New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

Independent Review Panel

31 August 2022

Submission on the NZLS Independent Review

Background

1. Thank you for the opportunity to submit on the Independent Review Discussion Document (**IR Discussion Document**).

2. This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (the **Trust**). The Trust is responsible for administering the New Zealand Women's Law Journal (the **Journal**), which is the only academic publication that is solely dedicated to publishing legal scholarship about women's issues in the law and supporting the work of women lawyers in New Zealand. The primary aims of the Trust are to promote awareness about gender justice in the law and to support women in the New Zealand legal profession in their careers. This includes contributing to wider society discourse about legal issues facing women.

3. The IR Discussion Document raises significant "big picture" issues for the future of the legal profession. The Trust has had extensive involvement and interest in the function of the New Zealand Law Society (**NZLS**) as a regulator of the provision of legal services and the culture of the legal profession.

Previous Trust Commentary

4. The Trust and its members have extensively canvassed and represented the views of the legal profession on its future since its inception in 2017.

5. In 2019 Allanah Colley, Ana Lenard and Bridget McClay from the Trust collected a breadth of experience, ideas and practical tips and tools, culminating in *Purea Nei: Changing the Culture of the Legal Profession*.[1] *Purea Nei* broadly commented on three keys areas of the profession which needed change:

    5.1 There is a lot we can do in the workplace to make a difference – many issues stem from the traditional partnership and corporate structure of law firms. Staff should be empowered to actively participate in governance and management.

[1] Allanah Colley, Ana Lenard and Bridget McLay *Purea Nei: Changing the Culture of the Legal Profession* (New Zealand Law Foundation and Michael and Suzanne Borrin Foundation, 2019). The full report is available here.

5.2 We need real leadership in order to achieve meaningful change – promotion into positions of leadership in a firm needs to be based on management skills as well as technical skills. People leaders should undergo rigorous due diligence checks for previous bullying, misconduct and harassment.

5.3 We need proper education and external help – education and training must be frequent and appropriate at all levels of a person's career. When it comes to accountability, there was a focus on the role that external and independent HR can play as well as the important role of clients to support safe and positive workplace practices. Of particular relevance to this submission, there was strong support for the NZLS having a more significant role by auditing workplaces along various safety, wellbeing and diversity factors, as well as having strengthened complaints and disciplinary systems in place with a specialist unit for responding to bullying and harassment.

6. The Trust has published a number of articles and commentaries addressing the culture of the legal profession that has allowed inequity and toxicity to continue unchecked for decades:

6.1 In 2017 Nicole Ashby wrote an article titled "Absent from the top; a critical analysis of women's under-representation in New Zealand's legal profession",[2] and Louise Grey wrote an article titled "Reflections from a young woman entering the profession, would a female partner quota address gender inequality within the New Zealand legal profession";[3]

6.2 In 2018 Dr Anna Hood wrote a review essay titled "Review Essay: Reflections on the perpetual cycle of discrimination, harassment and assault suffered by New Zealand's women lawyers and how to break it after 122 years: Reviewing Gill Gatfield's Without Prejudice".[4] That commentary discusses the problems that face many women in the profession and what generates those problems, as well as providing practical solutions;

6.3 In the 2018 edition four women from the profession shared their personal and professional experiences of the damaging culture within the law and what they believed needed to change to address the toxic culture. Their writing is captured in the piece "State of the Nation — Tauākī o te Motu."[5]

6.4 In the 2019 edition Alice Anderson and Mary Scholtens QC wrote a piece titled "Even now, people still see a good lawyer QC as being a man in a suit: the voice of women in New

[2] Nicole Ashby "Absent from the top; a critical analysis of women's under-representation in New Zealand's legal profession" (2017) 1 NZWLJ 80. The full article is available here.
[3] Louise Grey "Reflections from a young woman entering the profession; would a female partner quota address gender inequality in the profession." (2017) 1 NZLWJ 51. The full article is available here.
[4] Dr Anna Hood "Review Essay: Reflections on the perpetual cycle of discrimination, harassment and assault suffered by New Zealand's women lawyers and how to break it after 122 years: Reviewing Gill Gatfield's Without Prejudice." (2018) 2 NZWLJ 249. The full article is available here.
[5] "State of the Nation – Tauākī o te Motu" (2018) 2 NZWLJ 18. The four pieces are available here.

