New Zealand Law Society
Te Kāhui Ture o Aotearoa

Response to Independent Review of the statutory framework for legal services in Aotearoa New Zealand

24 August 2023

Contents

Introduction

The Law Society welcomes the Panel's report, which represents a valuable contribution to the future of regulation of the legal profession.

The Law Society has carefully considered the Review Panel's report on the Independent Review of the regulation of lawyers in Aotearoa New Zealand.

The Panel recommends substantive reform to the regulation of legal services. This document captures the Law Society's response to those recommendations. It reflects the views of the Law Society's governing Council which represents the legal profession across Aotearoa New Zealand. There are some recommendations which the Law Society accept, and others which the Law Society considers require additional thought and careful consideration.

The Law Society proposes to work with the Ministry of Justice and the profession on how the recommendations of the Panel may be implemented and undertaking the work required for areas where further consideration is required.

Overall conclusions drawn by the Panel

As indicated by the Panel, the views of the profession are not unanimous and in relation to each of the recommendations views from the profession range from accept to reject. However, all the recommendations made by the Independent Panel have either been accepted or accepted in principle by the Law Society or require further consideration. No recommendations have been rejected by the Law Society.

The Law Society accepted in principle the Panel's primary recommendation that the legal regulator be independent from the legal profession's membership body. However, this requires more consideration to determine:

- the structure of the entities;
- the governance of these entities to ensure independence from government;
- how the relationship between these entities would work;
- what functions each would carry out; and
- how the representative body would be funded.

If the recommendation that an independent regulator be implemented is accepted, this would mean the Law Society accepts in principle that it would need to be completely separate from the Law Society and from government. Consequently, that entity could not be a Crown Entity and cannot be subject to direction by Ministers. The Law Society considers that further consideration would be needed as to the composition of the Board of the regulator and to the process for appointment. More consideration would also be required as to the governance arrangements for the Law Society in its role as national representative body.

Many of the Panel's other recommendations are accepted in principle by the Law Society, including the recommendation that a te Tiriti clause should be included in the new legislation and should apply to those exercising regulatory functions under the Lawyers and Conveyancers Act 2006 (LCA). Further work is required to determine the appropriate language for that clause and how it would

operate in practice. The recommendations relating to regulatory objectives for the regulator and to update the fundamental obligations of lawyers are also accepted in principle.

The Law Society has accepted the Panel's recommendation that the legal regulator should not be responsible for regulation of non-lawyer providers of legal services but suggests that further thought needs to be given by Government as to whether these groups should be regulated in some other ways to ensure appropriate protection of consumers of those services.

The Law Society accepts in principle other recommended changes to the current regulatory approach, including the introduction of entity regulation for law practices in New Zealand and the recommendation permitting employed and in-house lawyers to provide pro bono services in non-reserved areas.

Other recommendations require further consideration such as the Panel's recommendation that a freelance model be introduced to provide greater flexibility for those who want to practice without supervision but who do not meet the current criteria for practice on own account. It may be that changes can be made to the existing practice on own account process to create more flexibility while still providing adequate protection for consumers of legal services. Similarly, the Law Society considers that more consideration is needed before new business structures (essentially enabling lawyers to practice alongside non-lawyers) are permitted in New Zealand.

The Law Society has recognised for some time that changes are needed to its complaints (and other regulatory processes) to make these more efficient and responsive, and it welcomes the suggestions from the Panel on ways to achieve this. Although further work is required to scope these changes and to enable them to be implemented, the Law Society supports changes that result in more effective and responsive complaints and disciplinary process.

The Panel's recommendations in favour of a more diverse profession are all accepted in principle by the Law Society.

The Law Society remains well placed to act as a national representative body. The Law Society has created significant systems, processes, and services to support profession, including wide geographical support in the form of its branches. The Law Society is the voice that other organisations reach out to and listen to. It is appropriate to note that the Law Society – in its current form – provides extensive representation of the profession throughout New Zealand with 13 branches nationally and provides a number of representative services which all lawyers in New Zealand may access. The Law Society is strongly of the view that many comments supported the Law Society retaining a strong representative function and acting as advocate for principles such as the rule of law (though some of this support was also in favour of retaining a dual representative/regulator model).

Context, process, and background

Background to the Independent Review

The Law Society commissioned an Independent Review into the statutory framework for legal services in Aotearoa New Zealand following the criticism of the Law Society's performance as a regulator in 2018. Reviews were undertaken during that time which focused on the regulatory framework relating to culture and conduct (such as the Cartwright Report and the Cultural Change Taskforce), but it became apparent that a more fundamental review of the legislative framework and the relationship between the Law Society's representative and regulatory functions was required. A decision to set up the Independent Review was made by the Law Society Council in October 2019.

The Terms of Reference for the Independent Review were developed in consultation with the profession in 2020/2021, with public consultation from 8 April to 27 May 2021. The Terms of Reference were wide ranging, and it was anticipated that the review could result in recommendations for substantive overhaul of the status quo.

While the Law Society is seeking to modernise its regulatory functions through its current Regulatory Strategy (2022), the Law Society has consistently and publicly pointed to the Independent Review as the seminal piece of work that it is undertaking to provide a pathway to address criticisms of its regulatory performance and issues with the regulatory framework more broadly.

As the Panel sets out in its Report, its process for completing its work included:

- preparing and circulating a discussion document, on which submissions were sought and surveys undertaken on a range of issues;
- preparing several specific working papers;
- participation in webinars, branch events, and meetings with members of the profession, as well as conducting four focus groups with particular cohorts; and
- travelling overseas to England and Wales, Ireland, Scotland, Canada, New South Wales, and Victoria to meet with regulators and representative bodies.

Engagement with the profession

There has been considerable opportunity for engagement by the profession during all stages of the Independent Review. Touch points and engagement levels include:

- The Terms of Reference consultation: The Steering Group finalised the Terms of Reference following consultation with the public and the legal profession in April and May 2021. This included 625 responses to the survey on the terms of reference.
- Independent review consultation:
  - The Panel's work commenced on 1 March 2022.
  - The Panel's discussion document was published on 14 June 2022 and was widely circulated. Consultation on the discussion document was initially to close on 12 August but was extended to close on 31 August 2022.

- The consultation included a survey to inform the Panel. 1,308 responses were received, of which 883 were from members of the legal profession.
- 183 submissions were received by the Panel as part of the consultation (including from over 30 law representative and consumer groups).
- From June to September 2022, the Panel participated in three webinars and five branch events (with few attendees) and held 55 meetings with 250 stakeholders and four focus groups.

- **Engagement with and responses to the Panel's report from 9 March:**
  - Independent Review report (post launch) – 35,495 impressions and 337 clicks.
  - Panel's video summarising their findings – 24,751 impressions, 9337 views and 225 clicks.
  - LawPoints (the Law Society's online publication) has been provided to practitioners with details on the Independent Review and how to access the full report.
  - The Law Society surveyed its constituents on the Panel's recommendations. 965 lawyers responded to the survey (noting that not all Council members opted to use this tool to ascertain their constituents' views).
  - Webinar – attendance over two webinars with attendance of 162 and 246 respectively.
  - Feedback received by email and in freetext responses to the Branch and Sections surveys was reviewed (as at 30 May) and included in a thematic analysis, which includes trends and observations and was provided to Council members.

While the public could have engaged via the Panel's video, the webinar or provided feedback directly to us, in preparing this response the voice of the consumer has not been specifically sought and is thus not reflected in any responses.

Preparation of this response

This response represents the view of the Law Society, as represented by its Council, to the recommendations in the Independent Review report.

To assist Law Society Council members to understand the views of their constituents on the Panel's recommendations, the Law Society conducted surveys of lawyers on the specific recommendations made by the Panel. There was not significant engagement by the profession with this survey – only 5.7% of the profession responded. Not all Sections, Branches and members associations used this tool and Council members were free to engage with their constituents through other means, such as meetings and other communications.

The Law Society Council has met on three specific occasions to consider this response. Prior to the draft being prepared, individual Council members (excluding the Board) voted electronically on each of the recommendations and were given an opportunity to provide free text responses. This information was used to prepare a draft response. Council members received this approximately two weeks prior to the final of the three Council meetings where this response was agreed.

Independent regulator

Recommendation 1: Establish a new independent regulator to regulate lawyers in Aotearoa New Zealand

This recommendation is accepted in principle.

The Panel's survey of the profession indicated an even split on whether an independent regulator should be established (44% to 45%).

Surveys of the legal profession on the Panel's recommendations that were conducted by the Law Society (Law Society's survey) indicated more support for this recommendation, with 61% of respondents indicating they agreed or agreed in principle and 23% not accepting the recommendation.

Explanatory note – Council responses
Recommendation 1: Of the 20 responses from Council, 3 (15%) were accept, 8 (40%) were accept in principle, 6 (30%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **Accept in principle.**

Of Law Society Council members, the majority either accept this recommendation or accept it in principle, reflecting the significance of this change to the regulatory framework for lawyers, and the issues that need to be resolved before such a change could be adopted. Some respondents queried whether all regulatory functions should be undertaken by an independent regulator or whether there should only be a separation of the complaints and disciplinary functions. There will be significant consideration of the scope and role of an independent legal regulator.

International experience

The Panel calls the New Zealand regulatory model for lawyers an outlier, both by comparison with other legal regulatory regimes internationally and among professional regulators in New Zealand. However, as the Panel also acknowledges, there remains a mix of models internationally for regulation of legal services. In England and Wales, Ireland, Victoria, and Western Australia, the legal regulator is entirely separate from the profession's membership body. Some of these jurisdictions have compulsory membership of representative bodies and they receive regulatory funding to deliver some services. In other jurisdictions, such as Queensland, New South Wales, South Australia and Tasmania, the regulatory and representative functions are joined but the complaints body is independent.

Issues with current model

As recognised by the Panel, the current model in New Zealand where the regulator is also the representative body has caused a range of issues for the Law Society and the lawyers it regulates.

There are inherent tensions that arise for a representative and regulatory body that is seeking to prioritise the interests of both consumers and lawyers. A separate representative body would better be able to support individual members and advocate on behalf of members collectively. The representative part of the Law Society is currently restricted in its capacity to do this due to

the Law Society's regulatory role. The Law Society is aware that its regulatory functions can act as a deterrent to lawyers accessing its representative services. Its representative functions can also restrict its provision of regulatory services focused on consumers.

There can be particular difficulties in responding to health and wellbeing concerns raised by practitioners. As New Zealand's population ages, an increasing cohort of lawyers are facing health issues which have varying degrees of impact on their law practices. Many of these practitioners require support. The Panel has acknowledged that the representative body for the profession is also the regulator, which potentially deters lawyers from talking with the Law Society about their concerns and seeking assistance and support. Separation of the representative function from the regulatory function will likely enable the representative body to have a stronger voice in support of lawyers.

The current model creates tension in the ability of the representative part of the organisation to advocate to the regulator on matters important to the profession, such as on proposed regulatory legislative or changes that might impact lawyers. For example, most representative bodies advocate for changes to rules and regulations and make submissions on any proposed legislative or regulatory changes that impact their profession (i.e. in the case of lawyers, the changes to the Rules of Conduct and Client Care (RCCC) that came into force in July 2021). The current model also leads to occasions when the representative role, with its influence in the governing structure, can compromise legislation and submissions that favour the profession more than the Law Society's regulatory obligations to the consumer or the wider public.

As the scope of regulation changes (for instance, the introduction of entity regulation, discussed below), and regulatory bodies are increasingly expected to demonstrate a more responsive approach to those they regulate, the case for an independent regulator for the legal profession grows. A specialist regulator needs to have the expertise and an appropriate decision-making structure to adapt to the regulatory environment. This includes ensuring the regulator has the flexibility to regulate legal services delivered by non-legal entities, if necessary, in the future.

