New Zealand Law Society
Te Kāhui Ture o Aotearoa

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Employment Relations Policy Team
Workplace Relations and Safety Policy Branch
Ministry of Business, Innovation & Employment

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Consultation on the employment dispute resolution system

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to provide feedback on New Zealand's employment dispute resolution (**EDR**) system.

1.2 This submission has been prepared with input from the Law Society's Employment Law Committee,[1] which is comprised of employment law experts, including in-house lawyers, barristers and solicitors. The submission reflects Committee members' perspectives, and focuses primarily on issues which impact access to justice across the various tiers of the EDR system.

2 General comments

2.1 The consultation paper asks the high level questions "What causes employment disputes?" and "How are disputes resolved?", and seeks to understand whether the system is delivering efficient, affordable and fair resolution. In our view, the EDR system falls short of delivering these outcomes for a number of reasons:

(a) Lawyers have observed that delays, inconsistencies and other operational and administrative issues within MBIE's Employment Mediation Service (**EMS**) and the Employment Relations Authority (**Authority**) are hindering the timely resolution of disputes.

(b) Concerns have also been raised about how parties, their representatives (often, unregulated advocates), as well as those responsible for resolving disputes are failing to meaningfully engage with EDR processes, and to make genuine attempts to resolve disputes, particularly at one of the lowest levels of the EDR system (mediation).

(c) Lawyers also continue to raise significant concerns regarding the competencies and conduct of unregulated employment advocates who represent parties within

[1] More information about this committee is available on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/employment-law-committee/.

the EDR system. Key concerns include their limited understanding of applicable law, instances of (at times, highly) inappropriate and unprofessional conduct, and their failure to comply with confidentiality and other legal requirements, as we discuss in more detail in section 6 of this submission.

(d) Costs also continue to act as a barrier to access to justice. While MBIE's EMS and early resolution service are free, other interactions with the EDR system come at a cost to parties: these include the payment of filing/application fees and hearing fees (for matters in the Authority and the Employment Court), and representation fees (if a party is represented by a lawyer or an advocate).

2.2 Where these factors delay access to justice at one tier of the EDR system (and in particular, at the very first tier – mediation), they also tend to have ripple effects on other tiers of the EDR system – so, if matters fail to settle at mediation, this will inevitably result in an increase in matters before the Authority and the Employment Court, and add to resourcing pressures at those tiers.

2.3 It is also important to recognise the social and legal context that the EDR system exists within. Over the last 50 years, the landscape of workplace relations shifted dramatically following:

(a) the abolition in the early-1990s of (mostly) compulsory unionism;

(b) the reduction in centralised employment agreements and wage bargaining; and

(c) and the diminution of union membership in the private sector.

2.4 In the past, unions played a significant role in dealing with workplace issues and conflicts in ways that avoided the need for individual legal proceedings. In contrast, the current legislative settings encourage the use of private legal proceedings when disputes occur (and this is particularly the case in private sector employment).

2.5 In making these observations, the Law Society does not take a position on whether there is a case for reintroducing features of employment law that gave unions a central role in progressing and resolving workplace disputes. However, it is likely that these changes added to the number of employment disputes, including those which progress to the Authority and the Employment Court.

2.6 In more recent times, the EDR system has been operating in a complex[2] and quickly and continuously evolving legislative and administrative landscape: significant piecemeal adjustments have been made to employment policy settings over the past few years, including through rushed lawmaking, with no opportunity for public engagement or input.[3] Eleven bills proposing changes to employment legislation have either been introduced and/or progressed during the current Parliamentary term, and the extent and frequency of these legislative changes have created uncertainty and additional cost for both employees and employers, as well as their representatives.

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2 Lawyers have identified the Holidays Act 2003 framework and the framework for personal grievances as being particularly complex (although we acknowledge here that the Employment Leave Bill will soon repeal and replace the Holidays Act).

3 For example, both the Employment Relations (Trial Periods) Amendment Bill 290-1 (2023) and the Equal Pay Amendment Bill 147-1 (2025) passed through all stages under urgency during the current Parliamentary term.

2.7 These issues are compounded where employment law intersects with other areas of law with similarly and rapidly evolving legislative landscapes (for example, criminal law, immigration law, and privacy law: significant legislative changes have been made within each of these areas during this Parliamentary term, with further changes to come).

2.8 There are some aspects of the EDR system that presently function well, and enable access to justice. For example, it appears the Employment Court processes operate well, in-person mediations facilitated by experienced and appropriately-trained mediators can still be very successful, and the Authority's Authority Settlement Conference pilot in Christchurch, while in its infancy, has received positive feedback from practitioners.

2.9 However, there remains an urgent need for improvements to several aspects of the EDR system. A holistic review of the EDR system, which has the scope to identify and respond to barriers to access to justice across the different tiers of the EDR system, is therefore timely and welcomed.

