



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# Tribunals Powers and Procedures Legislation Bill, Subpart 10 – Proposed amendments to the Lawyers and Conveyancers Act 2006

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*16/02/2018*

## **Submission on the Tribunals Powers and Procedures Legislation Bill, Subpart 10 – Proposed amendments to the Lawyers and Conveyancers Act 2006**

### **1. INTRODUCTION**

- 1.1 The New Zealand Law Society appreciates the opportunity to make submissions on the Tribunals Powers and Procedures Legislation Bill (Bill).
- 1.2 This submission principally addresses subpart 10 of the Bill, which contains proposed amendments to the Lawyers and Conveyancers Act 2006 (LCA) in relation to the Legal Complaints Review Office (LCRO) and the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (NZLCDT). Both Tribunals, while independent and falling under the operation of the Ministry of Justice, are funded by the legal profession and affect, by extension, the Lawyers Complaints Service operated by the New Zealand Law Society.
- 1.3 The submission also contains comments on subpart 16 of the Bill, which contains proposed amendments to the Real Estate Agents Act 2008 that would extend the power of the Real Estate Agents Disciplinary Tribunal to enable it to make compensation orders of up to \$100,000.
- 1.4 This submission is made on behalf of the Law Society in its regulatory role and is a stand-alone submission, separate from the Law Society's general submission dated 16 February 2018 on the general provisions of the Bill relating to tribunals. Attached at Appendix A is a list of recommendations from this submission on regulatory matters.
- 1.5 The Law Society would welcome the opportunity to be heard on this submission.

### **2. SUBPART 10 – AMENDMENTS TO THE LAWYERS AND CONVEYANCERS ACT**

- 2.1 The LCRO is an independent body managed by the Ministry of Justice. It reviews decisions of lawyers standards committees on application by one or all parties to a complaint. The Law Society has been concerned about the delays that occur when parties await the outcome of a review application. The LCRO has reported problems with its resourcing for some time, and this has contributed to current delays of more than a year for over 60% of the complaints it receives. For a number of years, the backlog has fluctuated between 500 to 600 files.
- 2.2 The Law Society has put much time and effort into streamlining and improving the time taken by the NZLS Lawyers Complaints Service to resolve complaints. The Lawyers Complaints Service provides a timely service and around 40% of all complaints received are referred to its Early Resolution Service. Those complaints are usually closed within 30 days. The hold-ups at the LCRO end are disappointing and undermine the LCRO's consumer protection role. There is also a widespread misperception that NZLS is responsible for the LCRO delays.
- 2.3 Apart from the problem with delays, the decisions of the LCRO office are generally well received and it is apparent that much thought and care is put into those decisions.
- 2.4 Overall, the Law Society is very supportive of the proposed amendments to the LCA. The Law Society is hopeful the amendments will be effective in promoting efficiencies and reducing the backlog in the LCRO office.

### **Clauses 113 and 114 (ss 179, 182) – service of documents**

- 2.5 The Explanatory Note to the Bill states that this amendment relates to the LCRO. However, these proposed amendments (to ss 179 and 182 of the LCA) in fact relate to the Lawyers Complaints Service and the service of notice on a practitioner in the event that a standards committee has intervened in a law practice.
- 2.6 The Law Society agrees with the amendments, and recommends that there also should be a provision for service or notification of service by electronic means.