Relationship between regulator and representative body

Although the Panel prepared a cost-benefit analysis for the model it has recommended, significant further work would need to be done to confirm the likely actual costs that would arise both to establish a new regulator and for the ongoing operation of both bodies. Given the expense and resources involved in this work, it is best undertaken when it is clear there is government support for an independent regulator, and its structure and core functions have been considered in more detail.

A key consideration should be on future-proofing the regulatory regime to enable it to regulate providers of legal services appropriately on an ongoing basis, including taking into account the likely impact of changes in technology. Consideration would need to be given to the relationship between the regulator and the representative body, and in particular what functions each body carries out. The membership body will play a key part in ensuring a responsive and effective regulatory regime, by providing services like education and professional support. These services help maintain the overall health of the profession and ensure competence and other matters can be addressed early, often without any need for the regulator's input. It is therefore essential that adequate funding is available for those kinds of functions, and to enable the Law Society to continue as a strong representative body for lawyers.

In some jurisdictions where there is an independent regulator, some regulatory functions are carried out by the representative body under statute or delegation (for instance in Victoria, where the Law Institute of Victoria has been delegated regulatory functions in relation to CPD, and commensurate funding is also provided). If this was also to occur here, it would be essential that adequate funding is available for those kinds of functions.

There are important wider public good functions that the public, government, and the judiciary now expect from the Law Society in areas such as law reform, administration of justice and the rule of law, which are funded by practising certificate fees, but the representative body would be well placed to deliver and is consistent with the approach in overseas jurisdictions. The regulator would need to have a role in commenting on law reform affecting lawyers or the legal profession.

The Panel has also recommended that library services should become a wholly representative function. We received several submissions on this topic. Due to the significant costs in running a library this is unlikely to be a viable prospect. There are also strong rule of law and administration of justice reasons why the costs of the law libraries should not be wholly representative. For these reasons, this does not appear to occur in overseas jurisdictions – we have yet to find an example of where a law library is funded entirely from representative subscriptions. In other jurisdictions, significant funding to operate the law libraries comes from government, interest on trust accounts and from regulatory fees and levies. It is also frequently connected with societies or associations that have compulsory lawyer membership.

Funding

In New Zealand the full burden of the cost of regulation is funded by the profession. Overseas, the legal regulator often has other sources of funding. In some cases, there is funding from government and in others interest on lawyers' trust accounts (public interest funds) is used to reduce the regulatory cost as well as providing necessary access to justice services. It is often used to fund libraries, law reform activities and legal education and wellbeing initiatives.

In New Zealand, under the LCA, banks that have nominated trust accounts must give 60% of the interest on those accounts to the Ministry of Justice to fund community law centres (approximately $40 million in the period 1 July 2022 – 30 June 2023). We understand that all banks that have nominated trust accounts are electing to give an additional amount directly to community law centres, which we commend.

However, the amount retained by New Zealand banks for their fees (at least 20%), appears to be greater than is retained by banks in other jurisdictions (in Victoria 100% of trust account interest is provided to the regulator[1]) and discussions should be initiated regarding how much is appropriate[2] for banks to be retaining in fees when in other jurisdictions interest is used to fund important public interest regulatory functions and to reduce regulatory costs on the profession. For instance, in Victoria, practising fees for the 2023-2024 practising year range between $260 and $725 NZD per practitioner,[3] depending on the type of practising certificate held, whereas in New Zealand, the practising fee for the 2023-2024 year is $1,430, plus GST, with some additional fees/contributions for certain type of practice which takes the highest fee to $2,209 plus GST.

1 The Victorian Legal Commissioner and Board uses these funds to provide grants to community law centres, and supports research, the law libraries, mental health and well-being.
2 Any discussions in this area should not result in less funding for community law centres.
3 Practising fees in Victoria do not attract GST.

In jurisdictions where there is an independent legal regulator, funding is generally provided by the regulator to the representative body for the carrying out of representative functions. For instance, in Victoria, 21% of the Law Institute of Victoria's budgeted revenue for the 2023-2024 year (or $3.6 million AUD) was provided by the Victorian Legal Services Board.

Of the jurisdictions named by the panel as examples of standalone regulators, two have compulsory membership of their representative organisations (England and Wales, and Ireland) and one has compulsory insurance (Western Australia), which brings more lawyers into the organisation. Although membership is not compulsory for the Law Institute of Victoria, only 31% of its funding is from membership fees.

Recommendation 2: Ensure the independence and effectiveness of the new regulator by institutional arrangements that include:

a) Establishing an independent statutory body, which is not a Crown Entity and not subject to direction from Ministers.

This recommendation is accepted in principle (if an independent regulator is established).

> **Explanatory note – Council responses**
> Recommendation 2a: Of the 20 responses from Council, 4 (20%) were accept, 6 (30%) were accept in principle, 7 (35%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **accepted in principle** (if an independent regulator is established).

The Council's views were split in this recommendation with half of the Council's members either accepting the recommendation or accepting it in principle. Some feedback received was against this recommendation because it presumed there was to be an independent regulator, rather than considering what would be the best framework for the regulator if an independent regulator was established.

By contrast, the Law Society's surveys of the profession showed 67% of the profession either accepted or accepted the recommendation in principle.

The Law Society has nonetheless received clear feedback that if a regulator is established, it should not be a Crown entity, and it must be completely free from government and ministerial influence, both through funding and the appointment of Board members.

The Law Society does not presently receive any government funding and there was no suggestion in the Panel's recommendation that it should in the future. However, the Minister currently approves the annual practising certificate fee under the LCA. Other regulators do not have this requirement.[4] This could be set by regulations including, if necessary, a method for any maximum year-on-year adjustment, to remove any government oversight of setting this fee.

4 For example, see the s 130 of the Health Practitioners Competence Assurance Act 2003 and s 20 of the Real Estate

The Law Society has also heard that should an independent regulator be introduced, the functions and scale of the independent regulator should be carefully considered and appropriately constrained to avoid increased costs and bureaucracy on the profession.

b) a board of eight members, with an equal split between lawyer and public members, chaired by a public member, and at least two members with strong Te ao Māori insights.

Further consideration is required before the Law Society is in a position to respond to this recommendation.

> **Explanatory note – Council responses**
> Recommendation 2b: Of the 20 responses from Council, 2 (10%) were accept, 3 (15%) were accept in principle, 12 (60%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **further consideration needed.**

The majority of Council members believe this recommendation requires more consideration before the Law Society can respond. This echoes, but is not the same as, the uncertainty found in the Law Society's survey where 54% of respondents either believed that further consideration was required (20%) or did not accept the recommendation (34%).

The Panel's observation was the Law Society's governance structure does not reflect that of other regulatory boards within New Zealand or the boards of independent legal regulators in some comparable jurisdictions. In summary, there is a general trend in other regulators to single governance layers, with boards ranging between 8 to 14 members and with competency requirements and the appointment of independent members.

In feedback received, there has been expressed general agreement that the board needs to be diverse, with relevant skills and experience. There was a strong view that Board members should have appropriate skills and knowledge of the relevant areas of law in which they are performing regulatory functions. The specifics of the diversity and experience required was debated. Should an independent regulatory entity be progressed, the constitution of any board would need further consideration and consultation.

Some feedback observed that in the Aotearoa New Zealand context, familiarity with Te Ao Māori is not an uncommon requirement in modern governance. There were some views that the board should be elected, with a majority of lawyers, and that the chair should be a lawyer/retired judge. Several contributors did not support the chair being a non-lawyer.

Other contributors considered the ten-year tenure was too long, and some were concerned about the skill and experience that public members would require. Contributors also asked about the required attributes of the board chair. Concerns about the ability to be truly independent continue.

Issues raised were not insurmountable to address should an independent legal regulator be established.

Agents Authority.

Some of these questions were considered by the Panel who made additional recommendations in areas such as there being a skills matrix for the board and the board appointing the chair.

c) appointment of board members by the Minister of Justice, following advice from a nominations panel comprising a mix of consumer representatives, governance experts and members of the legal profession.

Further consideration is required before the Law Society is in a position to respond to this recommendation.

> **Explanatory note – Council responses**
> Recommendation 2c: Of the 20 responses from Council, 2 (10%) were accept, 3 (15%) were accept in principle, 10 (50%) were further consideration needed and 5 (25%) were do not accept. We have noted the response as being **further consideration needed.**

A majority of Council members believe that further consideration is required before the Law Society is in a position to respond to the recommendation that the Minister of Justice appoint the Board. In the Law Society's survey, 50% of respondents either agreed or agreed in principle with the Panel's recommendation. 28% did not accept the recommendation.

International experience is varied when it comes to manner of appointment of the boards of legal regulators but there is a mix of nominations committees and Ministerial appointments (sometimes following recommendations by nominations committees, similar to what occurs in the Solicitors Regulation Authority in England and Wales).

In the New Zealand regulatory context, nominations followed by Ministerial appointment are common (for example the Teaching Council and the Medical Council). However, these professions do not have obligations to uphold the rule of law and to facilitate the administration of justice. Strong concerns have been expressed about Ministerial appointments and the risk, actual or perceived, of political bias, and interference undermining the integrity of law reform work (which also relies on the presumption that this remains a regulatory output).

Detail as to the composition and appointment process of the nominations panel has been seen as needing to be clarified by many. Some questioned the use of "*on advice from*" and suggested the Minister of Justice be required to appoint board members *"on recommendation from"* the independent nominations panel (and cannot appoint board members not recommended by the independent nominations panel). In addition, some concerns about the appointments process vary depending on the scope and powers of the regulator.

There were concerns expressed around the potential composition of any nomination panel and the importance of ensuring good representation from the profession and consumers.

The risk of limiting appointments to popular individuals and having the same pool of people considered for the nominations panel and the board was also highlighted.

Some practical suggestions included a transparent and independent process for appointments being

developed, including a public call for nominations, an independent nomination panel, clear processes to avoid conflicts of interest in the appointment process and careful vetting of any potential board member.

There was preference by some for the board of an independent regulator to be elected by members.

As with other recommendations in section 2, the role of the Minister of Justice raised concerns about a risk of blurring the separation of powers. This extended to views that any government interference should be rejected and the Law Society or the profession should be responsible for appointments.

The board appointment process will need to be worked through should there be an independent regulator.

New statutory objectives and obligations

Recommendation 3: Incorporate Te Tiriti and regulatory objectives in the new Act and update the fundamental obligations of lawyers, by:

a) including a Tiriti o Waitangi section, requiring those exercising powers and performing functions and duties to give effect to the principles of Te Tiriti o Waitangi.

This recommendation is accepted in principle.

Explanatory note – Council responses
Recommendation 3a: Of the 20 responses from Council, 2 (10%) were accept, 10 (50%) were accept in principle, 6 (30%) were further consideration needed and 2 (10%) were do not accept. We have noted the response as being **accept in principle**.

The recommendation that the new Act include a section requiring those exercising powers and performing functions and duties to give effect to te Tiriti is either accepted or accepted in principle by the majority of Council members.

The results of the Law Society's survey of the profession were evenly balanced, with 40% of respondents either accepting the recommendation or accepting it in principle and 41% not accepting it.

This recommendation received a lot of feedback. There were concerns expressed about the practical implications of the recommendation for the regulator, and that care would be required to ensure the profession and consumers of legal services understand its scope and how it applies.

For this reason, the wording of any proposed te Tiriti clause would need to be considered in detail to ensure it is fit for purpose for a professional regulator.

As the Legislation Guidelines have acknowledged, "*even subtle differences in the wording of legislation (for example, the contrast between "give effect to" and "have regard to") may have significant effects and must be carefully considered...*".[5] The Supreme Court has recently concluded that statutory te Tiriti clauses "*should not be narrowly construed*" and instead should be given a "*broad and generous*" construction.[6]

The Panel recommended the phrase "*give effect to*" as it reflects the most recent clause preferred by legislators (the Water Services Act 2022 and the Natural and Built Environment Bill, both of which require persons performing duties or functions under the relevant statute to "*give effect to*" te Tiriti principles). Consideration would need to be given as to whether an approach that has been adopted in legislation relating to natural resources is also appropriate for legislation establishing a professional regulatory body.