2.10 We now turn to issues which arise within each tier of the EDR system, which we hope will be addressed following the completion of this review. This focusses largely on Early Resolution, Mediation, and the Authority.

2.11 Feedback from practitioners is that the Employment Court's processes are largely working well, and delivering timely access to justice for parties involved in proceedings before the Court. For this reason, our submission does not raise issues specific to the Employment Court; however, some of the general comments in section 6 of this submission are relevant to proceedings in the Employment Court.

2.12 We note here that practitioners have raised concerns regarding barriers to access to justice (and, in particular, costs) preventing certain cases, such as those involving novel or technical legal arguments, from progressing to the Employment Court. However, the tiered structure of the EDR system means this particular issue cannot be resolved through reforms to the Employment Court's processes and procedures, and requires reform at the lower tiers of the EDR system.

3 Early resolution

3.1 MBIE's early resolution scheme is intended to function as a service "that helps employers and employees resolve a workplace issue quickly and informally".[4] However, delays within the service means the service is no longer delivering the quick service it was intended to provide.

3.2 There appears to be uncertainty regarding the legal status of the early resolution service, specifically whether it comes within the statutory provisions in the Employment Relations Act 2000 (**Act**). In particular, it is unclear whether existing statutory protections apply to discussions and agreements formed during early resolution (for example, whether early resolution discussions will always be confidential[5] and without prejudice). A number of practitioners were also unaware that the early resolution scheme still continues to operate within the EDR system because it does not appear to be widely utilised by MBIE.

4 www.employment.govt.nz/resolving-problems/how-to-resolve-problems/early-resolution.

5 Noting s 148 of the Act provides that matters discussed in mediation are confidential.

3.3 If the intention is for there to be greater uptake of the early resolution service (that is, if statistics show the service continues to be an effective EDR forum), then the status and protections which apply to the early resolution process should be clarified. The scheme, including how to access it and how it works, should also be better advertised to the public and representatives.

4 Mediation

4.1 A key purpose of the Act is to promote mediation as the primary problem-solving mechanism other than for enforcing employment standards.[6] Any improvements to the EDR system should therefore largely focus on its primary problem-solving mechanism (mediation), and on the largest employment mediation service provider in New Zealand: MBIE's EMS.

4.2 We identify below a number of issues within the EMS, which are hindering access to justice:

(a) **Delays:** over the last couple of years, MBIE has reported "significant peaks" in demand for mediation – in the 2023/24 financial year, applications for mediation rose by 23%, and, in 2024/25, applications increased by a further 9.1%.[7] These increases have been accompanied by increases to wait times during both financial years.[8] Lawyers have noted that these longer timeframes have led to:

(i) Delays in receiving mediation date options and the process for confirming a suitable mediation date. Examples provided by Committee members include:

(A) The parties waiting for 6 weeks to be offered a mediation date, and MBIE then advising the parties the file would be closed immediately because one of the parties had not responded to confirm their availability on the proposed date.

(B) The Support Officer refusing to schedule a mediation until the parties provide adequate documentation, despite being advised that no such documentation exists.

(ii) Mediations being scheduled months out from the date of application. The Law Society understands that parties that submitted requests for mediation in early July 2026 are now being offered dates in mid-September 2026. We heard of a recent example of a mediation being scheduled 8 weeks away, and when one party advised that this date was not suitable, the Support Officer advised the parties the file would be closed if they were unable to agree on a new date within 2 working days.

These delays are contributing to inconsistencies in the delivery of mediation, and creating uncertainty for parties about when they can expect to resolve a matter through the EMS. Some lawyers have also noted with concern that delays are

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6 Sections 3(a)(v) 143(f) of the Act.

7 MBIE *Annual Report 2024/25* (October 2025) at 25; MBIE *Annual Report 2023/24* (October 2024) at 21.

8 MBIE *Annual Report 2024/25* (October 2025) at 25; MBIE *Annual Report 2023/24* (October 2024) at 21.

being exacerbated by unscrupulous parties who 'game' the mediation system in order to buy additional time to prepare their case (for example, by accepting a mediation date that is two or three months away, and then becoming unavailable shortly before the mediation date).

A key focus of the current review should therefore be to identify precisely where parties are experiencing delays in the EMS, and the extent to which those delays are impacting access to justice. Any recommendations and findings of the review should also inform future budget bids and funding decisions.

(b) **Delays in obtaining urgent mediations:** lawyers have noted with concern that delays are impacting urgent mediations, with dates for urgent mediations often being offered 4 to 5 weeks after MBIE first contacts the parties about their application (which is often a number of weeks after an application is made).

