

# PUREA NEI:

Changing the Culture  
of the Legal Profession



D E C E M B E R 2 0 1 9

Allanah Colley  
Ana Lenard  
Bridget McLay

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# Purea Nei

Purea nei e te hau  
Horoia e te ua  
Whitiwhitia e te rā  
Mahea ake ngā pōraruraru  
Makere ana ngā here.

E rere wairua, e rere  
Ki ngā ao o te rangi  
Whitiwhitia e te rā  
Mahea ake ngā poraruraru  
Makere ana ngā here,  
Makere ana ngā here.

Scattered by the wind  
washed by the rain  
and transformed by the sun,  
all doubts are swept away  
and all restrains are cast down.

Fly O free spirit, fly  
to the clouds in the heavens,  
transformed by the sun,  
All doubts swept away  
and all restrains are cast down,  
Yes, all restrains are cast down.



# Acknowledgements

We could not have done this work without the gracious support of some incredible people. In particular, we would like to thank:

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- The New Zealand Law Foundation and the Michael and Suzanne Borrin Foundation, and the New Zealand Women’s Law Journal — Te Aho Kawe Kaupapa Ture a ngā Wāhine, for funding this project.
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- Christine Ling for her excellent design work on this report.
- The many people who discussed this report with us and who made themselves available to provide their feedback.
- Our family and friends who supported us (or put up with us!) in our work on this report, which was completed outside of our regular full-time jobs (and various other part-time jobs) in the law.

And most importantly, we would like to thank all of you – over 700 of you – who participated in this project and provided the ideas contained in this report. That we had such a strong showing of passionate voices is a testament to the compassion, kindness and dedication to good that exists in our profession.

# Foreword

The impetus for this report comes from the longstanding issues in the legal profession that have made it an unsafe or unhappy place for some. Recent and not-so-recent reports and records show that sexual violence, bullying, harassment and bias are too common. As a result, our people are suffering or leaving or both.

We are three female and Pākehā junior lawyers at the start of our careers who are disillusioned by the state of the profession we have come into. We are excited by what our careers will bring, and the privilege afforded to those involved with the legal profession to make a real difference in the world. However, we do not accept that achieving our career goals ought to involve accepting poor conduct by our peers, whether directed at us or others. We believe that together – and building on the important work of those who have come before us – we can make this a profession that is fair, just, equal and enjoyable.

We have sought to achieve that change by, amongst other things, putting this report together. This report is named ‘Purea Nei’, which means to cleanse and renew, on the suggestion of Justice Williams of the New Zealand Supreme Court. ‘Purea Nei’ is also a beautiful waiata composed by Hirini Melbourne, the words of which are set out at the front of the report. We see this report, which brings together a collection of ideas from people within and associated with the profession, as providing a path towards making the profession happier and healthier.

Part I is the introductory section which sets out the background to this report and our research methodology.

Part II records the results of our research. In the ‘Workplace Expectations and Culture’ section, we cover shifting individual and group mindsets, reflecting on and refining the structure of legal workplaces, and workplace culture.

The ‘Diversity and Inclusion’ section covers ideas aimed at achieving meaningful inclusion for all members of the profession.

In the ‘Work Format’ section we discuss the nature of work (primarily looking at flexible working and models aimed at addressing over-work) and the role of technology in the legal workplace.

The ‘Training and Education’ section examines how training can be used more effectively, what we should be focusing on, and the timing at which it should take place in people’s careers.

The ‘Leadership and Management’ section deals with the necessary qualities that we expect of our leaders, and groups together ideas relating to leading from the top under ‘Modelling Culture’, ‘Stepping Up’ and ‘Treating People Well’. The section also touches on promotion into leadership roles and holding leaders to account.

In the ‘Remuneration’ section we cover overtime pay, higher starting salaries, pay transparency and auditing, and performance-based pay.

In the ‘Human Resources’ and ‘Holding the Profession to Account’ sections we cover experiences and ideas relating to the human resources departments of legal workplaces, internal policies, and the role of the New Zealand Law Society.

In relation to ‘Clients’, we discuss issues relating to client management (fees, setting

expectations, related training, and handling poor conduct by clients) and what clients can do to help create a healthy culture in the profession.

It would be an impossible task to summarise the results of our research in just a few sentences, but we can confidently say that the central themes of all the solutions in this report are kindness (to ourselves and to each other), owning privilege, and being prepared to share power. It is only by putting our people's wellbeing and happiness first that we can have a healthy profession.

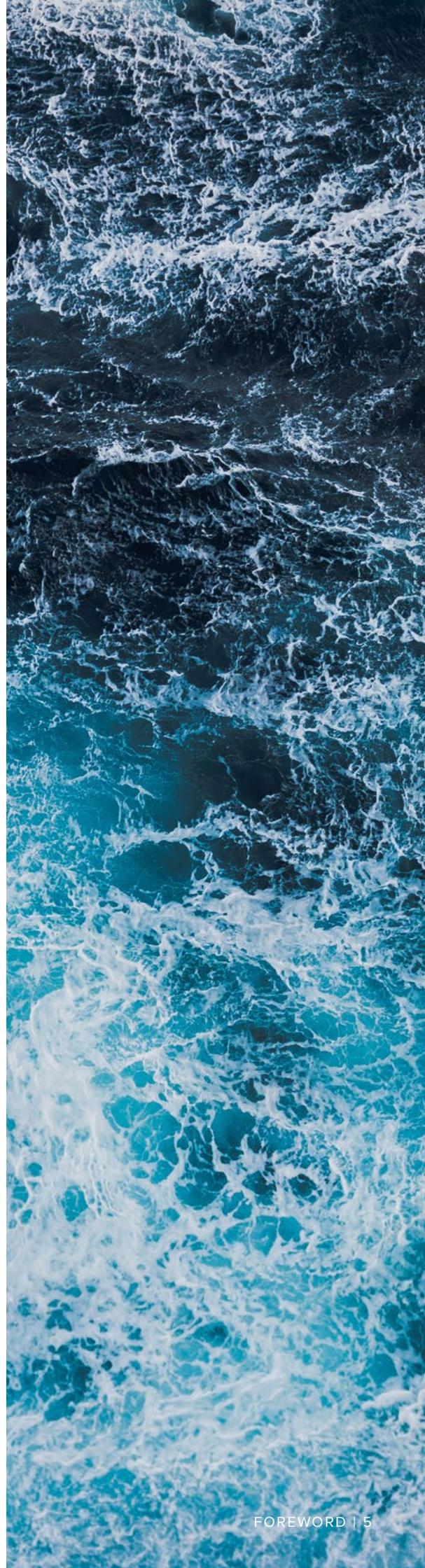
A breadth of experiences, ideas and practical tips and tools have been collected from over 700 people who participated in this research. We hope that this document provides a useful springboard for workplace, and broader, conversations about how we can improve the culture of the legal profession.

*He waka eke noa.*

We are all in this waka together. This well-known whakataukī accurately depicts the journey we are on when it comes to culture change in the legal community. In order to change the stories, the statistics and people's experiences, this must be a profession-wide conversation. This report is only the beginning of that process. Please use it, share it, and build on the ideas within it.

**Allanah Colley, Ana Lenard and Bridget McLay**

19 DECEMBER 2019



# Executive Summary

## There is a lot we can do in the workplace to make a difference

We encouraged participants to think about all aspects of the workplace and how things could be different in order to improve safety and wellbeing and overall happiness at work. The key themes were as follows.

Looking at and changing the structure of the workplace is important. Alternatives or changes to the partnership model, which was widely regarded as concentrating too much power in just a few and failing to provide sufficient checks and balances, were favoured. This might involve changing legislation, but could also involve: reducing levels of hierarchy; exploring contractor models; or empowering staff by enabling them to actively participate in governance and management.

Culture needs to be crafted. Leaders, working together with staff, should regularly take stock of workplace culture, examine what is working well and what needs changing, and put pen to paper on what the firm culture will be. Culture needs to be based on values that foster safety and wellbeing at work, and that are supported by all people in the workplace.

The mechanics of work need to be examined and upgraded to better support a healthy and productive workplace. The most favoured solutions were: flexibility about the 9-5 model; appropriate pay to reflect the hours required e.g., through higher starting salaries or overtime pay; and utilising technology for efficiency and not over-work. At the core of all

of the solutions was the desire for autonomy, respect, recognition of value add, and trust.

Where human resources services are utilised, they need to be supported and equipped in order to make good hiring, retention and progression decisions. Training on how to deal appropriately with misconduct needs to be sufficient and needs to enable HR teams to protect and support those who have suffered from workplace misconduct. Services such as counselling should also be provided and their use encouraged.

Finally, achieving meaningful diversity and inclusion were seen as important goals. The most favoured solutions include specifically recruiting diverse staff, recognising and implementing tikanga and Te Reo Māori in the workplace, and self-measurement and diversity targets. Diversity and inclusion mindsets and approaches must also be embedded in law schools.

## But we need real leadership in order to achieve meaningful change

Respondents were of the view that good leaders are good lawyers, approachable, caring, good at communicating, supportive and provide appropriate feedback.

Good leaders 'lead from the top' by modelling the culture they hope to create, by investing in their own training and people management skills, and by holding themselves and others accountable.

Participants believed that promotion into leadership roles has to be based on

management skills, as well as technical ability, and prospective managers need to display superior people skills (communication, approachability, supportiveness).

Finally, respondents were in favour of extensive and rigorous due diligence on future managers, and a clean record as far as bullying, harassment or other misconduct is concerned.

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## **And we need proper education and external help**

When asked about how training and education could be utilised to resolve culture issues, participants were overwhelmingly in favour of frequent and appropriate training at all levels of a person's career – at university, at work and at professional development courses. Training needs to be self-referential and allow people to explore and unpack their biases, and it needs to equip people with the right skills for dealing with difficult situations and conversations (e.g., calling bad behaviour out, supporting people in the workplace, and holding perpetrators to account).

When it comes to accountability, external and independent HR is a worthwhile option, particularly for smaller law firms and/or barristers' chambers. There was also strong support for a union. Respondents also explored the important role that clients play, firstly, in terms of lawyers appropriately managing demands (e.g., through urgency premiums, and through dealing courageously with abusive or oppressive clients), and secondly in terms of the purchasing power clients can direct in support of firms with safe and positive workplace practices.

Finally, there was strong support for the Law Society having a more significant role by auditing workplaces along various safety, wellbeing and diversity factors, and by having strengthened complaints and disciplinary systems in place with a specialist unit for responding to bullying and harassment.



# Introduction

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# Background

In 2018, harassment and bullying in the legal profession in Aotearoa made the national news. The discussion began with five summer clerks coming forward to disclose their experiences of sexual assault and harassment at Russell McVeagh, but quickly expanded to question the culture of the profession generally. In the course of her independent review of the summer clerks' experiences and Russell McVeagh's response, Dame Margaret Bazley identified fundamental deficiencies in policies, standards, systems, work management practises, and the overall culture of the firm.<sup>1</sup>

It is clear that these issues are not unique to Russell McVeagh. They are present in different forms and to varying degrees in many, if not all, legal workplaces.<sup>2</sup> They affect lawyers, non-legal staff, academics, students and even those who have left the profession. For example, a 2016 report into gender issues at the University of Auckland Law School concluded that "many women frequently feel uncomfortable, intimidated, excluded and marginalised".<sup>3</sup> A report on the experiences and retention of junior lawyers in New Zealand found that high levels of stress correlated with the lowest

likelihood of remaining in the profession, and that almost two-thirds of female respondents felt that their gender impacted negatively on their prospects in the profession.<sup>4</sup> What is also troubling is that ethnicity plays a significant role in bullying, with higher prevalence of victimisation among Māori, Pasifika and Asian lawyers.<sup>5</sup> As one of our survey respondents put it, "[r]acism is a bigger problem than sexism in the workplace and is not being focussed on". For too many, the legal profession is not a healthy, safe or fair place to work.

These issues are not new. An Auckland District Law Society Working Party on Women in the Legal Profession concluded in 1981 that "[d]iscrimination on the ground of sex does exist in the profession".<sup>6</sup> Gill Gatfield conducted extensive research about prejudice against women in the legal profession in the 1990s, confirming it was extensive.<sup>7</sup> Demographic data about the gender and ethnicity of lawyers collected by the New Zealand Law Society over the years has shown that women and lawyers of non-Pākehā ethnicity are underrepresented in leadership positions in the legal profession and in the judiciary.<sup>8</sup>

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1. Dame Margaret Bazley *Independent Review of Russell McVeagh: March – June 2018* (5 July 2018).

2. See, for example, Colmar Brunton *Workplace Environment Survey* (New Zealand Law Society, 28 May 2018).

3. Anna Hood and Julia Tolmie *Auckland Law School Gender Report* (2016) at 9.

4. Josh Pemberton *First Steps: The Experiences and Retention of New Zealand's Junior Lawyers* (2016) at 4.

5. *Workplace Environment Survey*, above n 2, at 7.

6. Auckland District Law Society *Report of the Working Party on Women in the Legal Profession* (December 1981) at [1.7].

