



## **Lawyers and Conveyancers Amendment Act 2012**

Public Act    2012 No 92  
Date of assent    19 November 2012  
Commencement    see section 2

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Lawyers and Conveyancers Amendment Act 2012.
  
- 2 Commencement**
  - (1) Part 1 comes into force on 3 December 2012.
  - (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
  
- 3 Principal Act amended**  
This Act amends the Lawyers and Conveyancers Act 2006.



- “(a) practises, and in the course of his or her practice provides regulated services, alone (that is, not in partnership with any other lawyer); and
  - “(b) is not actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of regulated services; and
  - “(c) is not an employee (other than an employee of an incorporated law firm in which he or she is the only voting shareholder) who, in the course of his or her employment, provides regulated services.
- “(2) Nothing in this section, section 118B, or section 119 limits or affects appointments, under the Royal prerogative (as preserved by section 119C(1) and (2)), to the office of Queen’s Counsel of a person who, when appointed to that office, is all or any of the following:
- “(a) a person who is not in the category in subsection (1):
  - “(b) a person who is appointed otherwise than in accordance with regulations under section 119(1)(a) and (b), guidelines of the kind specified in section 119(2)(b), or both:
  - “(c) a person who does not possess all or any of the qualifications and experience that guidelines of the kind specified in section 119(2)(a) indicate should be possessed by candidates for appointment as Queen’s Counsel.

**“118B Restrictions on practice of specified category of lawyers who hold rank**

- “(1) A person who holds the rank of Queen’s Counsel, and who when appointed to that rank was in the category in section 118A(1),—
- “(a) must not practise, or in the course of his or her practice provide regulated services, as a barrister and solicitor, or in partnership with any other lawyer; and
  - “(b) must not be actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of regulated services; and
  - “(c) must not be an employee (other than an employee of an incorporated law firm in which he or she is the only

- voting shareholder) who, in the course of his or her employment, provides regulated services; but
- “(d) is not precluded, by reason only of the fact that he or she holds that rank, from being a statutory officer.
- “(2) Subsection (1) is subject to sections 118C(5) and 118D(4), but overrides other provisions of this Act.
- “(3) A person who is subject to, and who contravenes, subsection (1) must be treated as having surrendered at the time of the contravention the rank of Queen’s Counsel.

**“118C Queen’s Counsel appointed before 1 August 2008**

- “(1) This section applies to a person who at the close of 31 July 2008 held, and at the close of 2 December 2012 continued to hold, the rank of Queen’s Counsel for New Zealand.
- “(2) If, after 31 July 2008 and under section 118(5) (as repealed by section 6 of the Lawyers and Conveyancers Amendment Act 2012), the person used, in relation to himself or herself, the words Senior Counsel and the abbreviation SC, then after 2 December 2012 he or she—
- “(a) may continue to use, in relation to himself or herself, those words and that abbreviation; or
- “(b) may use instead, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.
- “(3) The precedence to which the person is entitled is not affected by sections 118 to 119C (as substituted by section 6 of the Lawyers and Conveyancers Amendment Act 2012).
- “(4) The following apply to the person in the same way as they apply to a Queen’s Counsel appointed to that rank after 2 December 2012:
- “(a) sections 118B, 119A, and 119B (as so substituted):
- “(b) any regulations made under section 119(1)(c) and (e) to (g) (as so substituted).
- “(5) Despite subsection (4)(a), section 118B (as so substituted) does not apply, but section 118D(4) (as so substituted) does apply, to the person if after his or her appointment as a Queen’s Counsel and before or on 1 April 2010 and under section 118(2)(b) of this Act (as repealed by section 6 of the Lawyers and Conveyancers Amendment Act 2012) or not

inconsistently with an enactment in or under an earlier Act that corresponds to this Act he or she—

- “(a) practised, or in the course of his or her practice provided regulated services, as a barrister and solicitor, or in partnership with any other lawyer; or
  - “(b) was actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of regulated services; or
  - “(c) was an employee (other than an employee of an incorporated law firm in which he or she is the only voting shareholder) who, in the course of his or her employment, provided regulated services; or
  - “(d) was a statutory officer.
- “(6) Subsections (3), (4), and (5) apply to the person whether or not after 2 December 2012 and under subsection (2) he or she uses, in relation to himself or herself, the words Senior Counsel and the abbreviation SC.