Lawyers have also reported delays in allocating urgent matters to mediators: one example provided by a lawyer concerned an urgent mediation that was sought for a return to work from sick leave, explicitly noting the intention for parties to mediate and address return to work expectations as part of this process; however, 3 weeks lapsed before MBIE allocated the matter to a mediator (i.e., less than 10 days from the employee's return to work), and this only occurred when the Support Officer was directly contacted about the file. Examples have also been provided of situations where the employment relationship between the parties has ended in the time it has taken for an urgent mediation to be allocated.

Urgent mediations are usually sought in circumstances where the employee is still employed by the employer and urgent resolution is needed to maintain the employment relationship. Urgent mediations which are scheduled weeks or months away from the application date are much less likely to provide urgent resolution sought by the parties to the dispute. The EMS should be adequately resourced to deliver urgent mediations within 1 to 2 weeks, particularly where the employee continues to be employed by the other party to the dispute.

(c) **Mediators failing to assist parties:** lawyers have observed that mediators (particularly those who have been appointed to the role more recently, and are less experienced) are increasingly repeating, or summarising at length, the content of submissions and opening statements, rather than conveying matters concisely, explaining key points, and presenting different options available to the parties. This often uses up valuable time during a mediation, which could be more usefully spent helping the parties reach settlement.

Mediators should be encouraged to meaningfully engage with the parties and the mediation process, and to make genuine attempts to help the parties resolve their dispute. Training should also be provided to upskill mediators on how to assist parties in the limited time available during a mediation, and to ensure consistency across mediations facilitated by MBIE.

(d) **Preference for online mediations:** concerns have been expressed about the preference by MBIE to allocate online mediations, even when there is a request by the parties for an in-person mediation. In our view, in-person mediations conducted by trained mediators tend to be most effective at resolving disputes, particularly where there continues to be an ongoing employment relationship between the employee and the employer. In-person mediations enable mediators to more meaningfully engage with the parties and the issues arising from their dispute, and to encourage the parties to also actively participate in the mediation and attempt to reach resolution. As a result, matters are more likely to settle where mediations are conducted in person.

We have also received anecdotal reports of online mediations having a much lower rate of settlement than mediations conducted in person. If statistics confirm this to be the case, consideration should be given to conducting more in-person mediations to the extent possible, and where parties have indicated it is their preferred mode of mediation.

(e) **Missing mediators:** lawyers have reported numerous instances of mediators failing to appear for their scheduled mediations, and being uncontactable when attempts are being made to locate them. This delays resolution, and inconveniences parties and their representatives, who, despite having set aside time to attend the mediation, then need to take steps to confirm a new mediation date, and set aside additional time to attend the rescheduled mediation (and this too can be a time-consuming exercise, as it can be difficult for parties to contact MBIE support staff to reschedule the mediation).

(f) **Late appointment of mediators:** MBIE usually notifies the parties of the mediator assigned to them only on the day of the mediation. Where this occurs, mediators have limited opportunities to reach out to the parties ahead of the mediation to discuss the dispute, and understand what the parties are seeking to achieve through mediation. This can be a useful exercise: in many cases, brief pre-mediation discussions with the parties or their representatives can assist mediators with facilitating the mediation process, and with determining how to best engage with and assist the parties during the mediation – this has the potential to significantly reduce the time needed to reach a settlement.

(g) **Training:** mediators play a significant role in the early resolution of employment disputes, particularly in facilitating structured and rational discussions between the parties, and in identifying pragmatic approaches to resolving issues. It is therefore crucial that they are given adequate training to ensure they are capable of performing these functions (which can extend beyond the employment jurisdiction, and include issues relating to health and safety, and privacy). Training can also help mediators better understand how to meaningfully engage with and assist the parties to a dispute (particularly any unrepresented and vulnerable parties), and how to make genuine attempts to help the parties reach settlement. In the long term, it can also improve the consistency of mediation services provided by the EMS.

(h) **Inconsistencies in the application of policies:** lawyers have shared examples of mediators informing parties of 'policy decisions' made by MBIE, which do not appear to be recorded in any publicly available policy documents (for example, mediators refusing to sign Records of Settlement pursuant to section 149 of the Act because of specific clauses in a policy). When other mediators are asked about the application of these policies, they do not seem to be aware of their existence or application. Inconsistent application of policies in the EMS is creating uncertainty for employees and employers. Mediators should be made aware of all relevant policies, and be encouraged to take a consistent approach to their application. Applicable policies should also be publicly available and easily accessible to parties.

(i) **Guidance on relevant information:** with most parties now applying for mediation through MBIE's online portal, it could be helpful for MBIE to publish guidance for parties about administrative requirements, and steps the parties could take to avoid duplicating work and information. Guidance on these matters could again help increase efficiency and timeliness, and provide greater certainty to parties navigating the mediation process (particularly self-represented parties).

