

Constitutional change



Consultation document

October 2023

Constitutional change consultation

Introduction

The New Zealand Law Society Te Kāhui Ture o Aotearoa (the Law Society) is seeking feedback on potential changes to its [Constitution](#).¹ The Constitution sets out the procedural requirements for the Board and Council meetings of the Law Society as well as other matters. The Law Society is proposing changes to its Constitution that would bring in good governance practices in respect of the number of Board members, their composition, tenure and the structure of the Board along with the other changes.

The Law Society is a statutory body with the composition of its governance structure set out in the Constitution.² Further information about the Law Society governance structure can be found [here](#). Pursuant to [r 6 of the Constitution](#) Council is empowered to make changes to the Constitution; however, Council would like to consult with the profession before making any changes.

We want your feedback

The consultation period runs until **5pm Wednesday 20 December 2023**. Submissions and feedback can be sent to consultation@lawsociety.org.nz.

All feedback you provide will be treated as confidential. At the end of the consultation process, we will prepare a summary of the responses received, but no individual contributors will be identified.

Background to this consultation

The Law Society needs to ensure it is capable of being both an effective regulator and national representative organisation. Strategic and inclusive governance is important for the Law Society's long-term priorities including sustainability.

The Law Society has considered amendments that could be made to the Constitution to improve the governance structure of the Law Society.

This consultation looks at four key areas, being:

- Board size and the introduction of Independent Board Members
- Appointment of the president / Chair
- Tenure / continuity of decision-making, and
- Diversity and competencies.

Also included in this consultation are some general changes to the Constitution which have practical benefit going forward. Recent experience and the findings of the Independent Review Panel have identified areas where the Constitution could be amended to enable best practice governance of the Law Society.

¹ Lawyers and Conveyancers Act (Lawyers) Constitution 2008

² [Lawyers and Conveyancers Act \(Lawyers\) Constitution 2008](#).

The Independent Review Panel's recommendation was for change at a governance level and suggested 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 with appointments to be made by the Minister of Justice and no elections. It should be noted that implementing the substantive recommendations of the Independent Review require legislative changes. The Law Society is, however, looking at steps it can take consistent with the Independent Review findings in the interim.

The size of the Board of the Law Society is prescribed under r10 of the [Constitution](#); it is presently the president and the four vice-presidents, a total of five. Board observers are permitted but they do not have voting rights. We have had both lawyer and non-lawyer observers to the Board at different times.

This paper sets out detailed recommended changes. In making these recommendations, the Board and Council have considered the findings of the Independent Review,³ approaches of other New Zealand regulators, international legal regulators, and best practice for Boards in New Zealand.⁴ The Council has also considered what is appropriate for the Law Society for its current structure.

³ <https://legalframeworkreview.org.nz/>

⁴ With reference to guidelines published by the Institute of Directors New Zealand.

Suggested changes to the Constitution

Board size and the introduction of Independent Board Members:

Recommendation: That the size of the Board be increased from five members to 7-9 members. The current structure of a president and four vice-presidents is enhanced with a further minimum of two and up to four members independent Board members. The independent members are to be appointed by the Board. The Independent members may be lay persons or lawyers with appropriate experience.

Comment: Presently, vice-president Board members are nominated on a regional basis and voted on by Council members in the relevant region.

Having lay persons / independent board members on a board is common best governance practice as it adds diverse perspectives, mitigates conflicts of interest and encourages independent decision making in the best interests of an organisation.

Internationally, other legal regulators have larger boards (7-11 members) to undertake governance activities with about 50% lay representatives and require members to have specific skills / competencies (Victoria (AU), England & Wales and Ireland). Note that these other legal regulators do not have the two-layer governance structure that currently exists in New Zealand Law Society.

In the New Zealand context, other regulators have boards which are split between professional and public members, have non-professional chairs and factor in other competencies such as te ao Māori insights.

It is common for Boards to include up to 50% of independent members with voting rights. In the New Zealand Regulatory context, nominations followed by Ministerial appointments are common (for example the Teaching Council and the Medical Council).

Appointment of the president / Chair:

Recommendation: That the Board appoint the president/ Chair from the lawyer members of the Board.

Comment: Currently, the president may be nominated by any member of Council and Council alone votes on the president. Once appointed president, the president is automatically appointed the Chair of the Board. The president is required to be a lawyer under the current Constitution. There is no requirement the Chair be an experienced governor or have the leadership skills required to Chair the Board of a complex organisation.