Zealand's senior courts",[6] and Jenny Cooper QC wrote "Who gets to speak in New Zealand's top courts?"[7]

6.5 In 2021 former New Zealand Law Society President Tiana Epati wrote a piece titled "#MeToo must not leave anyone behind",[8] and Steph Dyhrberg and Zahra McDonnell-Elmetri wrote a piece titled "New rules, same culture? Commentary on the changes to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008"[9].

6.6 In the 2022 Special Edition Reina Vaai and Alice Mander shared a piece titled "We are not here to bless the food or conduct accessibility audits" which discussed their experiences in the legal profession as a Samoan lawyer and member of the disabled community respectively.[10]

6.7 The Trust and members from the Trust frequently comment in the media on issues involving the regulation of lawyers, including the recent decisions on James Gardner-Hopkins.[11]

What should the focus and scope of the regulation of the legal profession?

Purpose and Objectives

7. The Trust was surprised to learn that the Lawyers and Conveyancers Act 2006 (the **Act**), guiding the regulation of the legal profession, does not contain a purpose statement. However, this does, in part, assist to explain the stagnation which has occurred within the NZLS as a driver of cultural change in the profession – our regulation has no clear ambit or purpose.

8. Purpose statements are important to the operation of any legislation. Ordinarily, the structure of the legislation will be centred on furthering the purpose of the specific legalisation. Purpose provisions help users of legislation to understand the particular Act or part of an Act to which the provisions relate. They are operative provisions of the Act and should be drafted to be as helpful as possible.

9. As the Act has already been drafted without a purpose provision, care will need to be taken to align any purpose statement with the general thrust of the legislative provisions so that there is no conflict between the two.

---

[6] Alice Anderson with Mary Scholtens QC "Even now, people still see a good lawyer QC as being a man in suit: the voice of women in New Zealand's senior courts." (2019) 3 NZWLJ 183. The full article is available here.

[7] Jenny Cooper QC "Who gets to speak in New Zealand's top courts?" (2019) 3 NZWLJ 189. The full article is available here.

[8] Tiana Epati "#Metoo must not leave anyone behind." (2021) 5 NZWLJ 11. The full article is available here.

[9] Steph Dyrhberg and Zahra McDonnell-Elemetri "New rules, same culture? Commentary on the changes to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008." (2021) 5 NZWLJ 271. The full article is available here.

[10] Alice Mander and Reina Vaai "We are not here to bless the food or conduct accessibility audits" (2022) 6 NZWLJ 121. The full article is available here.

[11] See the **Media** section of the website here.

10. The Trust strongly recommends the introduction of a purpose statement in the Act to guide any and all representative and regulatory actions taken by NZLS.

11. The purpose statement should include a commitment to Te Tiriti o Waitangi and tikanga Māori as a central consideration in any decision that is taken under the Act.

12. As a regulator, the NZLS should be seen to take a strong stance of the eradication of bullying and sexual harassment from the profession. Any purpose statement should also contain reference to a safe profession, free from bullying and sexual harassment. It is important that a driving purpose of the NZLS is to take actions and make decisions which are consistent with making the profession a safer place for all lawyers, especially junior lawyers.

13. The Trust considers clear regulatory objectives should also be set down for the operation of the regulatory function of the NZLS. The objectives from the UK Legal Services Act 2007 are a good starting point. The Trust would also again support the inclusion of reference to tikanga Māori, Te Tiriti o Waitangi, and to preventing bullying and sexual harassment as objectives of regulation.

Who should be regulated?

14. The Trust does not take a strong position on the issue of who should be regulated by the NZLS. The risks of the provision of a poor standard of legal services are well understood. Of most interest to the Trust is that any so termed "lawyer" is within the ambit of the complaints system of the NZLS.