7. See, for example, Gill Gatfield *Without Prejudice: Same Issue – New Cover 1896–2016* (Thomson Reuters, 2018). See also Gill Gatfield "Be Just & Fear Not" [2018] NZWLJ 43.

8. In particular, only 6.3% of lawyers are Māori, while Māori make up 16.5% of the New Zealand population. While over 60% of new lawyers admitted each year are women, women only make up 32.7% of partners and directors in multi-lawyer firms. Women make up less than a third of New Zealand's judiciary, and minority women are even less present in these positions, with over 90% of New Zealand's female judges being Pākehā. See generally the New Zealand Law Society's 'Snapshot of the Profession', published periodically. See also: Sian Elias "Changing the world?" [2017] NZWLJ 4; Caren Fox, Deborah Chambers and Kathryn Beck "State of the Nation – Tauāki o te Motu" [2017] NZWLJ 16; Louise Grey "Reflections from a young woman entering the

# Taking stock

Important work has already been done taking stock of the issues that prevent people from having positive experiences in the legal profession in Aotearoa.

Zoe Lawton's #metoo blog provided a platform for people to speak out about their experiences of sexual harassment and bullying in the profession.<sup>9</sup> We acknowledge and thank those people who chose to share their stories, and express our support for those whose stories remain untold. It is also important to understand that the Me Too movement does not align well with all cultural backgrounds. For example, some people may feel intense whakamā (shame), and not empowerment, from speaking up.

And, it is clear that there are more stories. On 28 May 2018, the New Zealand Law Society released the results of its Workplace Environment Survey, which revealed that nearly one in every five lawyers have been sexually harassed in a legal working environment (31% of women and 5% of men).<sup>10</sup> 40% of women lawyers, and 55% of young women lawyers, had

been sexually harassed in the last five years.<sup>11</sup> 52% of lawyers had been bullied at some point in their working life.<sup>12</sup> Around 21% of lawyers had been bullied in the preceding six months, and these numbers rose to 35% and 34% for Pasifika and Māori lawyers, respectively.<sup>13</sup> In addition, 60% of survey respondents found their job very stressful and 44% felt that they work under unrealistic time pressures.<sup>14</sup>

The International Bar Association also issued a bullying and harassment report in 2019, recording similar results – in particular that, of the 7000 respondents, half of women and a third of men had experienced bullying in the legal workplace, and a third of women had experienced sexual harassment.<sup>15</sup>

In free-form comments in the survey we undertook, bullying by judges was also raised as an issue.

Finally, we acknowledge a pivotal development for the legal profession: the establishment of the Aotearoa Legal Workers' Union (ALWU) in May 2019.

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profession: would a female partner quota address gender inequality within the New Zealand legal profession?" [2017] NZWLJ 51; Nicole Ashby "Absent from the top: a critical analysis of women's underrepresentation in New Zealand's legal profession" [2017] NZWLJ 80; Bridget Sinclair, Bernadette Arapere, Kate Tarawhiti, Monique van Alphen Fyfe and Indiana Shewen "State of the Nation — Tauākī o te Motu" [2018] NZWLJ 18; Anna Hood "Review Essay: Reflections on the perpetual cycle of discrimination, harassment and assault suffered by New Zealand's women lawyers and how to break it after 122 years: Reviewing Gill Gatfield's Without Prejudice" [2018] NZWLJ 249.

9. Zoë Lawton "#Metoo Blog" (2018) <[www.zoelawton.com](http://www.zoelawton.com)>.

10. Colmar Brunton *Workplace Environment Survey* (New Zealand Law Society, 28 May 2018) at 16.

11. Using the behavioural definition from the Human Rights Commission: at 18.

12. At 33.

13. At 33.

14. At 10.

15. International Bar Association *Us Too? Bullying and Sexual Harassment in the Legal Profession* (International Bar Association, May 2019) at 8.

# Why is this project different?

The reports described above demonstrate the extent and seriousness of the issues the profession faces. By the end of 2018, few denied that the culture of the legal profession needed to change. This project seeks to continue the conversation about culture change in the legal profession by asking the next question: **how?** What needs to occur in order to make a meaningful difference? How can we translate the concern about what has happened before into meaningful improvements to the everyday experiences of the people in our profession in the future? We believe the people best positioned to answer that question are people in or associated with the profession themselves. That is the fundamental premise of this project.

To that end, this project has sought to engage with members of the legal profession and anyone associated with it – non-legal staff, legal executives, law students, legal academics, and former members of the profession – with a particular focus on *solutions* for change.

We have: held workshops in Auckland, Wellington, Christchurch and Dunedin; hosted open-ended online discussions on our website; received email submissions; and, in our final phase, conducted an online survey which attracted almost 650 responses. It is this widespread engagement, and the particular focus on solutions, that differentiates this project.

We believe that the engagement we have conducted is powerful for two reasons. First, it

brings a greater range of perspectives to bear on the problems we are addressing, which enhances the quality of the ideas and solutions generated. Second, the resulting ideas and solutions have the best chance of buy-in from large numbers of people within the profession because they come from the people directly affected – these are the people who are best placed to comment on how their own working lives might be improved.

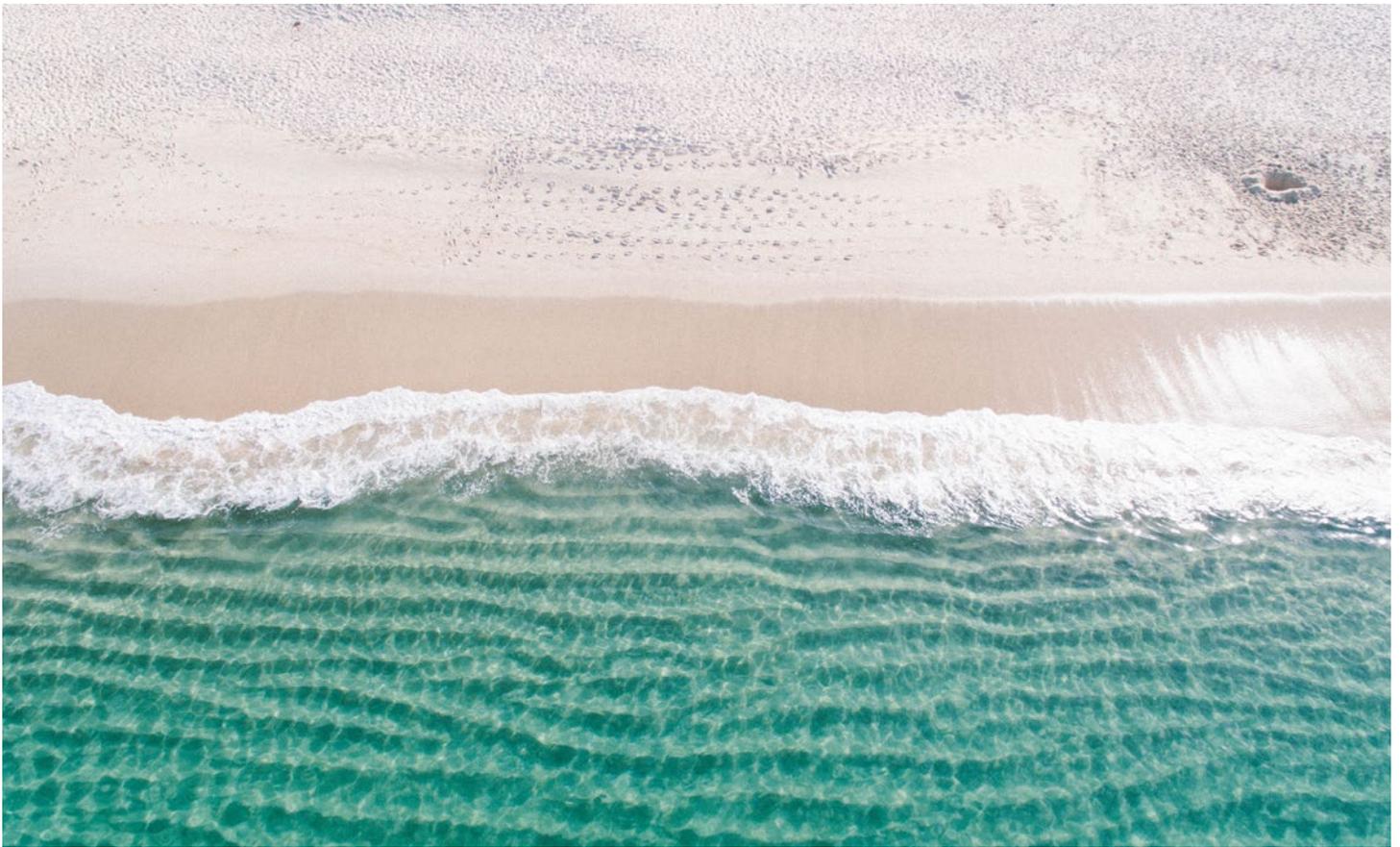
We acknowledge other forward-looking projects, such as Sarah Taylor’s report on the untapped potential of flexible working in the legal profession.<sup>16</sup> We include also the Law Society Working Group chaired by Dame Silvia Cartwright. The Working Group’s report, released in December 2018, examines the current regulatory framework for lawyers in order to better enable reporting, prevention, detection and support in respect of sexual violence, sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the profession.<sup>17</sup> The scope of the discussion that we have facilitated is broad; it encompasses regulatory concerns, but it is not limited to them.

We also acknowledge the Law Society’s Cultural Change Taskforce, which has been convened to drive and guide systems and cultural change within the legal community.<sup>18</sup> Finally, we note that in October 2019 the Law Society commissioned an independent review of its structure and function reflecting concerns

16. Sarah Taylor *Valuing our lawyers: The untapped potential of flexible working in the New Zealand legal profession* (ILANZ, April 2017).

17. New Zealand Law Society Working Group *A report to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession* (NZLS, December 2018).

18. “The Culture Change Taskforce” (27 September 2018) New Zealand Law Society <lawsociety.org.nz>.



about the Law Society's ability to deal with unacceptable behaviour.<sup>19</sup>

These are fantastic initiatives. However, we believe what has been missing is wide and substantive engagement with (and between) the people of the profession about their views on how to achieve healthy legal workplace environments – a profession-wide conversation. That is the aim of this project.

We also note that the New Zealand Law Society's Workplace Environment Survey was only sent to lawyers with current practising certificates, and therefore did not capture the experiences of recent graduates, former lawyers, academics, students, non-legal staff and legal executives. We have sought to address a gap in that survey by encouraging participation by all people associated with the legal profession, and not just practising lawyers.

It is important to acknowledge the limitations of our engagement, however. First, different authors would have asked different research questions and looked at the issues in different ways. We are three young Pākehā

New Zealanders. Second, and as we go on to explain, most participants in this research were similar to us. Although engagement was open to everyone, and we put significant effort into advertising the project as widely as we could, we did not provide separate and specific opportunities for engagement to marginalised groups or to those in power. We acknowledge that we have not been able to engage with everyone. This project is only the beginning of what we hope will be many more conversations with those who are deeply affected by the culture of the profession, and who have ideas for how we can move forward.

Another point to acknowledge is that this project is largely directed at employment conditions and work satisfaction. We have not engaged with the adversarial model of the court system, the remuneration expectations of the profession, the generally privileged lives of those who go to law school and become lawyers, and some dimensions of the discrimination that still exists in the profession. These are difficult and important issues that need confronting.

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19. "NZ Law Society to Commission comprehensive review" (23 October 2019) New Zealand Law Society <[lawsociety.org.nz](http://lawsociety.org.nz)>.

# Objective

We hope that this report will be a useful resource for organisations and individuals when they are deciding how to tackle the difficult and entrenched issues that have been identified in our profession. It will be available free of charge and distributed to as many organisations and individuals as possible.

It is important to observe, in using this resource, that each workplace is unique. Not all of the ideas in this report will be suitable for every place of work. It is critical to approach culture change with an open mind and genuine attitude, to communicate with staff, colleagues and stakeholders to understand how things can work better for them from their perspective, and to reflect on whether any proposed solutions actually achieve the intended aims in practice. Employers need to be open to trial and error, with total commitment to communication with, and honesty from, all staff without consequence. Consideration must be given to solutions for staff, legal and non-legal, at all levels – a range of tailored and targeted approaches will be necessary.

Reading through this report, it may at times feel like certain solutions contradict others e.g., the desire for more pay, but also more time for hobbies or pro bono work. We encourage readers not to see the proposed solutions as mutually exclusive – with a problem-solving mindset and in the right measure, many of the solutions can work together. The exploration or uptake of proposed solutions again depends on what is appropriate and workable for the groups and individuals in question.

This report does not purport to offer all of the answers, or to be a final handbook for dealing with issues in the profession. Ultimately, this report seeks to contribute to and encourage the ongoing discussion that the legal profession in New Zealand must have in 2019 and beyond: what's next? What do we need to do to be better?

# Engagement

Engagement is the cornerstone of this project. This was achieved through the following channels.

