LawTalk

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ABOUT LAWTALK

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Shaping justice in a connected world

BY **FRAZER BARTON**

Kia ora koutou katoa,

It's my pleasure to introduce this edition of *LawTalk*, which takes a deep dive into the vital and often complex world of international law, a theme that resonates more strongly than ever as our profession navigates an increasingly interconnected global legal landscape.

Our feature asks the compelling question: '*Does international law have teeth?*' and explores key areas such as the Law of the Sea, international arbitration, trade law, and the International Criminal Court, topics that challenge us to think beyond our borders and consider how international legal frameworks impact our work here in Aotearoa New Zealand. These articles invite us to engage thoughtfully with the global forces shaping justice today.

Bringing together international perspectives has reinforced for me the value of global collaboration and knowledge-sharing within the legal profession.

I was honoured to attend two conferences in India on behalf of the Law Society: The Presidents of Law Associations in Asia and the Rule of Law Convention. At the former, I spoke on the importance of diversity in the legal profession as a means of better serving communities and protecting the rights of the vulnerable. It was inspiring to share stories of New Zealand law reforms such as the Marriage Amendment Bill and the Holidays Amendment Bill, powerful examples of how the law can evolve to reflect the needs of our society.

Alongside the international focus, we are also celebrating a significant milestone closer to home. Thirty-five years ago lawyers and academics pored over the provisions of the Bill of Rights Act and began to shape how it would operate in society. It is fitting, then, that this year we have marked the Act's anniversary with a series of events in collaboration with the University of Canterbury Law School, including three seminars on criminal law, employment law, and environment and climate change, and culminating in a two-day

"Bringing together international perspectives has reinforced for me the value of global collaboration and knowledge-sharing within the legal profession"

conference with international experts and an address from the Chief Justice. We acknowledge all that has been achieved so far, and that the work of academics and lawyers will no doubt continue to protect and advance the application of the Act.

Our responsibility as kaitiaki, or caretakers of the legal profession, calls on us to maintain momentum – especially in times of change. In August we built on the findings of our *Strengthening the Rule of Law in Aotearoa* report with our submission to the 2025 Triennial Legal Aid Review, in which we called for increased and ongoing funding for the legal aid system and emphasised the need for any reforms to be evidence-based. As part of our submission, we included compelling cost-benefit and economic analyses from Deloitte, which concluded for every $1 invested in legal aid, at least $2.06 in benefits are generated. A sustainable and fair legal aid system is essential for a well-functioning and trusted justice system for all of society, and we keenly await the outcome of the review.

In the spirit of knowledge-sharing, I recently contributed to our bi-annual Advanced Litigation Skills course. As always, it was a privilege to be involved as participants from across the country participated in a simulated court room exercise. Their court performance was then critiqued by the judiciary and some of New Zealand's most experienced counsel.

I have been involved in the Litigation Skills programme since 1994; it is one of our most popular courses and an example of collegiality at its finest. I am always stunned by the generosity of our legal profession and those who provide their time so participants can gain valuable training.

Law Society learning is in safe hands with the highly experienced Michael Fraser, who joined us earlier this year as our General Manager of Continuing Legal Education. In this issue he shares his reflections from six months in the role, highlighting how education works to evolve our profession.

Finally, we celebrated the future of our profession through the energy and ideas of new lawyers at the inaugural *Taraitia ā Anamata – Create the future* conference, which brought together lawyers early in their careers with energy and ideas to shape what lies ahead. Their enthusiasm gives me great hope that the legal profession will continue to evolve with purpose and integrity.

This edition is a vivid snapshot of a profession that embraces both its local roots and global connections. Grounded in our values of Kaitiakitanga, Manaakitanga, and Pono, we continue to build a legal profession that is strong, inclusive, and trusted by all in Aotearoa New Zealand. ■

Does international law have teeth?

International law has a long history and a broad reach, shaping everything from commercial transactions to maritime boundaries and the pursuit of justice for the most serious of crimes. Yet, for all its history, it has been marked with uncertainty and the persistence of one question in particular: can international law genuinely constrain states, shape conduct, and deliver accountability–or does it too often fall short where it is most needed?

In this edition of *LawTalk*, we invited four experts to reflect on the power and impact of international law, each from a distinct perspective:

- International arbitration and its role in resolving cross-border disputes;
- The evolving framework of the law of the sea;
- The impact and enforcement of international trade law; and
- The reach and challenges of the International Criminal Court.

As you read these pieces, you'll find both optimism and caution. While some areas of international law highlight the growing reach of international legal mechanisms, others point to persistent gaps between legal principle and practice. Together, these insights offer a nuanced view of where international law stands today–and where it may be heading.

DOES INTERNATIONAL LAW HAVE TEETH?

Centuries of law

The international law of the sea

BY **ELANA GEDDIS**

Elana Geddis is a Barrister at Kate Sheppard Chambers, Wellington.

New Zealand's ability to control fishing and oil and gas exploration in our 200 nautical mile exclusive economic zone. The number of lifeboats on board the cruise ships that visit our ports. The construction of the cargo ships that carry our exports to the world. All are underpinned by the body of rules collectively referred to as the "law of the sea" – the oldest branch of international law.

The cornerstone of the modern law of the sea is the 1982 UN Convention on the Law of the Sea (UNCLOS). Described as a "constitution for the oceans", UNCLOS sought to regulate all uses of the sea and marine resources – including shipping, fishing, mining and scientific research. UNCLOS is supplemented by three implementing agreements focussing on mining, fishing, and high seas biodiversity. And it sits alongside a body of more detailed treaties, including specialist treaties addressing shipping and marine pollution.

UNCLOS was negotiated by states to serve their interests. So, it is hardly surprising that most of its rules are complied with most of the time. Where they are not, all 170 states that are party to UNCLOS have agreed to allow disputes to be submitted to the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice, or an ad hoc arbitral tribunal.

Over 30 cases have been dealt with under this dispute settlement mechanism. States have also used the advisory jurisdiction of ITLOS as a first step towards enforcement. In May 2024, for example, ITLOS issued an advisory opinion confirming that obligations to prevent marine pollution also require states to mitigate their greenhouse gas emissions.[1] The International Court of Justice has reached the same conclusion[2] – leading to speculation that a case may follow against states that have failed to take effective action to mitigate their emissions.

Dispute settlement can have a powerful effect even if a state is not successful in court. France ended its nuclear testing when faced with legal action by New Zealand (and others). And in 1999 New Zealand, together with Australia, sued Japan under UNCLOS for its illegal fishing of southern bluefin tuna. The case was lost on a technicality, but subsequently settled.

Despite its successes, however, dispute settlement between states will always be an incomplete enforcement mechanism. States are often reluctant to initiate a dispute for political reasons. Even when they do, it is not always easy to establish that an obligation has been breached – many rules are expressed broadly and at a high degree of

"religious" relationship with the sea. The Court upheld Mr Sellers' appeal, finding that the Inspector must exercise his powers consistent with international law. That prevented him from imposing any equipment conditions on a foreign flagged yacht, except to the extent that those were permitted under international law.

In making the decision in *Sellers*, Keith J emphasised that:[3]

> *for centuries national law in this area has been essentially governed by and derived from international law with the consequence that national law is to be read, if at all possible, consistently with the related international law. That will sometimes mean that the day to day (or at least year to year) meaning of national law may vary without formal change.*

Sellers is just one of many cases in which New Zealand's international obligations have been central to the interpretation of legislation and accompanying statutory powers. Much of the power of international law lies in this domestic application. States may act internationally, but governments make their decisions domestically. And – as it has done for centuries – the law of the sea shapes, informs and constrains those decisions. ■

"Much of the power of international law lies in this domestic application. States may act internationally, but Governments make their decisions domestically"

generality. Where a breach is found, there is usually no way to ensure the ruling is followed. Further, not all states are party to UNCLOS (most notably the United States). And finally, because the law of the sea governs obligations between states, there is no equivalent mechanism for individuals to challenge non-compliance directly. Individuals are left to hold governments to account through whatever avenues are available in their domestic courts.

The Court of Appeal's decision in *Sellers v Maritime Safety Inspector* [1998] NZCA 248, [1999] 2 NZLR 44 provides a colourful example of an individual doing just that. Mr Sellers, whose yacht was registered in Malta, objected in principle to the Inspector's requirement that it be fitted with an emergency locator beacon before leaving port in New Zealand. In Mr Sellers view, carrying such a beacon interfered with his

1. *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024
2. *Obligations of States in Respect of Climate Change, Advisory Opinion*, 23 July 2025.
3. [1999] NZLR 44 at p. 26.

DOES INTERNATIONAL LAW HAVE TEETH?

The role of international arbitration

BY **ANNA KIRK**

Arbitration, as a mechanism for resolving cross-border and inter-state disputes, stands as a powerful counterargument to the common critique that international law lacks teeth. International arbitration is a crucial tool for enforcing legal norms and upholding the robustness of the international legal order. For New Zealand, whose economic prosperity depends heavily on international trade and adherence to global norms, enforceability is particularly important.

The arbitration framework

The arbitration framework represents a sophisticated balance between state sovereignty and binding obligation. By consenting to arbitration in advance (whether through an investment treaty or commercial contract) parties transform voluntary compliance into enforceable commitments. For New Zealand businesses engaged in cross-border commerce, this creates a predictable environment where rights can be vindicated even against foreign governments or powerful multinational corporations.

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which New Zealand is a signatory, creates a remarkably effective global enforcement regime. With over 170 contracting states, the Convention requires national courts to recognise and enforce international arbitral awards, subject only to limited exceptions. It is widely regarded as one of the most important and successful international treaties, especially in international trade. New Zealand's Arbitration Act 1996 incorporates the UNCITRAL Model Law and the New York Convention, providing a robust legislative framework for enforcement of international arbitral awards.

New Zealand also incorporates the International Centre for Settlement of Investment Disputes (ICSID) Convention into domestic law through the Arbitration (International Investment Disputes) Act 1979. ICSID provides specialised Investor-State Dispute Settlement (ISDS), whereby private investors can claim directly against a state for violating international investment obligations under a relevant treaty. The ability of private actors to hold states accountable for breaches of international law through binding and enforceable arbitration is a significant element of enforcing international law.

New Zealand's participation in the international arbitration system

New Zealand recognises and enforces arbitral awards, including those against states, as demonstrated by the recent case of *Sodexo Pass International SAS v Hungary*. New Zealand's economy depends heavily on international trade, which makes the enforceability of

LEFT: The second Rainbow Warrior in the port of Izmir, Turkey 2010. It launched in 1989 after the sinking of the first in 1985.

international obligations particularly important for New Zealand businesses and the broader economy.

In the commercial context, cases such as *Ironsands Investments Ltd v Cheung Kong Infrastructure Holdings Ltd* and *Hi-Gene Ltd v Swisher Hygiene Franchise Corporation* show that New Zealand entities are active participants in international arbitration. New Zealand companies have been less active in pursuing claims against States under international investment agreements and New Zealand has never been the respondent state in an investment treaty arbitration.

New Zealand is also committed to state-to-state international arbitration as a mechanism to compel adherence to international law. This commitment is illustrated by New Zealand's active use of treaty-based dispute settlement mechanisms.

An example is the recent enforcement of obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). In 2022, having exhausted diplomatic routes, New Zealand initiated proceedings against Canada under the CPTPP's dispute settlement chapter, challenging Canada's administration of dairy tariff rate quotas. The arbitral panel accepted New Zealand's position that Canada's measures were inconsistent with CPTPP obligations. This case exemplifies how international law, through arbitration, provides a forum for states to hold each other accountable and seek remedies for treaty breaches.

