

20 August 2025

Te Au Reka Policy Team
Ministry of Justice

Email: TeAuRekaPolicy@justice.govt.nz

Tēnā koutou

Feedback on the Engagement Paper – Key court rule changes to enable Te Au Reka to be implemented in the District and High Courts: July 2025

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the *Engagement paper: Key court rule changes to enable Te Au Reka to be implemented in the District and High Courts: July 2025* (**engagement paper**) from the Rules Committee (**Committee**).
- 1.2 This feedback has been prepared with input from the Law Society's Criminal Law, Youth Justice, and Civil Litigation and Tribunals Committees.¹

2 General comment

- 2.1 The Law Society is supportive of the introduction of Te Au Reka to the criminal and civil jurisdictions of the District Court (**DC**) and the High Court (**HC**). We acknowledge and agree that the introduction of Te Au Reka will be a substantial change and needs to be managed carefully. In that vein, our feedback also covers issues and concerns raised by practitioners regarding the use of Te Au Reka in the criminal jurisdiction that may not directly impact or require rule changes, but which we suggest require careful analysis.
- 2.2 Overall, the Law Society considers the move to Te Au Reka a positive one that will substantially improve access to justice across jurisdictions by enabling easy and quick access to materials relevant to a court case. However, in the context of the criminal jurisdiction, we consider that more clarity on the details of the proposed changes is needed before we can provide substantive comments on whether the proposed rule changes will be sufficient or whether there are gaps that need to be addressed.

¹ More information about these committees can be found on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

3 Section 1: New mandatory obligation

- 3.1 The engagement paper provides that there will be an expectation that lawyers, including Crown and other prosecuting agencies, will be required to use Te Au Reka to provide information to, and receive information from, the court, with provision for minimal exceptions under a specific set of circumstances.
- 3.2 The Law Society agrees that for the system to become integrated, it is necessary to set a deadline for when use of the system becomes mandatory. However, we consider that it will be essential that adequate support and training are available to those who need help getting to grips with the system. Support will also be required to ensure that the inevitable bugs in the system that are likely to be reported at this time can be fixed promptly.
- 3.3 We also consider that significant resources for training on the system will be necessary to enable all lawyers to become adept at utilising the system *before* the mandatory obligation comes into force. Further, the system will need to be simple and intuitive in its design and function to enable those practitioners who are not technologically savvy to be able to learn and use the system with support.

4 Section 2: New ways of achieving existing procedural requirements

Court information and records

- 4.1 The Law Society acknowledges and appreciates the information provided at 2.3 of the engagement paper describing the position that is taken as to court information and records in hard copy or digital form. We query whether it is intended for Te Au Reka to eventually replace paper court records, and if so, wish to further query how oral applications regarding matters like bail applications and variations to sentencing orders (which often happen on the fly in a busy District Court list court) will be recorded. This is important to practitioners as they often involve matters that may need to be reviewed when the decisions or parts of decisions are contested at a later date.
- 4.2 It is unclear how Te Au Reka will capture, record and provide to relevant parties certain applications that are provided for under legislation (e.g. oral applications for search warrants under the Search and Surveillance Act 2012, and without notice applications under the Criminal Proceeds (Recovery) Act 2009). We consider it would be preferable for these matters to be formally recorded or transcribed onto the file so that it can be referred back to and checked for accuracy of details at a later date.
- 4.3 Further, we note that low-level sentencing matters are currently hand-written or orally delivered and stamped onto the hard copy of the court record, rather than a sentencing decision being recorded. It will be important that an accurate record of these decisions is maintained.

Filing information

- 4.4 High Court Rules 5.1, 5.25 and 19.7 and District Court Rules 5.1, 5.28 and 20.14 refer to the “proper registry”. If the geographical location is not to be determined at the time of filing (as indicated in the engagement paper), then a process will need to be put in place for how and when this is determined.

- 4.5 Given that the system will be relied upon by all court participants, including parties to a matter, a pertinent question is whether the changes to the rules mean that compliance with filing deadlines and properly completed forms will be more strictly enforced. We note that this would be a desirable outcome and should add impetus for practitioners to ensure that their documents are filed on time and in line with the rules.
- 4.6 An additional consideration regarding the filing rules may be whether all forms are necessary and required to be continued or brought across into the new system. Reviewing the form and content of standard forms at this time will ensure that the new system does not include unnecessary redundancies that currently exist in the system but are largely ignored.

Solicitor on the record

- 4.7 Generally, it is unclear which lawyers will have access to the file in Te Au Reka. Documents will still have a single named solicitor on the record, however, the convention in the District and High Court is that multiple lawyers are included in communications between the parties and with the court.
- 4.8 It is unclear how to ensure that notification is made to the relevant lawyers and only the relevant lawyers (so that, for example, all lawyers in the practice are not flooded with communications relating to matters that do not concern them).
- 4.9 Will there be automatic notification to all parties being notified when a document is served or there is a communication from the court?
- 4.10 What will be the process for updating changes to the lawyers who need to be in communication on any particular matter?