## Workshops

Between July and September 2018, workshops were held in Auckland, Wellington, Christchurch and Dunedin. One workshop was held in each centre, with the exception of Auckland, where we held two. These workshops were organised and marketed with the help of local women lawyers' associations: the Auckland Women Lawyers' Association, the Wellington Women Lawyers' Association, the Canterbury Women's Legal Association and the Otago Women Lawyers' Society. The workshops were run by women within the profession with facilitation experience, and people of all genders were invited.

Invitations to the workshops were sent as far and wide as possible to persons associated with the legal profession. Over 50 people participated. We did not collect demographic data for the participants. Over the course of 60–90 minutes, participants were asked to discuss the change they wish to see in the profession. All ideas, big or small, developed or incomplete, obvious or out-of-the-box, were encouraged.

## Online commenting and email submissions

Throughout the duration of the workshops, we also hosted discussions online, inviting email submissions for those who would prefer not to post their comments on the website. The terms

of that discussion were open-ended, as with the workshops. The number of contributions were limited through this forum.

## Survey

Clear themes emerged from the discussions at the workshops and online. There was strong support among those who participated for certain solutions. However, the number of people who contributed to initial discussions at workshops was relatively small. We considered that this was in part due to the inconvenience of having to attend a workshop or seek out the online platform, and also due to the open-ended nature of the questions we were asking. To address this and encourage wider engagement, we formulated a survey based on the themes raised at the workshops to continue the conversation on a wider scale, and in a more focussed way. The workshops essentially functioned as focus groups from which we developed the survey.

The survey was marketed directly to legal employers, law faculties, and through legal associations and publications. It remained open from late September 2018 to late December 2018. The survey contained 25 questions, ranging in format from asking participants to select from lists of solutions suggested in the workshops and online, rating solutions in order of priority to the participant, to open-ended questions where participants could type free-form answers without the constraint of existing suggestions. Participants could skip questions. 644 people responded to the survey. The survey questions are appended to this report.

# Methodology

This project has been designed and implemented by the authors. We were assisted in the engagement phase of the project by a number of people who are acknowledged at the start of this report.

This report seeks to identify and describe most of the solutions that we collected from our various channels of engagement in a generally qualitative way. Where ideas were similar, we have summarised them thematically. In essence, we have tried to capture a conversation, with some reliance on quantitative data. Quantitative data assisted us in getting a feel for which issues were generally important to people or which solutions drew significant support (or not). However, our focus remains on the qualitative data we gathered, aimed at sparking ideas in those who read this report. We have highlighted, where possible, the ideas that received the most support by participants.

We provided a draft of this report to our peer reviewers and implemented most of their feedback. Given the overwhelming demographics of the participants in this research, we included substantive suggestions from Te Hunga Rōia Māori o Aotearoa in this report. Te Hunga Rōia Māori o Aotearoa graciously provided substantive feedback on relatively short notice. Our personal reflection on this process is that we ought to have sought input from different minority groups at the outset of this project. We hope future researchers and groups involved in culture change in the legal profession choose to be inclusive in and throughout their project design.

Finally, this report started off entitled ‘Gender in the Legal Profession’, and was aimed at addressing gender issues. Gender was the predominant focus of the profession’s issues in early 2018, however, in drafting this report, it became clear that this project was really directed at culture generally. The title of the project may have had some impact on the overwhelmingly female response to this project.

We thank all participants for their input, whether or not their particular suggestions are included in this final report.

# Demographics

This section includes demographic data for the survey only, with the exception of the geographical data, which includes workshop participants also.<sup>20</sup>

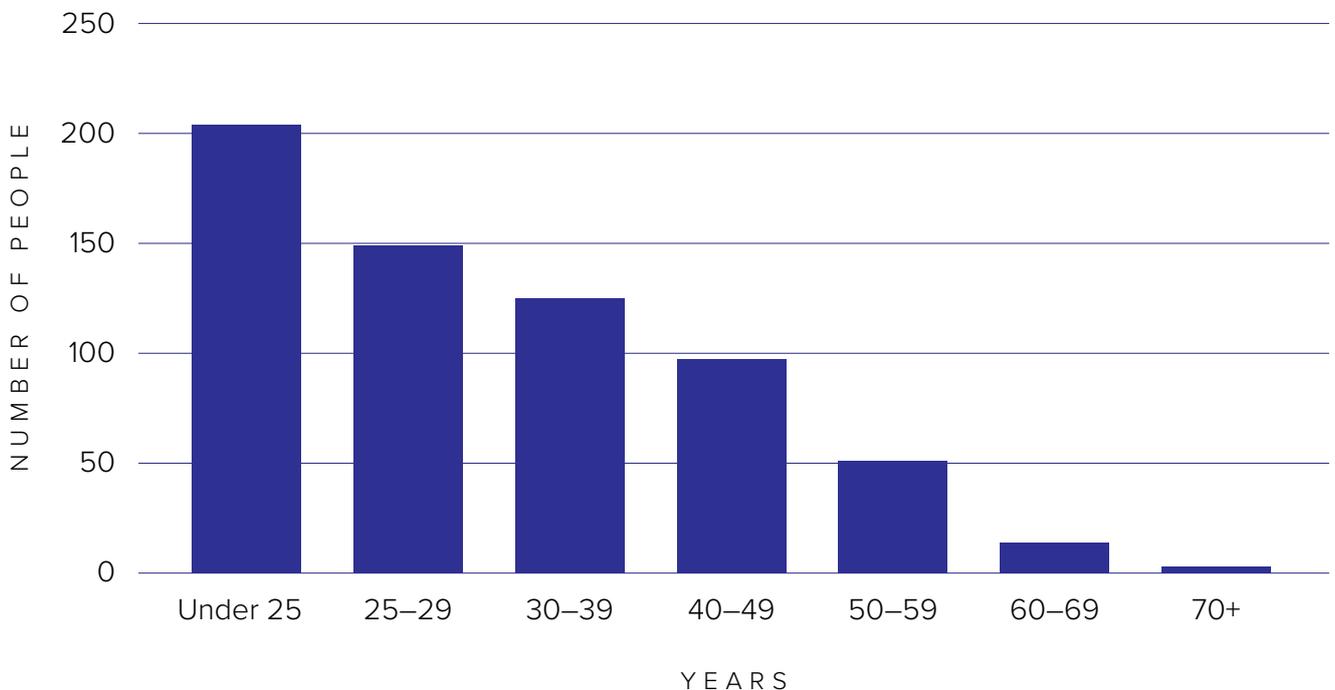
The typical survey participant is best described as a young, Auckland-based Pākehā female, employed in a law firm, with 0-1 years PQE.

Approximately half of the survey respondents were under 30.

In terms of gender identity, 76% of respondents were cis female, 22% were cis male and 6 respondents were non-binary, gender-questioning, trans male or other.

Most respondents were Pākehā (77%), followed by Asian descent (8%), Māori/Pākehā or Māori (7%), British/Irish/Scottish and Pasifika (each 2%). 4% of respondents identified with another ethnicity.

## Age



20. Questions 1 and 6 in the survey.

There was good geographical spread both for the workshops and the survey, bearing in mind relative population sizes.

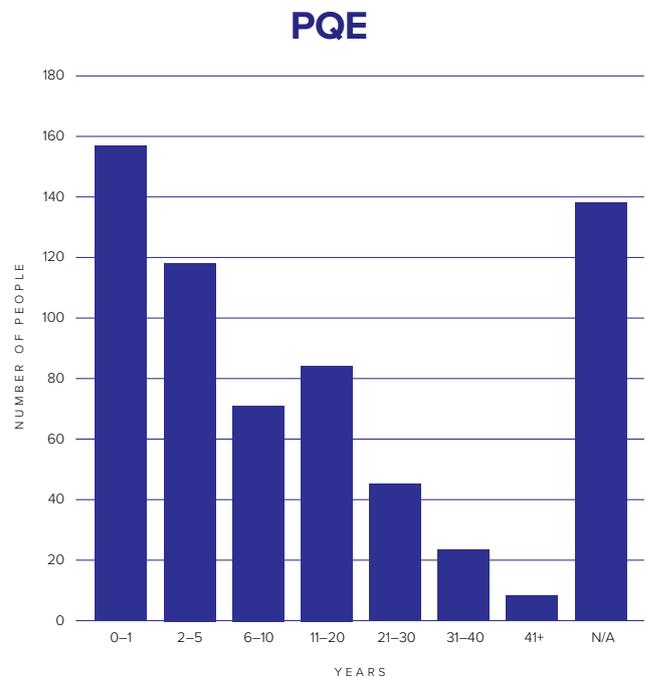
Auckland / Tāmaki Makaurau	<b>286</b>
Wellington / Te Whanganui-a-Tara	<b>202</b>
Canterbury / Ōtautahi	<b>73</b>
Otago / Dunedin (Ōtepoti)	<b>59</b>
Hamilton (Kirikiriroa) / Waikato	<b>17</b>
Tauranga / Bay of Plenty (Te Moana-a-Toi)	<b>12</b>
Nelson (Whakatū) / Marlborough	<b>10</b>
Overseas (Australia, England, Sweden)	<b>9</b>
Northland / Te Tai Tokerau	<b>8</b>
Other	<b>8</b>
Taranaki	<b>3</b>
Whanganui / Manawatu	<b>3</b>
Queenstown (Tāhuna) / Southland (Murihiku)	<b>3</b>
Hawke’s Bay / Te Matau-a-Māui	<b>2</b>

Survey participants were overwhelmingly employed in law firms or were law students:

Employee in a law firm	<b>207</b>
Law student (undergraduate and postgraduate and with or without legal work experience)	<b>160</b>
In-house counsel	<b>66</b>
Law firm partner or director	<b>52</b>
Recent graduate	<b>40</b>
Non-legal staff	<b>35</b>
Other <sup>21</sup>	<b>27</b>

Barrister or sole practitioner	<b>26</b>
In-house lawyer supervising staff	<b>14</b>
Employed barrister	<b>11</b>
Academic	<b>5</b>
Legal executive	<b>5</b>
Ex-lawyer	<b>3</b>

Finally, the Post-Qualification Experience (PQE) of respondents was as follows, with “NA” referring to those who either are not yet employed in the profession or who do not define their career by reference to PQE:



21. Recruiter, government, retired partner, Community Law Centre, not currently working, legal advocate for a union, policy adviser, freelance litigation support, NGO sector, statutory officer, legal and risk, and consultant.

# Results

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# Defining the problem

We have summarised above some of the reports that canvass the relevant problems in the legal profession. We also asked participants about their perception of the problems facing the legal profession, which we identified in our survey, with the results as follows.

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## The most important structural issues that need to be addressed in law firms<sup>22</sup>

We listed a series of structural issues identified in our workshops and in other reports on cultural issues in the profession and asked respondents to rank them. In descending order of importance, the structural issues were as follows:

- Ability to work flexibly without negative consequences.
- Profit focus / the primary purpose of lawyers being to bill the most hours.
- Lack of remuneration for overtime work.
- Diversity of staff (i.e., lack of it).
- Pay disparity between senior and junior staff.
- Partnership model.
- Ensuring equal parental leave for all staff.
- All senior leadership staff are lawyers.

One respondent summarised the structural issues in free-form comments in the survey as follows: “I was involved in a firm that treated

clients as cash cows there to be duped, and staff as resources to kick around as they see fit to satisfy their narcissistic supply. Not all firms are like this obviously, but it is astounding how some of them get away with it. [A]ll because of the power imbalance. Power certainly corrupts. [T]he leaders get to where they are due to their ability to bring in money for the partners ... And then when those people become the boss they simply act the same which perpetuates the whole problem.”

Another commented “I don’t have any friends in my year level who want to be partners.”

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## Biggest barriers to success for young lawyers / recent graduates<sup>23</sup>

We listed a series of barriers and asked respondents to rank them in descending order of importance. Here, we offered varied response categories to recognise that people define success differently. The results were as follows:

- Job-related stress.
- Working long hours without recognition or remuneration.
- Pay and remuneration.
- Lack of support in the workplace.
- Lack of opportunities to progress or be promoted.

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22. 386 people answered this question.

23. 353 people answered this question.

- Competitiveness amongst colleagues.
- Workplace sexual harassment or bullying.
- Other reasons (detailed below).
- Lack of support outside the workplace and with peers.

We invited free-form comments in response to this question. The following additional issues were raised, and respondents also added detail to the barriers we listed:

- Other negative social qualities in the workplace e.g., insecurity causing sabotage and gossiping.
- Family needs, both current and anticipated.
- Discrimination / sexism, including unconscious bias, both against women and ethnic minorities and generally. This extends to personal choices, lifestyle and background. Minority stress is also a real feature e.g., if one is both differently abled and identifies as LGBTIQ+, feeling as though one has to work extra hard to prove oneself, or feeling as though one is hired just to fill a quota and not because of ability.
- Prioritising the budget over non-billable matters and tasks.
- Time recording, which does not always reward a good lawyer for the right reasons (i.e., getting the job done quickly and therefore cost effectively).
- Mental health issues and/or lack of confidence.
- Access to experienced legal professionals who are willing to mentor / invest in young lawyers.
- Lack of meaning and efficiency in entry-level (and even higher-level) law work.
- External pressures, including housing affordability in Auckland.
- Feeling that the law is not the right career.