5 *Legislation Guidelines: 2021 edition, Legislation Design and Advisory Committee*, Chapter 5, part 6.
6 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board & Ors* [2021] NZSC 127, at [151].

Te Arawhiti has *commented* on the use of te Tiriti clauses, noting that: "*A recent proliferation of Treaty clauses, however, has raised questions about the extent to which they are the product of well-considered policy and careful analysis of their legal and practical effect. If Parliament's intended effects of a Treaty clause are not clear there is a risk they will not be implemented, potentially leading to unintended or adverse consequences both in the portfolio area and for the Māori Crown relationship.*"

The Panel's report acknowledges "*concern*" expressed by submitters about the "*risk of uncertainty*" associated with including a te Tiriti clause in the legislation establishing the regulatory regime for lawyers and "*what its practical effects would be.*" Law Society Council members have expressed similar concerns, noting that te Tiriti is understood to have given effect to a partnership between the Crown and Māori, and there is some uncertainty about how this would apply to an independent professional regulator.

Consultation on this recommendation by the Law Society and the public engagement undertaken by the Panel both indicated mixed views about the inclusion of te Tiriti in the regulatory framework, primarily due to a lack of information about what it would mean for the regulator, any membership body, and for the regulated profession. For instance, thought would need to be given as to how te Ao Māori perspectives and tikanga could be incorporated into the regulatory functions, how expertise in these processes would be obtained, and how these processes would be applied in practice. These, and other questions, would be considered as part of the structure and processes established by the regulator. A number of regulatory processes can be amended to better recognise te Ao Māori perspectives and tikanga, such as mediation and dispute resolution, admission ceremonies, education tools for the profession and consumers, and the process for applying for a certificate of character. Steps are already being taken by the Law Society to be more inclusive in its regulatory processes and functions. The New Zealand Council of Legal Education has also *introduced* a mandatory tikanga Māori component for the New Zealand legal curriculum, which was fully supported by the Law Society.

In addition, if implemented, the regulator would provide information to the profession and the public explaining how this new obligation will work, and that the provision applies to those carrying out regulatory functions rather than individual lawyers (there was initially some concern among lawyers that the obligation would apply to lawyers, responded to by the Law Society *here*).

As drafted, this clause would apply more broadly than simply to the independent regulator. The language requires "*all persons*" exercising functions and powers under the legislation to give effect to the principles of te Tiriti. If the powers currently given to the Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) and High Court under the LCA were shifted into the new legislation, this clause would apply to those bodies as well. Consideration would need to be given as to what this would mean.[7]

In addition to these issues, it is likely that alternative drafting that might better encompass an independent legal regulator's functions and responsibilities could be developed. For instance, the wording could be amended to apply to any person exercising regulatory powers or performing regulatory functions under the LCA, which would clarify that it captured the independent regulator

7 The Chief Justice made a submission on the scope of the te Tiriti clause in the Natural and Built Environment Bill (which, as originally drafted, would apply to the Environment Court and other courts on appeal) arguing that it would involve issues of principle and practicality. The Select Committee which recently reported back on this Bill suggested amending it so that it does not apply to the Courts except in limited contexts.

and potentially the representative body to the extent it carried out regulatory functions on the regulator's behalf, but not the Tribunal, the High Court, or lawyers.

Other independent regulators, such as the Teaching Council, the Real Estate Agents Authority, and health regulators such as the Nursing Council, the Psychologists Board and the Medical Council may have strategies in this area but do not have statutory provisions requiring them to give effect to te Tiriti. It is anticipated this may change when the legislation relating to those regulators is updated, but for the time being, the legal regulator would be a leader in terms of how it implements te Tiriti principles in its regulatory activities. The Teaching Council has adopted a te Tiriti strategy, which is something the Law Society is likely to consider regardless of whether an independent regulator is established or not.

b) setting out regulatory objectives, with an overarching objective to protect and promote the public interest.

This recommendation is accepted in principle.

Explanatory note – Council responses
Recommendation 3b: Of the 20 responses from Council, 3 (15%) were accept, 9 (45%) were accept in principle, 8 (40%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as **being accept in principle.**

The recommendation that the new Act sets out regulatory objectives with an overarching objective to protect and promote the public interest is either accepted or accepted in principle by the majority of Council members.

The Law Society's surveys of the profession indicated 55% either accepting or accepting the recommendation in principle.

It is noted that no other independent professional regulator in New Zealand has an overarching public interest objective. All these regulators work to protect the interests of consumers of the services they regulate, and in doing so, protect and promote the public interest, but this objective is not mandated in statute. Internationally, while some legal regulators have public interest objectives, others do not. If implemented, this recommendation would make the regulator a leader both among professional regulators in New Zealand and internationally in terms of other comparable legal jurisdictions.

If this recommendation is implemented, further clarification would be needed. Any overarching public interest objective given to the legal regulator should be linked to objectives the regulator can influence; ultimately, the interests that the regulator is serving are the interests of consumers of the services that are regulated, not the public generally (unless relating to wider law reform, rule of law and the administration of justice functions). It is worth noting that public interest considerations are often different, generally wider, than consumer interest considerations.

Although the Panel's executive summary refers to the legal regulator generally having an "*overarching public interest objective*", the drafting of this recommendation later in the Panel's report suggests that

the breadth of this objective appears to be limited by the more specific statutory objectives listed in the draft clause. That is, rather than giving the regulator an overarching objective of promoting and protecting the public interest, the intention appears to be to require the regulator to have regard to the public interest to the extent it carries out its other regulatory objectives, including (for instance) promoting and protecting the interests of consumers (which could be narrower than the public interest).

c) updating the fundamental obligations of lawyers, requiring lawyers to promote as well as protect their clients' interests and adding a new obligation on lawyers to maintain their competence and fitness to practise.

This recommendation is accepted in principle.

Explanatory note – Council responses
Recommendation 3c: Of the 20 responses from Council, 4 (20%) were accept, 8 (40%) were accept in principle, 8 (40%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle.**

This recommendation is either accepted or accepted in principle by the majority of Council members.

This recommendation was also largely supported by those who responded to the surveys conducted by the Law Society on behalf of the Council – 57% either accepted the recommendation or accepted it in principle.

The RCCC already place a duty on lawyers to "*promote and protect the interests of the client*" (r6). This duty has been in place since the RCCC were first made.

The Panel's proposal that s4 of the LCA is amended to require lawyers to promote as well as protect the interests of their clients would simply bring the fundamental objectives in the statute in line with the duties currently imposed under the RCCC. The proposed amendment will therefore improve consistency between the statute and the professional rules applying to lawyers and is unlikely to have a material impact on lawyers.

The Panel's proposed requirement that one of the fundamental obligations on lawyers include maintaining their competence and fitness to practise would helpfully reinforce existing obligations on lawyers:

- In relation to competence, under the RCCC, lawyers have a duty to act competently when providing regulated services to a client (r3). The purpose of the CPD requirements is to ensure that lawyers maintain competence. A lawyer that does not act competently may be the subject of a complaint or own motion investigation, which may result in disciplinary action.
- Lawyers are required to declare any matters that impact their fitness to practise annually when they renew their practising certificates. If it is decided that a lawyer is no longer fit to practise,

their practising certificate will not be renewed. Alternatively, in the case of a lawyer who is no longer fit to practise due to health concerns, a Standards Committee may intervene in the lawyer's practice or, in the case of a sole practitioner, the practitioner's attorney may be required to step in.

As a result, the expectation is that imposing a fundamental objective on lawyers to maintain their competence and fitness to practise would not have a material impact on lawyers.

The scope of regulation

Recommendation 4: Reform the scope of regulation, by:

a) maintaining the current focus of the regulatory framework on lawyers and conveyancers, rather than extending it to cover other unregulated legal service providers.

This recommendation is accepted.

> **Explanatory note – Council responses**
> Recommendation 4a: Of the 20 responses from Council, 9 (45%) were accept, 3 (15%) were accept in principle, 7 (35%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **Accept.**

This recommendation is either accepted or accepted in principle by the majority of Council members.

A majority of those who responded to the Law Society's surveys either accepted this recommendation or accepted it in principle (59%).

While the Report does not recommend extending the role of any independent regulator to include non-lawyers, the current statutory framework regulates lawyers and conveyancers. We note this means that any consideration of amendments to the current legislation would inevitably need to include consideration of the regulation of conveyancers at the same time.

As an increasing number of people obtain legal services from non-lawyer providers, the gap between those providers of legal services who are regulated and those who are not widens, leaving parts of society unprotected (with a potentially disproportionate impact on those who cannot afford a lawyer).

Further, given the pace with which our legal ecosystem is changing and the accessibility of legal services from non-lawyers (for example, from online providers), it seems likely that, at some stage, there will need to be consideration of the regulatory framework for non-lawyer providers of legal services.

Although other jurisdictions may not generally regulate non-lawyer providers of legal services, it is important to recognise that New Zealand's reserved areas[8] are narrow by comparison with other jurisdictions, meaning more providers of legal services fall outside of this definition than in comparable professions overseas. This leads to scenarios where a greater number of consumers in New Zealand are likely to be accessing legal services in non-reserved areas through unregulated providers.

While the availability of non-lawyer providers of legal services helps to keep the cost of these services low and enable those who might otherwise not have been able to afford a lawyer to obtain the help they require, there is presently no mechanism to ensure this help is given competently. There have

8 Giving legal advice in relation to the direction of management of proceedings, appearing as an advocate for a client before any court or tribunal, representing another person involved in proceedings in a court or tribunal, or giving specific legal advice under the Property Relationships Act 1976.

been very public examples of poor advocacy by some non-lawyers in the employment area and this has led to the Law Society supporting the regulation of employment advocates.

Further, some consumers of legal services do not understand the difference between a lawyer and a non-lawyer provider of legal services and what the impact of choosing a non-lawyer may be (such as no obligation on the non-lawyer to provide clear fees information, no dedicated mechanism for complaints, other than a Disputes Tribunal or the Fair Trading Act 1986, no obligation to hold client funds on trust).

It is also anticipated that risks to consumers will increase with the advancement of technology such as AI and with more legal services being offered online, rather than in person. At the very least, consideration should be given as to whether non-lawyer providers of legal services should be obliged to provide more information to consumers to help them understand the services they are purchasing and what their remedies are if they are not satisfied with those services. Further, it is likely that there will be increasing questions as to whether non-lawyer providers of legal services should be registered in the future similar to other regimes in order to protect consumers of those services, and whether a single regulator should oversee a legal services market, i.e. focusing on the services delivered rather than the title given to some of those who provide them.

Given the proliferation of non-lawyer providers of legal services, consideration should be given to providing stronger powers to the regulator to respond to people who commit an offence against the LCA by holding themselves out as a lawyer or by carrying out work in the reserved areas. For instance, consideration could be given to replicating the search warrant powers in s10 of the Health Practitioners Competence Assurance Act 2003 for the legal regulator to enable it to investigate potential offences under the LCA.

b) introducing a new 'freelance' practising model that allows lawyers to provide services to the public in non-reserved areas, without requiring prior approval from the regulator.

Further consideration is required before the Law Society is in a position to respond to this recommendation.

> **Explanatory note – Council responses**
> Recommendation 4b: Of the 20 responses from Council, 3 (15%) were accept, 5 (25%) were accept in principle, 9 (45%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **further consideration needed**.

The largest group of Council members believe this recommendation needed more consideration.

This contrasts with the Law Society's surveys of the profession, in which 53% of respondents either agreed or agreed in principle with the recommendation.

