

Hon Kiri Allan
Minister of Justice

Proactive release – Amendment to Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008

Date of issue: 9 February 2022

It is recommended that the following document is proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Amending the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 to Protect Lawyers' Personal Safety and Privacy Rights <i>Cabinet Paper</i> Office of the Minister of Justice 9 February 2022	Some information has been withheld in accordance with section 18(c)(ii) on the basis that making available the information would amount to contempt of the House of Representatives



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Amending the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008

Portfolio Justice

On 9 February 2022, the Cabinet Social Wellbeing Committee:

- 1 **noted** that the Regulations Review Committee received a complaint regarding the display of lawyers' work details on the public register of lawyers, leading to the harassment of a lawyer and their employers;
- 2 **agreed** to amend the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 to allow the New Zealand Law Society (NZLS) to remove a lawyer's work details from the register of lawyers in circumstances where:
 - 2.1 the personal safety of the lawyer is or could be compromised;
 - 2.2 the personal safety of persons with whom the lawyer resides is or could be compromised;
 - 2.3 the privacy rights of the lawyer are or could be compromised;
- 3 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to draft an amendment to give effect to paragraph 2 above;
- 4 **noted** that the exact wording of the amendment is subject to drafting advice from Parliamentary Counsel Office;
- 5 **authorised** the Minister of Justice to approve minor and technical policy drafting decisions;
- 6 **noted** that Ministry of Justice officials will consult with the NZLS to implement the above change, including the development of guidance for applying the criteria, evidence requirements, and on the application process for lawyers.

Rachel Clarke
Committee Secretary

Attendance (see over):

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Peeni Henare
Hon Willie Jackson
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

Proactive Release

In Confidence

Office of the Minister of Justice

Chair, Social Wellbeing Committee

AMENDING THE LAWYERS AND CONVEYANCERS ACT (LAWYERS: PRACTICE RULES) REGULATIONS 2008 TO PROTECT LAWYERS' PERSONAL SAFETY AND PRIVACY RIGHTS


Proposal

1. This paper seeks agreement to amend the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (the Regulations). The proposed amendment will allow the New Zealand Law Society (NZLS) to remove a lawyer's work details from the public register of lawyers in situations where personal safety or privacy concerns are raised.

Relation to government priorities

2. This is a routine operational adjustment that requires Cabinet approval.

Executive Summary

3. The Ministry of Justice reviewed a complaint received by the Regulations Review Committee about the display of work details on the register of lawyers. The complaint was made by a lawyer, who noted that a former client had obtained their details to harass them and their employer.
4. The complaint also noted that regulation 10(3)(b)(i) as set out in the Regulations imposes on a lawyer's personal rights and liberties.

5. I seek Cabinet's approval to amend the Regulations which will allow the NZLS to exercise discretion to remove a lawyer's work details from the public register of lawyers in situations where a person's personal safety or privacy is compromised.

Background

6. The NZLS maintains a register of lawyers (the Register) set up under the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (the Regulations).
7. The Regulations require that:
 - the NZLS must ensure the Register is available to be viewed by the public online at all times (reg 10(2)), and

- the register must show a lawyer's work address, telephone number, and fax number (if any) (reg 10(3)(b)(i)).
8. The Register is accessed via a search function on the NZLS website and provides members of the public with contact details and regulatory details such as whether the lawyer holds a practicing certificate, where and when they were admitted to the bar and whether or not they provide real estate services. The Register may also contain any other information about a lawyer, if the lawyer agrees, such as a work email address.
9. In March 2019, the Ministry of Justice reviewed a complaint received by the Regulations Review Committee (the Committee) about the Register. The complainant detailed that someone had used the Register to obtain their work details to harass them and their employer. The complaint stated that regulation 10(3)(b)(i) as set out in the Regulations imposes on a lawyer's personal rights and liberties. **Section 18(c)(ii)** [REDACTED]
10. Public and easily accessible information about lawyers promotes access to justice (as potential clients are able to find legal assistance) and preserves the integrity of the register (as the register provides a complete source of information about whether a lawyer holds a practicing certificate). However, there is a risk to the personal safety of lawyers by having work details publicly displayed. I consider this risk to include both mental and physical health and wellbeing.

Proposed changes to the regulations

11. I seek Cabinet agreement to amend the Regulations to allow the NZLS to exercise discretion to remove a lawyer's work details from the Register where
- the personal safety of the lawyer is or could be compromised;
 - the personal safety of persons with whom the lawyer resides is or could be compromised;
 - the privacy rights of the lawyer are or could be compromised.
12. I consider that the term 'personal safety' includes a threat to mental health and wellbeing as well as physical harm.
13. Allowing the NZLS to determine whether a lawyer's work details can be removed from the Register based on the criteria above will alleviate the risk of the Register being used to harass lawyers in the future. However, removing lawyers' work details from the Register will mean that they will not be displayed publicly by the NZLS, which could limit people's ability to find that lawyer and access justice.

