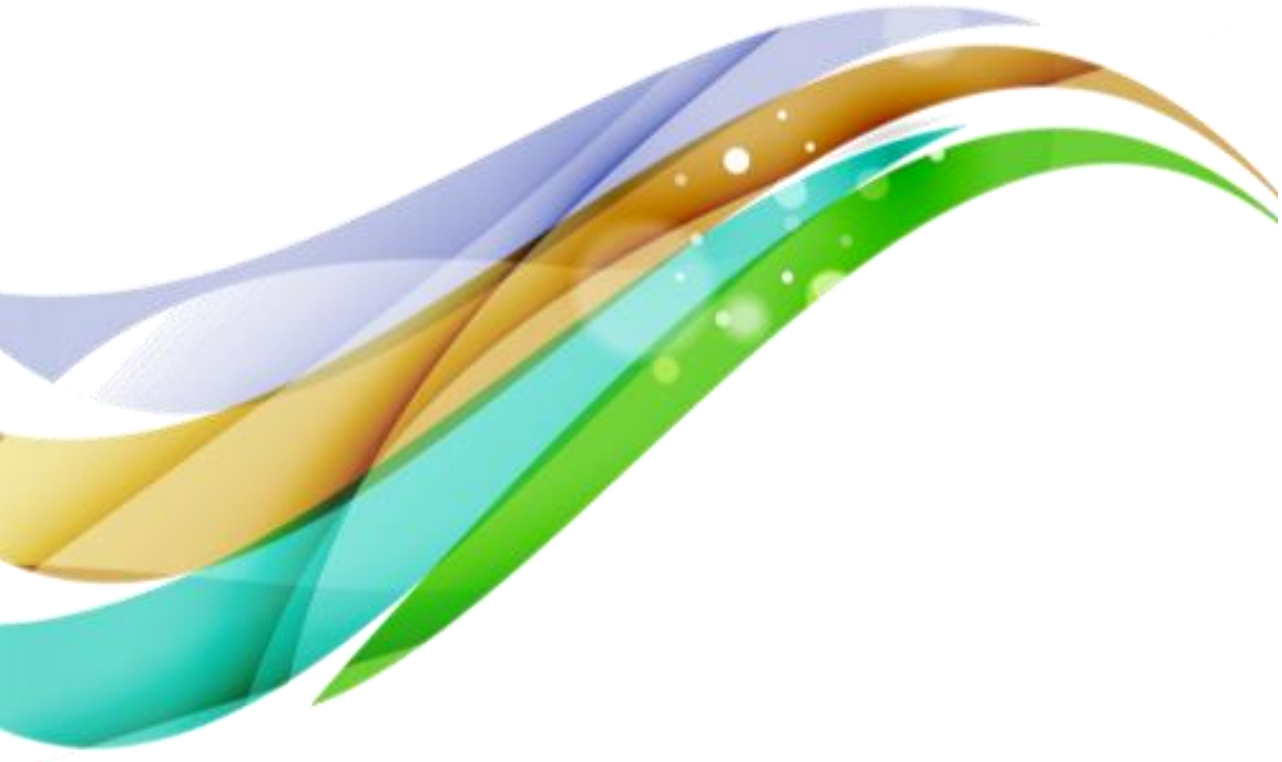
Regulating Lawyers in Aotearoa New Zealand

Te Pae Whiritahi i te Korowai Rato Ture o Aotearoa

Analysis of consultation responses

Prepared by consultants from Sapere Research Group
November 2022



Contents

Glossary 2

Please read 3

What this thematic analysis includes 3

What this thematic analysis does not include 3

What you need to be aware of when reading this report 3

Executive summary 4

1. Introduction 5

1.1 Background to the consultation 5

1.2 The consultation period 5

1.3 The respondents 5

1.4 Caveats 7

1.5 Reading this document 8

2. Regulator independence 9

3. Promoting inclusion 14

4. Promoting good conduct, CPD and pro bono 28

5. Conduct and complaints 43

6. Statutory framework 58

7. Which providers are regulated 67

8. Regulating business structures 76

9. Institutional arrangements 83

10. Other issues 90

Glossary

Abbreviation	Stands for
ABSs	Alternative business structures
CLC	Community Law Centre
CPD	Continuing Professional Development
LCA	Lawyers and Conveyancers Act 2006
LCRO	Lawyer Complaints Review Office
MDPs	Multi-disciplinary practices
Law Society	New Zealand Law Society
SC	Lawyers Standards Committee

Please read

We thank everyone who offered comment through the survey or by email submission on the Panel's consultation paper, which was published in June 2022. We appreciate the time people spent in developing their email submissions or responding to the survey and recognise that many submissions were extensive and well considered.

What this thematic analysis includes

This thematic analysis is based on responses to our consultation document: 1,308 responses to an anonymous online survey and 183 email submissions.

What this thematic analysis does not include

The Panel held many meetings with representative groups, branch events with lawyers and individual meetings, amongst other activities – these views are not reflected in this report.

What you need to be aware of when reading this report

The survey responses were anonymous and the written submissions were made in confidence. Given the stakeholder interest in this review, this analysis of consultation responses has been prepared to provide an insight into the key themes raised in the responses. This analysis is one of several inputs into the Panel's review of whether the current arrangements for the regulation and representation of lawyers and legal services are fit for purpose.

We note that around a fifth of the email submissions are from representative groups which represent the views of hundreds of individuals, including significant components of the legal profession. Weighting of the submissions was not undertaken nor would it be appropriate. Rather, this consultation analysis focusses on identifying themes that repeatedly arose in the email submissions and survey responses.

The submissions received on the discussion paper were far more varied, with a much greater range of views than would usually be found in a consultation process. There was considerable variety of opinion.

Any metrics quoted in this report are from the survey only and do not necessarily reflect the views of the email submissions. Quotes and detail are from both the survey and the email submissions. Generally, quotes were chosen to illustrate points that were made by multiple submitters.

This report was prepared by Sapere Research Group as part of its role as secretariat to the Panel and all quotes were selected for inclusion by Sapere.

Executive summary

This is a thematic analysis of submissions received by the Independent Review whether by online survey or email submission.

The New Zealand Law Society | Te Kāhui Ture o Aotearoa asked the Independent Review Panel to review whether the current arrangements for the regulation and representation of lawyers and legal services are fit for purpose. As part of the review, the Panel released a discussion document on 14 June 2022 and invited submissions on the issues raised.

The Panel received 1,308 survey responses and 183 email submissions.

All individual responses were read by the Panel. They are grateful for the time everyone took in crafting their submissions.

A selection of results follows, but it is impossible to summarise the wide-ranging views received on the topics here. **No topic had an overwhelming majority** and there were strong arguments on both sides for every question.

Key highlights

- Almost two-thirds (64%) of survey respondents agree that changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe within their workplaces.
- Almost two-thirds (61%) of survey respondents agree that changes are needed to the complaints model. The most common issue highlighted amongst survey respondents and email submissions was that complaints take too long to resolve.
- Survey respondents were split on whether an independent regulator was needed (44% agree vs 45% disagree)
- Over half of survey respondents agree that changes are needed to:
    - improve diversity and promote a culture of inclusion
    - the Act's coverage of broader providers of legal services

What next?

The Panel delivered its report to the Law Society Board in March 2023. This consultation analysis document and other working papers prepared by Sapere will be available on the review website (legalframeworkreview.org.nz) when the final report is publicly released by the Law Society.

1. Introduction

1.1 Background to the consultation

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (the Law Society) asked a three-person Independent Review Panel (the Panel) to review whether the current arrangements for the regulation and representation of lawyers and legal services are fit for purpose.

The Review was prompted by concerns about the suitability of the complaints model, the culture and diversity of the legal profession, the powers available to the regulator to deal with unacceptable behaviour (including sexual harassment, bullying and discrimination) and whether a membership body such as the Law Society should be responsible for regulating the legal profession. The Panel also considered the need for any changes to better protect consumers of legal services, ensure fair competition, enable innovation within the profession, and honour Te Tiriti o Waitangi and the bicultural foundations of Aotearoa New Zealand.

As part of the review, the Panel released a discussion document on 14 June 2022 and invited submissions on the issues raised.

1.2 The consultation period

Consultation on the discussion document was open for 11 weeks, from 14 June to 31 August 2022. There were two possible ways to give feedback, by anonymous e-survey or email submission. Some email submissions were received after 31 August but are still included in this analysis.

The Panel also undertook a series of activities to get feedback on the issues raised by the discussion document. These provided an opportunity for people to ask questions and seek clarification about the document, and to help them prepare their submissions. The activities included three webinars for the public and the legal profession (CPD accredited for practising lawyers), five branch events for the profession and numerous meetings with individuals and organisations.

1.3 The respondents

Respondents could fill in an online survey or email a submission.

1.3.1 Email submissions

There were 183 submissions received by email. The majority of respondents were practising lawyers, submitting in their own capacity. The next most common category was representative groups for lawyers. These groups can represent hundreds of individual lawyers. Some email submitters made more than one submission; these are counted as one submission for the purposes of this analysis.

Role	No.
Lawyer	108
Representative group (lawyers)	23
Other (includes academics, advocates and government)	19

Law firm	13
Representative group (other)	7
Consumer	6
Unknown	4
Representative group (consumers)	3

Some email submissions followed the questions in the discussion document or the survey, while others provided comment on specific matters. The most common topic covered in the email submissions was the complaints system, followed by the promotion of good conduct, continuing professional development and pro bono, and the statutory framework.

1.3.2 Anonymous survey

The survey received 1,308 responses where respondents answered at least one question.[1] As no questions were mandatory, some respondents did not answer some, or all, of the demographic questions (note that some tables below do not add up to 100% due to rounding).

63% of respondents were aged 40 and over

Prefer not to answer	20-29	30-39	40-49	50-59	60-69	70+
7%	10%	20%	25%	20%	13%	5%

Slightly more women than men

Prefer not to answer	Female	Male	Other*
10%	45%	42%	2%

* Other includes gender neutral and transgender

Over half of respondents have not been subject to a complaint

Yes	No	Other
34%	56%	10%

The majority of respondents identified as New Zealand European (note that respondents were able to select more than one option)

Prefer not to answer	Māori	Pacific peoples	Asian	New Zealand European	Other European	Other*
11%	9%	3%	5%	62%	4%	6%

* Other includes African, Middle Eastern and Latin American

[1] There were an additional 528 responses. However, these did not answer any questions and are therefore not counted as a response for this analysis.

Most respondents were members of the legal profession. The majority of lawyer respondents were working at a law firm (note that respondents were able to select more than one option)

Category	No.
Member of the legal profession	883
Hold a law degree but not practising	34
Other provider of legal services	27
Consumer	67
Legal academic	26
Law student	13
Public sector official	49
Judge or tribunal member	17
Volunteer associated with the Law Society	32
Employee or elected member of the Law Society, its Board or Council	29
Prefer not to answer	17

Organisation	No.
Law firm	489
Sole practice	137
Chambers	90
In-house lawyer within government	94
In-house lawyer in private company	39
In-house lawyer in voluntary sector	6
Community law centre	9
Academic institution	16
In tertiary study	5
Government agency (non-legal role)	19
None	12
Prefer not to answer	49

1.4 Caveats

There are important limitations to the information in this consultation analysis document. The findings reflect the views of those who chose to respond to this consultation. The findings may not be representative of the views of the wider population.

Some respondents completed both the survey and provided an email submission, often covering the same topics. As the survey is anonymous, we were unable to match these, therefore the total number of one-off responses will be lower than the total number of responses.

Other limitations include:

- Respondents were free to choose which questions they wanted to answer and therefore some questions have more responses than others.
- Some respondents opted not to answer closed-ended questions but did offer open-ended responses (and vice-versa) to the same question. This means there is not a direct correlation between the number of people who supported/did not support a particular statement and the number of people who gave a qualifying comment.
- There was considerable repetition between responses given to different questions, partly due to the survey design allowing multiple chances for feedback on similar points.
- Some respondents indicated a lack of information in the discussion document, or in their own knowledge, preventing informed responses or noted difficulty in interpreting the questions.

Demographics

While there is some discussion on demographic differences throughout this analysis for certain questions, it is important to note the following limitations with these discussions:

- Some respondents may have completed the survey more than once.
- Not all respondents completed the demographic information, therefore any disaggregation discussed in this analysis will be incomplete.
- Email submitters were not asked to provide demographic information, so any discussion in this analysis is based solely on survey responses.
- A high proportion of survey responses did not answer any questions on demographics, or only answered selected questions.

As a result, the survey is not statistically representative of any population (lawyer or consumer) and caution should be used when reading this analysis.

1.5 Reading this document

This document is set out by chapters that follow the survey questions. The overall structure is:

1. Overall graph for all questions in chapter – this is populated using survey data only
2. Question by question detail – this uses both survey data and email submissions
3. Demographic differences if relevant – this is populated using survey data only.

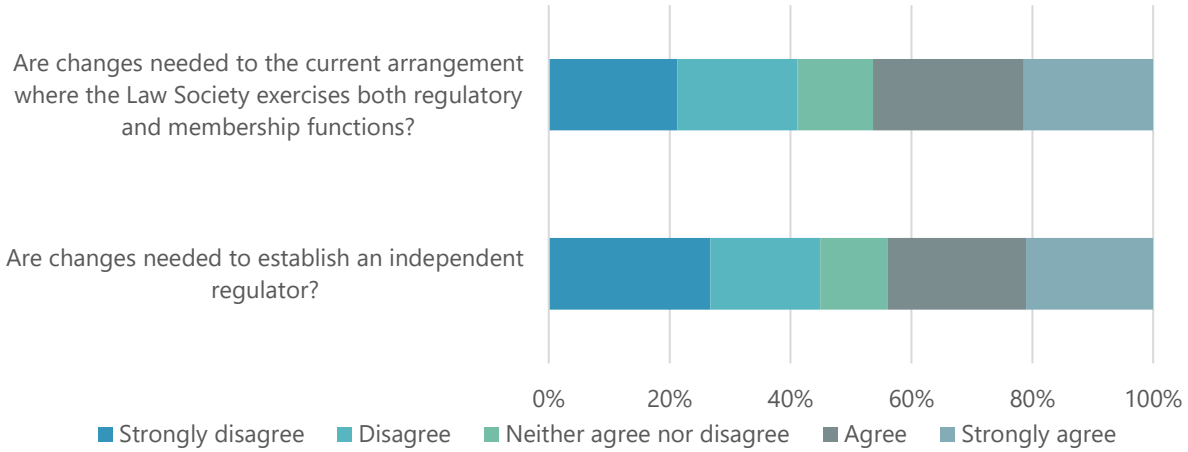
There are occasions where percentages provided from the survey data may not add up to 100% due to rounding. Quotes are attributed to submission method and, for email submissions, the category.

Frequency analysis was not possible to the level of 'x submitters said y'. This is because submitters sometimes provided similar statements across multiple questions, and this was not tracked. Therefore, the closed-ended survey responses were used as the main measure of frequency.

2. Regulator independence

- Relatively even split on whether survey respondents think changes are needed to current arrangements and an independent regulator needs to be established.
- Out of the representative group email submissions that provided comment on this issue, a majority agreed an independent regulator should be established.

Figure 1: Survey results on regulator independence



*n=850 for first question and n=842 for second question

2.1.1 What changes are needed to the current arrangements where the Law Society exercises both regulatory and membership functions?

Are changes needed to current arrangements?
46% agree or strongly agree
41% disagree or strongly disagree
13% neither agree nor disagree

Should there be an independent regulator?
44% agree or strongly agree
45% disagree or strongly disagree
11% neither agree nor disagree

Note: survey responses only

2.1.1.1 Changes are needed

46% of survey respondents either agreed or strongly agreed that changes are needed to current arrangements, and 44% agreed or strongly agreed there should be an independent regulator. This view was shared with many email submissions from multiple representative groups, law firms and individuals. A common reason provided by both survey respondents and email submissions as a case for change was the inherent conflict of interest between regulatory and representative functions.

> NZ is pretty much unique in having the members' society and the regulatory body as one and the same. These roles cannot co-exist together without conflict. [consumer submission]

Several submitters (including representative groups) noted that the Law Society is currently failing its members in its representative obligations.

> Change would increase the community's trust and confidence in the regulation of the profession, as well as the profession's trust and confidence in the representative work of the Law Society…There needs to be significant and transformative change to the current system. Decoupling regulator and representation functions can also provide a catalyst for making these types of changes. [representative group]

Submitters noted that lawyers are currently discouraged from seeking help or raising issues, due to the conflation of educational and support functions with disciplinary functions.

> The current arrangements have their limits. A member feeling under pressure, for instance with a large workload, is unlikely to talk freely with someone who is employed by the institution that is also their profession's regulator. In doing so they may fear some form of regulatory action or an impromptu inspection which of itself would cause more stress (and not necessarily protect the consumers of legal services). [survey response]

One representative group email submission noted that there is a perception that the current model is skewed towards the regulatory functions of the Law Society and there is confusion as to whether the Law Society is the police or the advocate. As another one representative group email submitter noted, an independent regulator could be a chance to drive significant culture change.

> It appears that the Law Society is too conflicted and constrained to respond to the challenges the profession faces…we consider independent regulation would be a more effective way of driving culture change within the profession. [representative group]

Submitters gave examples of how the Law Society is currently failing in its advocacy role, including the lack of wider proactive consultation in terms of certain law reform (eg, immigration) and indications of negative experiences of serving on Law Society committees and branches in terms of constraints on what they were allowed to say.

Submitters gave the following reasons about how changes could improve on the current arrangements:

- it would support increased regulatory compliance and best practice
- it would allow for improved transparency and clarity, better protection of consumers of legal services, promotion of public confidence
- it would allow for the promotion of competition and ensure any anti-competitive conduct of lawyers can be censured in order to promote consumer interests
- it will give the Law Society a chance to bring new blood into the organisation to create greater trust and confidence amongst the legal profession.

Not all agreed that if there was a split, the Law Society should retain the representative function. Submitters (including representative groups) suggested that the Law Society should become the regulator and current membership bodies should take over representative functions. Another

individual email submitter suggested a co-regulatory model with a front-line professional body subject to independent oversight from a government body.

Email submitters noted that any changes to the current arrangements need to take into account any other proposed changes as a result of this review. For example, two email submitters noted that should there be an expansion of regulation of legal service providers and an introduction of Te Tiriti into the LCA, an independent regulator will be needed as there will be greater need for a specialised body that has time and resources to administer these changes.

2.1.1.2 Do not change

41% of survey respondents disagreed or strongly disagreed changes are needed to the current arrangements, stating that the current arrangements are working well. In addition, 45% disagreed or strongly disagreed that there should be an independent regulator. This view was shared by multiple email submissions from representative groups, law firms and individuals. A common reason for disagreeing that an independent regulator needs to be established is the specialised nature of law practice.

> I strongly advocate against an independent regulator. The practice of law is very unique and specialized and I have no confidence that lay people would be able to handle or properly engage in the regulation of the industry. [survey response]

Submitters felt that efforts would be better spent on improving the areas already identified as needing improvement. Submitters noted that a common concern with an independent regulator is the cost implications.

> I doubt an independent regulator would do more than the Law Society already does to ensure a robust legal profession. The likely cost of change would outweigh the benefits. [lawyer submission]

> I can appreciate the view of those who want to see independent regulation – and I am not opposed to that, save for the costs and upheaval of the existing system. My preference would be for better resourcing in the existing regime including better guidelines for committee members, greater transparency, and ways to improve and expedite the complaints process. [survey response]

A representative group submitter suggested that the concern about the Law Society's dual role arose from issues with the current disciplinary processes, rather than from any inherent conflict of interest. Submitters (including representative groups) highlighted concerns with government involvement in the regulation of the legal profession.

> Having a new independent regulator, likely with members appointed by the government of the day, may impede on the ability for lawyers to fearlessly uphold the rule of law, challenge the government, and as a result diminish access to justice. Indeed, any arrangement other than the legal profession self-regulating may lead to such an unintended perceived and/or actual outcome. [representative group]

> A regulatory body set up by central government would reduce the independence of the profession and lead to politicisation, regardless of attempts to make the new regulator "independent" of government. [survey response]

Some submitters commented on the small size of New Zealand and suggested that we do not have the economy of scale of other jurisdictions that have a split system. Other submitters questioned whether there was enough evidence behind the case for change.

> There needs to be new evidence that this is now creating a problem for competition and innovation in the industry or that the level of public concern about regulation of the profession is at such a high level that it is materially eroding public confidence in the profession generally and in the quality of legal services consumers receive. [representative group]

Email submitters suggested that the Law Society should continue to exercise both functions, but the current arrangements can be improved by:

- implementing a functional separation (option 2 in the discussion document), including separate branding
- introducing more sections in specialist legal areas
- developing a strategy around its representative functions to improve communications and measure effectiveness.

2.1.2 If an independent regulator is established, what functions should lie with: the regulator, and the professional membership body?

The most common functions that submitters suggested should lie with the regulator are:

- complaints and discipline
- regulatory schemes such as the fidelity fund
- setting regulations and rules
- providing education re consumer rights
- admission requirements and processes.

The representative body functions suggested were:

- law reform
- advocacy
- library services
- ensuring health and safety in the workplace
- supporting culture change
- promotion of the profession to students
- increasing cultural competency
- professional networks
- conferences and other social activities.

The following functions were variously identified by email submitters as sitting either with the representative or the regulator:

- CPD
- practising certificates

- maintenance of register of lawyers
- trust accounts.

2.1.3 If an independent regulator is established, what would be the implications for the Law Society's continued ability to provide representative services?

Several submitters noted that this would improve the ability of the Law Society to provide representative services as they would no longer have to also provide regulator functions.

> The Law Society can continue to represent the legal profession as a whole and would arguably be better placed to represent the legal professional and advocate for it because there is no potential conflict arising in relation to the regulation of professional conduct. [representative group]

Submitters (including representative groups) noted that the funding model of the Law Society would be an important consideration to ensure representative services could continue. One representative group email submitter noted that compulsory membership might be required, otherwise there may be a significant risk to the reputation and wellbeing of the profession if there was no compulsory body for the representative function, eg, sole operators. Other submitters noted that the current specialist interest groups means that there would be a risk that the Law Society would fold if an independent regulator was established and there was no compulsory membership of the Law Society. In contrast, other survey submitters stated that compulsory membership should not be required.

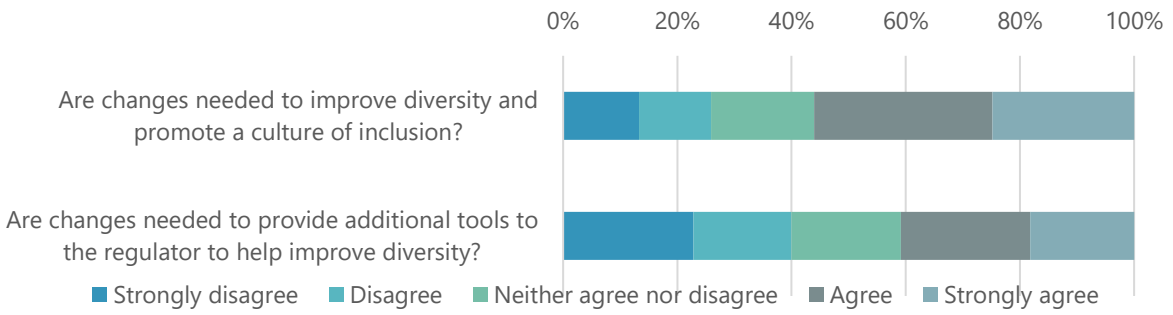
A few submitters noted that the Law Society would need to improve its skills and offerings to provide appropriate representative services.

> Many associations are struggling to demonstrate value to their members at present (see NZMA as a recent example). I believe the Law Society would need to figure out exactly what it delivered for members when it was no longer free to be a member. [survey response]

3. Promoting inclusion

- 56% of survey respondents agreed that changes are needed to improve diversity and promote a culture of inclusion within the legal profession. Multiple representative group email submissions agreed.
- Mixed survey responses to whether the regulator needs additional tools to help improve diversity. Multiple representative group email submissions agreed that additional tools are needed.

Figure 2: Survey results on promoting inclusion



*n=1031 for the first question and n=1021 for the second question

3.1.1 Over half of survey responses agreed that changes are needed to improve diversity and promote a culture of inclusion within the legal profession. Multiple representative group submissions agreed.

Note: Survey responses only

✓ **56% agree or strongly agree**

✘ **26% disagree or strongly disagree**

~ **18% neither agree nor disagree**

> The legal profession is failing to provide an inclusive environment for Māori lawyers. This is demonstrated by a number of factors including the continued lack of Māori representation at the upper-end of our profession (such as judges, partners, and [KCs]), and research indicating that Māori lawyers are at higher risk of sexual harassment, bullying and discrimination than their peers. These issues are structural and deeply-rooted…it is appropriate therefore that these non-client facing interactions are appropriately regulated and managed by the profession's regulator. [representative group]

3.1.1.1 Suggested steps for the Law Society

A focus on pathways into the profession

> Regulation within the profession is probably an ambulance at the bottom of the cliff. [lawyer submission]

> It starts with the schools teaching how laws are made, civics and then entry requirements to law schools. People can't be what they can't see. [survey response]

Multiple submitters (including representative groups) suggested that the Law Society could focus on providing scholarships and reducing barriers to entry for study. There was suggestion of a scholarship fund providing a living wage to law students and graduates. There are unpaid opportunities, but some people cannot afford not to work. And smaller firms often cannot afford to pay. Submitters suggested that mentoring programmes for law students in under-represented groups are needed.