**“118D Senior Counsel appointed after 31 July 2008 and before 3 December 2012**

- “(1) This section applies to a person who after 31 July 2008 was appointed to, and at the close of 2 December 2012 continued to hold, the rank of Senior Counsel for New Zealand.
- “(2) After 2 December 2012, the person—
- “(a) may continue to use, in relation to himself or herself, the words Senior Counsel and the abbreviation SC; or
  - “(b) may instead use, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.
- “(3) The precedence to which the person is entitled is not affected by sections 118 to 119C (as substituted by section 6 of the Lawyers and Conveyancers Amendment Act 2012).
- “(4) After 2 December 2012, the person is not precluded, by reason only of the fact that he or she holds that rank,—
- “(a) from practising, or in the course of his or her practice providing regulated services, either as a barrister or as a barrister and solicitor, or either alone or in partnership with any other lawyer; or

- “(b) from being actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of regulated services; or
- “(c) from being an employee (other than an employee of an incorporated law firm in which he or she is the only voting shareholder) who, in the course of his or her employment, provides regulated services; or
- “(d) from being a statutory officer.
- “(5) The following apply to the person in the same way as they apply to a Queen’s Counsel appointed to that rank after 2 December 2012:
  - “(a) sections 119A and 119B (as so substituted):
  - “(b) any regulations made under section 119(1)(c) and (e) to (g) (as so substituted).
- “(6) Subsections (3), (4), and (5) apply to the person whether or not after 2 December 2012 and under subsection (2) he or she uses, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.

**“119 Regulations relating to Queen’s Counsel**

- “(1) The Governor-General may, by Order in Council, make regulations (not inconsistent with this Act) prescribing—
  - “(a) the process by which candidates may be recommended to the Governor-General for appointment, by letters patent, under the Royal prerogative as Queen’s Counsel:
  - “(b) the fees to be paid by candidates for appointment as Queen’s Counsel:
  - “(c) the privileges and duties of Queen’s Counsel:
  - “(d) the conditions on or subject to which candidates may be appointed as Queen’s Counsel:
  - “(e) the conditions on or subject to which Queen’s Counsel may practise their profession:
  - “(f) the precedence that Queen’s Counsel are to have in the courts of New Zealand:
  - “(g) such other matters as may be necessary in relation to Queen’s Counsel.
- “(2) Regulations made under subsection (1) may authorise the Chief Justice and the Attorney-General to issue guidelines



(not inconsistent with this Act or any regulations of that kind) in relation to both—

- “(a) the qualifications and experience that should be possessed by candidates for appointment as Queen’s Counsel; and
- “(b) the process by which such candidates may be recommended for appointment.

**“119A Other ways of ceasing to hold rank**

- “(1) A person who holds the rank of Queen’s Counsel ceases to hold that rank if—
  - “(a) he or she is suspended from practice as a barrister or as a solicitor or as both (even if the suspension is only until a charge against the person has been heard and disposed of by the Disciplinary Tribunal); or
  - “(b) his or her name is struck off the roll.
- “(2) Nothing in sections 118 to 119C (as substituted by section 6 of the Lawyers and Conveyancers Amendment Act 2012) abrogates the power of the Crown to revoke, under the Royal prerogative, the appointment of any person who was appointed as a Queen’s Counsel for New Zealand.

**“119B Style of rank if Sovereign for time being is King**

- “(1) If the Sovereign for the time being is a King,—
  - “(a) every reference to Queen’s Counsel in a provision to which this paragraph applies is, unless the context otherwise requires, to be read as a reference to King’s Counsel; and
  - “(b) the words and abbreviation that a lawyer who holds the rank of Queen’s Counsel are to use, if he or she wishes, in relation to himself or herself, are King’s Counsel and KC.
- “(2) Subsection (1)(a) applies to—
  - “(a) provisions in this Act (other than in subsection (1) or in section 118C(1)); and
  - “(b) provisions in (or in any guidelines issued under) any regulations made under section 119(1).

**“119C Royal prerogative power to appoint unaffected**

- “(1) Sections 118A and 118B do not derogate from the power to appoint under the Royal prerogative to the office of Queen’s Counsel a person who, when so appointed, was not in the category in section 118A(1) (and by way of explanation who, after being so appointed, is not subject to section 118B, which imposes practice restrictions).
- “(2) The powers conferred by section 119 do not derogate from the power to appoint, under the Royal prerogative, people to the office of Queen’s Counsel.”

