New Zealand Law Society
Te Kāhui Ture o Aotearoa

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Civil Law Policy Team
Ministry of Justice

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Tēnā koutou

Fast dispute resolution: consultation on a new statutory adjudication framework

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the consultation paper *Fast dispute resolution: Consultation on a new statutory adjudication framework* (**consultation paper**) from the Ministry of Justice (**Ministry**).

1.2 This feedback has been prepared with input from the Law Society's Commercial and Business Law and Civil Litigation and Tribunals Committees.[1]

2 General comment

2.1 As a starting point, the Law Society is aware that there is unlikely to be universal agreement among the profession about the need for and merits of a process of the kind proposed. We recognise the need for continued focus and innovation to provide low-cost and efficient alternative dispute resolution processes. However, in respect of the present proposal, there remain some key reservations.

2.2 There is some difference of opinion in the profession with regard to the proposal. Some are adamantly not persuaded that the proposal is needed. Others consider that it does address a gap, and may be positive under the right conditions (subject to caveats about how it is designed). If the proposal proceeds, we set out below in response to the consultation paper's questions some initial views on what would, or would not, work, for the Ministry to take into account as the proposal develops. We first outline our four main shared concerns.

Existing process: quick binding arbitration

2.3 A key concern is that it is not clear that sufficient consideration has been given by the Ministry to the dispute resolution process that is already available, quick binding arbitration. This established process has advantages compared to creating an additional,

[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/.

and non-exclusive new adjudication process, whilst avoiding the real risks that will arise in seeking to establish a new process (reflected in our responses below to a number of the consultation paper's specific questions). A short-form, alternative dispute resolution process is already available under the Arbitration Act 1996 (**AA 1996**) which, unlike an adjudication process, provides a 'one-stop shop' final and binding determination. It is a well-established, fair and safe process, with articles 18 and 19 of the First Schedule of the AA 1996 providing a tested balance of procedural safeguards and flexibility.[2] Compared to an adjudication, a short-form arbitration provides a greater capacity for the arbitrator to stand back and tailor the dispute process to the circumstances of the case, subject always to natural justice requirements (the need for flexibility is a point we return to, below). Parties can exclude appeals on questions of law, so as to leave their disputes, for all practical purposes, in the hands of an appointed arbitrator. This assists finality.

2.4 In short, then, on one view, the real problem to be solved is not that short-form binding alternative dispute resolution is unavailable. It is unclear what information exists or what work has been done to understand whether, and if so why, short-form arbitration is not being fully utilised (or substantiate why it might not be considered fit for purpose by counsel and/or their clients, such that a new process is needed). We accept that there remains work to be done making New Zealand businesses aware of the benefits and flexibility of the AA 1996. We invite the Ministry to re-examine the strength of the case for creating a new option, when a process with appropriate safeguards and protections is already available.

The appropriateness of a model based on the Construction Contracts Act

2.5 We note the Ministry appears to have worked from the premise that the Construction Contracts Act (**CCA**) model is appropriate and fit for purpose and is working well for a wide range of disputes.[3] It is uncertain what the evidence for this is, and whether enough work has been done to identify any limitations in the model and the effects of essentially applying an expanded model to civil disputes.

2.6 In our observation, the CCA jurisdiction is quite focused in practice, largely used to resolve disagreement about the amount payable under a construction contract or whether there has been a breach of contractual terms. In particular, it is a somewhat unique feature of construction contracts that different parties need to keep working together, because the alternative risks impairment of the whole project. A 'pay now, argue later' process has developed, which is crucial in that context to limit the real risk of 'domino' insolvencies. In our understanding, it was intended for the CCA regime to address the problem of cash running out mid-project and problems around retentions. It allows immediate issues in a wider construction project to be dealt with efficiently, if imperfectly, leaving the parties to consolidate and resolve any larger disagreements separately.