4.3 These issues within MBIE's EMS have meant that better-resourced parties (most often, employer parties) are sometimes choosing to pay for private mediations to access a more timely and efficient dispute resolution process, at a cost which could instead be used to meaningfully resolve the dispute. However, parties that cannot afford to pay for a private mediation have no option but to continue to progress their matter through MBIE's EMS at a slower pace.

4.4 It is also possible these issues are contributing to low settlement rates: over the last two years, only around two-thirds of matters appear to have been settled at mediation.[9] Low settlement rates mean a greater volume of matters are proceeding to the Authority, placing strain on Authority's systems, as discussed further below.

5 Employment Relations Authority

5.1 Improvements could be made to the Authority's processes in the three key areas: resourcing/delays, consistency of process (which we acknowledge is contributed to by resourcing constraints), and consistency of outcomes. We discuss these in more detail below, noting that, if left unaddressed, these issues could reduce parties' confidence in the EDR system and their perceptions of access to justice within that jurisdiction.

5.2 We also acknowledge the Authority is aware of the concerns we set out below, and has taken an active approach in recent times to understand, address and improve issues where it can. However, there remain compounding issues which, in our view, could largely be addressed by additional and appropriate resourcing to recognise the increased volume and complexity of work.

Resourcing and resulting delays

5.3 Over the past couple of years, lawyers have continued to express concerns regarding delays in the Authority processes. These delays correlate to increases in the number of applications lodged in the Authority over that same period: in 2024, the Authority reported that there was a 22% increase in applications lodged in the Authority,[10] and, in

9 In the 2023/24 and 2024/25 financial years, settlement rates remained at 67% and 66.2& respectively – see: MBIE *Annual Report 2024/25* (October 2025) at 25; MBIE *Annual Report 2023/24* (October 2024) at 21.

10 Employment Relations Authority *Annual Report 2024* (June 2025) at 4.

2025, there was a further increase of 12%.[11] The Authority's 2024 Annual Report (published in June 2025) notes the increase in applications has "ultimately resulted in significantly more work flowing through the Authority with some of the effects of this continuing to be experienced".[12]

5.4 These increases in the Authority's workload do not appear to have been supported by a proportionate increase to resources and funding allocated to the Authority. Lawyers have noted that this has led to delays in:

(a) **Serving Statements of Problems:** we are aware of a number of large employers who have experienced delays in the service of Statements of Problem in an efficient and effective way. For example, these are sometimes emailed to a generic email address belonging to the employer (for example, 'askhr'), or couriered to the registered address for service, but without being marked with urgency or for the attention of the correct individual. With only 14 days to file a Statement in Reply, losing time in having proceedings effectively served can lead to applications for extensions of time and delays.

(b) **The lead up to an investigation meeting (IM):** lawyers have also raised concerns regarding delays in allocating matters to Members and progressing matters to a case management conference. We have heard, for example, that matters filed in the Auckland Office in December 2025 are only now being allocated to Members in July 2026. We note these delays appear regional, as this does not appear to be an issue for matters sitting with the Christchurch Office.

(c) **Holding IMs:** statistics published by the Authority show that, while the Authority's use of audio-visual links has increased in recent years, most IMs continue to be conducted in person. With Authority Members based in Auckland, Wellington or Christchurch, they then frequently need to travel to other towns and cities to attend in-person IMs.

Where this occurs, IMs need to be scheduled around the availability of suitable local premises, rather than at the earliest suitable date, which can often delay the progress of those matters. There appears to be some constraints internally with which premises can be used, and we suggest a review of this to ensure there are a range of suitable options to ensure IMs can be scheduled more quickly.

(d) **Issuing determinations:** while the Authority has recently reported that 95% of determinations are issued within the 3-month statutory timeframe,[13] there remain concerns among members of the profession regarding timeliness where:

(i) The Authority resets the 3-month timeframe when it seeks additional information from the parties;[14] and

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11 Employment Relations Authority *Annual Report 2025* (May 2026) at 4.

12 Employment Relations Authority *Annual Report 2024* (June 2025) at 4.

13 Employment Relations Authority *Annual Report 2025* (May 2026) at 26.

14 This approach is confirmed in the Authority's 2024 and 2025 Annual Reports (at pages 24 and 26 respectively), which note that the 3-month timeframe commences on the date of the investigation meeting or the date on which the Authority received the last evidence or information from the parties.

(ii) The Authority issues a determination outside of the 3-month timeframe because the Chief of the Authority has decided exceptional circumstances exist,[15] but these exceptional circumstances are not communicated to the parties.

In providing this feedback, we acknowledge there is no statutory requirement to communicate the reasons for an extension, and there will be genuinely urgent exceptional circumstances which mean determinations will be issued outside the statutory 3-month timeframe.[16] However, if inadequate resourcing is a reason for the exceptional circumstances that justify departing from the 3-month timeframe, then this should be addressed as a resourcing issue.