15. The Trust considers the disciplinary powers and processes of the NZLS should regulate any person carrying out legal services. That ambit should include in house lawyers.

16. The James Gardner-Hopkins case is a prime example of the need for expanded regulation. Whilst he is suspended from the provision of regulated services for the next three years, he is able to act in the Environment Court as an advocate, despite the fact he not allowed to practice as a lawyer. That role is akin to the role which employment advocates take in the Employment Court. It is a perverse result that he cannot be regulated for the provision of those services, despite demonstrating he is or was not a fit and proper person.

17. The Trust recommends an approach either under **option 3** (create a parallel 'light-touch' regime for specific categories of legal services provided by non-lawyers) or **option 4** (regulate all providers of legal services). The Trust recognises that both options would drastically increase the regulatory scope of the NZLS to all providers of legal services. Any change to the scope of regulation will need to be sufficiently resourced to enable to timely administration of the complaints service.

18. Any expansion in the regulation of legal services will need to be clearly signposted and advertised to the wider community to protect consumers and their rights when accessing legal services.

19. Question 10 of the IR Discussion Document asks whether entities providing legal services should be directly regulated in addition to individual lawyers. The Trust submits that they should be. Many entities, specifically large commercial law firms, have been left unchecked for many years and operated in ways which allow toxic work cultures to flourish, including through bullying and sexual harassment. See for example the comments made by the Disciplinary Tribunal in the James Gardner-Hopkins case that Russell McVeagh had a "work hard play hard culture which was a

consistently expressed opinion in the evidence"[12] but was unable to make comment on the firm's culture as a whole because it had not been represented at the proceedings.

20. The NZLS should be able to directly regulate firms and entities where they have fallen below the standard expected of them. That may include bullying and sexual harassment conduct, but also how entities respond to complaints of misconduct, as well as employment practices which exploit staff (such as paying junior staff below minimum wage).

Business Structuring

21. The Trust has several comments on business structuring and multidisciplinary practices discussed in the IR Discussion Document.

22. The Trust submits that the partnership model itself is the source of cultural issues in the profession.[13] This is for two reasons:

    22.1 There is an inherent concentration of power in partners as the owners and managers of a legal business. Conversely, in a company structure the shareholders have influence over the operation of the business and are able to hold the company to account. However, this is not true of the partnership model. Regardless of the size of the partnership there is a sense that the partnership looks out for itself, either by obscuring bad behaviour in larger firms or lacking the appropriate policies to manage staff in the first place in smaller firms.

    22.2 The second issue is the use of junior staff as leverage. The core tenet of the operation of law firms is the ability to charge out junior staff at high hourly rates in comparison to their hourly salaried rate. The difference is largely profit. The more hours junior staff work, especially beyond budgeted hours, the higher the true profit of the firm.

23. The Trust has three recommendations:

    23.1 The Trust supports amending the Act so that non-lawyers can be part of the ownership of the firm. This will likely increase the management ability of persons in ownership of the firm and may lead to changes in operation.

    23.2 The Trust recommends that anyone in management of a firm undertakes compulsory external professional supervision or mentoring. This can be further supported by services and education provided by the Law Society and NZLS CLE.

    23.3 The Trust recommends that firms consider different models of ownership, including separating management from legal work and encouraging a diverse governance board, both in terms of legal experience and ethnicity, and offering equity and investment to lawyers who are not partners. The Trust also recommends that NZLS support firms in these endeavours where possible, including by providing education and guidance on alternative models of ownership.

[12] *National Standards Committee v James Gardner Hopkins* [2021] NZLCDT 21 at [22].
[13] See further *Purea Nei* at 22.

24. Any expansion or consideration of the types of persons who can own and operate law firms may serve to alleviate some of the issues inherent in the partnership model of law firm ownership and is supported by the Trust.

Regulatory Tools

25. The IR Discussion Document raises limitations on the regulatory tools available to the NZLS.

26. The Trust is unclear on who is meant by the "NZLS Executive." The Trust has concerns about the ability of elected representatives on the NZLS Council or Board to appropriately use tools available to them to regulate their peers.