Consumer protection

The existing mechanism for lawyers to be approved to practise on own account intentionally results in barriers to entry, including by requiring applicants to have a certain amount of legal experience (at least three years in the previous five). This requirement was specifically included in the *relevant regulations* in 2010 to respond to quality assurance concerns associated with lawyers practising on own account with no experience or understanding of what was required. This was a concern particularly raised in the context of legal aid providers and barristers sole who were choosing to practise in that mode straight from law school. The LCA and regulations also require lawyers to meet education requirements, as well as to satisfy the Law Society of their suitability to practise on own account. These requirements provide an important quality assurance safeguard for lawyers who are offering unsupervised services to consumers.

Practitioners who are approved to practise on own account are overrepresented in complaints statistics compared with their proportion of the practising population. In the year to 30 June 2022, 72% of closed complaints handled by the Law Society were about directors, partners, sole practitioners, or barristers, but those individuals make up approximately 35% of the population of the legal profession.

Recommended freelance model

The Panel's freelance model recommendation would effectively bypass the practice on own account application process for lawyers the Panel considers to be low risk, namely those who work outside the reserved areas, who work in their own name without employees, are directly engaged by the client, and do not handle client funds. Those practitioners would be entitled to practise on own account without the approval of the regulator.

The recommendation is based on the model adopted in England and Wales. Care should be taken before relying on this experience, however, as the reserved areas in England and Wales are broader than in New Zealand. If the freelance model were adopted here, it would be available to a wider range of practitioners than in England and Wales.

Also, in England and Wales before a solicitor may apply for admission, they are required to have two years' relevant work experience in providing legal services including in contentious work. The same requirement does not apply in New Zealand, where lawyers may complete the Professional Legal Studies Course in as little as 13 weeks and meet the criteria for admission to the Bar.

A version of the freelance model is not available in other comparable jurisdictions such as the Australian states.

The Panel's view is that lawyers who practice alone and outside the reserved areas pose a lower risk than those who do not. This is debatable:

- As noted above, the Law Society handles a disproportionate number of complaints about lawyers approved to practise on own account relative to their proportion of the legal population. Of complaints that were closed about lawyers practising on own account in the year to 30 June 2022, 44% were about lawyers practising alone (sole practitioners or barristers). Although the proportion

of complaints about partners and directors was higher (54%), the difference is not such that it is reasonable to say that practitioners who practice on own account by themselves pose a low risk.[9]

- Practising outside the reserved areas does not necessarily mean that a lawyer poses a lower risk to their clients and, as they remain a lawyer while doing this work, they could still cause damage to the reputation of the legal profession. Significant financial loss can be caused to a client by a lawyer incompetently advising on a major contract or finance arrangement and considerable personal distress could be caused by a lawyer incompetently advising on a family law matter that has not reached the stage of litigation. The importance of competence is recognised by the Panel at other parts of its report.[10]

The risk that was intended to be addressed by current practice on own account requirements in the LCA is illustrated by a recent Disciplinary Tribunal *decision* where a practitioner was suspended from practice for two years following a period in which she effectively practiced on own account in immigration law despite not being approved to do so, and failed to adequately and competently advise her clients. Had the Panel's proposed freelance model been available in New Zealand, this practitioner would have been entitled to practise under it (as she was practising outside the reserved areas and without a trust account).

The Panel rightly points out that the existing pathway to practising on own account inhibits lawyers from practising flexibly through contract work, and that reforming the existing model would improve clients' access to qualified lawyers (rather than effectively encouraging them to obtain the same work from non-lawyers). But these efficiencies must be balanced against the need for protection for consumers of legal services who may not be able to judge whether their freelance lawyer is competent to provide the services they require.

It may be that a freelance model for lawyers not advising the public (in effect, lawyers contracting solely to an organisation in an in-house capacity) could be better accommodated within the practice on own account approval processes, provided they have suitable experience (as discussed further below).

Were the freelance model to be adopted here, other practical matters would need to be considered, such as:

- Would a lawyer who operated as a freelancer be required to notify the regulator before adopting those modes of practice and would they hold a particular type of practising certificate?
- Would a lawyer who was newly admitted to practise be permitted to operate as a freelancer or would there be some minimum experience requirements before they are entitled to do so (see further discussion on this point below)?
- Could a freelancer rely on their (unsupervised) freelance experience to later be approved to practise on own account within the reserved areas, to operate a trust account, or to work alongside other lawyers without the need to undertake further training or education?
- What would happen if the freelancer did in fact operate inside the reserved areas – is this simply a complaints matter, or would that constitute an offence against the regulatory regime?
- Would a freelancer be required to comply with the standard requirements for providing clients information in chapter 3 of the RCCC or would some bespoke requirements be adopted?

9 The fact that both groups potentially pose risk is reflected in the amendments in July 2021 to rule 11 of the RCCC (in relation to proper professional practice) which apply to all lawyers practising on own account regardless of whether they practice in a firm, or by themselves.

10 For example, the focus on competence assurance in chapter 9.

The introduction of greater flexibility into the modes of practice available to lawyers must be balanced with appropriate mechanisms to protect consumers. Giving the regulator tools like the ability to impose conditions[11] (for example to restrict a lawyer's area of practice) can provide important protections for consumers while enabling greater flexibility both for a lawyer who wants to practise more flexibly and for an employer who is looking to manage workflow issues. These tools would only be available if those who wished to freelance were required to inform the Law Society of that intention.

Barriers created by practice on own account application process

The Panel recommended removing the statutory minimum level of experience requirement for those who wish to apply to practise on own account. This reflects the Panel's acknowledgement that the proposed freelance model would not solve the perceived issues with return to the workforce for those who wish to practise on own account as partners or directors, as a sole practitioner with a trust account, or in the reserved areas.

The freelance model would not apply, for instance, to a lawyer who had taken parental leave and who wanted to practise on own account in litigation. That lawyer would still be required to apply to practise on own account. Depending on their period of parental leave, they may not have the required experience to do so and would have to establish special circumstances for their application to be approved. We are aware that this is an issue which to date has predominantly affected women and those returning from overseas.

The data held by the Law Society does not suggest that lawyers who are returning to work following a career break are disproportionately affected by the current practice on own account requirements:

- In the eight years (approximately) between 1 July 2015 and 30 May 2023, the Law Society's Practice Approval Committee has declined six applications which asserted special circumstances under reg 12A of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (out of 131 special circumstances applications, and 488 applications to practise on own account that were referred to PAC). None of these were applicants returning from parental leave.
- In several cases where an applicant has not met the minimum level of experience requirement in the past five years but does have sufficient experience overall to practise on own account, PAC has accepted an undertaking by the applicant to practise on own account only in a specific mode, such as in partnership alongside another lawyer or lawyers.

However, the Law Society accepts that the minimum hours worked requirement is likely to be disproportionately affecting those who have recently returned to work, albeit with considerable experience in the past (more than five years prior).

The Law Society cannot know how many people might have applied to practise on own account but have been put off by the current requirements, and acknowledges that this may impact certain groups disproportionately, specifically women returning from parental leave.

Data shows that most lawyers who commence practice post admission identify as female (64.6% in 2022, compared with 34.6% who are male and 0.1% who identify as gender diverse). However, the proportion of women lawyers who are approved to practise on own account is 39%. At the

11 Discussed further below.

most senior level of the profession, only 26% of Kings Counsel are women.[12] Undoubtedly, there are barriers to women reaching the highest levels of the profession, although many of these are societal barriers that cannot be resolved through regulatory action alone and require ongoing contributions from other parts of the profession such as law schools and employers.

It is important that any changes made to the regulatory regime to ensure that the practice on own account process does not discriminate against certain groups do not also remove regulatory barriers that are there to protect consumers.

The Panel has recommended removing the minimum legal experience requirement from the existing practice on own account process, but consideration should be given to amending it instead to require a minimum number of years' experience albeit across the practitioner's entire career, not only in the most recent five years. This would enable experienced lawyers who have taken a career break (and who meet the education requirements and are otherwise considered to be suitable) to be approved to practise on own account even if they have been absent from the profession for a time. Alternatively, the requirement could revert to the previous three years in the last eight years' experience requirement. If the freelance model is introduced, an equivalent minimum experience should apply to it as well. As noted above, additional protections, such as giving the regulator the ability to impose conditions on a practising certificate, where appropriate, would also help to ensure consumers are adequately protected.

Other amendments could be made to the current practice on own account application process to make this more efficient. The Law Society is presently considering what steps can be taken.

c) permitting employed lawyers to provide pro bono services to the public in non-reserved areas.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 4c: Of the 20 responses from Council, 6 (30%) were accept, 9 (45%) were accept in principle, 4 (20%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **accept in principle**.

This recommendation is either accepted or accepted in principle by a majority of Council members.

The profession similarly supported the recommendation, with 81% of respondents to the Law Society's surveys either accepting it or accepting it in principle. Only 7% did not accept the recommendation.

Generally pro bono legal services are provided to consumers who cannot afford to pay for a lawyer and may be particularly vulnerable. Alongside recommending that employed and in-house lawyers be permitted to provide pro bono services, the Panel has recommended that one of the regulator's objectives be "*promoting and protecting the interests of consumers*". To achieve both, it will be necessary to consider how pro bono services provided by employed and in-house lawyers should be regulated.

12 There is, of course, currently an even split between women and men at the very upper echelon of the judiciary, the Supreme Court.

The Law Society provided extensive submissions on this matter in response to the *Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill.* The Law Society supported employed lawyers being able to do more pro bono work and had started work on the regulatory requirements needed to balance quality assurance concerns with important access to justice considerations. The Law Society suggested that any employed or in-house lawyer who wishes to provide pro bono advice outside their employment should first seek the approval of the regulator to ensure sufficient consumer protection (akin to the process under which barristers apply to take direct instructions). The Panel did not support this mechanism. However, further consideration would need to be given as to the nature of the regulatory framework that pro bono services should be subject to. In England and Wales employed and in-house lawyers are *permitted* to undertake pro bono work for a not for profit body or community-interest company.

The Panel supports restricting employed lawyers to providing pro bono advice only outside the reserved areas. However, it is quite possible for a lawyer to make significant mistakes in acting outside those areas which cause serious loss for a pro bono client.

Other consumer protection mechanisms previously proposed by the Law Society should be considered as well, namely:

- A definition of "*pro bono legal services*" should be adopted to avoid confusion and uncertainty as to the breadth of any exception to the prohibition on employed lawyers providing legal advice outside their employment. This is consistent with the approach in Australia where the Australian Pro Bono Centre has adopted a clear definition[13] (which is widely utilised) to ensure clarity around what is not considered to be pro bono services.
- Whether changes to the RCCC are required, or how employed and in-house lawyers providing pro bono services would ensure the requirements of the RCCC are met, particularly around client care and service information and management of conflicts.

In the interests of consumer protection, given an employed or in-house lawyer providing pro bono services (other than via a Community Law Centre/Citizens Advice Bureau) will be doing so without direct supervision, a minimum experience requirement may also be appropriate (potentially akin to what is required to practise on own account). Further consideration would also need to be given to the insurance needs for employed and in-house lawyers who wish to provide pro bono services outside their employment and how those lawyers might be able to obtain appropriate professional indemnity insurance to mitigate their personal risk.[14]

13 *Australian Pro Bono Centre | Definition of Pro Bono*

14 For example, in Australia, there is a National Pro Bono Professional Indemnity Insurance Scheme which was established to encourage lawyers (particularly those who work in-house or for government) to undertake pro bono legal work. The scheme provides free professional indemnity insurance for lawyers and paralegals working on pro bono projects approved by the Australian Pro Bono Centre where there is no other professional indemnity insurance available.

d) permitting new business structures, to allow non-lawyers to have an ownership interest in law firms and lawyers to enter into legal partnerships with non-lawyers.

Further consideration is required before the Law Society is in a position to respond to this recommendation.

> **Explanatory note – Council responses**
> Recommendation 4d: Of the 20 responses from Council, 1 (5%) were accept, 7 (35%) were accept in principle, 10 (50%) were further consideration needed and 2 (10%) were do not accept. We have noted the response as being **further consideration needed.**

The largest group of Council members believe that this recommendation needed more consideration.

