

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1926.

---

---

# A BILL

To amend the law relating to solicitors and conveyancers; to provide for the admission of conveyancers as solicitors and to discontinue the grant of certificates to persons to practise as conveyancers; to provide for the regulation and management of trust accounts of solicitors and conveyancers; to make better provision for the investigation of charges of professional misconduct; to amend the Legal Practitioners Act, 1898, and certain other Acts; and for purposes connected therewith.

**B**E 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 :—

**1.** (1) This Act may be cited as the "Legal Practitioners (Amendment) Act, 1926." Short title.

(2) This Act shall be read and construed with the Legal Practitioners Act, 1898, which is referred to in this Act as the Principal Act.

**2.** (1) Section one of the Principal Act is amended by omitting the words and figures "Part IV—Conveyancers—ss. 16–20" and inserting in lieu thereof the words and figures "Part IV—Conveyancers—ss. 16–20A." Headings and interpretation. Act 1898, No. 22, ss. 1, 3, amended.

(2) At the end of section one of the Principal Act the following headings are inserted :—

Part VII.—Trust Accounts—ss. 41–45.

Part VIII.—The Solicitors' Statutory Committee—ss. 46–55.

(3) In section three of the Principal Act after the definition of barrister the following definitions are inserted :—

"Chief Justice" means the Chief Justice of the Court and includes an Acting Chief Justice and in the absence from duty of the Chief Justice and Acting Chief Justice means the senior puisne judge of the Court.

"Conveyancer" means a certificated conveyancer to whom a certificate has been granted under this Act.

"Council" means the Council of the Institute.

(4) In section three of the Principal Act after the definition of Court the following definition is inserted :—

"Institute" means the Incorporated Law Institute of New South Wales.

3. (1) After section thirteen of the Principal Act the following section is inserted :—

Act 1898,  
No. 22.  
New sections.  
Con-  
veyancers.

13A. (1) A conveyancer who has attained the age of thirty years and is desirous of being admitted as a solicitor shall not be required to pass any examination before entering into articles of clerkship, or to serve under such articles for more than four years.

(2) If a conveyancer who has attained the age of thirty years and is desirous of being admitted as a solicitor—

(a) has for at least five years since he became entitled to practise as a conveyancer been a managing clerk in the office of a solicitor practising in New South Wales; or

(b) has for at least ten years practised as a conveyancer in New South Wales,  
such conveyancer shall not be required to enter into or serve under any articles of clerkship.

(3) Subject to the provisions of this section a conveyancer who is desirous of being admitted as a solicitor shall pass such examinations in law and comply with such conditions as may be prescribed, and thereupon, if the Court is satisfied that he is a fit and proper person to practise as a solicitor, he shall, upon having his name on his own application removed from the roll of conveyancers, be entitled to be admitted as a solicitor.

(4) This section shall apply to conveyancers to whom a certificate has been granted either before or after the commencement of the Legal Practitioners (Amendment) Act, 1926.

(2) After section twenty of the Principal Act the following section is inserted :—

20A. A certificate to practise as a conveyancer shall not be granted after the commencement of the Legal Practitioners (Amendment) Act, 1926, except in the case of an applicant who has made an application under section seventeen of this Act before such commencement.

Discon-  
tinuance of  
grant of  
certificates.

4. After section forty of the Principal Act the following Part is inserted :—

New Part—  
Trust  
accounts.

PART VII.

*Trust accounts.*

41. (1) All moneys received for or on behalf of any person by any solicitor or conveyancer shall be held by him exclusively for such person, to be paid to such person or as he directs, and until so paid the moneys shall be paid into a bank carrying on business in New South Wales to a general or separate trust account.

Payment  
to trust  
account.  
Act 1908,  
No. 100  
(N.Z.), s. 47.

(2) The moneys shall not be available for the payment of the debts of any other creditor of the solicitor or conveyancer, or be liable to be attached or taken in execution under the order or process of any Court at the instance of any such other creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any solicitor or conveyancer may have against or upon any of the moneys.

42. (1) Every solicitor and conveyancer shall keep an account of all moneys so received by him in such a manner as to disclose the true position in regard thereto, and to enable the account to be conveniently and properly audited.

Audit.  
cf. Act 1913,  
No. 72 (N.Z.),  
s. 14.

(2) Every solicitor and conveyancer shall cause the account of the moneys to be audited by an approved accountant as prescribed by regulation.

(3) Where any solicitor or conveyancer has not caused the account to be so audited, the Attorney-General may appoint an approved accountant to audit the account at the expense of the solicitor or conveyancer.

(4) On auditing the account, whether in pursuance of subsection two or of subsection three of this section, the auditor shall forthwith send a report of the result of the audit to the Attorney-General, verified by the statutory declaration of the auditor.

