

# House of Representatives

## Supplementary Order Paper

Wednesday, 9 March 2005

### Lawyers and Conveyancers Bill

#### *Proposed amendments*

Stephen Franks, in Committee, to move the following amendments:

#### *Clause 4*

To omit this clause, and substitute the following clause:

- 4 New Zealand Law Society to promote purpose of this Act**
- (1) The following criteria are relevant to the implementation of the purpose of the Act (without limiting other relevant criteria):
    - (a) the importance of a lawyer being free from prejudicial conflicts of interest when providing legal services to his or her clients:
    - (b) the fiduciary duties and duties of care owed by a lawyer to his or her clients:
    - (c) subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, a lawyer should act in the interests of his or her clients:
    - (d) regulation should promote the efficient, competitive, and flexible provision of legal services.
  - (2) In formulating rules and regulations under this Act it is for the New Zealand Law Society or the Minister, as the case requires, to determine the weight that should be given to any criteria relevant to the implementation of the purpose of this Act.

#### *Clause 87*

To omit from subclause (2) the words “with the approval of the Minister and”.  
To omit subclause (2)(b).

*Clause 88*

To omit this clause.

*Clause 89*

To omit from subclause (1) the words “(as approved by the Minister)”.

To omit from subclause (2)(a) and (b) the words “(as approved by the Minister)”.

*Clause 90*

To omit the words “with the approval of the Minister and” and the words “and after consultation with such other person or groups as the Minister by direct,”

*Clause 91*

To omit this clause.

*Clause 92*

To omit from subclause (1) the words “(as approved by the Minister)” in both places they appear.

To omit subclause (2).

*Clause 95*

To omit this clause.

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### Explanatory note

Clause 4 currently elevates desirable ideals to the level of generally worded statutory duties. These statutory duties are imposed on all lawyers regardless of context and the area of practice. This will create real uncertainty, potentially cut across a range of existing legitimate practices, and create additional costs for consumers. There is no crisis in consumer confidence requiring this radical change, and the select committee was given no confidence that the outcome of imposing these ideals as statutory duties could be predicted. This issue is accentuated by clauses 7 and 9 making it misconduct or unsatisfactory conduct to breach these statutory duties. The better approach is to express these ideals as criteria which the New Zealand Law Society must have regard to when rule making. This is the approach taken in other legislation: See for example section 19B of the Securities Markets Act 1988 and section 20 of the Takeovers Act 1993.

This Supplementary Order Paper also amends the Bill to remove the requirement for Ministerial approval of the Rules of the New Zealand Law Society, and the ability of the Executive to regulate over the top of the New Zealand Law Society Rules. There is no evidence that the current rule-making procedure gives rise to limitations in the New Zealand Law Society Rules. This shift proposed by the Bill is a radical one, and it could seriously distort the standard set by the Rules.

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