

Independent review of the statutory framework for legal services in Aotearoa New Zealand

Final Terms of Reference in response to feedback

The Terms of Reference for the Independent Review of the statutory framework for legal services in Aotearoa New Zealand (the Review) have been finalised by the Independent Steering Group (the Steering Group) after a review of feedback received from the public and the profession on proposed Terms of Reference during a consultation held earlier this year.

Approach to consultation

A survey, and an invitation to make a submission, was sent to all lawyers listed in the New Zealand Law Society's (the Law Society) Registry, a range of lawyers' and para legal professional associations and groups, law schools, and relevant organisations and government agencies. It was communicated on the Law Society's website and social media channels, and through the weekly LawPoints email bulletin.

The Steering Group Chair also met with a number of groups to gather their perspectives: Te Hunga Rōia Māori o Aotearoa, Pacific Lawyers Association, New Zealand Asian Leaders Association, Aotearoa Legal Workers Union, Auckland Young Lawyers, Citizen's Advice Bureau, Law Society Council, New Zealand Asian Lawyers, New Zealand Society of Conveyancers, and Wellington Young Lawyers.

Summary of feedback

The Steering Group received 624 survey responses to the proposed Terms of Reference and nine written submissions.

Feedback indicated that the proposed Terms of Reference were largely supported. Consultation meetings, submissions, and an average of 73% of survey respondents agreed or strongly agreed across all the questions, with feedback centred around providing greater clarity on some matters, minor wording changes, or broadening of the proposed scope. Across all questions an average of 15% of respondents were neutral, and an average 12% disagreed or strongly disagreed with feedback mainly centred on satisfaction with current arrangements, and not wishing to extend the reach of the Law Society

Feedback confirmed the proposed areas of scope for the Review as:

- Aspects of the regulatory framework – conduct, complaints and discipline, regulated services, and appropriate separation of interest
- Aspects of the organisational and governance framework – New Zealand Law Society and Governance.

Changes to the Terms of Reference in response to feedback

The Steering Group considered the consultation feedback to identify areas of focus and refinement. They did not consider any comments that responded to the questions posed in the Terms of Reference. These comments will instead be provided to the Reviewer. The Steering Group also excluded changes that would widen the scope of the Review to any other independent body or sector.

Some themes in the feedback spoke to the overall direction of the Review and were core considerations for the Steering Group:

Te Tiriti o Waitangi, inclusion and diversity

There were mixed views on the place of Te Tiriti o Waitangi in the Review, ranging from those who thought it was not relevant, to others who felt it should be included in all areas of scope. Some respondents felt New Zealand's diverse and multicultural context was as important, if not more important, than its bicultural foundations.

The Steering Group decided to include these matters in the Review objectives and scope of the Review. This will provide an opportunity to consider differing perspectives and provide a clear positioning which is unlikely to occur again in the medium future. Considerations of te ao Māori frameworks and of inclusion and diversity have been included as areas for examination within aspects of the regulatory and organisational frameworks.

Government regulation

There was some feedback that government regulation should be in scope for the Review, and mixed views as to the appropriate separation of the Law Society's regulatory and representative functions.

Given the range of views expressed, the Steering Group agreed the Terms of Reference should make a clear distinction between direct government regulation (out of scope in accordance with the commitment to uphold the rule of law), and a potential regulatory function for an independent entity such as a legal ombudsman or a tribunal which has been included as an area for examination in aspects of the regulatory framework.

Culture, safety, health, and wellbeing

Whilst the health and wellbeing of legal professionals was included in the proposed objectives and scope for the Review, some feedback was that this should be strengthened to include an examination of the culture of the legal profession, including aspects of safety for lawyers.

The Steering Group agreed to extend the Review objective of the health and wellbeing of legal professionals to include a culture of safety, and to strengthen the theme of culture, safety, health, and wellbeing as an area for examination, particularly in the areas of conduct and vexatious complaints. This includes positioning the Law Society as the kaitiaki of the legal profession, and examining the role of the Law Society in promoting a positive workplace culture.

Relationships with other bodies

A significant portion of respondents commented that legal education and conveyancers should be in scope for the Review. Neither the New Zealand Council of Legal Education or the New Zealand Society of Conveyancers supported this view, and as separate entities have the right to determine this.

The Steering Group noted that the role of continuing professional development is included in the Terms of Reference an area of education that is within the mandate of the Law Society,

and decided that qualifications and evidence of qualifications should be out of scope as this was the mandate of the New Zealand Legal Education Council. The Steering Group also added a statement that the New Zealand Society of Conveyancers will be consulted on any potential changes that are likely to affect them, and their views made known in the Review report.

OPTION ONE

The Steering Group also made changes to the Terms of Reference in response to feedback to:

- Clarify that the age of the Act was not a driver for the review, but rather the changes that have occurred in the legal profession since the Act came into force
- Clarify the nature of competition and innovation as a driver for the Review
- Include an examination of tikanga-based approaches within the complaints system
- Extend the period of the Review to up to twelve months.

