

5 December 2023

Hon Judith Collins
Attorney General

By email: judith.collins@parliament.govt.nz

Tēnā koe Minister

I am writing on behalf of the New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society), to congratulate you on your appointment as Attorney General.

The role of Attorney General is of particular significance to the Law Society and its members, being the Law Officer of the Crown responsible for maintaining the rule of law, scrutinising adherence to the New Zealand Bill of Rights Act 1990 (Bill of Rights) and forming the link between the judiciary and executive government. The Law Society is similarly committed to upholding the rule of law and facilitating the administration of justice, and we outline below some of key priorities relevant to your portfolio.

Background

The Law Society is the professional body for lawyers in New Zealand. We are an independent statutory body constituted under the Lawyers and Conveyancers Act 2006 to regulate and represent the legal profession. We regulate just over 16,000 practising lawyers, and represent over 98% of lawyers.

The Law Society's role in law reform and advocacy

The Law Society has a statutory function to 'assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law.' This is a regulatory function carried out in the interests of the public.

The Law Society is consistently called upon to ensure workable legislation by providing reasoned and impartial submissions on law reform proposals. Law Society submissions also represent the public interest on matters such as access to justice, the administration of justice, constitutional protections, and the rule of law. We also act as an impartial intervenor in leading court cases of general and public importance in the higher courts.

To carry out this work,¹ the Law Society has over 170 volunteer lawyers, sitting on 17 committees, who contribute to submissions on bills, policy papers, working groups, and the

¹ Further information about the breadth of our law reform and advocacy work can be found on our [website](http://lawsociety.org.nz).

like. Perhaps of most relevance is our **Public Law Committee**,² comprised of 11 members who are expert lawyers in this field.

We highly value the open and collaborative relationships we have with officials across the public service and remain committed to early and informed consultation within our remit, with both Ministers and officials.

Our key priorities

Section 7 reports and consistency advice

The Law Society has some concerns about the process followed when Parliament is considering a bill subject to a section 7 Bill of Rights report. In particular:

1. Where the Attorney General reports to the House that a bill contains provisions inconsistent with any of the rights and freedoms in the New Zealand Bill of Rights Act 1990, there remains no process to ensure the bill does not proceed under urgency without public consultation. As we set out in a recent report to the United Nations for New Zealand's 4th Universal Periodic Review, there are multiple examples of bills proceeding with limited or no public select committee process, despite the presence of a section 7 report or other serious rights concerns.³ Similarly, where amendments are made to a bill following select committee (for example by Supplementary Order Paper) any Bill of Rights implications will not necessarily be brought to the attention of Parliament. There are no special procedures (or conventions) to ensure full public consideration.
2. In terms of the advice provided on Bill of Rights consistency more generally, we are concerned this advice is not always as robust as should be expected, and at times fails to identify where rights and freedoms in the Bill of Rights are engaged.⁴ Section 7 reports, and consistency advice more generally, are an essential component of our parliamentary Bill of Rights. Robust and thorough advice must be expected and encouraged from officials.

Appointments

We also look forward to working with you and your officials in relation to judicial and King's Counsel appointments. A number of barristers have mentioned that given the lack of a King's Counsel round this year, an appointment round would be welcome in the first half of 2024.

For your information, we have included a copy of the BIM prepared for Minister Goldsmith.

We would also like to offer you the opportunity to be a guest at an event with the profession such as a breakfast event in Wellington or Auckland.

² <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/>

³ <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/UN-Periodic-Review-11-October-2023.pdf>, See appendices 1 – 2.

⁴ See above, n 2, at appendix 3.

I am available to answer any questions or discuss this further. You can contact me in the first instance via Bronwyn Jones, General Manager Policy, Courts and Government (bronwyn.jones@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'F. Barton', written in a cursive style.

Frazer Barton
President