New Zealand has also used international arbitration in other contexts. The *Rainbow Warrior* case involved a bespoke form of international arbitration where the United Nations Secretary-General issued an equitable and principled ruling, including a requirement that France pay compensation and detain the agents who had committed the bombing for three years. Following breach of the detention direction, a second arbitration took place in which France was once again held to have breached its international obligations.

The *Rainbow Warrior* case is considered a leading precedent for state responsibility under international law and an important example of state-to-state arbitration in practice. In parallel, Greenpeace also used international arbitration to successfully bring a claim against France for sinking the Rainbow Warrior, setting a precedent for other international organisations to pursue claims against states under international law. New Zealand's participation in the *Southern Bluefin Tuna* arbitration further underscores its commitment to resolving international disputes through arbitral mechanisms.

Conclusion

New Zealand's experience of international arbitration demonstrates that international law does indeed have "teeth". International arbitration transforms abstract legal obligations into enforceable commitments through a global network of modern legislation, institutional frameworks, active participation in treaty-based arbitration, and a pro-enforcement judicial culture. For New Zealand, whose prosperity depends on a rules-based international order, arbitration-based enforcement mechanisms provide essential protections for its interests in the global arena. ■

DOES INTERNATIONAL LAW HAVE TEETH?

International trade law

BY **TRACEY EPPS**

It is hard to disagree with the prognosis of New Zealand senior trade official, Vangelis Vitalis that the golden weather for international trade is over.[1] This is most clearly manifested in the United States charging its trading partners tariffs that breach its international trade obligations.[2] It is also apparent in increasing protectionism globally, securitisation of international trade, and the use of economic coercion.

Writing about the situation, one respected trade economist said recently that "a generation of trade diplomats brought up on the 'rules based' trading system need to adjust to new realities".[3]

Yet on the same day, another equally respected economist wrote that "apart from the 15 per cent of world trade the US accounts for, the rules continue to be respected. The world trade game continues."[4]

It is all rather disorienting for lawyers and begs the question: does international trade law have any teeth?

When Vangelis Vitalis talks about the 'golden weather', he is referring to the period beginning in 1995 with the conclusion of the Uruguay Round of negotiations that transformed the 1947 General Agreement on Tariffs and Trade (GATT) into the World Trade Organisation (WTO). As Jennifer Hillman writes, as part of that process, the old diplomatic-style approach to settling disagreements was transformed into an ever-increasingly legal system.[5] The WTO's dispute settlement system allows automatic establishment of a dispute panel on request by any Member seeking a ruling on another Member's alleged breach of the rules. A separate appeals process with a standing Appellate Body to hear appeals from panel decisions was also created.

From 1995 until the late 2010s, the dispute settlement system was often referred to as the 'Crown Jewel' of the international trading system, the "strongest, most successful and most frequently used global dispute settlement in the history of international law".[6] Since 1995, over 600 disputes have been heard by the system. For smaller countries like New Zealand, the system is particularly important, providing an impartial forum for resolving trade disputes on the basis of the rule of law, rather than through the use of power. Despite some high profile instances of Members' failure to comply with dispute rulings, the system has been successful more often than not, with compliance rates cited at over 80 per cent.[7]

Today, however, the system is in a precarious position. Since 2019, the Appellate Body has been unable to function due to the United States blocking appointment of new 'judges', meaning it no longer has the quorum required to hear disputes. Further, panel decisions that are appealed cannot become legally binding until the Appellate Body makes a ruling, providing an opportunity for Members to block adoption of reports by simply filing an appeal (known as appealing 'into the void'). The United States' actions stem from concerns including the tendency of the Appellate Body to inappropriately extend precedent. The United States is not the only one with such concerns[8] but progress towards reform is slow.

Since December 2019, the majority of WTO disputes have been appealed into the void, while the number of WTO cases launched has decreased to approximately one-third the number of cases being brought when the Appellate Body was still functional.[9] This arguably signals that Members no longer see the dispute settlement system as having sufficient teeth to enforce the rules and therefore worth using.

But the system is not completely dead in the water. In 2020, a group of WTO Members, including New Zealand, established the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). This is an interim measure that allows appeals to take place until the Appellate Body can be restored. Members who

have joined the MPIA agree not to appeal into the void, and instead to use the Arrangement's procedures for hearing an appeal. The MPIA began hearing appeals in 2022 and has heard three appeals to date. There are over 56 members counting the 27 EU member states individually, and others including Australia, Canada, China, Japan, Singapore and the United Kingdom.

The WTO is not the only source of international trade law. Legally binding rules also exist in bilateral and regional agreements, such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) Agreement. While some argue that these agreements undermine the WTO, they are, for better or worse, part of the global trade landscape. Many of them contain legally binding dispute settlement mechanisms. Recently, New Zealand brought the first legal dispute under the CPTPP when it challenged Canada's administration of its dairy tariff rate quotas, demonstrating that FTAs are capable of being enforced.

To conclude, international trade law faces significant challenge. WTO Members will need to give their concerted support and continue using the system to ensure that it does not become a toothless tiger. There is much to be gained by preserving as far as possible a system that has worked as well as it has. ■

1. See for example address to the 2025 Primary Industries NZ Summit, reported in *Farmers Weekly*, 27 June 2025 (Annette Scott, "Golden weather is over: Vitalis"). He has made similar comments at various presentations attended by the author.
2. Including obligations under the General Agreement on Tariffs and Trade (GATT) to cap its tariffs at negotiated "bound rates" and not to discriminate among its trading partners.
3. Simon Evenett, on LinkedIn, 30 August 2025.
4. Richard Baldwin, "America Walked Off the Pitch: Why Didn't the World Trade Game End?" 30 August 2025, on LinkedIn.
5. Jennifer Hillman, "Moving Towards an International Rule of Law?". In Gabrielle Marceau, ed., *A History of Law and Lawyers in the GATT/WTO: The Development of the Rule of Law in the Multilateral Trading System* (Cambridge University Press, 2015).
6. Kristen Hopewell, "Unravelling of the trade legal order: enforcement, defection and the crisis of the WTO dispute settlement system" (2025) 101:3 *International Affairs* 1103 at p. 1104.
7. The WTO cites a 80 per cent compliance rate: *https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfdispu_e.htm*.
8. See for example, Jeffrey Kucik, Lauren Peritz and Sergio Puig, "Legalization and Compliance: How Judicial Activity Undercuts the Global Trade Regime" (2022) 53:1 *British Journal of Political Science* 221.
9. Hopewell, above, at p. 1104.

DOES INTERNATIONAL LAW HAVE TEETH?

The reach and challenges of the International Criminal Court

BY **STEPHEN SMITH**

Stephen Smith is a Senior Lecturer, Faculty of Law at the University of Otago.

The International Criminal Court is now in its 24th year. Like a faulty firework that had been expected to spectacularly light up the sky of international justice, the Court has not quite left the ground, let alone ignited. There has, however, been just enough smoke, heat and fizzle to make things interesting, even though we are looking at what presently appears to be a squib.

This is not from a lack of effort. To date, the Office of the Prosecutor has opened 17 separate investigatory situations on four different continents. Indictments have been issued against 70 individuals. Just six months ago, former Philippines president Rodrigo Duterte became the first non-African defendant to appear before the Court. The 125 States Parties to the Rome Statute have invested more than €2.5 billion to fund the Court, with the annual budget now approaching €200 million. For all this, the Prosecutor has secured convictions against just seven individuals on charges of crimes against humanity and war crimes. There have been four acquittals, and there are presently 33 living "fugitives", including Vladimir Putin, Benjamin Netanyahu and Joseph Kony.

Absent a UN Security Council referral, the ICC has jurisdiction only over

> "Like a faulty firework that had been expected to spectacularly light up the sky of international justice, the Court has not quite left the ground, let alone ignited. There has, however, been just enough smoke, heat and fizzle to make things interesting"

the territory and nationals of states that have ratified the Rome Statute. This has, at times, severely restricted the action the Court can take: for example, it has no jurisdiction over some of the more egregious international crimes that have been committed since 2002, including those that took place in the civil wars in Syria and Yemen; in Iraq; in the Tigray conflict in Ethiopia; and in the Xinjiang region of China.

Most of the blame lies with states. The ICC has no police force, so it relies entirely on the willingness of states to arrest those indicted by the Court, and many states – even those that are ICC members – continue to hesitate to do so, especially when the fugitive is a sitting head of state or government. In 2025, both Putin and Netanyahu have been welcomed as honoured visitors in ICC member states: Mongolia in the case of Putin, and Hungary in the case of Netanyahu.

So while there is plenty of blame to be shared for the ICC's uninspiring – or, at best, mediocre – record of results, the most pressing crisis at the Court is, paradoxically, being imposed on it not for its limited reach, but rather for what it has actively chosen to do.

In late 2024, a panel of ICC Judges issued arrest warrants against Israeli leaders for crimes against humanity and war crimes allegedly committed in the war in Gaza. The Biden administration aggressively objected through diplomatic channels, but the new Trump administration has taken a more proactive (some might say rash) approach. Under Trump, the US has imposed sanctions on the Chief Prosecutor, both Deputy Prosecutors, and six of the Court's 18 Judges. These sanctions are wide-ranging and prohibit any US national from providing any goods or services to those sanctioned. Because the ICC computer data and communications systems use cloud and email services operated by Microsoft, Prosecutors and Judges have been locked out of these systems; the affected individuals have also been denied access to their Google services accounts. It remains unclear to what degree these actions will degrade the ICC's capacities in the short- and long-term.

The Court is also losing member states faster than it is gaining them. In September 2025, the military rulers of the neighbouring states of Burkina Faso, Mali, and Niger jointly announced that they would be withdrawing from the Court in order to "reassert sovereignty". These states have, along with other African states, alleged that the ICC is a neoimperialist project designed by the states of Europe to keep Africa and its leaders subjugated to Western authority. Duterte's recent arrest and appearance before the Court, mentioned above, has only further underscored how Africa-centric the Court's previous accomplishments have been. Hungary has also given notice that it intends to withdraw from the Court, arguing that the ICC has succumbed to overpoliticisation.

For these and other reasons, the ICC is in crisis; it is unlikely to collapse or cease operations, but it has far to go before we can regard it as anything approaching a dazzling success. ■

RIGHT: Professor Petra Butler, Chief Justice Dame Helen Winkelmann, and Professor Kate O'Regan at the Bill of Rights Act conference.

Democracy and the rule of law

An international perspective

To mark the 35th anniversary of the New Zealand Bill of Rights Act, *LawTalk* invited Professor Kate O'Regan from the University of Oxford to reflect on international human rights protections. Professor O'Regan visited Aotearoa New Zealand as a keynote speaker at the 'Bill of Rights Act: Legacy and Lessons' conference, organised by the University of Canterbury Faculty of Law in collaboration with the New Zealand Law Society Te Kāhui Ture o Aotearoa. Drawing on her experience as a judge of the South African Constitutional Court, ad hoc judge of the Supreme Court of Namibia, and inaugural Director of the Bonavero Institute of Human Rights, Professor O'Regan shared her insights on the emerging challenges affecting human rights across the world.

Can you talk about the connection between democracy and the rule of law across jurisdictions – how do you think/do you think centering human rights in South Africa's constitutional transformation contributed to democratic stability?

The rule of law, democracy and human rights are different concepts, but they are closely related and together they are the foundation of open and free societies. The South African Constitution recognises this by declaring them as founding values. For a society like South Africa where human rights had not been protected and indeed flagrantly violated by the apartheid government over its four decades of rule, providing in the constitution for the protection of human rights was an important first step. But of course, there is much to be done to continue to strengthen democracy, the rule of law and the protection of human rights in South Africa, and that is the case in many democracies in the world. There is more work to be done.

You've said previously, the best thinking happens when people disagree, can you talk to some examples of this?