27. The Trust agrees there should be increased regulatory tools available to an independent body, such as the Standards Committee, to take immediate action in relation to concerns raised. This should include, for example, where serious concerns are raised about an individual to immediately suspend them from practice, or direct them to not engage in the provision of legal services until the matters have been resolved.

28. The Trust also considers serious consideration should be given to an increase in the maximum suspension period available. It is currently clear from the courts that they are unwilling to entertain strike off as a penalty for a person found to have sexual assaulted junior lawyers,[14] despite the fact it is frequently used a penalty for dealings with trust accounts.[15] Given the high threshold for strike off, penalties in excess of three years suspension should be available.

29. The Trust also considers other tools available should be the setting of mandatory CPD which a person must undertake while suspended. These CPD sessions would directly relate to the content of the complaint which resulted in their suspension, for example, training on bullying, sexual harassment, bias or management skills.

30. The Trust cautions that the use of immediate powers will need to be carefully reviewed and controlled in order to not produce unfair results where a complaint is ultimately found to be baseless or vexatious. Adequate training and guidance would need to be provided by the use of new regulatory tools with oversight or sign off.

Te Tiriti and the NZLS

31. The Trust agrees with the approach taken by the independent review that Te Tiriti o Waitangi is not just a discrete component of the Review. Te Tiriti and tikanga Māori are central to the consideration of any reform of the NZLS.

---

[14] *National Standards Committee 1 v Gardner Hopkins* [2021] NZLCDT 21 (22 June 2021); *and National Standards Committee (No 1) of the New Zealand Law Society v James Gardner Hopkins* [2022] NZHC 1709.

[15] See, for example, *Auckland Standards Committee 2 v Nguy* [2021] NZLCDT 26 (21 October 2021); *Wellington Standards Committee 1 v Gribben* [2020] NZLCDT 21 (16 July 2020); and *Auckland Standards Committee No. 5 v Kenneth Yee* [2015] NZLCDT 22.

32. The Trust was disappointed to read recent commentary by Mr Keene who was ADLS President from 2014 to 2016.[16] Mr Keene's commentary is regressive and not consistent with the progressive focus the NZLS must take to see a change in the culture of the legal profession.

33. At paragraphs 9 to 14 above, the Trust proposed that the Act's purpose statement should contain a commitment to tikanga Māori and Te Tiriti o Waitangi. There are other options available to include Te Tiriti o Waitangi in legislation.

34. The Trust submits that the Act should have a clear operative clause or section which requires those exercising or making decisions under the Act to consider tikanga Māori and Te Tiriti o Waitangi.

35. That alone will be insufficient to imbed the principles of Te Tiriti o Waitangi into the decision making of the NZLS. Regular and frequent education needs to be undertaken by all those who operate within the NZLS, including volunteers, to ensure there is cultural competency within the organisation to make decisions that are consistent with the principles. It is not enough to have a section in the legislation and for decision makers to make superficial reference to the application of Treaty principles.

36. Notwithstanding the above, given the independent review has confirm that Te Tiriti and tikanga Māori are central to the consideration of any reform of the NZLS, the Trust submits that Te Hunga Rōia Māori o Aotearoa (or other people/groups nominated by Te Hunga Rōia Māori o Aotearoa) should be involved in co-designing the reform of the NZLS to ensure that Te Tiriti and tikanga Māori is properly incorporated and recognised.

How to best promote a positive and diverse culture within the legal profession?

37. The Trust submits that there are limitless options which could be undertaken by the NZLS if it sought to create a real positive and diverse culture within the legal profession. Care should be taken by the NZLS to assess any new programmes and initiatives so as not to be tokenistic.