> Proactive efforts to ensure that the legal profession includes people from all walks of life i.e. that the profession is made up of individuals from a broad range of backgrounds so that a broad range of interests are represented. This could be done by having more scholarships and mentoring programs for law students or lawyers who come from lower socio-economic backgrounds and cultural backgrounds, and making sure that these people are actually aware of, and supported to, apply for this support. [survey response].

Multiple submitters (including representative groups) noted that there is a lack of support for law graduates going through the admission process and the requirement to provide two references should be removed as it is a difficult requirement for some graduates to meet, especially from lower socio-economic environments. Additionally, the costs involved and the requirement to know a lawyer to move your admission can also be restrictive. Another survey respondent suggested making the professionals course part of the law degree, as it is a significant impediment to those who are not funded into the course by their employers.

> The admission process places far too much emphasis on the 'people of standing' references, and the requirements for this are far too narrow. For people from families that are working or 'lower' class meeting this requirement is ridiculous. Not all of us personally know doctors or lawyers when we decide to enter the profession. For example – when I was applying for admission, I provided more than the required number of 'people of standing' references. I was still called up by a member of the law society and cross examined over each of my references – and the Law Society member was extremely aggressive in tone. I had to explain how I knew each of them personally. [survey response]

An email submission from a law firm suggested that the Law Society should address the gap between how law is promoted to potential law students and the reality of the job.

Promotion

Submitters (including representative groups) suggested that the Law Society continuously advocate for inclusiveness and diversity in the profession through public campaigns, working with the education sector (including school-level) and law firms. There is a wider community perception issue of who can be a lawyer – the Law Society is positioned to create change in that perception.

As one representative group submitter suggested, the Law Society should be mandated to work with the profession to achieve an inclusive and diverse profession. It should be required to act in a transparent manner and ensure its internal culture supports and lead from the front. Communication to the profession should focus on why diversity is valuable.

Submitters (including representative groups) suggested establishing formal mechanisms, such as committees, centres and funds, that are focussed on improving diversity and inclusion. For example, one representative group email submission suggested establishing a diversity committee which oversees CPD for cultural competency and is tasked with helping to increase diversity and promote inclusion.

Individual email submitters suggested that the Law Society can promote inclusion through organising events that include celebrating different cultures, eg, Diwali festival. It can include the wider community to reinforce the message that the legal profession welcomes diversity. Another suggestion was more collegial events to allow for personal interactions from different backgrounds.

To help with the diversity of the profession, submitters suggested that the Law Society should actively promote and educate on the range of flexible working options which can and should be made available to all lawyers.

> Active promotion of part-time and flexible (including remote) working models within law firms and government in order that people who cannot or do not wish to work the "traditional" 40+-hour week onsite are able to contribute meaningfully as lawyers – and have a genuine pathway for progression. [survey response]

As a representative group submitter suggested, the Law Society should be required to promote (eg, through the Rules) increased cultural competence and actions taken by lawyers and employers to increase representation. They should also be required to report on profession-wide progress. As suggested by an individual submitter, they should actively seek out and publicise examples of diversity in the profession, with different modes of communication suited to divergent groups.

As two submitters (one individual and one representative group) noted there is a lack of education and leadership from the Law Society about disability within the profession and what steps firms and the Bar can take to support lawyers with a disability to flourish. The Law Society should take an active role in promoting legal education to the disability community and facilitate a connection between firms and the Bar with law students who identify as having a disability.

Law Society policies and processes

> Transformative change is required to build a diverse and inclusive legal profession that is equipped to serve its community. This includes focus on the work of the Law Society itself, the operation of law firms and practitioners' day-to-day work. Change must focus on every aspect of the NZLS's functions. [representative group]

Submitters suggested that the Law Society do more to support financially struggling lawyers (e.g. solo parents), or lawyers looking to return to the profession after time off. A financial credit for CLE would be a start, or a hardship discount on practising fees. Submitters asked the Law Society to consider a reduced practising fee for some professionals, eg, part-time (not the current rebate system). The current income threshold for a reduced fee needs to be significantly increased (from the current

$50,000). As one representative group suggested practising certificates should be pro-rated for those lawyers who only work part-time.

> Stop gate-keeping from the start – teach about law in schools, make its study open at university and make it easier to work part-time, including for CPD and fees – the rebate scheme isn't a reasonable approach to part-time practice (for example). Create options for judicial studies too so that it can be a proper career not a cherry, and continue the public service focus for judges and [KCs] brought in under Jonathan Temm. We need to stop being elitist in a real way. [survey response]

Representative group submitters suggested that the Law Society should have a plan to provide for an integrated strategy for increasing diversity, starting at law school. The Law Society should be required to monitor and report on progress on an annual basis. As some representative group submitters noted, the Law Society also needs to model and promote positive and diverse culture within its own organisation and ensure that any initiatives put forward work effectively.

> We need a representative body that will truly take ownership of the issues and drive the necessary change, acting in an open, transparent and accountable manner. Previous initiatives like the 2018 Gender Equality Charter and the 2017 Gender Equitable Engagement and Instruction Policy have failed and it is worth understanding why…because this illustrates what must be done differently. [representative group]

Areas for more research

Submitters made suggestions for further research to enable change to occur:

- Regular research into diversity and publication of results is needed so the Law Society sections and other groups within the profession can undertake their own member initiatives, e.g. local branch support connected to law schools.
- Investigate and understand the high attrition rate of junior women lawyers, as it is a departure from the law graduate ratio. Once they understand the issues, they can begin to address them.
- Investigate the attrition rate of students who graduate with a law degree but fail professionals – this may reflect a disconnection or lack of communication between providers of professionals and the universities.
- Research equality of outcome to find where the inequality lies in the legal sector.
- Commission a study into the role of disability within the legal profession to understand the scope of the issues.
- Research into understanding when the barriers arise and the causes of those barriers. For example, if particular groups are dropping out of law school and not showing up as applicants for roles, then that indicates a different kind of problem than if they are graduating but not getting jobs. Another kind of problem would be if they are getting jobs but they are not progressing.

Other ideas for specific initiatives

Respondents identified many specific initiatives that they believe will promote inclusion and improve diversity:

- Provide funding to associations and initiatives working to reverse inequality.

- Create a database for lawyers who identify with particular groups so a potential client can find what they're looking for.
- Engage directly with communities with fewer lawyers so communities can get better access to lawyers and see law as a career.
- Revise website to be more inviting and flexible, and make it multilingual.
- More outreach in schools, eg, by reinstating the Law in Schools programme.
- Use more inclusive meeting spaces e.g. marae.
- Improved education around self-employment in a legal environment.
- Liaison officers for hard-to-reach groups.
- Greater education about the difference between diversity and inclusion. Many workplaces consider themselves diverse, but inclusion requires active steps to be taken to make sure people are actually included.
- Many women have lowered confidence following parental leave, and those who return to work are often stalled in their careers as they balance competing demands. Meaningful support, guidance and encouragement are needed to return to the legal profession.

3.1.1.2 Suggested steps for firms and the profession

> The Committee believes that increasing diversity in the legal profession, and in particular increasing diversity in those who have influence (directors, partners and executives) is likely to bring about positive changes in workplace culture. [representative group]

Submitters (including representative groups noted that there is a strong business incentive to create a positive and diverse culture to encourage diverse lawyers to work there. Large law firms have the resources; however, smaller firms may face a greater challenge due to lack of scale so may be less able to focus on this. Employers need to accept that diversity improves organisations.

> Diversity is a pull-factor, not a push-factor. The profession needs to be attractive to the types of people it wants, but it equally must be honest and transparent in selling itself and discussing the reality of the different areas that graduates can enter into. [law firm submission]

Ideas from submitters include:

- The focus on equality of outcome based on sex and race does not recognise the real driver of challenge – inequality of opportunity. To promote a diverse culture, the profession should swing the balance towards creating equality of opportunity.
- The profession does not reflect society, and more needs to be done to encourage other ethnicities into the law and support these lawyers to grow.
- Diversity requires the upper levels of the profession to stop only looking at top grades when hiring. This approach says everything about the ability to study but little about the morals.

> Graduates from less able backgrounds need to be considered for jobs. Making applicants apply online with tick boxes for grades does not help people who may have had a different path to law be considered for jobs. [survey response]

Submitters noted that the business models of most large law firms have resulted in a culture where younger lawyers are seen as a disposable commodity, and there is no support for flexible working (eg,

for parents) or accommodations made for those with disabilities or language issues. Culture change through a change-management type project is needed for those practitioners who do not think there is an issue, and voluntary training is insufficient. Employer policies need to be actioned through investments, e.g. physical infrastructure such as parent's rooms, sick leave policies.

> The legal profession is woefully behind other professions when it comes to the actual underlying enablers for diversity and inclusion: many law jobs are still entirely inflexible (both in terms of flexible hours and flexible location) and not family-friendly -- which often rules out women, and makes many men have to make an incredibly difficult sacrifice. There is a moving trend towards in house to try and get around the harsh rigidity of firms in particular. In addition, while the 'plain English' approach has lessened this, barriers to lawyers where English is a second language are still high. Bi/multilingual lawyers are not seeing as many opportunities to be valued for the benefit they bring as compared to overseas. The rigidity of the profession is also likely to make it difficult for those with disabilities -- though I have not done any reading or spoken to anyone to confirm this, I can imagine the inflexible hours and being stuck in the office every single day could be difficult for some. [survey response]

Submitters suggested that charging by the hour is problematic in terms of improving diversity (for example, it makes it difficult for women to progress beyond a certain level if they have children and want to work part-time). One individual submitter suggesting replacing billable hours with 'piecework'. The clients often complain about being charged for no progress. A positive culture is more likely to arise from a result-based invoicing system which measures progress in a project rather than bean-counting.

As one individual submitter noted, lawyers with disabilities can experience particular problems at workplaces:

> There is a cultural narrative of disability which considers persons with disabilities, particularly those with sensory (visual or hearing) impairments, to be less effective at practice than their unimpaired contemporaries. The culture of the profession prevents frank and open discourse about a person's particular needs and how the impact of their disability can be effectively mitigated to enable full participation in the workplace. [lawyer submission]

Submitters suggested that law firms should offer more support for law students while they seek their first law job. Some law students do not know any lawyers, and this puts them at a disadvantage as they cannot use connections to help them.

Other suggestions include:

- training on the complex social issues that may impact clients
- use of champions to promote diversity and inclusion
- greater mentoring for underserved groups and for young lawyers
- greater support for neurodiverse and Rainbow lawyers
- no unpaid internships as this discriminates against those who are required to work during their study.

3.1.1.3 Other considerations

One representative group submitter suggested that inclusion and diversity should be reframed to address the underlying power imbalance and stated that intersectionality is a better frame for the issue. They note that inclusion and diversity takes a one-dimensional approach, measuring whether the legal profession represents the general population based on single metrics. Such approaches focus on the symptom, rather than the underlying causes of power imbalance.

> Without addressing power, any initiative to improve inclusion and diversity risks remaining ineffective and open to criticism of tokenism. [representative group]

Submitters noted that there are barriers related to accessibility into the profession, including physically inaccessible buildings for people with disabilities, colonial/western systems of learning, lack of cultural competence within professional and academic staff, and lack of support systems for at-risk students. As one individual submitter noted, there is inadequate support for persons with disabilities in the transition from university to practice, and then to flourish into senior roles.

One individual submitter noted that there is a big gap between immigrant and second generation, though they are categorised in the same ethnic group.

3.1.1.4 No additional steps are needed for the Law Society or the legal profession

Around a quarter of survey respondents disagreed that changes are needed to promote inclusion. Multiple email submissions from individuals and law firms also shared this view, however no representative group email submissions appeared to agree that no additional steps are needed. A common reason for not supporting additional steps was that any impediments to increasing our diversity are outside the legal profession and the Law Society's remit, for example, education, poverty and other socioeconomic factors.

> Attempting to address perceived cultural deficiencies by way of structure and regulation seems to be a hopeless task. [lawyer submission]

Multiple submissions stated that they did not believe one specific group should be singled out and there should be no separate treatment or recognition. Any promotions and appointments should be by merit.

> I actually think the legal profession is already quite diverse. I think that if further steps are taken without the areas of lack of diversity being clearly identified then you run the risk of people being promoted/included based on the fact they are diverse rather than on their merits. [survey response]

A few submitters suggested that the legal profession should not be striving to create a profession that is representative of the wider population. For example, one survey respondent noted that the makeup of any profession is the natural consequence of individual preferences and it would be strange for the legal profession to perfectly reflect the population as different groups of people have different interests.

> The idea that the makeup of the legal profession should reflect the wider population is an inherently flawed one. [lawyer submission]

> No evidence has been provided that (1) diversity in the legal profession must match diversity in the broader population or (2) that the structure or regulatory settings of the legal profession have any material impact on diversity. If there is to be a focus on this, then the issue is one of broader educational and social settings in terms of ensuring better equality of opportunity (rather than aiming for equality of outcomes). [survey response]

Several submitters suggested that change is already happening, both within the profession and in wider society, and it does not need to be pushed further by the Law Society. One individual submitter cautioned that, as with a lot of current social issues, there is an increasing degree of impatience which can result in the development of poor legislation or policy. They suggested that a measured approach often produces better outcomes and we should not assume all changes required are good changes. They noted that any legislation needs to acknowledge the range of views and not become subject to a 'one rule fits all' mentality, which can happen when legislation is used as a tool of social change.

3.1.2 Mixed survey responses to whether the regulator needs additional tools to help improve diversity. Multiple representative group submissions agreed that additional tools are needed.

Note: Survey responses only

✓	✘	~
41% agree or strongly agree	**40% disagree or strongly disagree**	**19% neither agree nor disagree**

Those in favour of additional tools (including multiple representative groups) stated that mandatory reporting requirements would be a good idea to help improve diversity.

> A large part of why the legal profession fails to be inclusive is because people belonging to under-represented groups struggle to know which firms truly value and uphold diversity and inclusion and having a regulator that enforces transparency of this data would aid prospective students in choosing where to go, as well as make firms work harder in their efforts. [representative group]

> The law firm structure places power in the hands of the partnership who benefit greatly from retaining the status quo, therefore additional tools for the regulator are essential. This could include mandatory reporting, requirements for positive action (including quotas), penalties for "unconscious" bias, deeming provisions for discrimination where the inference can be drawn from partnership statistics, etc. The profession has been far too slow to act, to the detriment of the current generation of lawyers. [survey response]

Suggested areas to report on include gender, ethnicity, salary information (including partnership pay gaps), in-house promotions, King's Counsel appointments, parental leave policies, and flexible working arrangements.

> Reporting requirements might also extend to briefing counsel, [King's] Counsel appointments (if appropriate), or to in-house promotions, to ensure the focus is not just on law firms but is across the profession. Our sub-committees commented that it would be useful to see reporting on flexible working arrangements, and the number of people working under flexible arrangements (with reporting on gender and ethnicity within that). [law firm submission]

Submitters (including representative groups) suggested requiring reporting on all lawyers, not just partners. One representative group email submitter suggested that change may be happening more quickly in city centres, so reporting should be from offices within a firm, rather than at national firm level.

> Yes I think additional tools are required but the report should be at all staff levels, not just partners. A lot of the time we observe a large proportion of female or Māori staff at junior levels but not at the senior associate / partner level. The reporting has to be meaningful. [survey response]

Submitters disagreed as to whether the requirement only be for firms over a certain size, or mandatory for all.

> We believe that the regulator does need additional tools such as the gender equality charters adopted overseas. Given the gender and cultural diversity within the profession already, we do not see this as something controversial and should be able to be done as a matter of course. [Submitter] strongly supports a mandatory regulatory objective to include diversity as a key metric that the profession needs to meet. We believe that as a minimum mandatory requirement, reporting on diversity should be required. [representative group]

> I am in favour of mandatory reporting rules for firms over a certain size – this is now becoming the norm in other commercial entities (either voluntary or mandatory) and is expected by clients and employees. Mandatory reporting (provided that it targets the right information and metrics and enables valid comparisons) is a first step in promoting appropriate changes to practices. [survey response]

> Yes, but I think it should be applicable to firms of all sizes. While it is important to have the larger firms set a good example, many regional law firms should also be held accountable for the gender and ethnic makeup of their staff, and this should be made available to the public. [survey response]

Submitters cautioned that measuring only one dimension (e.g. gender) fails to address the complexity of measuring diversity and will amount to a tick box exercise. Various aspects of a person's identity need to be considered together. Additionally, one individual email submitter cautioned that ethnic diversity may not be a reliable indicator of linguistic diversity, especially to the level where legal concepts can be shared.

Submitters suggested that the Law Society needs to carefully consider exactly *how* diversity and inclusion might be defined and measured across the profession, with specific and measurable goals, reporting and planning. There were views on either side of establishing a quota system.

One individual submitter suggested that the Law Society set standards of cultural competency for the profession, and make these standards mandatory under CPD requirements. Another individual email submission suggested a framework is required so that proper practice of law is more than an absence of bullying and discrimination. The submission suggested the profession should take a human rights approach under the UN's Protect, Respect and Remedy Framework. Under this framework, the Law Society and law firms would have the responsibility to respect the human rights of others, including employees, clients and the public.

Those not agreeing that additional tools are necessary (survey respondents and individual and law firm submissions) suggested that diversity should be left up to firms and, as private businesses, that they should be free to employ who they want. Submitters often noted that law firms publicise their staff on their website so consumers can make their own choice. One individual submitter stated that no regulator should be able to sanction a firm on the ground it does not, for example, sufficiently teach Treaty principles to staff.

> No. Additional regulation is likely result to only superficial/token compliance, increasing compliance costs while creating no real benefit. The profession is slowly recognising the need [for] change and that takes time, but I feel that the majority of the profession is onboard the journey. [survey response]

> Absolutely not. These are private businesses who should be free to employ and promote based on their own criteria. Any sort of quasi quota system should be discouraged. If the legal customer market requires diversity it will make that known and firms can then adapt to meet that expectation if they choose. Labour market forces will also control firm behaviour. [survey response]

Multiple submissions did not agree with the requirement to publish diversity data for firms and stated that the focus is best placed on improving the culture of the profession, not making diversity a tick box exercise.

> That will not change the mindset of those who have control in the big firms. The big firms promote themselves as being diverse because it's good PR. It would be very naive to think the big firms won't figure out a way to meet the diversity targets and not change their culture. [survey response]

Survey respondents suggested that requiring reporting may lead to unintended consequences.

> No. Such a suggestion implies intrusion into personal information that may not be immediately discernible nor apparent. It also would create an atmosphere of fear in that a firm would be required to hire employees to properly practice law based on immutable characteristics rather than merit in order to satisfy regulation, which would be both sexist and racist (and arguably unlawful). [survey response]

> Absolutely not. Likely to actively harm public confidence in the provision of legal/conveyancing services or protect consumers of such services if they perceive that

providers might have got to that position for any reason other than merit. [survey response]

No. As a woman of Māori descent, as much as I believe that firms should improve diversity by hiring a broader range of particular demographics, it shouldn't come at the expense of skill. I think that if there were reporting requirements then particular people may end up being hired solely as a box ticking exercise and I would hate to see people (women or non-Pākehā ethnicities) essentially being used as a facade to "represent" diversity. I believe that this could encourage negative stigma towards these people, as others may start to believe that they haven't been hired for genuine reasons (as seen in other countries where similar policies have been implemented, such as the South African BEE system. These policies rarely tend to have the effect that the regulator intended). [survey response]

3.1.3 Demographic differences

As shown in Figure 3, there is a trend towards agreeing that changes are needed to improve diversity and promote a culture of inclusion as age decreases. Among those aged 20-29, over 75% either agreed or strongly agreed that changes are needed, with fewer than 10% of respondents disagreeing. This is compared to an overall agreement rate of 56%. Similar results are seen in the answers towards whether the regulator needs additional tools to promote diversity, as seen in Figure 4 with 60% of those aged 20-29 agreeing or strongly agreeing, compared to 41% overall.

Figure 3: Survey results for "are changes needed to improve diversity and promote a culture of inclusion?", stratified by age

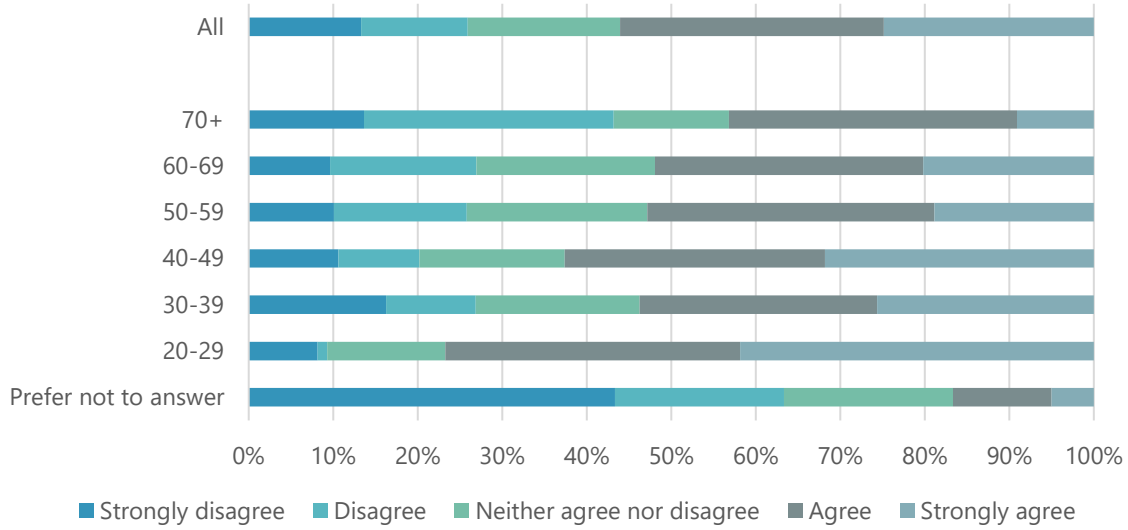
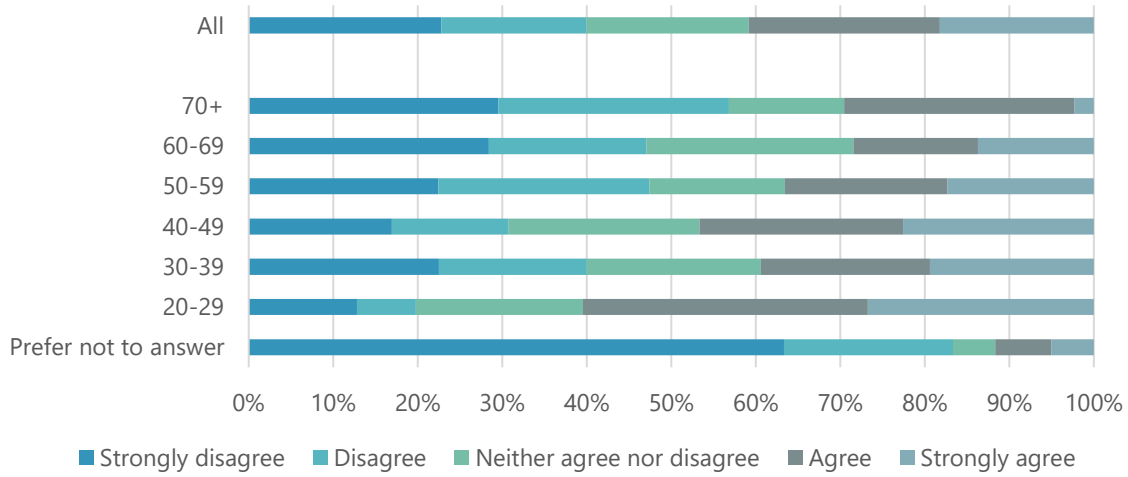
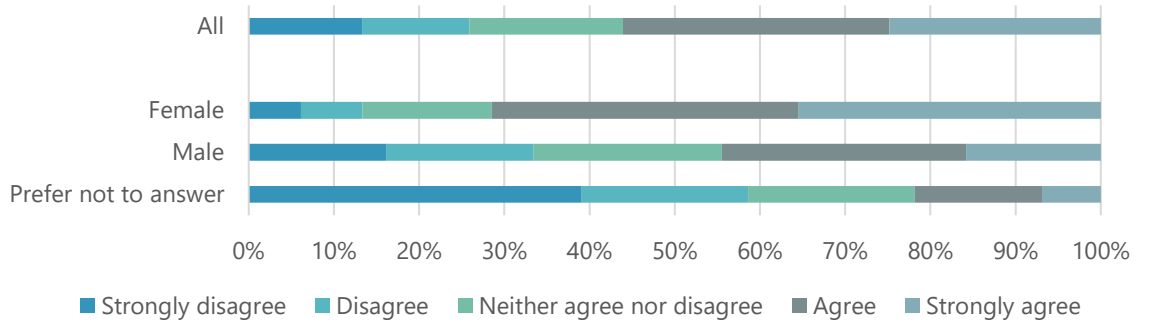


Figure 4: Survey results for "are changes needed to provide additional tools to the regulator to help improve diversity?", stratified by age



As shown in Figure 5, women are more likely than men to agree that changes are needed, with 71% of women either agreeing or strongly agreeing compared to 44% of men. Regarding whether the regulator needs additional tools, 55% of women agreed or strongly agreed, compared to 26% of men, as seen in Figure 6.