### **Clause 117 – LCRO powers to strike out, etc**

#### *New section 205(1)*

- 2.7 The current section 205 states that the LCRO may decline to make any further inquiry or further investigation into a complaint or matter but does not elaborate as to when that power may be exercised. Clause 117 proposes a new summary dismissal power for the LCRO so that unmeritorious applications for review of standards committees' decisions can be struck out summarily. The Law Society supports the objective of the amendment, which appears to be the promotion of efficiencies that would be obtained by dealing with unmeritorious applications in this way. However, the Law Society has concerns about the wording of the new section, as drafted, and sets out some alternative proposals at paragraph 2.9.
- 2.8 The proposed new section 205(1) states:
- (1) The Legal Complaints Review Officer may strike out, in whole or in part, an application for review if satisfied that it—
    - (a) discloses no reasonable cause of action; or
    - (b) is likely to cause prejudice or delay; or
    - (c) is frivolous or vexatious; or
    - (d) is otherwise an abuse of process.
  - (2) If a party is neither present nor represented at the hearing of an application for review, the Legal Complaints Review Officer may—
    - (a) strike out the application; or
    - (b) determine the application in the absence of the party; or
    - (c) adjourn the hearing.
- 2.9 The terminology “discloses no reasonable cause of action” is incongruous in this context, where the LCRO reviews decisions by standards committees in respect of complaints about lawyers' conduct. The phrase “is clearly unmeritorious” or similar would be more apt in this setting.<sup>1</sup>
- 2.10 The Law Society also considers that the proposed new section should include the powers already in existence for lawyers standards committees to take no action or no further action on a complaint under sections 138(1) and (2) of the LCA. Currently, under those sections, these powers can only be exercised by a standards committee. They are more extensive than those proposed for the LCRO, and include the ability to take no action where the subject matter of a complaint is trivial, is not made in good faith or where the complainant

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<sup>1</sup> A similar point is made at paragraph 2.7 of the Law Society's general submission on the Bill, dated 16 February 2018.

does not have sufficient personal interest in the subject matter of the complaint. Section 138 provides:

**138 Decision to take no action on complaint**

- (1) A Standards Committee may, in its discretion, decide to take no action or, as the case may require, no further action, on any complaint if, in the opinion of the Standards Committee, —
  - (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
  - (b) the subject matter of the complaint is trivial; or
  - (c) the complaint is frivolous or vexatious or is not made in good faith; or
  - (d) the person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
  - (e) the complainant does not have sufficient personal interest in the subject matter of the complaint; or
  - (f) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the person aggrieved to exercise.
- (2) Despite anything in subsection (1), a Standards Committee may, in its discretion, decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Standards Committee that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

*New section 205(2)*

2.11 Proposed new section 205(2) states that “[I]f a party is neither present nor represented at the hearing” (emphasis added), the LCRO may strike out the application, determine it or adjourn the hearing. This wording appears inconsistent with the amendments in clause 118 (new section 205(3A)) allowing a review to be determined on the papers (i.e. without requiring a hearing). Presumably the wording in new section 205(2) refers only to the situation when it has been decided to hold a hearing and that if a party is not represented nor present the review can be struck out or determined. The Law Society suggests that the introductory words of the new section 205(2) be re-drafted so they read:

- (2) If a hearing is held in respect of an application for review, and a party is neither present or represented at that hearing, the Legal Complaints Review Officer may —

**Clause 118 – determination on the papers**

*New section 206(2)*

2.12 The Law Society strongly supports the proposed amendment in new section 206(2) to allow the LCRO to hold hearings on the papers rather than in person, without requiring the consent of the parties. This does not compromise the requirement for a fair hearing or natural justice, and enables better use to be made of available resources.

2.13 The Law Society queries whether new section 206(2A), which states that before doing so the LCRO must give the parties a reasonable opportunity to comment on whether the review

should be dealt with in that manner, is necessary. The Law Society considers that it is preferable to have the presumption of a hearing on the papers as the default position. That would promote consistency, as this would be the same as the provision which relates to the Lawyers Complaints Service process (section 153). If comments are requested first from the parties, this is likely to affect the expected gains in efficiencies which would flow from the amendment. I

- 2.14 In new section 206(3B), the words “*adjudication*” and “*determine the claim concerned*” are used. This is not terminology used elsewhere in Part 7 of the LCA. The Law Society suggests replacing “*adjudication*” with “*review*” and “*determine the claim concerned*” with the words to “*determine the review*”.

#### **Clause 119 – Suppression**

- 2.15 Section 211 relates to the powers exercisable by the LCRO on review. Clause 119 introduces a new section 211A, enabling the LCRO to make suppression orders. The Law Society supports this amendment.
- 2.16 The Law Society suggests that a better place for this section to be inserted might be in the LCRO publication sections – currently in section 206(4), which deals broadly with proceedings of the LCRO.

#### **Clause 120 – Enforcement of compensation orders in the District Court**

- 2.18 Section 215 currently permits the enforcement of orders made by the LCRO for payment of costs or expenses or both, in the District Court as if it is a final judgment of that Court. The Law Society supports the clause 120 amendment to include compensation orders, so as to provide a remedy to the party owed the compensation. However, the Law Society identifies some issues with the current drafting of the Bill below.
- 2.19 The Law Society considers there should be clarification or amendment to ensure that an order made by the LCRO relating to a fine is capable of being enforced. In this regard, by contrast, the amendment at clause 127 to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (NZLCDT) enforceability provisions is clearer. That provision (proposed new section 258(2A)) refers explicitly to enforcement of orders “*to pay a fine, expenses or other monetary amount to any other person ...*”.
- 2.20 The Law Society also queries the approach taken in the amendment, which sees all compensation orders being treated as orders of the District Court, whatever their value. By contrast, the effect of the existing section 215(1), (2) and (3) is that orders for costs or expenses are orders of the District Court if the amount is \$12,000 or less, and otherwise orders of the High Court. This creates the potential for the need to issue multiple recovery actions in different courts, depending on the value of the costs and expenses order. A better approach would be to leave the question to the ordinary civil jurisdictions of the District Court and the High Court.
- 2.21 Finally, it would also be helpful to clarify whether ‘compensation’ includes an order to reduce or remit a fee rendered by a lawyer. A reduction or remittance of a fee is a remedy routinely granted in circumstances where a complaint is upheld.

### **Clause 123 – Appointment of temporary acting member**

- 2.22 Section 233A is a new section referring to the appointment of a temporary acting member of the NZLCDT if a current member becomes incapable of acting by reason of illness, absence or other sufficient cause.
- 2.23 If a temporary acting member of the NZLCDT is required, the Law Society recommends that the current appointment process is nevertheless followed.
- 2.24 The current process requires that consultation should occur in relation to a lay member and for a lawyer member, this is an appointment made by the NZLS Board. In circumstances of urgency, the Law Society can attend to such matters quickly.

### **Clause 124 – Hearings on the papers**

- 2.25 New section 238A enables the NZLCDT to determine proceedings on the papers if the Tribunal considers it to be appropriate. The Explanatory Note refers to this as a standard provision.
- 2.26 It is appreciated that the Tribunal will be exercising its specialist knowledge and expertise to determine when a hearing on the papers is appropriate and that the parties must be given an opportunity to express their views over the proposal to hear on the papers (section 238A(2)).
- 2.27 Nevertheless, given the quasi-judicial nature of the Tribunal and the significant impact a decision can have on the lawyer involved, this is an area requiring caution. The Tribunal can suspend or strike off a lawyer, which can have a major impact on the former lawyer's ability to earn a living and his or her professional reputation. In terms of the rights of natural justice, it may be appropriate to impose conditions on when this power might be exercised – for example, if the lawyer is unlocatable or refused to participate in the proceedings. There is currently, in section 245, the ability to make an interim suspension order without any notice to the practitioner if the Tribunal is satisfied that it is necessary or desirable having regard to the interests of the public or the financial interests of any person.
- 2.28 Hearings on the papers are more acceptable in applications heard by the NZLCDT that are not disciplinary in nature and relate to other matters such as an appeal from the declination of a practising certificate and interlocutory matters.
- 2.29 The Law Society suggests that the hearings on the papers should be restricted to any matter:
- under Part 7 where the lawyer has pleaded guilty, and where it is appropriate in the Tribunal's view;
  - otherwise under Part 7 only in exceptional circumstances;
  - outside of Part 7,<sup>2</sup> where considered appropriate in the Tribunal's view.

