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

By email: consultation@lawsociety.org.nz

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The New Zealand Law Society | Te Kāhui Ture o Aotearoa

Submission in support of changes to the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008

1. Thank you for the opportunity to provide feedback on potential amendments to the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (**Regulations**).

2. This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (**Trust**). The Trust is responsible for administering the New Zealand Women's Law Journal. It is the only academic publication that is solely dedicated to publishing legal scholarship about gender justice 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 proposed amendments to the Regulations provide the New Zealand Law Society (**NZLS**) with some discretion around the details included on the public register of lawyers (**Register**), where the health and safety of a lawyer is at risk. In this submission, the Trust acknowledges lawyers of any gender may have their health and safety placed at risk by publication of their details on the Register. Accordingly, this submission uses gender neutral language throughout. However, the Trust wishes to emphasise that women lawyers may particularly be affected by the publication of their details on the Register, given that women are disproportionately the victims of interpersonal and sexual violence.[1]

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[1] Colmar Brunton and New Zealand Law Society, "The 2018 Legal Workplace Environment Survey" (29 June 2018) – see here and here.

4. The Trust has previously published an article on a related topic, the 2021 changes to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the Lawyers and Conveyances Act (Lawyers: Ongoing Legal Education – Continuing Professional Development) Rules 2013. In 2021, Steph Dyhrberg and Zahra McDonnell-Elmetri wrote a commentary in the Journal titled "New Rules, Same Culture?"[2] The article concluded that although the new Rules were a step in the right direction, they alone would not affect the fundamental culture shift the legal profession needs.

5. In summary, the Trust supports the proposed amendments to the Regulations. However, the Trust suggests further clarity on two procedural aspects of regulation 10C(3) is required: (1) having a standard application form for lawyers wishing to have public access to their information prevented/restricted; and (2) specification of the timeframe that public access to a lawyer's information is prevented/restricted.

Regulation 10A

6. The Trust agrees and supports the inclusion of a purpose provision for the Register. It brings the Register in line with comparable regulatory regimes.[3] It also ensures compliance with information privacy principle 11.[4]

7. The Trust considers regulation 10A is appropriate in scope and wording.

Regulation 10B

8. Regulation 10B is largely consistent with the requirements of current regulation 10.

9. The Trust agrees that the information in regulation 10(2) should be specifically consented to by the lawyer before publication on the Register.

Regulation 10C

10. While regulation 10C(2) requires the NZLS to make the Register publicly available, regulation 10C(3) introduces the most significant of the proposed changes: to allow the NZLS to restrict public access to details included on the public register, where the health and safety of a lawyer (or someone they live with) is at risk.

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[2] That article can be accessed here.
[3] For example Real Estates Agents Act 2008, s 70.
[4] Privacy Act 2020, s 22.

11. Regulation 10C(3) provides:

> … the Law Society may prevent or restrict public access to specified information about a lawyer in order to protect the lawyer's privacy or personal safety if—
>> (a) the lawyer asks that the Law Society do so; and
>> (b) permitting public access to the specified information is likely to result in physical or mental harm to—
>>> (i) the lawyer; or
>>> (ii) a person with whom the lawyer resides.

12. Per regulation 10C(4), "specified information" means the lawyer's work address and the lawyer's phone number at their work address.

13. The Trust supports this exception to the provision of personal details on the Register. At present, there is a real danger that victims of interpersonal violence, particularly family violence, may be forced to choose between practising law or having their physical whereabouts and contact details made public. Being forced to make such a choice is unacceptable. Lawyers should not fear that they, or someone they reside with, may suffer physical or mental harm because of publication of their details on the Register.

14. However, the Trust considers the exception could benefit from three procedural additions.

    a. First, the creation of a standard form document setting out the information the lawyer must provide and submit to the NZLS. This document will provide details of the evidence the NZLS requires to decide whether physical or mental harm is "likely" to the lawyer or a person with whom the lawyer resides. This will help ensure lawyers' requests are treated fairly. Such a form also has the benefit of streamlining the process for a victim lawyer, who may already be burdened by the threat to their privacy and/or personal safety. By way of example, the unpublished electoral roll form lists the types of supporting information that should be attached to the application.[5]

    b. The NZLS may wish to consider whether there ought to be a process following a decision not to grant a lawyers' application for their personal details to be withheld from the Register. For instance, there may be cases where a lawyer has good grounds for their personal details to be withheld from the Register, but the NZLS requires additional information to make its decision. Consideration could also be given to whether there should be a review process if an applicant lawyer is dissatisfied with the decision.

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[5] The form can be accessed [here](#).

c. Second, it would be useful to clarify how long the NZLS intends to prevent or restrict public access to the specified information. This could easily be done by insertion of the appropriate wording into the first sentence of regulation 10C(3) – for example, "…the Law Society may <u>indefinitely</u> prevent…" or "…the Law Society may, <u>for a period of three years</u>, prevent…" Such certainty is necessary to ensure the lawyer has the appropriate protection, while ensuring the purpose of the Register, per regulation 10A, is met. The Trust considers specifying a certain period that information is prevented/restricted from the Register is the most appropriate course. It suggests three years, as a period that balances the purposes of the Register (see regulations 10 and 10A) and protects lawyers. After such period, a lawyer may make a further application to keep their information protected. Ideally, if a specified time period is adopted, the NZLS would give notice to the lawyer in advance of that period expiring. This could be by email or through the NZLS registry website.

Regulation 10D

15. The Trust also supports regulation 10D. Similar to the purpose provision, the Trust considers specifying the purposes for which the Register may be searched brings the Register in line with comparable regulatory regimes and ensures compliance with the Privacy Act 2020.

Conclusion

16. Thank you for the opportunity to provide feedback on potential amendments to the Regulations. Please feel free to contact us if you have any questions about our submission or wish to discuss anything in our submission further.

Ngā mihi

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