(e) **Dealing with urgent matters:** there do not appear to be target timeframes for progressing and determining urgent matters. As a result, the determination of urgent matters can sometimes take months, which is particularly problematic where the relationship is ongoing. Again, this does not seem to be an issue affecting all Authority Offices.

5.5 These delays could easily be addressed with more resourcing. Any reforms to the EDR system must therefore seek to identify where additional resourcing is required, to provide timely access to justice for parties.

5.6 Any future allocation of resources must also:

(a) be proportionate to the volume of applications that are being lodged in the Authority;

(b) ensure that offices that receive a greater volume of applications, or experience more significant delays, receive a greater share of those resources (and we note here that lawyers have indicated that delays are currently most prominent in the Authority's Auckland Office); and

(c) enable the Authority to obtain suitable premises – even at short notice – to conduct in-person IMs in a timely way (particularly if in-person IMs are to be the Authority's preferred mode).

5.7 Consideration could also be given to operational and administrative changes that could be made to the Authority's processes to reduce timeframes and improve efficiency (although these broader reforms should only be progressed following public and stakeholder consultation)– these include:

(a) Sharing relevant case managers' email addresses with parties and their representatives. This would remove the need for parties to email the Authority's generic email, and ensure matters are immediately directed to the relevant case manager.

(b) Consideration of whether Support Officers could play a greater role in the Authority's processes. We understand that, in the past, Support Officers took a more active role in triaging and progressing matters, and such an approach could

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15 As permitted under s 172B(3) of the Act.

16 We note the Act expressly permits this under section 172B(3).

help improve efficiency and timeliness. Support Officers could, for example, assist with identifying matters which have not been to mediation or early resolution prior to lodgement in the Authority (lawyers have noted that this is not uncommon, and Statements of Problem sometimes serve as notice of a personal grievance being raised by an employee). In such circumstances, Support Officers could play a greater role in referring parties to mediation at the outset, rather than requiring the responding party to file a Statement in Reply and *then* referring the parties to mediation.

However, these additional responsibilities may require legislative change, and further training for Support Officers.

5.8 We also acknowledge that the Authority is proactively considering ways to improve timeliness (for example, the Authority is currently trialling Authority Settlement Conferences, and practitioners are of the view that these appear to be working well). However, further work is needed to ensure the Authority remains capable of delivering timely justice to employees and employers.

Inconsistencies

5.9 Lawyers have noted that inconsistencies in how matters are dealt with by different Members in the Authority are causing uncertainty for both employees and employers. In addition, there are significant inconsistencies of outcomes which make it difficult for a party to assess their case.

Procedural inconsistencies

(a) **Inconsistencies in dealing with applications for reinstatement:** lawyers have observed that some applications for reinstatement are dealt with on the papers, and other considerably similar applications are dealt with in person. The question of whether a reinstatement application should be dealt with in person or on the papers is largely left to the discretion of the Member allocated to the matter. This has, over time, led to inconsistencies in how reinstatement applications are dealt with (even where they engage similar issues or facts). It could be helpful to take a more consistent approach to determining applications for reinstatement, which clearly identifies whether an application should be dealt with in person or on the papers.

(b) **Inconsistent approaches to jurisdictional and limitation issues:** it could be helpful to establish a consistent approach to jurisdictional and limitation issues (such as where it is alleged a personal grievance has been raised outside the required 90-day timeframe). The most efficient and cost-effective approach is generally to have this determined as a preliminary issue, including on the papers, where appropriate. This allows for clear identification of the claims that will proceed to a substantive investigation. In some cases, the Authority has directed that substantive and jurisdictional/limitation issues are to be dealt with as part of one hearing, together with the substantive matters. This has led to parties incurring the time and cost of locating witnesses and preparing substantive evidence on claims that may ultimately be found to be out of time.

(c) **Inconsistencies in how unregulated advocates and self-represented parties are managed:** there appear to be inconsistencies in how the Authority deals with self-represented parties and advocates, particularly where they refuse to work with the other party to resolve their dispute. One example provided by a lawyer involved a self-represented applicant who refused to interact with the other party to the dispute, and no efforts were made by the Authority to engage with the self-represented party and progress the matter, which meant the matter languished in the Authority for a significant duration of time).

(d) **Inconsistencies in how interpreters are used:** the Law Society understands the Authority's current policy on obtaining interpreters is to provide the service for those who need an interpreter, but not for the whole proceeding (unless the proceeding requires interpretation of te reo Māori or New Zealand Sign Language). Lawyers have raised concerns about whether the periods during which interpreters are available are adequate to enable the parties to the dispute to meaningfully engage in the dispute resolution process. One lawyer also shared a recent example involving a deaf party who was only allowed to have an interpreter for one additional hour – this suggests there may also be inconsistencies in how the Authority is applying its policy on interpreters. MBIE's review could therefore consider whether improvements could be made to the involvement of interpreters in order to enhance access to justice.

