

17 September 2019

Ministry of Justice
Wellington

By email only: Anna.Ferguson@justice.govt.nz; Robyn.Washborne@justice.govt.nz

Re: Register of Lawyers – potential Rules change, personal safety and privacy concerns – consultation

Thank you for seeking feedback about proposed changes to the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (Regulations), to incorporate a discretion to enable the New Zealand Law Society to omit a lawyer's work contact details from publication on the Register of Lawyers where there are privacy or personal safety concerns. The New Zealand Law Society (Law Society) welcomes the opportunity to respond to the proposed amendment to Regulation 10(3)(b)(i). The Law Society sought input from the legal profession, and our comments are set out below.

Comments on the proposed amendment

Regulation 10 provides for the maintenance of a Register of Lawyers by the Law Society, and states:

- (1) *“The Law Society must establish and maintain a register of lawyers and, as far as practicable, must keep the register accurate and up to date.*
- (2) ...
- (3) *With respect to every lawyer, the register must show the following:*
 - a. ...
 - b. *The lawyer's contact details, which-*
 - i. *must include the lawyer's work address...*

The Regulation does not currently permit the Law Society discretion to omit a lawyer's work address in any circumstances. The proposal is to amend the Regulation so that the Law Society can exercise discretion to omit that information from the Register of Lawyers on a case by case basis, in circumstances where disclosure of information would likely prejudice the *privacy or personal safety* of an individual lawyer.

The Law Society agrees that an amendment is an appropriate response to address risks to lawyers which may be associated with publication of their contact details. The Law Society proposes that to effectively achieve that purpose, it is necessary to amend the Regulations to:

1. clarify the meaning of the term “work address”, and
2. allow omission of a lawyer's work address on a case by case basis with reference to established criteria.

The Law Society considers that these amendments are also necessary to address related security considerations, and whilst not directly linked to safety, an additional amendment to clarify the Register's purpose would improve the Regulations by bringing them in line with equivalent occupational registers.

Amendment to clarify the meaning of work address

The aim of protecting lawyers' safety could be addressed in part by considering the purpose of the requirement to record information about their work address. While the purpose of Regulation 10 is not stated in either the Regulations or the Lawyers and Conveyancers Act 2006 (the Act), a comparison with equivalent occupational regulatory regimes suggests that the purpose of the Rule is to protect consumers by allowing them to:

1. determine whether a person is licensed and if so, the status and history of that person's licence;
2. access publicly available services from appropriately qualified professional advisers;
3. know how to contact the licensee; and
4. facilitate the administrative, disciplinary, and other functions of relevant regulatory authorities.

The Law Society considers that this consumer protection purpose does not require the identification of a lawyer's physical work location and can be met if the Register includes a verifiable means of contact such as a PO Box or other postal/electronic address. The Law Society recommends that consideration is also given to amending Regulation 10 to replace the words "work address" with "contact address" or "postal/electronic address".

Amendment to allow omission on a case by case basis

There will be some cases when it is not practicable for a lawyer to use a postal address that is different from their physical work location. To provide for those situations it is necessary to amend the Regulations so that the Law Society can exercise discretion to omit a lawyer's work/contact address from the Register, upon application by the lawyer, and on a case by case basis.

It is vital that any criteria for assessing whether publication on the Register is *likely to prejudice the privacy or safety* of a lawyer is concise yet flexible enough to accommodate the different situations of individual lawyers which may give rise to concerns about publication of their work contact details. The threshold established through criteria must also strike an appropriate balance between individual concerns and the public interest.

We welcome the Ministry's suggestion that it will work closely with the Law Society to identify how the regulation and criteria for omission should be drafted. As a starting point, we suggest that the following factors should be taken into account:

1. The personal safety of the lawyer should be the principal concern, but the purpose should extend to protecting the safety of persons with whom the lawyer resides.
2. The meaning of the term "safety" should extend beyond physical safety to include protection from mental harm, such as harassment.
3. There may be reasons other than safety for which it would be appropriate to omit a lawyer's work/contact address. For example, lawyers engaged on national security matters or particularly contentious Inquiries may wish to avoid revealing their work address if that is also the storage location for sensitive documents.¹
4. The privacy rights of the lawyer and those with whom they reside will need to be carefully balanced against the wider public interest in consumer protection and transparency. It may be

¹ For example, in the UK, the work address of the Public Inquiry into Undercover Policing legal team is classified as SECRET under the UK government's Government Security Classification Scheme, and all correspondence is directed to a separate postal address.

appropriate for personal privacy to be given greater weight in circumstances where the lawyer works solely from their home address.

Amendment to identify purpose of the Register

In addition to the amendments suggested above, the Law Society considers that an additional amendment to clearly state the purpose of the register should be considered.

This would be consistent with the comparable regulatory regimes. For example, the Real Estate Agents Act 2008 (REAA) and the Immigration Advisers Licensing Act 2007 incorporate specific provisions emphasising that the register must only be searched for the purposes set out in the respective Acts. The REAA goes further and specifically provides at section 70 that “A person who searches the register for a purpose that is not a purpose set out in section 64 must be treated for the purposes of Part 8 of the Privacy Act as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act”.

An amendment to bring the Regulations into line with those other regimes would be consistent with both the privacy by design principles of the Privacy Bill, and the Law Commission’s recommendations on public registers in 2008.

We hope you find these comments helpful. Please contact the Law Society’s Regulatory team through Charlotte Walker (charlotte.walker@lawsociety.org.nz) to follow up on the development of appropriate criteria to underpin the proposed amendments.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal line extending to the right.

Andrew Logan
Vice President