### **Clause 126 – Online publication of time frames, procedures and progress of decision**

- 2.30 In relation to the proposed section 249C, the Law Society recommends that all disciplinary decisions falling under Part 7 of the LCA are published. This is for reasons of fairness and

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<sup>2</sup> For example: an application to the Tribunal for the lifting of a previous Order for a practitioner to not practise on own account, or an appeal against any decision of the New Zealand Law Society or New Zealand Society of Conveyancers to decline to issue, or refuse to issue, a practising certificate made in accordance with s42(1) of the Lawyers and Conveyancers Act 2006.

equality, subject to suppression orders. Some restrictions are already provided for in section 240. The exclusion provided in proposed section 249C(4)(b) as an example of good reason not to publish, of decisions being of “limited public value”, seems unusual in this context. Given there are very few lawyers facing disciplinary charges each year (around 40 on average), it would seem inequitable if some names were not published because of perceived “limited public value”, given the consumer-protection focus of the LCA.

- 2.31 A “limited public value” exclusion would be appropriate in applications heard by the NZLCDT outside Part 7 which are not disciplinary in nature and relate to other practice matters, such as an appeal from the declination of a practising certificate and other interlocutory matters. As an example, in *J v NZLS* [2016] NZLCDT 1, the applicant successfully applied for restriction of publication of his matter, which was already in the public domain, as it was not disciplinary in nature – being an application for a practising certificate to practise on his own account. He alleged there was no public interest in his identity, that he had suffered significant harm from publication, and that it was in the interests of natural justice that parties should be able to make an application without every step being the subject of public scrutiny. The Tribunal considered that it was in the public interest that the decision be available to read but that the applicant’s name did not add to the information provided by the decision.
- 2.32 Given that the current section 240 already contains restrictions on publication, the Law Society suggests that the proposed new section might be better placed within the current section 240.

#### **Clause 128 – Offence of breaching suppression order**

- 2.33 New section 262A proposes that it be an offence to breach a suppression order of the LCRO under either the proposed new section 211A or of the NZLCDT under the existing section 240 (a person who breaches such an order will be liable on conviction to a fine of up to \$3,000).
- 2.34 The Law Society supports the creation of an offence in respect of any person making public a decision of the LCRO/NZLCDT that has not been published. However, this should exclude publication to or within the Lawyers Complaints Service: see existing section 240(3) in this regard, which lists exceptions to restrictions on publication made by the NZLCDT.
- 2.35 Generally, provisions for the LCRO and the NZLCDT are listed separately in the LCA. This section proposes an offence provision for both Tribunals. There is a provision in relation to the NZLCDT under existing section 263 relating to a breach of a publication order. It is not altogether clear how sections 240 and 263 fit with the proposed section 262A, and the Law Society suggests that the Bill clarifies this matter.

#### **Clause 129 – Schedule 3 amended: Term of appointment of LCRO extended**

- 2.36 The clause 129 amendment to Schedule 3 provides that an initial appointment of an LCRO will be for a term of up to 5 years (an increase from the current 3-year term) and that an LCRO may be reappointed.
- 2.37 The Law Society recommends 3-year appointments with two rights of reappointment for 3 years (a total of 9 years). Beyond that, in special circumstances, the appointment may be extended subject to consultation with the Law Society. The maximum term of nine years is in line with the terms of appointment for members of lawyers standards committees.

- 2.38 The Law Society also queries whether transitional provisions are needed to cover existing appointments.