The recommendation gained more support from members of the profession; 51% of those who responded to the Law Society's surveys either accepted it or accepted it in principle.

Lawyers are currently prohibited from sharing the income from the provision of regulated services with any non-lawyer (other than patent attorneys). These restrictions prevent lawyers (including foreign lawyers) from working alongside other related professionals to deliver a suite of services for a client via a single entity.

Undoubtedly, providing greater flexibility for legal services to be delivered via different business structures promotes competition and innovation, which is in the best interest of consumers. Alternative business structures and multi-disciplinary practices (MDPs) are now permitted in several comparable jurisdictions, including England and Wales, New South Wales, and Victoria.

Further consideration is required to determine how this recommendation would operate in practice, but these issues have been addressed in other jurisdictions. The following questions will need further consideration:

- MDPs would need to reconcile their fundamental obligations under the LCA and professional obligations under the RCCC with the commercial imperatives of the practice. For instance, lawyers currently have fundamental obligations to be independent in providing regulated services to their clients and to protect the interests of their clients. Each MDP would need to ensure that its lawyer staff members could continue to do this, notwithstanding their non-lawyer colleagues who are free to focus on commercial considerations such as profit. It may be that restrictions should be placed on entities that wish to provide legal services alongside other services, whereby effective control of the entity must remain with lawyers (for example, a maximum percentage of non-lawyer ownership.[15]
- Each MDP will need to consider how to handle matters such as confidentiality and conflicts in a way that enables the lawyers working for the MDP to continue to meet their professional duties.

15 This was required in England and Wales on a transitional basis, under which authorized MDPs were entitled to have no more than 25% non-lawyer managers and no more than 25% non-lawyer share ownership: *SRA | Legal Disciplinary Practices | Solicitors Regulation Authority*

- MDPs would need to be clear with clients about which services they are offering are being provided by a lawyer (and are therefore subject to legal professional privilege) and which are not.
- The extent to which the regulator would regulate the non-reserved legal activities performed by an MDP[16] or any non-legal activities undertaken by the entity, if entity regulation is also introduced (entity regulation is discussed below).

If implemented, the introduction of this recommendation would need to be carefully managed, potentially through phased introduction. This occurred in England and Wales where, during a transition period, *authorised MDPs* were entitled to have no more than 25% non-lawyer managers and no more than 25% non-lawyer share ownership.

e) directly regulating law firms, with new firm-level obligations.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 4e: Of the 20 responses from Council, 7 (35%) were accept, 8 (40%) were accept in principle, 4 (20%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **accept in principle.**

The majority of Council members either accept this recommendation or accept it in principle.

Similarly, this recommendation was strongly supported by the profession, with 70% of respondents to the Law Society survey either accepting it or accepting it in principle. Only 12% of respondents did not accept the recommendation.

There is already some form of entity regulation in the New Zealand legal profession:

- The Law Society regulates incorporated law firms (ILFs) (but not partnerships) under the LCA.
- Since July 2021, under the RCCC, all "*law practices*" are required to meet certain obligations to address bullying, discrimination, and harassment, and in respect of complaints by clients. A law practice is every lawyer practising on own account as well as any entity that provides regulated services to the public.

However, unlike in comparable jurisdictions, like England and Wales and some Australian states, there is not yet wholesale regulation of law practices in New Zealand.

Support for this recommendation reflects the fact that, under the current model, systemic issues within law practices can be difficult to address. An example of this is where complaints are received that reflect poor culture in a law practice or inadequate policies and processes. Currently, for law practices other than ILFs, the only option is to consider the conduct of individual lawyers within the practice. Entity regulation would enable the regulator to examine the conduct of the law practice as a whole (alongside any individual lawyers) to determine whether steps are required to address systemic issues. Potentially, where issues arise, an entity's registration could be subject to conditions or, in serious cases, suspended or revoked.

16 Noting that the LCA already covers non-lawyer employees – for instance, complaints can be made about employees of practitioners and ILFs.

Consideration would need to be given as to which entities would be regulated and what obligations would be imposed. In England and Wales, for instance, there is a separate firm Code of Conduct which sets out requirements relating to compliance and business systems, cooperation with regulators, service and competence, conflict of interest, confidentiality and disclosure, and client money and assets.

A registration process for entities would also need to be considered alongside the funding for this model. For example, in England and Wales firms pay an annual fee to the Solicitors Regulation Authority based on turnover. The process for authorisation in England and Wales involves an application by the firm to the regulator, including the nomination of a compliance officer as well as the approval by the regulator of managers and owners of the authorised practice. Once approved there are conditions that apply to the authorised firm (for example around restrictions on employment of certain individuals, information disclosure, and payment of fees), as well as a Code of Conduct which regulated practices must comply with.

Quality assurance and care

Recommendation 5: Enable the regulator to better protect consumers, support practitioners and assure competence, by:

a) giving the regulator new tools, including powers to suspend practising certificates, require practitioners to undergo a health or competence review, undertake practice reviews and impose bespoke conditions on a practising certificate

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 5a: Of the 20 responses from Council, 4 (20%) were accept, 7 (35%) were accept in principle, 9 (45%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle.**

This recommendation is either accepted or accepted in principle by the majority of Council members.

The recommendation was also supported by the majority of the profession, with 62% of respondents to the Law Society survey accepting it or accepting it in principle.

New and up to date regulatory tools would be welcomed by the Law Society regardless of whether other recommendations are implemented. If greater flexibility is introduced into the regulatory regime for lawyers (for example, through permitting MDPs and/or a freelance model of practice), a wider and more responsive range of tools is required to manage the risks to consumers associated with these changes. A majority of Council members supported this recommendation, with some expressing the view that more consideration is needed as to what these powers would look like.

Health/competence reviews

The current regulatory regime does not adequately enable the regulator to take into account a practitioner's declining health or competence. This is because:

- While health conditions are one of the factors a lawyer must make a declaration about when applying to renew their practising certificate, this relies on both the lawyer's recognition that they have a health concern that is impacting their practice and their willingness to declare the matter. Because the renewals process is annual, it does not enable health concerns to be addressed during the practice year.
- Either a Standards Committee or a sole practitioner's attorney are able to step in where there are concerns about health that are impacting a practitioner's ability to practise. However, intervention by a Standards Committee is an onerous and time-consuming process, which in practice is undertaken only rarely. It requires the Standards Committee to be aware of the health concern (which usually arises because a complaint is made), and to reach the view that a particular threshold is met where there is a risk to either the practitioner's trust account or their practice. The process

is not appropriate for cases of slow cognitive decline. While the attorney process is intended to address these scenarios, the attorney can only step in if the practitioner is unable to conduct their practice and again relies on an assessment of the lawyer's health by the lawyer and the attorney.
- Health concerns are sometimes considered by Standards Committees through the complaints process if the health concern causes a competence issue. However, this reactive process is focused on a disciplinary process, rather than on addressing cognitive decline and supporting a practitioner to manage this.

As the legal profession ages, more responsive tools are required to enable the regulator to respond appropriately to declining health and competence. The competence review mechanism under the Health Practitioners Competence Assurance Act 2003 may be a useful example of the kinds of powers that should be considered for the legal regulator. This process enables the regulator to review competence, impose outcomes, place conditions on the scope of practice (such as requiring the practitioner to have counselling or professional supervision), and in some cases to suspend a practising certificate either before or after a review takes place if there is a risk of serious harm.

Adequate support needs to be given to lawyers who are suffering health conditions to ensure that they are able to practise well. Many health conditions will not affect a practitioner's ability to practise and should not necessarily be brought to the attention of the regulator, but for scenarios where there is a concern that health is impacting a lawyer's practice, regulatory processes need to be designed in a way that removes the fear of self-reporting and enables practitioners to return to work as soon as possible. This is likely to be easier to achieve via a separate representative body.

Conditions on practising certificates

At present, lawyers sometimes agree to limitations on their practising certificate or approval to practise on own account by giving undertakings to the Law Society (or the Lawyers and Conveyancers Disciplinary Tribunal). This provides some reassurance in cases where some doubts remain about the lawyer's capability. However, this process relies on the cooperation of the lawyer concerned. Although there is generally an incentive to agree, it would be preferable if the Law Society was able to impose conditions without the practitioner specifically agreeing (as noted, this power is presently available to medical regulators). Conditions could incorporate limitations on where a practitioner practices, what areas they practice in, or additional training or education that is required.

Clarity would be needed as to what could trigger a condition being imposed, how it would be monitored, whether it would expire or be required to be removed, what would happen if it was not complied with, and what review process would be available.

Suspension of practising certificates

At present, the Law Society may only seek interim suspension of a practitioner if a Standards Committee has conducted a hearing into a complaint or own motion inquiry, has resolved to refer the matter to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, and has laid charges against the practitioner in that Tribunal. This process is resource-intensive and can be relatively slow-moving.

Enabling the legal regulator to decide to suspend a practitioner's practising certificate on an interim basis in limited cases would improve protection for consumers, by preventing the practitioner from practising while the concerns about their behaviour are being considered. This process would need

to be undertaken in a way that ensured the practitioner's right to natural justice is met, and the practitioner must have the right to a prompt review of the decision.

Consideration would need to be given to when and how this power could be exercised, including what could trigger the use of the power, and the practitioner's natural justice rights and right of review.

b) reviewing CPD requirements, including the current 10-hour CPD requirement, and specifying key mandatory components of CPD to be undertaken every three to five years.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 5b: Of the 20 responses from Council, 5 (25%) were accept, 10 (50%) were accept in principle, 4 (20%) were further consideration needed and 1 (5%) were do not accept. We have noted the response as being **accept in principle.**

This recommendation is either accepted or accepted in principle by the majority of Council members.

The majority of respondents to the Law Society's survey (64%) either accepted this recommendation or accepted it in principle.

The underlying premise of the present approach to CPD for lawyers is that it is flexible. Other than completing a CPD plan and record and the minimum number of hours of CPD activity, it is up to each lawyer to ensure that their CPD activities meet their current learning needs. It is intended to be an approach to learning that is appropriate to professional adults. The approach recognises that CPD should not be so onerous it becomes a deterrent to those considering entering or staying in the profession.

Minimum hours of CPD

The Panel's recommendation is that the independent regulator, if established, should review the existing CPD requirements, including specifically looking at the current requirement to complete 10 hours annually.[17] The Panel has not specifically recommended any change from the status quo.

The Law Society agrees that this review should be carried out by an independent regulator, if established.

Many other comparable jurisdictions have adopted a minimum number of hours of CPD. This includes Scotland, Ireland, British Columbia, Ontario, Victoria, New South Wales, and South Australia. By contrast, CPD in England and Wales is undertaken by way of a competency framework, with solicitors being required to reflect on their competency needs.

17 Noting that the requirements in other professions can be considerably larger – for instance, Chartered Accountants in New Zealand are required to complete at least 120 hours of CPD every 3 years, 90 hours of which must be verifiable: *CPD requirements for all members from 1 July 2021 | CA ANZ (charteredaccountantsanz.com)*.

To implement a framework of this kind would involve replacing the points-based, minimum hours of study approach with a requirement that each practising lawyer establishes their own competency needs and then conducts study designed to achieve these goals. Rather than making annual declarations of completed study that may then be audited, a competency framework might require each lawyer to demonstrate to the regulator they have maintained their competency using a variety of means and on a longer cycle.

As a recent Victorian review report[18] states: "A competency framework would provide a readily understandable guide for lawyers about their expected level of competence consistent with their level of knowledge and experience. It would provide a basis for re-focusing the CPD framework on learning outcomes rather than measuring activity inputs."

Existing ability to make aspects of CPD mandatory

Several overseas jurisdictions have made aspects of their CPD requirements mandatory. Since July 2021, the Law Society has also had the power to do this, although has not exercised this to date.

