consumer.

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SUBMISSION on the Discussion Document for the Independent Review of Lawyers and Legal Services in Aotearoa New Zealand

1. Introduction

Kei te tika e mihi atu ana ki ngā tāngata whenua o te whenua nei. We acknowlege the indigenous people of this country. Tēnei te mihi ki a rātou. We give our acknowledgements to them.

Thank you for the opportunity to make a submission on the discussion document for the Independent Review of Lawyers and Legal Services in Aotearoa New Zealand – Te Pae Whiritahi i te Korowai Rato Ture o Aotearoa. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. General Comments on the discussion document

We strongly support and welcome the independent review of lawyers and legal services in Aotearoa New Zealand.

3. Our answers to selected questions

Our answers to selected questions in the discussion document are set out below.

Question 4: Are the reserved areas for lawyers appropriately defined?

Yes, we consider the reserved areas for lawyers are appropriately defined. In our view, extending the scope of reserved areas of work may limit access to legal services for consumers. Therefore, we see little benefit to consumers in expanding the reserved areas. A similar conclusion was reached in the UK in the Final Report on the Independent Review of Legal Services Regulation.

At Consumer, we have several staff members with law degrees (but who are not practising lawyers) who provide legal services to both members and non-members on consumer related issues. If the reserved areas of work are extended, we, and other similar organisations, may no longer be able to continue to provide these services to consumers.

Question 5: Are there instances where consumers are likely to suffer adverse outcomes from using unregulated providers of legal services?

We consider there is a risk that consumers will suffer adverse outcomes from using unregulated providers of legal services.

At Consumer, we occasionally receive complaints about substandard services provided by unregulated providers of legal services, such as employment advocates. We also receive occasional complaints about lawyers.

From the complaints we receive, it appears that consumers don't always understand the difference between regulated and unregulated providers and the fact the same protections don't apply to both types of providers.

Question 6: Should the focus of the Act on regulating the activities of lawyers be broadened to include providers of legal services more generally?

Yes, but regulation of lawyers and providers of legal services by non-lawyers should have different standards. We therefore support option 3 - a parallel 'light-touch' regime for specific categories of legal services provided by non-lawyers.

In our view, it would be beneficial to regulate legal services provided by non-lawyers to ensure that the integrity of the legal profession is maintained, consumers are better protected, and there is increased awareness about a provider's regulatory status.

Equally, we consider an onerous regulatory system that covers all categories of legal services provided by non-lawyers will impact consumers' ability to access legal services. In particular, it will impact access to community-based and not-for-profit organisations, such as Consumer NZ, Citizens Advice Bureau, FinCap and Community Law Centres throughout Aotearoa, as well as many Government agencies providing legal services

Question 7: Should regulatory obligations vary depending on the degree of risk from the type of legal service?

Yes, as stated above, we consider there should be some level of regulation for all providers of legal services. However, the extent of regulation for providers should depend on the categories of legal services being offered and the particular circumstances of each provider.

Regulation should be targeted and proportionate to the risk posed by non-lawyers providing legal services. It should also factor in the burden and cost to the provider and consider the potential benefits and/or disadvantages to consumers if the provider is regulated.

As noted above, there is benefit in having unregulated providers (or minimally regulated providers) of legal services because it increases access to legal services, often at a significantly reduced cost or at no cost. It is important that all consumers have access to legal services.

Question 8: Should the Act allow law firms to use alternative business structures that permit ownership, management and investment by persons other than lawyers?

We recognise alternative business structures would allow law firms to expand their capabilities and services. For example, they may offer a wider variety of services through new technologies. Alternative business structures with well-known brands could also increase consumer confidence in the services being offered and potentially reduce costs for consumers.

We also recognise there are downsides to allowing alternative business structures. For example, there is likely to be more conflicts of interest and a possible decrease in pro bono work.

However, we'd like to see further analysis of this issue before forming a firm view on whether these business structures are beneficial for consumers and should be allowed.

Question 9: Should the Act permit multidisciplinary practices, where lawyers can enter into a partnership with non-lawyers?

Yes, we see potential benefits for consumers if multidisciplinary practices are permitted and lawyers could enter into partnerships with non-lawyers. If a consumer requires assistance with legal and accounting issues, for example, they could conveniently obtain these services from one place.

Additionally, a partnership between lawyers and non-lawyers could allow a legal service provider to widen the areas of expertise it offers which would be beneficial for consumers. However, again, we'd like to see further analysis of this issue.

Question 10: Should entities providing legal services be directly regulated, in addition to individual lawyers?

Yes, we consider there is merit in directly regulating entities providing legal services.

However, we note this could create a financial and administrative burden on organisations such as Consumer NZ, CAB and Community Law Centres.

If the burden of providing such services is too high, these community organisations would no longer be able to offer the valuable services they provide. This would be detrimental to consumers.