**Part 2**

**Amendments relating to other matters**

**7 Purpose of this Part**

The purpose of this Part is to amend the principal Act to—

- (a) enable (but not require) a conveyancing practitioner to hold non-voting shares of an incorporated conveyancing firm, and a lawyer to hold non-voting shares of an incorporated law firm, as a trustee of a trust in which—
  - (i) each beneficiary is a relative of 1 or more of the trustees; and
  - (ii) each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services:
- (b) enable grandchildren of a conveyancing practitioner or, as the case may be, a lawyer to be non-voting shareholders of an incorporated conveyancing firm or, as the case may be, an incorporated law firm:
- (c) require the power of attorney that a lawyer or conveyancing practitioner in sole practice must give to authorise the donee of that power to conduct that practice as an agent to be given for any periods during which the lawyer or conveyancer is an undischarged bankrupt:
- (d) ensure applications for a review by the Legal Complaints Review Officer of a specified decision or action

by (or on behalf of, or with the authority of) a Standards Committee must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to the applicant's attention (which is presumed to have occurred on the fifth working day after the decision or action):

- (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.

*Incorporated conveyancing firms and  
incorporated law firms*

**8 Interpretation**

- (1) Paragraph (d)(i) of the definition of **incorporated conveyancing firm** in section 6 is amended by inserting "(any 1 or more or each of whom may, but none of whom is required to, hold those shares as a trustee of a qualifying trust)" after "paragraph (b)".
- (2) Paragraph (d)(i) of the definition of **incorporated law firm** in section 6 is amended by inserting "(any 1 or more or each of whom may, but none of whom is required to, hold those shares as a trustee of a qualifying trust)" after "paragraph (b)".
- (3) Section 6 is amended by inserting the following definition in its appropriate alphabetical order:

“**qualifying trust** means, for the purposes of the definitions in this section of incorporated conveyancing firm and incorporated law firm, a trust in which—

- “(a) each beneficiary is a relative of 1 or more of the trustees; and
- “(b) each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services”.

- (4) Paragraph (e) of the definition of **relative** in section 6 is amended by inserting “or grandchild” after “child”.

*Appointment of agent to conduct sole practice  
of lawyer or conveyancing practitioner*

**9 Schedule 1 amended**

- (1) Clause 7 of Schedule 1 (which states periods for which the power of attorney required by clause 2(1) or 4(1) of that schedule must be given) is amended by inserting the following paragraph after paragraph (b):
  - “(ba) any current or future period or periods during which the donor is an undischarged bankrupt; and”.
- (2) Clause 7(ba) of Schedule 1 of the principal Act (as inserted by subsection (1))—
  - (a) applies to a power of attorney that was required by clause 2(1) or 4(1) of that schedule to be given before the commencement of this section; and
  - (b) requires a power of that kind to be amended or replaced within 3 months after the date on which this section comes into force so that, as so amended or replaced, it is given for periods that include the period or periods specified in clause 7(ba) of Schedule 1 of the principal Act (as so inserted).

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

**10 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”.

**11 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”.

*Legal Complaints Review Officer*

**12 Applications for review**

- (1) Section 198 is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) be lodged with the Legal Complaints Review Officer within 30 working days after a copy or notice of the determination, requirement, or order made, or the direction given, or the performance or exercise of the function or power, by the Standards Committee (or by any person on its behalf or with its authority) is served on, given to, or otherwise brought to the attention of, the applicant for review (which, in the absence of proof to the contrary, is presumed to have occurred on the fifth working day after it is made, given, or performed or exercised); and”.

- (2) Section 198(b) of the principal Act (as substituted by subsection (1)) applies only to applications for review under section 193 of the principal Act—

- (a) made, and not withdrawn or finally determined, before the commencement of this section; or
- (b) made after that commencement.

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

**13 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

**14 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*

**15 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).”

**16 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*

**17 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.”.



**18 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*

**19 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*

**20 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.

**21 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*

**22 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”.

**23 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”.

**24 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)”.

**25 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*

**26 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*

**27 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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**Legislative history**

18 March 2010	Introduction (Bill 120–1)
13 October 2010	First reading and referral to Justice and Electoral Committee
13 April 2011	Reported from Justice and Electoral Committee (Bill 120–2)
25 September 2012	Second reading
13 November 2012	Committee of the whole House
15 November 2012	Third reading
19 November 2012	Royal assent

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This Act is administered by the Ministry of Justice.

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