2.7 The Law Society has reservations about whether replicating the 'pay now, argue later' element of the CCA regime is warranted in any other context. At a minimum, we suggest

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2 See for example *Trustees of Roroaira Forest Trust v A-G* [1999] 2 NZLR 452 at 459 and *Methanex Motunui v Spellman* [2004] 1 NZLR 95 (HC) at [44]–[50], upheld in [2004] 3 NZLR 454.

3 Consultation paper at 8.

that further work is needed to understand whether the rationale that underpinned that approach in the CCA regime is likely to apply to all or most disputes which might be resolved using the adjudication process. We are further aware of some criticism that the CCA is a 'one size fits all' approach that is not appropriate for very complex disputes, although it may be misused in certain circumstances as a litigation strategy. This concern is of course addressed in the fact that the proposed new adjudication scheme is voluntary. However, because it is voluntary, there is also a risk that uptake of it would be limited.

Potential for limited uptake

2.8 There are two potential scenarios as to when parties might choose to use the proposed new adjudication scheme, which are worth considering.

2.9 The first is that parties to a contract may agree upfront, when they enter a contract, that certain disputes relating to that contract will be referred to adjudication (i.e. they will bind themselves as a matter of contract to use the scheme). For parties to choose the proposed alternative dispute resolution mechanism as one that they effectively 'bake' into their contracts, it seems likely that:

(a) Parties would be attracted to it only if it provides a genuine alternative to those models already available (e.g. mediation or arbitration). If it is entirely non-binding, there is a risk it may not present a viable and attractive alternative to using mediation and then, if that fails, arbitration or court. For this reason, there would likely need to be limits on the ability to appeal a decision of an adjudicator.

(b) Parties would need assurance that there is a body of appropriately skilled and qualified adjudicators and that the process for their appointment is free from conflicts. As we note below, owners of authorising bodies should not be able to appoint themselves as adjudicators (which, we understand, can happen with CCA adjudications). Any authorising body should be responsible for assessing and ensuring, for the relevant dispute, that adjudicators have appropriate capabilities. These would be essential criteria for the success of the scheme.

2.10 The second scenario is that parties might agree to use the adjudication scheme to resolve a dispute at the time that the dispute emerges. It seems to the Law Society that while this may happen over time, there is a real likelihood of slower uptake in this scenario until commercial entities have trust and comfort in the matters raised above. This is because, if parties who are already in a dispute seek legal advice on the various avenues for resolving that dispute, their legal advisors may be reluctant to recommend that the process is used for a particular dispute that has arisen until they have seen it working well.

2.11 Both of these tend to indicate a risk of there being a limited uptake of the new option.

Workability for complex and high value disputes, particularly in compressed timeframes

2.12 In general terms, the Law Society has concerns about the application of the framework to high value or complex disputes or disputes involving multiple parties. For such disputes, if the adjudicator's decision can be appealed, parties may find that there is little point in

using the scheme because the chance that one or more parties will appeal is high; if, on the other hand, the proposed scheme is amended to, as we have suggested above, limit the grounds for appeal, parties are again unlikely to choose it for disputes of complexity or high value. There is a further concern that, in likelihood, the very tight timeframes would not allow sufficient time for evidence and submissions on very complex disputes to be prepared and decisions reached (which risks undermining confidence in the scheme).

2.13 The Law Society therefore considers that a simple, highly truncated process of the kind proposed is likely to be better suited to relatively simple disputes between just two parties. It recommends excluding multiple party disputes from the scheme and also considering capping the value of the disputes that can be referred to the process. While value does not necessarily equal complexity, it can often be a reasonable proxy. Having a value threshold could prevent a situation where there is a loss of confidence in the process because complex disputes better suited to the court process end up in adjudication.