38. Comments from the *Purea Nei* study are illustrative and are set out in full for your consideration:[17]

    38.1 "The profession needs to focus on a broader picture of diversity than just the interests of the ambitious, wealth, white female lawyers wanting to sit atop the tree with the ambitious, white, male lawyers who historically had it to themselves. That means more focus on access to the profession i.e. the NZLS working with schools and universities to promote access for Māori and other ethnicities, socio-economically disadvantaged and young men. We need a diversity policy that doesn't just focus on women and their success at the top of the profession. Not that that isn't important and worth significant attention, but it has the flavour of replacing one power structure with another. If we focus on what equality looks like rather than simply one or two aspects of disadvantage we have a better chance of hitting it. As an example there has been little attention paid to the male stereotypes that advantage men in the workplace but equally present huge barriers to male lawyers wanting to work part time or take on primary caregiver roles. I suspect that

[16] Jenni McManus "Former ADLS President slams 'pre determined' review of the legal profession" 4 August 2022. Article available here.
[17] *Purea Nei* at 26.

bullying and other unhealthy behaviours would be less prevalent if half a firms lawyers, men included, worked part time. How many male lawyers work and care part time? Any?"

38.2 "It's idealistic to think you can change the legal profession without changing society as well. What has happened in the legal profession didn't occur in a vacuum. Any programmes and initiatives must be well considered and researched."

38.3 "I think that senior levels of the profession should represent the demographics of those entering the profession and the wider society. This needs to be along gender, ethnic, sexuality and other lines. Equal representation is an important goal. It is better for clients to have options in terms of lawyers they can relate to, and it is important in terms of making sure the practice of law reflects diverse ways of thinking. The way that the law is practised directly translates into what the law becomes, and that law ought to reflect and meet the needs of the diverse community it serves."

38.4 "I think breaking down the patriarchal history of the legal profession is something which can be done. The concept of professionalism, and appearance are all based on heterosexual, cis gender, pakeha men, which make up the majority of partners in firms."

38.5 "Small things like getting rid of dress codes, and not requiring to fit into this explicitly conservative culture can make people feel welcomed. I think the legal profession unconsciously excludes queer and gender non confirming people. When we're told we cannot have this hair colour, cannot have tattoos, piercings, cannot dress a certain way or told we cannot present our bodies how we want, whether it be online or in person. It is incredibly shaming and I think specifically exclusive of women, queer and gender diverse populations who now value freedoms. At worst it is slut shaming. In contrast a man who gets drunk and messes an uber on a night out is lauded and given joke awards. It's clear the culture excuses and values masculine and patriarchal expression and sees feminine, queer and non-binary voices as grotesque and "unprofessional." My suggestion is:

(a) Anything that has nothing to do with the actual work we are doing should not be the business of the law firm. Let us live our lives because not doing so will exclude those who are not already privileged.

(b) Actually celebrate and include us, not just have diversity photoshoots to give false hope to graduates that the firm is actually diverse. It may be at the junior level but it's been decades, where is the real diversity up top? And focus on the groups that the legal profession shuts outs: gender-nonconforming and queer people, Māori and pasifika and lower socio economic group."

39. The Trust submits that the NZLS should publish a range of information that all law firms are required to report on including:

39.1 diversity in their board on gender and ethnicity;

39.2 parental leave policies and any flexible working arrangements;

39.3 pay information and whether there are any pay gaps.

40. NZLS should also actively promote and educate on the range of flexible working options which can and should be made available to all lawyers.

41. The Trust supports mandating lawyers to undertake compulsory annual training in unconscious bias, bullying and sexual harassment and cultural competency. There is benefit in all lawyers undertaking such training, though management should be required to take them.

42. The Trust considers that to create or develop a good and positive culture requires a complaints process that is fit for purpose and actually regulates the profession it is tasked with regulating. This is discussed in more detail below.

CPD

43. The Trust considers that CPD is a crucial element to the regulation of the profession. Recent changes to the Act and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 mean that the NZLS is able to mandate courses which must be undertaken by all lawyers, or a subset of lawyers. As discussed above, the Trust considers there is real benefit in mandating courses which address unconscious bias, bullying and sexual harassment, and cultural competency as annual courses that must be taken as part of receiving your practising certificate for that year.

