

Legal Services (Distribution of Special Fund) Amendment Bill

Submission of the New Zealand Law Society Te
Kāhui Ture o Aotearoa

14 August 2025

Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Legal Services (Distribution of Special Fund) Amendment Bill (**Bill**).
- 1.2 This short submission:
 - (a) expresses the Law Society's support for the Bill;
 - (b) draws the Select Committee's attention to a further issue concerning the Special Fund, being the amount of interest that may be retained by the banks.
- 1.3 The Law Society does not wish to be heard on this submission.

2 The Law Society supports the Bill

- 2.1 The Bill proposes to amend section 94 of the Legal Services Act 2011 (the **Act**), to explicitly allow the Secretary for Justice to enter into contracts with community law centres to 'fund, facilitate, and otherwise support the provision of community legal services.' At present, section 94 of the Act refers to entering contracts 'to purchase community legal services.'
- 2.2 The explanatory note to the Bill states the amendment is intended to ensure the costs of supporting functions can be met by the Special Fund, rather than Crown funding.
- 2.3 The Law Society strongly supports adequate funding of community legal services. Community law centres are an essential part of meeting the growing access to justice gap, and empowering people to resolve their legal issues. The need in this area is growing, not diminishing.
- 2.4 In addition to the provision of direct community legal services through the individual community law centres, the centres are playing a stronger and growing role in the pro bono clearing house area through Te Ara Ture and the referrals made to Te Ara Ture. This important function must continue to thrive, and the Law Society supports amending the Act to ensure these functions are maintained.
- 2.5 Although we consider the present wording of section 94 already allows contracts to include funding that supports the delivery of community legal services (this being a necessary part of providing legal services), we support the intention to make this explicit.
- 2.6 We make only one small drafting suggestion: the addition of and/or at the end of proposed subsection (1)(a), to make it explicit that the Secretary may enter a contract for either or both of the specified purposes.

3 A further issue: trust account interest retained by banks

- 3.1 In light of a recently released proposed Member's Bill, the *Lawyers and Conveyancers (Interest Retained by Bank on Nominated Trust Account) Amendment Bill* (Hon Duncan Webb) we consider it appropriate to bring to the Select Committee's attention a broader concern relating to the Special Fund.
- 3.2 At present, section 301 of the Lawyers and Conveyancers Act 2006 allows banks to retain 40% of the interest payable on solicitors' and licensed conveyancers' nominated

trust accounts. After deduction of that amount, the banks are required to pay the remainder to the Special Fund Management Committee.

- 3.3 In the period 1 June 2022 to 31 May 2023, the five banks paid approximately \$40 million per annum to the Special Fund Management Committee. We understand that some banks that have nominated trust accounts are electing to give an additional amount directly to community law centres, which we commend and support. However, the amount retained by New Zealand banks for their fees (if we are conservative and say at least 20% after the provision of additional voluntary contributions) would equate to over \$13 million per annum, and we understand this is a much greater percentage than is retained by banks in other jurisdictions.
- 3.4 In 2021, the Law Society commissioned an independent review of the statutory framework for legal services in New Zealand. The review was launched in response to a need to ensure the framework is fit for purpose for a modern profession and organisation. The findings and recommendations of the Independent Review were wide-ranging. Of relevance, the report identified systemic underfunding of our regulatory functions, despite having significantly higher practising fees than comparable jurisdictions (approximately six times higher than Victoria, Australia).
- 3.5 In New Zealand, this is because the cost of our regulatory services is funded by the profession, via annual practising certificate fees and other levies.
- 3.6 The Law Society's response to the Independent Review noted the amount of interest on trust accounts retained by the banks, the impact this has on practising fees, and that this amount appears to be greater than retained in other jurisdictions. In many overseas jurisdictions, interest on trust accounts is provided, in part to fund important regulatory functions such as legal research, libraries and wellbeing and access to justice initiatives and to reduce regulatory costs on the profession.
- 3.7 If the amount currently retained by the banks were to be reduced, there would need to be further consultation and discussion about the purposes for which the Special Fund can be used. That would require further work with both the Law Society and community law centres. We reiterate our view that community law centres should be properly resourced and should have access to more funds from the Special Fund.
- 3.8 We do not suggest it would be appropriate to pursue this reform in the context of this Bill, *unless* the process is paused to enable policy work and consultation (particularly with the community law centres). However, we encourage the Committee to seek further advice on this matter, given the proposed Member's Bill referenced above.



Frazer Barton
President