



New Zealand Law Society Working Group to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession

Terms of Reference

INTRODUCTION

Background

- 1 In February 2018 media outlets in Aotearoa New Zealand reported allegations of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour occurring within the legal profession of this country. These allegations related to conduct both recent and historic.
- 2 Such behaviour is unacceptable in the legal profession.
- 3 These allegations raise questions about:
 - 3.1 the legal profession's current regulatory framework, and in particular –
 - (a) whether the regulatory policies, processes and framework enable adequate prevention, detection and reporting of sexual harassment, bullying, discrimination or other inappropriate workplace behaviour within the profession;
 - (b) whether the regulatory policies, processes and framework provide adequate support for those affected by sexual harassment, bullying, discrimination or other inappropriate workplace behaviour; and
 - (c) the adequacy of the regulatory policies, processes and framework to enable effective action to be taken where such conduct is alleged.
- 4 As the main regulator of the legal profession, the New Zealand Law Society acknowledges there is a problem within the profession with respect to sexual harassment, bullying, discrimination and other inappropriate workplace behaviour, and that a fundamental aspect of that problem is under-reporting of such behaviour.

- 5 The New Zealand Law Society acknowledges its role in working to prevent sexual harassment, bullying, discrimination and other inappropriate behaviour in the legal profession – it has commenced a plan of action that will be undertaken over the coming months.
- 6 Where sexual harassment, bullying, discrimination or other such inappropriate behaviour occurs in the legal profession it must be dealt with and the New Zealand Law Society is committed to upholding the fundamental obligations imposed on lawyers, and monitoring and enforcing the provisions of the profession’s regulatory framework.
- 7 The New Zealand Law Society has established a working group to consider what improvements can be made to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession.

Purpose of this document

- 8 By this document the New Zealand Law Society establishes the Working Group to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination, and other inappropriate workplace behaviour within the legal profession (**the Working Group**).
- 9 The Working Group will operate in accordance with the terms of this document to fulfil its purpose and functions.

OBJECTIVE OF THE WORKING GROUP

Purpose

- 10 The Working Group will report to the New Zealand Law Society, but will operate independently.
- 11 The Working Group aims to inquire into and report on the following matters in relation to the reporting, prevention, and detection of and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour:
 - 11.1 the effectiveness of the legal profession’s current regulatory framework;
 - 11.2 what, if any, improvements should be made to the current regulatory framework;
 - 11.3 the adequacy of the current policies and processes that support the regulatory framework;
 - 11.4 the adequacy of the current regulatory framework in respect of continuing professional development requirements.
- 12 The work done by the Working Group will work in parallel with Task Force that will be established by the New Zealand Law Society which, in conjunction with an external expert, will develop a strategy and action plan to achieve culture and systems change in the legal profession and guide and drive that change to provide safer legal working environments

Functions

- 13** The Working Group is established to inquire into and report upon:
- 13.1** The current regulatory framework, including but not limited to —
 - (a)** whether the current disciplinary and complaints framework and processes enable adequate reporting and investigation of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour;
 - (b)** whether the current disciplinary and complaints framework and processes provide adequate support for persons affected by sexual harassment, bullying, discrimination and other inappropriate workplace behaviour; and
 - (c)** whether the current disciplinary and complaints framework and processes enable effective action to be taken in response to sexual harassment, bullying, discrimination and other inappropriate workplace behaviour.
 - 13.2** What changes, if any, are required to the current regulatory framework and processes to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination or other inappropriate workplace behaviour.
 - 13.3** If changes are required, the method of improving the current regulatory framework, including but not limited to —
 - (a)** whether legislative or regulatory change is required; and
 - (b)** whether improvements to the regulatory framework can be guided or informed by the practices or systems of other national and international bodies.
 - 13.4** What changes, if any, are required to improve the way in which the regulatory framework is implemented by the New Zealand Law Society, including but not limited to whether changes to the Lawyers Complaints Service are required.
 - 13.5** What changes, if any, are required to the legal profession's current continuing professional development requirements.
 - 13.6** The impact of any changes to the regulatory framework and processes on the ability of those affected by sexual harassment, bullying, discrimination or other inappropriate workplace behaviour to seek or obtain other forms of redress.
 - 13.7** Any other matter that may be thought by the Working Group to be relevant to the general or particular objects of the inquiry.

and to make any recommendations it considers appropriate.

- 14** The Working Group is not established to inquire into or investigate specific incidents of alleged misconduct.