2.14 Lastly, as flagged above, there are significant concerns that the claim and response timeframes are very tight. This feature, if it remains, would undermine uptake and workability. While it will be a particular drawback in respect of complex or high value disputes where parties may need to prepare substantial affidavit evidence from factual and expert witnesses, our concern is more general. The short default timeframes for adjudication mean that parties to even ordinary disputes risk experiencing stress and distress as they try to find legal representation and provide all of their evidence within a matter of days. This concern will need to be addressed if the proposal proceeds. Consideration will also need to be given to how adjusting the proposal to reflect this concern in turn remains consistent with the desire for a highly efficient process.

3 Consultation questions

Have you had problems with the speed of dispute resolution? What did this cost you in time and money?

3.1 The Law Society notes that whilst this question appears to be directed at businesses, rather than the legal profession, there are concerns among the profession regarding the speed and cost of current dispute resolution processes. Some practitioners have commented that their clients do report issues with the speed and cost of current dispute resolution options.

Do you think that a statutory adjudication process would be useful for you, your organisation or your clients? Why?

3.2 Subject to the caveats above, which are significant, the Law Society considers that there is potentially a gap in the current alternative dispute resolution landscape for a statutory adjudication process. A swift, cost effective and reliable resolution of relatively simple and low-value disputes holds promise, in response to processes that are currently both slow and expensive. Too often, the current landscape does not justify the economics of arguing over a contract dispute of modest value, and such a process could fill that void.

3.3 However, we would be concerned that such a process may be unlikely to be used if it is both entirely voluntary and non-binding, or if it can be appealed or re-litigated in court or at arbitration. To be attractive to parties as an option before taking court action, a new framework would need to be sufficiently different from already available alternative dispute resolution options, like mediation, which is already widely utilised.

3.4 In our view, it is necessary to ensure the framework has significant advantages over, or is significantly different from, other available mechanisms. We contemplate that there are several options that would help achieve that. They are:

(a) keeping the scheme voluntary, but limiting the grounds on which an appeal can be raised (e.g. manifest error or breach of duty by the adjudicator); or

(b) making the scheme mandatory for certain disputes.

3.5 We prefer option (a) because it retains the wider range of covered disputes and takes into account the risk that the adjudication workforce may not always have the necessary technical skills and/or knowledge to deal with particular disputes.

Have we identified the right principles to guide development of an adjudication framework?

3.6 An adjudication process may not be suitable for all disputes that could fall within its ambit. However, the Law Society considers that, overall, the Ministry has identified the right principles to guide the development of an adjudication framework, subject to our concern as earlier outlined: that adjudication being based on a pay-now argue-later framework is not the right process for low-value disputes generally. The right process for such disputes is a short-form tailored process, which comes to a single result and does not contemplate a further separate process.

3.7 On the 'suitability' principle, we predict that parties may include adjudication as a mandatory step in the dispute resolution clauses of their contracts, rather than waiting for a dispute to emerge (at which point getting the parties to agree to adjudication may be difficult for the reasons described above).

3.8 In terms of the 'public confidence' principle, it should also encompass trust that the outcome will be largely 'correct' and withstand challenge, whether by appeal or review.

Should businesses be the only parties that are able to seek a statutory adjudication? Who else do you think should be included?

3.9 Should any general adjudication scheme be created, the definition of the term 'business(es)' in this context will be crucial. It is appropriate that consumers are not subject to the use of the procedure by businesses. However, practical difficulties in constraining the term 'business' need to be carefully considered. For example, would the term capture sole traders who are not incorporated? In our view, there seems to be no reason why it should not capture that category of businesses.

3.10 It is also necessary to consider whether similar patterns of conduct as have been identified in the CCA scheme may become an issue. Some parties may be able to take advantage of the framework, as they can produce evidence or submissions more quickly

within a limited timeframe. This may give them an unfair advantage over less well-resourced or smaller entities.

What types of disputes do you think could be adjudicated in addition to contract and payment disputes?

3.11 Should any general adjudication scheme be created, the Law Society suggests it may be worth considering whether to include property disputes and disputes relating to commercial leases between businesses as types of dispute that could be adjudicated. Such contractual disputes are already often subject to arbitration clauses and (as above) it would be useful to either analyse (or articulate) more fully and clearly whether and, if so, why a short-form arbitration process is not being utilised in such cases (to assist in turn in understanding the merits of working to improve uptake of that process, rather than establishing a new model).

3.12 It is unclear from the consultation paper whether it is envisaged that the adjudicator's jurisdiction to consider expert reports on specific issues means the adjudicator would only consider expert witness statements from each party's expert witness or if the adjudicator could seek an independent expert witness statement. We consider it may be preferable to provide the adjudicator with a mandate to commission an independent expert report on one or more issues where technical expertise or advice is required, with parties sharing the cost of obtaining the report.

Should both parties have to agree to using statutory adjudication? Why / why not?

3.13 Yes. We acknowledge that there is scope to include an ability for regulations to be made to mandate the use of the framework for certain disputes in relation to particular sectors or contracts, or that are below a specific value threshold. However, particularly if the decisions are appealable, or the underlying disputes can be re-litigated in court, it would be a waste of time and resource to undertake an adjudication if both parties have not been fully convinced to participate in the process. If the parties did not agree to using statutory adjudication, it is likely to simply increase the expense and time to reach an ultimate resolution of the dispute that is then re-litigated by the party that did not agree.

Should a court be able to order statutory adjudication?

3.14 No. If a dispute has been raised to the level of court proceedings, we consider it should be determined by the court, not referred to another process. In our view, there would not be any benefit to enabling such an order to be made.

Should there be a financial threshold for statutory adjudication? If so, what should it be?

3.15 There are several considerations that need to be taken into account and analysed prior to determining an appropriate financial threshold for statutory adjudication. A threshold should be prescribed, but in our view, the key issue is complexity. However, it is acknowledged that the use of a financial threshold could serve as a reasonable proxy for complexity.

3.16 The Disputes Tribunal already provides a mechanism for the lowest value disputes. At the other end of the scale, the truncated procedure would not be suitable for high value

and complex disputes (over $300,000 or $500,000, for example). Hypothetically, the procedure could be aimed at disputes of between $30,000 and $300,000. The threshold for High Court jurisdiction offers a useful guide.[4]

How should the framework address cross-border disputes? Is there anything else you think we should consider regarding cross-border disputes?

3.17 Adjudication does not seem appropriate for cross-border disputes, unless they are enforceable in overseas jurisdictions (e.g. by way of a court judgment or arbitration). If the overseas party is unsuccessful, then the potential issues of enforcing the decision in that party's jurisdiction mean that lawyers are unlikely to recommend the scheme to their clients.

What qualifications, expertise or experience should an adjudicator be required to have, if any?

3.18 An adjudicator should meet some basic skills and potentially be required to have some sort of qualification.

3.19 The starting point for most disputes should be adjudicators who are experienced, qualified lawyers. Reflecting that these disputes are probably contractual in nature, and may be quite legalistic, the criteria for judicial appointment are suggested as appropriate: at least 7 years PQE, legal ability, character, and technical skill.

3.20 The need to reflect society is perhaps less relevant to these disputes, but a reflection of the business community would be appropriate, particularly if disputes require particular cultural or language understanding.

3.21 For some disputes, there may be a need for technical rather than legal expertise. Where there are relatively straightforward questions (though they may be contentious on the facts — for example, who caused a delay, or whether a service or product met its required technical specifications), these sorts of disputes may be best adjudicated by a person who has the right general skills but also some specific technical expertise or experience.

3.22 As such, it may be that there is scope for different adjudicators to market their technical expertise and experience in particular areas, or for particular types of dispute.

3.23 There could be an authorising authority that appoints adjudicators from a qualified pool. If the scope of a particular dispute is limited to a technical matter, they could appoint a technical person. If a dispute is about which party was responsible for a delay, or whether something had met specifications under a contract, that kind of narrow question could be dealt with by someone with more experience in the technical aspects.

