wednesday, 24 November 1982

LAW PRACTITIONERS BILL

Proposed Amendments

HON. MR McLAY, in Committee, to move the following amendments:

Clause 2: To insert on page 6, after the definition of the term "practitioner", the following definition:

"Prescribed", in relation to a fee, means fixed in accordance with this Act:

Clause 6: To omit subclause (4A) on page 9, subclause (5) on pages 9 and 10, and subclause (6) on page 10.

Proposed new clause 6A: To insert on page 10, after clause 6, the following clause:

6A. Application of Act to law offices and legal advice bureaux—(1) For the purposes of subsections (1) (b) and (2) of section 65 of this Act (which relate to a person under suspension or struck off the roll acting in a solicitor's business) the operation by any person or body of persons of any office or bureau to which section 6 of this Act applies shall be taken to be the carrying on of the business of a solicitor; and those provisions shall, with all necessary modifications, apply accordingly.

(2) For the purposes of section 66 (2) of this Act (which relates to the employment of a person under suspension or struck off the roll) the operation by a solicitor of any such office or bureau shall be taken to be the carrying on of his business as a solicitor; and that provision shall, with all necessary modifications, apply accordingly.

(3) Every person, not being a practitioner but being an operator or one of the operators of any such office or bureau, commits an offence against this Act who, without the sanction of the Court or of the New Zealand Disciplinary Tribunal, employs or permits to act as a clerk or otherwise in or about the business of the office or bureau any other person whom he knows to be under suspension from practice as a barrister or solicitor or to have had his name struck off the roll otherwise than at his own request.

(4) Part VI of this Act (which relates to solicitors' trust accounts) and any rules made under section 16 (2) (e) of this Act shall, with all necessary modifications, apply with respect to the operation of any such office or bureau.

(5) A District Council, a complaints committee, and the New Zealand Disciplinary Tribunal shall have jurisdiction under Part VII of this Act to deal with any complaint or matter relating to the conduct of any person employed in any such office or bureau as if he were an employee of a practitioner; and the provisions of that Part shall, so far as they are applicable and with all necessary modifications, apply accordingly.

(6) For the purposes of subsection (5) of this section, an order may be made or revoked under subsection (2) or subsection (6) of section 115 of this Act in respect of the employment of a person in any such office or bureau, whether or not the order or revocation relates also to his employment by a practitioner; and every operator of any such office or bureau (not being a practitioner) who knowingly acts in contravention of any order made under the said subsection (2) commits an offence against this Act.

(7) Part IX of this Act (which relates to the Solicitors' Fidelity Guarantee Fund) shall, with all necessary modifications, apply to any such office or bureau as if the operation of the office or bureau were the carrying on by a solicitor of the practice of his profession on his own account without partners; and for the purposes of that Part, as applied by this subsection, all fees and levies shall be payable in the same manner and at the same times as they are payable by solicitors.

Clause 16, subclause (2), paragraph (g): To omit from line 3 on page 15 the word "Regulation", and substitute the word "Regulating".

Clause 26, subclause (1): To omit all the words in line 43 on page 22, and substitute the words "specified in paragraphs (d) to (g) of subsection (2), and in subsection (2A) of that".

Clause 30, subclause (2), paragraph (c): To omit the paragraph on page 24, and substitute the following paragraph:

(c) Four persons to be appointed on the recommendation of the Council of the New Zealand Law Society:

Clause 35, subclause (2): To omit from line 8 on page 26 the expression "6", and substitute the expression "7".

Clause 45, subclause (1): To omit from line 6 on page 31 the words "or oaths".

Clause 54: To omit from lines 29 and 30 on page 35 the words "In the case of a person commencing practice as a solicitor,".

To omit subclause (7) (all the words in lines 16 to 26 on page 37).

Clause 68: To omit the clause on pages 48 to 50, and the heading immediately above that clause.

Clause 77, subclause (1): To insert in line 29 on page 55, after the word "shall", the words ", out of the funds of the donor available to him,".

Clause 85, subclause (6), paragraph (c): To omit from line 8 on page 62 the word "of", and substitute the word "or".

Clause 87, paragraph (b): To omit from line 18 on page 64 the words "that provision", and substitute the words "section 85 of this Act".