The Steering Group will now begin robust and transparent process to select a Reviewer. We are anticipating the Reviewer will be appointed by the end of the year.

OPTION TWO:

Key themes from the feedback are provided in the table below. The Steering Group has made some additional changes to the Terms of Reference in response to this feedback.

The Steering Group will now begin robust and transparent process to select a Reviewer. We are anticipating the Reviewer will be appointed by the end of the year.

Key themes - feedback on the proposed Terms of Reference for the Review	
Drivers for the Review	<p>60% of survey respondents supported the drivers for the Review, and 20% disagreed.</p> <p>Comments included feedback that the age of the Act was not itself an issue, differing views on the inclusion of bi-culturalism, the need to include multiculturalism, and some disagreement with or wish for clarification of the inclusion of competition and innovation as a driver.</p>
Objectives and considerations for the Review	<p>71% of survey respondents agreed with the objectives for the Review, and 15% disagreed.</p> <p>Comments included differing views on the role of the Law Society in relation to Te Tiriti o Waitangi, the need to ensure diversity is not only based on ethnicity, and that the culture of the legal profession and the safety, health and wellbeing of lawyers needed more emphasis. Respondents who disagreed with the proposed objectives felt the current model works well and already adequately addresses the proposed objectives.</p>

Scope for the review	72% of survey respondents agreed with the proposed scope for the Review and 14% disagreed. Comments are captured in the aspects of the regulatory and organisational frameworks.
<i>Aspects of the regulatory framework:</i> Conduct	76% of survey respondents agreed that Conduct should be in scope for the Review, and 12% disagreed. Comments included the need for a clearer framework of acceptable behaviour within and outside the workplace, between lawyers, non-lawyers and clients. Culture change was also required. Others felt that matters should be dealt with through criminal or employment law mechanisms, or would be addressed through by recent changes to the Conduct and Client Care Rules and the Continuing Professional Development Rules.
<i>Aspects of the regulatory framework:</i> Complaints and discipline	81% of survey respondents agreed that complaints and discipline should be in scope, and 8% disagreed. Comments included poor timeliness, lack of safety in the current complaints system, and the need for greater transparency and improved management of vexatious complaints. A strong theme was the need for alternative dispute resolution pathways including tikanga frameworks.
<i>Aspects of the regulatory framework:</i> Regulated services	81% of survey respondents agreed that Regulated Services should be in scope for the Review, and 7% disagreed. Comments in favour included that the increase in non-regulated professions providing legal services lessened protection of consumers, whereas others felt this was beyond the remit of the Law Society, or that the current framework was adequate.
<i>Aspects of the regulatory framework:</i> Appropriate separation of interests	76% of survey respondents agreed that separation of interests should be in scope for the Review, and 10% disagreed. Comments included views that one entity should not have both regulatory and representative functions, and others felt that there is no evidence that change was needed. Some felt that separation may be costly, inefficient, and a cause for confusion.

<p><i>Aspects of the organisational and governance framework:</i> New Zealand Law Society</p>	<p>77% of survey respondents agreed that the functions and structure of the Law Society should be in scope for the Review, and 5% disagreed.</p> <p>Comments included some who felt the current system was functioning well, whereas others felt that organisational structure, financial management, governance and culture should be examined.</p> <p>Some respondents commented that the national and branch model should be re-examined, although there was disagreement over whether a national, district or branch model would be preferable.</p>
<p><i>Aspects of the organisational and governance framework:</i> Governance</p>	<p>75% of survey respondents agreed that governance should be in scope for the Review, and 6% disagreed.</p> <p>Themes emerging under this section included how people are appointed for board roles, the optimum number of people on the board, and challenges with the election/volunteer structure. Some feedback raised diversity of the board as an important consideration, across gender, ethnicity and geography.</p>
<p>Out of scope for the Review</p>	<p>59% of respondents agreed with the proposed out of scope items and 21% disagreed.</p> <p>Comments included a call to bring formal education, conveyancers, and government regulation in scope, although some felt these should remain out of scope.</p>
<p>Guiding principles</p>	<p>79% of survey respondents agreed with the proposed guiding principles for the Review. 11% disagreed, particularly with the inclusion of a commitment to Te Tiriti o Waitangi. Some felt that the rule of law should be included in the guiding principles, although this is an objective for the Review.</p>
<p>Engaging with stakeholders, and managing the review</p>	<p>73% of respondents agreed with the list of proposed stakeholders, and 13% disagreed, with most comments centred around which stakeholders should be engaged. These comments will be passed to the Reviewer.</p> <p>There were some suggestions that the timing for the review may need to be longer, and views were provided on the type of reviewer. This feedback will be considered by the Steering Group in its approach to appointing a Reviewer.</p>