- Drinking culture encouraged from Law School onwards.
- Lack of support for extra-curriculars.
- Feeling like an outsider in what can be perceived as an exclusive profession with a certain 'type' who is pegged to succeed.

## Biggest barriers to success for non-legal staff<sup>24</sup>

51% of respondents said that not being treated equally compared to legal staff, was their biggest barrier. 23% said that the seating arrangements in the workplace separated legal and non-legal staff. 18% said their biggest barrier was being bullied or belittled by legal staff or being excluded from social activities with legal staff.

Other barriers were also listed in the free-form comments, as follows:

- The lack of understanding of the complexity of anything other than the law.
- The lack of knowledge of running a business by the legal staff who run the business.
- The fundamental flaws in the structure of legal partnerships.
- The negative or apathetic attitude of partners towards anything outside of their personal or professional interests.
- The disparity of benefits available to non-legal staff compared to legal staff.
- Micro-management by legal staff of professionals experienced in their non-legal field when specifically hired to provide that non-legal expertise.
- Lack of in-house training for legal executives and secretaries.
- Little opportunity to grow or move up in the organisation.

24. 39 people answered this question.

- Being bullied by senior non-legal staff.
- Poor or inequitable pay and remuneration.

One respondent made the point that their barriers were similar to those in the previous question aimed at legal staff – including remuneration issues.

## Buying into the process of change

One respondent summarised a pertinent issue well:

*In the LawTalk where all law firms commented on how they were improving the culture of the firms, two of the individuals who gave responses on behalf of certain firms I have heard are responsible for causing lots of stress amongst their staff. It makes it hard for members of the legal profession who know these things to take any of the responses seriously. It's all very well to offer yoga classes and fruit, but when you're a partner unnecessarily responding to emails at 11pm at night or interrupting their weekends, it makes staff feel guilty and anxious about not being available and responsive, and creates a culture of anxiety and never feeling quite good enough.*

In our work on culture change in the profession, we have encountered this issue many times. Sometimes the loudest advocates for change are the people who embody, in part, the barriers to it.

Part of meaningful change is not only talking about how breaking down barriers can make a difference. Meaningful change is a self-reflexive process requiring us to develop a deep sense of self awareness and push our own limits when it comes to areas in which we are individually blocking change.

And as another participant pointed out, it is important that the profession celebrates models that are working so that we move beyond “not that” into real life examples of positive change in action.



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# Workplace expectations and culture

The solutions discussed in this section are drawn primarily from two questions in the survey, supplemented by observations about the discussions during the workshops:

- What do you think could be done to address the structural issues you consider important?<sup>25</sup>
- Do you have any other ideas for changes that are needed in the legal profession?<sup>26</sup>

The answers below are grouped according to theme, and include ideas from the website and the workshops.

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## Shifting mindsets

Participants felt like widely-held and deeply entrenched perspectives are holding us back from creating new ways of being in the law. Shifts in collectively and individually held mindsets are critical. The following mindsets were identified as being problematic: the exclusive and exclusionary feel of the legal profession, including through: formal dress; monocultural and status quo thinking; the over-valuing of time-based chargeable work or money-making relative to other important professional/workplace aims and functions; the expectation of consistently long (and hard) hours; a culture of presenteeism; and the value placed on individuals as a function of hierarchy or fee-earning ability.

Proposals for helping shift some of these mindsets included: reviewing and implementing relevant recommendations from the Bazley report; Continuing Professional Development or other reflective opportunities aimed at reconnecting lawyers with professional purposes that are wider than the economic benefit of being a lawyer; more reliance on technology to enhance efficiency; alternative billing models (value, productivity, or fixed-fee), which might help encourage productivity rather than activity; and provision for less formality in dress where appropriate (e.g., ‘dress for your day’).

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## The structure of firms

Many respondents identified the partnership model as being the source of a number of cultural issues in the profession. There are two key aspects of the model, in our view, that can encourage poor workplace behaviour and a failure to deal with it.

The first is the concentration of power in partners as owners and managers of the business. Conversely, in a company structure, shareholders can hold managers to account, and therefore can act as a check on the power concentrated in senior managers and directors. In a company where the managers are not also shareholders, the monetary incentive is more nuanced and can reflect more values than simply billing more hours. For large publicly

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25. We then listed various examples: moving away from the partnership model, having a lawyers’ union, strengthening the Law Society’s ability to regulate or assist, having a junior lawyer and non-legal staff member on the management board, moving away from the 9am-5pm desk-based model and utilising technology for remote working, paying overtime, more regular bonus periods, allowing junior lawyers to claim back more of their hourly rate. 346 people answered this question.

26. 219 people answered this question.

listed companies, the market and share prices act as an additional check. It is important to note that power also works in different ways depending on the size of a workplace. In a large partnership, it is easier to obscure rogue behaviour (but conversely, a large organisation is more likely to have better systems and processes for managing staff). A small partnership might allow for more visibility of staff behaviour (but conversely might have ad hoc systems and processes for managing staff).

The second issue with the partnership structure is leverage, whereby partners charge salaried fee-earners out at much higher hourly rates than the fee earners' ultimate hourly wage. A chunk of the difference goes towards firm cost centres (non-fee earning staff, overheads, marketing etc), but a significant part of the difference is profit for partners.

It is important to note an additional factor unique to professional services. Competition does not operate as effectively as a check on professional services providers as it does in the consumer goods industry. If you do not enjoy your experience at a restaurant, you simply don't go to that restaurant again. If taxis are too expensive, you can use Uber. However, in the professional services, it is not as easy to (a) identify whether your provider is doing a good job until much later or at all and (b) if you manage to identify substandard work product, it is prohibitively expensive and even logistically difficult to shift providers – it will be expensive for a new lawyer to read in and there will be a degree (maybe significant) of re-doing old work, you might jeopardise your transaction or your case if it is close to settlement or trial, and it is logistically difficult to change lawyers (documents must be gathered and sent, a retainer signed, and anti-money laundering requirements complied with).

These factors make competition in the legal profession more theoretical than actual, so it must be borne in mind that the market probably does not have as much of an impact on controlling the behaviour of business owners and managers in the law as it might in consumer goods industries.

The following solutions were proposed by respondents to tackle the structural concerns relating to the partnership model:

- **At the parliamentary/government level:** changing legislation so that non-lawyers can be part of the ownership structure; introducing more flexibility for lawyers to work as contractors without having to be a sole practitioner; investigating the legal profession for breaches of employment legislation; issuing or better promoting guidance for legal practices for how to comply with legislation; issuing or better promoting guidance about whistleblowing rules for employees; periodic reviews of employment legislation to see whether it is adequately achieving its stated aims and protecting employees / enabling and encouraging them to come forward rather than put up with breaches of legislation; 'use it or lose it' parental leave for both parents of 6-12 months each.
- **At the profession level:** making out-of-firm supervision or mentoring compulsory or strongly encouraged.
- **At the partnership level:** allowing for equity investment from lawyers who do not wish to be partners/managers; giving more of a management role to non-owner lawyers; separating management from legal work; having more diverse board and governance committee membership (e.g., a non-legal staff representative, junior representative, and an independent person); having a staff board; having a partner/manager responsible for all non-legal staff and separately for all junior staff; more diversity in the partnership to help break down monocultural thinking (including, for example, part-time, flexible working partners); more cross-fertilisation in firm work streams as opposed to fixed 'teams' (assisting with visibility concerns); independent and external human resources providers; signing up to voluntary charters that encourage good workplace practices such as the Gender Equality Charter; and removing levels in the

hierarchy to deconcentrate power in more senior members of the practice.

- **All lawyers:** engaging in alternative models of delivering legal services e.g., on a contractor basis that can obviate the need for partnerships and offer lawyers opportunities to practice in ways that suit them (see e.g., Axiom Law);<sup>27</sup> and starting new firms based on different principles so that people have more employment options and can choose a workplace that better aligns with their goals.

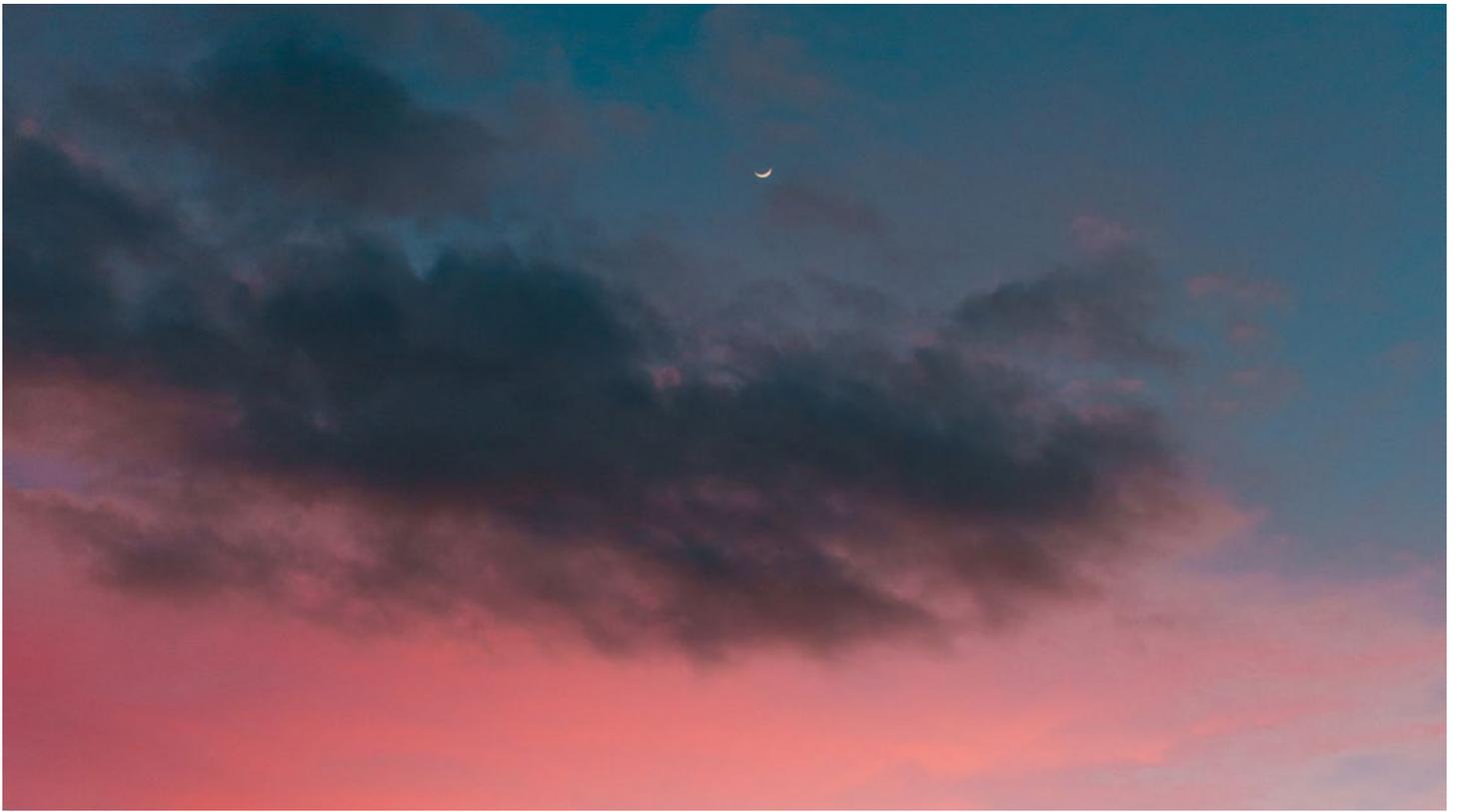
## Workplace culture

There were various ideas offered by participants in respect of workplace culture, most of which were underpinned by the need for commitment to common values: honesty, transparency, communication, collective responsibility for the creation and maintenance of culture, positivity, safety, diversity, and a healthy workplace. Culture can arise organically, and certainly all staff are responsible for culture. This section, however, focuses on what leaders and managers can do to craft a positive, safe, and productive culture, recognising that workplace culture is best approached deliberately rather than in an ad hoc manner.

Leaders should, with their staff, undertake a review (perhaps external) of existing culture, which ought to cover at least the following matters:

- What are the cultural values we exhibit? Are these helpful or detrimental to our workplace, our staff, and our business goals?
- What do we value in the workplace? How do we measure value in the workplace? What would things be like if certain functions were not performed properly? How do we show appreciation for the roles and tasks we value?
- How do we communicate in the workplace? With honesty, transparency, and compassion? Or are there blockages? Can people have difficult conversations without backlash and stigma? How might we unblock communication channels? Where are the areas where we need to be transparent (e.g., workplace goals, pay, bonuses, distribution of opportunities etc)? What are the risks of a lack of honesty and transparency in the workplace?
- What conscious and unconscious biases exist in the workplace and how do they impact staff, hiring and our work product? Do we understand the value of diversity? If we are committed to diversity, are we achieving diversity and inclusion in practice e.g., by showing equal praise and reward for diverse individuals and diverse interests? Is our environment inclusive in all respects (e.g., do we make it easy for people to attend client functions or social events)?
- What are our beliefs around individual versus collective responsibility for wellbeing at work? If we are committed to collective responsibility for wellbeing at work, how do we show this? Do we provide for work-life balance? Do we encourage it? Do staff feel that it is OK to take holidays and have their weekends, and to work flexibly? How do we show that rest and balance are encouraged? Equally, how do we make people feel supported in their work? And do we believe in encouraging self-development and growth? How do we provide for feedback, and are our feedback mechanisms effective?
- How do we encourage teamwork and collaboration? Do we cater to different needs and take advantage of unique strengths?
- How do we handle human nature e.g., the development of personal relationships and the consumption of alcohol. What are the risks of ignoring these and other realities of professional life?
- How does the physical workplace contribute to culture? Does it encourage separation

27. <[www.axiomlaw.com](http://www.axiomlaw.com)>.



and inequality between different groups of people in the workplace, or teamwork and team building? Does it allow for bad behaviour to be hidden?