This power is flexible – the Law Society could mandate CPD training in specific areas, or mandate specific courses, although the latter would require certification of the courses and the capacity within the education and training sector for them to be delivered to all lawyers. For this reason, generally other jurisdictions have preferred to mandate areas of study, rather than specific courses. This also helps to retain some of the flexibility of the current model, as well as reasonable autonomy for practitioners.

Notwithstanding the Working Group's focus on anti-bullying and discrimination, any genuine consideration to mandating aspects of CPD should look to future-proof the process by considering how the legal profession is changing and what is on the horizon for practitioners. This will ensure the regulator is not simply mandating study in "problem areas" after they have already become a problem. It may also be that some mandatory components are more suitable during a lawyer's early years in the profession. Any mandatory components must be accessible to all members of the profession both in terms of cost and the availability of appropriate course-providers.

Were aspects of CPD to be made mandatory by the regulator, consideration would also need to be given to whether the regulator requires additional powers to enforce the requirement and what those powers should be.

18 *CPD_Report_Final_0.pdf (lsbc.vic.gov.au)*

Complaints system

Recommendation 6: Reform the system for handling complaints about lawyers and introduce a model in which:

a) complaints will be assessed and determined by in-house specialist staff, rather than by volunteers on Standards Committees.

Further consideration is required before the Law Society is able to respond to this recommendation.

Explanatory note – Council responses
Recommendation 6a: Of the 20 responses from Council, 5 (25%) were accept, 5 (25%) were accept in principle, 9 (45%) were further consideration needed and 1 (5%) was do not accept. Given the even split and the fact that the largest group believe that further consideration is required, we have noted the response as being **further consideration required.**

The response by Council members to this recommendation was evenly split, with 50% of Council members either accepting it or accepting it in principle. The largest single group of Council members consider it requires further consideration.

The recommendation was also supported by the majority of the profession, with 61% of those who responded to the Law Society's survey either accepting it or accepting it in principle.

This recommendation goes hand in hand with the recommendation that the legal profession is regulated by an independent body, although the Lawyers Complaints Service could be separated from the Law Society's other regulatory functions.

Although the current model has some advantages, primarily the invaluable expertise and experience offered by volunteer members of Standards Committees, the expectation is that a specialist in-house complaints team will enable a more efficient and consistent complaints process, resulting in faster resolution of complaints and a smoother, less stressful process for both complainants and lawyers (particularly in relation to low level consumer complaints). Most comparable overseas jurisdictions have at least an independent complaints service (such as New South Wales), or an independent regulator with a specialist in-house complaints team (such as Victoria). Some jurisdictions, like England and Wales, have two complaints bodies with jurisdiction over different types of complaint (consumer and conduct).

An in-house complaints team would need to be supported by appropriate legislation, including legislative provisions that enable a responsive, fair, flexible, and consumer-centric process.

It is acknowledged any in-house complaints resolution team will require a range of expertise, including current or former lawyers as staff with expertise in particular types of legal issues, such as costs disputes, as well as issues arising in particular subject areas such as conveyancing and family law.

Depending on the range of issues the in-house team considers, expertise from non-lawyers would also be required. This is essential to the credibility and effectiveness of the model. The regulator itself would need to build this body of expertise and obtain the expertise of external advisors when required. Adequate resource will be required to ensure an appropriate range of skills is available.

b) formal investigative and disciplinary processes will be reserved for those matters that require a disciplinary response from the regulator. Complaints about 'consumer matters' (eg, fees, delay, poor communication) will instead go through a dispute resolution process.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 6b: Of the 20 responses from Council, 9 (45%) were accept, 10 (50%) were accept in principle, 1 (5%) was further consideration needed and 0(0%) were do not accept. We have noted the response as being **accept in principle.**

Almost all Council members either accept this recommendation or accept it in principle.

This recommendation was also strongly supported by those who responded to the Law Society's survey, with 83% either accepting the recommendation or accepting it in principle. Only 5% did not accept it.

At present, it takes a Standards Committee on average 304 calendar days to process a standard complaint (slightly down from 319 days in 2020).[19] The Law Society agrees this is too long. A significant reason for this delay in resolution is an unresponsive statutory complaints process that requires all complaints received to go before a Standards Committee for consideration. It is not currently possible to dismiss complaints administratively if they are trivial, vexatious, or otherwise lacking merit. All complaints must go through this process, regardless of their seriousness, and regardless of whether they are about rudeness, timeliness, conflicts, incompetence, bullying or sexual harassment. All fee complaints must also be considered in this way no matter the level of the fees complained about. This causes valuable Standards Committee time to be spent on dealing with complaints that could have been responded to and resolved more efficiently (noting that Standards Committee members are volunteers). The delays also impact on both complainants and lawyer respondents, who are required to participate in a protracted and often stressful process.

Several comparable jurisdictions adopt a multi-track approach to handling complaints about lawyers, including the regimes for solicitors in Victoria, New South Wales and England and Wales. This enables complaints to be triaged, with the regulator determining that no further action will be taken where unnecessary or inappropriate. For those complaints that progress, less serious complaints about service, including most fee complaints, can be handled using an approach focused on resolution and restoration, while investigative tools are reserved for more serious responses.

19 2022 annual report.

This would significantly improve the efficiency and timeliness of the complaints process, as well as bring the regulator in line with its overseas contemporaries. It would also ensure regulatory responses match the nature of the conduct and the extent of harm caused by it.

If adopted, guidance would be provided for complainants to understand how their complaint will be progressed, as well as to guide the profession and consumers on what constitutes a "consumer" complaint and what is a conduct matter. Clarity would also be needed in relation to:

- how a dispute resolution process for consumer complaints would work;
- if and when a consumer complaint could evolve into a conduct matter (such as in the case of repeated conduct);
- what process would be available (if any) for review of consumer matters (assuming, based on recommendation 6d below, that the review committee would not have jurisdiction);
- what outcomes are available for both tracks; and
- whether additional support is needed for those lawyers who are the subject of a complaint, particularly a conduct complaint.

As noted above, the expectation is that specific expertise would still be required on particular categories of both consumer and conduct matters, such as costs complaints and complaints arising in particular areas of law.

The Law Society also supports other key elements of the complaints system proposed by the Panel.

In particular:

- The Law Society supports a less prescriptive and more responsive complaints process. Its view is that the present delays in the complaints process can largely be attributed to unwieldy and overly prescriptive legislation. Removing complex,[20] confusing (and sometimes inconsistent) provisions which presently bind Standards Committee and replacing this with an overarching objective and proactive, flexible, and modern regulatory tools which support that objective will result in better (and faster) outcomes for both complainants and lawyers.
- The Law Society has previously asked for changes to be made to the LCA to enable its staff to triage complaints when they are received to ensure they are responded to in a way that reflects their seriousness, and to determine certain complaints administratively if no action is needed. These mechanisms are available to other independent regulators.[21]
- For consumer matters, encouraging the parties to attempt to resolve the matter and, if that fails, giving the regulator the power to determine a complaint based on what is fair and reasonable in the circumstances is likely to result in quicker resolution of more minor matters and a reasonable outcome for both complainant and lawyer.
- Prioritising investigative resources towards conduct matters should also result in these matters proceeding more promptly.

20 For instance, the Law Society has previously sought amendment to s188 of the LCA, which provides for confidentiality of information held by Standards Committees, their delegates and staff. The Law Society's requested amendments seek to achieve a better balance between the confidentiality of the complaints process and increasing the transparency and openness of the Lawyers Complaints Service.

21 Such as the Real Estate Authority and health regulators under the Health Practitioners Competence Assurance Act 2003.

All of these modifications are likely to have a positive impact on resources and result in a more responsive process overall. For instance, in 2022 in Victoria:

- 4,114 enquiries about potential complaints involving a lawyer were received by the legal regulator (noting there were more than 26,000 lawyers practising in Victoria in that year).
- 1/3 of these related to costs, most of which were able to be resolved between the parties with the support of the regulator.
- 1,071 complaints were received, of which 60% were "consumer" complaints and 36% involved potential disciplinary conduct, with 2% involving both.
- 458 complaints about consumer matters were closed, of which 338 involved disputes about costs. 35% of consumer complaints that were closed were resolved through mediation and informal resolution. Only 11% were referred to the Victorian equivalent of our Disciplinary Tribunal.
- 416 complaints about disciplinary matters were considered, with 324 disciplinary matters closed, and 27 disciplinary determinations made.

c) the identity of a lawyer who engages in 'unsatisfactory conduct' will not be publicly disclosed other than in exceptional circumstances, with naming reserved for cases where the Lawyers and Conveyancers Disciplinary Tribunal finds the lawyer guilty of 'misconduct'.

This recommendation is accepted in principle.

Explanatory note – Council responses
Recommendation 6c: Of the 20 responses from Council, 5 (25%) were accept, 11 (55%) were accept in principle, 4 (20%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle.**

The majority of Council members accept this recommendation in principle.

The recommendation was strongly supported by respondents to the Law Society's surveys, with 77% either accepting it or accepting it in principle. Only 8% did not accept the recommendation.

The identity of a practitioner who is found to have engaged in unsatisfactory conduct currently only occurs in rare cases. This is because, under the LCA there are only very limited grounds on which a Standards Committee can order the publication of the identity of a practitioner.

In the five years to 30 June 2021, Standards Committees directed publication of the identity of a practitioner on 15 occasions, out of a total of 201 publication orders (and a total of 6,860 complaints closed) in the same period.

The Panel's recommendation that the regulator should adopt naming guidelines will help to ensure that the process for deciding whether to name a practitioner who is found to have engaged in unsatisfactory conduct occurs consistently and transparently. Clear guidance on when the unsatisfactory conduct was sufficiently "exceptional" to warrant naming the practitioner would be required. The Law Society can begin work on these guidelines (for its Standards Committees) without any legislative or regulatory reform.

d) the independent Legal Complaints Review Officer will be replaced by a small review committee convened by the regulator and staffed by external members or an external adjudicator.

Further consideration is required before the Law Society is in a position to respond to this recommendation.

> **Explanatory note – Council responses**
> Recommendation 6d: Of the 20 responses from Council, 2 (10%) were accept, 6 (30%) were accept in principle, 10 (50%) were further consideration needed and 2 (10%) were do not accept. We have noted the response as being **further consideration needed.**

The largest group of Council members believe this recommendation needs more consideration.

60% of respondents to the Law Society's survey either accepted this recommendation or accepted it in principle.

This recommendation contains limited detail and further work would be required to consider how an internal review process would work in practice and what powers the review committee would have.

The Panel has concluded that an internal review committee (albeit with external members or an external adjudicator) would be more logical if an independent legal regulator is adopted, and that an internal mechanism of this kind would be significantly more cost effective. Some Council members saw the independence of the Legal Complaints Review Officer (LCRO) as a benefit that should be preserved.

There are a range of factors requiring further consideration, including:

- What types of matters could go before the review committee (the Panel recommends conduct matters only, not consumer matters) and who can refer those (under the current regime, a range of people can seek review of a complaint, including the practitioner's employer, or fellow partner or director, and the Law Society itself).
- In respect of conduct matters, would the review committee be able to review all outcomes of complaints or investigations, including a decision to refer the matter to the Disciplinary Tribunal (as is currently the position).
- Whether the review committee could also review other types of regulatory functions (at present the LCRO can review decisions by Standards Committees to commence own motion investigations or to intervene in a practice).
- The range of powers given to the review committee, including whether it would have the power to refer decisions back to the original decision-maker (the internal complaints body) for reconsideration (which the LCRO may currently do).
- How the external members/adjudicator would be appointed, what qualifications they would require, how often they would "sit", and what administrative and legal support they would need.

It is acknowledged that there may be an increase in judicial reviews of regulatory decisions if the jurisdiction of the review committee was reduced, although this is unlikely to be commensurate with the current number of reviews to the LCRO.