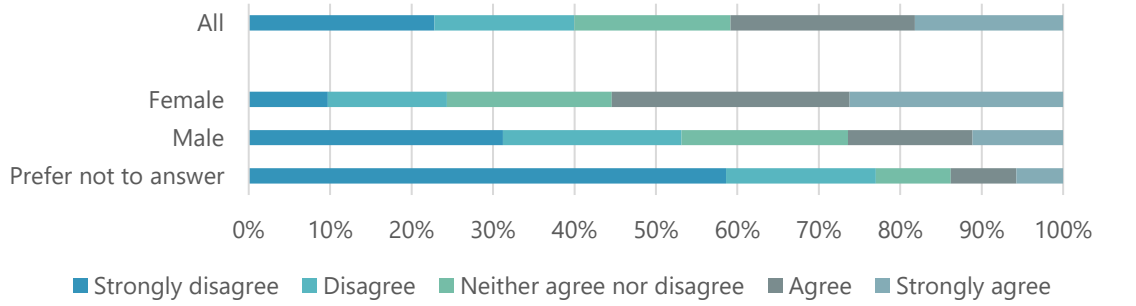
Figure 5: Survey results for "are changes needed to improve diversity and promote a culture of inclusion?", stratified by gender



*

Excluded genders with fewer than 10 respondents

Figure 6: Survey results for "are changes needed to provide additional tools to the regulator to help improve diversity?", stratified by gender



*

Excluded genders with less than 10 respondents

As shown in Figure 7, those who identified as Asian or Pacific peoples were more likely to agree that changes are needed. Similar results were seen in response to whether the regulator requires additional tools to improve diversity, in Figure 8. Māori, New Zealand European and Other European also supported additional regulatory tools.

Figure 7: Survey results for "are changes needed to improve diversity and promote a culture of inclusion?", stratified by ethnicity (note respondents could select more than one ethnicity)

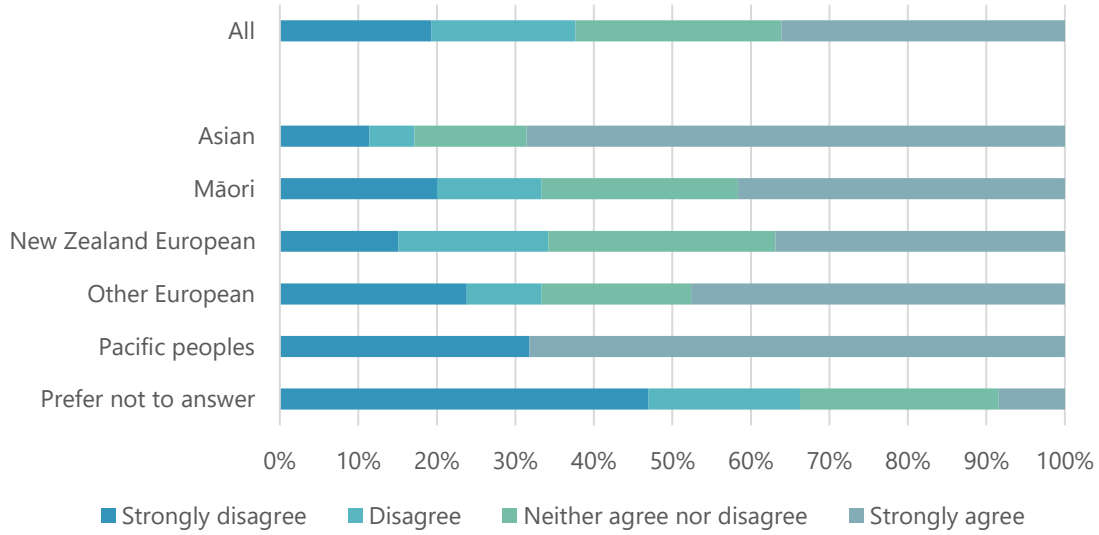
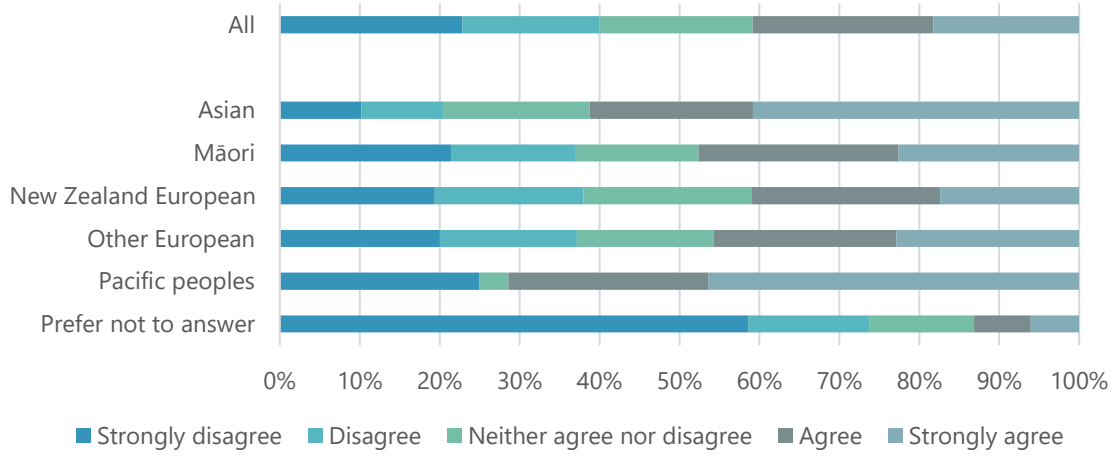


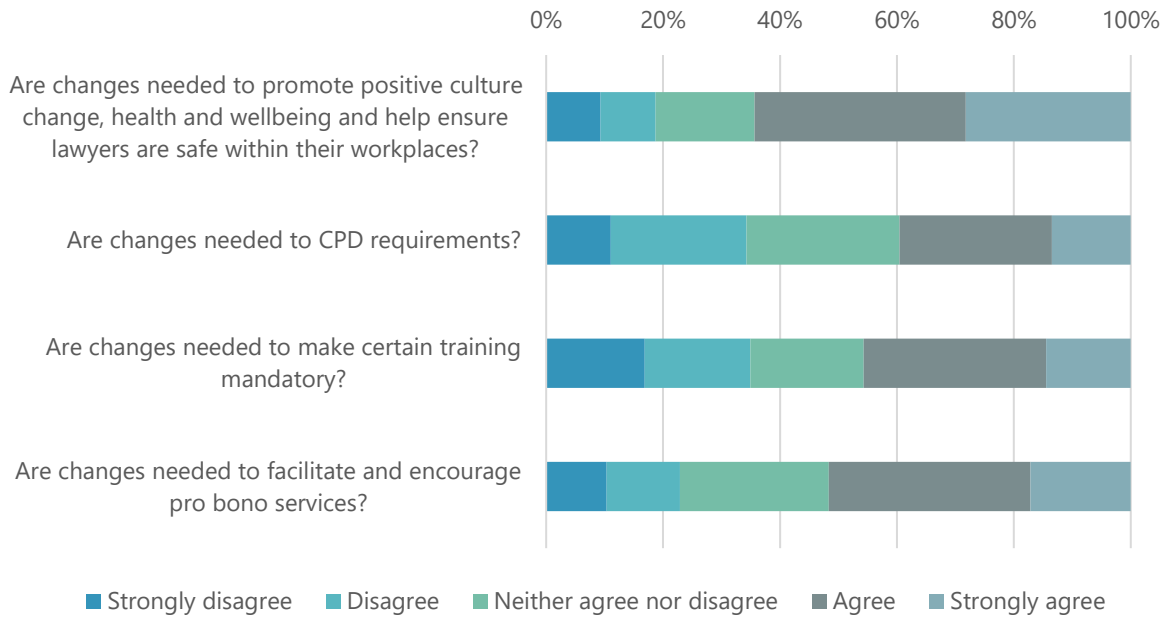
Figure 8: Survey results for "are changes needed to provide additional tools to the regulator to help improve diversity?", stratified by ethnicity (note that respondents could select more than one ethnicity)



4. Promoting good conduct, CPD and pro bono

- The majority of survey respondents believe that changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe in their workplaces. Email submissions agreed.
- Mixed survey responses to whether changes are needed to current CPD arrangements, however, more email submissions agreed than not.
- Mixed survey responses to requiring mandatory training. Email submissions were also split, however more representative groups agreed than not
- Just over half of survey respondents agreed that changes are needed to facilitate and encourage pro bono services, with email submissions providing many examples of how to change.

Figure 9: Survey results on promoting good conduct, CPD and pro bono



*n=1063, 1059, 1062, 1061 respectively

4.1.1 The majority of respondents believe that changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe in their workplaces

Note: Survey responses only

✓	✖	~
64% agree or strongly agree	19% disagree or strongly disagree	17% neither agree nor disagree

4.1.1.1 Steps for the Law Society

We start this sub-section with a quote from a representative group submission.

> We are concerned that a significant number of our associations' members are disenfranchised from the Law Society. For our women members, we believe that is at least partly due to NZLS' failure to address sexual assault and bullying for so many years, the ongoing failure to follow up on the Gender Equality Charter, the Gender Equitable Engagement and Instruction Policy, the Women's Panel and the Working Group findings and the failure to address the lack of diversity and inclusion in any systematic way. In our discussions with members over this submission, they have often said "the Law Society doesn't represent me". To connect with women lawyers the Law Society needs to actively promote, and work with the profession, to achieve an inclusive and diverse community, free from discrimination in the way we have outlined. [representative group]

Sixty-four percent of survey respondents agreed that changes are needed. While the Law Society does currently have wellness programmes, submitters suggest that these are not timely or effective. One representative group submitter suggested that the lack of uptake of wellbeing services provided by the Law Society may not be the result of an absence of awareness, but a reflection of the reluctance to use those services offered by an organisation that is also the regulator.

Submitters suggest that the Law Society should be taking and maintaining a positive stance in terms of wellbeing and should realise there are a wide range of factors that may affect a lawyer's wellbeing. the Law Society should also lead by example.

> Changing workplace behaviour is something that will take many years to effect and is not something a simple legislative or rule change will miraculously solve. [representative group]

Specific initiatives are listed below:

Promotion

- the Law Society should actively encourage members to review work practices, ways of working, and provide positive examples of what good looks like.
- Provide awards to firms etc that have shown excellence in improving culture and wellbeing.
- More social events by geographical and practice area.

- The telling of good personal stories, rather than what may be perceived as manipulative training programmes, may help more.

Programmes and support

- Wellness programmes at branch or local level, supported nationally. In addition, successful wellness programmes operating at local/branch levels should be reviewed by the Law Society with a view to implementing these on a national level e.g. the stepping forward programme in Canterbury-Westland.
- More support from the Law Society is needed in certain areas e.g. family and immigration law, including access to supervision and/or a confidential sounding board. Also look at the supports available for sole practitioners, who do not have the resources of large law firms.
- More support for leaders to ensure they have the mental health needed to look after their staff.
- Review current services e.g. Law Care to ensure efficacy and accessibility.
- Improved guidance to workplaces for dealing with conduct issues/poor environment.
- Training during LLB and professionals on mental health and wellbeing.

Processes and reporting

- Legislative change may be necessary to mandate the use of audio-visual link (AVL)/virtual meeting rooms (VMR) in procedural and other appropriate Court matters. These worked in COVID, but now there seems to be a preference to return to in-person. AVL/VMR helped with wellbeing of lawyers.
- Mandatory reporting on themes from National Friends Panel.
- Proactive behavioural audits.
- Clarify the grounds on which retainers can be terminated for harassment, bullying, and threatening behaviour.
- Section 55 of the Act and the application form for a certificate of character need to be redrafted. The question asking whether a person is unable to perform functions required for the practice of the law due to a mental or physical condition is located on the same page as questions such as bankruptcy and criminal charges. This undermines the goal of reducing the stigma associated with mental health issues.

> We are making progress and I think there is much better awareness now than 10 years ago of the culture and wellbeing issues in the profession and our own responsibility for fixing them. One thought to continue to encourage this is to introduce some sort of incentive – e.g. awards to firms/in-house departments that have a positive culture and health and wellbeing focus. In addition to incentivising what we seek to achieve this could encourage creativity and showcase what 'good' looks like for firms/departments that may not know where to start... [survey response]

4.1.1.2 Steps for firms and the profession

A representative group submitter suggested that this is something that needs to be looked at holistically as it is hard for a regulator to codify a wellness factor into its role as it is likely that needs will vary between firms. Representative group submissions state that it is important that initiatives to

improve working culture within the profession should be supported by the regulator, and the Law Society needs to acknowledge firms that have done well in workplace wellbeing.

Survey respondents suggested improving the internal or external mechanisms for reporting concerns without fear of reprisals. In addition, ensure that reports do not go unheard or investigated. Another suggestion was to implement buddy systems for junior lawyers:

> Having a buddy system to assist junior colleagues at work. The NZ culture of 'sink or swim' to an extent needs to change. Learning on your own is good but it does affect mental health and well being. Makes lawyers (esp junior lawyers) feel unsupported in their legal journey. [survey response]

One individual submitter noted that an emphasis on collegiality and interaction between practitioners, including more personal interaction, could help to promote ethical and professional behaviour. Another individual submission noted that practitioners need to understand the impact of their practices on those with disabilities.

4.1.1.3 Working conditions

Multiple submitters and survey respondents made specific reference to the current working conditions, particularly for junior lawyers. They note that these need to change in order to improve health and wellbeing and promote positive culture change. An issue highlighted was that the long hours worked mean that staff are paid at less than minimum wage.

Firms' business practices are often suggested to be the root cause of this issue, with an emphasis on billing. Submitters suggested a move away from hourly billable and profit-share models to ease pressure on workers, improve quality of work and promote work-life balance.

> A lot of the issues with overwork and burnout come from the model itself – we bill in units and firms make more money if their employees are working at 100%+ capacity all of the time. There is constant uncertainty as to where the next big new instruction will come from. There is no financial incentive to turn down work, reduce billable targets and promote healthy work-life balance. Therefore, within firms, wellbeing is heavily dependent on individual leaders and partners and their philosophy of team culture, and their prioritisation of team wellbeing over other goals. [survey response]

Suggestions to improve working conditions include mandatory reporting of hours, mentoring programmes, providing the Law Society with more tools, and allowing anonymous reporting to the Law Society about specific firm practices.

> The single biggest improvement to work-life balance and wellbeing would be for legislative amendment to the ERA [Employment Relations Act] 2000, or regulator empowerment, to enable strict guidelines as to the level of overtime that can be worked before additional hours of work must be paid at the notional hourly rate of the lawyer in question. Making better work-life balance a financial necessity for firms is the only way to drive major change and prevent massive rates of burnout, mental health issues and suicide, and the exclusion of minority groups such as parents/caregivers, and disabled persons from the workforce. Everything else is just talk and does not address the root cause of the issue which is the race to the bottom of squeezing more and more productivity out of individual lawyers which is reproduced by the incentive structure of

> salary-based fixed remuneration. In my view, "reasonable additional hours" should be clearly set by legislation or regulation. For example, 25% on top of usual hours in any monthly period, or 20% on top of usual hours in any three-monthly period. The percentage could scale up based on seniority, or only apply to employed lawyers with a salary of less than a specified amount to reflect the fact that senior practitioners and/or partners with a stake in the business are compensated in other ways. [survey response]

4.1.1.4 No steps needed

Nineteen percent of survey respondents disagreed that any further steps were needed in this area. Submitters noted that we have appropriate pre-existing law and regulations and there is no basis to treat a legal workplace differently to any other workplace.

> Law firms have their own health and safety obligations as employers and responsibility should sit there. Risks creating a duopoly of obligations which are already fully regulated under employment and other law. [survey response]

4.1.2 Mixed survey responses to whether changes are needed to current CPD arrangements, however, more submissions agreed than not

Note: Survey responses only

✓	✘	~
40% agree or strongly agree	34% disagree or strongly disagree	26% neither agree nor disagree

Forty percent of survey respondents agreed that changes are needed to the current CPD arrangements, and multiple email submissions from representative groups, law firms and individuals agreed. Submitters provided some reasons behind the idea that changes are needed:

- CPD is not being used in the way it was intended. It was intended that lawyers reflect on where they are in their career and what they need to develop. But in reality it is seen as another professional obligation to meet in the least painful way, e.g. by attending a 10 hours in one day event.
- The requirements are fine, but the oversight by the Law Society is lacklustre and the profession sees it as another box to tick.
- Content is starting to repeat itself and quality is dropping.

> CPD is an obligation. When CPD first became mandatory we were told that that was to be relevant to our areas of practice, now they have "catch up" days which seem to be designed for participants to do any CPD at all, whether or not it is relevant. It would be far better to concentrate on assisting lawyers to develop their practice in their chosen field, financially if necessary. Ask the lawyers what they want and need. And ask the universities where the gaps are. [survey response]

Submitters provided multiple ideas for changes to the regime, and these are set out below, organised by topic.

Changes in structure and process

- Increase in the hours required.
- Implement a competence assurance regime (wider than just CPD).
- The development of a clearly defined competency framework which would allow lawyers to better understand what the requirements are and target their learning where it is needed. It can provide a mechanism for mandating certain topics, without mandating activities.
- Pro-rating hours for those working part-time or on parental leave.
- Consider rollover of hours over years.
- Change the recordings and reflections requirement as these can be onerous e.g. by allowing a quiz or simply a certificate of attendance.
- A limit to how many CPD hours can be earned in one day.
- Introduce a service component into CPD eg, pro bono work, volunteering with Community Law.
- Junior lawyers in their first five years should have more structured CPD with mandatory requirements on how to avoid client complaints, ethics, practical workshops in chosen areas of practice.
- Change the prescriptive and audited structure by relying on individual responsibility with the idea that a lawyer could be called upon to account for CPD at any stage.
- Review the evidence behind CPD to reform the system (see below).

> We suggest that including a service component into the CPD requirements could be a way to keep legal professionals grounded and connected to the community they serve. This would encourage lawyers to foster relationships with diverse groups, and could in turn help to demystify the legal profession (and the law) for people who face barriers accessing justice. [representative group]

> The Law Society should review its guidelines for recognised CPD activities. Under the current guidelines, the majority of CPD activities can only be counted if there is an opportunity for interaction and feedback. This requirement is limited and is not consistent with other professions who have CPD requirements such as Institute of Directors, Chartered Accountants and Engineering. These professional bodies allow both synchronous (live) learning and asynchronous (self-paced) learning which enables people to learn at a time that best suits them. This self-paced learning can include recorded webinars, online learning, reading publications and any activities which support a formal programme including preparation, reading or follow up activities such as applying your learnings. People expect more flexible training and development options, particularly from people who work part time or are on parental leave. In our experience we believe including asynchronous CPD activities continues to meet the aims and objectives of the CPD rules (build on culture of lifelong learning and increase the competency of New Zealand Lawyers) as lawyers would still need reflect on their learnings gained. [survey response]

Changes in courses offered

- Quarterly updates relating to new law etc that practitioners need to know – this should be online and free.
- Rebates or discounts needed for Community Law Centres.
- Ensure courses are available in the regions, rather than mostly in the main centres
- Tailor to reflect shift to online and asynchronous learning. Limiting CPD to live and interactive sessions may no longer be appropriate.
- Make particular training free or discounted to incentivise members to participate.
- Make CPD courses more accessible, for example providing written resources in advance, recordings after the session, and making online options available for all seminars.
- Make CPD more practice-area specific as there is a risk in people moving between areas without proper training.
- Additional areas of training include climate change training, trauma-informed practice, and a greater focus on mentoring.

> CPD has broadened in scope and method of delivery post pandemic, which is to be applauded. (One of the best CPD sessions occurred in lockdown – not so much the topic, but the collegiality that grew among the participants.) CPD offerings can grow the change and diversity the profession says it wants – so please continue to develop and deliver a diverse range of topics, including methods of practice, and please vet the presenters for the ability to engage an audience! [survey response]

Other suggested changes

- Stop the practice in some law firms of bonding – where a firm pays for CPD or professionals then bonds the lawyer for a period of time (if they leave before that time, they need to repay a portion of the costs).
- More research by the Law Society about education delivery e.g. value of role play/interactive styles over webinars.

No changes are needed to the current regime

Thirty-four percent of survey respondents disagreed that changes were needed to the regime, and multiple email submissions from individuals and law firms also felt that no changes were needed.

> None. A variety of useful CPD is available to all practitioners, and the level of commitment required is appropriate for busy practitioners. [survey response]

4.1.3 Mixed survey responses to requiring mandatory training. Submissions were also split, however more representative groups agreed than not

Note: Survey responses only

✓	✘	~
46% agree or strongly agree	35% disagree or strongly disagree	19% neither agree nor disagree

4.1.3.1 Mandatory training is needed

Forty-six percent of survey respondents agreed that mandatory training is needed, with multiple email submissions from multiple representative groups, a law firm and individuals agreeing. While the types of training submitters suggested should be mandatory varied, the suggested areas in the discussion document were generally agreed to. Additional areas suggested include mental health and wellbeing, business guidance, management skills, technology, intersectionality and periodic ethics retraining.

> Put simply, tikanga and te reo Māori are part of the law of Aotearoa New Zealand today. If a practitioner today does not have some knowledge of these they are failing to meet even their existing obligations to uphold the rule of law and to facilitate the administration of justice in New Zealand. [representative group]

> There is a yawning gap in the profession between those who recognise that there is a problem and the need to change, and those who do not. the Law Society needs to commission and implement a change management-type project aimed at educating these practitioners. Offering voluntary training is insufficient and easily ignored, by the very people in the profession who need it most. Annual training on harassment, discrimination, diversity and unconscious bias must be compulsory for CPD for every lawyer. [representative group]

> Increased awareness of issues throughout the profession can make some outdated views uncomfortable to hold. [lawyer submission]

Some submitters questioned how often the training should occur. Should it be required annually, as a one-off, every few years? Other submitters agreed with mandatory training but warned about the tick-box effect. One individual submitter noted that cultural competency training (and other e.g. discrimination) is hard to procure of appropriate scale and quality. Another representative group noted that thought needs to be given to the funding of such training.

> There is a significant and urgent need for the entire legal profession to upskill in te reo Māori, tikanga Māori, the Treaty, and te Tiriti. This ought to be required as part of lawyers' CPD requirements. We note, however, that careful thought needs to be given to how this training will be supported and funded. For example, if iwi or hapū are to be involved in supporting or delivering that training, they must be properly funded to do so. [academic submission]

> There needs to be real care taken that the cultural competency and soft skills training is not simply a check box exercise. If training in this area is mandatory it also need to be audited as effective. Otherwise it is an unnecessary waste of valuable time. [survey response]

Submitters and survey respondents suggested that courses should be low-cost or free, and that lawyers should be able to choose which courses they take within the mandatory areas.

> I would hate to see this becoming a tick box exercise however also see the need for a change in the way we approach these things as a profession. There are so many areas under the discrimination banner that could be included. If this was to be made mandatory, it would be good to see the tools (whether this be webinar or workbook etc) provided without additional charge (or with only minimal charge) to lawyers. [survey response]

Other ideas included:

- Gender impact training for those that work in family court, criminal court, on property or financial matters.
- The Stepping Up course could include a section on helping new graduates who have come from more disadvantaged communities and awareness of the challenges these graduates face.
- Mandatory training for senior lawyers to provide support to junior lawyers to ensure all junior lawyers receive mentoring and support.
- Mandatory training when applying to practise on own account.
- Mandatory training during the professionals course and during the LLB.

4.1.3.2 No mandatory training

Thirty-five percent of survey respondents disagreed with mandatory training. Multiple submitters (individuals, law firms and several representative groups) agreed and suggested that it should be left up to professionals to determine what courses they need.

> Unless the Law Society can show there is actual evidence that mandatory CPD has any benefit, then we support the proposal that it should return to a less mandatory system. [representative group]

Submitters noted that one-hour courses are not going to make a difference to people's viewpoints and will become tick-box exercises. A more integrated, practical approach for (eg, cultural) competency is needed, as a single session will not create a complete understanding.

> Training is more effective when it is ongoing and specifically related to a workplace's policies and processes, rather than a one-off and general programme. [representative group]

> No training should be mandatory – a profession wide focus and working towards overall culture change is more efficient than mandatory trainings which can become meaningless check boxes and not inspire any engagement or change. [survey response]

Submitters questioned whether any research has demonstrated positive links between mandatory training and behaviour change, and one individual email submitter stated that research has shown that unconscious bias programmes are likely to be ineffective and may even worsen attitudes.

4.1.4 Just over half of survey respondents agreed that changes are needed to facilitate and encourage pro bono services, with submissions providing many examples of how to change

Note: Survey responses only

✓	✘	~
52% agree or strongly agree	23% disagree or strongly disagree	25% neither agree nor disagree

Fifty-two percent of survey respondents agreed that changes are needed, with multiple email submissions from representative groups, law firms and individuals agreeing. Firms need to value pro bono work internally as much as paid work and compensate workers accordingly. Some submitters suggested it should be made mandatory (e.g. through required hours at a Community Law Centre), with others limiting that idea to large law firms, top barristers or senior lawyers only.