**Clause 129 – Schedule 3 amended: clause 3(1) appointment of Deputy LCROs**

- 2.39 New clause 3(1) of Schedule 3 proposes a change from the existing provision that there be appointed two deputies to the person appointed as the Legal Complaints Review Officer, to “deputies ... may be appointed from time to time.”
- 2.40 While the Law Society supports the appointment of more LCRO deputies to assist in clearing the current backlog, it suggests that safeguards be built into further appointments. The legal profession largely funds the LCRO in relation to direct and indirect expenses, but it has no direct influence over the administration or management of resources and/or processes within the Office. The cost attendant on an appointee is not limited to the salary but also direct and indirect overheads which are apportioned across the Tribunals division. This includes appropriate direct costs required to support the appointee, including administration support and resources. Each appointment has a substantial run-on effect in terms of cost for both the Ministry of Justice and the Law Society well beyond the salary.
- 2.41 The three current delegates appear to be supporting the needs of the LCRO together with the two current deputies. However, the limitation of the role of delegate causes delays. While the delegates are able to carry out hearings when required, they are unable to sign off decisions and therefore discussion and consultation must take place with the LCRO or deputies before signing off takes place. Inevitably this causes delays in the issuing of decisions.
- 2.42 It is submitted that there should be two further changes concerning appointments. Firstly:
- 2.42.1 An ability to appoint temporary deputy LCROs of up to a fixed term, of say, 12 to 18 months. This is needed to clear the backlog urgently.
- 2.42.2 An ability to appoint further deputy LCROs.
- 2.43 However, both types of appointments should be subject to consultation with the Law Society — first as to the number of appointments if more are proposed, and secondly, on the candidates and on a specific proposed appointment. At present, there is consultation on proposed appointments only (see section 190(2)).

**Clause 130 – Schedule 4 amended: Term of appointment of NZLCDT members extended to 5 years**

- 2.44 The proposed new clause 2(1) in Schedule 4 extends a term of a member of the NZLCDT from the current term of not exceeding 3 years, to up to 5 years.
- 2.45 The Law Society recommends that 3-year appointments remain with rights of reappointment for terms of 3 years. This would be consistent with the appointment terms for the LCRO (prior to the proposed amendment in clause 1(1) of schedule 3) and with the terms of Standards Committee members.

**Clause 130 – Schedule 4 amended: Decisions to be in writing and state reasons**

- 2.46 A new clause 12 is inserted in Schedule 4, providing that every decision of the NZLCDT must be in writing and must state the reasons for the decision. While this amendment is supported, the Law Society recommends that there be a provision for urgent matters, allowing interim decisions to be made without reasons but subject to written reasons following.



## **Other matters to be considered for inclusion in the Bill**

2.47 There are three further matters which the Law Society recommends be explored with a view to inclusion in the Bill. A brief outline of these is set out below. The Law Society would be happy to assist with drafting of appropriate provisions should these suggestions, or any of them, be considered desirable.

### *Reimbursement of the NZLCDT's hearing costs by NZLS*

2.48 Section 257(1) of the LCA provides for reimbursement of the Tribunal's hearing costs. This requires the Law Society (and the NZ Society for Conveyancers, for whom the Law Society does not speak) to reimburse the costs of a hearing. In turn, where appropriate, the Law Society seeks to recover these costs from the lawyer concerned. Currently this reimbursement provision is restricted to when the NZLCDT hears a "charge" against any person. There is no ability for the Tribunal to order reimbursement when it hears other matters that are not disciplinary in nature such as an appeal when a practising certificate application has been declined under section 42 of the LCA. It would be appropriate to change "charge" to "charge or any other matter".

### *Restricting the ability of the LCRO to review a determination of a standards committee to lay a charge before the Disciplinary Tribunal*

2.49 Currently, the LCRO considers it has the power to review a determination of a standards committee to lay a charge against a person before the NZLCDT. While the LCRO does give priority to these applications, it causes a delay of between 3 to 6 months. There is no requirement for standards committees to provide reasons for a determination to lay a charge before the NZLCDT, which can hamper the LCRO in its review process (see *Orlov v New Zealand Law Society* [2013] 3 NZLR 562). To date the Law Society can only recall one instance where such a determination was reversed by the LCRO.

2.50 The removal of the LCRO's ability to review such a determination (by amending section 195 of the LCA) would improve efficiencies in both the LCRO and the NZLCDT, enabling charges to be heard promptly. If a determination to lay a charge was inappropriate, the NZLCDT is able to make a decision to that effect at any hearing.

2.51 The Law Society also notes that an application for judicial review of a determination to lay a charge may also be made directly to the High Court, which can lead to a multiplicity of proceedings. The Court of Appeal has said that such applications for judicial review would normally be consolidated with any appeal of the Tribunal's decision following its determination (see paragraph 31 of the Court of Appeal's decision in *Deliu v New Zealand Law Society* [2016] NZAR 1062).

2.52 Finally, the Law Society notes that section 197(2) of the LCA prohibits any review by the LCRO of a determination of a standards committee to lay a charge before the Disciplinary Tribunal in relation to the exercise or performance of a standards committee to which sections 194 – 196 applies by "Applicants in other cases".

### *Amendment to s 227 – application to lift restriction to practise on own account*

2.53 The Law Society considers that a minor amendment is required in relation to section 227 of the LCA, which sets out the list of functions of the NZLCDT. This section should include provision to hear and determine any application by any person to be authorised to practise on own account following an order prohibiting this made under section 242(1)(g) of the LCA.

Section 227 refers specifically to most other orders that the NZLCDT can make but inexplicably omits this.

### **3. SUBPART 16 – AMENDMENTS TO THE REAL ESTATE AGENTS ACT 2008**

- 3.1 Clauses 219 and 227 of the Bill propose to amend sections 93 and 110 of the Real Estate Agents Act 2008 to enable Complaints Assessment Committees, following a finding of unsatisfactory conduct by a real estate agent, to refer the matter to the Real Estate Agents Disciplinary Tribunal to consider whether to make a compensation order not exceeding \$100,000.
- 3.2 The Law Society supports the introduction of a power to award compensation to consumers who have suffered loss as a result of a licensee’s unsatisfactory conduct. The Law Society is commenting on this proposal in this submission because it is a comparable regime to the LCA regime, based on consumer protection and redress.<sup>3</sup>
- 3.3 In that context, there are concerns that the two-step process proposed by clauses 219 and 227 may:
- have a significant impact on timeliness and resource in relation to resolving consumer complaints (double-handling, and delays in process),
  - disadvantage those seeking modest levels of compensation who will be required to proceed through two processes, and
  - may also have an impact on real estate agents who are the subject of a complaint – increased cost, time and stress caused in defending conduct through two processes.
- 3.4 These potential consequences appear inconsistent with the objectives of the regime and the need for complaints to be resolved as efficiently and expediently as possible for the benefit of both complainants and licensees.
- 3.5 The Law Society suggests that a more efficient, timely and cost-effective approach would be for Complaints Assessment Committees to be able to make compensation awards under section 93 of the Act in cases of unsatisfactory conduct. Any such award would be subject to the safeguard of an appeal to the Tribunal under section 111.



Kathryn Beck  
**President**  
16 February 2018

### **Appendix A: Recommendations on regulatory matters**

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<sup>3</sup> Standards Committees established under the LCA may award compensation up to a statutory cap of \$25,000, in cases of unsatisfactory conduct where it appears any person has suffered loss due to a practitioner’s act or omission.

