

28 January 2021

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Ministry of Justice
Wellington

By email: Maeve.Neilson@justice.govt.nz

Tēnā koe Maeve,

Re: MOJ proposal, ID cards for lawyers – NZLS feedback

Thank you for the opportunity to provide feedback on the Ministry of Justice’s proposal to introduce identification (ID) cards for lawyers, as set out in your letter dated 16 November 2020. The Ministry’s letter was circulated to the Law Society’s Courthouse Committee, Branches, and provided to the profession via our weekly e-publication, LawPoints.

As noted in the letter, ID cards would allow lawyers to effectively skip the queue when entering a courthouse but would still require them to go through security screening. The letter set out the Ministry’s position on court security, including the legislative background and other considerations the senior leadership team took into account when deciding that lawyers will not be able to circumvent security. Following the March 2019 terrorist attacks, the security landscape has changed in New Zealand and the Law Society is committed to working constructively with the Ministry on security and safety issues.

We appreciate the recognition in your letter that “Tāhu o te Ture recognises its relationship with the legal profession “who form an integral part of te kōti process and require frequent and timely access to te kōti”. The Law Society’s focus is on ensuring lawyers do not experience significant delays when entering courthouses that would prevent them from carrying out their work, while at the same time making sure they, and other court users, are safe.

In response to the LawPoints news item inviting feedback, the Law Society received over 30 pieces of feedback, which have been anonymised and included in the **attached** document. There is widespread support for the proposal, including from the New Zealand Bar Association. Some of the feedback included specific comments on the operational aspects of security screening, including the inconsistency of security protocols throughout the country. While we are aware that the Public Defence Service lawyers are Ministry employees, the different treatment is an issue for a number of lawyers. A short summary of key points is provided below.

Feedback on lawyer ID card proposal

General support for ID cards

- We received feedback from those appearing regularly in court that ID cards will be a useful initiative to alleviate delays, and will be useful as proof of ID when standing in the queue for security screening.
- There is merit in the proposal in terms of reducing delays and costs by reducing waiting time, which may help to ensure the court's business is able to proceed on time regardless of queues.

Other feedback

- Other people noted that in their region, there was little utility in having an ID card, as there often weren't any queues in some of the regional courts.
- Some lawyers were not satisfied with the requirement to go through security, and thought they should be able to circumvent security altogether on the basis that they are trusted Officers of the Court (as Judges are trusted to enter via their own entrance, and not required to go through security).
- Some lawyers indicated they would feel uncomfortable about jumping the queue ahead of other court users. Several lawyers commented that there is clear merit in the public seeing that lawyers are treated the same when it comes to security – this reduces the risk of lawyers being seen as elitist, and gives all court users confidence that court security is a robust process. Some lawyers commented that it can be embarrassing to be waved through ahead of other court users, particularly when tensions are high.

Current exemptions/those not required to be screened

- Public Defence Services lawyers are not required to go through security screening. For example, in Christchurch the lawyers who commented understand this was because they are MOJ employees, and that the PDS were a tenant in the building (this is no longer the case). It was also noted that Police walk through security, and are not required to be screened. Other court users not required to go through security include café staff, victim support staff, and forensic staff. In Christchurch we have been advised that couriers have their own swipe card and basement access. Feedback indicates that this disparity in treatment is causing tension between court users.

Variation in practice

- We've received feedback that security protocols are different depending on the courthouse. For example, in some areas lawyers are required to go through screening apparatus, put their bags through a scanner and are scanned with the wand if they beep. In other areas, lawyers have indicated they are waved through and their bags are not required to be scanned. In some courts there is screening apparatus which is often not used.
- The general theme from the feedback is that the security is less strict in the regional courts, however this appears to be being tightened up due to a recent security directive that everyone must proceed through security (for example, in Nelson, Hamilton courts). Lawyers report that changes of security protocol without prior engagement or explanation often gives rise to increased tensions between court users.

- Some people are waved through because they look like lawyers – one lawyer commented that it doesn't make sense to allow anyone to circumvent screening simply because they are dressed in formal attire and present respectably. The current system appears to be based on the security guard's discretion, which allows too much scope for that discretion to be applied in a discriminatory way.
- One practitioner raised that it is difficult for lawyers to be prepared and compliant when security practices vary in different courts (for lawyers that appear in different courts).

Other: COVID-19, existing swipe cards, objectionable items, privacy, access to locked courtrooms

- It was noted that queues were significantly worse during higher COVID-19 alert levels, and that it would be helpful to plan around how to deal with this should we return to higher alert levels.
- Some lawyers have existing swipe cards which provide access to lawyers rooms/libraries, also some people have a code (i.e. Wellington, Porirua). Is there any way to combine the cards?
- A few people noted the statistics around objectionable items and reflected that it wasn't clear these items were brought in by lawyers. However, anecdotally people are aware there have been instances where objectionable items have been brought into courthouses by lawyers.
- Other feedback centres on health and safety risks associated with queuing along side potentially dangerous (i.e. gang affiliated) court uses.
- Regarding privacy concerns, more than one person noted that it's important for there to be transparency around how the personal information is obtained, how it is stored, under what conditions the cards will be issued etc. Additionally, as previously discussed, there will need to be a clear process for what happens to an ID card when lawyers are no longer practising (e.g. when they retire).
- Another issue is around access to locked courtrooms. Police prosecutors get in first – defence counsel don't. Lawyers noted this is problematic where one party to a proceeding is given privileged access to a court, when the other party is not. The implication here is that one side is more trustworthy – one practitioner asked why shouldn't all counsel with approved access cards be able to get into a courtroom if any counsel can?

We would appreciate the opportunity to meet and discuss lawyers' feedback with you, and we look forward to receiving further information on how the proposal will be operationalised. Please let us know when it is convenient to meet; I can be contacted through the Law Society's Law Reform and Advocacy Adviser Emily Sutton (Emily.Sutton@lawsociety.org.nz).

Nāku noa, nā



Bronwyn Jones
Principal Advisor to the Chief Executive

Encl: Anonymised Lawyer feedback on MOJ ID card proposal