Increase who is allowed to provide pro bono

Numerous submitters (including representative groups) noted that in-house counsel cannot provide pro bono services, even with consent of their employer and in their own time. An individual submitter noted that in-house counsel also cannot get involved in governance or leadership of community groups as opinion on documents etc may be construed as legal advice.

> I have 20 years PQE, a General Counsel job title and an employer that would probably supportive of me helping out charities that our business supports. However, under current pro bono rules I could not even review a basic contract off my own bat. It should be possible to put in place some sensible rule changes to permit more pro bono work being done. For example anyone who has consistently been employed as a lawyer in NZ for 10 years should be presumed capable of doing basic work in their field. Pro bono rules should not require unrealistic steps to be taken e.g. I am not going to complete a course that costs over a thousand dollars and consumes much of my time before I can start to do the odd hour of free work and I am not going to one of my panel firms and find a partner at [a large law firm] say to review my free hour helping out a community charity with some basic contract review. [survey response]

One individual submitter also noted that employed lawyers cannot undertake pro bono (other than through their firm), which means lawyers working part-time/semi-retired cannot do pro bono on their own even though they have time.

Submitters provided ideas of how to allow in-house counsel to provide pro bono services:

- minimum qualification or experience level
- additional training
- a mandated Law Society insurance scheme

- specific disclosure requirements
- prescription about specific types of legal work that can or cannot be done
- Community Law Centres have employed lawyers that can supervise.

While one representative group submitter noted that increasing the ability of in-house lawyers to do pro bono is a potential way to increase access to justice, the submission suggested that further work is required to establish whether this is actually the case and the way in which the scheme could operate.

The Law Society support and pro bono

Submitters provided numerous ideas of how the Law Society might support lawyers to provide more pro bono services:

- An improved and clear definition of pro bono (e.g. fees free only or is reduced rate also considered pro bono?). Submitters often highlighted that pro bono work is often not formally recorded. The definition should be adopted into legislation – look to the Australian Pro Bono Centre for a definitional starting point.
- The setting of aspirational targets like in Australia and the UK.
- The requirement to report hours on an annual basis at a law firm level, perhaps only law firms of a certain size.
- Incentivised data gathering on the types of pro bono services provided.
- The Law Society should form a specific committee to improve access to justice and the level and standard of pro bono work. The committee needs to be appropriately resourced.
- The Law Society could tax members who do not provide any true pro bono services, or alternatively provide tax relief for those that do provide pro bono services.
- The Rules needs to be revised to better support pro bono (eg, insurance requirements, clear distinction between informal advice which should not be captured). Alternatively, the Law Society should work with insurers to assist in appropriate cover.
- Fees (e.g. practising or CPD) or insurance could be reduced for those who do a certain amount of pro bono a year.
- The Law Society could recognise, acknowledge and reward lawyers who demonstrate commitment to pro bono (eg, through events).
- The Law Society need to facilitate and support agencies that provide pro bono services e.g. Community Law.
- Require firms to communicate what they offer on a pro bono basis, their criteria for taking the work on, and the contact point for making a request.
- Allow some pro bono to be counted towards CPD hours, or require pro bono as part of CPD.
- Promote and recommend practices such as budget allocation for pro bono work.
- Require a certain number of hours of pro bono as a requirement for getting a practising certificate.
- Create a 'public solicitor' office (akin to the Public Trust) which barristers can use as their instructing solicitor for free when doing pro bono or very low fee work.

Pro bono, legal aid and other funding models

Multiple submissions noted that there would not be such a critical need for pro bono if Legal Aid was better funded, and suggested that the Law Society should increase its efforts here.

> Pro-bono work is a stop-gap to make up for inadequate legal aid funding. Legal aid rates should be increased and regulation should be neutral as to the provision of pro bono services. [survey response]

One individual submitter questioned whether the answer to improved access to justice lies in increasing pro bono work.

> We need to avoid staying trapped in the pattern of thinking that the answer to access to justice either lies in more pro bono or more legal aid and that there are no other options…We need to look more broadly at how to create affordable models for assistance. [academic submission]

Other submitters suggested that there is a need to look at funding models to improve access to justice. For example, one survey respondent suggested that, instead of free or low-fee services, people need commoditised transactions and there should be serious consideration of the charging models used to help increase access to justice. Another survey respondent suggested that special fee arrangements should be easier to enter into.

A survey respondent highlighted a specific issue between pro bono and legal aid in terms of costs:

> A good example of current deficiencies relates to costs against a pro bono client. If you take a civil legal aid case your client generally is protected against a costs order if they lose; not so if the case is taken on a pro bono basis. But lots of lawyers who do pro bono do not want to go through legal aid system because it is so bureaucratic and compliance driven for next to no money that it is often easier to just do it pro bono. Why is it not possible for a practitioner to get legal aid to assess a file agree that it has merit and sign off on it as a pro bono matter in which adverse costs shouldn't be awarded? [survey response]

Other suggestions

Other suggestions include:

- Public sector could require tendering law firms to provide evidence of hours of pro bono undertaken.
- Clearing house for pro bono that links areas of expertise.
- A clear statement in the Act that those providing legal services have a duty to provide pro bono services in circumstances where the state and/or the market are failing to provide appropriate legal services to significant parts of the community.
- Better data is needed on the level of pro bono and the assessment of key impediments before embarking on finding solutions.
- Greater transparency in the pricing of legal services is needed.
- Mandate that pro bono be considered in performance reviews.
- Firms need to adopt policies that allow pro bono work to happen more freely.
- Support through learning opportunities eg, partnering of junior and senior lawyers.

Submitters noted that there is a fundamental difference between providing pro bono services to already well funded charities as essentially a marketing exercise, and aiding a client who would not otherwise have access to services.

Submitters noted that consumers need to have the ability to make claims and complaints that will be covered under insurance. Section 9 protects employed lawyers from giving advice in their personal capacity without realising the implications that can arise if the advice is incorrect and outside an insurance policy.

No changes needed

Twenty-three percent of survey respondents disagreed that changes are needed to encourage pro bono services. Multiple submitters (including individuals and law firms) stated that pro bono services should not be regulated, and it should be a natural outcome of a firm with good culture, not forced. Making it mandatory will increase the compliance burden on lawyers.

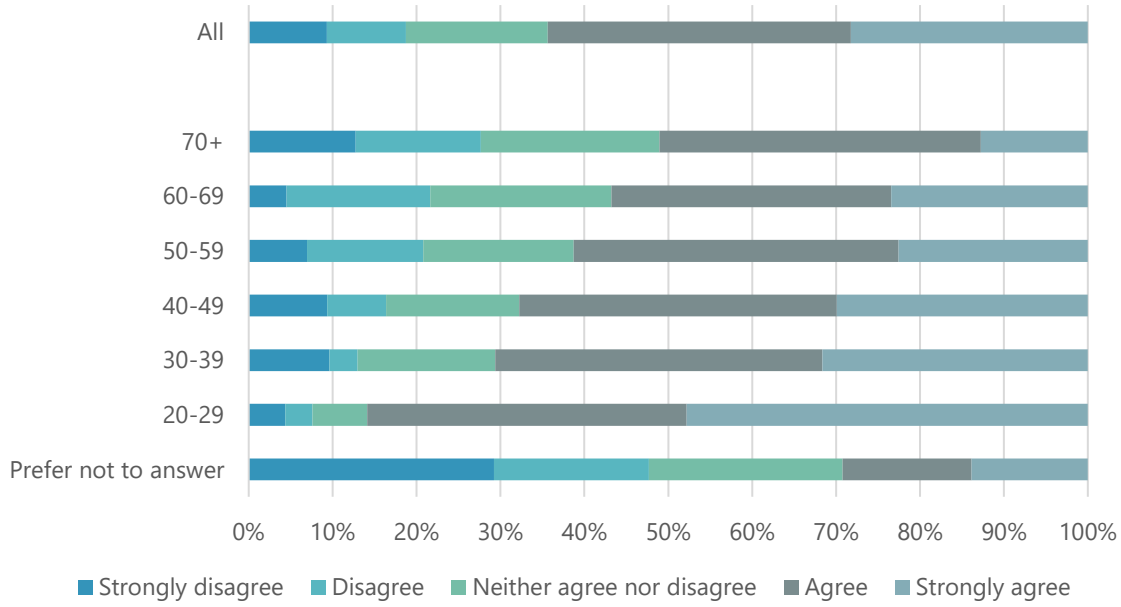
> Practitioners in general provide the level of pro bono services that is appropriate for their practice. Providing expectations as to the provision/level of provision of such services will be burdensome to some, and unnecessary for others. [survey response]

> I do not object to pro bono work, but making this mandatory will – like seemingly everything else the Law Society gets involved with – simply increase the time and costs that lawyers have to spend on compliance. The compliance burden will surely be a disincentive, because it takes time away from doing the actual pro bono work. I also imagine that there will be some well-intentioned but poorly conceived rules around what counts as 'acceptable' for pro bono work. So, is there really evidence that forcing lawyers to find 'acceptable' causes to support, and then to fill out forms to prove that they are doing this, actually provides a benefit to society? Cannot lawyers be left to choose how and when they do pro bono work, without the compliance burden? [survey response]

4.1.5 Demographic differences

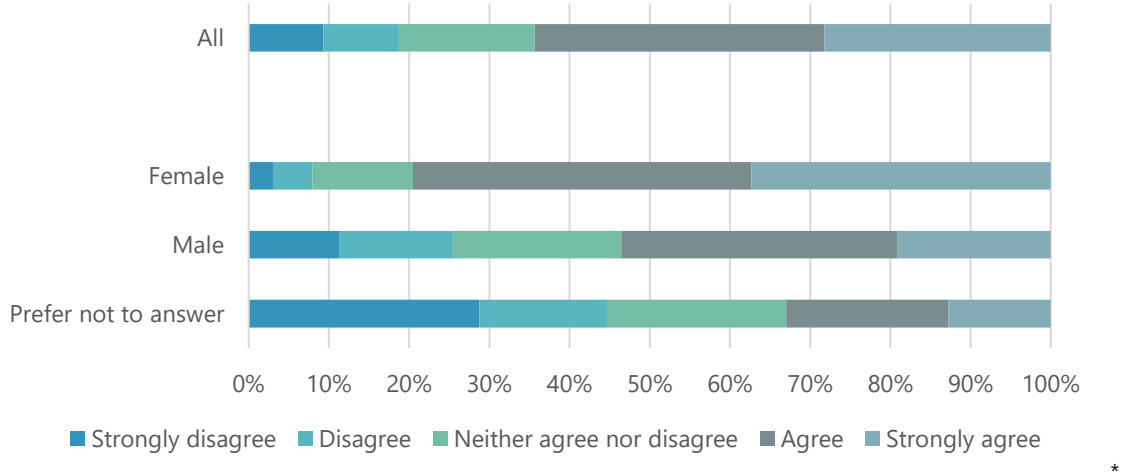
Like the findings in the previous section, there is a trend towards agreeing that changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe within their workplaces as age decreases. As shown in Figure 10, among those aged 20-29, over 86% either agreed or strongly agreed that changes are needed compared to an overall agreement rate of 64%.

Figure 10: Survey results for "are changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe within their workplaces?", stratified by age



As shown in Figure 11, women are more likely than men to agree that changes are needed, with 80% of women either agreeing or strongly agreeing compared to 54% of men.

Figure 11: Survey results for "are changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe within their workplaces?", stratified by gender

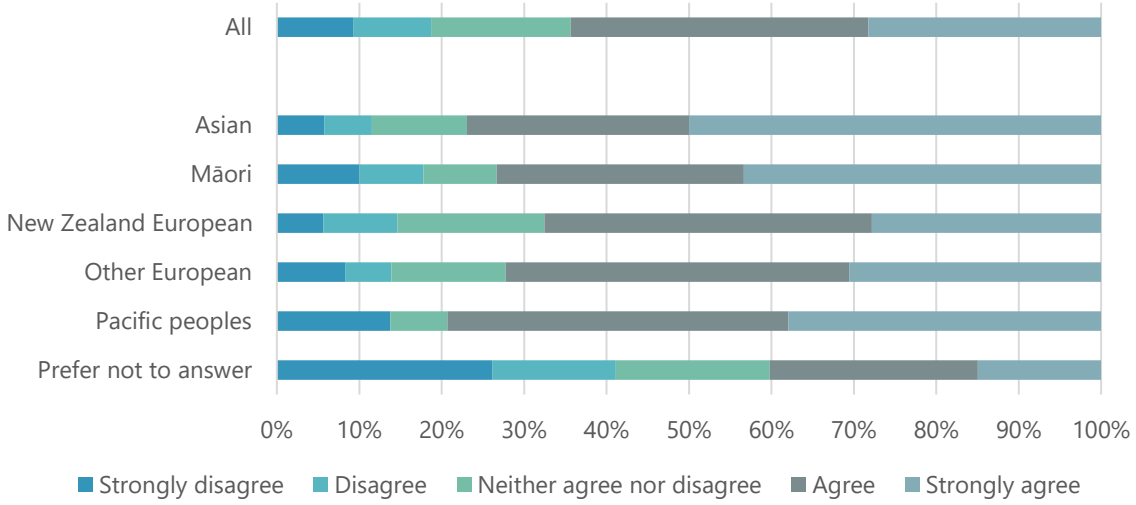


*

Excluded genders with less than 10 respondents

As shown in Figure 12, there were similar levels of agreement across ethnicities that changes are needed, excepting those who preferred not to answer.

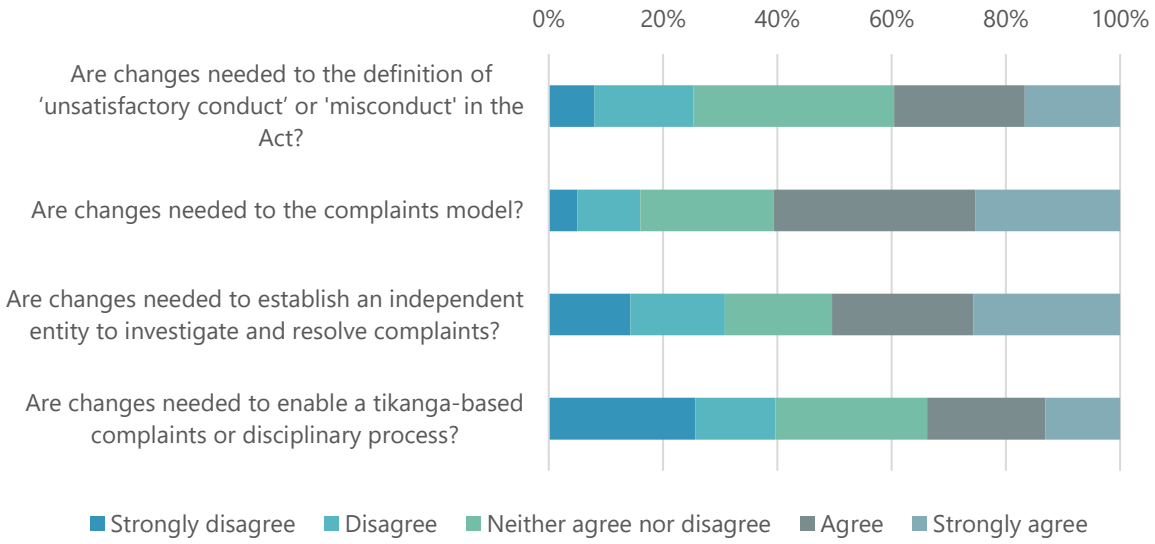
Figure 12: Survey results for "are changes are needed to promote positive culture change, health and wellbeing and help ensure lawyers are safe within their workplaces?", stratified by ethnicity (note that respondents could select more than one ethnicity)



5. Conduct and complaints

- Mixed survey responses to whether the definitions of 'unsatisfactory conduct' and 'misconduct' should be updated. Submissions were also split.
- The most common issues identified with the current process are the time taken to resolve a complaint and the inconsistency of decisions.
- Most survey respondents believe that changes are needed to the complaints model. Many email submissions agreed.
- Half of survey respondents agreed that an independent entity to investigate and resolve complaints was needed. A similar split was seen in email submissions.
- Mixed survey responses to whether a tikanga-based complaints or disciplinary process was needed. Submissions provided detail on what the process might look like.

Figure 13: Survey results for conduct and complaints



*n=983, 985, 986, 983 respectively

5.1.1 Mixed survey responses on whether the definitions of 'unsatisfactory conduct' and 'misconduct' should be updated. Submissions were also split.

Note: Survey responses only

✓ **40% agree or strongly agree**

✖ **25% disagree or strongly disagree**

~ **35% neither agree nor disagree**

5.1.1.1 Changes are needed

Timing of conduct

Multiple submitters (including representative groups) stated the definitions should be changed to reflect recent case law and expressly extended to include offensive conduct unrelated to the provision of regulated services. In addition, several submitters stated a need to clearly note the timing of the conduct and therefore that the scope could include actions outside work.

> It is essential that the definition of 'unsatisfactory conduct' and 'misconduct' are amended to cover breaches of the Act and Rules by a lawyer where the personal conduct in question is unrelated to providing regulated services. How can we seek to address the major issues within the profession regarding senior lawyer's behaviour towards junior staff within the office and at work social events if the definition does not clearly include this type of conduct. [survey response]

> The current definitions create an unclear distinction between conduct connected to the provision of legal services and other conduct. This creates unnecessary complexity, particularly given recent revisions to the rules. The categories should be modernized and streamlined. [survey response]

In contrast, several submitters stated that regulating conduct at social functions/personal capacity is a step too far.

> Unsatisfactory conduct or misconduct should be restricted to matters relating to professional matters. Unsavoury personal conduct by a lawyer that is unrelated to their professional conduct should be dealt with as with any individual (eg, either via employment or police complaint) [survey response]

Clearer definitions and examples needed

> Yes. The current structure of the definitions of "unsatisfactory conduct" and "misconduct" and the lack of specific reference in the Rules to the relevant types of behaviour lead to a risk that unacceptable conduct doesn't meet the disciplinary threshold. [representative group]

Several submitters suggested that the definition of 'unsatisfactory conduct' is being misused and is becoming wider than it was intended. They suggested it needs to be tightened and properly defined. One survey respondent suggested that 'misconduct' should be widened to include anything that would also come under general employment misconduct (eg, using a position of power to advance a personal relationship).

Some submitters noted the lack of definition in conduct unbecoming or professional misconduct and called for more clarity, guidance notes and examples. The current structure of the definitions and lack of specific reference in the Rules to the relevant types of behaviour lead to a risk that unacceptable conduct does not meet the threshold. One representative group submitter suggested that, given there are different standards for misconduct and unsatisfactory conduct depending on whether the conduct is connected or unconnected to the provision of regulated service, the Act needs to be amended to include a purposefully broad definition of this phrase used in case law, or a non-exhaustive list of situations that are connected to the provision of regulated services.

A few survey respondents noted that there are only two definitions, and sometimes actions will fall between the two. The punishment for one far outweighs the other and there needs to be a middle ground.

> They are on too far of the opposite end of the spectrum. UC gets you a slap on the wrist while M gets you disbarred, with not much middle ground. [survey response]

Current definitions too subjective

Submitters suggested that the current definitions are too subjective and open for interpretation. As one individual email submitter suggested, the definitions are conceptualised as ethical standards, rather than regulatory standards. They incorporate self-referential concepts of conduct like "disgraceful" and turn, at least in part, on the perception of conduct by lawyers themselves. The definitions and accompanying rules should be reconceptualised as a statement of regulatory standards. Misconduct and unsatisfactory conduct should be defined by reference to breaches of the rules and not by reference to extraneous concepts.

Adjustment of costs should be allowed without a finding of unsatisfactory conduct

Several submitters stated that the finding of unsatisfactory conduct to allow adjustment of a bill of costs should be removed, save for grossly excessive/unreasonable.

> A committee should be able to make a finding that a fee should be reduced, without that necessarily requiring a finding of unsatisfactory conduct. Whether it also amounts to unsatisfactory conduct should be at the discretion of the committee. [survey response]

5.1.1.2 Don't change

Twenty-five percent of survey respondents felt that changes are not needed to the definitions, and this was backed up by multiple email submitters. One submitter suggested that the issues go beyond definitions and the regulator needs to understand the nature of harm to guide future decision-making.

Submitters suggested that the Law Society could provide examples of what behaviour would qualify, without changing the definition.

5.1.2 Key issues with the current complaints model

The most identified issue with the current complaints system is that it takes too long. Other common issues highlighted were inconsistent decisions, the system being open to abuse and that the professional volunteers are overburdened with the number of complaints and the amount of material to get through.

> It is broken – for lawyers and complainants alike. I was recently involved in a matter that took many years from investigation through to an "on the papers" hearing to complete. It was truly exhausting. On another occasion involving a fee dispute the non-paying client had no real grounds for dispute but used the process to give them time to wind up their business and avoid the debt (part of which they had admitted but not paid). I have no doubt the volunteers on the standards committees do their best. The system needs better resourcing. The consequences of these processes for professionals are hugely significant

> and stressful. An efficient and fair process is crucial for all and engenders respect from all participants. My two experiences have been the opposite of that. [survey response]

The process

Submitters note that the process is too adversarial and punitive. However, in contrast, one email submitter stated that a process that did not properly reflect the rules of natural justice would be criticised.

> Would like to see greater emphasis on rehabilitation and restoration. At present it is an entirely adversarial situation, but wouldn't we generally be better served as a profession to support our members to work through the issues that brought them to that place, make meaningful amends to the harmed party, and have them then able to mentor others who have gone through or are identified as being at risk of similar behavioural issues? [survey response]

The length of time taken to resolve a complaint means that, in some cases, the complainant essentially must resign, otherwise they have to work alongside the alleged bully for an extended time period.

> The complaints process needs to have a complainant centred focus and provide support to victims throughout the whole process. Many people who have made formal complaints of sexual harassment and assault have reported the legalistic, lengthy, opaque and often adversarial complaints process that they endured caused more harm than the original conduct [organisation]

Submitters suggested that the process is hard to understand, the rules prescribe general steps, and often the process is haphazard and subject to variation. However, one email submitter suggested that inconsistency may reflect the tendency of the local population to complain, and the merits of the complaints received. Submitters noted that there is not an appropriate mechanism for quickly addressing vexatious or meritless claims.

Submitters suggested that processes are not transparent. Complainants have a right to know about the status of a complaint, and clients/public have a right to know about the status of any proceedings so they can make an informed decision about engaging.

Many complainants appeal from a committee's decision to the LCRO, which may suggest lack of confidence in the independence of the committee system. The system needs to give confidence to the complainants that their issues have been considered fairly.

Two individual submitters note that introducing a reporting requirement on the actions of colleagues is problematic, since the practice of law relies on trust. There has been a reluctance of lawyers to abide by their duties to report misconduct. There have been stories of senior practitioners getting junior lawyers to raise concerns about the fitness to practise of one of their senior colleagues, rather than making the report themselves. Fellow practitioners can be reluctant to raise concerns about other practitioners because there are such limited options available for redress.

Standards Committee (SC) processes

- SCs do not often promote mediation. This may be due to the lack of suitable mediators and insufficient resources.
- SC decisions either do not address issues or give inadequate reasons.

- If the matter is taken to hearing, the practitioner complained about should be allowed/required to participate in person, rather than working 'on the papers' as a default.
- The requirement for a SC to always have a formally appointed convenor or deputy means that if one resigns, the whole business of the SC is suspended until a replacement can be found.

Open to abuse

Multiple submitters including representative groups state that the current system encourages delays, abuse of process (no consequences for collateral attacks of a vexatious nature), abuse from clients by threatening to complain unless the lawyer reduces their fees, and distress. There are serial complainants.

> Complaints that lack a reasonable foundation still take up a lot of time and money for lawyers and are often used tactically by clients to avoid paying fees. [survey response]

Submitters noted that complaints are lodged as a tactic to deter lawyers from representing their clients or to protract the issue. They suggest that prompt resolution would make these tactics less successful.

A law firm submitter stated that clients are using the fact that if they complain, they won't have to pay their legal fee until the complaint is resolved, which can take years, to effectively give themselves an interest-free loan.

From a consumer point of view

Submitters noted that clients with language/communication disadvantages are excluded from the process through requirements such as formalising the complaint in writing – this is a barrier to mediation. Lawyers are often represented by counsel appointed by insurers, and the LCRO processes lean too far in the direction of an adversarial process. This disadvantages those who do not have the skills or confidence to proceed in this manner.

> Early intervention in situations where there are power or knowledge imbalances can minimise damage done to the people concerned and to the reputation of the profession. [lawyer submission]

> It is an onerous, stressful system for complainants. Imagine you wish to submit a complaint against a lawyer. Realistically, to face a chance against the lawyer and their professional indemnity and legal representation, you would benefit from having your own legal representation. But think about that … needing a lawyer and to pay for their services just to make a complaint about a lawyer! That is not fair. It is not right. It is a kick in the teeth. [survey response]

A group submitter suggested that the early resolution service process may have an excessive focus on timely resolution and fail to grapple with the power dynamics and wider structural issues involved. The absence of procedural protection may further disadvantage the already disempowered.

One individual submitter noted that LCS only accepts complaints over $2,000. Smaller amounts are still significant to some consumers so they should be allowed to lodge a complaint.