## Appendix A

### Tribunals Powers and Procedures Legislation Bill– NZLS regulatory recommendations

Rec #	Submission: paragraph #	Topic	Recommendation
<b>Subpart 10 - proposed amendments to the Lawyers and Conveyancers Act 2006</b>			
1	2.5	<b>Service of documents:</b> cl 113-114	The Law Society agrees with the amendments, and recommends that there also should be a provision for service or notification of service by electronic means.
2	2.8-2.9	<b>LCRO powers to strike out etc:</b> cl 117	The Law Society recommends alternative wording to the terminology “discloses no reasonable cause of action” in proposed new section 205(1)(a) – such as “is clearly unmeritorious”.
3	2.10	As above	Proposed new s 205 should include the powers already in existence for lawyers standards committees to take no action or no further action on a complaint under sections 138(1) and (2) of the LCA.
4	2.11	As above	The introductory words to new section 205(2) should be redrafted, for clarity and consistency with new section 205(3A).
5	2.12-2.13	<b>Determination on the papers:</b> cl 118	The Law Society strongly supports proposed new section 206(2) allowing LCRO hearings on the papers without requiring the parties’ consent. The Law Society recommends that new section 206(2A) be amended, to make a hearing on the papers the default position.
6	2.14	As above	The terminology in new section 206(3B) should be redrafted, for consistency with wording used elsewhere in Part 7 of the LCA.
7	2.15-2.16	<b>Suppression:</b> cl 119	The Law Society supports the introduction of LCRO powers to make suppression orders, and suggests new section 211 would be better placed with the LCRO publication sections (currently in section 206(4)).
8	2.18-2.19	<b>Enforcement of compensation orders in the District Court:</b> cl 120	The Law Society supports the clause 120 amendment to section 215 to include compensation orders, so as to provide a remedy to the party owed the compensation. However, the wording should be clarified, to ensure that an order made by the LCRO relating to a fine is capable of being enforced.
9	2.20	As above	The Law Society also considers section 215 compensation orders should be enforceable in the ordinary civil jurisdictions (District Court and High Court), rather than being treated as orders of the District Court as proposed in cl 120.

10	2.21	As above	It would be helpful to clarify whether 'compensation' includes an order to reduce or remit a fee rendered by a lawyer.
11	2.22-2.24	<b>Appointment of temporary acting member:</b> cl 123	The current appointment process (requiring consultation with the Law Society) should apply to the appointment of NZLCDT temporary acting members under new section 233A.
12	2.25-2.29	<b>NZLCDT hearings on the papers:</b> cl 124	The Law Society recommends NZLCDT hearings on the papers under new section 238A should be restricted to any matter: <ul style="list-style-type: none"> <li>• under Part 7 where the lawyer has pleaded guilty, and where it is appropriate in the Tribunal's view;</li> <li>• otherwise under Part 7 only in exceptional circumstances;</li> <li>• outside of Part 7,<sup>4</sup> where considered appropriate in the Tribunal's view.</li> </ul>
13	2.30-2.31	<b>Online publication of time frames, procedures and progress of decision:</b> cl 126	In relation to new section 249C, the Law Society recommends that all disciplinary decisions falling under Part 7 of the LCA are published, for reasons of fairness and equality, subject to suppression orders.  A "limited public value" exclusion would be appropriate in applications heard by the NZLCDT outside Part 7 which are not disciplinary in nature and relate to other practice matters, such as an appeal from the declinature of a practising certificate and other interlocutory matters.
14	2.32	As above	New section 249C might be better placed with current section 240 (which contains restrictions on publication).
15	2.33-2.34	<b>Offence of breaching suppression order:</b> cl 128	The Law Society supports the creation of an offence (new section 262A) in respect of any person making public a decision of the LCRO/NZLCDT that has not been published. However, this should exclude publication to or within the Lawyers Complaints Service: see existing section 240(3) in this regard, which lists exceptions to restrictions on publication made by the NZLCDT.
16	2.35	As above	It is not clear how new section 262A fits with existing offence provisions in the LCA, and this should be clarified.

<sup>4</sup> For example: an application to the Tribunal for the lifting of a previous Order for a practitioner to not practise on own account, or an appeal against any decision of the New Zealand Law Society or New Zealand Society of Conveyancers to decline to issue, or refuse to issue, a practising certificate made in accordance with s42(1) of the Lawyers and Conveyancers Act 2006.