I was talking here from the experience of sitting on a collegiate court and disagreeing with colleagues and trying to understand the source of that disagreement and then seeking the possibility of bridging it, which can happen, but only if one takes time to really listen and grapple with their arguments. I think this can happen in other contexts such as political disagreements too, but there is an important premise: people think better when they disagree but they will probably only do so if they respect one another. If we listen closely to those with whom we disagree and try to understand in good faith the source and basis of the disagreement, then we often learn something valuable and it can help us rethink our own ideas. If we do not respect those with whom we disagree and dismiss them without engaging with their ideas, this will not happen. And if we only talk to people with whom we agree that kind of deep rethinking is less likely to happen.

Like South Africa's Constitution, the New Zealand Bill of Rights Act came into being in the 1990s. Reflecting on the Bonavero Institute's work on human rights issues across a range of jurisdictions, what do you think we can expect from the next 35 years of our Bill of Rights Act?

Both the New Zealand Bill of Rights Act and the South African Constitution were adopted at a time when constitutional democracy and bills of rights were being adopted in many parts of the world: other examples are the Namibian Constitution 1990, the Canadian Charter of Rights and Freedoms of 1982, the UK Human Rights Act of 1998, the Hong Kong Bill of Rights Act of 1990. This was a time when democracy, the rule of law and the protection of human rights was

waxing across the world, in the aftermath of the fall of the Berlin Wall. Today we live in a different world where all the major democracy and human rights indices tell us that democracy, the rule of law and the protection of human rights are in steep, though not universal, decline. It is to be hoped that the pattern of decline may be reversed in the years ahead but that is not certain. Changing geopolitics will be important to what happens, as will what happens in local politics in each jurisdiction of the world.

On using law for justice – what are some of the challenges of making laws work without having unintended rights consequences?

Most laws have unintended and unanticipated consequences and some of these consequences, but not all, will have human rights implications. Legislatures thus have a responsibility to continue to monitor the application and impact of laws they enact to ensure that they work as anticipated and do not infringe human rights. Courts play a role here in the protection of human rights, although that role varies depending on their powers.

Across the world, what are you seeing as the big emerging challenges testing existing domestic rights frameworks?

There are many challenges facing the world. To mention two: the digital world, while presenting opportunities, also presents sharp challenges for the protection of freedom of speech, including the media, privacy, and equality. The regulation of both the uses and applications of artificial intelligence are increasingly challenging, as is the regulation of global very large online platforms. The climate crisis also presents severe human rights challenges and this will undoubtedly accelerate in the years ahead. Both of these challenges are global in character and their global nature often makes addressing them at domestic level effectively difficult. Yet we are in a time when geopolitical tensions make it unlikely that global agreements on how to address these challenges will be reached, and so domestic systems are having to seek to address them individually.

How do you see the future of domestic rights protection evolving over the next 35 years?

If human rights are to be protected and fulfilled across the world, they have to be claimed and protected everywhere, from the ground up. Achieving the protection of human rights is a challenge for every generation. It is not possible to predict what the next 35 years will bring but what is clear is that we cannot simply rely on the powerful to protect human rights, they have to be asserted by ordinary people everywhere. ■

Progress towards timely access to justice

Chief District Court Judge Heemi Taumaunu discusses recent initiatives in the District Court criminal jurisdiction to improve timely access to justice

BY **CHIEF DISTRICT COURT JUDGE HEEMI TAUMAUNU**

Improving timely access to justice is a top priority for the District Court of New Zealand – and for the whole court system. Before I outline the work that is going on, I first want to acknowledge the high workload and pressure on counsel who appear in the District Court, the biggest court in Australasia. The Chief Justice in her annual report has spoken about the pressure the justice system is under and referenced in particular the impact on the legal profession. I concur. Our timely action initiatives have to be balanced by empathy and constant attention to the wellbeing of everyone associated with the court and I can assure you that the profession is front of mind.

I am sure you will be reassured that the approach we are taking to timely access to justice in the District Court is a continuation of the approach that was developed in full collaboration with the leaders of the profession in the middle of Covid, when the Criminal Process Improvement Programme (CPIP) initiatives were first under development.

The essential principle behind the District Court approach to timely access to justice is to ensure, where possible and appropriate, meaningful progress towards disposition is made at every court event. This is the opposite of churn, when no progress is made and cases are adjourned to repeat the same step in the process.

Our pursuit of timely access to justice is not the pursuit of timeliness for its own sake. In the interests of justice there may well have to be occasions where no progress is made and the step needs to be repeated. The interests of justice may require it. District Court judicial officers are bound to apply the relevant law but within those boundaries, you can expect them to be seeking to make meaningful progress where it is appropriate to do so.

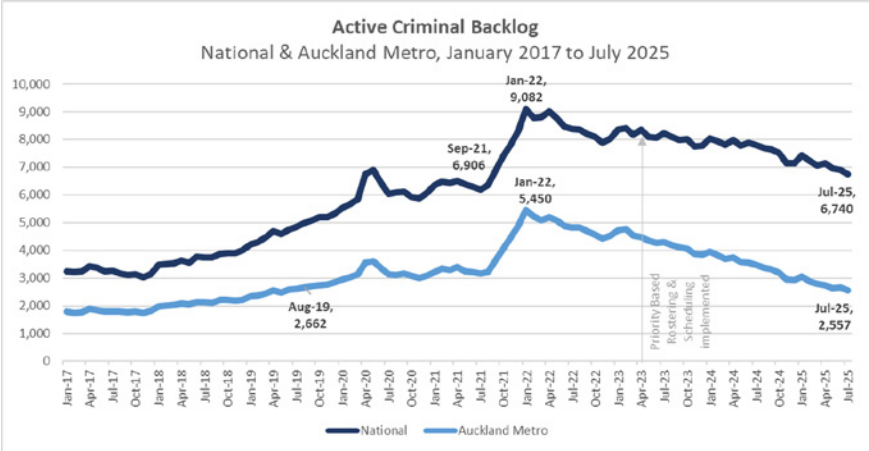
As long as it is appropriate and lawful, this approach benefits all involved. From the point of view of the legal profession, it means you can see meaningful progress being made. Hearings will be available earlier and delay reduced. That should lead to a more satisfying professional experience, rather than a frustrating day in court where no progress was made because of system-wide issues.

The District Court has made significant progress with timely access to justice: at the end of July 2025 there were 6660 criminal cases in backlog nationally, down 26.7% since the peak of more than 9000 in January 2022. Timely disposal of criminal cases in the District Court has remained stable at 81% since early 2024 and if we continue with the measures we have in place, it is on track to reach 90% by mid-2027.

Since 2023, we have put in place a raft of measures to bring backlogs back under control, improve the timeliness of cases going through court and address the overall effectiveness of court processes.

In 2023 we introduced priority-based rostering and scheduling, which means allocating the judicial resource to where the need is greatest. At that time, half of all criminal backlog cases were located in the six Auckland Metro courts, so that is where more of the judicial resource went.

I know the extra court hearings in Auckland were challenging for counsel and justice sector agencies to adjust to and it took a lot of discussion and goodwill to work through. Priority-based rostering and



scheduling is now our way of doing things and we are constantly looking at the national picture to decide how to employ judicial resource to best effect.

In 2024 I issued the Timely Access to Justice Protocol, setting out a standard of 90% of criminal cases disposed of within category-based timeframes or thresholds. For example, the protocol states that category three judge-alone trials should be heard and determined within nine months, and category three jury trials within 15 months.

In each category the thresholds set out realistic timeframes for most cases to progress from first appearance to disposal, and seek to strike the right balance between aspirational objectives and operational realities. The 90% standard also makes allowance (10%) for those highly complex cases that are unlikely to be disposed of within the applicable timeframe.

Some of the case-management practices that contribute to more meaningful court events are:

- The Bail Application Scheduling Framework (introduced September 2024), which ensures those in custody have their bail application heard as soon as possible. It is intended to make the most efficient use of judicial, court, counsel and stakeholder resources by making sure all necessary information is before the court and defendants are not needlessly before the court if their bail application is not ready to be pursued. Since its introduction, people in custody have enjoyed faster access to a bail hearing.
- The Case Review Hearing Guidelines (1 August 2025) promote more accurate setting down of trials by ensuring that witnesses who are required in person at trial and those whose evidence may be admitted are clearly identified. This ensures cases are in their most streamlined state for hearing. Prosecutors and defence counsel in all courts can also expect judges to commence case review hearings by inviting the prosecutor to refer to the memorandum of proof and outline the relevant evidence the prosecution intends to call to prove each material element of the charge.
- The Judge-alone Trial (JAT) Protocol (1 August 2025) supports the preparedness of parties for the trial date to reduce delays and make the most optimal use of available judicial time.

We are also continuing to focus on the criminal case backlog. Timely access to justice concerns are just as real for people whose cases are in backlog, or even more so, as for those with new cases before the court.

In plain language terms, our timely justice strategy is two pronged, balancing distinct but connected strands of work. First, ensuring as much as possible that 90% of new cases are finished within the relevant category-based timeframe. And second, simultaneously reducing existing backlogs with a particular focus on hearing and determining our most serious backlog cases at the earliest available opportunity.

As the graph above shows, we are making steady progress reducing delays and backlogs. There is still room for improvement and there is a lot left for us to do. I extend my sincere gratitude to the profession and to those lawyers who regularly appear in the District Court for their ongoing efforts to support the District Court to provide timely access to justice for all. ■

RIGHT: Mark Kelly. Barrister and Commercial Mediator

From determination to resolution

The role of ADR in the senior courts

Mark Kelly's research paper '*Mediation and the Senior Courts*'[1] considers whether senior courts should be granted greater powers to order mediation in civil disputes. Drawing on the precedent set in *Churchill v Merthyr Tydfil CBC*,[2] where courts in England and Wales were granted the authority to order parties to engage in alternative dispute resolution (ADR), Kelly advocates for changes to be made to the court framework in Aotearoa New Zealand to more actively encourage mediation throughout the course of civil proceedings.

Limitations of the current framework

Kelly identifies limitations in the current court framework. Under the High Court Rules 2016 (HCR) and the Court of Appeal (Civil) Rules 2005 (CAR), judicial powers to promote ADR are modest. Kelly observes that the HCR prioritise "determination" over "resolution," with mediation typically only being considered once a case is ready for a hearing. While the CAR do allow for directions to support resolution, little else is done to promote the use of ADR.

Kelly notes that neither set of rules provide strong procedural nudges or consistent cost consequences for failure to engage in ADR.

Upcoming reform

Positive changes are coming. From 1 January, the High Court (Improved Access to Civil Justice) Amendment Rules (HCAR) will incorporate the concepts of proportionality and resolution into decision-making. Judicial Issues Conferences will include the express consideration of whether it is appropriate to resolve the proceeding by alternative means such as mediation, without the current prerequisite of needing to be ready for trial.

Separately, the Ministry of Justice recently consulted on a proposed statutory adjudication framework. This initiative aims to offer businesses a fast-track mechanism for resolving disputes outside of court. If implemented, businesses would have access to a quick and cost-effective mechanism to settle their disputes while reducing the strain on court resources.

Embedding ADR in court procedure

Aspects of Kelly's report will not be addressed by the incoming reforms. He proposes a "suite of powers" to embed ADR into senior court processes. For the HCR, this would include:

- a presumption that parties will endeavour to resolve disputes by using ADR,
- the ability for Courts to order ADR without party consent, and
- costs sanctions which explicitly require a reasonable justification for failure to engage with ADR.

For the CAR, he recommends the power to order parties to mediate and similar costs sanctions.