Fee/cost specific

As noted by several submissions, fee complaints are the most difficult to deal with as the concept of a fair and reasonable fee is somewhat subjective. Complaints about fees can involve lawyers who didn't set the fee (but did work on the case) and lawyers who weren't representing the complainant. Some firms work hard to resolve complaints quickly without going to Standards Committees and will write off fees to avoid this as they know it takes a long time to resolve and is very stressful.

Gaps in the process

As noted by a group submission, where problematic conduct is a symptomatic of underlying structural, mental health, social and personal issues, the current regime fails to provide lawyers with the support necessary to navigate these issues. An individual submission noted that minor infractions like lateness or rudeness are not well addressed by current procedure.

> Sitting on an SC, it is an utter frustration, in a situation where it is as plain as a pikestaff that the practitioner is unwell, overtaxed, isolated or otherwise challenged (including in relation to readily remediable competence issues), to have to stay at scrupulous arm's length issuing progressively more stringent disciplinary orders when both the human instinct and most probably the most effective thing to do would be to pick up the phone and say "*You need help. Here are some sources of advice and support that are available to you. Use them. Sort it out*". We have observed this in particular with isolated legal aid lawyers struggling in the dismembered legal aid system and, more generically, sole practitioners or lawyers in small firms including in relation to trust accounting compliance. [lawyer submission]

Submitters noted that the complaints model does not take into account the mental health of practitioners or rehabilitation after negative findings. Submitters noted that the Law Society does not act when members have mental health or drug-related issues and allows them to continue to practise without supervision or oversight. In addition, there is no system to ensure regular communication with, or support for, complainants and other affected persons.

> The complaints process should be an opportunity to intervene in a supportive way, including in respect of addiction and mental illness. [organisation]

One survey respondent noted that the current disciplinary model relies on the aggrieved party to make a complaint, rather than non-interested parties (although any party can make a complaint).

> The current complaints model relies upon individual aggrieved parties to bring complaints -- ie, it uses a private prosecution model. A disciplinary prosecutor should be able to investigate and instigate disciplinary proceedings against lawyers, and non-interested parties (judges, other lawyers) should be able to make reports of concern to the public disciplinary prosecutor for investigation. [survey response]

The people

Two representative group submitters suggested that the current system relies heavily on volunteers and is not properly resourced. Several submitters stated that people who volunteer for Standards Committees may not always be suitable eg, a local lawyer should not be considering a complaint about another local lawyer or may not have technical knowledge. There is also an absence of

complaint-specific subject matter knowledge among committees. The wide differences in approach taken by SCs result in inconsistent outcomes.

A group submission stated that, regarding the makeup of SCs, the requirement for SCs to be made up of up to seven lawyers and two lay members is unrepresentative of the community – this only reflects the Law Society policy, not a legislated requirement. Additionally, an individual email submitter noted that SCs will not have many sole practitioners on them as they do not have time, meaning there is a biased view in the SC.

An individual submitter noted difficulties in attracting the right skills to the LCRO, with the Ministry of Justice only making appointments for three-year terms, despite being able to appoint for five years. This limits career paths.

The powers and rules

A representative group submitter suggested that more guidance is needed around s 188 of the Act for discretion to release information during the process and after the decision is released. For example, limited disclosure where workplace safety risks are at issue, wellbeing of complainant to be paramount in decisions around disclosure. In addition, where there is a finding of unsatisfactory conduct or misconduct involving workplace safety, the name of the practitioner and nature of conduct should be disclosed unless there are exceptional circumstances. At a minimum, the information should be disclosed to employees at the practice where the practitioner currently works and where the conduct occurs (if different).

However, in contrast, another individual submitter stated that the default position (for all complaints) should remain that the practitioner's name goes unpublished unless there are aggravating features or features that warrant a warning, as publication is primarily a punitive measure.

As one individual submitter stated, the LCRO does not have the powers to be effective when an SC has dismissed a meritorious complaint. They are confined to 'review', largely limited to reviewing the logic of the SC decision, and do not question the evidence underpinning the SC decision.

Another individual submitter suggested that the rules are confusing as to what confidentiality or other obligations there are on complainants and other affected persons during the process. Rules should be amended to clarify that a person who makes a complaint under rule 2.8 or 2.9 is not obliged to keep the fact they made a complaint, or the details, confidential.

5.1.3 The majority of survey respondents believe that changes are needed to the complaints model. Many submissions agreed.

Note: Survey responses only

✓	✖	~
61% agree or strongly agree	**16% disagree or strongly disagree**	**23% neither agree nor disagree**

> Substantive reform must start with replacing the prescriptive framework in the Act – and providing the scope for a flexible regime that arms the Law Society with the necessary latitude to develop (and modify) appropriate procedures, to better reflect the different tiers of complaint. Amongst other things, this could provide the scope for the concept of less formal infringement tickets, …streamlining the number of disputes-handling bodies and their procedures, paying adjudicators and making use of suitably experienced adjudicators from outside the legal profession. [representative group]

Disciplinary powers (note that some of these overlap with section 8.1.3)

- The maximum suspension period should be extended, over the current three years.
- SCs should be able to make an order or direction triggering practitioner support functions in terms of mental health and other issues.
- The regulator should have powers to issue interim suspensions and disciplinary powers that can be exercised pending final decisions. Interim powers help protect workers and clients where decisions take a long time (eg, for serious misconduct).
- The power to enforce deadlines and page limits to reduce unnecessary information.

Information needs

There were a number of areas where submitters suggested more guidance and information is needed:

- All legal services should be mandated to inform the customer about the complaints procedure and rights.
- More guidance on where there is an apparent conflict between a lawyer's employment obligations and their mandatory reporting obligations.
- Give further consideration to the interface between mandatory reporting obligations and confidentiality and/or non-disclosure obligations contained in primary legislation (e.g., secrecy provisions in income tax legislation). Breach of non-disclosure obligations can be a criminal offence.
- Further consider and clarify the interface between this complaints process and other regimes e.g. Ombudsman or Privacy Commissioner.
- Defining misconduct for the purposes of establishing whether the reporting obligation is mandatory can be difficult, and more guidance or access to confidential advice is needed.
- Establish a member defender service to help guide members on what to do if they face a complaint.
- Clear guidance on what constitutes a breach of standards is essential for regulated parties to ensure they can easily comply.
- Guidance templates for complaints.
- Fully redacted versions of SC decisions should be linked to the decision summaries published, for educational purposes.

Alternative dispute resolution and preventative processes

Multiple submitters suggested a stronger focus on reconciliation and mediation is needed, reducing the adversarial nature of the process and empowering individuals who might otherwise be reluctant to make a complaint.

> Mediation, restorative practices, and the inclusion of tikanga and Te Ao Māori sensitive processes could sit alongside the also necessary current decision making, or sanctions based model. [survey response]

Other submitters suggested the creation of an early diversion scheme for low-level instances of alleged unsatisfactory conduct with provision for warnings and requirements to undertake training and make amends. This could be offered to practitioners at an early opportunity to quickly resolve low-level complaints.

A group submitter suggesting amending the regulations to explicitly provide for restorative engagement as an alternative pathway to resolution of complaints concerning minor allegations, and a complementary process to address aspects of more serious complaints of misconduct. The legislated provision for complaints to be resolved by way of negotiation, conciliation, and mediation (s 143(1)(a)) means there is the possibility for more creative and restorative ways within the current system.

Restorative processes can meet an identified gap in the resolution of complaints about lawyers (ie, the emotional and relational components of complaints). The same group email submitter as above recommended implementing restorative engagement using the following principles: people focus, voluntary participation and shared decision-making, active accountability, commitment to repairing harm and rebuilding trust, flexibility in process, safety, balance and representation in process, commitment to Te Tiriti.

> The disciplinary process is more or less the ambulance at the bottom of the cliff, as it operates only once a lawyer's past conduct has been challenged. It would be desirable to consider possible preventative approaches also. Even if they only avoided a tiny fraction of the negligence that otherwise might have occurred. [academic submission]

One individual submitter cautioned that alternative dispute resolution processes may disadvantage complainants as they may feel it is easier to deal with an organisation to whom they feel vulnerable at arm's length.

Reporting processes

With regards to reporting requirements:

- All SC and LCRO decisions should be published unless there is good reason not to do so. Names can be redacted.
- A searchable database of decisions would serve an educational purpose and help promote consistency in decision-making.
- Status quo under which practitioners' names are suppressed needs reform – there is a case for disclosure being the rule, rather than the exception, where a finding of unsatisfactory conduct or misconduct has been made.
- There should be more guidance over publication of lawyers' names.
- Rules should be amended to require firms to report annually to the Law Society on the number of complaints received and resolved privately, so the Law Society can monitor the effectiveness of private resolution.
- Standards Committee names should be published, as suggested by the Cartwright review.

The people

Submitters stated that the process needs to be resourced with persons with appropriate skills and experience; this may require additional funding. Contracting the services of appropriately qualified decision-makers (which may increase the number of lay people). However, it is important to continue to include lawyers as well. Concerns were also raised about the management structure within the Law Society to support the Standards Committees.

> There are way too many levels of management and not enough folk doing the work of assisting Committees. This has led to a breakdown in communication flow and efficacy … leading to less productivity and disengagement within the Complaints Service. It has also led to … fewer resources being put to supporting the Committees. [survey response]

Submitters stated that a trained Chair for hearings is needed, appointed on merit, with professional support. This is due to the suggestion that lawyers do not necessarily have good decision-making skills. Additionally, the SC makeup should be reviewed to ensure every committee has the right range of expertise and practical experience eg, property law.

Several submitters stated that the LCRO (funded via a Ministry-approved levy on lawyers) needs to be better resourced and funded.

New processes

> Substantively reducing delay in resolution of complaints and inquiries should be the main focus of improvements. A shift to a less adversarial model may assist in improving the speed of the process, especially if an early triage system is used. [lawyer submission]

The most common improvement suggested by submitters was an appropriate triage function to help reduce delays.

Multiple submitters suggested that fee complaints should be removed from the present complaints process. An adjustment to a fee can only be ordered following a finding of unsatisfactory conduct, and therefore lawyers are likely to resist complaints about fees, and every effort should be made to resolve fee complaints by mediation. Multiple submitters stated that it should be possible to recommend or impose a reduction in costs without a finding of unsatisfactory conduct. Submitters suggested that if mediation is unsuccessful, the process that existed under the old Law Practitioners Act is more suited to addressing fee complaints.

Along the same lines, several submitters suggested that the process should delineate between consumer and conduct complaint processes – this is essential to ensure the categories of complaints are met with a fit for purpose response.

Other suggestions included:

- Removal of the prescriptive provisions in the LCA to improve the Law Society's ability to evolve its complaints handling systems in line with best practice without needed statutory amendment on each occasion. In contrast, another email submitter suggested that the Law Society should prescribe the process which SCs follow – departures should be the exception, not the rule. Publish this process in plain English, with a flowchart.

- Establish a proactive system that detects problems and investigates and improves the system – a quality management approach. This would involve all users of legal services sending feedback directly, and the Law Society investigates and monitors and adjusts as necessary.
- Better processes around how the Law Society regulates the issue of practising certificates when a lawyer is subject to proceedings. Someone currently subject to proceedings appears on the register as a holder of a practising certificate.
- It is not currently clear whether lawyers who have been suspended can appear in other capacities in court. The Act should establish that a disciplinary finding addresses all possibilities of appearance under other statutes, so courts know who is entitled to appear.
- SC process should be streamlined by moving towards a complaints assessment committee like other professions.
- Incentivise the use of law firm complaints handling processes in the first instance (but do not make compulsory). The Rules should also require a firm to inform a complainant about its available complaints handling processes at the time of receiving a complaint.

5.1.4 Half of survey respondents agreed that an independent entity to investigate and resolve complaints was needed. A similar split was seen in submissions

Note: Survey responses only

✓	✘	~
50% agree or strongly agree	**31% disagree or strongly disagree**	**19% neither agree nor disagree**

5.1.4.1 Agree

Half of survey respondents agreed that an independent entity was needed. Many email submissions from representative groups, law firms and individuals agreed with this.

> We all need to know that there is a body who we can communicate concerns with and who will ensure that a person's rights are protected. [consumer submission]

Regarding the makeup and purpose of the entity, it was suggested that:

- The organisation should have both lawyers and lay people, investigators, and experienced lawyers.
- Costs should be met by a levy on the profession, filing fees and cost recovery. However, multiple submissions expressed concerns about increased costs to lawyers and noted the current system uses a lot of pro bono time to run. One email submitter suggested if the body was funded based on numbers of complaints, then some areas of the law (e.g. family) will disproportionately bear the burden.
- The entity needs to be sufficiently resourced to resolve complaints quickly. Funding arrangements need to be enough to meet quick turnaround times.

- The entity would only be used for more serious matters, appropriately funded to ensure prompt resolution. Fee disputes would remain with the Law Society.

> All complaints or particularly those with a major imbalance of power or large complexity should be overseen by an independent entity who is not concerned with protecting lawyers but with justice and doing what is right by the community. [survey response]

5.1.4.2 Disagree

Thirty-one percent of survey respondents disagreed that an independent entity is needed. Many submissions from representative groups, law firms and individuals agreed and suggested that the current system is kept and tweaked, and that any concerns stem from issues with the current processes eg, delays.

> Many of the matters presented as requiring the appointment of an independent regulator stem from the apparent bureaucracy and delay associated with the current process. [lawyer submission]

> An independent body regulating us risks political interference in decisions, threatening the upholding of the rule of law. [representative group]

Reasons behind disagreeing with an independent entity include:

- While a split system has international precedent, it is a mistake to assume that matters can be easily divided into consumer matters and conduct matters, as most conduct issues begin as complaints about poor service.
- It may not produce a better system and their design and implementation would entail significant system design risk.
- Replacing SCs would have significant cost implications and deprive the complaints process of the breadth and depth of experience provided by the SCs.
- What evidence is there that an external entity would resolve complaints quicker and produce more consistent results?
- The advantage of the current Law Society disciplinary structure is that there is no confusion possible between the different functions. Having different entities may introduce confusion for consumers wanting to make a complaint.
- Non-lawyer decision-makers do not understand legal processes.

> Moving to an independent entity will result in skyrocketing costs, with laypeople who lack knowledge of the legal profession and the professional obligations of lawyers adjudicating on matters and likely making a wrong decision as a result. [representative group]

5.1.5 Mixed responses from survey respondents on whether a tikanga-based complaints or disciplinary process was needed. Submissions provided detail on what the process might look like

Note: Survey responses only

✓	✖	~
34% agree or strongly agree	40% disagree or strongly disagree	27% neither agree nor disagree

Submissions from representative groups and individuals and survey respondents suggested that a tikanga-based approach would be non-adversarial, collective, mediation-based and based on principles of restorative justice. A representative group submitter noted that research should be commissioned to consider the design of a tikanga-based regulatory process. In addition, submitters (including a representative group) noted that processes must be led by Māori, adequately funded, developed, and delivered in a culturally safe way.

> Holding a tikanga based complaints service needs to be done in partnership with iwi/mana whenua who can guild and uphold tikanga practices. Important to not confuse an institution or 'regulator' as the culture knowledge holders – only tangata whenua Māori can hold this role, and ensure respect is maintained across different cultural tikanga practices in the different areas – hence a need to work in partnership to develop the process, and maintain and check the process is tika. [survey response]

Submitters and survey respondents noted that it may only be an appropriate process in certain cases.

> There are different modes and it could look similar to a restorative justice process. Many complaints about for instance poor service, insensitivity, breakdown in communication, or misunderstanding about cultural issues could perhaps be dealt with this way if both parties agree. However "misconduct" complaints (e.g., stealing client money) are best dealt with in a more direct way (as in "go straight to tribunal" rather than the present protracted method of long letters back and forth etc before the case gets to a tribunal for resolution). [survey response]

Submitters and survey respondents suggested that aspects of tikanga should be incorporated into the current complaints process.

> It is not just important that a tikanga based process is available to those who wish to use that process, but that a more general process will be greatly enhanced by a consideration of alternative dispute resolution concepts and process from tikanga Māori. [representative group]

> I am of Māori descendant, but I don't really care for a tikanga-based complaints or disciplinary process. Perhaps there could be some nice aspects of tikanga to introduce into our standard process, but not a separate process. [survey response]

Others suggested that if there is a choice, both options should be made available to everyone, and the message should be conveyed that both options are equal.

> If a tikanga-based process is adopted, I consider that it is important that the system is accessible by all complainants and practitioners, irrespective of race, if both parties agree to the process. [survey response]

Forty percent of survey respondents disagreed that there needs to be a tikanga-based complaints process. Some survey respondents suggested that any tikanga-based approach should not be forced on the profession, and that having two systems may produce inconsistent results.

> I have deep reservations about a two model system for complaints and discipline – surely that promotes division, and the prospect of greater inconsistency of approach/outcome. If there was a tikanga-based process then the "other" version should follow the same steps, even if tikanga wasn't the focus. [survey response]

5.1.6 Demographic differences

As shown in Figure 14and Figure 15, those who have been subject to a complaint in the past were slightly more likely to agree that changes are needed to the complaint process, and that there was a need to establish a separate entity.

Figure 14: Survey results for "are changes needed to the complaints model?", stratified by complaint status

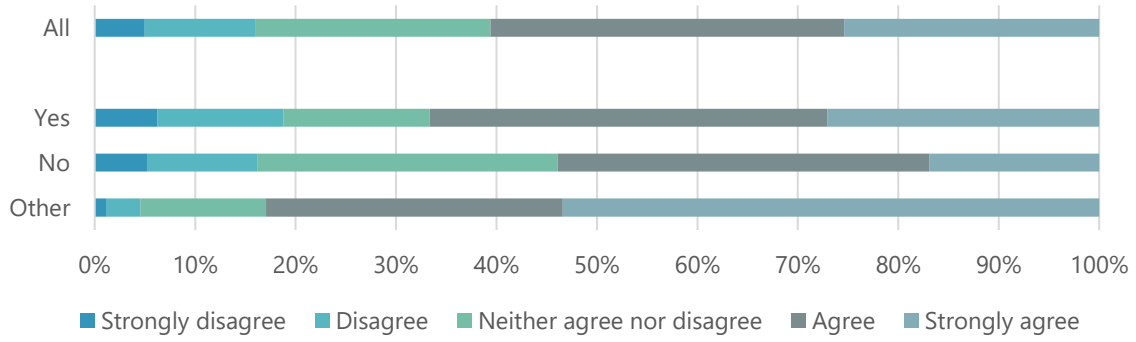
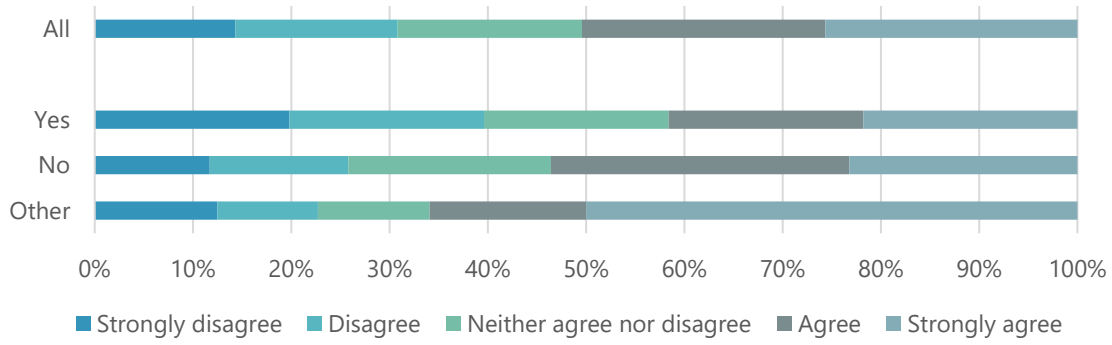
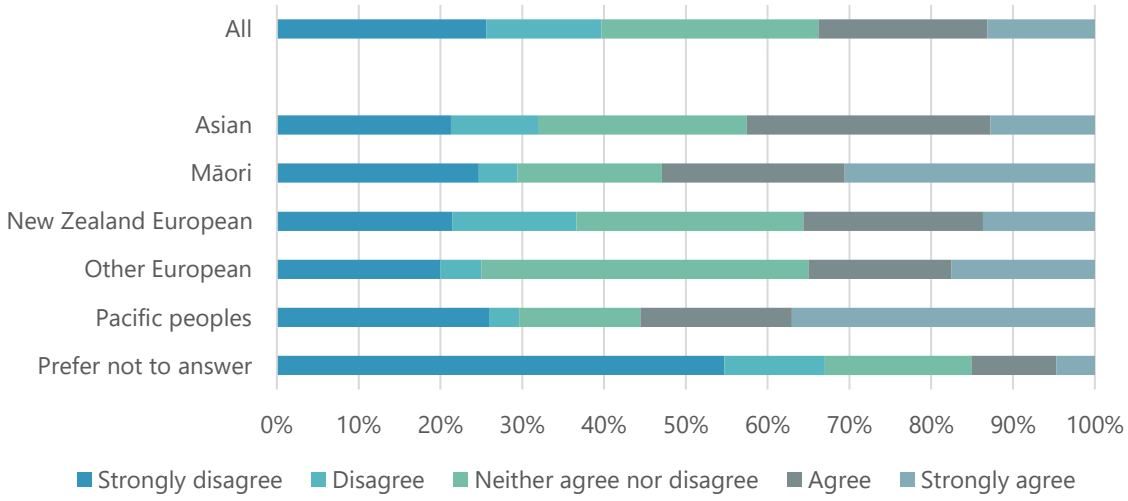


Figure 15: Survey results for "are changes needed to establish an independent entity to investigate and resolve complaints?", stratified by complaint status



As shown in Figure 16, those who identify as Māori or Pacific peoples show higher levels of agreement to establishing a tikanga-based complaints or disciplinary process. Those who preferred not to answer show a lower level of agreement.

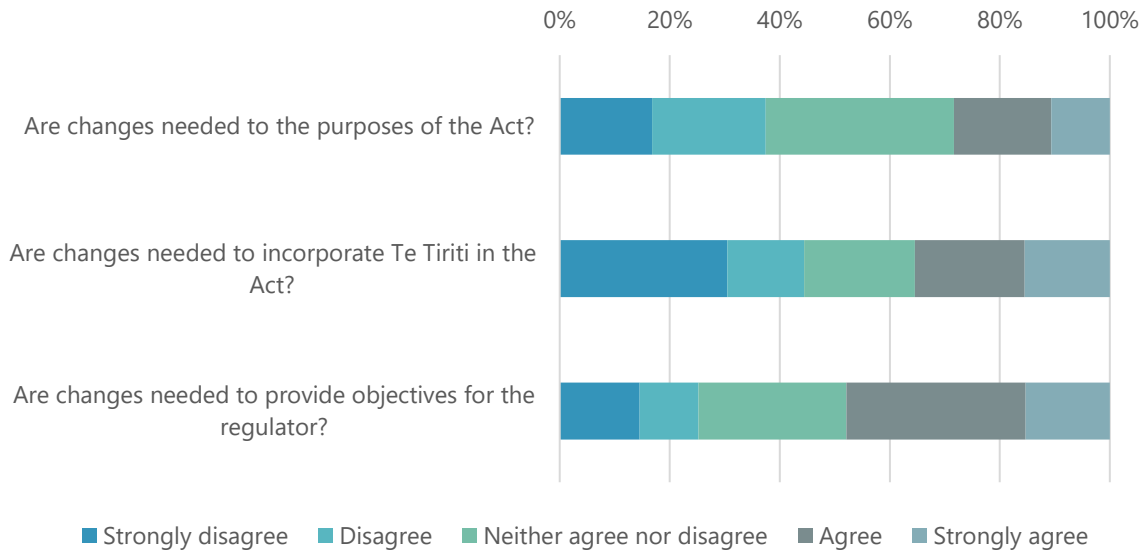
Figure 16: Survey results for "are changes needed to enable a tikanga-based complaints or disciplinary process?", stratified by ethnicity (note that respondents could select more than one ethnicity)



6. Statutory framework

- Minority of survey responses feel changes are needed to the purpose of the Act, however, more submissions agreed than not
- Minority of survey responses agree that Te Tiriti o Waitangi should be incorporated into the Act. More representative group submissions agreed than not.
- Almost half of survey respondents agree that statutory objectives should be set out to guide the regulator, with many submissions agreeing.

Figure 17: Survey results on statutory framework



*n=910, 925 and 908 respectively

6.1.1 Minority of survey responses feel changes are needed to the purpose of the Act, however, majority of submissions agreed.

Note: Survey responses only

✓ **28% agree or strongly agree**

✘ **37% disagree or strongly disagree**

~ **34% neither agree nor disagree**

6.1.1.1 Changes are needed

Twenty-eight percent of survey respondents either agreed or strongly agreed that changes are needed to the purpose of the Act, with multiple submissions from representative groups, law firms and individuals agreeing. One representative group submitter noted that a new purpose statement would signal the significant changes being made, make the key purposes of the regime clear and set out the factors that help form the basis for the application of the Act and help guide interpretation.