Also, we are concerned that regulating legal entities providing legal services could result in Government agencies (such as MBIE, Commerce Commission etc) ceasing to provide useful consumer services. If we consider the breadth of the potential legal services currently provided by Government agencies, this could have a significant detrimental effect on consumers accessing these services.

Question 11: What additional regulatory tools should be available to the regulator?

The regulator should have a broader set of regulatory tools to ensure it can address lower-level concerns promptly and before any harm occurs. We support the regulator having the power to direct a lawyer to take specific actions, like undertaking further training, writing an apology, or seeking mental health support.

The scope of these additional regulatory tools should be focused on mitigating and preventing harm. Where the harm has occurred, the focus should be on resolving the matter promptly. We agree that the focus should be on supporting consumers and practitioners rather than it being a disciplinary process.

Where there has been unsatisfactory conduct and the matter cannot or should not be addressed by the regulator, these matters should be reserved for the Standards Committees and the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

Question 15: Are the current CPD requirements fit for purpose?

No, the current CPD requirements should include mandatory training for topics such as:

- Te Tiriti, Te Ao Māori, and tikanga Māori
- Cultural competency
- Anti-racism and anti-discrimination
- Anti-bullying

Question 16: Should it be mandatory for lawyers to undergo training in anti-bullying and discrimination as part of their CPD requirements?

Yes, lawyers should be required to undertake training in anti-bullying and anti-discrimination as this is likely to improve lawyers' dealings with consumers and their workplace cultures.

Question 17: Should it be mandatory for lawyers to undergo cultural competency training as part of their CPD requirements?

Yes, it is important that all consumers feel safe and respected when accessing legal services. It is necessary to ensure everyone has access to justice. Lawyers must be aware of their own unconscious biases and know how to provide legal services equitably to consumers with a diverse range of cultural backgrounds.

Question 18: How might the statutory framework and the regulator facilitate and encourage pro bono services?

We support funding for pro bono services being provided to charities and organisations such as Community Law and Citizens Advice Bureau which offer legal services to people who would not otherwise be able to afford and access legal services.

The statutory framework and the regulator should facilitate and support these sorts of agencies. The statutory framework and the regulator should also focus on addressing what Chief Justice Winkelmann refers to as the "justice gap". This is where individuals who require legal assistance do not qualify for legal aid due to their income but cannot afford to pay the cost out of their own pockets.

Question 19: Is there a need to update the definition of 'unsatisfactory conduct' and 'misconduct'?

Yes, we agree section 12 of the Lawyers and Conveyancers Act should be amended to clarify the meaning of 'unsatisfactory conduct' and make it clear it includes offensive conduct unrelated to the provision of legal services but where there is a link to the workplace, colleagues, or clients, or where the conduct may bring the profession into disrepute.

Question 20: Is the current complaints model fit for purpose? What are the key issues?

No, the current complaints model is not fit for purpose, and we agree with the issues set out in the discussion document. From a consumer perspective, the key issues are:

- The perception the complaints process is not independent.
- The complaints model not being consumer-centric or restorative.
- The complaints model may not be working for Māori and Pacific peoples.
- The complaints model failing to meet the needs of consumers and lawyers.

Question 21: Is there a need for structural changes to the complaints model?

Yes, we support option 2 ('Establish a new independent complaints body for all complaints') or option 3 ('Have two separate bodies deal with complaints of poor service or conduct').

Our preferred option is option 2. Most other professions have an independent complaints body so we consider the legal profession should too.

Establishing a new independent complaints body would also increase consumer confidence in the complaints process.

Option 3 would provide some assurance to consumers that the complaints process is independent. It would also ensure that the regulator's resources are appropriately reserved and distributed to deal with the more difficult conduct matters. However, it is not our preferred option.

While there are significant cost implications associated with options 2 and 3, the changes are necessary as the current complaints model is failing both consumers and lawyers.

Question 22: Is there a need to establish an independent entity to investigate and resolve complaints?

Yes, we consider that having an independent entity to investigate and resolve complaints would be beneficial as it would increase transparency and consumer confidence in the complaints process.

Question 23: What might a tikanga based complaints or disciplinary process look like?

Although we aim to represent all consumers, we are not experts in Te Tiriti so encourage the Independent Review Panel (Panel) and the New Zealand Law Society/Te Kāhui Ture o Aotearoa (NZLS) to engage Te Tiriti, Te Ao Māori and tikanga Māori experts and communities to seek guidance on matters relating to these areas of expertise.

Question 24: Is there a case to change the current arrangement where the NZLS exercises both regulatory and membership functions? Why?

Yes, we see benefit in separating the regulatory and membership functions. This is consistent with our support for an independent entity to investigate and resolve complaints.

We recognise there are cost implications for establishing a new regulator (option 3), and that a regulator (current and future) is and would be considerably smaller compared to other jurisdictions such as England and Wales. We therefore support option 2 – implementing an operational

separation to improve the separation of functions within the NZLS as a practical solution balanced against the potential costs.

Thank you for the opportunity to provide comment.

ENDS