There are real concerns about the timeliness of the current review process. While 214 Standards Committee determinations were referred for review to the LCRO in 2023, the LCRO closed only 160 decisions. For cases that have been closed by the LCRO since 1 July 2018, 30% took longer than 12 months to resolve, with 4% taking more than 24 months to resolve. For cases that are currently still unresolved, 14% have been open for longer than 2 years and 5% for longer than 3 years. This shows a decline in timeliness over the last five years. A number of issues have contributed to this delay including COVID-19 lockdowns, increased jurisdictional challenges, increased complexity of the issues being raised and an increased trend in lawyer applicants adopting formal approaches to advancing their views with lengthy submissions and accompanying documentation.[22] In addition, we are aware that resourcing and position vacancies is impacting on the productivity of the office.[23]

e) lawyers will be subject to a new duty to ensure complaints are dealt with promptly, fairly, and free of charge.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 6e: Of the 20 responses from Council, 6 (30%) were accept, 8 (40%) were accept in principle, 6 (30%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle.**

The majority of Council members accept this recommendation in principle.

69% of respondents to the Law Society's survey either accepted this recommendation or accepted it in principle. Only 11% did not accept the recommendation.

Lawyers practising on own account are currently under an obligation to have appropriate complaints handling procedures to ensure client complaints are dealt with "promptly and fairly". The Panel did not feel this went far enough, concluding that lawyers should be under a positive duty to actually deal with complaints promptly and fairly, as well as at no cost to the complainant. This language was not adopted previously because of a concern that lawyers could find it difficult to handle complaints promptly (and therefore be in breach of their professional duties) through no fault of their own if the client does not cooperate.

Given that lawyers practising on own account are already required to have complaints mechanisms in place to achieve this outcome, this change should have only a minor impact on most lawyers, provided some leeway is given for any delay in the resolution of such complaints that is out of the control of the lawyer.

Most lawyers would not expect to charge for handling complaints they receive. However, lawyers are sometimes subject to repeated vexatious or frivolous complaints and consideration may be needed to providing guidance on how these should be handled.

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22 Annual Report of the Legal Complaints Review Officer for the 12 months ended 30 June 2022.
23 The LCRO has been operating without a full complement of officers. The Law Society has asked for a review of remuneration rates to reflect the subject matter and nature of the role.

Cultural challenges

Recommendation 7: Encourage diversity and inclusion in the legal profession, by:

a) creating a regulator with a specific objective of "encouraging an independent, strong, diverse and effective legal profession" and a competence-based board that reflects diversity.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 7a: Of the 20 responses from Council, 3 (15%) were accept, 7 (35%) were accept in principle, 7 (35%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **further consideration needed.**

The responses from Council were evenly split on this recommendation, with half either accepting the recommendation or accepting it in principle.

Of those members of the profession who responded to the Law Society's survey, 50% accepted this recommendation or accepted it in principle, while 31% did not accept it.

Further work is required to determine what this obligation would mean in practice. Diversity and inclusion are important objectives for the profession. However, feedback received questioned whether this objective should be an objective of the regulator or whether it more properly lay with the Law Society as the representative body.

In particular, clarity is required as to what the obligation to encourage a diverse legal profession would involve. No other professional regulator in New Zealand is required to comply with such a requirement. It is important to recognise that efforts to increase diversity within a profession are the responsibility of a range of bodies including employers, tertiary education providers and even secondary schools. The Law Society supports the establishment of a diversity and inclusion framework for the profession.

The Law Society supports stipulating competence, skills, and diversity requirements for board members of the independent regulator. However, further consideration regarding what this would look like needs to occur. As discussed in relation to recommendation 2, many other New Zealand professional regulators have adopted competency, skills, and diversity requirements or expectations for some or all their board members. Overseas regulators have requirements that stipulate the need for a range of skills across the Board of the organisation.

b) removing regulatory barriers that are having a discriminatory effect.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 7b: Of the 20 responses from Council, 7 (35%) were accept, 9 (45%) were accept in principle, 4 (20%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle.**

The majority of Council members either accept this recommendation or accept it in principle.

Similarly, a majority of those who responded to the Law Society's survey (59%) either accepted this recommendation or accepted it in principle.

While the Law Society supports the removal of genuinely discriminatory barriers to entry to the profession, some entry requirements are needed to ensure consumers are able to obtain legal services from lawyers who are (and remain) competent and fit to practise. For instance:

- As discussed above, the requirements of the practice on own account process intentionally creates barriers to ensure only those who are genuinely suitable and appropriately qualified to practise on their own are permitted to do so.
- Assessing the fitness of an applicant to practise or a lawyer seeking to renew their practising certificate is also an essential element of consumer protection. The collection of sensitive health information reflects the language of the LCA as health can be an aspect of fitness to practise. The Law Society has no powers to collect relevant health information from other bodies and therefore must rely on the information provided by the applicant. A mental health condition should not necessarily be determinative of whether a person is deemed to be fit to practise, but genuinely relevant information about a person's health that may impact their practice is required so that an appropriate assessment can be made in the interests of protecting consumers of legal services. The Law Society recognises that, under the current regime, some practitioners may feel uncomfortable about providing information about their health to the regulator if they have concerns this might impact their practising certificate. Were an independent regulator to be established, the expectation is that practitioners would feel more comfortable seeking support they need from a representative body that is separate from the regulator.

Some of the Panel's specific recommendations for removing barriers to entry to the profession can be implemented reasonably easily, including amending existing guidance to make it clear that a wider range of referees can be used by applicants for a certificate of character and providing updated guidance to applicants about how to manage this.

As discussed above, the Law Society agrees that there are initiatives that can be taken in respect of the process for seeking approval to practise on own account, such as modifying the experience requirement so that it does not unfairly impact those who have taken a period of time away from the profession for parental leave and taking steps to make the process more efficient and consistent.

As the Panel recognises, admission ceremonies are outside the jurisdiction of the Law Society (this is the jurisdiction of the High Court), but it is relevant to note the Law Society has previously advised the courts it sees no legal impediments to admission ceremonies occurring on marae. In addition, admission ceremonies have occurred completely in te reo Māori (and admission candidates are provided the option of speaking in te reo Māori). The Law Society fully supports te reo Māori ceremonies and for these to be held on marae.

It is also important to recognise the discriminatory barriers identified by the Panel are not the only barriers to entry to the profession. Completing a law degree and finding suitable employment are often the most significant barriers for many young people who wish to become a lawyer.

c) giving the regulator new powers to collect diversity data from law firms and publish aggregate data on trends within the profession.

This recommendation is accepted in principle.

> **Explanatory note – Council responses**
> Recommendation 7c: Of the 20 responses from Council, 6 (30%) were accept, 5 (25%) were accept in principle, 6 (30%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **accepted in principle.**

The majority of Council members either accepted this recommendation or accepted it in principle.

A majority (59%) of respondents to the Law Society's survey either accepted this recommendation or accepted it in principle.

The Law Society recognises that the legal profession is lagging in its reflection of diversity in our population generally. As acknowledged in the *Law Society's Regulatory Strategy for 2022-2025*, 77% of lawyers identify as New Zealand European compared with 66% of New Zealand's working population, 6.9% as Māori (compared with 14% of the working population), 7.5% as Asian (compared with working population of 15%) and 3.3% Pacific Peoples (compared with 7% of the working population). As noted above, although women are the majority of lawyers commencing practice from law school, they are in a minority in the more senior parts of the profession.

As the Regulatory Strategy acknowledges, "there is growing recognition of the importance of having a workforce that both reflects and represents the communities it serves."

Some aggregated data about demographic trends and diversity is already published annually by the Law Society. At present, the Law Society collects ethnicity data from individual lawyers when they make an application for a practising certificate. The provision of this data is voluntary, although the *most recent snapshot* of the profession published by the Law Society contained ethnicity data of approximately 96% of registered lawyers.

The Panel has recommended that the regulator be given specific powers to collect diversity data from firms over a certain size and to publish that data as a means towards encouraging greater diversity in the profession. The intention is for the regulator to report on trends, not to publicly identify specific firms. The information would be collected as an aspect of entity regulation (discussed above).

The expectation is that this data would be collected in addition to the existing voluntary collection of data from individual lawyers.

Any additional collection and reporting of diversity data by the regulator should not detract from broader efforts that are needed to improve diversity across the profession, efforts that cannot not be achieved by the regulator alone but must be prioritised by law schools and employers as well, as noted above. Some also queried whether it was the role of the regulator to collect, hold, and report on this data.

Law Society as membership body

Recommendation 8: The Law Society should continue as the national representative body. It should have a single governance layer, with a board comprising 8–10 members, including public members.

Further consideration is required before the Law Society is in a position to respond to this recommendation.

Explanatory note – Council responses
Recommendation 8: Of the 20 responses from Council, 2 (10%) were accept, 5 (25%) were accept in principle, 9 (45%) were further consideration needed and 4 (20%) were do not accept. We have noted the response as being **further consideration needed.** However, Council unanimously considers the Law Society should continue as the national representative body. Further consideration is needed in relation to the governance of that entity.

There are two aspects to this recommendation, who is the national representative body and how they are governed. A majority of Council believe that further consideration is needed in respect of the recommendation. In the Law Society's survey, 58% of respondents either agreed or agreed in principle with the Panel's recommendation while 35% either did not accept the recommendation or stated further consideration is required.

Further consideration of this recommendation is required before the Law Society is in a position to respond to this recommendation. This is in part because some respondents did not accept, or only accepted in principle, the separation of the regulatory and representative functions of the Law Society.

This recommendation is a natural conclusion of events if there is to be an independent regulator as proposed in the Panel's first recommendation, is supported.

If the recommendation to introduce an independent regulator is implemented, it is vital to the Law Society that the representative body can succeed as a standalone entity. A well-functioning, well-resourced membership body provides essential support for regulated persons, including legal education, wellbeing initiatives, and other professional support. It also independently advocates for the profession on matters such as rule of law and access to justice. It also has a vitally important role in advocating for the regulated profession as a whole. As discussed above, a successful membership body plays a key part in ensuring the regulatory regime is responsive and effective, by helping to maintain the overall health of the profession. It is possible that, as in other jurisdictions, the representative body would be responsible for carrying out some regulatory tasks on behalf of the regulator and would expect to receive some funding from the regulator for this.

Who is the national representative body?

The Law Society remains well placed to continue as a national representative body. The Law Society has created significant systems, processes, and services to support profession, including wide

geographical support in the form of its branches. The Law Society is the voice that other organisations reach out to and listen to.

It is appropriate to note the Law Society **is the only lawyers' professional body that** provides extensive representation of the profession throughout New Zealand with 13 branches nationally, across the many regions of Aotearoa, and provides a number of representative services which all lawyers in New Zealand may access.

Representative activities are provided along a continuum with some being readily seen (such as regional branch networking) and others being less visible (such as providing wellbeing support and guidance in specialist areas). In the 12-month period to March 2023, the Law Society facilitated 236 education and collegial events through the branch network alone with total attendances of over 11,000.

Our sections play an important role in the delivery of representative services in their particular areas. Our Family Law Section, Property Law Section and ILANZ support their members through education, communications and advocacy. The collective total membership of the sections is in excess of 6300 members[24].

The Law Society was able to provide a wide range of support and advocacy through COVID-19, adverse weather events and specific health and safety incidents. The Law Society is the trusted voice of the profession with the Courts and Judiciary. The Law Society provides support and well-being services to members who may not otherwise have access to them (or would prefer to access support outside of their employment). Although the libraries are funded by regulatory, our network of library services (including 29 lawyer kiosks and sites around the country) are supported by our representative services in these areas.

New Zealand Law Society Continuing Legal Education Limited is also a subsidiary company of the Law Society, and is a leading provider of continuing legal education services in New Zealand.

In the feedback provided to the Law Society, many comments supported the Law Society retaining a strong representative function and acting as advocate for principles such as the rule of law (though some of this support was also in favour of retaining a dual representative/regulator model).

How should the national representative body be governed?

In respect of the current governance structure, the system of a 25-member council who delegate decision making to a smaller board of five elected members is unusual when compared with other New Zealand representative bodies who have a separate regulatory body.