(5)

(5) If in auditing the account the auditor discovers—

- (a) that the account is not kept in such a manner as to enable the account to be properly audited; or
  - (b) any matter which appears to him to involve dishonesty or any breach of the law on the part of the solicitor or conveyancer; or
  - (c) any loss or deficiency of the moneys or any failure to pay or account for the moneys,
- the auditor shall set out the facts so discovered by him in the report to the Attorney-General.

In any other case the report shall consist of a certificate that the account has been duly kept and is in order in all respects.

(6) For the purpose of the audit and report it shall, on the request of the auditor—

- (a) be the duty of the solicitor or conveyancer to produce to the auditor all books papers accounts documents and securities in any way relating to the account, and to give him such information as may be reasonably required for the audit;
- (b) be the duty of the manager or other principal officer of any bank with which the solicitor or conveyancer has deposited any moneys, whether in his own account or in any general or separate trust account, to give the auditor such information with respect to the bank account or accounts of the solicitor or conveyancer as may be reasonably required for the audit.

43. (1) Any person who knowingly acts contrary to the provisions of this Part shall on conviction before two justices of the peace be liable for every such offence to a penalty not exceeding *one hundred* pounds.

Offences.  
14 Geo. V,  
No. 4 (Q.),  
ss. 3, 5, 6.

(2) Nothing contained in this Act and no proceeding taken under this Act or any regulation made thereunder against any person shall prejudice or

or affect any right or remedy by civil process which any person aggrieved might have had if this Act had not been passed.

44. (1) The Court shall have the like summary jurisdiction over a conveyancer as it has over a solicitor, including power to remove his name from the roll of conveyancers or to suspend him from practice for any period. Summary jurisdiction over officers of Court.

(2) Wilful failure by any solicitor or conveyancer to comply with any provision of this Part or any regulation made thereunder shall be professional misconduct and shall accordingly, if the Court thinks fit, be ground for the exercise of the summary jurisdiction of the Court. 1913 No. 72 (N.Z.), s. 14.

45. (1) The Governor may make regulations for ensuring that moneys received for or on behalf of any person by any solicitor or conveyancer shall be held and dealt with and an account thereof kept and audited in accordance with the provisions of this Act, and in particular— Regulations. Ibid. s. 14.

- (a) providing for an audit of the account, and for a report of the audit ;
- (b) prescribing the conditions under which persons may be approved accountants for the purpose of the audit ;
- (c) prescribing the persons to whom the report of an auditor shall be sent for inspection information or record ;
- (d) providing that an auditor shall be subject to an obligation not to divulge, otherwise than as prescribed by regulation, any matter of which he shall be informed in the course of the audit, and shall also be subject to the like liability in damages to a client of the solicitor or conveyancer as the solicitor or conveyancer would be if he divulged the matter ;
- (e) prescribing a scale of fees to be paid to such auditors ;

(f)

(f) prescribing that, in the absence of any agreement in writing with the client to the contrary, the audit fees shall be paid by the solicitor.

(2) Every such regulation may prescribe a penalty not exceeding *one hundred* pounds for the breach of any of the provisions and requirements thereof.

(3) The regulations shall be published in the Gazette, and shall take effect from the date of publication or from a later date to be specified in the regulations.

The regulations shall be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

5. After Part VII as inserted in the Principal Act by this Act the following Part is inserted:—

New Part—  
The  
Solicitors'  
Statutory  
Committee.

#### PART VIII.

##### *The Solicitors' Statutory Committee.*

46. (1) There shall be a committee, to be called the Solicitors' Statutory Committee, to inquire into and report upon any charge or question as to the professional misconduct of any solicitor. Committee.  
Act No. 2,903  
(Vict.), s. 15.

(2) The committee shall consist of not less than three and not more than seven members, and any solicitor, whether a member of the council or of the institute or not, shall be eligible to be a member of the committee.

(3) The members shall be appointed by the Chief Justice, and shall hold office as prescribed.

(4)

(4) The committee shall appoint, for such time not exceeding the prescribed period as it thinks fit, one of its number to be the chairman thereof.

(5) A quorum of the committee shall consist of at least three members.

(6) The proceedings of the committee shall be conducted in accordance with such rules as may be prescribed.

(7) The committee shall, in addition to the powers conferred by this Act, have such further powers necessary or convenient for the due fulfilment of its functions as may be prescribed.

47. (1) Any person who claims to be aggrieved by the professional misconduct of any solicitor may make a charge thereof in writing to the council or the committee. Charge of professional misconduct. Act No. 2,903 (Vict.), ss. 16, 18.

Any such charge received by the council shall be forthwith referred by it to the committee.

(2) The committee may require that further particulars be given of any charge, and that any charge be verified by statutory declaration.