44. The Trust does however note its concern that the courses offered by the NZLS are cost prohibitive. For example, the Civil Litigation Skills Course is over $4,000 for a junior lawyer to attend. That might not be cost prohibitive for a lawyer at a large commercial law firm, however a junior lawyer in the regions or at a small boutique practice may struggle to convince their partnership to pay for the course. Ordinary NZLS courses also amount to a couple of hundred dollars. Again, this may be cost prohibitive for some lawyers. The NZLS is not doing enough to offer cheaper alternatives, scholarships or reduced fees to lawyers. These courses can also be highly competitive to get into when the opportunity should be open to everyone to increase their skill set.

45. The Trust also understands that many law firms engage in a practice called "bonding". That is where a firm pays for a CPD course or professionals and then bonds the lawyer to the firm for a period of time (often one to two years). If they leave within that time, they then must repay a portion of the costs. The Trust submits that the NZLS should advocate very strongly that such a practice cannot continue in the profession. Firms have an obligation to provide training for their lawyers and this should not be reliant on bonding a person to a firm for a period of years.[18]

46. The Trust also submits that work can be done to make CPD courses more accessible, including the provision of written resources in advance, recordings being made available after the session, and making in person and online options available for all seminars.

[18] It may be that in some circumstances where being qualified as a barrister and solicitor is not a requirement for a job, but the person would nevertheless wish to qualify that some aspect of bonding could be appropriate. For example, working in a consulting firm. The Trust considers care should still be taken with any bonding imposed by firms.

Is the current model for regulating conduct and handling complaints fit for purpose?

47. Question 19 of the IR Discussion Document asks if there is a need to update the definition of unsatisfactory conduct and misconduct in the Act.

48. The Trust supports legislative change to the definitions. The Trust agrees with the NZLS Working Group that amendment of the definition is required and should be altered to:

    48.1 amend the definition of misconduct so that sexual violence, sexual harassment, bullying and discrimination that meets the current threshold is captured regardless of whether the behaviour occurred at a time when the lawyer was providing regulated services; and

    48.2 amend the definition of unsatisfactory conduct so that conduct that breaches the section is captured regardless of whether it occurs when the lawyer is providing regulated services, and other unacceptable behaviour is captured where it has brought or is likely to bring the profession into disrepute.

49. Despite the NZLS Working Group confirming that the process under the Act is not fit for the purpose of dealing with complaints about harassment, sexual harassment, discrimination, bullying and violence, no changes have been proposed.

50. The complaints process needs to have a complainant centred focus and provide support to victims throughout the whole process. Many people who have made formal complaints of sexual harassment and assault have reported the legalistic, lengthy, opaque and often adversarial complaints process that they endured caused more harm than the original conduct.[19]

51. The Trust submits that many of the issues raised in the section "Current complaints model has flaws" are well known and have been the case for many years. The Trust supports the process used by the Law Society of Ontario so that when a complaint is made by Māori or Pasifika that they are first asked what process they would like the complaint to progress through. They have full autonomy over the processes used in the determination of their complaint including the process used at the hearing and the form any hearing takes.

52. The Trust considers that there should be more guidance around the application of section 188 of the Act for discretion to release information during the course of the disciplinary process and after a decision has been released.

53. The Trust's view is that the following matters should be included in any guidance:

    53.1 Limited disclosure where workplace safety risks are at issue: in cases where the alleged conduct raises issues around workplace safety (including, but not limited to, sexual harassment, bullying, harassment and discrimination), the name of the person under investigation and the nature of the alleged misconduct should be disclosed to:

        (a) the complainant;

[19] Dhyrberg and McDonnell-Elemetri "New Rules, same culture?" (2021) 5 NZWLJ 271.

(b) any persons who have provided confidential reports;

(c) any other persons who provide information to the Standards Committee during the course of the process;

(d) the accused's current employer/ workplace; and

(e) the workplace at which the conduct is alleged to have occurred.

53.2 Wider disclosure where workplace safety risks are at issue: employers should also be permitted to disclose the name of the person under investigation and the nature of the alleged misconduct to employees to whom it considers have a genuine interest in receiving such disclosure. The Trust considers a "genuine interest" in receiving disclosure would include those with a direct reporting relationship to the person, including those in a person's team and partnership and also extends to include support staff. However, its primary position is that all current and future colleagues should be notified.

