Submission

by

Business NZ

to the

Justice and Electoral Select Committee

on the

Lawyers and Conveyancers Amendment Bill (No. 2)

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Lawyers and Conveyancers Amendment Bill (No.2)

1. Introduction

1.1 Business New Zealand welcomes and is very pleased to support the introduction of this amendment to the Lawyers and Conveyancers Act which addresses a current anomaly preventing lawyers with practising certificates employed by employers' organisations and unions from providing legal services to members of those organisations.

1.2 The above difficulty has been of great concern to Business New Zealand and its regional organisations which, once the Act was in force, would no longer have the right to describe themselves as able to provide members with employment lawyer services. This is because as it stands, the Act makes it unlawful for their employment lawyers, even though fully qualified, to act other than for their own organisation; they could not act for the organisation's employer members. Without the amendment, employer organisations and union legal staff could represent members only if they worked without practising certificates and did not refer to themselves as 'lawyers'.

1.3 Given the long-standing involvement of union and employer organisation lawyers in both employment law cases and the giving of employment law advice, it is particularly unfortunate that new legislation should exclude them from practising in a discipline in which they have particular expertise. Set out under the 'Discussion' heading is a short outline of the way in which legal involvement in the employment sphere has developed over the years.

2. Recommendation

2.1 That the bill proceed

3. Discussion

3.1 Until the introduction of the Employment Contracts Act (ECA) in1991 there was no particular need for lawyers employed by Business New Zealand's (then the NZ Employers' Federation (NZEF)) regional employer organisations to have practising certificates since earlier legislation prohibited lawyers from appearing in conciliation without the consent of the other party while personal grievance provisions applied only to union members. (That is, general employment law applied only to certain, not to all, employees). The employers' organisations and NZEF had always, however, had lawyers on their staff, although usually, but not exclusively, without practising certificates.

3.2 The ECA opened up the personal grievance process to all employees, tended to focus employment contract bargaining on the enterprise, and generally provided much greater scope for legal involvement than had previously been the case.

3.3 The Health and Safety in Employment Act 1992 gave further impetus to the above development and from the early 1990s more and more law firms (and other advocates) began to see good reason for involving themselves in employment relations law although up to that point, employment law expertise had more usually rested with unions and employers' organisations. From then on it became important for such organisations to be able to tell their members that advice was available from 'real' lawyers and for the lawyers themselves to be able to maintain a direct link with the legal profession through accessing legal news, updates and continuing legal education.

3.4 It was at about this point that the Law Society first questioned employers' organisations use of lawyers with practising certificates. (And it should be noted that even lawyers without practising certificates have been admitted to the bar though under the new Act they will be unable to call themselves lawyers).

3.5 Discussions on the above point were held resulting in the Law Society's agreement that legally qualified staff employed by employers' organisations could give legal advice and represent their respective employers' members as lawyers. (A critical point was that the staff *must* be employees of the relevant employers' organisation.)

3.6 Business New Zealand's regional associations have worked hard over recent years to deliver employment law advice and representation to employers through a multi-disciplinary approach to improving workplace relationships and problem solving. A range of services is delivered because it is recognised that straight-out legal interventions rarely engender good workplace relations. It makes little sense to limit the contribution associations' lawyers can make to the multi-disciplinary set-up by having them work without practising certificates. It is a little curious that the current Act would continue to allow the same 'lawyers' to provide advice to employer members as long as they did so minus a practising certificate.

3.7 Without the proposed amendment the options would be either to use legal personnel without practising certificates or to provide current legal services through a separate firm (but setting up such a firm would be a not inconsiderable exercise). Concern has been expressed that advice given to employer members may not be dispassionate because it is comes from someone working for an employer organisation. However, it is difficult to see why this should be so when whatever is advised must always be in the client's best interests.

3.8 The proposed amendments to the Act will cure the problem identified, both for unions and for employers' organisations.