Trust and collaboration

Reliance would not solely be placed on procedural changes to encourage the use of ADR. Kelly also emphasises the need to build trust in mediator competence, suggesting the creation of a panel of accredited mediators for senior court matters. Enhanced

ABOVE: Malcolm Wallace, AMINZ President – Barrister, Arbitrator and Mediator

RIGHT: Polly Pope – Barrister

communication between mediators, lawyers and the courts would play a key role in integrating ADR.

Insights from the Profession

Malcolm Wallace, AMINZ President – Barrister, Arbitrator and Mediator

Wallace has observed a steady expansion in the use of ADR, particularly in commercial and complex family wealth disputes. He supports greater judicial powers to encourage mediation and welcomes the upcoming changes to the HCR. However, he cautions that "confidence in the Courts might diminish, if the public thinks that the Courts are too busy or somehow disinterested in resolving disputes because of the overwhelming burden of criminal cases on the Court's workload."

On striking the right balance between encouraging and compelling the use of ADR, Wallace notes: "almost all horses that are led to water will drink from the ADR well, but compulsion versus coercion is a delicate balance." He sees potential for AI to improve access to ADR services, particularly for self-represented parties.

Wallace anticipates a shift in the ADR profession, with more women and non-lawyers becoming mediators and the age of those with advanced qualifications decreasing. "This change in personnel will lead to a change in the role of ADR, with growth beyond the traditional sectors that embrace ADR."

He envisions a collaborative model: "if Judges knew that ADR professionals would work collaboratively with the Judges to improve access to justice, and improve the speed, efficiency and reliability of the process for resolving disputes, then I think this would create the greatest opportunity for improvement and success."

Polly Pope – Barrister

Pope considers that ADR is well-established in commercial disputes and the construction sector where adjudication offers fast and binding outcomes. She notes that "law reform would be required" for use of the adjudication model across other sectors. "In the meantime, the New Zealand Dispute Resolution Centre (NZDRC) has designed a contractual adjudication process, which allows parties to a contractual dispute to decide to opt in to an adjudication process."

Pope identifies a "pressing gap" in procedural innovation among lawyers. "Every litigator needs to understand the availability of ADR,"

RIGHT: Michael Jamieson, Manager at The ADR Centre

she says, adding that suspicion of ADR proposals is often misplaced. "Lawyers need to be serious about their duty to inform clients of alternatives to litigation, and if there is a quicker or less expensive option available then there may need to be a very good reason to turn that down."

Pope highlights innovations such as fixed-fee services and contractual adjudication. On oversight of ADR service providers, she stresses the importance of qualifications, noting that Arbitrators and Mediators Institute of New Zealand (AMINZ) accreditation and institutional peer review help to maintain standards.

In the future, Pope predicts that AI will "revolutionise aspects of dispute resolution," but warns of sovereignty risks if New Zealand-specific platforms are not developed. "In my experience AI is already being used by self-represented parties in adjudication to prepare documents. When AI is channelled into apps and platforms specifically tailored for New Zealand dispute resolution processes there is likely to be significant improvements in access to justice."

Michael Jamieson – Manager at The ADR Centre

Jamieson supports the recent changes to the HCR but believes a cultural shift is needed: "It would be helpful if instead of asking "Have you tried ADR?', judges ask, 'Why haven't you tried ADR?' and there could be adverse costs awards or sanctions against parties who have refused to engage with ADR processes without good reason."

"ADR helps all cases move towards resolution"

He notes that commercial parties typically respond positively to ADR, while some litigators remain reluctant. "ADR helps all cases move towards resolution," he says, especially where ongoing relationships are involved. He adds that "some lawyers overlook their obligation under section 13.4 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 to advise their clients of alternatives to litigation."

In an ideal setting, Jamieson anticipates ADR will become "integral and complementary to the Court processes," supported by AI-driven innovations that streamline outcomes and improve access to justice. He sees a growing role for culturally responsive practices, including tikanga Māori, Pasifika and sharia-based approaches.

Looking ahead

The perspectives shared by Wallace, Pope and Jamieson reflect a shared understanding that ADR plays a key part in a responsive court system. The reforms under the HCAR, alongside the Ministry of Justice's consultation, signal meaningful progress in embedding ADR into the life cycle of a claim. While not all disputes will be suited to ADR, there is potential for it to be utilised in cases where it could deliver meaningful benefits like saving time and reducing costs. Drawing on Kelly's "suite of powers," a collaborative approach from judges, lawyers and rule-makers may be key to easing the burden on the courts and realising the full potential of ADR. ■

1. *markkelly.co.nz/wp-content/uploads/RP24-25-Mediation-and-the-Senior-Courts-.pdf*
2. [2023] EWCA Civ 1416, [2024] 1 WLR 3827

ABOVE: Courtyard render of the new Te Puna Hapori Whanganui Courthouse

Te Puna Hapori

New Whanganui courthouse

BY **CHRIS BALDWIN**

Chris Baldwin is the Project Director of the new Whanganui Courthouse, Ministry of Justice.

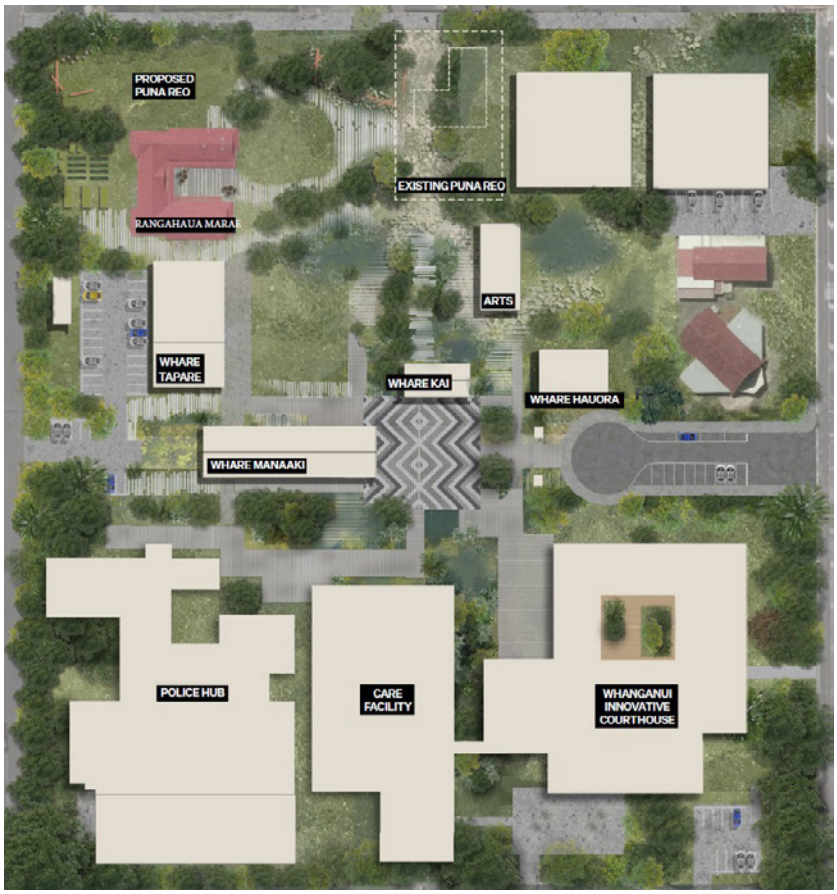
A new courthouse is being built in Whanganui that will create a more community-centred approach to justice and social outcomes. The new Whanganui Courthouse will be part of a wider community wellbeing hub, Te Puna Hapori.

Te Puna Hapori is an iwi and hapū-led whānau and community wellbeing vision for Whanganui and is the name of the transformational kaupapa and physical site.

Te Puna Hapori is a partnership between Whanganui Iwi and Hapū, the Ministry of Justice, New Zealand Police, and Whanganui District Council and sets out a different approach to ensuring wellbeing through a focus on community and whānau. The holistic vision recognises that a single initiative or service is unlikely to be sufficient to address complex issues without shifting the conditions that are restraining the issues and achieving an overall goal of "'Toitū te Whānau – uniting to improve the wellbeing of our whānau and community".

> **"The new Whanganui Courthouse will be part of a wider community wellbeing hub, Te Puna Hapori"**

BELOW: Te Puna Hapori Site Plan



Te Puna Hapori is underpinned by a core set of values that guide the project:

Toitū te Kupu – Relationship of Integrity

The intent of one's word and the truth of its expression.

Toitū te Mana – Relationship of Authority

Recognition of the permanence of Iwi Mana and the sharing of responsibility to uphold that mana.

Toitū te Whenua – Relationship of Sustenance

The connection of humanity with the natural world, and the duty of care by humanity towards the natural world

The new courthouse will be built alongside the existing Rangahaua Marae, a new Police Hub and a shared Care Facility which will provide the custodial functions for both the Courthouse and the Police Hub. Plans for the northern half of the site continue to develop with opportunity for other wellbeing and community services to join Te Puna Hapori.

It will provide increased courtroom capacity – four courtrooms, two of which are jury enabled, safer people-centred facilities for victims, defendants, participants, and their families, and improved flexible spaces that support the health and safety of all court users and their changing needs.

There are a number of key drivers and outcomes for the new Whanganui Courthouse:

- improved access and experience for all court participants.
- a built environment that supports better separation of parties through the provision of interview and whānau spaces and is dynamic to meet future operational needs and models.
- improved efficiency and timeliness of access to justice, by minimising the risk of asset failure, ensuring facilities are open and operable, and ensuring they can meet volume and capacity demands.
- meeting statutory requirements by ensuring the facilities where our people work and where we provide services are safe, healthy and support wellbeing of all participants including public, judiciary and staff.
- improving the social and economic wellbeing of the people of Whanganui through partnership between the Crown and iwi.
- improved safety (physical and psychological) for all court users (including the public, judiciary, the legal profession and staff).

To develop the design brief, the design team worked with the Te Puna Hapori partners and broader Whanganui Courthouse

RIGHT: View from the Atea, render of the new Te Puna Hapori Whanganui Courthouse

stakeholders to create five courthouse design principles that set the foundation for the design of the courthouse. These principles are directly linked to Toitū te Whānau and Te Puna Hapori's foundational framework:

- **Mātāmua Ko Te Hapori** – Community Focus
- **He Wāhimahi o Nāianei** – An Inclusive Environment
- **He Wāhi Hirahira** – A Strengthened Sense of Place
- **Hui Manahau** – Mana-Enhancing
- **Wairua Rangaawatea** – Integrity and Harmony

These principals are grounded in what we heard throughout the stakeholder engagement and are embedded within the vision of Te Puna Hapori.

As well as the four new courtrooms, the new Courthouse will also accommodate two hearing rooms, a mediation room, 12 interview rooms, five whānau rooms, vulnerable person suites, lawyer rooms and a secure internal courtyard to allow court users to step outside whilst remaining within the Courthouse.

There is space within the Courthouse for wrap around services to ensure alignment with any future operational changes and the requirements that come with these.

Throughout the design process there was an emphasis on creating a space that eases anxiety. Natural light in all courtrooms provides a connection to place, and a central landscaped courtyard allows people to feel connected to the whenua while inside the building.

The build itself consists of a three-storey building that houses the four courtrooms and a single storey section that is more community focused and welcoming for all visitors.

Criminal Courts are located on the upper level of the building, providing key views out towards the Puna, Mounga, and the wider Whanganui landscape. Elevated above the public realm, and shrouded with perforated screening, court functions can occur with a sense of privacy, yet with a strong sense of place and connection back to the Whanganui community.

The Ministry partnered with NZ Police to approach the procurement of the main contractor jointly alongside Tupoho, which has seen Naylor Love come on as our construction partner and will construct the Courthouse, Police Hub and Care Facility. ■

Both the Courthouse and the Care Facility are scheduled to be opened in mid- 2027.