Inconsistent outcomes

5.10 We acknowledge that with 24 Members, and the complexities of the legal framework within which they are working, it is reasonable for there to be variations in decisions from Member to Member.

5.11 However, practitioners have raised that it is becoming increasingly difficult to advise clients on the risks and likely outcomes of their claims because how matters are dealt with, and ultimately determined, can vary significantly from Member to Member.

5.12 Examples include the significant variation in remedies awarded by the Authority for unjustified dismissal claims, and the overall varying success rates of employers versus employees from Member to Member.

5.13 While we have identified below some of the inconsistencies in the Authority's process, a more careful assessment of the Authority's processes, procedures and outcomes could help identify how to improve consistency and certainty for parties.

Other issues which could also be addressed

5.14 We identify below some additional matters which could be dealt with as part of this review, which we believe have the potential to improve access to justice:

Recording IMs

5.15 The Authority does not currently record IMs, and therefore Members must take complete and accurate notes. There are some risks to this approach (for example that notes may not always reflect the full extent of discussions which take place during IMs, and delays in finalising notes could impact Members' recollections of discussions).

5.16 Consideration could therefore be given to whether the ability for the Authority to record IMs (i.e., as audio recordings or transcripts) could enhance transparency, and assist with the faster resolution of matters, particularly if these records could subsequently be produced in the Employment Court (for example, to help narrow de novo challenges).

5.17 However, if such a change is to be implemented, we recommend undertaking further consultation, including with key stakeholders, to identify:

(a) what impacts this would have (including on timeliness and efficiency), particularly where IMs are held outside of the three main centres (i.e., outside Auckland, Wellington and Christchurch);

(b) when it would/would not be appropriate to record matters;

(c) when these records can be accessed and relied on; and

(d) whether it would be appropriate for recording to be funded through a 'user-pays' model.

Setting matters for IMs

5.18 We understand the Authority is currently aiming to set matters down for an IM within 4 months of the matter being allocated to a Member. The Law Society supports this initiative as a proactive way to keep matters progressing and reduce delays.

5.19 In order to achieve this target, parties and their representatives are being asked to indicate what their availability will be like in 4 to 6 months' time. This is a significant length of time, and it can be difficult for parties and their representatives to indicate their availability over that period, while also looking to confirm whether others (including key witnesses) will also be available.[17]

5.20 It could be helpful if Authority Members could proactively indicate which dates/months are being considered for the IM when they set the matter down for a case management conference – this could help narrow the window of time within which the parties, and their representatives and any witnesses need to be available.

Email attachments

5.21 The Authority's maximum size limit (20MB) for email attachments sometimes prevents parties from submitting evidence by email. Lawyers have noted that, where this happens, the parties do not always receive a 'bounce back email' or any other notice of delivery failure. This means parties may be unaware that their emails and attached evidence have not been delivered to the Authority, and that they have breached directions set by the Authority to file evidence. We recommend investigating this issue (including whether it arises from a technological problem, which could mean this issue is having a wider impact).

In-person IMs

5.22 The Authority's preference for in-person IMs has meant some matters are being scheduled even where an in-person meeting is unnecessary, and unlikely to be of

[17] Lawyers have noted this remains a labour-intensive exercise even where artificial intelligence and other tools are used to narrow down available dates.

assistance to the parties or the Authority Member. A recent example of this involved a non-publication matter where the parties were asked to appear in person, but the in-person meeting then largely focussed on reading through the parties' submissions, without any further engagement on the non-publication issue, even though this could have easily occurred without an in-person appearance, as the case did not involve any novel issues. Consideration could therefore be given to allowing some flexibility in how particular matters are heard (particularly if a remote appearance has the ability to reduce cost without impeding access to justice).

6 Other matters

6.1 The Law Society has also identified a few other matters which could be addressed when making improvements to the EDR system:

(a) The creation of a framework for the regulation of employment advocates;

(b) Management of the use of artificial intelligence; and

(c) Changes to section 150A of the Act to enable costs to be paid to barristers.

6.2 We discuss each of these matters below.

Regulating employment advocates

6.3 The Act currently allows *any* person to represent and advocate on behalf of an employer or employee throughout all stages of the EDR system. This tradition of permitting representation by those who are not members of the legal profession originated under older (and now repealed) employment legislation, which permitted unions to bring personal grievance claims on behalf of their members. At the time, union members could advance their own claims only in circumstances where their union unreasonably failed or refused to advance their claim.[18] Non-union members were unable to bring grievance claims, and were only permitted to bring wrongful dismissal claims and some contractual claims.