One individual submitter noted that there is a divergence of views about what the rule of law means and suggested that we need a debate on thiss, which we can then inscribe in statute – making it clear what lawyers' ethics are. Other suggested changes from survey and email submissions include:

- To address equity, fairness, and access to justice.
- Remove reference to the 'new' profession of conveyancing practitioner.
- To protect legal workers from harm and exploitation and ensure safe legal workplaces free from bullying and harassment.
- Promotion of an independent, strong, diverse, and effective legal profession.
- Express recognition of public interest.
- The promotion of considerations of the paramountcy of the rule of law
- The purpose should link more directly to the interests of the public, rather than just consumers of legal services.
- The purpose should be changed to best reflect our society as it is today, including to recognise and respect the mana of tangata whenua and tangata tiriti.
- To protect the independence of the judicial process.
- To ensure legal services are delivered with a high standard of ethics and professionalism.
- To enable the legal profession to maintain autonomy and self-governance.
- To ensure quality of services.
- Also amend s 66 as the current section on representative functions to include reference to access to justice.

One individual submitter suggested looking to the Law Society of Ontario, which adopted a requirement that lawyers had a 'special responsibility to respect the requirements of the human rights laws in force in Ontario', which was a compromise from a bolder statement intended to facilitate cultural change.

Another representative group submitter suggested that we should rethink the term consumer. As present in the LCA, it fundamentally deviates from the purpose of extending trust and procuring justice, by solely projecting the act of legal representation as a paid service. One survey respondent questioned the emphasis on consumer protection and whether it is still as relevant today.

> I feel that the Law Society has historically put too much emphasis on consumer protection. While this is undoubtedly important in some areas, it is not as critical for in-house lawyers – a 1/3 of the profession – and yet whenever I've talked to the Law Society about different models overseas and how we could change/improve things, they've always cited the need for "consumer protection" as a reason for not changing anything. [survey response]

6.1.1.2 No changes are needed

Thirty-seven percent of survey respondents either disagreed or strongly disagreed that changes are needed to the purpose of the Act, with several individual and law firm submissions agreeing. Submitters that disagreed that changes are needed often stated that the current rule of law obligation is sufficiently broad, particularly when read with the fundamental obligations. One individual submitter suggested that including a requirement to uphold constitutional provisions would make obligations

less certain. Another survey respondent questioned whether specific objectives in overseas jurisdictions have led to a reduction in issues in those systems.

An individual submitter suggested that any uncertainties may be due to a lack of understanding of the current purpose.

> There may be a lack of understanding as to the breadth of the fundamental obligations and the way they will shift with the statutory and social climate. [lawyer submission]

6.1.2 Mixed survey responses on whether Te Tiriti o Waitangi should be incorporated into the Act. Majority of representative group submissions agreed.

Note: Survey responses only

✓	✖	~
35% agree or strongly agree	**44% disagree or strongly disagree**	**20% neither agree nor disagree**

6.1.2.1 Agree with incorporation

Thirty-five percent of survey respondents agreed or strongly agreed with the incorporation of Te Tiriti into the Act, with multiple submissions from representative groups and individuals agreeing. Submitters noted that it would need to go beyond mere tokenism.

> The fundamental obligations of lawyers in s 4 should be amended to place a specific requirement on lawyers to uphold the country's constitutional values, including He Whakaputanga and Te Tiriti o Waitangi. The lack of recognition, both in the past and through to today by some practitioners that He Whakaputanga and Te Tiriti means that specific emphasis should be given to note that these are, in fact part of our current constitutional framework. Careful consideration will need to be given to form in which Te Tiriti is incorporated into this section and the effect of that. [representative group]

As a representative group submission noted, incorporating Te Tiriti in the legislation for a statutory body performing a public function is appropriate and would bring the Act into line with other Acts establishing similar statutory bodies.

> The Act should be amended to expressly incorporate Te Tiriti with an operative reference which requires those exercising functions or making decisions to give effect to Te Tiriti. Without this, we don't think there will be any meaningful change. [representative group]

In contrast to the argument that the requirement to uphold rule of law means Te Tiriti is already incorporated, several representative group submitters suggest that it should be made explicit to avoid doubt.

> As tikanga and Te Tiriti are…already part of the 'rule of law' – we see no reason why this should not be expressed in the Act. Put another way, if it is widely accepted that tikanga

> and Te Tiriti are part of the law, what is the harm in having an express statement (or express statements) to this effect? [representative group]

> In our view, a specific Tiriti obligation on lawyers: a. is arguably an inherent dimension of the obligation to uphold the rule of law in the Aotearoa context; b. should be made explicit, including to avoid doubt if there is a diversity of views on whether that obligation exists. [representative group]

Another representative group submitter noted that from 2025, all law schools must incorporate tikanga Māori into compulsory papers. Therefore, from about 2030 onwards, incoming graduates will be armed with a bijural skill set that the rest of the profession will not have unless wider changes are made now to upskill lawyers.

Some submitters suggested that what is required is not a general reference, but specific measures to demonstrate that those developing policy and legislation have actively worked through what is required to recognise and safeguard the principles of Te Tiriti.

> …incorporating Te Ao Māori and Tikanga Māori perspectives and practices into the proposed regulatory framework, and as a necessary component of continuing professional development, can help lift the capability of legal practitioners to be more responsive to the needs and aspirations of whānau, hapū and iwi Māori. [lawyer submission]

As one representative group submitter noted, any inclusion will need to be backed by appropriate policies and funding.

> …any inclusion of an obligation to honour Te Tiriti should be backed by policy led by the views of Māori, a commitment to more than adequate resourcing, that supports this obligation and Māori within the legal profession. [representative group]

6.1.2.2 Other considerations

Submitters (including representative groups) noted that what Te Tiriti means is evolving and there is, as yet no legal and social consensus as to the definition of the principles. A number of submitters (including representative groups) and survey respondents stated that they would need to know what principles are being considered and how before providing a position.

> There is no commonly agreed definition of what the Treaty means, what its principles are, and what incorporation of that into any Act actually does. The legal profession must be careful not to put token/symbolic gesture into its legislation that does little change in reality. [survey response]

Additionally, extensive consultation would be needed over any proposed changes, and it is necessary to have a consensus on a method or roadmap as to how the incorporation in the Act will manifest itself before comment is possible. It was also noted that any inclusion needs to be backed by policy, a commitment to more than adequate resourcing.

> This is not something that can be rushed and requires a very deliberate and considered engagement process over a long period of time. [lawyer submission]

6.1.2.3 Do not agree with incorporation

Forty-four percent of survey respondents disagreed or strongly disagreed with the incorporation of Te Tiriti into the Act, with multiple submissions from individuals, law firms and representative groups agreeing. Submitters suggested it is already incorporated by virtue of the requirement to uphold the rule of law and that inserting an explicit reference would add no substance to that requirement.

> If the panel has in mind following the approach taken in some other legislation, where references to the Treaty are left bare, the content deliberately unspecified and intended to be evolving, then serious rule of law issues arise. It is one thing to make unadorned reference to the Treaty when imposing obligations on public bodies, it is quite another to do so when an individual's direct reputation and livelihood turns on it. [lawyer submission]

> It is not principled to isolate out one single component of New Zealand's (largely unwritten and non-entrenched) constitutional framework, as worth of being upheld above other components. [representative group]

Several submitters (including a representative group) suggested that Te Tiriti is between Māori and the Crown. Lawyers are private businesses and therefore should not be required to comply with the Treaty.

> The Treaty of Waitangi should not be incorporated into the Act. Solicitors are not treaty partners and need to be impartial in advising clients on treaty matters. Having direct statutory obligations under the treaty would create conflicts for lawyers where those values are in conflict with client interests. This would be a damaging outcome. [survey response]

One individual submitter suggested that legislation that proposes to discipline or exclude on the basis of criticising the place of Te Tiriti is inconsistent with the Bill of Rights Act.

Several submitters noted that while the country had bicultural foundations, it is now multicultural. Some submitters suggested that incorporation may increase separatism.

> The Society should not promote the inclusion of upholding the Treaty in the purpose statement in the Act (s 3)…It would extend separatism, or the potential for separatism, to the way the profession is regulated and represented, and the way lawyers deal with individual members of society. The Society should take the exactly opposite tack. It should advocate for equality under the law… [lawyer submission]

Submitters cautioned that lawyers are needed to advocate on both sides. If the Law Society takes a position that implicitly endorses lawyers on one side of the debate, this may alienate lawyers on the other side.

> This would have major constitutional implications for the rule of law and for the role of lawyers in upholding the rule of law. For example, it would have implications for the ability of lawyers to defend Treaty based arguments in litigation. Lawyers must be free to argue against Treaty claims in the same way as they defend NZBORA claims. [survey response]

6.1.3 Almost half of survey respondents agree that statutory objectives should be set out to guide the regulator, with many submissions agreeing

Note: Survey responses only

✓	✘	~
48% agree or strongly agree	25% disagree or strongly disagree	27% neither agree nor disagree

Almost half (48%) of survey respondents agreed that statutory objectives are needed, with many email submissions from individuals, law firms and representative groups agreeing. Suggested objectives include:

- to encourage and facilitate access to justice
- to uphold constitutional principles
- to encourage innovation, independence, competition, and productivity
- to promote the welfare, wellbeing and interests of lawyers
- to promote public confidence and ensure consumer protection
- to encourage a safe, healthy, diverse and inclusive legal profession
- to protect and promote the cultural identity and values of clients in the regulation of legal services
- to promote fairness and equity
- to set standards to protect consumers and members of the profession
- to support training and development of the profession
- to provide fair, efficient and transparent oversight of the legal profession
- to address complaints in a manner that is fair to both parties
- to apply or engage with Te Tiriti principles.

> We would strongly support a statutory objective to encourage additional diversity (cultural/ethnic/linguistic as well as gender and sexuality) within the profession for the simple reason that the profession acts for the public and needs to reflect society at large. Other key objectives for the regulator, in our submission, is to reiterate that it acts in the interests of the public (as the profession does) but also that it will be independent, objective and sensitive to all relevant matters such as cultural and linguistic differences. [representative group]

Multiple submitters (including representative groups) suggested that the UK Legal Services Act objectives are a good starting point. One representative group submitter noted that any objectives should link to the overarching purpose statement and capture or reference any obligations required by other legislation. The same submitter stated that it is important for any objectives to be set at a high level to allow for the addition of regulatory functions in response to changes in the external environment. Similarly, another individual submitter stated that flexibility is needed to later adjust and update objectives, noting that it can be difficult to change legislation so placing these in regulations or rules would allow for regular review and improvement.

Two survey respondents suggested that there should be a new statutory objective for the Law Society and NZCLE to enter into mutual recognition or recognition of qualification agreements with regulators in other jurisdictions, to improve global mobility of lawyers.

A minority of survey respondents (25%) disagreed that statutory objectives are needed to guide the regulator. A few submissions agreed.

> I consider that setting out statutory objectives for regulators can be counterproductive becoming prescriptive and narrowing in focus, excluding other considerations. [survey response]

One representative group submitter suggested that there is greater accountability provided through functions, rather than objectives. Functions go to the core of what a regulator must do, rather than what they aim to do.

6.1.4 Climate change should be a focus of the regulator

As one representative group submitter suggested, the Law Society has a crucial leadership role to play in relation to the profession and climate change, flowing on from its functions under s 65 of the LCA to uphold the fundamental obligations imposed on lawyers and to promote the reform of the law for the purpose of upholding the rule of law. the Law Society should spearhead the discussion about what ethical obligations lawyers have in relation to climate change and facilitate the education of lawyers about climate change.

Another representative group submitter suggested that the Law Society provide by regulation that climate change ramifications of a matter be a ground on which a lawyer may refuse instructions, should they chose to. The issue impacts not only lawyer/client relationships, but also employee/employer relationships. It should also adopt a climate change resolution similar to that adopted by the Law Society of England and Wales.

A third representative group submitter suggested that the Law Society should encourage firms to go digital, reducing paper usage and travelling less – in terms of environmental impact.

6.1.5 Other changes to the statutory framework

Submitters (including representative groups) highlighted other changes or reviews that are needed to the statutory framework. These are presented here, grouped into categories.

Trust accounts

As an individual submitter suggested, the Law Society should make it easier for a third-party stakeholder to become an approved escrow account. The current regulation that all monetary retainers must be held in a solicitor's trust account, or an approved escrow account, needs to reviewed. The latter has never been approved by the Law Society where it was not also a solicitor's trust account. The time and cost involved in sorting out the holding of a retainer for small fee jobs (under $5,000) is uneconomic.

Another individual submitter noted that the requirement to operate a trust account where clients are being billed on a subscription or retainer basis is too restrictive. Alternative providers are looking to

provide a more client-friendly billing option eg, fixed monthly retainer or subscription, invoiced partway through the month.

> Restriction…does not incentivise lawyers to explore viable innovative ways of practising which…is to the detriment of clients who would ultimately benefit from such models. [lawyer submission]

Barrister practice

As stated by an individual email submitter, the ability of barristers to accept direct instructions must be widened to assist in access to justice. Most barristers have "post box" instructing solicitors for at least half their cases. This is wasteful of time and resources and discourages barristers from picking up cases they might otherwise pick up. Also, barristers should be able to ask for money up front.

One representative group submitter asked why barristers sole remain subject to the intervention rule when the rule creates an uneven playing field between barristers practising in the area of immigration and licensed immigration advisors – particularly when there are no instructing solicitors available at midnight.

Section 9(1A)(a)(i)

As one individual submitter suggested, the Act is needlessly complex and needs to be overhauled. For example:

- Section 9(1A)(a)(i) prohibits an employed lawyer from providing legal services other than to the employee's employer.
- Recognising that an in-house lawyer often operates within a group of companies and provides legal services to companies within that group that are not the lawyer's employer (a breach of section 9(1A)(a)(i) of the Act), Rules 15.2.4 and 15.2.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 purport to relax the prohibition in section 9(1A)(a)(i).
- Unfortunately, the Act does not permit the prohibition in section 9(1A)(a)(i) of the Act to be relaxed by regulation, so the purported relaxation in Rules 15.2.4 and 15.2.5 is unlawful ("ultra vires" the Act, in the old terminology).

Other

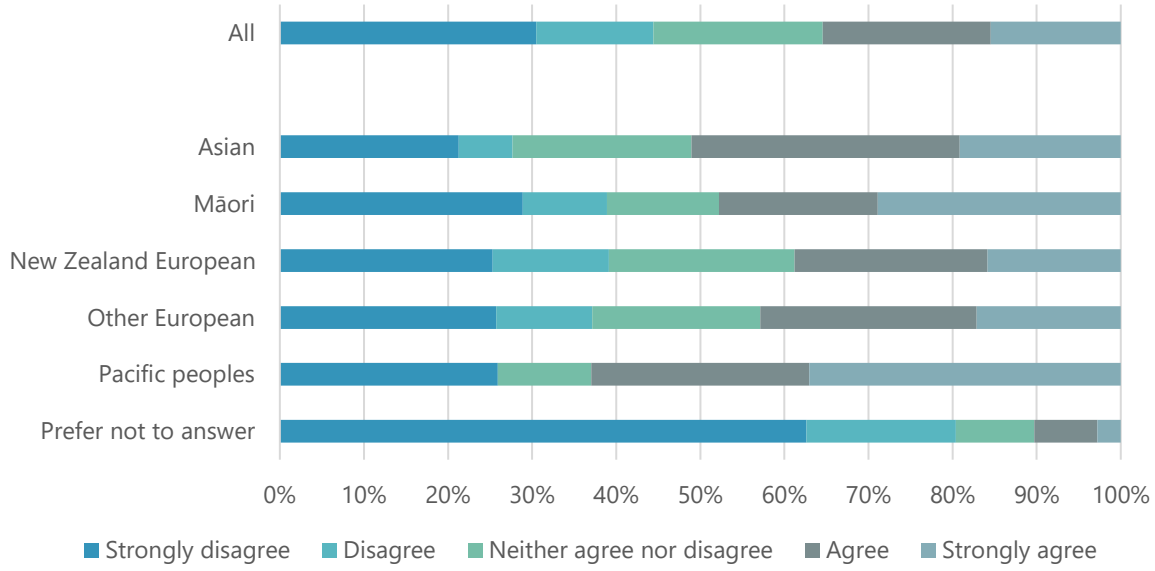
- The $2,000 threshold for conveyancing matters has not been reviewed for years.
- The regulatory regime should differentiate between clients to ensure that additional and expensive protections are required only for vulnerable clients (eg, individuals, rather than the delivery of in-house legal services to corporate entities). Sophisticated purchasers can determine the level of service and protection they wish to pay for.
- The current regime is not flexible enough to accommodate developments in legal technology, where there is potential in increasing access to justice and reducing legal costs.
- There is a need to amend the LCA to the effect that conveyancing practitioners' undertakings should be recorded as being enforceable to the same degree and in the same manner as lawyers. This change is agreed to by both the Law Society and the NZ Society of Conveyancers, but the Minister of Justice said they no longer supported it.

- The Act needs to be amended to make it clear that Community Law Centres can do legal work outside of their Ministry of Justice contracts. Currently there is confusion around whether Community Law Centres can provide legal services under other funding arrangements

6.1.6 Demographic differences

As shown in Figure 18, there were similar levels of agreement across ethnicities about whether changes are needed to incorporate Te Tiriti into the Act, excepting Pacific peoples who showed a higher level of agreement and those who preferred not to answer, who showed a lower level of agreement.

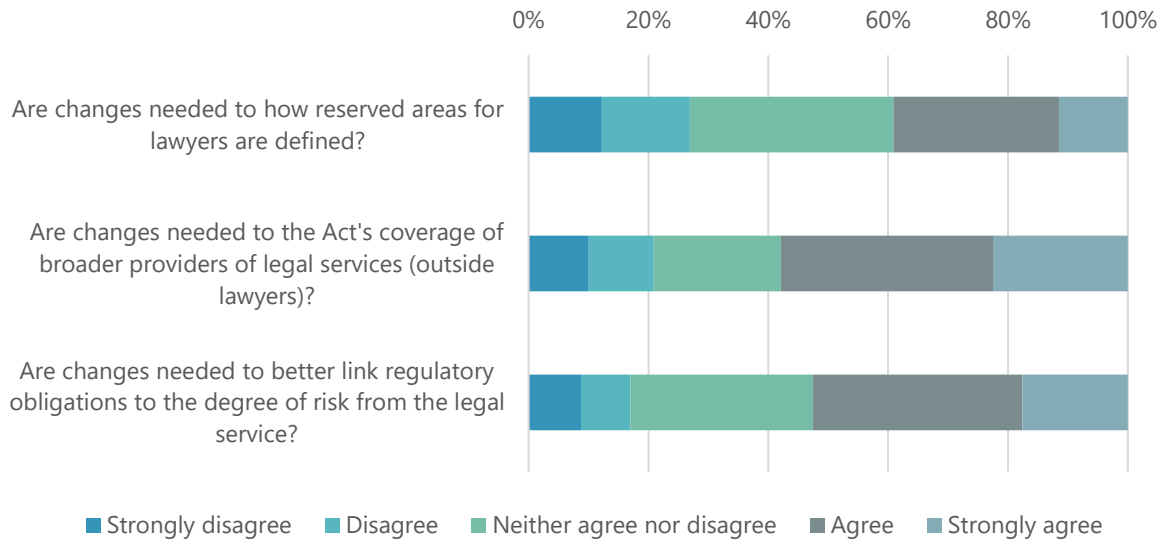
Figure 18: Survey results for "are changes needed to incorporate Te Tiriti in the Act?", stratified by ethnicity (note that respondents could select more than one ethnicity)



7. Which providers are regulated

- Mixed survey responses to whether changes are needed to how reserved areas for lawyers are defined. More submissions agreed than disagreed.
- Over half of survey responses agree that changes should be made to the Act's coverage of broader providers of legal services (outside lawyers), with many submissions agreeing.
- Over half of survey responses agree that we need a better link between regulatory obligations and the degree of risk from the type of legal service. Submissions were split.

Figure 19: Survey results on which providers are regulated



*n=851, 858, 847 respectively

7.1.1 Mixed survey responses to whether changes are needed to how reserved areas for lawyers are defined. More submissions agreed than disagreed.

Note: Survey responses only

✓ **39% agree or strongly agree**

✘ **27% disagree or strongly disagree**

~ **34% neither agree nor disagree**

7.1.1.1 Changes are needed

Thirty-nine percent of survey respondents considered that changes are needed, with many submissions from individuals, representative groups and a law firm agreeing. One representative group submitter noted that any changes to the definition of 'legal services' must be carefully drafted

and consulted on to ensure that non-lawyers are not inadvertently prevented from providing services they are experienced in (and may already be subject to other controls).

One representative group email submitter noted that the Act needs to protect the use of the terms 'law' and 'law practitioners', while another representative group email submission noted that reserved areas of the law raise issues of 'protected terms'. Currently, these terms are all English terms. The increasing use of Te Reo Māori in legal contexts will raise the issue of whether Te Reo kupu should also become 'protected terms', and who should have the ability to restrict the use of those kupu.

One survey respondent noted that whether the definition is appropriate will depend on whether the LCA is regulating lawyers or legal services.

> It depends if you're regulating lawyers or the services that are being provided. It seems to be a muddled model at the moment. If there is a move to regulate legal services – then do there need to be any "reserved areas" that only lawyers can undertake? Or do you extend the scope of "reserved areas" so only lawyers can undertake legal services? [survey response]

Another survey respondent stated that the areas should be reviewed to take into account how the profession has changed.

> It would be helpful to review them to see if there need to be changes given the way in which the profession has changed over the past 20 years. Some of the work that used to be done is now basically non-existent e.g. adoption. Other areas of work have grown greatly e.g. Treaty of Waitangi. [survey response]

Too narrow

A few submitters (including representative groups) noted that the reserved areas are too narrow. Two submitters (a representative group and a law firm) noted that innovative delivery of legal services including the increasing use of technology to provide legal services is likely to grow, and the system needs to be future-proofed.

Submitters noted that the term 'regulated services' is not broad enough and should be widened to protect consumers of legal services, as there are non-lawyers providing legal advice. As one individual email submitter stated, poor conduct can happen outside of the scope of practising law. It should be extended to lawyers who use their skills and knowledge in related areas e.g. acting as a trustee, executor, power of attorney etc. When they are constructing documents using legal jargon and legal expertise, it should be considered legal work.

An individual submitter suggested that amendments are needed to remove restrictions that prevent the sale of online legal documents by non-lawyers as this limits competition and results in consumers paying more than they should e.g. wills.

One individual submitter highlighted that the breadth of legal services in s 21 compared with the confined scope of reserved areas in s 24 is striking. They suggested that it is logical to require regulatory adherence from those who provide legal services, including reserved work, and noted that the link with the use of professional labels has not inhibited people from providing legal services.

Submitters suggested that the role and scope of legal services provided by in-house lawyers with practising certificates may not reflect current practice and be too narrowly framed.

> I think they are fast becoming out of date. As a lawyer earlier in the profession, I am seeing many of my peers hold practising certificates while working in more policy-based jobs or regulatory roles. They are still producing work that directly relates to laws and policies, but do not fit within the traditional reserved areas. [survey response]

A representative group submitter highlighted that the current definitions and scope are designed to look at litigation and court related matters, and issues with regards to preparation of documents may be overlooked. They noted that overseas there has been suggestions that the regulatory scope should cover advice, assistance, representation, and document preparation and that an exception or clarification should be made for notarial services. A survey respondent had a similar view of the definition.

> The reserved areas of work are very narrow, and largely relate to court work. This is an area where a failure in the quality of a service provider is likely to be found quickly, but is nevertheless a very small part overall. The Act therefore does not appropriately protect the public from non-lawyers providing high risk legal services, particularly where those services are non-contentious (such as contracts) and therefore a lack of quality is unlikely to be discovered until well after the damage is done. [survey response]

Too broad

In contrast to the above, a few submitters (including representative groups) suggested that the current definitions are too broad. One representative group email submitter suggested that the generic term 'proceedings' is too broad as it includes purely administrative matters such as day-to-day applications for probate or letters of administration to the High Court.

A survey respondent suggested that the giving of advice on matters such as trusts and wills should be reserved. A representative group submitter suggested that accountants should not be able to draft trust deeds and that this should be a reserved area for lawyers.

Too complicated

Several submitters suggested that the current definition is too complicated, hard to apply in practice, and needs clarity. For example, one individual submitter suggested that the scope of reserved work is widely misconstrued by lawyers in ways which expand its scope, creating barriers for non-lawyers. Another individual submitter noted the interlocking definitions of conveyancing, legal services, legal work, regulated services and reserved areas in s 6 are extremely confusing.

> Regulation needs to recognise that services are increasingly being provided online. Providers may be domestic or international, lawyers or non-lawyers. The vagueness around the definition of the reserved area of work makes it difficult to determine what is protected and what is not, and whose duty it is to patrol this. [academic submission]

Conveyancing practitioners

One representative group submitter stated that there is a need to clarify and limit the work types that conveyancing practitioners can undertake so they are not providing services outside their training and

expertise (eg, drafting wills). This uncertainty stems from the definition of conveyancing in s 6(c) which includes legal services that are incidental to, or ancillary to, in effect, conveyancing. They also suggested that clarification is needed on the use of the branding on conveyancing practitioner firms so they cannot use the word 'law' in their name. The same submitter also suggested that conveyancing practitioner firms should be required to be transparent by identifying their businesses as being controlled by conveyancing practitioners rather than lawyers.