- What does our image say about us? e.g., dress code, labels (lawyer versus non-lawyer), marketing materials. Does it encourage inclusion and equality in the workplace?
- What about our leaders as individuals? What values do they promote? Do they have a high degree of personal integrity and accountability? Are they, or can they be, the flag bearers of the culture we hope to have? How do we ensure future leaders are cultural ambassadors?

From there, leaders, again in consultation with staff and with others in the profession who have done the same, should reflect carefully on what culture they hope to create and draft a guiding culture document that can form the basis for enabling specific changes to achieve the desired culture.

Regular reviews of any culture charter, and the steps taken to implement the desired culture, should be undertaken.

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## Individual behaviour

Structural and collective solutions are critical to achieving change in the profession. However, how we manage ourselves as individuals is also important. Respondents talked about the need for kindness and courtesy, active listening, open mindedness, gratitude, tolerance and acceptance of difference, collaboration over competition, and a willingness to challenge unconscious (and conscious) biases. Showing leadership as individuals (regardless of age or stage) was also seen as important, for example, by taking opportunities to question, challenge and improve the system, by committing to being a strong role model, and by speaking out about observed bad behaviour in the workplace. Wrapped into this is the importance of deeply knowing oneself, including understanding triggers and weak spots. In a high risk and high pressure environment, developing a healthy and bespoke toolkit for managing stress is critical.

One thing that senior lawyers and organisations can do is invest in the personal development of their staff members. It will greatly assist workplace culture if confidence, communication and coping skills can be enhanced at the individual level.

# Diversity and inclusion

Suggestions regarding diversity and inclusion were discussed in the workshops and peppered throughout survey answers.

A number of broad systemic considerations were raised by participants, as well as specific suggestions for improving diversity and inclusion initiatives. The general theme was that participants wanted to see genuine inclusion as opposed to basic diversity initiatives. Real and creative action is required.

The systemic issues raised merit setting out in full:

*“The profession needs to focus on a broader picture of diversity than just the interests of ambitious, wealthy, white, female lawyers wanting to sit atop the tree with the ambitious, wealthy, white, male lawyers who historically had it to themselves. ... That means more focus on access to the profession. I.e. the NZLS working with schools and universities to promote access for Māori and other ethnicities, socio-economically disadvantaged, and young men. We need a diversity policy that doesn’t just focus on women and their success at the top of the profession. Not that that isn’t important and worth significant attention, but it has the flavour of replacing one power structure with another. If we focus on what equality looks like rather than simply one or two aspects of disadvantage, we have a better chance of hitting it. As an example, there has been little attention paid to the male ... stereotypes that advantage men in the workplace but equally present huge barriers to male lawyers wanting to work part time or take on primary caregiver roles ... I suspect that bullying and other unhealthy behaviours would be less prevalent if half a firms lawyers, men included, worked part time. How many male lawyers work and care part time? Any?”*

*“It’s idealistic to think you change the legal profession without changing society as well. What has happened in the legal profession didn’t occur in a vacuum. Any programmes and initiatives must be well considered and researched.”*

*“I think that the senior levels of the profession should represent the demographics of those entering the profession, and of wider society. This needs to be along gender, ethnic, sexuality and other lines. Equal representation is an important goal - it is better for clients to have options in terms of lawyers they can relate to, and it is important in terms of making sure that the practice of law reflects diverse ways of thinking. The way that law is practised directly translates into what the law becomes, and the law ought to reflect and meet the needs of the diverse community it serves.”*

*“I think breaking down the patriarchal history of the legal profession is something which can be done. The concept of professionalism, and appearance are all based on heterosexual cisgender pakeha men, which make up the majority of partners in firms.*

*Small things like getting rid of dress codes, and not requiring to fit into this explicitly conservative culture can make [people] feel welcomed. [...] I think the legal profession unconsciously excludes queer and gender non-conforming people. When we’re told we cannot have this hair colour, cannot have tattoos, piercings, cannot dress a certain way or told we cannot present our bodies how we want, whether it be online or in person, it is incredibly shaming and I think specifically exclusive of women, queer and gender diverse populations who now value such freedoms. At*

worst it is slut-shaming. In contrast, a man who gets drunk and messes an uber on a night out is lauded and given joke awards. It's clear that the culture excuses and values masculine and patriarchal expression and sees feminine, queer and non-binary voices as grotesque and "unprofessional".

My suggestion is:

- anything that has nothing to do with the actual work we are doing should not be the business of the law firm. Let us live our lives because not doing so will exclude those whose lives are not already privileged.
- Actually celebrate and include us, not just have diversity photoshoots to give false hope to graduates that the firm is actually diverse. It may be at the junior level but it's been decades... where is the real diversity up top? And focus on the groups that the legal profession shuts out: gender-nonconforming and queer people, māori and pasifika, and lower socio-economic groups."

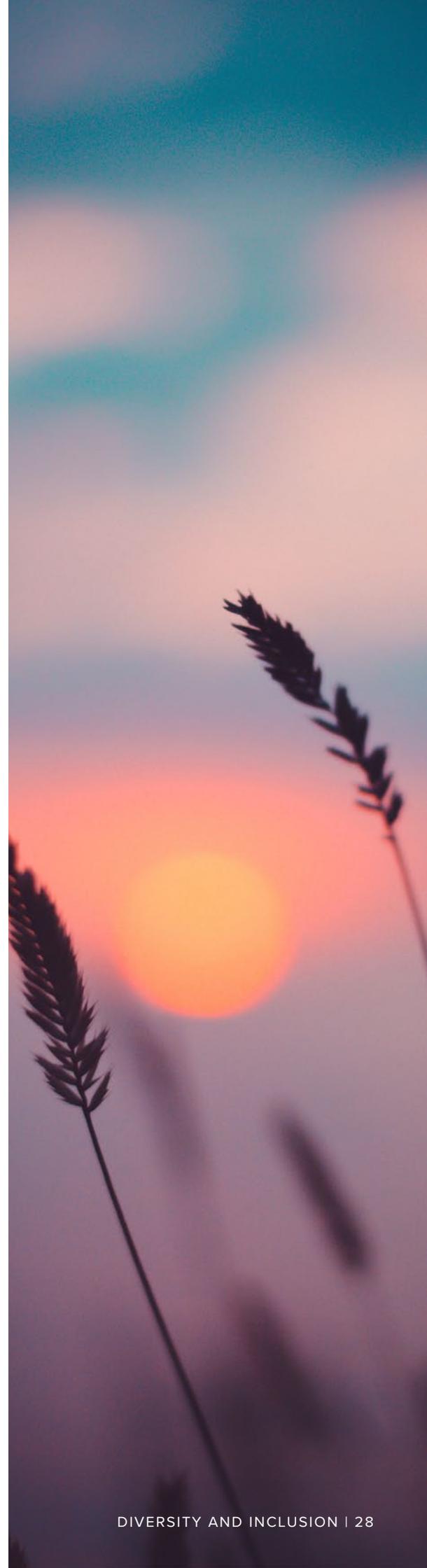
Specific solutions were as follows:

- Workplaces need to specifically recruit Māori, Pasifika and other ethnicities.
- Workplaces can better recognise the importance of tikanga in our legal system – and therefore the importance of people competent in tikanga being part of our firms. Culture tends to be used without permission, and on a free labour basis, for firm cultural activities or to pitch for Māori and Pasifika legal work – yet this contribution is not specifically valued.
- Workplaces can address diversity in the hiring process by moving away from a solely grade-based approach. A grade-based approach often excludes people who cannot afford to focus solely on grades at university because they must work or look after family. This can affect people from communal rather than individualistic cultures more.
- Law firms could measure themselves or be measured by external organisations on staff

wellbeing, equality and diversity, while being careful not to view such measurement as being sufficient alone. Workplaces need to go above and beyond and actually show they are supporting and helping their diverse communities. For example they can establish staff groups within the firm or organisation e.g., LGBTIQ+, Māori, and Pasifika groups. Seeing partners actively participate in staff groups can be very encouraging for junior lawyers who are members.

- In respect of members of our community who are differently abled, workplaces need to put measures in place to make sure people can be honest about their abilities and will not be stigmatised.
- Women should feel free not to have to refer to themselves as "Miss", "Ms" or "Mrs" in Court, but simply by their last names, like men, if they wish to. It should be made clear in any court etiquette education that there need not be any difference in appearances as a function of gender.
- Workplaces should have diversity targets or quotas for boards.
- The Law Society should publish pay information so that any pay gaps can be explored and remedied.
- Law schools should work on making changes to the culture and diversity of law schools, both in terms of staff and students.
- Firms need to promote partners based on competence and diversity. This will flow on to more diversity at the bar and inner bar, and on the bench.
- The Law Society and workplaces can make annual unconscious bias training mandatory.
- Lawyers should always ask whose name should be listed first on a matter, and not assume the male spouse always comes first.
- Individuals with similar backgrounds and potentially similar experiences can make an effort to support each other in the workplace e.g., women supporting women in law firms.

- Workplaces can connect staff with or provide childcare/holiday programmes.
- Workplaces can provide greater visibility of diverse role models in senior positions, particularly those who have children and have flexible working arrangements.



# Work format

The ideas in this section are primarily drawn from a number of questions in the survey, as follows:

- What do you think could be done to address the structural issues you consider important?<sup>28</sup>
- Do you have any other ideas for changes that are needed in the legal profession?<sup>29</sup>
- Do you have any specific examples of technology that have helped foster a positive work culture such as by enabling flexible working / reducing pressure, or others?<sup>30</sup>

The answers below are grouped according to theme, and include ideas from the website and the workshops.

## The nature of work

Purely from the perspective of the proportion of time we spend doing it, work can be considered the most pivotal part of our lives. For many people, this is true also of the psychological impact of work and its role in their life goals generally. The use of new technologies in the workplace is an opportunity to increase efficiency and reduce the time spent completing tasks, giving people freedom to enjoy activities outside of work. However, perversely, in many workplaces, technology has led to an increase in time spent on work, and work has infiltrated

what previously would have been regarded as personal and private time. With virtually no limit to how much we now work, this has put the question of why we work front and centre.

There seems now to be more of a willingness to question how we do things, and there is a rise in new values when it comes to work. Some of these values include: the importance of spending time on ourselves in recognition of the wholeness of our human experience; the importance of spending time with people who we care about and deepening relationships; and the importance of doing things that are fulfilling, have meaning, and make a positive contribution to society.

These changing values are well-reflected in the kinds of ideas we received about work format. The 9–5 ‘chained to the desk plus available at all other times by email’ model was widely regarded as unfavourable, and in need of anything between tinkering with or total revamping.

There are also shifts in values within work. Respondents mentioned the need to trust employees, and to focus on outputs (work product) rather than inputs (time spent at the office). If staff are getting their work done to the required standard and on time, and if clients are happy, why does the nature or format of a staff member’s working style matter? There is no reason, in these circumstances, not to give

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28. The following examples, based on discussions at the workshops, were listed below the question: moving away from the partnership model, having a lawyers’ union, strengthening the Law Society’s ability to regulate or assist, having a junior lawyer and non-legal staff member on the management board, moving away from the 9am-5pm desk-based model and utilising technology for remote working, paying overtime, more regular bonus periods, allowing junior lawyers to claim back more of their hourly rate. 346 people answered this question.

29. 219 people answered this question.

30. 239 people answered this question.

employees the trust and freedom to complete work in ways that best suit them.

Related to these concepts is the idea that all opportunities for working flexibly and according to one's own style should be available to all staff: being a parent is no more or less important than being a single childless person with hobbies.

Equally, the need to consult with staff, and prioritise their voices (as the people whose lives are affected by these decisions), was highlighted on numerous occasions. 'Don't make decisions about us without us'. There are many ways to maintain meaningful engagement with staff, one of which is providing regular opportunities for communication without consequence such as coffees, periodic reviews, social engagements, weekly team meetings, daily morning teas, or monthly strategy meetings.

These value shifts are undeniably frustrating for many employers. After all, employers make it possible for people to have jobs in the first place. Equally, however, employers are troubled by staff retention and the cost of recruitment. These days, many people have many options – including outside of the law. Considering the adoption of some of the below suggestions, in consultation with staff (who, after all, might like the '9 to 5 or 6' model if it means they do not have to have their emails on their phones) could address some of these shifting expectations and assist with recruitment and retention.