[4] Another point for the Ministry to consider may be whether the existence of a new adjudication process could itself affect the High Court threshold, and potentially justify an increase in that threshold.

Do you think adjudicators need to be authorised? If so, how do you think they should be authorised? Is there a need to authorise private entities to select or provide adjudicators?

3.24 The Law Society supports the proposed approach of having authorising authorities (rather than having a separate government department) and considers they should specifically have:

(a) a role in assessing and certifying adjudicators as meeting the criteria; and

(b) responsibility for ongoing monitoring of adjudicators' suitability.

3.25 Having an overseeing body that controls the appointment process, and some government-led regulation of the appointment process (such as specified criteria of being a sufficiently qualified lawyer or other professional) provides important objectivity. Their legislative role should not be simply to select an adjudicator where the parties are unable to agree.

3.26 In the Law Society's view, it would not be appropriate if the authorising body is in the private sector and able to appoint themselves to adjudication roles. This would raise conflict of interest issues.

What powers do adjudicators need to have? What should an adjudicator *not* be able to do?

3.27 An adjudicator should have broad powers. They should not be able to set unrealistic timeframes; however, this could and should be expressed as a duty rather than a fetter on powers.

Do you agree with the obligations listed in the consultation paper? Are there any other obligations an adjudicator should have?

3.28 The Law Society agrees with the listed obligations and considers that the CCA requirements for an adjudicator should apply here.

3.29 However, it is presently not sufficiently clear whether and how strictly an adjudicator would be required to apply the law. Given the broad range of disputes, we consider it would be important that adjudicators are obliged to determine those disputes in accordance with the law.

3.30 We recommend including an additional obligation to remain skilled in the relevant area of law they are involved in (such as contract, tort or property) so that the parties and public can have confidence in the decisions made.

Where do you think providing for flexibility in an adjudication would be most useful?

3.31 Should any general adjudication scheme be created, in the Law Society's view, there is a question about how much flexibility the framework should enable to, for example:

(a) extend the standard statutory timeframes, or make time for hearing from parties if proceedings are dealt with 'on the papers' (see further comments below);

(b) rule that a matter is not appropriate for adjudication; or

(c) enable the parties themselves to make those decisions, either by mutual agreement or one advising that it is a condition on their use of the process that there will be an opportunity to be heard.

3.32 We consider that providing for opt-out by parties could be a good approach. This may provide a necessary safeguard against the concern of a well-resourced business being able to rush the process through, and another, comparatively poorly resourced, being disadvantaged.

3.33 Providing for decisions 'on the papers' is one of the ways that the procedure could be kept efficient. This could be appropriate for simple disputes. However, if providing for such an option, flexibility will be needed, as the appropriateness of such a process is connected with complexity. If a dispute is simple, resolving it on the papers can work. The more complex it is and higher value it is (the more, in other words, that is riding on the decision), the greater will be the likely need to hear from the adjudicator, counsel, and to test evidence. It will not be uncommon for there to be affidavit evidence that is conflicting. An adjudicator, tasked with assessing who is more credible on the basis of legally drafted affidavits, will have a challenge without the ability to hear from parties. On the flipside, hearing from parties makes it more akin to a judicial process and could slow things down.

How should the framework deal with adjudicator fees?

3.34 The framework would need to address, as a minimum, the following factors:

(a) An adjudicator's fees must be reasonable.

(b) An adjudicator should be required to provide a rate in advance to the parties that will be applied, and basic time records showing the time that has been spent against that rate, so that both parties can be confident that they are getting a good deal and have the necessary information to challenge a bill if they do not believe it is reasonable.

(c) This would require a process for the parties to challenge fees (in a similar way as recourse to the Law Society for complaints about lawyers charging inappropriately).

(d) A default position that the parties meet fees equally seems appropriate, as does the ability to adjust the proportions if the conduct of one party justifies that.