A survey respondent had similar views, noting that:

> Conveyancers too have issues with people thinking they are lawyers when they are not. One of the major ones being that conveyancers cannot give undertakings. As they are not officers of the court, they should not be able to give undertakings and cannot conceptually or legally do so. However I've lost count of…times I've been told that "my lawyer" when in fact the person is talking about a registered conveyancer operating without any lawyer supervision. Some of these conveyancer providers even use the word law in their business names, adding to the confusion. [survey response]

7.1.1.2 No changes needed

Twenty-seven percent of survey respondents considered that no changes are needed to how reserved areas for lawyers are defined. Multiple submissions from individuals, law firms and representative groups also provided this viewpoint. Two submissions from an individual and a representative group stated that extending the scope of reserved areas may limit access to legal services for consumers.

Another representative group submitter suggested that if they were expanded, there could be an unintended consequence that people fulfilling these types of roles would be limited or unable to provide these services. The submitter stated that it is better to keep the limit on who can hold themselves out to be a lawyer. Two survey respondents noted that widening the definition would dilute the status of lawyers.

A survey respondent noted that any broadening of the definition needs to be justified.

> Nearly all regulation has a cost-benefit problem attached to it. The case for any broadening has to be rigorously justified. It should also not be a vehicle for taking away rights to freedom of speech. [survey response]

7.1.2 Over half of survey responses agree that changes should be made to the Act's coverage of other providers of legal services, with many email submissions agreeing

Note: Survey responses only

✓	✘	~
58% agree or strongly agree	21% disagree or strongly disagree	21% neither agree nor disagree

7.1.2.1 Yes, it should be broadened

Over half (58%) of survey respondents agreed that changes should be made to the Act's coverage of other providers of legal services, with many email submissions from individuals, law firms and representative groups agreeing. **By far, the most common example highlighted by both survey respondents and submitters was employment advocates.** Other providers suggested were paid McKenzie Friends, immigration advisors, conveyancers, insurance advocates, ACC advocates, environmental advisors, insolvency practitioners and education advisors. One survey respondent suggested that a new category of regulated foreign lawyers should be introduced, similar to the English Solicitors Regulation Authority model.

> I 100% believe that people like employment advocates should be regulated. Currently there are no professional obligations on advocates nor is there any avenue to complain about their conduct. I have had experience with an advocate on the other side of proceedings whose conduct would at least have been misconduct, if not serious misconduct, if they were a lawyer. They are performing what otherwise would be a reserved area of work and so should have the same professional obligations as lawyers. [survey response]

Submitters (including representative groups) suggested that there are instances where the combination of the no-win, no-fee model, combined with a lack of regulation, can result in clients being pushed into a course of action that is not in their best interests.

> Despite consumers of lay persons' services having some safeguards under current consumer protection laws, those laws lack specificity and do not provide the necessary level of accountability. [representative group]

> Holding advocates and other workplace related service providers to a similar standard would recognise the requirement to protect the consumer, while increasing individual accountability and upholding public interest regarding the profession. [representative group]

Submitters also highlighted that section 26 of the Act is poorly drafted by making it an offence to draft documents on behalf of someone only if they are already in a court proceeding. As a result, there are some non-lawyer websites offering legal advice and services in relation to the preparation of Limited Licences that rely on the loophole.

> It is very clear what "reserved areas" are. Unfortunately this is abused and worked around by public, eg people offering to assist to prepare limited licence documentation despite the Act being clear that document preparation for court proceedings is an area reserved for lawyers. More regulation of people providing 'legal services' needs to be encompassed rather just 'lawyers'. the Law Society should have the authority to regulate public who try and undertake reserved areas. [survey response]

Another representative group submitter noted that one of the shortcomings in the structure is that relevant definitions might not capture advice provided by software or AI, e.g. will drafting, template contracts. The current definition of 'legal work' under s 6 is sufficiently broad for further developments, but the definition of 'legal services' is not as it required legal services be provided by a person. They suggest changing this to provided *to* a person.

As one individual submitter noted, any concern that expanding protected services would affect prices is misguided. Lawyers are already expensive and out of reach for many New Zealanders. Non-lawyers will not play any role in keeping legal fees down.

Solutions

Multiple submitters (including representative groups) agreed with the idea of a light touch parallel regime for specific categories of legal services provided by non-lawyers. Another representative group submitter suggested that, for assistance, we look to the Australian example of making a distinction between limited scope legal services and unbundled services. Unbundled services are where a legal matter is broken down into specific tasks, and the lawyer only provides representation for some of those tasks (e.g. only drafting court documents). Limited scope legal services are short-term legal assistance offerings (e.g. legal aid).

One representative group submitter suggested there should be an all-inclusive approach to the regulation of legal services. They suggested that we look to how the health profession is regulated for those who practise health, not those who have professional qualifications – therefore consumers are protected from all providers of health services, not just those with a health profession title.

Two representative group submitters suggest that a national database be established that includes both lawyers and non-lawyers who provide legal services which records qualification, practising certificate status – to enhance public confidence by allowing consumers to check before receiving services.

7.1.2.2 Other considerations

Multiple submitters (including representative groups) suggested that consumers do not always understand the difference between regulated and unregulated providers and the fact that the same protections do not apply to both types of providers. As one individual submitter noted, the solution lies in publicising why using a lawyer offers additional protection.

A common concern amongst representative group submissions was that further regulation will come at a cost to all legal service providers and care needs to be taken to ensure the benefits of further regulation are weighed against the likely costs, including implications for access to justice.

One representative group submitter suggested that, if it is broadened, the regulatory agency needs to be appropriately resourced to enable timely administration, in addition to clear signposting and advertisements to consumers.

7.1.2.3 No, it should not be broadened

Twenty-one percent of survey respondents disagreed with broadening the LCA. This view was shared with multiple submitters, including individuals and law firms, who noted that it would be impossible to execute for policy, resource and funding reasons. Submitters and survey respondents suggested that the case for broad regulation has not been made and there are risks in terms of how regulation could create an environment where the burden is too great and the service is compromised. They suggested that consumers have made a choice to access such services.

> Consumers of legal services who choose to engage non-lawyers may commonly be aware of the increased risks but may have decided to prioritise something other than risk reduction in making their decisions, probably related to cost and accessibility of services from a professional. On balance, I favour consumers being able to make that choice rather than forcing them either to use regulated practitioners or to go without legal services. [lawyer submission]

> No. That's not our problem. There are other regulators in the market that can deal with any such issues. The focus for the Law Society should be on lawyers (and conveyancers) and not independent employment advocates and the like. With more regulation comes more cost, that is a given. If we are concerned about access to justice, then we should not be adding cost to advocacy. [survey response]

A few survey respondents noted that, while certain services should be regulated, they should have their own legislation, rather than broadening the LCA. Submitters noted an unintended consequence of broadening the Act is diluting the status of lawyers.

> Broadening the scope of the Act could result in an inherent diminished recognition of the status of lawyers within the legal profession as it will become unclear when legal advice is provided to the client. [law firm]

> Retain status quo. Lawyers are happy to be regulated as currently provided. The public take a risk if they obtain legal services from persons not regulated by the Act. If there is an issue with legal providers outside the profession, then incorporate separate legislation. [survey response]

Another law firm submitter suggested that any expansion of the Act could overlap or conflict with other Acts currently applicable to providers of services e.g. Private Investigators Act, Financial Markets Authority.

A representative group submitter suggested that particular legal services (including via automated means) by non-lawyers should be maintained in the interests of access to justice (more competition combined with more advanced and cheaper technology that fosters innovation), provided the offering of such services is not misrepresented.

7.1.3 Over half of survey responses agree that we need a better link between regulatory obligations and the degree of risk from the type of legal service. Submissions were split

Note: Survey responses only

✓	✘	~
53% agree or strongly agree	**17% disagree or strongly disagree**	**30% neither agree nor disagree**

7.1.3.1 Yes, they should vary

Just over half (53%) of survey respondents agreed that there needs to be a better link between regulatory obligations and the degree of risk, with multiple submissions agreeing, including individuals, representative groups and law firms. One individual submitter noted that the current regime is binary – either no regulation, or significant regulation. An incremental regulatory regime would encourage non-traditional providers to offer legal services while still ensuring consumer protection. Other submitters suggested that there may be a case for different levels of regulation if there are lower risks and/or other mechanisms for dealing with poor performance eg, in-house lawyers.

> Yes. Defining sophisticated purchasers of legal services and citizen consumers of legal services all as "the public" does not differentiate or allow new models of legal services to evolve. [survey response]

> Yes, definitely. The risk profile of in-house legal services is very different from when legal services are provided to consumers/the public. Yet they're treated/regulated in the same way which does not make sense. [survey response]

Submitters (including representative groups) highlighted specific situations of different risks:

- If a lawyer wants to go into sole practice or become a principal, they first need to have worked under supervision. However, in-house lawyers can start advising the companies they work for without supervision. This can lead to unsound legal advice and reputation damage to both the lawyer and the profession.
- Lawyers employed by membership organisations (except unions) cannot provide wider legal services to members. However, if they gave up their practising certificate, they would be allowed. This seems perverse.
- In-house lawyers should be subject to lower practising fees due to the different mode of practice and associated complaints risk and disciplinary/consumer protection profile. Look to Victoria, Tasmania and ACT for examples of this. On the other hand, in-house lawyers may need more regular training on rules.

7.1.3.2 No, they should not vary

Seventeen percent of survey respondents disagreed that there needs to be a better link and multiple email submissions (including representative groups) agreed. Submitters provided reasons for this, often highlighting that risk is subjective and difficult to define, and the idea that a blanket approach is easier to understand, more certain and cheaper to administer. Multiple submitters highlighted the difficulty in defining risk and that an accurate taxonomy of risk and services may not be workable.

> There may be other factors. It also depends on how you define risk – not just financial but also emotional and psychological harm to consumers, and reputational risk to the profession and ensuring access to justice and the rule of law. [survey response]

One representative group submitter noted issues with how risk will be assessed – eg, commercially rather than in terms of tikanga, such as the impact on mana or to historical rights and interests. Such an approach would risk placing a disproportionate burden on Māori practitioners who provide high

risk services but through regimes such as legal aid that inadequately reflect the financial burdens associated with this.

Several submitters and survey respondents stated that lawyers need to accept that the cost of regulation may fall unevenly but that this is a cost and privilege of being part of the profession.

> No. Bearing some of the cost of the regulatory system is just how it is. It will be unnecessarily complex to try anything else. [survey response]

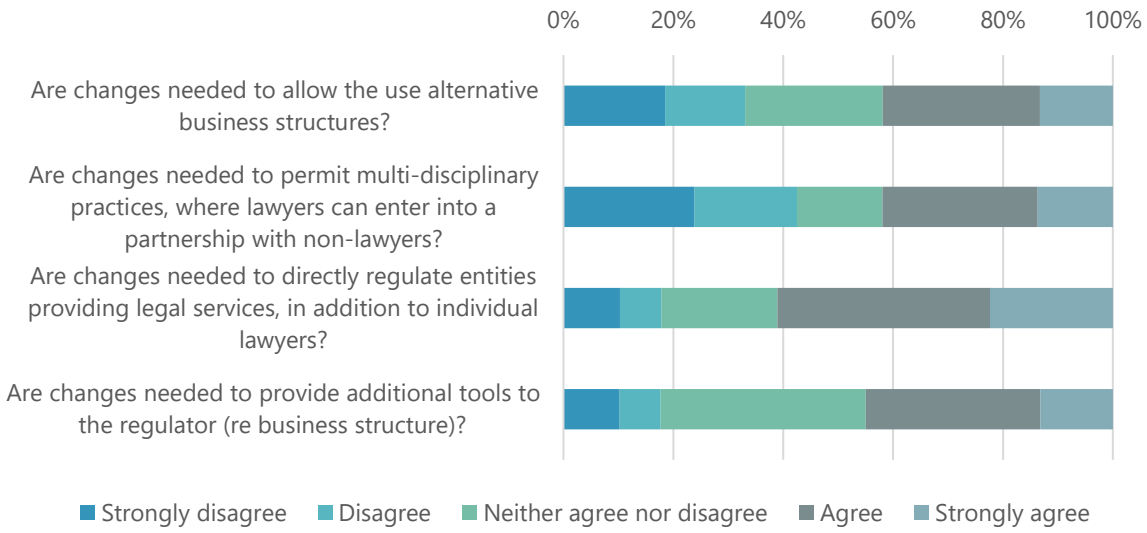
One representative group submitter disagreed with using the percentage of complaints in each area of law as a means to determine how lawyers in each practice area should be regulated. Placing a higher burden on some lawyers, eg, family, would result in greater attrition in these areas of law. Similarly, another individual submitter noted that varying regulation according to risk will only reduce the number and diversity of people who are able to afford to offer the higher risk services and drive more people to have to take their advice where they can.

Two representative group submitters stated that government/in-house lawyers should continue to be regulated in terms of professional standards in the same way as other lawyers. The availability and maintenance of legal professional privilege is as important for the government as for any other client – the privilege exists for the benefit of the client, not the protection of the lawyer. There should be no distinction in the application of privilege just because the client is receiving that advice from an internal, rather than an external, lawyer.

8. Regulating business structures

- Mixed survey and email responses to allowing alternative business structures that permit ownership, management and investment by persons other than lawyers and multi-disciplinary practices.
- The majority of survey respondents think that entities providing legal services should be directly regulated, in addition to individual lawyers. This view was shared by many submissions.
- Multiple submissions agreed that additional tools for the regulator are needed, however there were mixed survey responses.

Figure 20: Survey results on regulating business structures



*n=838, 842, 837, 803 respectively

8.1.1 Mixed survey and submission responses to allowing alternative business structures that permit ownership, management and investment by persons other than lawyers and multi-disciplinary practices

Alternative business structures
42% agree or strongly agree
33% disagree or strongly disagree
25% neither agree nor disagree

Multi-disciplinary practices
42% agree or strongly agree
43% disagree or strongly disagree
16% neither agree nor disagree

Note: survey responses only

8.1.1.1 In favour

Forty-two percent of survey respondents agreed that alternative business structures (ABSs) and multi-disciplinary practices (MDPs) should be allowed. Many submissions agreed, including submissions from representative groups, individuals, and law firms. As survey responses and submissions noted, the regulatory restrictions on law firms accessing capital through equity and being able to bring non-lawyers into ownership can result in disadvantageous outcomes. Submitters noted that current options of capital funding are dysfunctional and inefficient, and it is difficult to keep up with technological advances. Outside capital and its consequent oversight bring rigour to decision-making and culture. Availability of external capital can allow for broader geographical offering of services and, through increased investment in IT and support, means a lower cost to clients.

> New Zealand law firms are currently handicapped in meaningfully engaging with, and becoming part of the modern global legal profession, despite clients frequently seeking services which touch on a range of jurisdictions. [law firm]

As a submission from a law firm noted, with the traditional model, lawyers may become deeply specialised, leading to a lack of diversity of thought and problem-solving. Allowing ABSs would reduce the risk that is sometimes created by teams from separate firms operating in silos on some matters.

Submitters suggested that the nature of the law-firm partnership has contributed to poor wellbeing and diversity outcomes. The model is the source of cultural issues due to the inherent concentration of power in partners as the owners and managers and the use of junior staff as leverage. It is also prone to inertia. Allowing non-lawyers to be part of ownership will increase the management ability and may lead to changes in operation. Providing firms with flexibility in structuring would enable innovation and provide opportunities, especially to women and Māori, to do law differently in a way that suits them.

> The reality is that a model that does not allow modern business practices drives focus on short-term profits and therefore creates toxic cultures where people are squeezed for longer working hours to deliver on budgets and create maximum return for owners. [lawyer submission]

Multiple submissions (including representative groups) stated that, regarding MDPs, the Act should allow lawyers to enter into MDPs with, for example, technology, accountants, consultants, tax and engineering professionals to create one-stop-shops and open up new employment opportunities.

> I can see how having, for instance, in-house investigators would be more efficient for [a criminal defence] practice. I can imagine other types of efficiencies in other areas of law as well. Other industries experience efficiencies by having in-house legal advisors. It seems arbitrary and unfair to restrict lawyers from experiencing those same efficiencies by forbidding in-house non-lawyers (survey respondent).

An individual submission noted that technology can help the legal industry address access to justice issues and without being able to work closely with lawyers, these experts cannot truly understand the nature of legal work. This would also increase the tech-literacy of lawyers, necessary to meet the legal challenges arising in a modern world. A submission from a law firm and survey responses also noted that keeping up with technology is important to remain attractive to consumers.

> The reality of today's market is that consumers are increasingly attracted to firms that can offer multi-disciplinary services delivered by members of several different professions and increasingly includes the use of innovation of processes and technology. [law firm]

As an individual submission noted, there are corporate disciplines in relation to diversity, equity, inclusion, codes of conduct, environmental/social governance and reporting – allowing ABSs may encourage some of these corporate disciplines to be applied to firms.

Ways to manage risk

- We could forbid equity owners in ABSs who are non-lawyers from being involved in operational decisions of the firm, and restrict directorships to lawyers only.
- If a firm's primary purpose or one of its primary purposes is the provision of legal services, then non-lawyers should not have a governance or directorial role in those firms or those parts of those multi-disciplinary firms.
- Firms can establish protocols around access to client information etc to maintain ethical and fiduciary obligations.
- The Law Society should develop appropriate business codes to ensure standards of practice are maintained.
- Use of engagement agreements which clearly identify which services are provided by lawyers.
- Registers of legal practitioners for large MDPs.
- Use technology to manage confidentiality, and training for staff.
- Hold all owners to professional standards as well as the entity itself.
- Require majority ownership by lawyers.

Specific changes needed

Submitters suggested that the definitions of incorporated law firms and qualifying trusts need to amended in the LCA to allow a spouse, de factor partner or civil union partner of a lawyer to be a trustee of a trust which holds non-voting shares in an incorporated law firm. This limitation reduces the ability to borrow and invest as when both lawyer and spouse/partner who is a non-voting shareholder are named as trustees of a family trust, banks consider both income streams, but when the spouse/partner can't be named as a trustee the banks only consider one stream.

A law firm submission stated that New Zealand should allow business structures for lawyers where non-lawyer patent attorneys can be in partnership with lawyers or be directors and shareholders in incorporated firms. This would allow single entities to operate as combined patent attorney/lawyer practices – rather than the current dual-entity structure required. This would bring New Zealand into line with Australia; the two jurisdictions share a common patent attorney profession.

8.1.1.2 Other considerations

Several submitters suggested that further analysis is needed for both ABSs and MDPs on costs and benefits re access to justice and other factors e.g. innovation, costs to lawyers. Submitters suggested that we should look at the evidence overseas before making a decision here. As one individual submitter noted, there is a real prospect of a decrease in quality and service, and we should 'wait and see' whether comparative jurisdictions see a decline in quality before allowing it here. Another

individual submission noted that while this structure in theory produces more innovation and therefore cheaper services, more evidence is needed on whether this resulted overseas.

One representative group submitter suggested that asking this question in terms of ownership and investment is the wrong approach. The involvement of others in the structuring of the provision of services may be appropriate if it better facilitates access to justice or the support of lawyers in providing services.

One representative group submitter suggested that firms should consider different models of ownership, including separating management from legal work and offering equity and investment to lawyers who are not partners, and that the Law Society should support firms in these endeavours.

8.1.1.3 Against

Thirty-three percent of survey respondents were against ABSs, while 43% were against MDPs. While email submitters were against allowing both ABSs and MDPs, others were only against one or the other. A common argument against was the lack of clarity over professional obligations and authority to implement and uphold those obligations.

> I am strongly opposed to the concept of non-practising lawyers being entitled to hold shared, or be directors, in any corporate structure carrying on a law practice in New Zealand…The risk of conflicting interests in increased dramatically and the profession will lose credibility and integrity… [lawyer submission]

> The practice of law and law firm ownership is an opportunity for persons from all walks of life to enter a profession and, if they choose, become an owner. The corporatisation of law firms with outside ownership is likely to result in the same outcome that has happened to optometrists, chemists, medical practices, with ownership being taken up by persons outside of the profession. [lawyer submission]

One survey respondent suggested that, by allowing MDPs, there may be coercion on clients to make use of all services available.

> As lawyers, we are powerful already and to allow the above will expose our clients to be persuaded towards non-lawyer businesses connected to their law firm such as real estate, accounting, investment, HR, marketing, insurance. Clients should have to go outside their law firm for these things. It helps ensure they are not conned into other ventures. This is very important. [survey response]

As a counter to the argument above that opening up ownership will allow for increased investment opportunities, one survey respondent questioned whether that was actually needed

> Law firms are innovating and the younger generation coming through are adopting new technologies at hand. Significant capital investment is not required in order to establish a law firm with good systems in the modern-day and age and therefore see little value that can be added by allowing non-solicitors to participate in the ownership structure. [survey response]

Submitters noted that opening up ownership of firms to non-lawyers is a poor decision as:

- it risks the profession becoming a business as opposed to a profession

- it will allow subtle financial pressures on objectivity
- new entrants will target profitable repeat work that law firms currently do to allow them to serve other clients
- competition will create a more profit-orientated, siloed sector, decreasing access to justice and pushing out local practitioners, e.g. clients often need wraparound services
- it will lead to oversimplification of legal matters, underestimating the complexity involved
- lawyers sign up for unlimited liability. ABSs will cut across this. A powerful aspect of the current regime is all lawyers in a partnership or incorporated firm have the personal and professional responsibility for the actions and conduct of all that work in the firm. Allowing non-lawyer ownership will cut across this.

Other submitters suggested that allowing MDPs is also not a good decision as:

- MDPs have profit-maximisation as an overriding objective – this can conflict with legal practitioners' professional obligations
- an MDP may elect to engage in tribunal shopping to get the 'least worst' penalty if misconduct occurs.

8.1.2 The majority of survey respondents think that entities providing legal services should be directly regulated, in addition to individual lawyers. Multiple submissions agreed.

Note: Survey responses only

✓	✘	~
61% agree or strongly agree	18% disagree or strongly disagree	21% neither agree nor disagree

The majority of survey respondents agreed that entities should be directly regulated, with multiple submissions from representative groups, law firms and individuals agreeing. As one representative group email submission noted, the current model takes an individualistic approach to accountability, failing to recognise individual behaviours can be reflective of wider culture issues. The regulator should be able to make decisions that apply beyond the individual, eg, mandating changes in policies/practices in problematic workplaces. A representative group and an individual submission noted that this would ensure appropriate practices and processes, to ensure responsibility for individual lawyer compliance is systematised, and to ensure staff wellbeing is protected.

> the Law Society should be able to directly regulate firms and entities where they have fallen below the standard expected of them. That may include bullying and sexual harassment conduct, but also how entities respond to complaints of misconduct, as well as employment practices which exploit staff (such as paying junior staff below minimum wage) [legal organisation]

> An individual lawyer's ability to properly fulfil their professional obligations is sometimes reliant on the extent to which they are allowed to fulfil those obligations. [lawyer submission]

A representative group submitter cautioned that the Law Society would need to consider the financial and administrative burden on organisations such as Community Law Centres to ensure they can continue to operate. The requirement may also cause government agencies to cease to provide some consumer services.

One survey respondent cautioned that a poorly designed regime may lead to differing standards amongst legal practices.

> Drawing the line is likely to be a problem. It could well lead to differing standards being imposed, or differing outcomes for the same unsatisfactory event. And a sort of 'workplace safety' shambles, where a scattergun approach is taken to everyone's detriment, and a loss of focus on what the problematic behaviour was. [survey response]

Eighteen percent of survey respondents disagreed with the idea, with several submissions from individuals and representative groups agreeing. As one representative group submitter noted, the best way to incentivise behaviour is through individual professional responsibility. There is already the requirement for a firm to have a designated lawyer reporting annually on conduct, and this should be sufficient.

A representative group and an individual submitter stated that this would also raise difficulties in terms of barristers' chambers which resource-share but have no ability to manage members.

> Barristers' chambers should not be included if law practices are to be regulated, as barristers within chambers are nevertheless entirely professionally independent of one another. [representative group]

Survey respondents suggested that this is a good idea only if changes are made to ownership arrangements.