The Panel's recommendation for the size of the board of the representative Law Society follows the recommendation in respect of the board for the independent regulator and suggests that eight to ten members, including some skills-based appointments may be appropriate.

The Panel suggests that a portion of the governance members continue to be elected and those elected members appoint further members to fill skills gaps (following independent governance advice).

24 As at March 2023.

The feedback provided to the Law Society from both respondents and Council members was varied:

- there were strong views against public full voting members on the representative body board;
- there were mixed views about the size of the board, and how the board should be selected while maintaining the Law Society's position as a national representative body; and
- questions have been raised about how elections would be undertaken, whether there would still be scope for sections[25] to be on Council, and the role of the 13 regional branches, along with other representative organisations.

This indicated there were different views regarding a potential governance structure of a representative only Law Society and further consideration is needed on this aspect. However, this should not be read as a lack of support for the Law Society as the representative body, which was strong. Some respondents commented they were unable to give substantive feedback and that further consideration was needed as they did not have sufficient detail regarding the recommendation.

Some noted they are looking forward to a representative body that solely supports and advocates for lawyers but there was concern about how it would be funded (see below).

Further considerations

If the representative and regulatory functions were split by the creation of a new independent regulator and maintaining a national representative body, any change to the structure would also need to consider the powers held by each of the representative and regulatory bodies.

Our experience is that the profession would expect to be consulted and engaged in the structure of any potential representative only Law Society.

Under the current co-regulatory structure, the LCA refers to the Law Society doing things such as setting practising fees and carrying out regulatory functions which ceases to be appropriate in a split structure, with a separate regulator.

The expectation is that the membership body's functions could not be funded by a membership fee alone, without that fee being unattractively high. In other jurisdictions, the legal regulator provides funding to the membership body for carrying out regulatory functions. In many jurisdictions the representative body also receives funding from the interest on trust accounts to deliver regulatory services that contribute to public good, rule of law and administration of justice functions (such as libraries and law reform). This occurs even though not all regulated persons are members of the membership body. Consideration would need to be given to whether this is also required here.

The current issue around the costs of funding representative services is the priority for the profession.

25 Specific interest groups being the Property Law Section, the Family Law Section and In-house Lawyers Association of New Zealand (collectively, Sections) all presently are members on the Law Society Council.

Recommendations and the Law Society's response

Accept: The Law Society accepts the intent of the recommendation and the mechanism for delivery.

Accept in principle, further consideration on mechanism: The Law Society accepts the intent of the recommendation, further consideration is required before the Law Society is in a position to determine the best mechanism to deliver it.

Accepted by majority: Accepted by majority Council decision

Further consideration needed: Further consideration is required before the Law Society is in a position to respond to this recommendation.

Not accepted

#	Recommendation	Response	Responsible	Next Steps
1	Establish a new independent regulator to regulate lawyers in Aotearoa New Zealand.	Accept in principle (by majority)	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for an independent regulator.

Explanatory note – Council responses
Recommendation 1: Of the 20 responses from Council, 3 (15%) were accept, 8 (40%) were accept in principle, 6 (30%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **Accept in principle**.

#	Recommendation	Response	Responsible	Next Steps
2	Ensure the independence and effectiveness of the new regulator by institutional arrangements that include:			
a	establishing an independent statutory body, which is not a Crown Entity and not subject to direction from Ministers	Accept in principle (if an independent regulator is established).	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for an independent regulator.
Explanatory note – Council responses Recommendation 2a: Of the 20 responses from Council, 4 (20%) were accept, 6 (30%) were accept in principle, 7 (35%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **accepted in principle** (if an independent regulator is established).				
b	a board of eight members, with an equal split between lawyer and public members, chaired by a public member, and at least two members with strong Te ao Māori insights	Further consideration needed	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider potential governance options.
Explanatory note – Council responses Recommendation 2b: Of the 20 responses from Council, 2 (10%) were accept, 3 (15%) were accept in principle, 12 (60%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **further consideration needed**.				
c	appointment of board members by the Minister of Justice, following advice from a nominations panel comprising a mix of consumer representatives, governance experts and members of the legal profession.	Further consideration needed	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider potential governance options.
Explanatory note – Council responses Recommendation 2c: Of the 20 responses from Council, 2 (10%) were accept, 3 (15%) were accept in principle, 10 (50%) were further consideration needed and 5 (25%) were do not accept. We have noted the response as being **further consideration needed**.				

#	Recommendation	Response	Responsible	Next Steps
3	Incorporate te Tiriti and regulatory objectives in the new Act and update the fundamental obligations of lawyers, by:			
a	including a Tiriti o Waitangi section, requiring those exercising powers and performing functions and duties to give effect to the principles of Te Tiriti o Waitangi	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 3a: Of the 20 responses from Council, 2 (10%) were accept, 10 (50%) were accept in principle, 6 (30%) were further consideration needed and 2 (10%) were do not accept. We have noted the response as being **accept in principle**.				
b	setting out regulatory objectives, with an overarching objective to protect and promote the public interest	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 3b: Of the 20 responses from Council, 3 (15%) were accept, 9 (45%) were accept in principle, 8 (40%) were further consideration needed and 0(0%) were do not accept. We have noted the response as being **accept in principle**.				
c	updating the fundamental obligations of lawyers, requiring lawyers to promote as well as protect their clients' interests and adding a new obligation on lawyers to maintain their competence and fitness to practise.	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 3c: Of the 20 responses from Council, 4 (20%) were accept, 8 (40%) were accept in principle, 8 (40%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle**.				

#	Recommendation	Response	Responsible	Next Steps
4	Reform the scope of regulation, by:			
a	maintaining the current focus of the regulatory framework on lawyers and conveyancers, rather than extending it to cover other unregulated legal service providers	Accept	Ministry of Justice/NZLS	As part of legislative policy work consider whether additional powers are needed to respond to people who commit an offence under the LCA
Explanatory note – Council responses Recommendation 4a: Of the 20 responses from Council, 9 (45%) were accept, 3 (15%) were accept in principle, 7 (35%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **Accept**.				
b	introducing a new 'freelance' practising model that allows lawyers to provide services to the public in non-reserved areas, without requiring prior approval from the regulator	Further consideration needed	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider what amendments if any might be appropriate, while protecting the public, to regulations and legislation.
Explanatory note – Council responses Recommendation 4b: Of the 20 responses from Council, 3 (15%) were accept, 5 (25%) were accept in principle, 9 (45%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **further consideration needed**.				
c	permitting employed lawyers to provide pro bono services to the public in non-reserved areas	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider what amendments if any might be appropriate, while protecting the public, to regulations and legislation.
Explanatory note – Council responses Recommendation 4c: Of the 20 responses from Council, 6 (30%) were accept, 9 (45%) were accept in principle, 4 (20%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **accept in principle**.				

#	Recommendation	Response	Responsible	Next Steps
d	permitting new business structures, to allow non-lawyers to have an ownership interest in law firms and lawyers to enter into legal partnerships with non-lawyers	Further consideration needed	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 4d: Of the 20 responses from Council, 1 (5%) were accept, 7 (35%) were accept in principle, 10 (50%) were further consideration needed and 2 (10%) were do not accept. We have noted the response as being **further consideration needed**.				
e	directly regulating law firms, with new firm-level obligations.	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 4e: Of the 20 responses from Council, 7 (35%) were accept, 8 (40%) were accept in principle, 4 (20%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **accept in principle**.				

#	Recommendation	Response	Responsible	Next Steps
5	Enable the regulator to better protect consumers, support practitioners and assure competence, by:			
a	giving the regulator new tools, including powers to suspend practising certificates, require practitioners to undergo a health or competence review, undertake practice reviews and impose bespoke conditions on a practising certificate	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 5a: Of the 20 responses from Council, 4 (20%) were accept, 7 (35%) were accept in principle, 9 (45%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle**.				
b	reviewing CPD requirements, including the current 10-hour CPD requirement, and specifying key mandatory components of CPD to be undertaken every three to five years.	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to rules.
Explanatory note – Council responses Recommendation 5b: Of the 20 responses from Council, 5 (25%) were accept, 10 (50%) were accept in principle, 4 (20%) were further consideration needed and 1 (5%) were do not accept. We have noted the response as being **accept in principle**.				

#	Recommendation	Response	Responsible	Next Steps
6	Reform the system for handling complaints about lawyers and introduce a model in which:			
a	complaints will be assessed and determined by in-house specialist staff, rather than by volunteers on Standards Committees	Further consideration required	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 6a: Of the 20 responses from Council, 5 (25%) were accept, 5 (25%) were accept in principle, 9 (45%) were further consideration needed and 1 (5%) was do not accept. We have noted the response as being **further consideration required**.				
b	formal investigative and disciplinary processes will be reserved for those matters that require a disciplinary response from the regulator. Complaints about 'consumer matters' (eg, fees, delay, poor communication) will instead go through a dispute resolution process	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 6b: Of the 20 responses from Council, 9 (45%) were accept, 10 (50%) were accept in principle, 1 (5%) was further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle**.				

#	Recommendation	Response	Responsible	Next Steps
c	the identity of a lawyer who engages in 'unsatisfactory conduct' will not be publicly disclosed other than in exceptional circumstances, with naming reserved for cases where the Lawyers and Conveyancers Disciplinary Tribunal finds the lawyer guilty of 'misconduct'	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 6c: Of the 20 responses from Council, 5 (25%) were accept, 11 (55%) were accept in principle, 4 (20%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle**.				
d	the independent Legal Complaints Review Officer will be replaced by a small review committee convened by the regulator and staffed by external members or an external adjudicator	Further consideration needed	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 6d: Of the 20 responses from Council, 2 (10%) were accept, 6 (30%) were accept in principle, 10 (50%) were further consideration needed and 2 (10%) were do not accept. We have noted the response as being **further consideration needed**.				
e	lawyers will be subject to a new duty to ensure complaints are dealt with promptly, fairly, and free of charge.	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 6e: Of the 20 responses from Council, 6 (30%) were accept, 8 (40%) were accept in principle, 6 (30%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle.**				

#	Recommendation	Response	Responsible	Next Steps
7	Encourage diversity and inclusion in the legal profession, by:			
a	creating a regulator with a specific objective of "encouraging an independent, strong, diverse and effective legal profession" and a competence-based board that reflects diversity	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 7a: Of the 20 responses from Council, 3 (15%) were accept, 7 (35%) were accept in principle, 7 (35%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **further consideration needed**.				
b	removing regulatory barriers that are having a discriminatory effect	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 7b: Of the 20 responses from Council, 7 (35%) were accept, 9 (45%) were accept in principle, 4 (20%) were further consideration needed and 0 (0%) were do not accept. We have noted the response as being **accept in principle**.				
c	giving the regulator new powers to collect diversity data from law firms and publish aggregate data on trends within the profession.	Accept in principle	Ministry of Justice/NZLS	NZLS will work together with MoJ in consultation with the profession to consider policy work required for potential amendments to legislation.
Explanatory note – Council responses Recommendation 7c: Of the 20 responses from Council, 6 (30%) were accept, 5 (25%) were accept in principle, 6 (30%) were further consideration needed and 3 (15%) were do not accept. We have noted the response as being **accepted in principle**.				

#	Recommendation	Response	Responsible	Next Steps
8	The Law Society should continue as the national representative body. It should have a single governance layer, with a board comprising 8–10 members, including public members.	Further consideration needed	NZLS/MOJ/ PCO	This separation would form part of the policy work required to amend legislation but NZLS can also look at amendment to its Constitution.

Explanatory note – Council responses
Recommendation 8: Of the 20 responses from Council, 2 (10%) were accept, 5 (25%) were accept in principle, 9 (45%) were further consideration needed and 4 (20%) were do not accept. We have noted the response as being **further consideration needed**.
Council unanimously considers the Law Society should continue as the national representative body. However, further consideration is needed in relation to the governance of that entity.

Frazer Barton
President

24 August 2023