When should an adjudicator be able to award costs?

3.35 The Law Society would support the proposal that an adjudicator may be able to determine that costs and expenses would be borne on other than a 50/50 basis. However, the legislation should specify the factors relevant to that decision, so the adjudicator effectively has to provide some justification with reference to the statute to depart from 50/50 sharing.

3.36 As an example of a relevant consideration, a costs award could be used as a punitive measure to prevent poor conduct of the parties. It might be the default position that costs will lie where they fall, but with the adjudicator able to award costs against a particular party if their conduct justifies it — such as taking claims without merit or

causing unnecessary costs. The threshold for awarding increased or indemnity costs under Rule 14.6 of the High Court Rules might be a useful starting point to rebut the default position of costs lying where they fall.

Should adjudication determinations be immediately binding on the parties? Is there anything else we should consider?

3.37 To be attractive to parties, an adjudication will need to be binding. However, there is some concern in declaring it immediately binding, given the difficulty in later recovering payments made if the originally unsuccessful party is successful in overturning the adjudication decision.

3.38 One compromise might be for the adjudication to be binding after the expiry of a certain period during which the parties can commence fresh proceedings or appeal the adjudicator's decision. If a new proceeding or review is not sought within that time, then the adjudication could be deemed to be binding and enforceable by summary judgment.

Should there be any restrictions on bringing a new claim in the courts, or beginning another dispute resolution process, after a determination has been made?

3.39 In the Law Society's view, restrictions would be appropriate. It seems counterintuitive for parties to be able to commence fresh proceedings (although the experience of CCA determinations, where appeals or relitigating claims are rare, is comforting).

3.40 One way of limiting the risk of adjudications not being effectively final would be to limit the ability of parties to start a fresh proceeding to circumstances in which a judicial review is permitted, such as an error of law or failure of process. In terms of trying to convince commercial contracting parties to use the procedure, we anticipate that they would be less likely to choose the new process if it is effectively no different from mediation in the sense that anyone can take anything and relitigate.

How should determinations be enforced?

3.41 Enabling District Court jurisdiction for hearing and determining any enforcement orders seems appropriate.

Should the framework include extra incentives to encourage compliance with determinations? What are your ideas?

3.42 In principle, the Law Society considers that some incentives would be worthwhile. We have reservations about some of the proposed options, including:[5]

(a) that a name and shame register would be sufficiently useful to warrant the cost of setting it up and maintaining it; and

(b) the suggestion of paying security, which might prevent use of the adjudication process.

3.43 Of the options provided, interest and fees might be the measure that would be the least 'chilling'.

5 Consultation paper at 21.

In what circumstances do you think an unsuccessful party should be able to oppose enforcement?

3.44 The Law Society considers there should be limited circumstances in which an unsuccessful party is able to oppose enforcement. As suggested above, appropriate circumstances may be if there has been an application for review or fresh proceedings within a specified time period.

How many days should be allowed for each stage of the adjudication process?

3.45 As earlier discussed, the Law Society has significant concerns that the proposed claim and response timeframes are very tight. If lawyers are involved and need to be instructed, the proposed timeframes will be insufficient, except for very low-level disputes. The system needs to be fast to be successful, but parties with complex or high-value disputes are less likely to want to be forced into a procedure that is too swift. If parties believed they would have to adhere to these timeframes for complex disputes, they may be less likely to use the process. Their concern would stem from the time required to bring lawyers up to speed, provide them with the necessary advice, and complete the required work before a decision is reached.

3.46 One option to lessen this risk would be to enable the parties either to be able to agree on proposed appropriate timeframes for claim, response, and determination at the outset (i.e. in their contract). Alternatively, the adjudicator could be entitled to set these timeframes (perhaps as part of the appointment process). The process in the latter instance could be, for example, that a dispute is sent to an adjudicator who is required to disclose their fee and to propose a timetable before the parties instruct, or the authorising organisation appoints the adjudicator. The parties (or the authorising organisation) could seek rates and timeframes from more than one potential adjudicator, before determining how to move forward.

When should an adjudication be confidential? Conversely, when should an adjudication not be confidential?

3.47 The Law Society is satisfied that the proposal sets out the relevant primary considerations for determining whether or when an adjudication should be confidential, such as:

(a) everyone agrees;

(b) it is already public;

(c) it needs to be shared to enforce the decision; or

(d) it is shared in such a way that doesn't reveal the parties.

3.48 The principle of open justice is a fundamental democratic norm, and in our view should be the default position. However, there may be other public interest considerations justifying confidentiality as the default position, which the Ministry may wish to explore.

Should an adjudication framework allow for legal representation? Why / why not?

3.49 It will be essential, in the Law Society's view, for the adjudication framework to at least allow for (if not require) legal representation. The breadth of the disputes potentially

covered means that there will be some disputes that it will likely be inappropriate to resolve without parties being legally represented. One thing that adjudicators will need to be alert to is the potential for a better resourced party with legal representation to take advantage of the process where the other party is unrepresented. The framework should enable room for adjudicators to intervene in such a scenario (e.g. by extending timeframes to allow a party who has not instructed a lawyer more time to do so).

What other legislation could overlap with an adjudication framework? Which should take precedence?

3.50 We note there are aspects of the proposed framework that may intersect with other legislation, such as the Lawyers and Conveyancers Act 2006 (**LCA**). It would be important for the Ministry to consider this overlap in the development of its framework for statutory adjudication.

3.51 We consider there are two possible areas of overlap which will need careful analysis to ensure effective operation of both legislative frameworks remains possible. The first is the oversight of the regime. For example, we note that whilst mediation is considered legal work which may only be conducted by legal practitioners, the oversight of complaints about the quality of and decision-making aspects of a mediator's practice (and any complaints about that practice) may be overseen by an authorising body such as the Arbitrators' and Mediators' Institute of New Zealand Incorporated (**AMINZ**) rather than the Lawyers' Complaints Service.

3.52 However, we note that there are professional responsibilities that AMINZ and other authorising bodies employ that set out the oversight function, and it would also be necessary to consider whether it is preferable for a similar model to apply to the statutory adjudication framework or whether more formal oversight would be required. For example, AMINZ operates as a membership model and includes as part of its oversight functions:

(a) a code of ethics;

(b) a complaints process; and

(c) institutional rules.

3.53 The second possible area of overlap with the LCA could be the use of the adjudication framework by business and law practices, to resolve complaints about legal fees. Under section 132(2) of the LCA, such issues are within the jurisdiction of the Lawyers' Complaints Service. This is an important part of the regulatory oversight of legal services. As reflected in section 161 of the LCA, there can be cross-over between complaints processes and civil dispute procedures related to fees and this should be kept in mind in the design of any adjudication processes. We imagine there may be other regulatory regimes for which similar concerns would arise.

3.54 Finally, we consider it would be preferable that the specialised procedures of specialist tribunals should take precedence over the general adjudication procedure that is proposed.

Should adjudication providers be required to report data to monitor the effectiveness of the framework?

3.55 We support a requirement on adjudication providers to report data, to enable monitoring of the framework's effectiveness.

What future changes should we think about when designing the framework?

3.56 In the Law Society's view, if there are to be future changes to the scope of the legislation, legislative amendment will be the appropriate way to progress them to ensure Parliamentary oversight. The framework should not include a mechanism to add new types of disputes in the future, other than business disputes.

What else should be included in an adjudication framework?

3.57 The Law Society has no further comments.

4 Next steps

4.1 We hope this feedback is useful. Please feel free to get in touch with me via the Law Society's Law Reform and Advocacy Advisor, Shelly Musgrave (shelly.musgrave@lawsociety.org.nz), if you have any questions or wish to discuss this feedback further.

Nāku noa, nā

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