14. In putting forward the proposed amendment, I considered the following other options:
- whether to give the NZLS an unfettered discretion to remove a lawyer's work details from the Register on a case by case basis, without setting criteria. I was concerned that such a discretion could, over time, lead to a public perception that the NZLS was protecting the interests of its members over the public's interests by choosing to leave lawyers' work details off the register. I believe that would undermine the integrity of the Register and may not promote public confidence in the NZLS as a regulator of the legal profession.
 - whether to limit the proposed amendment to solely personal safety concerns. This would cover situations like the complainant's, where lawyers fear for their personal safety. However, I consider that including privacy as well as personal safety in the amendment is appropriate and will protect lawyers in a situation where there are appropriate privacy reasons for withholding a lawyer's work details that may not reach the threshold of a compromise to personal safety. I also note this is broadly consistent with the Insolvency Practitioners Regulation Act 2019 (IPRA), which permits information about an insolvency practitioner to be removed from the public register if it "would be likely to prejudice the privacy or personal safety of any person."
15. The amendment I propose in para 11 above provides clear guidance for the NZLS to follow when decisions are being made as to whether a lawyer's work details should be left off the Register.

Process and eligibility for removal from the Register

16. I propose the amendment requires lawyers to apply to the NZLS to have their work details removed from the Register. If the NZLS is satisfied of the criteria, the applicant would be notified of the outcome and their work details would be removed from the register. If the NZLS is not satisfied that there are adequate personal safety and privacy concerns to remove a lawyer's work details from the register they would explain the reasons to the applicant. This facilitates an efficient and transparent process. I would expect that the NZLS will respond promptly to applications, in acknowledgement of the time sensitive nature of personal safety and privacy issues.
17. I also consider that there needs to be a balance between addressing personal safety and privacy concerns for lawyers and upholding the integrity of the Register to ensure that people are still able to access lawyers with ease. Therefore, some evidence to identify compromise to a lawyer's personal

safety or privacy concerns will be required to support a lawyer's application. This is necessary to maintain the integrity of the Register. Requiring evidence ensures lawyers are not incentivised to lodge an application to the NZLS without experiencing personal safety or privacy concerns. I consider that the threshold for the type of evidence required should be reasonably low.

18. When a member of the public has genuine reasons to access the work details of a lawyer, which have been removed from the register, I expect NZLS will act as an intermediary between the member of the public and the lawyer, a role they already undertake as needed.
19. My officials at the Ministry of Justice will work with the NZLS to implement the change, including the development of guidance for applying the criteria, evidence requirements, and on the application process for lawyers.

Timing and approach

20. Should Cabinet agree to the proposed amendment, I will instruct officials to work with the Parliamentary Counsel Office (PCO) to draft the amendment to the Regulations and will put forward the amendment to be considered at Cabinet Legislation Committee.
21. Following Cabinet decisions, officials will consult with the NZLS to develop the operational process to be followed for lawyers to apply to have their work details removed from the Register.

Financial Implications

22. There are no financial implications for the Government arising from this proposal. The NZLS does not expect a great number of applicants and cost of the pre-assessment process will be absorbed into baselines. The NZLS will monitor the cost when determining its annual levy on practitioners to run the Society.

Legislative Implications

23. The proposal seeks to amend the Regulations. The amendment will come into force following Cabinet decisions and approval from the Cabinet Legislation Committee.

Regulatory Impact Analysis

24. The Treasury Regulatory Quality Team considers that the decision sought in this paper is exempt from the Regulatory Impact Analysis requirements on the basis that it has no or minor impacts on businesses, individuals, or not-for-profit entities.

Human Rights

25. The proposed amendment seeks to balance the rights of lawyers to personal safety and privacy with the rights of the public to have access to information about where to secure legal representation.

Treaty of Waitangi Implications

26. There are no Treaty of Waitangi implications arising from this proposal.

Gender Implications

27. There are no gender implications arising from this proposal. The discretion provided to the NZLS will not discriminate based on gender.

Disability Implications

28. This proposal has no disproportionate impact on any persons with disabilities. The discretion provided to the NZLS will not discriminate based on disability.

Consultation

29. The Ministry of Justice identified and consulted with the following stakeholders that have an interest in the amendment:
- Ministry of Business, Innovation and Employment;
 - Office of the Privacy Commissioner; and
 - NZLS

Proactive Release

30. I intend to proactively release this Cabinet paper within 30 business days of Cabinet's decision. Proactive release will be subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Committee:

1. **Note** that a complaint was received by the Regulations Review Committee regarding the display of lawyers' work details on the public register of lawyers, leading to the harassment of a lawyer and their employers;
2. **Agree** the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 be amended to allow the NZLS to remove a lawyer's work details from the register of lawyers in circumstances where:
 - 2.1. the personal safety of the lawyer is or could be compromised;

- 2.2. the personal safety of persons with whom the lawyer resides is or could be compromised;
- 2.3. the privacy rights of the lawyer are or could be compromised.
3. **Invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office to draft an amendment as set out in recommendation 2;
4. **Note** the exact wording of the amendment is subject to drafting advice from Parliamentary Counsel Office;
5. **Authorise** the Minister of Justice to approve minor and technical policy drafting decisions;
6. **Note** that Ministry of Justice officials will consult with the NZLS to implement the change, including the development of guidance for applying the criteria, evidence requirements, and on the application process for lawyers; and
7. **Note** that, once drafted, I plan to take the amendment to the Cabinet Legislation Committee for its consideration.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice