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New Zealand Law Society

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Tēnā koe

Accessibility and security at te kōti

Over recent months the Law Society and Tāhū o te Ture have discussed opportunities around how the profession might expedite their entry into te kōti (courts), without adversely impacting the intent of our kōti security measures. I thought it might be useful in pointing out some of our key drivers that influence our wider health and safety system, so that you might find our proposed solution favourable.

As an organisation, we appreciate that through our evolving health and safety system, the profession will have seen changes in how te kōti are accessed. Our aim is safe accessibility to Justice for all kōti users.

Tāhū o te Ture is continuing to mature its approach to health, safety and security. The death of a kōti participant in Te Papaioea (Palmerston North) District Court in 1999 prompted the Courts Security Act 1999 and the initial establishment of Court Security. Our security response continues to be driven by a changing landscape within Aotearoa; shaped by significant wider events such as the Ashburton Shootings in 2014 and Ōtautahi (Christchurch) mass shootings in 2019. In addition, we have witnessed changes in central government expectations through the introduction of the Health and Safety at Work Act 2015, the Protective Security Requirements, and recently the COVID-19 Public Health Response Act 2020.

Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 (HSWA) puts clear legal requirements on organisations to manage any work-related risks that could cause serious injury, illness or death. The principles of the Act centre on ensuring everyone who goes to work should come home healthy and safe. It also requires us to consider the health and safety of anyone who enters our places of work – contractors, participants, judicial members, lawyers, sector partners and other visitors to our sites.

Under HSWA, Tāhū o te Ture is considered a Person Conducting a Business or Undertaking (PCBU), as such, we have a primary duty of care - a primary responsibility for people's health and safety at our places of work.

As a PCBU, we must ensure we have practices in place to provide for and maintain a work environment that mitigates any risk of harm e.g. safe plant and structures, safe systems of work, and adequate facilities for the welfare of our workers. We must also train and supervise people to protect them from risks arising from the work they do, as well as monitor the workplace to ensure people are not exposed to illness or injury through the work they do.

'Officers' under HSWA must ensure "due diligence" is in place to meet our health and safety obligations. The Officers at Tāhū o te Ture are the members of the Senior Leadership Team. They need to be aware of the risks within our organisation that impact people's health and safety, understand how those risks are

being mitigated, and make decisions around balancing the degree to which risks can be mitigated, with enabling our work to continue and ensuring access to justice.

A key guiding principle of HSWA is that, as far as is reasonably practicable, health and safety risk should be eliminated or mitigated. Something is 'practicable' if it is possible or capable of being done and deemed reasonable, if comparative to what other businesses would reasonably do in the same situation. In summary, the Act expects Tāhū o te Ture to have in place measures which ideally eliminate risk or mitigate them to the highest degree possible. In the event of an incident requiring external investigation, our due diligence and application of measures will be tested against the "reasonably practicable" definition by WorkSafe.

Tāhū o te Ture understands the potential for violence to be one of its ever-present critical risks (a risk that could cause serious injury, illness or death) and that as the PCBU, it has a responsibility to do what is reasonably practicable to eliminate those risks, where the risk cannot be eliminated, it must be minimised. Amongst a range of health and safety measures in place, we employ a tīma of specialists in the security field who are deployed with specialist training and equipment, including security screening, as a response to this risk.

Protective Security Requirements

The Protective Security Requirements (PSR), established in 2014, sets out the Government's expectations with the aim of ensuring there can be trust and confidence in each agency's security settings. There are a set of requirements that Tāhū o te Ture, alongside other agencies, are expected to meet. This is further driven by a capability maturity model which agencies have been required to identify and routinely reassess their own level of maturity against, as well as establishing future maturity targets. Efforts in this space to meet the requirements, as well as progress maturity, are reported back to the Government annually.