6.4 A policy decision was subsequently made in 1991 to enable employees to bring their own personal grievance claims, and a further policy change was made in 2000 which meant a personal grievance became the only way to lodge complaints about dismissal.[19] However, these changes were not accompanied by any reforms to restrict those who can represent parties within the EDR system. This meant *any* individual could represent a party to an employment dispute (a right that was previously exclusive to unions), and 'lay' advocates were given the ability to represent parties (including in the Employment Court), and provide advice on dispute resolution and employment law without regulation or needing to hold any relevant qualifications.

6.5 This has, over time, led to the growth of a body of unregulated advocates who are not qualified or practising lawyers, and are not bound by requirements relating to training, qualifications, and professional conduct. The Law Society has been alerted to (at times, significant) concerns regarding the behaviour of these unregulated advocates, which adversely impacts their clients (and in doing so, raise consumer protection concerns)

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18 Industrial Relations Act 1973, s 117(3A); Labour Relations Act 1987, s 218.

19 Employment Relations Act, s 113.

and others involved in a dispute, as well as the parties' ability to successfully resolve their dispute.

6.6 The frequency and number of concerns raised with the Law Society about the conduct of employment advocates has increased markedly over the past few years. Examples of poor conduct include:

(a) displaying aggressive, intimidating and threatening behaviour, including verbal abuse and derogatory language directed at other parties and representatives;

(b) when dealing with lawyers, making or threatening to make complaints against the lawyer acting for the other party (i.e., to the Lawyers Complaints Service) in an attempt to intimidate the lawyer;

(c) threatening to take legal action against other parties and their representatives (for example, for defamation);

(d) demonstrating a very limited (or, in some cases, a lack of) understanding of applicable laws, processes and procedures, as well as disregard for procedural requirements, which sees them providing "substandard" advice to clients;[20]

(e) missing deadlines, and filing evidence on behalf of their clients without the clients' knowledge or approval;

(f) failing to promptly advise individuals of conflicts of interest;[21]

(g) failing to attend scheduled mediations, and failing to provide any notice or reasons for this;

(h) impeding genuine attempts made by others involved in the dispute to settle matters, including by filing unnecessarily lengthy documents and inundating the other party with complaints and information requests;[22]

(i) charging unreasonably high fees (examples shared by lawyers include fees which comprise up to 80% of the settlement sum paid to their client, and 100% fee uplifts, which double the fees payable to the advocate);

(j) where services are provided on a 'no win, no fee' basis, encouraging their clients to agree to financial settlements without seeking alternative remedies in order to be able to claim their fee, including in circumstances where this is not in their client's interests (in that there may have been a significant likelihood of a higher award had the matter proceeded to a determination in the Authority);

(k) misrepresenting themselves as lawyers when they do not hold a practising certificate issued by the Law Society (noting this can also constitute an offence

20 See, for example: https://newsroom.co.nz/2025/10/21/disappointing-govt-kicks-employment-advocate-regulation-down-the-road.

21 One example involved an advocate who failed to advise an employee that they were already representing the employer involved in the dispute until after the employee had disclosed information about their case to the advocate, which the advocate then relied on in a subsequent Court proceeding.

22 One example involved an advocate who filed briefs of evidence containing inadmissible materials, and filed a Statement in Reply was over 70 pages long – these were accompanied by complaints to WorkSafe, the Ombudsman, the Labour Inspector and the Attorney-General, and over 250 information requests and over 500 emails, some of which were 10 pages long.

under section 22 of the Lawyers and Conveyancers Act 2006 in some circumstances);

(l) breaches of confidentiality,[23] and reports of attempts to listen in to confidential discussions between the other party and their representative;[24]

(m) making changes to settlement agreements after they have been signed by the parties;

(n) filing meritless claims and seeking unrealistic remedies, and setting unrealistic expectations for their clients, which then causes distress and creates uncertainty; and

(o) repeatedly contacting the other party to the dispute even when advised that the other party is represented.

6.7 The Law Society is also aware of recent media reports of employment advocates with past criminal convictions,[25] as well as those who have been convicted of stealing settlements awarded to their clients,[26] or have had restraining orders issued against them.[27]

6.8 Despite raising these concerns with Ministers and Government officials on numerous occasions, there remains no avenue to make complaints about the quality of advocacy services and alleged unprofessional behaviour or misconduct, outside of the voluntary member organisation, the Employment Law Institute of New Zealand.[28]

6.9 These examples and concerns make a strong case for the regulation of employment advocates. The Law Society has previously suggested a regulatory framework could be modelled on the framework in the Immigration Advisers Licensing Act 2007, which regulates licensed immigration advisors. We remain of the view that regulation is necessary (particularly given the increasingly complex and quickly-evolving legislative environment), and that the Immigration Advisers Licensing Act remains an appropriate model for such regulation.