Further information on Te Puna Hapori can be found on its Facebook page or website.

Te Puna Hapori – Community Space & Wellness hub in Whanganui
www.tepunahapori.com

Te Puna Hapori | Whanganui | Facebook

Site inductions for lawyers

With court operations set to continue from the existing building until the new Whanganui courthouse is fully operational, the Ministry reminds all lawyers who work there to take advantage of the site-specific security inductions available to them. Lawyers are encouraged to refresh their site security knowledge each year. To enroll in a security induction at a courthouse where you work, speak to the local court security team or email the Ministry of Justice National Security Operations (NSO) *NSOAdmin@justice.govt.nz*

From burden to balance

New Zealand's historic shift to proportionate liability in construction dispute resolution

BY **ADJ PROFESSOR KIM LOVEGROVE**

A landmark announcement – 18 August 2025

On 18 August 2025, the Hon Chris Penk, New Zealand Minister for Building and Construction announced major reforms to the Building Act 2004 (NZ).

The Minister confirmed that *"the Government will scrap the current framework, known as joint and several liability, and replace it with proportionate liability. Under this new model, each party will only be responsible for the share of work they carried out"*.[1]

For territorial authorities (TA), homeowners, insurers, and industry professionals, this marks a fundamental, if not tectonic shift in how responsibility for building defects will be allocated. As the Minister stated, *"it's time to put the responsibility where it belongs"*.[2]

Joint and several liability: the old

Joint and several liability (JSL) has been the prevailing liability regime in New Zealand construction law for decades.

Under JSL, where multiple parties are responsible for defective building work, a plaintiff may in certain circumstances recover the entirety of their loss from any one solvent defendant. The outcome depends on the factual mosaic of the case, not limited to considerations such as whether a code compliance certificate has been issued by the TA, whether inspections took place and the degree of culpability of each respondent.

This doctrine was ostensibly designed to protect claimants, providing a way to recover compensation even if one or more parties had become insolvent. But in practice, the consequences have on several fronts been problematic:

- In some instances, "deep pocket" defendants, most notably territorial authorities became the default guarantors of compromised construction outcomes. This imposed very large liabilities on some councils.
- The insolvency of developers or builders meant that TAs with no avoidance option, underwrote the defaults and liabilities of others provided they were "blanched" with a degree of culpability, even if it was peripheral.
- At the turn of the millennium, a major insurer insolvency event in Australia led to a huge upsurge in litigation, in part due to the massive assumption of risk by insured parties who were forced to pick up the liabilities of insolvent actors.
- This culminated in widespread interstate reform and the adoption of the proportionate liability doctrine, as joint and several liability threatened to precipitate a systemic breakdown in the insurance ecology

Thus, JSL was seen as unsustainable in Australia. Certain states in Canada and the United States, have also adopted proportionate liability.

Furthermore, the sustainability of local government underwriting was always in question, as its

raison d'être was not to serve as the financial backstop of malaise in the building sector particularly where the authors of that malaise were unrelated and remote actors.

Claimants and citizens: competing classes

The philosophical debate over JSL has also revealed an often-overlooked truth: the doctrine benefited the plaintiff class of consumer in one sense while penalising the citizen in another.

From a utilitarian perspective, the larger class is the ratepayer body. A sufficiently significant consensus emerged that preferencing the interests of this broader community delivers greater systemic fairness when compared with preferencing a narrower group of plaintiffs.

This recognition formed part of the intellectual backdrop for reform. Policy discourse acknowledged that while JSL may benefit individual plaintiffs, it does so by transferring significant and at times massive costs onto the wider population.

Hence the common refrain familiar to the writer '*why am I as a rate payer underwriting the liabilities of bankrupt contractors?*

The cost of distraction

Another problem with JSL was how it could distort the way some TAs allocated resources. Faced with open-ended liability exposure, they diverted significant management time and financial resources into defending against potential claims to the detriment of delivering core services.

Proponents of proportionate liability say that it allows TAs to preoccupy themselves with their statutory responsibilities. Time, funding, and institutional capacity can be redirected towards what matters most: ensuring compliance with the Building Code and safeguarding public safety through higher proactive inspectorial interventions.

What proportionate liability brings

The new regime of proportionate liability is a fundamental departure from the 'last man standing' rule.

It is a fault-based doctrine where:

- Each defendant is liable only for the share of responsibility judicially attributed to their conduct.
- No party covers another's insolvency.
- Liability lands proportionately, reflecting the actual role of each participant.

This represents a dramatic paradigm shift. Solvent defendants, especially TAs, and insured respondents will no longer bear the financial responsibility of others' defaults. Responsibility will reside with the authors of the loss.

Importantly proportionate liability has a proven pedigree. In Australia, it has been the prevailing doctrine in the building industry for more than three decades, honed with judicial

ABOVE: Adj Professor Kim Lovegrove MSE RML D Litt (Hon Causa)

scrutiny, evolving through case law, and embedding itself in everyday legal and insurance practice.

Australian precedent – a tested and sustainable model

The Australian experience provides reassurance for New Zealand policy-makers, industry, and the courts.

Proportionate liability was introduced in the early 1990s under building regulatory amendments. The Victorian Building Act 1993 was the pioneer statute in this space. It represented a decisive departure from JSL, setting a template that would eventually be adopted across multiple Australian jurisdictions at the turn of the century.

The writer served as instructing officer to Parliamentary Counsel in the development of the Victorian Building Act, helping to formulate the liability provisions that anchored the proportionate liability regime. Since its enactment, he has worked with the system extensively in practice as a construction lawyer and can state that:

More than thirty years on, the system has proven sustainable:

- Building disputes in construction and engineering have been litigated and resolved under the regime.
- Professional indemnity insurance markets adapted, with proportionate liability factored into coverage.
- Plaintiffs, while no longer guaranteed full recovery from a single defendant, benefit from supporting mechanisms such as residential warranties and compulsory insurance.

Australia's long-running experience shows that proportionate liability balances fairness to defendants with adequate protection for consumers. There has been no significant consumer disquiet, a key factor in its sustainability.

Drafting the provisions – learning from exemplars

The jurisprudential nuancing in the drafting of proportionate liability provisions by the venerated offices of parliamentary counsel in New Zealand will be critical. Lessons can be drawn from Australian exemplar clauses, which have been tested in litigation and refined over decades.

Equally significant is the pioneering contribution of the International Building Quality Centre (IBQC), which is chaired by the writer.

The IBQC has spearheaded the

> "New Zealand is entering a new era of accountability, guided by lessons from Australia and underpinned by a doctrine that aligns liability squarely with those who cause the loss"

development of an internationally recognised exemplar proportionate liability provision.

Drafting has been led by a former Chief Parliamentary Counsel in Victoria and former Law Reform Commissioner, working closely with the writer on the creation of a new International Model Building Act–an instrument that places best-practice proportionate liability provisions at its core.

This work will now be subject to interrogation and refinement by senior jurists and leading construction lawyers from several countries, who will review the draft wording considering challenges encountered in judicial interpretation.

The ambition is clear: to craft a provision that sets a global benchmark–minimising ambiguity, closing loopholes, and providing a durable framework capable of withstanding the toughest tests of litigation.

By drawing on both Australian precedents and international good practice drafting models, New Zealand can leverage of and implement a regime already forged in the furnace of experience and road-tested on the highways of jurisprudence.

How will it change things in practice?

Comprehensive and all-encompassing pleadings

Litigators, plaintiffs and respondents alike will need to adapt to the new regime. Under proportionate liability, all potentially responsible parties must be joined at the outset. Failure to do so risks leaving plaintiffs undercompensated and defendants exposed to unbalanced apportionment.

Forensic expert evidence

Even greater reliance will fall upon early-stage deployment of expert witnesses. Courts will require forensic dissection of responsibility across multiple disciplines – architectural design, engineering, construction methodology, inspections, and certification. Each share of responsibility must be evidenced and quantified.

Pleading and strategy

Statements of claim and defence will need to articulate the specific responsibilities of each party, with precision in allegations and cross-claims. Poorly drafted pleadings could prejudice a client's ability to ensure fair allocation of liability.

Judicial balancing

Courts 'divvy up' shares of liability based on evidence. While New Zealand courts will chart their own path, they can draw on a wealth of Australian precedent.

Insurance and warranties

The Minister has already flagged supporting mechanisms for proportionate liability, including:[3]

- Reviewing professional indemnity insurance settings.
- Examining home warranty settings for residential building.

These mechanisms may look to the Australian model, where insurance and warranty schemes have long co-existed with proportionate liability.

Safeguards, and future outlook

Critics of proportionate liability often raise the concern that plaintiffs may recover less if some responsible parties are insolvent and not joined. This can be a risk, but can be overcome through safeguards and holistic liability and risk ecology:

- Insurance requirements can ensure that professionals are adequately covered.

- Home warranties can fill the gap if responsible parties' default.
- Regulatory oversight can ensure that BCAs and practitioners maintain standards of accountability.

The long-term outlook is positive. By reducing TA exposure, the reform could well be an enabler for more efficient and confident consenting. By ensuring that each actor bears their fair share, it promotes accountability and professionalism across the sector.

There are broader benefits too. Harmonisation with Australia's proportionate liability regimes should bode well for trans- Tasman insurance compatibility and may be conducive to additional insurance providers.

Conclusion

The transition from joint and several liability to proportionate liability is not merely a technical adjustment in legal doctrine; it represents a fundamental recasting of the architecture of New Zealand's construction law liability ecology.

For councils, it lifts the longstanding burden of underwriting the insolvency risk of others. For builders, designers, and engineers, it provides clarity in the delineation of responsibility. For New Zealand citizens, the ratepayers, it promises relief from the inequitable task of subsidising the liabilities of remote actors.

For insurers, it ensures they underwrite only the liabilities of their insured, rather than being compelled to act as de facto underwriters of others. This reform could also exert downward pressure on premiums.

In its place, proportionate liability, complemented by a refined insurance ecology, offers a fairer and more targeted framework of protection without distorting the system.

New Zealand is entering a new era of accountability, guided by lessons from Australia and underpinned by a doctrine that aligns liability squarely with those who cause the loss.

Author biography

Adj Professor Kim Lovegrove MSE RML D Litt (Hon Causa), Barrister (NZ), construction lawyer (Australia)

Professor Lovegrove has four concurrent adjunct professorships, is a barrister sole in New Zealand and a senior construction lawyer with Lovegrove & Cotton Construction and Planning Lawyers in Australia.

He was instructing officer to Parliamentary Counsel in the early 1990s during the drafting of the Victorian Building Act 1993, which introduced proportionate liability into Australia. More recently, he was engaged by New Zealand's Ministry of Business, Innovation and Employment to advise on liability reform pathways, drawing on his international experience and lessons derived from his role as Chair of the International Building Quality Centre (IBQC).

He has been retained by the World Bank to advise on international best practice approaches to the design of building regulation for the Chinese, Malaysian and Malawian governments and has twice been retained by the Japanese Government to participate in law reform think tanks.

He has written extensively on building law reform, risk allocation, and liability doctrine, and continues to contribute to global best practice initiatives in construction regulation. ■

Adjunct Professor Kim Lovegrove will be giving a presentation on New Zealand's adoption of proportionate liability in construction dispute resolution at a seminar series for the New Zealand Society of Construction Law in late October. More information is available on their website.

1. Hon. Chris Penk, "*Biggest Building Consent System Reform in Decades*", Beehive NZ (18 August 2025), paragraphs 12-13.
2. Ibid, paragraph 11.
3. Ibid, 'Notes to Editor'.