53.3 Wellbeing of complainant and affected persons to be paramount: in sensitive cases, the wellbeing of the complainant or other affected person should be the paramount consideration. Decisions around disclosure should always be discussed with complainants and affected persons before they are finalised.

54. The Trust considers that further amendments to the Act are needed to require disclosure of Standards Committee decisions in certain circumstances.

55. In cases where a practitioner is found to have engaged in unsatisfactory conduct or misconduct involving workplace safety, the name of the practitioner and the nature of the conduct should be disclosed either publicly or within the profession, unless there are exceptional circumstances that outweigh disclosure. The Committee should retain discretion as to the release of further details.

56. At a minimum, the information should be disclosed to all employees at the practice where the practitioner currently works, and employees at the workplace where the conduct occurred. It should also be available on inquiry by persons with a genuine interest in the information, for example persons who work with, or are considering working with, the practitioner in question.

Should there be an independent regulator?

57. The Trust supports divesting either the regulation or representative function from the NZLS.

58. Considering the above, it is likely that an independent complaints body would serve the interests of the legal community better. It is then likely NZLS should only retain its representative functions.

59. The Trust agrees that the NZLS does not currently advocate in a way that is fit for purpose as a representative of the legal profession. The NZLS should have been in a position to speak strongly in relation to the James Gardner-Hopkins decisions. Instead, as part of the co-regulation model, it was unable to even comment on whether the complaint was before the Standards Committee in the first place.

60. The Trust submits that we need a representative body that takes a strong stance on bullying and sexual harassment in the legal profession. That representative body cannot be bound by its regulatory function.

61. The Trust does not have confidence in the ability of changes to result in improved separation of functions within the NZLS. A complete divestment is necessary with an independent regulator who can oversee the complaints function previous run by the NZLS.

What are the optimal institutional arrangements for modern regulatory and representative bodies?

62. The Trust considers there are serious issues with the current structure of the NZLS. The Council being operated by elected members tends to reinforce and support the entrenched cultural, gender and racial make-up of the members of the Council.

63. The Trust recognises that the broader Council are representative of most of the representative branches including In House Lawyers, Pasifika Law Association etc.

64. The Trust also notes its concern with the recent news in the NZ Herald of a culture review of the NZLS.[20] Without specific knowledge of the events giving rise to the review, the Trust can only speculate there are issues or allegations of bullying within the NZLS organisation as a whole or within the Council as an elected body. That is not a sustainable way for a regulator to operate and demonstrates the ongoing structural issues within the NZLS.

65. The Trust submits that each member of the NZLS Council, if retained, should be independently appointed by a committee who consider both merit and the diverse make-up of the Board. There should be no restriction on membership to the NZLS Council being contingent on being a lawyer. Any person with relevant skills and experience should be able to participate.

66. Those roles should not be solely voluntary but include a stipend. It may be that the most senior members of the NZLS Council are remunerated as if they were full time jobs if appropriate. This makes clear that those positions and the work involved in carrying them out is important and valued. Remuneration should be provided to signal that is the case.

What should the relationship between regulator/representative body and Māori?

67. Regardless of what form the future NZLS takes, Māori must play a central role in the future of the Society. The Trust agrees that there is a strong case for Te Hunga Roia Māori to have a greater role in the governance of the NZLS. Any contribution should be adequately compensated and not reliant on volunteers.

Conclusion

68. The Trust commends the Independent Review Panel for framing the review in a comprehensive and all-encompassing way. By no means does the Trust consider that the legal profession will

[20] Sasha Borissenko "Confidentiality and the Law Society's culture review" NZ Herald (7 August 2022). Article is available here.

change overnight, or necessarily by changes to the NZLS. It is however an important piece of work, and the Trust looks forward to the recommendations following the review.

69. Members of the Trust are available to discuss this submission with the Independent Review Panel if necessary.

70. Thank you for the opportunity to provide a submission.

Ngā mihi nui,

Victoria Rea
Law Reform Manager
The New Zealand Women's Law Journal — Te Aho Kawe Kaupapa Ture a ngā Wāhine