6.10 We also note the Law Society has joined (on invitation) a cross-sector working group established by the Law Association of New Zealand to progress the development of a regulatory framework for employment advocates. The Law Society will, to the extent possible, contribute to the Working Group's discussions and recommendations on this issue.

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23 One example involved an employee who had approached an advocate who, unbeknown to the employee, was acting for the employer involved in the dispute. The advocate failed to disclose that they were acting for the employer, and later relied on information the employee had disclosed to the advocate in confidence to argue the employer's case.

24 One example was provided of an advocate standing immediately outside a room in an attempt to listen into a confidential discussion involving the other party to the dispute.

25 www.stuff.co.nz/nz-news/360869066/brent-edwards-brent-tomich-brent-willis-fraudsters-ever-changing-identities-and-his-new-business.

26 www.stuff.co.nz/nz-news/350155927/employment-advocate-abuses-client-steals-10k-settlement.

27 www.nzherald.co.nz/nz/embattled-anti-bullying-crusader-allan-halse-slapped-with-restraining-order/SL5SVGY74FERHESFRUYV46RBS4.

28 But note that the Employment Law Institute's processes only apply to its own members.

The use of artificial intelligence (AI) in the EDR system

6.11 Practitioners have observed that there has been an increase in the use of AI in all aspects of the EDR system, but particularly in preparing pleadings, briefs of evidence, and submissions in the Authority and Court. This is particularly common with unrepresented parties and parties represented by employment advocates, although we accept many lawyers are also making use of AI tools in their work.

6.12 While AI use itself is not problematic, in some cases its use its resulting in:

(a) unnecessarily lengthy pleadings, briefs of evidence, and submissions (lawyers have shared examples of submissions exceeding 50 pages);

(b) credibility issues about what the parties' experiences are, where briefs of evidence are prepared using AI, including what embellishments have been made by AI;

(c) incorrect case citations from AI hallucinations;

(d) entirely incorrect legal analyses; and

(e) unnecessarily verbose documents and correspondence being filed.

6.13 It could therefore be helpful to consider whether a more proactive approach is needed to more closely manage the use of AI within EDR systems, particularly where it impacts the timely progression of matters – this could include, for example:

(a) Enabling greater oversight and scrutiny of evidence submitted by parties in order to identify whether evidence has been created, embellished or altered using AI;

(b) Where AI has been used to prepare witness statements and other evidence, requiring the parties to disclose any inputs into the AI;

(c) Introducing a page limit for submissions and evidence (noting limits have already been implemented in higher courts, so this would not constitute a novel approach if implemented within the EDR system); and

(d) Requiring the Authority to enforce and bring to the attention of the parties and their representatives the *Guidelines for use of generative artificial intelligence in Courts and Tribunals* (in particular, the guidelines for lawyers and non-lawyers, which would apply to self-represented litigants and employment advocates).

Enabling payments to barristers

6.14 Lawyers have noted that it is common practice for settlement agreements to include provision for costs to be paid directly to a party's lawyer. However, the Authority has recently determined that section 150A of the Act does not permit costs to be paid directly to a barrister (as opposed to a solicitor) under a settlement certified under section 149 of the Act.[29]

6.15 The Law Society understands the New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture has written to the Minister for Workplace Relations and Safety earlier this year, recommending an amendment to section 150A(3)(b) of the Act to enable costs to be paid

[29] *Wu v Grande Construction Ltd* [2025] NZERA 157; *Singh v Kanji Corporation* [2024] NZERA 470; *KQJ v RXT* [2024] NZERA 281.

to other party's "lawyer as defined in s 6 of the Lawyers and Conveyancers Act 2006" (rather than to the other party's "solicitor").

6.16 For the reasons outlined in the Bar Association's letter of 6 March 2026, the Law Society supports an amendment to section 150A of the Employment Relations Act to clarify that *costs* can be paid directly to the other party's lawyer (which, as explained in the Bar Association's letter, would then include solicitors as well as barristers). However, in our view:

(a) This amendment should only apply to the payment of *costs*, and must not enable the payment of money more generally to barristers (as barristers are not permitted to operate trust accounts, and therefore cannot receive or hold money or other valuable property for or on behalf of another person).

(b) Where costs are to be paid to a barrister, this amount should be clearly identified in the settlement agreement between the parties.

(c) Any amendment should not abrogate relevant provisions in the Lawyers and Conveyancers Act 2006 and obligations under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, which continue to apply, and dictate the arrangements and conditions under which a lawyer may receive funds.

7 Next steps

7.1 We hope this feedback is helpful. Please feel free to get in touch with me via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz) if further discussion would assist.

Mark Sherry
Vice President