

29 September 2023

Te Kura Kaiwhakawā | Institute of Judicial Studies
Supreme Court/Old High Court building
42 Ballance Street
Wellington 6011

By email: TeKura@justice.govt.nz

Tēnā koutou

This letter is sent on behalf of the New Zealand Law Society, New Zealand Bar Association, and the South Auckland Bar Association (“the organisations”).

Our organisations acknowledge the significant work Te Kura Kaiwhakawā provides to enhance the work of the Courts and that reform in many areas is necessary.

However, we are collectively concerned that there should be a full opportunity for consultation on the development of Te Kura’s guidance for directions under s 126A of the Evidence Act 2003, *Responding to misconceptions about sexual offending*.

We therefore request this opportunity on behalf of the profession. We appreciate that Te Kura is entitled to develop this guidance in the best way it sees fit. However, the profession wishes to support the development of the guidance in a way that ensures the guidelines are not the subject of controversy or challenge.

We have senior members of our criminal defence bar within each of our organisations who report material concerns with some aspects of the guidance being delivered or proposed to be delivered to juries. The categorisation of myths and stereotypes is important, but in some respects remains the subject of expert controversy.

While we appreciate Te Kura did consult with some senior members of the profession, we remain concerned that the guidance does not reflect the broad consensus of the criminal bar views about what material can be safely considered settled expert evidence, and as a result the guidance is not yet reflective of uncontested expert evidence on myths and misconceptions.

We would therefore be grateful for additional consultation with our organisations to support the work of Te Kura to avoid unnecessary controversy and undermining public confidence.

We respectfully propose that use of Te Kura’s guidance be deferred to allow for consultation with our organisations. In making this request, we recognise that s 126A has already come into effect and that directions in appropriate cases will need to be made.

We therefore suggest that if further consultation was carried out on Te Kura's guidance, any directions in the meantime could be made on a case-by-case basis with discussion between the presiding judge and counsel (as is common with other directions).

We look forward to discussing this matter with you.

Ngā mihi nui,



Frazer Barton
President, New Zealand Law Society



Maria Dew KC
President, New Zealand Bar Association



Ish Jayanandan
President, South Auckland Bar Association