

4 October 2024

Grace Haden
fyi-request-28323-4b0bccac@requests.fyi.org.nz

Ref: OIA 115645

Tēnā koe Grace

Official Information Act request: Law Society

Thank you for your request under the Official Information Act 1982 (the OIA) on 7 September 2024 to the Ministry of Justice (the Ministry). Specifically, you requested:

By way of OIA please provide documentation which considers accountability to the rule of law by each of the following and who is responsible for enforcement of compliance for

- 1. the law society itself*
- 2. its employees*
- 3. by its members*

please provide documentatoin or policy as to how the public is protected from non compliance with statutory obligations by the law society. where do we go what do we do or do we just suffer the fall out, can the law society be a party to an offence by seemingly condoning a criminal offence. where is the public protection?

Your request for information is better and more coherently addressed by the Ministry responding to your concerns directly than by providing individual documents.

Whilst the Ministry administers the Lawyers and Conveyancers Act 2006 (the Act), the New Zealand Law Society (the Law Society) is the national regulator of the legal profession. The Law Society's regulatory functions are outlined in section 65 of the Act as follows:

- to control and regulate the practice in New Zealand by barristers and by barristers and solicitors of the profession of the law,
- to uphold the fundamental obligations imposed on lawyers who provide regulated services in New Zealand,
- to monitor and enforce the provisions of the Act, and of any regulations and rules made under it, that relate to the regulation of lawyers, and
- 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.

The Law Society and its employees

The Ministry plays no role in the day-to-day operations of the Law Society, which are matters for its Council, Board, and Chief Executive. However, the Minister of Justice does have a co-regulatory role, primarily in overseeing the exercise of the Law Society's regulatory functions. For example, the Law Society is required under section 94 of the Act to develop rules for the conduct of practice by lawyers. These rules (and any changes to them) must be approved by the Minister of Justice who, when granting approval, must have regard to various matters set out in section 101 of the Act. The Law Society is required to present the Minister with a report on the exercise of its regulatory functions and powers annually which must be tabled in Parliament.

You have requested information on enforcing compliance of the Law Society's statutory obligations. The Law Society is a statutory entity, with powers provided by Parliament through the Act. The Judicial Review Procedure Act 2016 provides for judicial review of the exercise of, or failure to exercise, a 'statutory power' (as defined by that Act). I cannot provide advice on whether any particular decision of the Law Society is judicially reviewable – you may wish to seek independent legal advice on that. More information on judicial review can be found at: courtsofnz.govt.nz/assets/6-Going-to-Court/media/rules-and-resources/Judicial-reviews.pdf/

More generally, I note that section 63(2) of the Act states that the Law Society is a body corporate and "has and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity." Section 272 of the Act outlines situations where the Law Society and its members, officers, and employees are excluded from criminal or civil liability.

The Legal Profession and Law Society members

As you are aware, the Law Society receives complaints through its Lawyers Complaints Service (LCS) about lawyers who are alleged to have breached their professional standards. The LCS helps people resolve issues about the conduct, service, or fees of current or former lawyers, current or former incorporated law firms, or current or former employees of lawyers or incorporated firms. If the complaint cannot be resolved by the LCS, it will be referred to a Standards Committee which will investigate and make a decision on the complaint. There is more information at: lawsociety.org.nz/lawyers-complaints-service/

Anyone who is not satisfied with the decision of the Standards Committee can seek a review from the Legal Complaints Review Officer (LCRO), an independent judicial officer supported by the Ministry of Justice. There is more information at: justice.govt.nz/tribunals/lawyers-and-conveyancers/lcro/

A decision of the LCS or LCRO may be judicially reviewable as outlined above. Again, I cannot provide advice on whether any decision is judicially reviewable – you may wish to seek independent legal advice on that.

Please note that this response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/oia-responses/

You have the right under section 28 of the OIA to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at ombudsman.parliament.nz or call 0800 802 602.

Nāku noa, nā



Helen McDonald

General Manager, Courts Justice Services, Policy (Acting)