The Law Society's president has historically had an ambassadorial role as well as being the Chair of the Board. This ambassadorial role, which is an essential part of being president of a representative organisation, includes speaking on behalf of the profession and connects closely with stakeholders across the profession, government and the judiciary.

If we were to align with other regulators,⁵ it would be reasonable to have the Chair be an independent person. Note that many other New Zealand regulators have their Chairs appointed by their Minister.⁶ Note that the standard position for companies is that the board appoints a chair,⁷ as distinct to the shareholders.

We acknowledge there is a need in the regulatory and representative body as the Law Society currently has for the president/ Chair to be a lawyer, so we are not proposing to change this requirement.

It is appropriate for the president / Chair to be a person who the Board considers has confidence in and has the skills and leadership qualities to fulfil the governance role of chair and the representative role of president, which is why the recommendation is the Board appoints an existing Board member who is a lawyer to be the president / Chair.

⁵ Such as the Legal Service Regulatory Authority (Ireland) and the Solicitors Regulation Authority (England and Wales)

⁶ Such as the Real Estate Agents Authority, the Teaching Council; the Chair of the Financial Market Authority is appointed by the Governor-General on recommendation of the Minister.

⁷ [Schedule 3 of the Companies Act 1993](#) applies unless a company has varied their constitution.

Tenure / continuity of decision-making:

Recommendation: All Board members to have an initial term of 3 years being eligible for up to 2 further 3 year terms up to a total of 9 years. A process for the removal of Board members should be included.

Comment: The current one-year term of the president and two-year terms for vice-presidents does not provide organisational consistency to assist with achieving goals and implementing long term strategy.

To create such continuity, Board members should be appointed for a longer period (3 years) with a maximum stated term (9 years). An initial system would need to be created so that Board members were not all ending their first term at the same time.

Further rigour should also be incorporated into the Constitution with a process for removal and appointment of Board members. This is a standard practice.

The Constitution has no framework for the removal of an officer which is abnormal. To clarify the position, it is recommended the Constitution should be amended so where a person is appointed by the Council it may resolve to remove that person from the Board (and trigger an election) and for an independent Board member where the appointment is made by the Board, the other Board members may resolve to remove that independent member.

Diversity and competencies:

Recommendation: Include a general requirement for skills and competency based appointments in the Constitution.

Comment: Currently there are no competencies or skills mandated in the Constitution for Board members as these members are voted in by Council.

The president is nominated by a Council member and elected by a Council member voting system. The president and the vice-presidents are by virtue of their office Board members. Vice-presidents are nominated and elected by branches representing certain regions.

While the intention may have been to have a representative Board, as the Council has changed over time, the ability to represent the profession and consumers based on the current Constitution has been diminished, and there is no skills-based requirement in any office. Critically, there is no requirement in the Constitution for any Board member to have any skills, cultural or consumer-based competencies or for the Board to include lay members, in addition to the five elected members.

The inclusion of competencies is a standard requirement on regulatory boards internationally from a legal perspective and also within New Zealand regulators.

A flexible list of competencies should be developed to ensure diverse skills and thoughts are held by individuals and then the Board as a whole.

It is recommended the drafting has flexibility to ensure that across the whole Board the members collectively have the skills and experience to respond to cultural or societal or governance needs (such as a te ao Māori view, experience in consumer issues / consumer focus and financial acumen). The intention would be that any specific expertise not met through the Council-voted Board members would be filled through the appointment of the independent members by the Board.

The selection by the Board of any independent members would be done with consideration to the mix of attributes, including experience, skills and diversity around the table. The Board should be able to assess the composition of the Board and the aspects of diversity it has, or needs, including how they relate to consumers, strategy and future needs. At least one independent members should be a lay person.

Other changes:

Recommendation: There are a number of technical amendments in the following areas which the Law Society intends to make at the same time, being:

1. Removing the requirement for the executive director to be based in Wellington
2. As already permitted by Council, enable written resolutions of the Board;
3. A number of consequential changes required of the size of the Board increase, such as quorum and appointment of a chair when the chair is absent, and
4. Delete Part A which has been superseded.

Comment: While making amendments to the Constitution there are some administrative and technical matters to be addressed at the same time. For example, the Law Society should be able to appoint an executive director with the skills for the job and not be constrained by location. Another example to be tidied is Part A of the Constitution which sets out transitional provisions relevant when the Lawyers and Conveyancers Act 2006 was first enacted which have been superseded by Part B and resolved by Council that they do not apply.