Clause 110, subclause (3): To omit from line 9 on page 81 the word "practices", and substitute the word "practises".

Clause 113, subclause (4): To omit from line 9 on page 84 the word “has”, and substitute the word “had”.

Clause 114, subclause (1): To omit from line 24 on page 84 the word “suitable”, and substitute the words “fit and proper”.

Clause 115, subclause (6): To omit from line 27 on page 85 the word “suitable”, and substitute the words “fit and proper”.

Clause 117, subclause (2): To omit from line 16 on page 86 the word “suitable”, and substitute the words “fit and proper”.

Proposed new clause 136A: To insert on page 94, after clause 136, the following new clause:

“136A. Trusteeships held by practitioner suspended or struck off—(1) If under this Part of this Act a practitioner is suspended from practice or his name is struck off the roll, the District Council may serve on him, or on any of his partners or employees, or on any person conducting his practice, a notice signed by 2 members of the District Council requiring the person on whom the notice is served to supply to the District Council, so far as it is practicable to do so,—

- (a) A list of all wills in which the practitioner is appointed as a trustee, and the names and addresses of the testators;
- (b) A list of all other trusteeships that are held by the practitioner under any trust or are to be held by him on the occurrence of any event;
- (c) Such other particulars as may be necessary to enable the District Council to exercise its powers under subsection (2) of this section.

(2) Notwithstanding anything in this Act, on receipt of any list referred to in subsection (1) of this section the District Council may notify the testator under any such will, or the other trustee or trustees under any such trust, as the case may require, that the practitioner has been suspended from practice or, as the case may be, that his name has been struck off the roll.

(3) In this section the term “trust” means a trust of any kind; and includes the duties incident to the office of a personal representative; and “trustee” and “trusteeship” have corresponding meanings.

(4) Every person commits an offence against this Act who, without lawful justification or excuse, fails to comply with any requirement of a District Council in any notice given under subsection (1) of this section.

EXPLANATORY NOTE

Clause 2: The amendment is consequential upon amendments to clauses 52 and 59 (1).

Clause 6, and the proposed clause 6A: The amendments constitute a revision of clause 6 to clarify it, and to ensure the proper application of various provisions of the Bill to law offices and legal advice bureaux to which clause 6 applies. The intention is to ensure, in particular, that the same disciplinary code applies to such bodies as applies to ordinary legal practice.

Clause 16 (2) (g): The amendment corrects a typographical error.

Clause 26 (1): The amendment is consequential upon changes to clause 16.

Clause 30 (2) (c): The amendment relates to appointments to the Council of Legal Education. As originally introduced, the Bill provided for 4 persons to be appointed on the recommendation of the Council of the New Zealand Law Society. The Statutes Revision Committee changed this to appointment after consultation by the Attorney-General with the Council. The amendment reverts to the original position.

Clause 35 (2): The amendment increases from 6 to 7 the quorum necessary for the conduct of business at meetings of the Council of Legal Education, consequent upon the increase in its membership.

Clause 45 (1): The amendment is consequential upon the omission of subclause (2).

Clause 54: The first amendment is consequential upon the removal of barristers from this clause.

The second amendment removes the specific reference to 12 months' post-enrolment experience in a legal office. The effect is to leave the experience of an applicant in any case to be weighed under subclause (6) (b), without any special emphasis being given to one particular kind of experience.

Clause 68, and the proposed clause 136A: The present requirement (*clause 68*) on all solicitors to keep a wills register is replaced (in *clause 136A*) by an obligation, where a solicitor is suspended or struck off, to supply certain information relating to wills and trusteeships.

Clause 77 (1): The amendment relates to the position where solicitor A is unable, for one reason or another, to conduct his practice, and solicitor B takes over as a sort of locum tenens. The amendment makes it clear that the liability of solicitor B to pay the practising fees and related charges in respect of the practice is limited to the funds of solicitor A.

Clauses 85 (6) (c), 87 (b), 110 (3), and 113 (4): The amendments are of a correcting and drafting nature only.

Clauses 114 (1), 115 (6), and 117 (2): The amendments revert to the original test of "fit and proper" (rather than "suitable" as recommended by the Statutes Revision Committee) in respect of the striking off, or the restoration to, the roll. This keeps the test consistent with that for admission under *clause 45 (1)*.