The PSR ensures agencies consider and manage security in a wholistic way, across the spectrum of governance, personnel, information and physical security elements, for example ensuring:

- Senior leadership are engaged in security matters, as well as driving the performance of security settings.
- We have the appropriate level of vetting in place to ensure we employ people who are suitable for the roles they are employed into; and they do not pose a risk in their role (to others, to official information they have access to, or equipment and infrastructure).
- There are the right tools, practices and processes in place to safeguard the confidentiality of information, making it accessible only to those authorised and with a necessity to have access;
- Our physical environments are designed and built with security in mind, supported by procedures and practices that provide a safe working environment for our people, Judiciary, partners, contractors, participants and the public.

These actions must be consistent across the entire agency, as well as imbedded. Collectively these efforts provide confidence in ensuring the integrity, safety and security for people, information and assets.

COVID-19 Public Health Response Act 2020

The COVID-19 Public Health Response Act 2020 was passed as standalone legislation to provide a legal framework for responding to COVID-19, broadly based on the Health Act 1956. The Act allowed the Minister of Health (or the Director-General of Health in specified circumstances) to make orders under section 11 to give effect to the public health response to COVID-19 in New Zealand.

COVID-19 has impacted the way services have been delivered in te kōti, particularly at Alert Levels 2 – 4. As part of the COVID-19 effort, Tāhū o te Ture ensures the availability of contact tracing QR codes and Court Security manages a contact tracing register at kōti entry points for those without phones or without the Ministry of Health's NZ COVID Tracer App, as per the Government's expectation.

Growth in Tāhū o te Ture

The consequence of this changing landscape has seen Tāhū o te Ture develop a greater understanding of our responsibilities, as well as a further awareness of the risks within the environment that require elimination or mitigation. In response, investment in safety and security improvements throughout the agency include:

- Establishing the Health, Safety and Security Governance Committee (HSSC) which is attended by members of senior leadership, as well as the forming of the Health, Safety and Security team;
- Introduction of standards, policies and procedures which more effectively minimise, and wherever possible, eliminate health and safety risks for our people, judiciary, partners and participants;
- Redesign and upgrades to our kōti environments to provide greater safety and protection, including creating clear physical definitions between restricted and public spaces;
- Greater investment in health, safety and security tools and equipment such as electronic security (e.g. electronic access control and CCTV), wider deployment of screening equipment at kōti entry points, and the introduction of identification cards;
- Expanding the number of health and safety representatives, as well as ensuring we have health and safety committees that oversee each of our sites;
- A more visible security presence on our frontline with significant increases in personnel within the Court Security team across the country (this has grown by over 170 roles in the last three to four years);
- A greater focus on kōti entry points, including the introduction of pandemic contact tracing registers, QR codes, facemasks, and thermal imaging cameras (for Alert Levels 2 – 4).

Accessibility and screening at te kōti

Court security screening is a key control within our health and safety system, a measure that is reasonable and practicable as per HSWA, for the mitigation of the critical risk of violence. This security measure sanitizes our kōti environments, ensuring weapons or other “weapons of opportunity” are not available

when altercations do occur and in which their availability and use would significantly heighten the level of harm an incident would result in.

Reporting tells us that over two thousand items were prevented from entering our kōti in the 2019-20 FY. Approximately 96% of these items were “objectionable items” (that while understood to be carried without intention, posed a risk to cause harm if weaponised against another individual within te kōti). Security screening was the pivotal measure that enables us to detect and eliminate these items from entering te kōti.

Tāhū o te Ture recognises its relationship with the profession who form an integral part of te kōti process and require frequent and timely access to te kōti . Exceptions to screening would reintroduce a level of risk which means our Senior Leadership Team would not have confidence that we are doing all that is reasonably practicable, unless we can offer an alternative control that provides the same effect.

To minimise the inconvenience of the entry process at te kōti (where there are queues), Tāhū o te Ture propose that the profession consider wearing an identification card that would allow members to circumvent the initial queue and make it possible to be screened immediately, ahead of other kōti participants.

Should this proposal be met with support, Tāhū o te Ture will continue to work with the Law Society to implement an ID card system, specifically for members seeking expedited access to te kōti where queues have presented a challenge to their regular access.

Nāku iti noa, nā



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