### **Flexible working**

Plenty of firms and workplaces have flexible working in place. Moreover, large portions of the profession work flexibly already, and do so with tremendous success: including all those who are self-employed as sole practitioners or barristers, amongst whom are all Queen's Counsel.

There need not be any stigma against flexible working, and to hold stigma against it actually obscures the fact that many people do not manage their work properly as employees or employers who do not work flexibly. Stigmatising flexible working also harms our staff who are primary parents, quite frequently women, and being inflexible as to work format can and does hinder career progression.

Here are the comments and suggestions we collected:

- The benefits of flexible working include people being able to work free from interruption and saving on transport costs.
- Flexible working policies should be brainstormed, discussed and drafted with staff. They should also be adhered to and enforced once in place.
- Discussions should be had at the hiring stage, with arrangements reflected in the employment agreement.
- The granting of requests to work flexibly should be standard, with declinations explained with reasons.
- The process should be formally documented, and if there is a Human Resources department, requests should go through HR.
- Where useful, staff should receive support and training on how to manage themselves while working flexibly.
- There are many different models of flexible work, ranging from full flexibility to part-flexibility e.g., Work from Home Wednesday, some desk time and some flexi-time.
- Flexible working could be granted to everyone automatically.
- Part-time options should also be available.
- Other kinds of support can be folded into attempts to enable staff to work in better ways e.g., access to childcare, or a space for children to play if they need to be brought into work.
- Firms should make their policies public.
- For an in-depth study on flexible working in the New Zealand legal profession, see Sarah Taylor's '[Valuing our Lawyers](#)'.

### **Models aimed at addressing over-work**

Flexible working alone does not address the fact that many lawyers are over-worked. The following ideas were offered as ways to deal with managing lawyers' workloads:

- There was a lot of support for paying overtime e.g., hourly payment for hours worked beyond 40 hours per week. Paying for overtime will force employers to think better about how they use their resources and time. Time in lieu for overtime hours worked is another method of compensating for overtime. These and other remuneration-related suggestions are addressed in further detail later in this report.
- More leave or unlimited annual leave, which again is a matter of trusting that employees can manage their own workloads and be responsible with how they manage their time.
- Four-day work weeks.
- Promoting an industry standard shorter working week e.g., 30-40 hours.
- A cap on the number of hours worked per month, possibly with a proportionate reduction in the month following if the previous month's cap has been exceeded.
- Remuneration can help motivate some people e.g., more frequent bonus periods, receipt of a share of profits or business ownership.
- Shift work models, so that one person does not have to work all hours, but can hand the work over to the night shift worker. Some staff might prefer evening or night shifts during certain periods of their lives.
- Shifting to an 'on call' model where staff do not have to come in to work if they have nothing to do, but can be called in during normal working hours. Total hours per month (or other time period) can then be monitored and averaged out to make sure there is no under- or over-work.
- Use of the health and safety register to monitor working hours patterns and keep an eye on possible escalations.
- If a desk-based model is preferred or required, no emails after work hours.
- Meetings should only be scheduled during work hours.
- Encouraging or requiring staff to leave at 5pm and not come to work on the weekends.
- Letting staff have the rest of the month off once they have met their billable targets.
- Employers and staff could consider how they divide work to utilise the collective brain. Some people prefer legal research, others prefer to avoid it. Giving people opportunities to define their roles a bit more can help with diversifying the work force and creating opportunities for people who otherwise would not enter or re-enter the law, or who might be thinking of leaving. Some tasks are also more amenable to contractor or part-time arrangements, and can therefore particularly have a positive impact on women with children, who are often still primary parents. These kinds of models can also help encourage fathers to take more responsibility in the home. Part of this also involves looking beyond PQE – new lawyers who have come to the law as a second career have much to offer, as do graduates with very developed skillsets from their non-law activities.

## Technology

Technology drew a mixed reception in our research. Many recognised the incredible freedom, flexibility and balance that it could enable; others cautioned that all it enabled was around-the-clock availability:

*“Technology often seems helpful. I have found it actually means more work outside of working hours.”*

*“Mostly technology adds pressure”*

*“My fear is that while technology can enable work/life balance and flexibility it can equally take over all life ...”*

*“In my experience, technology does not enable work-life balance, it enables (and creates [an] expectation that) work flows into personal life and lawyers are available all the time. I advocate not taking devices home, disabling work emails, and having a genuine break [from] work.”*

Some respondents also noted the importance of not obscuring the underlying need to create good workplace culture with the benefits afforded by good technology:

*“Law firms already have the technology! The technology cannot save us. This is a cultural issue.”*

*“Learning to treat employees well doesn’t require technological solutions.”*

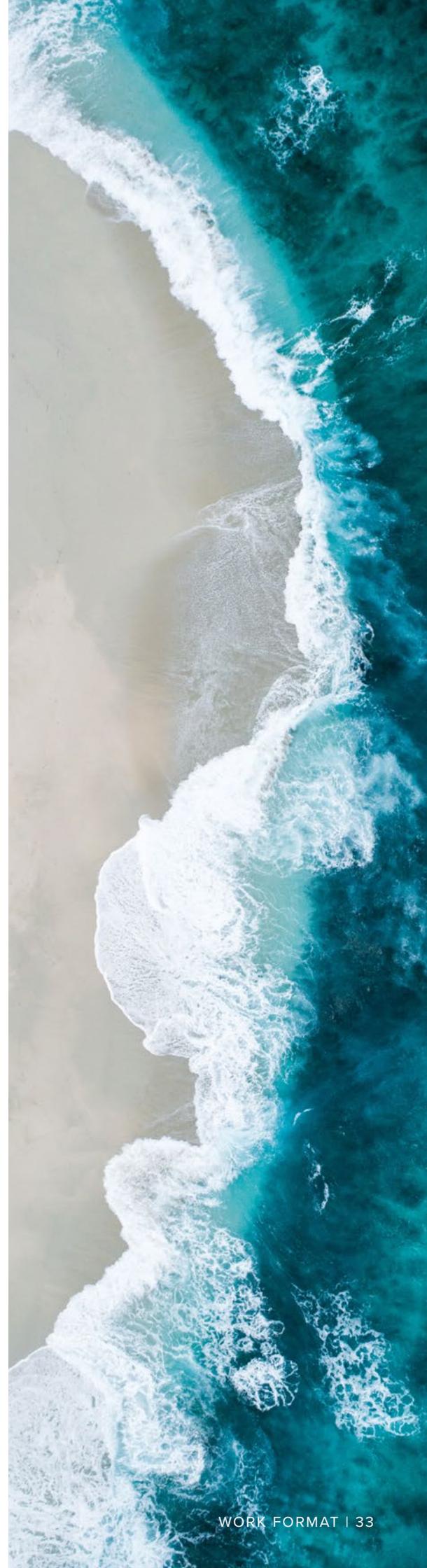
*“I think technology can definitely help achieve more in less time and also find simpler ways of doing things so that you become more productive but at the same time, culturally, it isolates us from each other. ... I think technology can lift performance but not necessarily the culture.”*

Finally, it is important to note an inherent tension between technology offering efficiency and time-based income generation. One respondent noted that law business owners might be reluctant to introduce efficient systems because of their potential to reduce time billed and therefore profit generated.

The following suggestions were raised as potential technological solutions for workplace expectations issues, remembering always that any technological changes ought to be thought through carefully in terms of whether and how they improve or worsen the experiences of legal workers – and changes ought to be made first and foremost in consultation with staff:

- Solutions to assist with working flexibly and/or from locations other than the office:
  - Remote access for all staff to one’s work desktop, or use of cloud storage software e.g., **Dropbox**.
  - Providing staff with cell phones (and paying for monthly plans), laptops and other technology as required (such as tablets).
  - Communication and collaboration technology e.g., **WhatsApp**, **Slack**, **SuiteBox** (which also provides for digital signing), **Microsoft Teams**, **Beekeeper**, **Skype for Business** (which also shows when people are online, offline, on
- leave etc). Care needs to be taken with any technology that shows people’s availability – statuses should automatically shift to ‘offline’ outside of working hours.
- Paperless offices – easy remote access to files from anywhere.
- Free teleconference dial-in numbers.
- Screen-sharing software.
- Time recording software also available on cell phones and tablets.
- Support with home office setup e.g., screens (in addition to laptops) for home and assistance with reliable and fast internet connectivity.
- Solutions to assist with working more comfortably and efficiently:
  - Voice recognition / dictation software e.g., **Dragon**.
  - Advance grammar and spellcheck software e.g., **Grammarly**.
  - Occupational health and safety assessments for work stations.
  - Standing desks.
  - Good business software e.g., **TechnologyOne**.
  - Entry of overtime hours into time recording or other software i.e., without having to email human resources staff or employers.
  - Datacom’s **MyPay** app, which offers staff instant access to their employee information including applying for leave, checking public holidays etc – again, without any need to email anyone directly.
  - Better document review technologies.
  - Open plan offices.
- Solutions to assist with workplace culture issues:
  - An app for workplaces to submit misconduct etc so that it goes to an independent entity to review and consider.

- Policies around flexible working, bullying/ harassment, complaints processes etc need to be clearly and easily available on the workplace intranet.
- Not using billable software that is designed to compare performance to other staff or adjust behaviour e.g., by turning red if billing below 100% of chargeable time.
- **Heelix**: real-time feedback and performance management platform.
- **Vault** app for capturing and recording hazards, risks or incidents in real-time.
- **Wellnomics WorkPace Breaks & Exercises**, which monitors how often breaks are taken and issues reminders.
- **Google Forms** or **SurveyMonkey** for anonymous electronic surveys and feedback.



# Training and education

A recurring theme that emerged during this project was the desire for comprehensive training and education for all individuals in the legal community. The key questions are training on what and how.

## What should training focus on?

In terms of the content of any training to change the culture of our profession, the obvious starting point (and indeed the area raised most often by participants) is unconscious bias training. Some workplaces already have such training available for their staff. NZLS CLE also offers programmes in this vein, such as a free webinar on unconscious bias in the workplace, created by Carol Brown and recorded in 2017.<sup>31</sup> Training on unconscious bias typically encourages participants to reflect on their own biases (conscious and unconscious) in terms of gender, ethnicity, age and physical appearance, how that impacts their approach to others in their workplace, and what individuals can do to counter their biases.<sup>32</sup> For those who have never considered such issues, unconscious bias training can be a good starting point for confronting one's own behaviour. Indeed, many of our participants suggested such training had a valuable place in the profession and everyone should complete it within their working lives.

However, many of our workshop participants also highlighted that completing a one-hour webinar or seminar on unconscious bias is simply not enough to shift the behaviour we see in our community. Participants discussed several other ideas for what the substance of further education and training could be, including:

- Specific training about bullying and harassment – what inappropriate behaviour actually is, how to recognise it, targeted discussion about how such behaviour occurs in different environments (e.g., the courtroom versus the law firm), and how to combat it and have difficult conversations.<sup>33</sup> We note that NZLS CPD provides a free webinar on '**Preventing and Dealing with Harassment and Bullying**', recorded in April 2018.
- Strategies to call out bad behaviour and how best to intervene as a bystander.
- Training on specific policies for bullying and harassment at individual workplaces as part of an employee's induction as well as the reporting and complaints mechanisms available.
- Training on how to manage and support people effectively as well as more general leadership training for everyone in the profession, not just partners or senior members.

31. <[www.lawyerseducation.co.nz/Courses/Free+Recordings.html#ubw](http://www.lawyerseducation.co.nz/Courses/Free+Recordings.html#ubw)>.

32. See, for example, New Zealand Law Society "Unconscious bias" <[lawsociety.org.nz](http://lawsociety.org.nz)>.

33. One participant recommended a book that discusses how to have difficult conversations that could be of use in such training: Bruce Patton and others *Difficult Conversations* (Penguin Books, 2011).

- Developing communication skills, both written and oral, as well as how best to communicate with our colleagues (senior and junior).
- How to be a good mentor.
- Delegation skills and giving useful feedback to your colleagues.
- Emotional intelligence training and empathising with colleagues.
- How to deal with difficult clients.
- Training about the power dynamics that exist in the profession and how to combat these.
- Robust training for human resources teams, leaders and key organisations about how to handle complaints of bad behaviour.
- How to model inclusive behaviour and treat diversity as more than a box ticking exercise.
- Cultural competency training. For example, training to ensure managers understand the cultural expectations that an employee may be trying to balance against what is expected of them at work, such as caring for immediate or extended family members, or contributions to their church or local community.
- The importance of tikanga and Te Tiriti o Waitangi to our legal system and society. This should also include Te Reo Māori lessons.
- LGBTIQ+ sensitivity training.
- Training on wellbeing in your career, mental health, and strategies to increase your resilience.

One participant commented that prevention training, especially in relation to sexual violence and sexual harassment, needs to be developed with the help of appropriate experts, and needs to be well-researched and piloted before being implemented. It is important that any training that is implemented is grounded in research and proven methods that address problematic behaviours, otherwise there is a danger of workplaces, universities and organisations implementing their own training schemes which do more harm than good.