Accountability and relationships

- 15** The Working Group is accountable to the New Zealand Law Society for the quality and timeliness of its advice and reports.
- 16** The Working Group's task will be conducted from May 2018 and the preliminary outcomes reported to the Board of the New Zealand Law Society at its meeting in October 2018.

CONDUCT OF BUSINESS

Working Group's intent and values

- 17 In carrying out its responsibilities, the Working Group will at all times act honestly, fairly, diligently, and in accordance with the law. Members will undertake their duties with care and diligence at all times, giving proper time and attention to matters before them.
- 18 All Working Group members will participate fully and constructively in Working Group discussions, contributing the benefit of their particular knowledge, skills and abilities to discussions.

Conduct of business

- 19 The Working Group will meet at such times and operate in such way as determined by the Working Group.
- 20 The Working Group will:
 - 20.1 Provide free and frank advice to the New Zealand Law Society;
 - 20.2 Provide advice that takes into account the sensitive nature of the issues under analysis; and
 - 20.3 Create and maintain full records of all information received, and shall ensure the confidentiality of that information is maintained where required or otherwise appropriate.
- 21 The New Zealand Law Society will support the Working Group by providing such information, assistance and advice requested by the Working Group in order to fulfil its functions in a timely manner.
- 22 The Working Group may otherwise regulate its own procedures.

Membership

- 23 The Working Group comprises 5 members, including the Chair.
- 24 The Chair of the Working Group is Dame Silvia Cartwright. In the event the Chair cannot attend, Joy Liddicoat, barrister and solicitor will chair the meeting.
- 25 The New Zealand Law Society appoints 4 other members:
 - 25.1 Professor Elisabeth McDonald, University of Canterbury;
 - 25.2 Jane Drumm, General Manager of Shine;
 - 25.3 Joy Liddicoat, barrister and solicitor; and
 - 25.4 Philip Hamlin, barrister.
- 26 The members of the Working Group are appointed by the New Zealand Law Society and will be appointed for the duration of the period required to fulfil their functions above, with the option to extend for such further periods as required.
- 27 Any member of the Working Group may tender their resignation from the Working Group at any time by way of letter addressed to the Chair.
- 28 Members of the Working Group are not employees of the Working Group, the New Zealand Law Society, or the Crown.

Roles and responsibilities of Working Group

Role of Working Group Chair

- 29 The Chair of the Working Group's responsibilities include:
- 29.1 Leadership of the Working Group;
 - 29.2 Ensuring the efficient organisation and conduct of the Working Group;
 - 29.3 Setting the agenda for each meeting, with input from other members of the Working Group;
 - 29.4 Chairing Working Group meetings;
 - 29.5 Ensuring all Working Group members are briefed on material matters arising at or between Working Group meetings;
 - 29.6 Promoting an environment of trust, respect and openness to ensure consultative and constructive relationships between Working Group members and between the Working Group and the New Zealand Law Society;
 - 29.7 Ensuring the Working Group functions in accordance with its purpose and mandate.

General responsibilities of Working Group members

- 30 Working Group members have a responsibility to exercise independent judgement, courage, and respect.

Review

- 31 These Terms of Reference may be amended by the New Zealand Law Society and by the Working Group in consultation with the New Zealand Law Society.

Members' interests and conflicts

- 32 Prior to appointment, members of the Working Group are expected to identify and disclose any conflicts of interest, and any other relevant matters.
- 33 If any conflict of interest or other relevant matters arise during the tenure of a member of the Working Group it will be disclosed to the Chair in order for a decision to be made about that member's continued membership of the Working Group.

Disclosure of information

- 34 All members of the Working Group will be required to sign an individual Confidentiality Agreement. This will enable the disclosure of confidential information gathered by the New Zealand Law Society to the members of the Working Group for the purpose of enabling the Working Group to fulfil its functions.
- 35 The discussions of the Working Group are confidential to its members.

- 36** Where specific instances of sexual harassment, bullying, discrimination or other inappropriate workplace behaviour are reported on by the Working Group, the Working Group must not use individual names of persons directly involved, unless such information is publicly available or the individual expressly consents to such use.
- 37** Where any information about individual instances of sexual harassment, bullying, discrimination or other inappropriate workplace behaviour is directly received by the Working Group, the ordinary procedures of the New Zealand Law Society upon receiving confidential reports shall apply, and no inquiry will be instigated by the New Zealand Law Society without consultation with the complainant.
- 38** All information disclosed to the Working Group is New Zealand Law Society information.