A fresh take on CLE

Michael Fraser's vision for legal learning

At a time when the legal profession is being asked to do more with less, more complexity, more scrutiny and more pressure, Continuing Legal Education (CLE) has never been more important. But CLE, like the profession itself, is evolving, and at the helm of this evolution is Michael Fraser, the New Zealand Law Society's new General Manager of CLE, whose vision is about much more than meeting compliance targets.

Fraser brings a cross-sector perspective to the role, combining academic rigour with commercial pragmatism. His background includes a PhD in accounting, executive education from Stanford, and senior leadership roles in both education and governance, most recently at the Institute of Directors. What sets him apart though is not just experience, but his instinct for what learning looks like in a world where professional demands are rapidly shifting.

Rethinking the role of learning

Fraser's first observations on stepping into the role were both encouraging and revealing: the legal profession is incredibly generous, "lawyers are often time-poor, yet they're among the most generous people I've met, always willing to dive in and contribute," Fraser says, "many lawyers give their time freely, volunteering, mentoring and contributing to education." That spirit, he believes, is an underrecognised strength. It's also a key foundation for building a learning culture that goes beyond the transactional model of CLE many have grown used to.

For Fraser, the task ahead is clear. It's about shifting CLE from being a tick-box exercise to a strategic tool, one that helps lawyers engage with the issues shaping their work, their clients, and society more broadly. That includes the familiar challenges: fast-moving legislative reform, increasingly complex client needs, and the enduring pressures of workload. But it also means addressing the personal toll that legal work can take, especially in high-stakes or emotionally taxing areas of practice.

Learning, in Fraser's view, must respond to all of this. Not only by delivering technical knowledge, but by helping lawyers build resilience, make ethical decisions in uncertain contexts, and stay connected to each other and to the purpose of their work. Fraser's vision is clear, "learning shouldn't just be about compliance. It should forge connection, sharpen capabilities, and help us respond to real-world challenges with confidence."

From education to engagement

One of the first moves with new leadership has been a deliberate re-framing of how CLE is structured within the Law Society. Previously a subsidiary company, CLE is now fully integrated into the organisation. It's a seemingly administrative change, but one with strategic implications. Fraser knows what this means for learning, "now that CLE is fully inside the Law Society, we're better aligned. We can tap into member insights and deliver learning that truly resonates."

Being closer to the Law Society's membership means CLE can draw more directly from the lived experiences, challenges, and aspirations of the profession. It also enables a more joined-up approach to learning, where insights from complaints, regulation, advocacy and professional standards can inform the kinds of education that's offered. Fraser is clear, "we'll keep what works, the classics like simulations and case studies, but add modern delivery, accessibility, and context."

> “If you want information, you can Google it. But if you want trusted insight, peer connection, and learning that fits your legal context, you come to the Law Society”

This more integrated approach is being formalised in a new Learning Strategy. The name itself is intentional, Fraser notes, “we deliberately called it the Learning Strategy because learning happens everywhere, online, at events, in peer discussions. It’s all part of the ecosystem.”

“Learning” rather than “education” reflects a broader, more inclusive view, one that recognises the many ways lawyers grow their knowledge and capabilities, both formally and informally.

Fraser is quick to point out that this doesn’t mean abandoning what’s worked in the past. Simulation-based learning, peer-led sessions, and practice-specific conferences remain core elements of the CLE offering. But they will be supported and extended by new formats, technologies and delivery methods designed to make learning more accessible, more relevant, and more engaging.

Innovation with purpose

While the full rollout of the Learning Strategy is still in development, signs of its intent are already visible.

CLE events like the Family Law Conference, which consistently draws high engagement, show the appetite lawyers have for both community and content. For those in emotionally demanding fields like family law, Fraser sees learning as more than a tool for keeping up, it’s a space for reflection, support and renewal. Fraser is clear on what’s important, “yes, attendance and feedback scores give us data, but the real success is when alumni tell us a workshop changed their approach months later.”

Workshops such as Advanced Litigation Skills are another example. Role-play, simulation, and peer feedback are all techniques that help lawyers not only understand, but embody, the skills they need in practice. These approaches are hardly new in the world of adult learning, but their thoughtful integration into CLE is helping lift quality and relevance.

Fraser’s goal is to build on these strengths, while opening the door to new possibilities: integrating contemporary issues like the ethical use of AI, adapting to hybrid work, and responding to the social justice dimensions of legal practice. All of these, he argues, are not just peripheral topics, they are becoming central to the way law is practised in Aotearoa New Zealand and beyond.

The value of trusted learning

In an era where information is cheap and everywhere, one of Fraser’s strongest convictions is that learning still matters, especially when it’s trusted, curated, and connected to the profession. “If you want mere information, you can Google it. If you want connection, context, and credibility, that’s us,” Fraser’s clear about that.

It’s not hard to find an answer to a legal question online. But knowing whether it’s right, whether it fits

your jurisdiction, your client's needs, or your ethical obligations, that's another matter entirely. CLE at its best, Fraser believes, gives lawyers something the internet can't: context, credibility, and connection.

It's also about identity. In a profession where expectations are high and time is short, CLE can too easily become just another obligation. But Fraser wants to make it something lawyers look forward to because it equips them, connects them, and reminds them why they do what they do.

Looking ahead

The ultimate measure of success for Fraser and his team won't just be attendance numbers or satisfaction scores, though those matter. It will be the profession's engagement over time: how lawyers talk about learning, how they prioritise it, and how it shapes their work.

That's not something that changes overnight. But the shift is already underway. With a more integrated structure, a future-focused strategy, and a leader who understands both the mechanics and meaning of learning, CLE is quietly transforming.

The message is clear: Continuing Legal Education (CLE) isn't just about staying current. It's about staying sharp, connected, and ready for what's next.

And if Michael Fraser has his way, it's about finding joy in that journey too. ■

CLE: What's Changing?

A quick look at what's new–and what's coming–in Continuing Legal Education at the Law Society

Back in the fold

CLE has been fully reintegrated into the Law Society after previously operating as a subsidiary. This closer connection means:

- Better alignment with the profession's needs
- Easier access to insights from across the organisation
- More cohesive, relevant learning offerings

From education to learning

The new Learning Strategy is more than a name–it's a shift in approach. It reflects:

- A broader view of how lawyers learn
- Recognition that learning happens beyond classrooms and webinars
- An emphasis on engagement, not just compliance

Not just knowledge but capability

CLE is evolving to focus on:

- Practical, applicable skills
- Resilience and wellbeing in the profession
- Ethical and social dimensions of practice

What stays the same

Core offerings like the Family Law Conference and Advanced Litigation Skills workshops remain. Simulation, role play, and peer-based formats are still central and a commitment to high-quality content, relevant to New Zealand practice

What's coming

Expect to see:

- More flexible and accessible learning formats
- Greater use of digital delivery
- Learning experiences that respond to issues like AI, hybrid work, and societal change

Why it matters

"If you want information, you can Google it. But if you want trusted insight, peer connection, and learning that fits your legal context, you come to the Law Society." – Michael Fraser

PROFESSIONAL STANDARDS

Regulated services – what they are and why they matter

As kaitiaki of a strong, progressive and trusted legal profession, the New Zealand Law Society Te Kāhui Ture o Aotearoa plays a vital role in maintaining the integrity of the legal system. With the provision of legal services being regulated under the Lawyers and Conveyancers Act 2006 (the Act), one of the Law Society's key responsibilities is ensuring lawyers meet the high standards expected of them when it comes to providing "regulated services." It also plays a role in protecting consumers from legal services provided outside the scope of regulated services and unauthorised practice of law. But what exactly are regulated services and why is the definition important?

Legislative definition

Piecing together the meaning of "regulated services" through the definitions in s6 of the Act can be a complex task. Its scope is broad and carries important implications for the provision of legal services to consumers.

In relatively simple terms, in reference to a lawyer or incorporated law firm, regulated services means "legal services," "conveyancing services" or services that a lawyer provides by undertaking the work of a real estate agent.

Breaking down the definition further, legal services are services that a person provides when carrying out "legal work" for another person. Legal work is not outlined exhaustively, but includes:

- the reserved areas;
- providing advice about legal or equitable rights;
- preparing or reviewing legal documents;
- offering alternative dispute services, such as mediation or arbitration; and
- *anything that is incidental to the work listed above.*

In practice, this might look like drafting a contract, advising on compliance issues or helping to resolve a dispute.

Conveyancing services are services a person provides when carrying out "conveyancing" for another person. Conveyancing is defined as legal work that creates, changes, transfers or terminates rights in property or business. This includes effecting or documenting:

- a lease of land;
- a mortgage or charge over land;
- a trust affecting real property or land; and
- *anything that is incidental to the work listed above.*

Effecting registration of instruments is also considered to be conveyancing, but the physical presentation of documents for registration can be done by an agent of a lawyer.

An aspect of the definition of conveyancing that may not be well understood is that it includes legal work carried out for the purposes of the sale or purchase of a business whether or not land is involved in the transaction. It also captures legal work for the creation of certain trusts (as referred to above) but not the preparation or drafting of wills.

Why does the definition matter?

The definition is important because it sets out the types of work that fall within a lawyer's professional obligations. This is essential for safeguarding the public, as well as supporting the complaints and disciplinary processes established under the Act.

Certain areas of legal work, the "reserved areas," are specifically carved out for consumer protection purposes. This restriction ensures that those accessing these services are covered by protective mechanisms, like the Lawyers' Complaints Service (LCS) or, if applicable, the Lawyers Fidelity Fund.

The reserved areas

Taking a closer look at the reserved areas, these services can only be carried out by a lawyer. They primarily cover representing someone in court or carrying out tasks that are required under legislation to be provided by a lawyer, for example, the certification and advice requirements provided for under s21(f) of the Property (Relationships) Act 1976.

Providing advice on proceedings also falls into this category as well as drafting court documents and filing applications on behalf of another person.[1] This can be an area of difficulty, with some non-lawyer organisations providing support services to those going through a court case. While it is not an offence to offer procedural or emotional guidance, care must be taken not to cross over into providing advice or drafting court documents.

There are exceptions to only lawyers operating within the reserved areas. For example, self-represented parties can appear before a court regardless of whether they hold a practising certificate and lay advocates may appear in proceedings in certain circumstances, including before the Employment Relations Authority. A Court or Tribunal can also grant permission for a non-lawyer to represent another person before it. Exemptions apply to the Māori Land Court and Māori Appellate Court too, where (with leave) non-lawyers can represent a party in proceedings.

Who can provide legal services?

Outside the reserved areas, anyone may offer legal services, provided they do not hold themselves out as a lawyer[2] by using prohibited terms like 'barrister,' 'lawyer' or 'counsel' to describe themselves. When only qualified lawyers use these titles, the public can trust that they are dealing with someone who is accountable to a professional code of conduct. It is a criminal offence for individuals to misrepresent themselves as a lawyer and a conviction can result in a fine of up to $50,000.

Overseas lawyers can provide legal services in Aotearoa New Zealand, but they cannot carry out work in the reserved areas. However, they are allowed to appear in proceedings where knowledge of international or foreign law is essential. While they can call themselves lawyers, they must clearly state the country or territory where they are able to practise under that description, for example, 'admitted in England and Wales,' and ensure that they are not providing a false representation of their services.

Practically, many overseas qualified lawyers are employed by law firms and may provide a full range of legal services under the supervision of the firm. Alternatively, they may be employed in-house by corporations and organisations to provide legal services outside the reserved areas.

In the digital age

In the modern world, the ways in which legal advice can be shared have expanded, particularly with the increase in use of social media. Describing roles on LinkedIn profiles must be done accurately, as well as when creating any posts that might come across as being advice from a lawyer.

Short-form video content is becoming a popular way to connect with younger audiences, and some legal professionals are already using it to promote their services or discuss legal issues. The limitations on who can provide legal services and call themselves a lawyer apply here too, and any comments that touch on legal expertise should be made with caution.