A couple of participants emphasised it is time that “soft skills”, such as people management and communication, are prioritised when we train staff, rather than just focusing on the substance of the law, how to draft legal documents or being a good advocate.

Others also highlighted that it is crucial that men, as well as women, access this training regularly to provide them with the skills and confidence to speak out and support others. One participant said, “it must be part of our job as a lawyer to call out bad behaviour” and so we all need training to enable us to appropriately do so.

Another participant said we need to think about what behaviour we want to foster in our workplaces and how we can foster it, and this should be what our training is targeted at.

One respondent commented that it is important that training takes place through a variety of methods, including peer-to-peer training so that the messages come from others you can relate to, not just from human resources teams or senior members of the profession at a NZLS-led session.

## How do we incorporate increased training and education?

When should this training be made available for those in our legal community? As a profession, we already have rigorous requirements when it comes to education and ongoing training for lawyers: a four-year undergraduate degree, six months of professional study before being admitted to the bar, 10 hours of mandatory continuing professional development to be completed annually, and a mandatory Stepping Up course run by the New Zealand Law Society for those wanting to move into partnership or practise on their own account. Participants repeatedly stated these existing mechanisms provide a perfect opportunity to educate our people and provide training on a wider variety of topics at all levels. Several people considered training must be regular and frequent throughout one’s career so that it is normalised and reinforced.

When we asked our survey participants to rank the forum and timing of mandatory training on how to combat unconscious bias, sexual harassment and bullying, they responded as follows:<sup>34</sup>

- Almost 30% said it was most important to them that all staff working in a legal workplace have this training every year.
- 23% considered it was most important to them that training is mandatory before any person is promoted to a leadership position.
- 20% felt it was most important this training be included as part of the legal ethics course while studying towards an undergraduate law degree, or as part of general and more practical training during Law School.
- Over 28% of participants thought including this training as a requirement of the regular CPD hours lawyers must complete was the most or second most important area to have mandatory training.
- Over 24% of participants said they considered training during professionals study was either the most important, or second most important area to them in which to have this training.

These responses reinforce what the participants of our workshops reported about how such training should be implemented in our community: it needs to be regular and frequent, it should be taught to our people while they are new to the profession and before they even enter legal workplaces, and it must take place before people are appointed to leadership positions (whether they are a lawyer or not).

As discussed above, further education and training for our people could take place in a myriad of forms. However, an important issue that was raised by some participants, and something the authors also firmly believe,

is that training cannot take place in a vacuum. While more training, and at crucial points in a person's career, is certainly valuable, we cannot expect more training alone to solve the cultural problems facing our community.

Training at an individual level will only prove valuable when it is free and easily accessible, when it is matched with increased support from employers for their staff to attend training during work hours, when workplace policies reflect the principles taught to our people, and when individuals are held to account for acting contrary to expected behavioural standards both by their employer and the Law Society. Training cannot be implemented in isolation or in an ad hoc manner. As is evident through this project and others, a holistic approach to changing the culture of our community must be adopted for progress to be made. More frequent training of our people is only one component of this.

It is important also that training is available to all staff, and that non-legal, administrative and business development staff are also supported in their training.

## Law School

A number of respondents zeroed in on the importance of law school in the education process. Key themes were that honesty about the profession is important at this stage, as is developing an understanding that law is first and foremost a profession focused on client service and that it is not necessarily a road to great riches.

Respondents noted the importance of exposure to different pathways in and out of the law (other than junior > senior > partner), the need for more practical training as well as training on expected standards of behaviour, and a shift away from the importance of grades (the pressure to achieve being described as “crippling”).

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34. 344 people answered this question.

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# Leadership and management

There has been considerable focus on the central role that managers and leaders in the legal profession play. Leaders and managers can either help or harm. In this section, we focus on:

- how respondents feel about their managers;
- the active steps that can be taken by leaders and managers to improve cultural issues in the profession;
- how promotion to leadership and managerial roles should be assessed so that only people fit for the job hold those roles; and
- what to do about holding bad leaders to account.

A critical tension is that people management is a necessary result of moving up the ranks in the law, and yet not all people are willing or able to properly manage people. Furthermore, at present, good people management is not necessarily a pre-requisite to career progression in the law. As one survey respondent put it: “[i]t’s crazy that firms promote people without considering their management skills.” Another said: “Obviously legal ability is necessary, but it is not sufficient. If the person cannot manage people effectively and fairly, they are not suited to a leadership role.”

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## Which qualities do you think your supervising partner, manager or boss displays?<sup>35</sup>

The good news is that, when asked this question, most respondents thought that their managers were: good lawyers; smart; approachable; caring; communicative; and provide feedback and support staff facing personal difficulties.<sup>36</sup> Just under half of the survey respondents also thought their manager was a good people manager.

Respondents elaborated on the positive characteristics their leaders displayed:

- Relaxed and respectful of people’s lives outside of work.
- Excellent and supportive mentor.
- Cares about career paths, work-life balance, open and honest conversations, and ensuring staff well-being stays on track – focuses less on technical work, and more on management and wider departmental projects.
- Generous with time and advice and provides ample workplace flexibility for all employees.

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35. 321 people responded to this survey question.

36. But note that a significant minority did not select these characteristics as being displayed by their manager, as follows: good lawyers (22%); smart (25%); approachable (32%); caring (39%); communicative (42%); provides feedback (44%); supports staff facing personal difficulties (45%).

- Fair and just, has personal integrity and is inspiring.
- Supports the team and ensures that there is a positive and inclusive working environment.
- Culturally aware and has undertaken unconscious bias training, plus supportive of people from different backgrounds, and able to relate and communicate.

A smaller percentage of respondents cited negative qualities in relation to their managers: 17% had managers who did not provide feedback; 12% had managers who did not respect their time; 10% had managers who would not explain delegated work clearly; 7% had managers who would ask the respondent to do tasks unrelated to their job; and 5% of respondents' managers would yell at them.

In terms of negative traits, respondents commented as follows:

- Displaying favouritism.
- "Gossiping" with the lads.
- An "awful" manager and person, who was nevertheless on Law Society panels and in the disciplinary group (noting that there needed to be leadership displayed in Law Society selection, and not just "shameless self promotion").
- Expressing that bullying claims were overstated.
- Treating the respondent differently from male staff (not teaching or giving her work) because "You'll just leave so I am better doing it myself" and "I allow you to do your business, not many other firms would let you do that outside of work" (in relation to a business the respondent was running in her personal time).
- Narcissism, a sense of entitlement, being "fake".
- Incompetent at managing stress, time, temper and people.
- Bullying.
- Insufficient constructive feedback.

- Giving work beyond one's level of expertise, in order to facilitate learning, which is usually fine, but the manager was then unavailable to provide support if stressed with other work, or the employee was made to feel like an inconvenience if asking for help.
- 'Seething' when there are mistakes or communicating in a 'you should have known better' tone.
- Focusing on financial performance at the expense of other contributions.
- Cares about welfare and learning in theory, but this is always trumped by the needs of the client – practical support is rarely offered.
- Passive aggressive and giving the "silent treatment" for grievances that are then only raised in the performance review (when they could easily have been resolved earlier).
- Lacks responsibility and shifts blame onto juniors for their own mistakes / positioning oneself in the best light to ensure they protect themselves.
- Making criticisms that lack evidence (e.g., complaining about slow turnaround when client feedback is actually positive; and against concrete metrics like billable hours) – HR in this instance has given undue weight to the supervisor's perspective.
- Often does not communicate effectively about scope of work, deadlines, etc and/or has unrealistic expectations about time/work required for a matter.
- Lovely person but terrible manager. On the other hand, another partner is a fantastic teacher but has questionable morals – this is an isolating environment to work in.
- Often difficult to pin down a feedback session, or even a work-related meeting.
- Lacks personal skills.
- Does not give out enough praise e.g., two instances in four years.
- Inappropriate comments/lack of professional boundaries.

- Does not consider impact of work on staff – dumps work at the last minute.
- Does not understand the extent of the work that is done by staff – feels like a guessing game when figuring out what the supervisor wants (but supportive and kind on the other hand).
- An unstructured working environment.

Participants were realists about the nature of legal work. Occasional busy or high-pressure periods are a part of legal practice that cannot be avoided. The stress, long hours and lack of sleep that accompany these periods mean that people are unlikely to be at their best. Some areas of legal practice tend to present these sorts of periods more frequently, and with particular intensity, such as litigation. Some lawyers are more willing to tolerate this than others. As one participant put it, people with different degrees of resilience and life goals (and the authors would add, life circumstances) are entitled to self-select the most appropriate workplace and pathway in the law suited to them.

However, when busy periods and poor emotional regulation become widespread and systemic, this becomes a workplace safety and culture issue that needs to be scrutinised and addressed. Under our laws and as a feature of common decency, everyone is entitled to fair, humane, safe and positive working conditions.

## What are some of the things that leaders can do to ‘lead from the top’?<sup>37</sup>

After asking this question in the survey, we listed a number of examples to assist respondents in coming up with ideas, as follows: going home at a reasonable time; flexible working; making positive comments about work/life balance and having diverse interests; and encouraging diverse interests through giving you the time and space to take them up.

A number of respondents generally agreed with the suggestions posed by us in the

question, but there were many more ideas. All of these fundamentally come down to leading with integrity and mana:

### Model the culture you hope to create

- Demonstrate work/life balance – including prioritising and protecting your own health and welfare so that staff can see it is possible to advance without sacrificing self, diet, exercise, sleep, family and relationships.
- Work reasonable hours, and take all of your leave, including parental leave (particularly for male leaders).
- Have lunch – and not at your desk, and sometimes with staff in the lunchroom.
- Leave at the end of the business day and ‘loudly’ – perhaps even at a time that is normal for most New Zealanders, not a time that is normal for lawyers!
- Say things like “having lunch with your friends is more important than work, you’ll always be busy, don’t cancel your lunch”.
- Talk about things other than work.
- Have hobbies and diverse interests, encourage staff to do the same, and celebrate staff milestones in their outside-of-work lives. Diverse interests within the law and at work should also be encouraged e.g., volunteering or involvement in the broader legal community.
- Respect people’s time by not sending emails out of hours or on weekends, if it can be avoided (it is possible to set up email rules so that emails are sent within the working day).
- Be vulnerable, open and honest. Encourage communication both ways, and give people a voice.
- Have your values straight: justice; the rule of law; the development of the profession as justice-based and honourable; quality of output over time spent and the bottom line.

37. 339 people answered this question.

- Develop and encourage a positive team culture: think carefully about how to have a cohesive team and then do it – whether it is team sports, casual lunches, or other – the format should be flexible to suit the needs, interests and idiosyncrasies of your team.
- Have each other’s backs as a team – including setting aside time to check in on people daily.
- Think carefully about and implement true inclusivity at your workplace e.g., having a place for children to come after school to eat and do homework, and actively using Te Reo in the workplace.
- Commit to staff autonomy (e.g., flexible working arrangements supported by technology) and harness and celebrate strengths and differences as well as providing support for areas in which people would like to improve.
- Encourage and support individuality and individual needs. For example: get rid of dress codes; provide time and support for staff to be involved in kaupapa that support them e.g., Te Hunga Rōia Māori o Aotearoa and the Pacific Lawyers Association – and not at the expense of other CPD/training.
- Discourage and address any negative aspects of workplace culture e.g., judgement, gossip, back-handed comments about flexible working or non-billable contributions.
- Appreciate that we spend most of our waking lives at work: so have fun, encourage healthy humour, do not take yourself too seriously, and enjoy the time you spend with the people who you work with.

One respondent noted, rightly, that it is important to reflect on the impact that modelling certain behaviours might have. For example, if senior staff work flexibly, this might be to the detriment of junior staff who then have to pick up the slack. There may be a perception that better working arrangements are perks that are not available to all staff, but only those with power. Being aware

of and managing those sorts of unintended effects is an important part of modelling good behaviour conscientiously.

### Truly step up

- Develop your management skills: time management; proper and fair delegation; good communication; be approachable and available; ask rather than tell; monitor workloads and capacity and reallocate where appropriate; give appropriate advance warning for busy periods where possible; check on and care about staff welfare; be a proper team member and do not ask people to do things that you would not be prepared to do; follow through on promises. Developing those skills should be ongoing and constant – learn, grow, go to supervision if it would help, and be open to feedback e.g., 360 degree anonymised reviews.
- Take responsibility: fall on your sword when you have made a mistake (including sometimes when you are not to blame); do not throw your staff under the bus; say sorry; be an “umbrella” – protect and back your staff; do not put your stresses onto other people; pick up the slack when your team is overloaded; and be active in talking about organisational culture and values with staff. One respondent said their manager did not allow them to work on the weekend and instead took on the work themselves, the manager saying “I’m paid to do that”. Another respondent reminded us that leaders need to understand that juniors are not paid anywhere near what they are.
- Recognise your own limitations as a leader and develop strategies and tactics to improve or deal with them. Especially do not give negative feedback to others on things you yourself may not do well either.
- Lean in to tough calls and difficult conversations: make time for those difficult conversations – do not avoid them; push back on unreasonable clients; hold your colleagues accountable; follow through on zero tolerance for bullying, harassment

and related or other conduct detrimental to the workplace – including removing other partners if they have fallen short of the standard; address staff conduct such as bullying, poor performance, or being a poor team player; properly look into complaints; and be openly critical about poor culture in the legal profession so that others feel safe about speaking out as well.