17	2.36-2.37	<b>Term of appointment of LCRO extended:</b> cl 129 amendment to Schedule 3	The Law Society recommends cl 129 is amended, to provide for 3-year appointments with two rights of reappointment for 3 years (a total of 9 years). Beyond that, in special circumstances, the appointment may be extended subject to consultation with the Law Society. The maximum term of nine years is in line with the terms of appointment for members of lawyers standards committees.
18	2.38	As above	The Law Society also queries whether transitional provisions are needed to cover existing appointments.
19	2.39-2.43	<b>Appointment of Deputy LCROs:</b> cl 129 amendment to Schedule 3, cl 3(1)	<p>The Law Society supports the appointment of more LCRO deputies to assist in clearing the current backlog, but recommends that safeguards be built into further appointments: two further changes are recommended –</p> <ul style="list-style-type: none"> <li>• An ability to appoint temporary deputy LCROs of up to a fixed term, of say, 12 to 18 months [this is needed to clear the backlog urgently], and</li> <li>• An ability to appoint further deputy LCROs.</li> </ul> <p>Both types of appointment should be subject to consultation with the Law Society — first as to the number of appointments if more are proposed, and secondly, on the candidates and on a specific proposed appointment.</p>
20	2.44-2.45	<b>Term of appointment of NZLCDT members extended to 5 years:</b> cl 130 amendment to Schedule 4, cl 2(1)	The Law Society recommends that 3-year appointments remain with rights of reappointment for terms of 3 years. This would be consistent with the appointment terms for the LCRO (prior to the proposed amendment in clause 1(1) of schedule 3) and with the terms of Standards Committee members.
21	2.46	<b>Decisions to be in writing and state reasons:</b> cl 130 amendment to Schedule 4, new cl 12	The Law Society supports the new cl 12 requirement that every decision of the NZLCDT must be in writing and must state the reasons for the decision, and recommends that provision be made for urgent matters, allowing interim decisions to be made without reasons but subject to written reasons following.
<b>Other matters to be considered for inclusion in the Bill: refer paragraph 2.47</b>			
22	2.48	<b>Reimbursement of NZLCDT hearing costs by NZLS</b>	The Law Society recommends a minor amendment of section 257(1) of the LCA, changing “charge” to “charge or any other matter”, to enable the Tribunal to order reimbursement when it hears other matters that are not disciplinary in nature (such as an appeal when a practising certificate application has been declined under section 42 of the LCA).

23	2.49-2.50	<b>Restricting the ability of the LCRO to review a determination of a standards committee to lay a charge before the Disciplinary Tribunal:</b> section 195, LCA	LCRO reviews of determinations of standards committee decisions to lay charges before the NZLCDT can cause delay, for the reasons outlined at [2.49]. Amending section 195 of the LCA to remove this area of review would improve efficiencies in both the LCRO and the NZLCDT, enabling charges to be heard promptly. If a determination to lay a charge was inappropriate, the NZLCDT is able to make a decision to that effect at any hearing.
24	2.53	<b>Application to lift restriction to practise on own account:</b> section 227, LCA	A minor amendment of section 227 LCA (which sets out the list of functions of the NZLCDT) is required. This section should include provision to hear and determine any application by any person to be authorised to practise on own account following an order prohibiting this made under section 242(1)(g) of the LCA. (Section 227 refers specifically to most other orders the NZLCDT can make but inexplicably omits this.)
<b>Subpart 16 - proposed amendments to the Real Estate Agents Act 2008</b>			
25	3.1-3.5	<b>Real estate agents' unsatisfactory conduct – referral by Complaints Assessment Committees to Real Estate Agents Disciplinary Tribunal, for compensation orders:</b> cll 219, 227	<p>The Law Society supports the introduction of a power to award compensation to consumers who have suffered loss as a result of a licensee's unsatisfactory conduct: the amendment is comparable to the LCA regime, based on consumer protection and redress. However, the two-step process proposed by cll 219 and 227 appears inconsistent with these objectives and the need for complaints to be resolved as efficiently and expeditiously as possible for the benefit of both complainants and licensees.</p> <p>The Law Society therefore suggests it would be more efficient, timely and cost-effective for Complaints Assessment Committees to be able to make compensation awards under section 93 of the Act in cases of unsatisfactory conduct. Any such award would be subject to the safeguard of an appeal to the Tribunal under section 111.</p>