Conduct and regulated services

One area where regulated services are particularly relevant is the

Quick guide: regulated services at a glance

What counts as regulated services?

- Defined in s6 of the Act
- Legal and conveyancing services
- The reserved areas
- Drafting contracts
- Preparing legal documents
- Offering alternative dispute resolution services (e.g., mediation, arbitration)

The reserved areas

- Defined in s6 of the Act
- Representing others in court or tribunals
- Providing advice about proceedings
- Legal work required by law to be done by a lawyer, e.g. property relationship agreements under s21(f) of the Property (Relationships) Act 1976
- Only lawyers can operate here, with some exceptions

Who can provide legal services (excluding the reserved areas)?

- Anyone, as long as they do not hold themselves out as a lawyer
- Must avoid protected titles (lawyer, barrister, solicitor, etc.) under s2(b) of the Act
- For more detail, read our guidance on who is and isn't a lawyer at *lawsociety.org.nz/choosing-a-lawyer*

Overseas lawyers

- Provided for under s25 of the Act
- Can provide legal services in New Zealand (excluding reserved areas)
- Must state where they are admitted to practise, e.g. "Admitted in England and Wales"
- Can appear in international or cross-jurisdictional proceedings
- For more detail, read our practice briefing on overseas lawyers working in New Zealand at *lawsociety.org.nz/overseas-lawyers*

Why it matters

- Regulated services are about public protection and confidence
- Ensures clients get qualified, accountable legal help
- Supports the profession's credibility and trustworthiness

disciplinary provisions of the Act. Here, there is a distinction between conduct that occurs while providing regulated services (professional) and conduct that occurs outside of this setting (personal).

Most disciplinary provisions in the Act focus on professional conduct and, while personal conduct can also be subject to disciplinary action, the circumstances where this applies are more limited. The divide between personal and professional conduct has been the subject of several recent decisions by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal and higher courts, and the definition of regulated services continues to shape this area of the law.

Maintaining integrity

As evidenced, regulated services underpin many areas of the Act. By defining the work that must be carried out by lawyers, consumers of legal services can be assured that they are receiving a high level of care from lawyers who are held accountable to a code of conduct. In cases where those standards are not met, mechanisms like the LCS and, if applicable, the Lawyers Fidelity Fund, can be utilised to address any issues. These factors combined aim to maintain public confidence in the provision of legal services by ensuring that legal work is carried out by people qualified to do so and is completed to a high standard. ■

1. There is an exception allowing for a person acting under the supervision of a lawyer to draft and file court documents, but such supervision would need to meet the regulatory and professional requirements under the LCA which apply to lawyers, and which are outside the scope of this article.
2. To be considered a lawyer, a person must hold a practising certificate issued by the Law Society.

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Why more lawyers should use the Law Society library's research service

For many years, the New Zealand Law Society Library has quietly been one of the local legal profession's greatest assets. While many lawyers have come to rely on its resources and expertise, others have yet to discover the full extent of what the Library's Research Team can do for them. A respondent to a recent survey about the library put it succinctly:

> *"The library service is the most under-rated service the Law Society provides – bar none."*

Across Auckland, Wellington, and Christchurch, a team of seven specialist legal researchers provide fast, accurate, and cost-effective research services for lawyers nationwide. Whether you are a sole practitioner or a large firm looking for quick answers or in-depth case analysis, the team offers expertise and resources that go well beyond what many firms can maintain themselves.

The Research Team bring years of experience across practice areas, as well as advanced training in legal research and information management. Their work isn't limited to pulling case law. They can assist with:

- in-depth legal research across all practice areas
- access to authoritative commentary, journals, and overseas resources
- document delivery from the Library's extensive collections
- citation checking and verification – particularly important in today's landscape of AI-generated case law.

In fact, the team has seen a growing number of AI-generated cases submitted for citation checking. While artificial intelligence tools can be useful, they can also produce "hallucinated" cases that simply do not exist. The Research Team plays a critical role in fact-checking these references (for a fee). For this reason, they ask that lawyers let them know if AI has been used when submitting requests, so the team can take extra care to verify the information.

If you ask the researchers themselves why the research they do matters, the answer is simple: Their work allows you to focus on clients by delivering research that enhances the standard of your work.

Researcher Josee Klein explains, "Lawyers should use our legal research service because we save them time and help enhance the quality of their work. Our expertise in navigating legal databases and sourcing reliable, up-to-date case

law means lawyers can focus on advice and client service – not digging through search results."

Researcher Alissa Reid adds, "Because we are fast at what we do, it is real value for money. We are skilled at searching and know how to do it efficiently and effectively. Depending on the request, we can often complete research within an hour."

The team's cost-effectiveness is particularly appreciated by sole practitioners and small firms, who often cannot justify the expense of multiple database subscriptions or in-house research staff. As another survey respondent put it:

> *"Their research and document delivery assistance is highly cost-effective especially for sole practitioners."*

Librarians from large law firms also use the Library's specialist expertise for hard-to-find texts and curly issues.

One of the most notable things about the Research Team's work is the sheer variety of research requests they receive. On any given day, they may be asked to investigate issues spanning criminal, family, employment, company, and public law.

The breadth of their research means that the team is constantly learning, adapting, and finding connections across areas of law. This variety, combined with the intellectual challenge, is part of what keeps them motivated and passionate about their work.

Researcher Katie Wickes highlights the bigger picture, "The knowledge that we are providing excellent legal research, supporting access to justice for lawyers and their clients, makes our job fulfilling and worthwhile. I enjoy working at the forefront of legal jurisprudence, close to the action at the High Court, and having access to developing legal research resources and databases."

Survey feedback gathered anonymously from lawyers across the motu speaks volumes about the service:

> *"The range and depth of material is second to none. The library collections are up to date with the major authoritative texts, online databases, case series, legal journals and seminars."*

> *"Research is fast and cost efficient, researchers engage to ensure they have met the brief."*

> *"The online request portal is very quick and easy to use, and the staff always turn around requests very quickly. They are also very helpful in offering up other information where relevant."*

For many, the Library is not just a research service, but a place of community and professional support. The physical libraries remain valuable spaces for lawyers preparing for hearings, catching up on research, or simply working in a professional environment close to the courts. People are welcome to use the Libraries and nationwide kiosks to do their own research.

Over the past 20 years, legal research has transformed dramatically. Where researchers once relied heavily on loose-leaf services, fax machines, and physical texts, today's environment is overwhelmingly digital.

Katie Wickes reflects, "The online legal environment has exploded and so too has our knowledge and skills in these online platforms. Our library has evolved into a virtual as well as physical space, allowing us to provide seamless research support nationwide."

This adaptability ensures that the Library remains ahead of the curve, delivering authoritative, efficient research in an era where the sheer volume of online information can overwhelm even the most seasoned practitioner. The Library are also regularly adding to their services, a recently-added AI tool is LexisNexis Argument Analyser.

Next time you're buried in case law or facing an urgent client deadline, remember: the Library is here to help. And as one satisfied lawyer summed it up in the recent survey:

> *"Their research expertise is second to none. I can't imagine practising without them."* ■

How to access the research service

To make a request and for details on services and charging, visit the Library's dedicated web page at *lawsociety.org.nz/professional-practice/law-library*.

Law Reform and Advocacy update

Over the past four months, the Law Society has made 19 submissions on Bills, and 32 submissions on a range of discussion documents released by government agencies. Many of these submissions have touched on important issues for the profession and the public, including the 2025 Triennial Legal Aid Review.

In its submission on the legal aid review, the Law Society called for increased and ongoing funding of the legal aid system, and for any reform to be evidence-based. It noted that concerns about the legal aid scheme were longstanding and argued that greater investment in legal aid is needed to facilitate access to justice while ensuring the long-term sustainability of the scheme and providing fair remuneration to legal aid providers. There is a consistent theme of legal aid fees increasing at a rate far below the increasing costs of providing legal services, meaning real remuneration for legal aid providers has deteriorated considerably over the past 15 years.

As a part of the Law Society's commitment to evidence-based advocacy for the profession, the submission included cost-benefit and economic analyses commissioned from Deloitte Access Economics. These analyses concluded that for every $1 invested in legal aid, a minimum of $2.06 in benefits is generated, and there are additional economy-wide benefits generated. The analysis is limited by the quality of New Zealand data on legal aid and the justice sector, particularly for the criminal, civil and Waitangi Tribunal jurisdictions. However, those information gaps are in relation to only the benefits of legal aid – all costs are accounted for. This means the cost-benefit analysis and economic impact analysis are conservative and likely materially understate the true net benefits of legal aid. The Deloitte report is available in full on the Law Society's website.

Other recent law reform submissions include:

- Following on from the consultation earlier this year, the Law Society submitted on the Regulatory Standards Bill and appeared before the Finance and Expenditure Select Committee. The Law Society's submission identified a lack of clarity around the problem the Bill seeks to address, highlighted the selective inclusion of certain principles, and noted the Bill as proposed is unlikely to improve regulation.
- The Judicature (Timeliness) Legislation Amendment Bill, which proposes a series of amendments aimed at maximising judicial resource and improving timeliness, including raising the judicial cap on High Court judges from 55 to 57. The Law Society's submission encouraged consideration of raising that limit further. In response to the Bill's proposed new regime for dealing with 'plainly abusive' civil proceedings, the Law Society recommended improved clarity and further consideration of procedural protections, particularly around the scope of 'plainly abusive' and the interaction of these provisions with the existing process under section 166 of the Senior Courts Act.
- A submission on the Financial Markets (Conduct of Institutions) Amendment (Duty to Provide Financial Services) Amendment Bill, a member's bill which seeks to prevent banks from 'debanking' or withdrawing banking services from customers unless for a 'valid and verifiable commercial reason.' While not taking a position on the policy underlying the Bill, the Law Society's submission outlined several areas in which further policy and drafting work is required, including the practical difficulties and boundaries of the proposed duty, and how the rights

> "There is a consistent theme of legal aid fees increasing at a rate far below the increasing costs of providing legal services, meaning real remuneration for legal aid providers has deteriorated considerably over the past 15 years"

and obligations of both customers and banks ought to be balanced.

- A submission on the Anti-Money Laundering and Countering Financing of Terrorism (Supervisor, Levy, and Other Matters) Amendment Bill, which will establish the legislative power to apply a levy to AML/CFT reporting entities, amongst other amendments. The Law Society's submission raised significant concerns about the drafting of the levy provisions, including the unjustifiably broad discretion left to officials about how the levy is calculated and imposed.
- The Credit Contracts and Consumer Finance Amendment Bill, which seeks to clarify that sections 95A and 95B of the Credit Contracts and Consumer Finance Act 2003 will have retrospective effect and apply to proceedings that are already underway. The Law Society opposed the retrospective application of these sections to active proceedings, which raises rule of law concerns and adversely impacts rights accrued by parties to the proceedings. The submission noted there is insufficient evidence to justify retrospective application and suggested alternative approaches which are less objectionable from a rule of law perspective.
- A substantial submission on the Electoral Amendment Bill, which proposes changes including earlier closure of the voter registration period; disqualifying all prisoners convicted and sentenced to a term of imprisonment from enrolling and voting while in prison; and updating provisions relating to bribery and treating. Consistent with the Law Society's position on the disenfranchisement of prisoners in 2010, the submission outlines that the proposed voting ban creates inconsistencies and arbitrary outcomes, and contravenes domestic and international norms. Similarly, the submission does not support changes to close voter registration earlier, and suggests there is limited justification or need for the changes, which will likely disenfranchise many voters.
- The Legislation Amendment Bill, which raised concerns about proposed amendments to broaden the purposes of revision bills and to enable substantive legislative changes in revision bills, which have a streamlined process with fewer opportunities for scrutiny and debate. The submission noted that processes already exist for making substantive legislative changes, and it is unclear why these amendments are considered necessary.