> Not if things remain the same. If changes are made so that non-lawyers can own firms then the natural consequence is that regulation of an entity would be necessary because the non-lawyer owner is not subject to the same rules as a lawyer personally. [survey response]

> If lawyers are the sole owners of a law firm, then no: the regulation of lawyers directly is sufficient. If non-lawyers are allowed to own a law firm, then yes, otherwise there would be a gap in regulation. [survey response]

8.1.3 Multiple submissions agreed that additional tools are needed for the regulator, however there were mixed responses from survey respondents

Note: Survey responses only

✓	✘	~
45% agree or strongly agree	18% disagree or strongly disagree	37% neither agree nor disagree

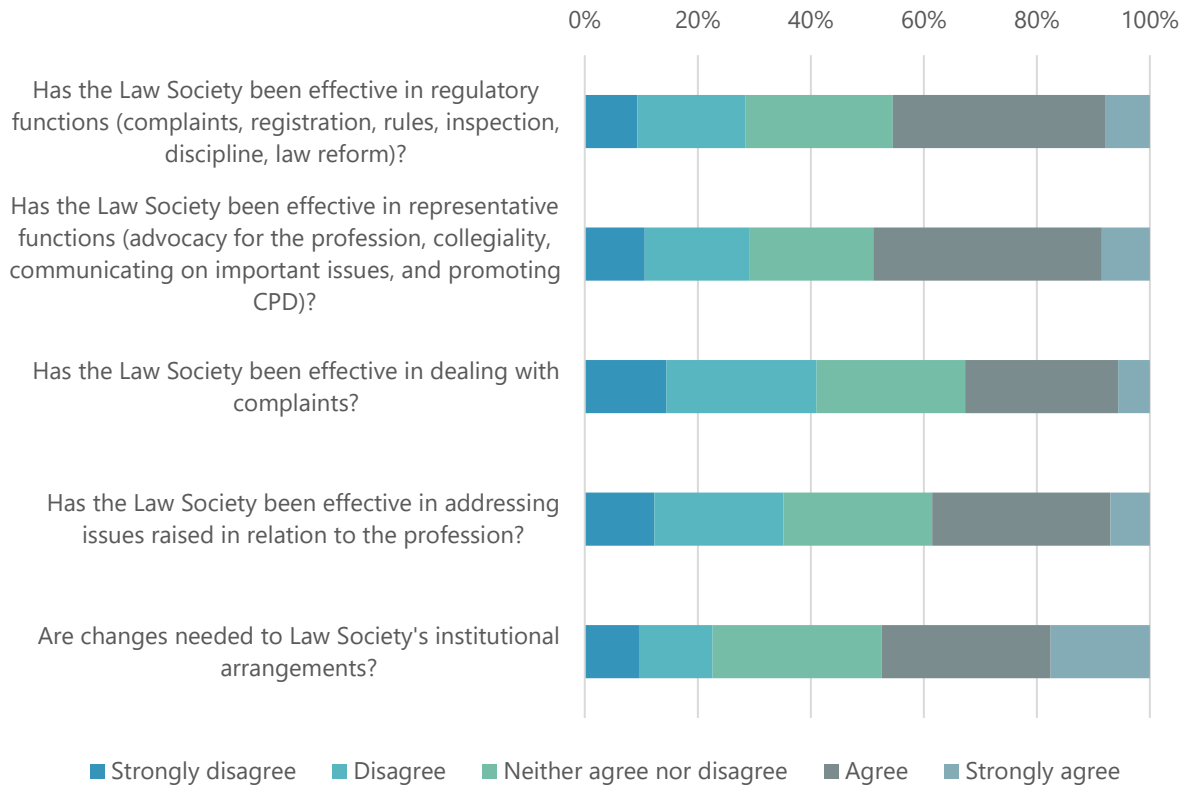
Forty-five percent of survey respondents agreed that additional tools should be made available to the regulator, with multiple submissions from representative groups, individuals and law firms agreeing. Some examples given from submissions and survey respondents were:

- the ability to take immediate action in relation to concerns raised, e.g. the ability to immediately suspend from practice, or direct them to not engage in the provision of legal services until the matter is resolved
- the ability to require mandatory CPD while a person is suspended, these sessions would directly relate to the content of the complaint
- the ability to undertake practice reviews of members in public practice to monitor member compliance with professional and ethical standards
- the power to direct lawyers to take specific actions, especially when dealing with fitness to practise concerns that aren't necessarily disciplinary e.g. training or supervision requirements
- competence reviews
- the ability to require conditions to assist with a safe return to practice
- the ability to impose additional or bespoke conditions on a licence or practising certificate
- the ability to issue binding directions or accept enforceable undertakings from a provider
- the ability to set standards for who can be in partnership with lawyers or invest in their practices, similar to rules on disqualification of company directors
- the power to issue class or individual exemptions to allow flexibility and adaptability to respond to changing circumstances
- the power to directly address culture and wellbeing issues within a firm by issuing warnings, and then improvement notices
- the power to issue orders that a sanctioned lawyer not be eligible to hold a position of responsibility for staff, while being permitted to continue practising.

9. Institutional arrangements

- Almost half of survey respondents agreed that changes are needed to Law Society's institutional arrangements, with multiple submissions agreeing.

Figure 21: Survey results on institutional arrangements



*n=807, 811, 802, 805, 729 respectively

9.1.1 Almost half of survey respondents agreed that changes are needed to the Law Society's institutional arrangements, with multiple submissions agreeing

Note: Survey responses only

✓ **47% agree or strongly agree**

✘ **23% disagree or strongly disagree**

~ **30% neither agree nor disagree**

Forty-seven percent of survey respondents agreed that changes were needed across multiple areas, with multiple submissions from representative groups and individuals agreeing.

Focus

Submitters suggested that the Law Society is too focussed on regulatory functions or has an undue focus on litigation and access to justice. They suggested that a greater focus is needed on things that affect all lawyers eg, anti-money laundering, constant tax changes.

> I think they're behind on the representative side. [survey response]

One representative group submitter noted that there is a lack of a tangible commitment to issues of diversity in governance decision-making. Two representative group email submissions suggested that funding should be made available for governance or cultural competency training.

Process

A number of suggestions were made regarding the Law Society's processes:

- Consider consensus-based decision-making, rather than majority-based which often exacerbates power imbalances.
- Council should meet more often through electronic means. Similarly, the Law Society should allow remote attendance to encourage those in rural areas to be involved in committee meetings and conferences.
- Each member of the Law Society Council should be independently appointed by a committee who consider both merit and diverse makeup of the Board.
- The Board should have greater consultation with the Council via ad hoc meetings where necessary.
- Review the presidential election process: remove or reduce the weighting bias to allow a more level playing field, eg, give each Council member only one vote. If the weighting bias remains then other Council members should have the ability to vote on the same basis as branches, e.g. the Property Law Section should hold three votes instead of one due to its large membership. Alternatively, give every lawyer holding a practising certificate a vote to result in an outcome that is more representative of the wider profession or use the model where the Board selects the President from its members.
- A better induction process is needed.
- Clearer reporting from the Board to the Council is needed, and more frequent Council meetings are required (every 2-3 months online, in between face-to-face meetings).
- Board members should be paid.
- Require Vice-Presidents to consult with constituents regularly as a way of increasing Council input into decision-making by the Board.

Structure

Submitters suggested that the governance and management structure is unclear and unwieldy, and this uncertainty is common across the profession. They requested transparency about structure and processes. Another individual submitter suggested that there is an over-management problem.

> The overall impression is that the Law Society is slow and bureaucratic. [survey response]

One group submitter noted that the best practice approach to governance should reflect the underlying rationale for regulating an occupation i.e. protecting the public. Therefore they suggest that the governance board should not be dominated by members of the regulated profession and that it requires more people with governance experience.

Some submitters stated that ensuring full representation throughout the country has been taken too far. This was more important in earlier times when travel was slower and lawyers across the country were not in regular contact. In contrast, survey respondents noted that regional representation is important and needs to be revived.

> It seems to me that the regional DLS's have lost their way…The regional DLS's need mana and scope to respond to the local needs and provide a local voice, and to me that seems to have died away in many areas. [survey response]

Specific suggestions include (note that some of these may overlap with the 'appropriate modern governance structure' section that follows):

- A full review, including whether current voting system and North Island/South Island reps are what is best.
- The Board of five is too few to make decisions for all lawyers and has too much power compared with the Council.
- Appoint a Māori Vice or Co-President. Also establish VP roles for underserved groups.
- A streamlined committee is sufficient e.g. President, VP and five committee members, elected by a single transferrable vote by the nationwide membership of the Law Society.
- Amend the constitution to allow for outside Board members to be appointed to allow for different skillsets to be introduced.
- The tenure of both Council and Board members should be reviewed to allow for greater continuity. Revise the Board selection process to ensure continuity overlap of at least two Board members for a minimum of one year. For example, three-year appointments, with a max of three terms. Too much change in personnel causes loss of institutional knowledge, but too little change causes decline in governance quality.
- One Board member should be appointed to represent Sections and other interest groups to allow a fairer dissemination of information to all Council members.
- The delegation of authority from the Council allowing the Board to make all the decisions should be revoked or restricted, with clearer parameters.
- There should be diverse representation from legal professions, judiciary and lay people. Lay people appointed to Council or Board will bring constructive insights and will help address the perception of being run by lawyers for lawyers.
- More transparency in electing the President and VPs, including better communications of election dates, better information of the role.

Twenty-three percent of survey respondents disagreed that changes are needed to the Law Society institutional arrangements. Some individual submitters also disagreed that changes are needed.

> The reliance on volunteers is…the essence of the self-governing profession – we have a proud tradition of reciprocity and service which it seems unnecessary to me to end. [lawyer submission]

> It's a big beast with constantly moving goalposts and what gets done is to be applauded! [survey response]

9.1.2 What would an appropriate modern governance structure look like, and how might governance members be selected?

Submitters (including representative groups) suggested that a modern governance structure would ensure diversity and ensure main areas of legal practice are represented. Property lawyers have in the past been underrepresented; what about sole practitioners? The goal should be to encourage and facilitate the best mix of skills and experience – something the current system does not do.

> There is a need for positive discrimination as to gender and ethnicity to facilitate better balance and thus outcomes. [lawyer submission]

> In my view, a large part of the current problem is that the people in leadership roles are of a generation ill-equipped to address the current problems, and that could be addressed by ensuring representation from younger lawyers, ALWU, more diverse lawyers, in particular lawyers from disadvantaged backgrounds. [survey response]

In terms of the makeup of governance bodies, submitters suggested there need to be Board members with governance experience, but they also need to be prepared to undertake ongoing training in governance.

> We need properly qualified and experienced governance members…Perhaps a certain number of board members should be appointed as governance professionals. [survey response]

According to a representative group submission, in terms of branches, they need to retain a formal role in governance as they are a key link between members and national office. A focus that removed local representation would lead to dominance by metropolitan areas. An individual submitter suggested that representatives need to actively manage their mandate from their regional membership to avoid expressing personal views as if they were mandated from their region. Another representative group submitter suggested that the President and other Board members should not be able to concurrently be on a branch council to ensure branches can effectively perform their representative functions.

Election and appointment processes

> Would prefer the present system is changed so members select board and president. The present system possibly means some lawyers with talent are overlooked because they are from a region with a low number of votes and/or they are not known to those on the Council probably because they have not been a branch president and are thus now well-known to those on the Council at the time the voting is done. It is not a "participatory democracy" at present. If a lawyer is based in (say) the Manawatu, and another lawyer from the same region puts his/her name forward to be president, the practitioner has to canvass a branch elsewhere for nomination. If however the system was "one person one vote" it would not have this barrier in place. [survey response]

- Move to a one lawyer, one vote basis for electing the national President, with limits on campaigning and nominations to come from Council members.
- Governance members should be elected directly from members, not through the current electoral college system.
- Stagger appointments/elections.
- Appointments should be skills-based with a process similar to that used for crown entities, not the current electoral-model.
- A mix of elected (by the entire profession) and appointed Board and Council members.
- Should the functions be split, the regulatory body should be appointed by the government, such as the attorney general. The representative functions should be democratically elected by members.
- Lay people should be part of governance.

Different models

- A co-regulatory model involving a structurally separated from the Law Society. A separate regulatory decision-making body appointed by the Law Society Council, subject to approval of government oversight body, with terms of reference guaranteeing operational independence from the Law Society.
- the Law Society does not need bicameral leadership. The common commercial structure of a Chairman/President, with an elected/nominate Board and a managing director, is all that is necessary.
- Autonomous Crown entity under s 7 of the Crown Entities Act 2004 – so required to have regard to government policy when directed by responsible Minister.
- Regulatory body established as a crown entity and governance members appointed by the Governor-General on advice of the Minister.

Dissenting opinions

It is important to note that multiple survey respondents did not think changes were needed to the governance structure, and that the status quo should be kept.

9.1.3 How might a future governance structure better reflect Te Tiriti?

9.1.3.1 Agree

> …any governance structures moving forward (including any separate regulatory body) would need to reserve at least half of its seats for Māori representation in order for the body to be seen as genuinely upholding Te Tiriti o Waitangi…all potential governance appointees be assessed for their Māori or Te Tiriti o Waitangi competency requirements. [representative group]

A representative group submission cautioned against simply carving out seats for Māori in governance at the Law Society and suggested something wider is needed, eg, a partnership approach.

> We would caution against simply putting in a carve-out. This would again reaffirm the existing control of the Law Society with tikanga Māori as an exception, rather than viewing

> the Tiriti partnership in terms of mana ōrite – of equal status and value. [representative group]
>
> Māori need to be represented throughout the entire structure – not just in governance – all governors need to demonstrate strong Māori and cultural competency in their professional practice in governance – not just in law. [survey response]

Specific ideas from submitters include:

- continual review of structure and governance against evolving understanding of Te Tiriti and tikanga within our law and society
- at least two appointees with expertise in the Treaty on the governing body
- Māori representatives
- a Māori sub-committee
- introduction of a co-governance model
- require the appointment of a Pou Tikanga (Māori cultural advisor) or a Tumaia Kaiārahi (Māori Advisory Group) to advise the CE
- explicit Te Tiriti commitments in the key documents and minimum Māori membership requirements for the Board
- organisational expectation that all governance members demonstrate basic competence in Te Reo Māori and Te Tiriti
- a mana-to-mana advisory body involving the Council and iwi leaders that meets regularly should be established to help give effect to the principles of Te Tiriti
- a requirement for consultation with iwi and Māori when Māori interests are engaged.

9.1.3.2 Te Hunga Rōia Māori o Aotearoa

Multiple submitters (including representative groups) specifically identified Te Hunga Rōia Māori as an important part of this consideration. Submitters suggested that they should be included at the governance level and be given the same status and resourcing as the Law Society. At the very least, more funding should be provided to them.

One representative group submitter suggested that Te Hunga Rōia Māori needs to maintain its independence and should not have a direct, everyday role in the Law Society.

Specific suggestions included:

- an elected Board member from Te Hunga Rōia Māori
- Te Hunga Rōia Māori should play an appointing role in selecting Māori the Law Society governing members
- a Vice-President, appointed by Te Hunga Rōia Māori
- requirement for the CE to enter a strategic partnership with Te Hunga Rōia Māori, including a strategic vision for governance
- closer ties with Te Hunga Rōia Māori, including information sharing and secondment arrangements
- Te Hunga Rōia Māori should be involved in co-designing the reform of the Law Society.

9.1.3.3 Do not agree

Some submitters did not agree with governance structures that better reflect Te Tiriti, suggesting that to give one part of our ethnically diverse country additional votes or seats is not the correct approach.

> Giving a free seat to minority representation creates more problems than it does solutions, it encroaches on the principles of democracy and insinuates that these individuals wouldn't have a achieved a placement on their own merit or voting campaign [law firm]

Arguments against were similar to the arguments against incorporating Te Tiriti into the statutory framework, for example, Te Tiriti is between Māori and the Crown.

> The profession's institutional arrangements/governance structure are not an appropriate means to reflect/give effect to the principles of Te Tiriti. Te Tiriti is principally an issue that must be addressed in the context of the relationship of the Crown to Māori. [survey response]

A few submitters expressed concern about a potential co-governance model. Other submitters suggested that there is insufficient information as to how this would look in practice, due to the uncertainties surrounding the definition of Te Tiriti.

> Until it is commonly accepted which version of the Treaty is the one to be used, I fail to understand how the Treaty can be incorporated into the governance of the profession. [lawyer submission]

10.Other issues

These areas are outside the areas in the discussion document but are included here for completeness.

10.1.1 General issues

Access to justice and legal aid

Submitters suggested that there is inadequate funding for legal aid and public interest litigation. The existence of punitive costs regimes makes it impossible for the vast majority of New Zealanders to have access to justice. Most New Zealanders cannot afford to take a petty case against their employer due to prohibitive costs. Other submitters suggested that there is currently poor support for Criminal Legal Aid providers.

One individual submitter suggested a way to improve access to justice: have barristers pay a sum equivalent to the Fidelity Fund and use this to fund more public defenders and better legal aid rates.

Consultation

Several submitters noted that any changes need a comprehensive engagement process on a long timeframe. One individual submitter suggested that the Law Society should contract an institution skilled at engagement.

Employment standards

One representative group submitter suggested that there needs to be regulation of minimum employment standards in law firms such as pay, overtime, pastoral support and health and safety. This is also touched upon in section 4.1.1.3.

Another individual submitter suggested that appropriate standards of business efficiency are needed to ensure practitioners work and cost their services in a manner that covers outgoings and allows sufficient income.

One individual submitter suggested that competency assessment of lawyers over a certain age is needed (eg, 75 years). There is a current gap where people self-assess their ability to keep practising and there is no independent oversight of a person's ability.

Small and sole practices

As noted by some submissions, sole practice is becoming increasingly difficult with the increasing regulatory requirements, e.g. anti-money laundering reviews, auditing requirements. As one individual submitter noted, any proposals need to be clearly thought through as to how they will affect small legal firms. For example, the removal of the conveyancing scale meant conveyancing shops appeared with cheaper services that did not include litigation. Therefore the price of litigation skyrocketed as firms could no longer supplement with conveyancing as this was cheaper elsewhere.

Technology support

An individual submitter suggested that we have the technology to modernise and streamline title transfers. The regulator needs to require this to ensure the playing field stays level.

Another individual submitter asked for more targeted support due to the changing environment (eg, increasing use of technology). Target groups could be: single and small group practices; large firms; corporate lawyers employed by non-lawyer corporates.

Other

- The Law Society should consider a pilot study for a marae-based court with a Treaty-based alternative justice system with different penalties and procedures.
- Remove unlimited personal liability insurance requirement. We are the only profession to carry this burden in the country.
- the Law Society is unable to reconcile its Trans-Tasman Mutual Recognition Act local registration authority statutory imperative to register Australian lawyers in NZ based on their fitness to practise as judged by the Australian local registration authority with either the fit and proper/character assessment the Law Society is statutorily obliged to make.

10.1.2 Library

There were conflicting opinions from submitters on the current provision of library services. A few submitters suggested that the current provision is appropriate and that hard copy books remain essential. In contrast, an individual email submitter suggested that library support is poor. Another individual submitter suggested that most firms pay for online access and do not use the Law Society law library – this means these firms are subsidising firms/individuals who do not have online services and use the Law Society library. They suggest that the library be user pays/subscription.

10.1.3 Practising on own account process

Multiple submitters noted issues with the process for practising on own account. They noted that the current framework is not fit for purpose for alternative or non-traditional legal providers. The process of applying to practise on your own account assumes that lawyers will be working like partners of traditional law firms or in sole practice.

It does not contemplate contracting as a career path. Legal contracting is an effective method for senior lawyers to work flexibly and allows a realistic pathway back into the profession. Working part-time for a law firm results in little flexibility as lawyers are generally required to work set hours on set days and are often given more menial tasks.

Submitters suggested that there needs to be flexibility for lawyers to practise on own account earlier with appropriate monitoring and supervision, rather than waiting the required number of years. There should also be a streamlined pathway for practising on own account for legal contractors or create the ability to hold a practising certificate while contracting while maintaining supervision arrangements.

Under current rules, people without the required 'recent legal experience' need to apply under the special circumstances exception when applying to practise on own account. This creates uncertainty and is an incredibly labour-intensive process where the Law Society provides minimal to no guidance.

> If not for mentoring and encouragement from senior colleagues who had been through the same experience…[she] would not have applied. [lawyer submission]

Multiple submitters suggested that the requirement of a minimum amount of recent legal experience is a structural barrier and sends a message that working flexibly or part-time or taking leave negatively impacts capability. This discrimination falls disproportionately on women, Māori, Pasifika, disabled – hindering diversity in the profession. Another representative group submitter noted the approach to recording PQE years in relation to parental leave in contrast with those who take extended periods of annual leave and are not expected to disclose.

> The profession should not be structuring itself in ways that act as a barrier to such fundamental choices and requirements of women in their personal lives if it ever wishes to ensure that women are properly and fully represented within it, let alone protected in the laws we seek to uphold through our work. [lawyer submission]

> A friend of mine is a mother and has been working part time for the last few years. She leads a team at her firm. I was shocked to find out that in order to do her Stepping Up course, she has to apply for "special circumstances", as the hours required are based on a full time worker…People wonder why, in a profession which has so many women, women are still underrepresented at the partnership level – and this is certainly a barrier. Part time workers are essentially seen as less competent and are "othered" before they can be seen the same way as their peers. [survey response]

They suggest that the section 30 interviews represent an outmoded view of legal practice focused on revenue generation. They also take too long to set up.

> Applicants are being interviewed by traditional lawyers who struggle to understand or appreciate the intended manner of practice. [lawyer submission]

> My interview was also quite a confronting experience. There was a level of insistency that I couldn't be a lawyer part-time…Both processes (application and interview) left me feeling incredibly demoralised and worthless. I felt that in my 40s with 20 years' experience I deserved better. And that as a woman who'd had children, yet again nothing had changed and the system didn't value me. It just felt like the PAC process was yet another glass ceiling. [lawyer submission]

In addition, submitters suggested that the Stepping Up course trainers are problematic and also represent a traditional view of law and work.

One representative group submitter noted the issue where lawyers employed by Community Law Centres (CLCs) need to be directly supervised by a lawyer qualified to practise on their own account. If they can't, the CLC must request approval from the Secretary of Justice for alternative arrangements. The rules require lawyers to apply to the Law Society for approval to practice on their own account, and actually commence that practice within two years of completing Stepping Up. But supervision in a CLC is not considered practice on own account. This means that many CLC senior lawyers must complete refresher Stepping Up courses every two years and request approval from the Secretary of Justice for their supervision arrangements. A change to the regulations could streamline this process. The representative group submitter suggested that the interview panel should also have one CLC lawyer in relevant circumstances.

10.1.4 Education and pathways to the profession

Submitters suggested that there should be alternative pathways to the profession. One suggestion is a non-degree track to being a lawyer, eg, the ability of legal executives to become lawyers, and admission after a period of apprenticeship.

Law school

- Law schools should include Te Tiriti and tikanga as part of the ethics papers. In addition, cultural competency should be encouraged as early as possible at law school and a request should be made to universities to include cultural competency.
- Online legal studies should continue past COVID-19 to allow for more diverse students to be able to study.
- Create opportunities within CLE to make it compulsory for undergraduate law students to gain practical legal experience.
- the Law Society can work with law schools to make certain courses available to students if they wish to take them, rather than requiring them of qualified lawyers.
- Law school and professionals should make it easier for students to work in the community.
- Institute post-LLB testing as a requirement for admission or require applicants for admission to pass all CLE subjects irrespective of having been given a compensation pass.

Other education

- Conveyancing/landonline training should be made available either as part of the LLB or as a newly qualified solicitor.
- Training on how to deal with difficult people (both clients and colleagues).

Any proposed changes need to be carefully consulted with NZCLE in relation to any changes in separation of function of the Law Society/establishing an independent regulator, or a move to extend regulation to currently unregulated providers of legal services.

10.1.5 Judicial and other processes

Submitters suggested that the court work model needs urgent review due to overwork and stress involved. Others suggested that there needs to be an investigation into bullying of lawyers by judges. This can have a serious impact on lawyers. An individual submitter suggested that we need a system that will proactively police this issue. Submitters suggested that judicial officers should receive mandatory cultural competency training. A judicial mentoring system targeted at underserved groups was also mentioned by a representative group email submission.

Some submitters called for a review of the KC system due to a number of concerns around government interference, anti-competitiveness, and secrecy of process. The current criteria elevates one form of advocacy over others, discriminating against lawyers who focus on advocacy outside the litigation context – which disproportionately affects women, Māori and Pasifika. One individual submitter suggested an independent public system of application and appointment as in the UK.

One individual submitter suggested that the Counsel for Subject Person or Child system is flawed. Funding is fixed which can result in a mindset of doing as little as possible. The person does not get a

choice in who they appoint and can't seek an alternative lawyer. Some lawyers appointed do not meet with the client and try to prevent their client being present in court. Another representative group submitter suggested that judges and Counsel for Child need competency standards including advanced understanding of family and sexual violence, including the role of coercive control.

10.1.6 Practising certificates

Two submitters noted that reinstating a practising certificate is difficult if people have been out of the country, have had an extended period of leave, or have been working in different industries.

> The linear career pathway is no longer and we need to take a substantive lens to innovative and new lawyers joining the profession and contributing with diversity of thought. [lawyer submission]

10.1.7 Other suggestions

- Greater transparency in the pricing of legal services.
- Regulation needs to flexible enough to allow for the provision of different models of free or low-cost services. It would be beneficial to allow Community Law to provide a wider range of services and charge limited rates.
- Consider whether the regulatory framework that governs the professional development of in-house lawyers should be improved by requiring individuals to complete local qualifications that are developed with reference to the international frameworks developed by the Chartered Governance Institute.
- Sometimes people have to ask lawyers when government officials can't answer the question regarding regulations in individual cases. It is unfair to force people to pay extra to check they are complying with the law. Lawyers should be able to exempt client from paying or ask the government to pay in such cases.
- To help consumers select the right lawyer, there could be an opt-in system on a lawyer's level of experience and quality of service in specific areas of law. There is a lack of transparency or good information for consumers.
- Issue of monies and trust accounts and the nominee. If money is not on interest bearing deposit, then the Law Commission and the bank gets 50% – this is wrong. Any interest earned overnight should go to the client or the law firm operating the trust account. It makes no sense that lawyers' clients' funds are funding the Law Commission, which is a government function and not a Law Society function.