Storage and access

- 4.11 The information intended for storage on Te Au Reka necessitates robust cybersecurity measures, as well as clear storage and access policies and procedures. This is crucial to prevent sensitive information from falling into the wrong hands. Given the rising threat of cyberattacks on government information repositories, highlighted by the hack of sensitive patient health records from Waikato DHB,² it is essential to provide assurances, certainty, and clarity regarding these processes.
- 4.12 We note some concerns about online access for parties given that, in many cases, there may be data that is prohibited for those parties to access. Further, there is no way to control whether parties share their access with other third parties who should not have access to that material. Concerns regarding proof of identity for access persist despite the proposed use of Real Me identity verification, as this verification does not preclude the sharing of access details. We query whether party access should be limited in some

² Natalie Akoorie "Waikato DHB warned a cyberattack 'catastrophic for patient safety'" RNZ (12 November 2021), accessed online at: <https://www.rnz.co.nz/news/ldr/455535/waikato-dhb-warned-a-cyberattack-catastrophic-for-patient-safety>; NZ Herald "Waikato DHB cyber attack: 4200 people's personal detail disclosed on dark web" (10 September 2021), accessed online at: <https://www.nzherald.co.nz/nz/waikato-dhb-cyber-attack-4200-peoples-personal-details-disclosed-on-dark-web/LCSXDX4W3HTZ4FCISHAL4T32IM/>; Dr Rizwan Asghar "A cyberattack lesson from Waikato DHB" University of Auckland (21 June 2021), accessed online at: <https://www.auckland.ac.nz/en/news/2021/06/21/cyberattack-lesson-from-waikato-dhb.html>

way to mitigate this concern, given the level of private data that may be accessible via the platform, and note earlier comments from the Family Law Section about the need to ensure that those accessing Te Au Reka can access only information they are permitted to see.

- 4.13 It is also unclear how it will be determined which personnel within a law firm will have access, to ensure that the appropriate lawyers (and where reasonable, administrative staff within a law firm) would have access, without them being provided with a flood of notifications.
- 4.14 The engagement paper appears to contemplate defendants having access to information via Te Au Reka (rather than solely via their lawyer). Criminal defence lawyers have raised concerns regarding access to court files via Te Au Reka by parties who do not have access to computers and the internet at their home address, and whether they will be able to utilise public computers (such as in libraries) to access the court information, or whether courts will have kiosks set up with computers for parties to use for access. These matters are important to the protection of the privacy and sanctity of the data contained within Te Au Reka. Access to private information via a public computer may raise concerns about members of the public being able to access that data, either through saved login information on the computer or a user remaining logged into the platform after finishing their session on the computer.
- 4.15 The engagement paper proposes that parties and their lawyers (unless they stop representing a party) will be able to access case information through Te Au Reka for as long as the case is active, plus a period of a further six months. The Law Society agrees with the proposed access period of six months after closure of the case.

General questions

- 4.16 Regarding any other aspects of how Te Au Reka is likely to operate which ought to be considered in terms of impact on civil and criminal proceedings in the District and High court, the Law Society notes that it is useful to have contact details for the appropriate Registrar at the Court to be able to speak to and this should be preserved.
- 5 Section 3: Rule changes needed to allow for specific aspects of Te Au Reka design and implementation

Timing

- 5.1 It is assumed that filing will be possible at any time, regardless of whether or not strictly speaking a document is filed “within time”; for example, if a defence was due on 18 August, it would still be capable of filing on 19 August (or indeed after 5 pm on 18 August) notwithstanding that it was strictly out of time. The Law Society recommends providing clarification on this point, and ensuring that filing out of time remains possible.

Transition

- 5.2 We note that the transitional approach is likely to necessitate practitioners operating under both systems for a period of time, switching between digital and traditional processes depending on the court and timing of the proceeding. Managing two different filing and service systems could create additional administrative work and workflow

disruptions. The inconsistency between courts — where some operate under Te Au Reka and others do not — may also lead to delays and challenges in document handling and case management. We suggest that during the transition between systems, room for error is allowed without sanction or penalty to parties involved in the proceeding.

6 Next steps

- 6.1 We hope this feedback is useful. Please feel free to get in touch with me via the Law Society's Senior Law Reform and Advocacy Advisor, Claire Browning (claire.browning@lawsociety.org.nz), if you have any questions or wish to discuss this feedback further.

Nāku noa, nā



Mark Sherry
Vice President