48. The Court, a judge, or the council may refer to the committee for inquiry any question as to the professional misconduct of any solicitor which appears to the Court judge or council to require investigation. Questions as to professional misconduct. Ibid. ss. 16, 18.

49. (1) The committee may by writing under the hand of the chairman summon before the committee at a time and place named in the summons any solicitor in respect of whose professional misconduct any charge has been made to or any charge or question has been referred to the committee, and may inquire into the charge or question. Summoning of solicitors.

(2) If the solicitor does not attend at the meeting to which he has been summoned or at any adjournment thereof, the committee may proceed with the inquiry in his absence.

50. The provisions of sections eight, nine, ten, eleven, and twelve, and of Part III of the Royal Commissions Act, 1923, shall apply *mutatis mutandis* to the inquiry. Powers and offences in relation to the inquiry. cf. Ibid., s. 18 (1) (c).



mutandis to and with respect to the inquiry, provided that for the purposes of this Act sections nineteen and twenty of that Part shall be read as if the words "twenty pounds" were substituted for the words "two hundred pounds."

51. (1) After the inquiry the committee shall make a report to the Court or judge or council or such of them as may be prescribed. Report. Act No. 2,903 (Vict.), s. 20.

If the committee is of opinion that the solicitor has been guilty of any professional misconduct, the committee shall make a report thereon to the Court, and transmit with the report a copy of the evidence taken on the inquiry.

(2) The report shall state the findings of the committee in relation to the facts of the case, and if any member of the committee dissents, the report shall state the fact of dissent, and specify the findings from which he dissents.

(3) The Court may refer the report back to the committee for further inquiry or for amendment, and may review any finding of fact therein.

(4) Upon motion and upon reading the report the Court may act thereon, and with or without further evidence make such order as the Court thinks fit.

52. (1) Notwithstanding any other provision of this Act any person who but for this Act would have been entitled to apply to the Court to remove the name of a solicitor from the roll, or to apply to the institute to require a solicitor to answer any allegation contained in a statutory declaration, shall be entitled so to apply, whether the matter complained of has or has not been inquired into by the committee, and whether the application is based on professional misconduct or on any other ground. Application to Court direct. Ibid. s. 21.

(2) The institute may in any like case make a like application to the Court.

(3) Upon any application under this section the Court may—

- (a) deal with the application;
- (b) refer the matter to the committee for inquiry and report;
- (c)

- (c) require the committee to transmit to the Court a report upon any inquiry held by the committee into the same subject-matter;
- (d) take the reports into consideration upon the hearing of the application.

(4) The provisions of this Act with respect to any question referred to the committee by the Court or a judge shall apply *mutatis mutandis* to and with respect to any matter referred to the committee by the Court under this section.

53. (1) Notwithstanding any other provision of this Act, where any charge is made to or any charge or question is referred to the committee, and before the committee makes its report, the Court or a judge on the application of the institute or of any person concerned may in any case where in the opinion of the Court or the judge the circumstances warrant the appointment appoint a special committee to inquire into and report upon the charge or question.

Special  
committee.  
Act No. 2,903  
(Vict.), s. 22.

(2) The special committee shall to the exclusion of the statutory committee have the powers and be subject to the duties of the statutory committee in respect of the charge or question, and the provisions of this Act and of any rules of court relating to the statutory committee shall apply *mutatis mutandis* to and with respect to the special committee.

54. (1) The institute shall, in addition to its existing powers and functions, have the following powers and functions, that is to say—

The  
Institute.  
Act 1913,  
No. 72 (N.Z.),  
s. 1.

- (a) to take such steps as may be necessary or proper for or with respect to the investigation in accordance with this Act of any charge or question as to the professional misconduct of any solicitor;
- (b) to institute prosecutions and other proceedings for the breach of any statute rule or regulation relating to the practice of the law or to the preparation of deeds or instruments relating to real or personal estate;
- (c) to oppose any application for admission as a solicitor;
- (d)

(d) to appoint any barrister or solicitor to appear before any court in any of the matters referred to in this section.

(2) Any prosecution or proceeding referred to in paragraph (b) of subsection one of this section may be instituted in the name of the institute by the president or any vice-president or any other person duly authorised by the council in that behalf. Act No. 2,903 (Vict.), s. 14.

Every such prosecution or proceeding shall, unless it is proved to the contrary, be deemed to be instituted by and on behalf of the institute.

55. (1) The council may appoint any person to investigate any charge or question as to the professional misconduct of any solicitor, and to present the same to the statutory committee, and may appoint any barrister or solicitor to appear before the committee. The council. Ibid. s. 17.

(2) The council may appoint any barrister or solicitor to appear before any court in any matter affecting the institute or the members thereof or in which the institute is directly or indirectly concerned or interested, and any barrister or solicitor so appointed shall have audience in any court in any such matter. Ibid. s. 13.