All public submissions are available on the Law Society's website, and new public consultations are advertised weekly in LawPoints.

Recent advocacy and engagement

Release of our Rule of Law report

In June 2025, the Law Society released its *Strengthening the rule of law in Aotearoa New Zealand* report, which highlights ongoing and emerging challenges to the rule of law in New Zealand, and makes 78 recommendations to address promote the rule of law. The report was launched at an event hosted by Te Herenga Waka – Victoria University of Wellington, where Law Society President Frazer Barton presented some of the report's key findings, followed by panel discussion on the rule of law, and insights from LexisNexis, who supported the launch of the report.

Te Au Reka, the new digital case management system for the courts and tribunals

The Law Society continues to engage with the Ministry of Justice on the implementation of *Te Au Reka* in the Family Court (in 2026) and beyond (from 2027 onwards). Once implemented, *Te Au Reka* will be compulsory for lawyers representing clients in the relevant courts. Along with other key stakeholders, the Law Society has been engaging with officials about the design and features of the case management portal, ways to communicate updates to the profession, and training for the profession.

Letter to Attorney-General

The Law Society wrote to the Attorney-General to raise concerns about comments made by the Minister for Workplace Relations and Safety, Hon Brooke van Velden, about the appointment of new members to the Employment Relations Authority. The letter conveyed the Law Society's concerns that the Minister's comments could undermine the rule of law as well as the independence of the Authority. The Attorney-General appears to share these concerns, and has confirmed she has discussed these matters with the Minister and Cabinet, following the Law Society's letter.

Engagement with the judiciary

- *Commercial List*: through a profession working group, the Law Society's Civil Litigation and Tribunals Committee has assisted the judiciary with developing a new Commercial List Practice Note for the Auckland High Court. The Practice Note, which came into effect on 6 October 2025, seeks to improve efficiency with close case management, faster determination of interlocutory issue, and quicker hearing dates.
- *Webinar on new High Court Rules*: the Law Society has worked with the judiciary to organise an event for profession about the *High Court (Improved Access to Civil Justice) Amendment Rules 2025*, which will come into force on 1 January 2026. The convenor of the Law Society's Civil Litigation and Tribunals Committee, who represents the Law Society on the Rules Committee, joined Hon Justice Francis Cooke and Hon Justice Sally Fitzgerald to provide an overview of the background, content and implications of the new Rules. ■

UPCOMING CLE EVENTS

WHEN EQUAL SHARING IS UNJUST – SECTION 13 PRA

Online *1 CPD hour*

When: 5 November 2025
Chair: Katie Hollister-Jones and Ben Jefferson

NAVIGATING TRUSTEE DISPUTES

In-person *Online* *1.5 CPD hours*

When: 11 November 2025
Presenters: Elizabeth Heaney and Liam McNeely

OFF THE PLAN SALE & PURCHASE

In-person *Online* *2 CPD hours*

Starts: 11 November 2025
Presenters: Ben Eagleson and Denise Marsden

YOUTH ADVOCACY UPDATE

In-person *Online* *2 CPD hours*

When: 11 November 2025
Chair: Dale Lloyd
Presenters: Her Honour Judge Ida Malosi, Craig Clark, Kirsten Evans, Emily Hockly and John Wu

FAMILY LAWYER AND LAWYER FOR CHILD – INTERACTIONS AND INSIGHTS

Online *1.5 CPD hours*

When: 12 November 2025
Presenters: Helen Tyree and David Tyree

ENVIRONMENTAL LAW CONFERENCE

In-person *Online* *6 CPD hours*

When: 13 November 2025
Chair: Bronwyn Carruthers

INTRODUCTION TO FAMILY LAW ADVOCACY & PRACTICE

In-person *13 CPD hours*

When: 25-26 November 2025
Chair: Sarah Ineson and Helen Tyree

New partnership with Gallagher Insurance delivers value to members and the profession

A strategic partnership between the New Zealand Law Society Te Kāhui Ture o Aotearoa and Gallagher Insurance is already delivering tangible benefits to members and the wider legal profession. Launched in September, the collaboration offers exclusive access to professional indemnity insurance and supports professional development initiatives.

Amanda Woodbridge, General Manager of Representative Services and Strategy, says it is rewarding to see the partnership come to life after months of careful planning.

"Gallagher is a strong addition to our Law Society Partner Programme, and we're delighted that this is about more than an insurance product. Gallagher's support for education aligns with our vision of a strong, progressive, and trusted legal profession."

At the heart of the partnership is Gallagher's *LawSure*, a bespoke professional indemnity insurance product underwritten by Agile[1], available exclusively to Law Society members and law firms that meet membership eligibility thresholds. Tailored specifically for New Zealand lawyers, particularly small firms and sole practitioners, *LawSure* offers comprehensive coverage and expert support.

> **"I was genuinely impressed with Gallagher's LawSure pricing, especially the lower excess. The application process was simple and straightforward, and the information pack and policy wording were clear, with all the contact details I needed.**
>
> **It's great to see our representative body offering benefits like this – it's a real value-add"**
>
> **— RICHARD SMITH, BARRISTER**

Early feedback from members using *LawSure* has been positive, with users noting good value and helpful application processes. attractive pricing and great customer service.

Gallagher has also demonstrated its commitment to professional development for the legal profession. It is the premium sponsor of the Family Law Conference (16–17 October) and recently partnered with the Law Society to deliver a webinar on Managing Professional Risk. Head of Financial and Professional Risks Amanda Halfacree and Executive Broker Jac Heale shared insights on the causes of professional claims, emerging risk trends in legal practice, real-world case studies, and strategies for strengthening risk management.

Amanda Woodbridge says the partnership reflects the Law Society's commitment to delivering greater value to members.

"We received clear feedback from members, particularly small firms and sole practitioners, that they wanted more choice and support to manage their businesses effectively. We've responded to that, and our team looks forward to expanding offerings that help small practices thrive."

1. Agile Insurance Group NZ Limited. Agile are a Lloyd's of London syndicate (Syndicate number AUS 2427).

Key points about LawSure

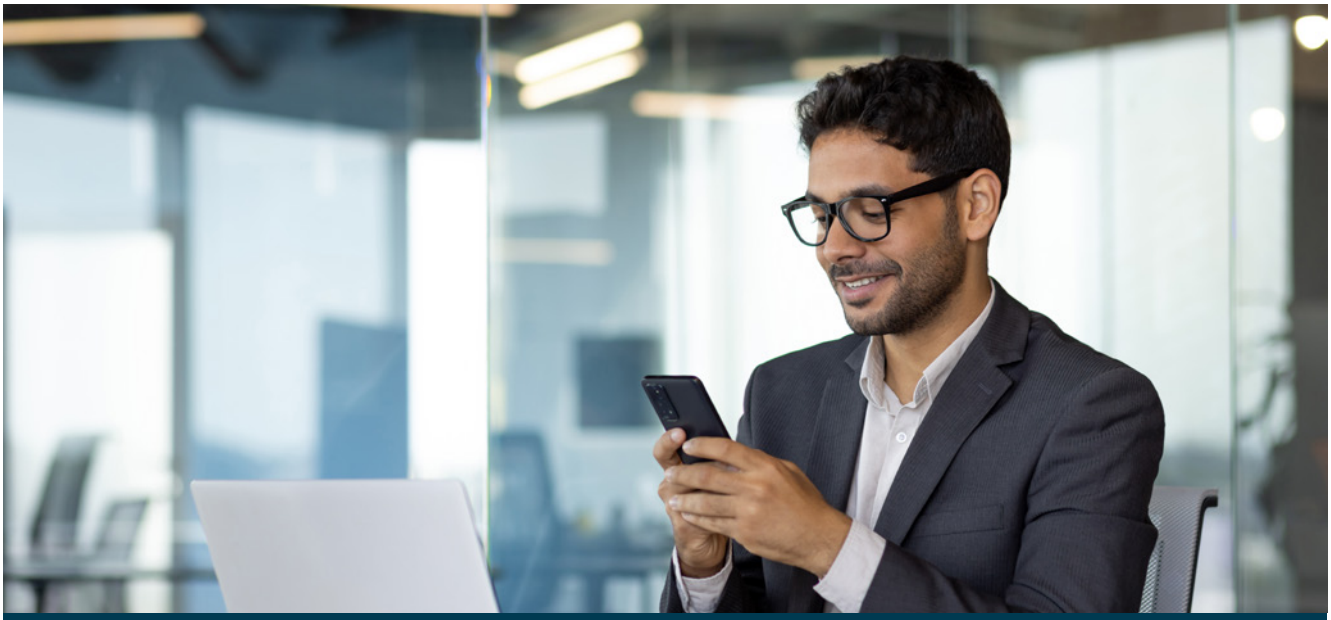
LawSure is exclusive to Law Society members and firms that meet membership eligibility thresholds.

- While Law Society members and eligible firms get access to Gallagher's *LawSure*, they still need to meet Gallagher's requirements.
- Pricing is available on application and may vary depending on individual practice needs.
- Lawyers should undertake their own due diligence and seek independent advice before purchasing any insurance product.
- The Law Society does not endorse *LawSure*. Information provided does not constitute financial or insurance product advice.

For more information visit: *www.ajg.co.nz/lawsure*.

Membership thresholds to access LawSure

Total lawyers at the firm	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Number of paid 3PQE Law Society members	1	2	2	3	4	4	5	6	7	7	8	9	10	10	11	12	13	13	15	16



Our Partner Programme

Gallagher joins ANZ and LexisNexis as strategic partners of the Law Society. Through these partnerships, we aim to enhance the relevance and value of membership, support resilient and future-ready practices, and help the profession address real-world challenges.

Make the most of the savings

Law Society members can also access savings on banking, accommodation and travel, fuel and vehicle expenses and many other categories through our Law Society Partner Programme app.

1. **Get the app**

   Download the Law Society Partner Programme app from the App store or GooglePlay.

2. **Sign up**

   Sign up using your Law Society Membership Number. This is the same as the six digit Lawyer ID number you use to log into registry – you'll find it on your practising certificate. Contact *membership@lawsociety.org.nz* if you need assistance.

3. **Browse the offers**

   Tap 'All Offers' in the app to see the full list of Law Society offers or select the category group if you are looking for something more specific.

4. **Redeem in-store or online**

   Read the coupon to find out how to redeem your discount. If the offer is redeemable in-store, present your app at the point of sale. If the offer is redeemable online, simply press the link or follow the instructions on the discount page.

What a Lawyer Fireside panel:
Sam Lindsay, Sam Thorp, Jeremy Johnson, Gemma Wragg, and Sarah Wilson

Jordan Neville
National New Lawyers Group

Inaugural New Lawyers' Conference an overwhelming success

Connection and confidence building were in abundance at the inaugural New Lawyers' Conference held at Te Pae Christchurch Convention Centre in August.

Inspirational and engaging key note speakers Rez Gardi MNZM and Nigel Hampton KC encouraged delegates to follow their passion and build a strong network of personal and business relationships, while Dr Sarah Anticich and Joe Consedine presented compelling sessions designed to build confidence and capability in the early stages of careers, with particular focus on psychological safety and emotional intelligence.

Plenty of opportunities were provided throughout the one-day conference for delegates (lawyers with 0-7 PQE) to engage and connect, and that connection featured highly in the overwhelming positive feedback received.

Nigel Hampton KC

The next big idea needs you to protect it.

A **Master of Intellectual Property** gives you the qualifications to be a patent or trade mark attorney in New Zealand and Australia.

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