- Recognise the power that you have and use it for good: tell staff to go home after 5.30pm if they have nothing urgent to complete or even require staff to ask for permission to stay later than 5.30pm; and block email access outside of work hours.

### **Treat people well**

- Be caring, respectful, kind, empathic, honest, helpful, grateful, and consistent in treatment towards all people (clients, staff and everyone else). Acknowledge staff for their contribution regularly and genuinely.
  - Trust your employees, take an interest, and be supportive – the more you give the more you get.
  - Listen to staff (including by providing opportunities for staff to be heard, such as regular catch-ups) and be open to differences of opinion. Communicate and be transparent about, for example, there being busy periods with long hours and what you will do to counterbalance that.
  - Do more to support and encourage non-legal, administrative and business development staff, and give more credit to the excellent contribution that all members of the workplace make.
  - Give positive feedback – everyone does something well.
  - Give people responsibility but be present and available to support them. Allow people to develop their individual style as legal professionals.
  - Try not to judge or gossip. Snap judgements about people can lead to bad decisions
- about staff (e.g., “he is lazy” when in fact, he has a child with chronic illness and is not coping with the stress of it and is distracted at work). Gossip is a way in which you exhibit judgements you harbour internally – the content of your gossip signals to the listener the kinds of things they may be judged about.
- Be fair: advocate for fair pay for junior and administrative staff; pay for overtime; allow leave throughout the year; be open-minded about unpaid leave; encourage staff to take breaks; give manageable workloads; schedule meetings in the middle of the work day rather than early in the mornings or later in the day; tell staff when something is not urgent, and generally be clear about deadlines; and encourage staff to go home at a reasonable time.
  - Professional development: allow time for observation and passive learning; encourage personal growth even during working hours; encourage productivity – if a walk would help reduce stress levels, this is preferable to sitting at one’s desk and being unproductive.
  - Tailor your approach: view staff as individuals and adapt the work environment accordingly; permit a lawyer to tread water in terms of career development at times when this is necessary to accommodate other life experiences like caring for family; encourage all staff to take time off for family responsibilities; and reorganise systems so that staff can work wherever they are based.
  - Be understanding when the wheels fall off and work with the person to find out the causes and remedy the issue in a non-blaming/shaming way.

## **Promotion into leadership roles**

We asked two related questions in the survey on the assessment of promotion to leadership:

- How do you think promotion into leadership roles should be assessed?<sup>38</sup>

*95% of people said promotion should be assessed based on leadership and management skills, contrasted with 23% who said promotion should be assessed purely by reference to ability as a lawyer or fee earning ability. 62% of people said promotion must be assessed after sufficient due diligence has been conducted regarding whether the person has bullied, harassed or abused people in the past.*

- Which of the listed qualities do you think senior staff should be assessed on before being considered for promotion?<sup>39</sup>

*More than 80% of respondents ranked the following skills as requiring assessment: good communication skills; being a good people manager; approachable; a good lawyer; and provides feedback.*

*About two thirds of respondents ranked the following as requiring assessment: cares about staff welfare and learning; respects individuals' time; supportive of staff when facing personal difficulties; and smart.*

Respondents expanded and elaborated on the qualities that should be assessed or required in the free-form comment box that followed this question. The general theme was that promotion should always be about a blend of leadership skills and legal ability, with many of the qualities summarised above in the 'lead from the top' section listed here also. Additional qualities were:

- A person who embodies and follows the culture on which the firm is based.
- Selflessness; humility; high emotional intelligence; and emotional maturity and stability.
- Good at collaborating with other teams in the firm.

- Values the contribution of all staff whether billable or non-billable, full-time, part-time or flexi.
- Supports independent supervision where staff can discuss clinical and ethical issues in a private and confidential setting.
- Being inspiring and a trailblazer who explores new initiatives.

Some additional suggestions were raised which merit mention.

- A full and extensive review of a candidate is important e.g., 360 degree review by former and current staff, clients and colleagues. A number of people noted that some care needed to be taken and thought put into how to go about due diligence before a person is promoted to a leadership role including, in particular, how certain findings would affect the decision as well as whether tools like a character assessment would be useful. A clean behaviour record and being an ethical person were regarded as important.
- There should be approval and support from the wider staff.
- There is room, within assessing 'soft skills' or 'management skills' for biases to arise, and care needs to be taken regarding how the assessment is done.
- Having a good understanding of the business of law and the ability to bring work into the firm are important. Equally, there needs to be a shift in focus to billing-adjacent strengths, and a willingness to see value in different kinds of billable work (e.g., small private client versus large corporate client).
- There should be complementarity in the partnership: some partners are better work generators and fee earners; some

38. 367 people answered this question.

39. The listed qualities were good communication skills; you feel comfortable approaching them to ask for help; a good people manager; cares about my welfare and learning; supportive of me when I am facing personal difficulties; a good lawyer; smart; provides feedback; respects my time. 380 people answered this question.

- are intellectual; some are excellent people managers. When assessing promotion, attention should be paid to gaps and weak spots in the partnership with a view to redressing those – including the need for diversity of various forms at the leadership level.
- There needs to be a better way to structure the practice of law so that people with a high degree of technical ability, but an unwillingness or inability to manage and lead, can still have a role, and vice versa. This is largely how the business world is structured.
  - On the Law Society side, there should be an amendment to the requirement to have at least three years of full-time practise in the last five years in order to be able to practise on one’s own account. This would remove barriers for people who have reduced their working hours or taken some time out to look after family.
  - Partners should have to make a contribution to an annual fund for the purpose of employees obtaining independent legal advice for grievances.
  - Partners’ deliverables and competencies should be transparent and available to partners and staff. They should form the basis of who to admit to partnership, and should be part of the review where partner remuneration is determined.
  - Compulsory and ongoing management training – also occurring from an earlier stage and not just at or near partnership.
  - The wellbeing of staff working under that person should be a key performance indicator for partners – with financial consequences for poor staff wellbeing.
  - Health, safety and culture should be a standing agenda point at partnership meetings.
  - There should be audits of partners’ conduct, including how many hours they made each employee work in the last year.

## How can we hold leaders to account?

A number of suggestions were put forward in the workshops and on our website regarding how we might hold leaders to account. Those suggestions that relate to accountability through external mechanisms (such as regulation, the Law Society, a legal workers union etc) are covered in that section below. This section focuses on what workplaces can do to hold leaders to account, with the overarching theme being that there needs to be some form of real sanction and deterrence in place for leaders. There were a number of suggestions that related to structural issues, largely already discussed above. The remaining suggestions are as follows:

- Have a chief executive who is not a partner.
- Partners should be subject to an annual review, with a requirement that they model good behaviour.

# Remuneration

The issue of remuneration featured overwhelmingly in the conversations we had with participants in this project.

Under the partnership model staff are generally paid a fixed salary based on a standard working week, usually accompanied by a provision enabling the employer to require the person to work additional hours as “reasonably required from time to time”. Meanwhile, staff time is billed to clients at a significantly higher rate than what that staff member is paid, particularly for junior lawyers. There is therefore a strong structural incentive (although perhaps not conscious) for partners to require staff to work beyond their contracted hours, as any fees charged beyond those hours have virtually no associated remuneration cost.

In many legal workplaces it seems the only way employees can access the profit generated by this further work is through discretionary bonuses, if at all. Many workshop and survey participants expressed that they had been encouraged or even pressured to work beyond their contracted hours with no apparent benefit for themselves. Working extra hours was framed as the employee ‘paying their dues’, without which they could not hope to progress in the profession. For many, working significantly longer than their contracted hours and receiving nothing in return was so frequent as to be the expectation or norm. Multiple people observed that, if they divided their annual salary by the hours they had worked in the previous year, their hourly rate fell below the minimum wage.

Research recently conducted by the Aotearoa Legal Workers’ Union has confirmed that Minimum Wage Act breaches appear to be rife in the legal profession.<sup>40</sup> As one respondent put it:

*“I met my monthly budget on the 14th this month. I am now nearly at 200% (today is only the 24th), and will be billing 4 x my salary for this month’s work. It is ridiculous that I am not better compensated for the massive amount of hours worked this month, either in time or money.”*

Many participants felt that re-thinking remuneration practises in the profession was the key to achieving meaningful cultural change, particularly around workplace expectations and work-life balance. One of the survey questions asked respondents what could be done to address structural issues in the profession. Open-ended responses were invited, but the authors provided a list of examples. Included within that list were three remuneration-based options: compensating staff for overtime hours; more regular bonus periods; and paying juniors a greater proportion of the hourly rate that they are charged out at to clients.

These examples came from discussions with workers at our workshops. The results of the survey indicate that they had overwhelming support as possible solutions. Of the 346 people who responded to this question, 238 expressed support for one or more of those options, or proposed a different remuneration-based option.<sup>41</sup> The solutions proposed are discussed in more detail below.

40. Aotearoa Legal Workers’ Union *Employment Information Survey* (2019).

41. 14 survey respondents also raised remuneration-based solutions in response to the question, “Do you have any other ideas for changes that are needed in the legal profession?” Those responses have been incorporated into the discussion below.

## Overtime pay

Remuneration for overtime was supported by almost all workshop participants, and was raised by large numbers of survey respondents. As one respondent put it, “[o]vertime pay is a no-brainer, this needs to change immediately”. The two most popular methods suggested for compensating for overtime were: payment per hour worked overtime; or time in lieu for hours worked overtime. The identified benefits of these methods were:

- They compensate for overtime worked on a direct hour-by-hour basis.
- Using the objective measure of overtime hours actually worked ensures fair and equal application of the overtime policy, rather than leaving it at the discretion of the supervising partner.

Many participants expressed the view that paying staff for overtime would be the key to resolving other workplace expectation issues, such as:

- Encouraging more efficient delegation. If staff must be paid for overtime hours, partners or managers will be incentivised to organise their work practices to be in a position to give staff work at the start of the day, rather than leaving an employee to be idle all day and then handing them a large task in the afternoon that they must work into the evening to complete in time for the next day. As one survey participant observed “I often receive urgent work at 5 pm that has been sat on all day. Extremely frustrating”.
- Encouraging managers or partners to consider carefully whether work is truly urgent, or whether it could wait to be completed during normal hours the next day. If there is more work than staff capacity and staff are frequently recording significant overtime hours, that may highlight resourcing issues such as the need to employ more staff.

However, some participants expressed concern that overtime pay may be used as a justification to demand that employees work longer hours.

That could inhibit healthy work-life balance, and would be particularly unsuitable for employees with families. It was suggested that there be caps on the amount of overtime that employees might be expected to work. A difficulty with that approach is setting a cap that reflects different employees’ life circumstances and goals. Some may want to work longer hours to achieve higher pay, whereas others may only want to work overtime rarely. That could be addressed by open lines of communication between employees and supervising partners, so that employees’ workflow could be adjusted accordingly. However, the success of that approach would depend heavily on the management skills and expectations of the manager or partner.

Some participants also expressed concern that remunerating for overtime might be unworkable in firms or teams where work tends to fluctuate between extremes of low and high intensity. Those concerns could be addressed by rewarding overtime in other ways, such as higher overall salaries or shorter bonus periods.

## Higher starting salaries

Starting salaries were a key concern for junior lawyers who participated in the survey. Many participants expressed discontent about the significant gap between their hourly rate and the amount they are charged out at to clients. For many junior lawyers living in expensive cities such as Auckland and Wellington, their starting salary effectively only enables them to live pay cheque to pay cheque. Low starting salaries appear to be the accepted norm for graduate lawyers, with employers setting the bar relatively low whilst claiming to offer salaries that are ‘competitive’ with similar-sized firms. Respondents commented as follows:

*“The gap between billed hours and solicitors’ remuneration needs to close. It is wrong that junior staff are required to work long hours without additional reward when the firm charges for every hour they work.”*

*“The firm should more fairly distribute profits among staff rather than keeping the big carrot for the partners.”*

*“Junior lawyers are hilariously underpaid for the value they bring to firms.”*

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## Pay transparency/auditing

Many feel powerless to raise issues around remuneration with their employer because they lack information about how others are remunerated within their workplaces, and how other lawyers at their level are remunerated in the profession more widely. Greater transparency around pay and remuneration would place people in a better position to negotiate with their employer. As one respondent put it:

*“Employment contracts should fairly reflect the hours that will be worked at large law firms. My contract said something like 8.30 am to 5.30 pm unless reasonabl[y] required to work longer ... That was not a fair reflection of the reality.”*

Survey respondents raised the idea that the Law Society or others should openly publish pay brackets. We note that some information on pay at certain workplaces has been collected by the Aotearoa Legal Workers’ Union.<sup>42</sup>

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## Performance-based pay

Many of those in support of remuneration for overtime also expressed the view that, while overtime hours should be compensated, time billed should not be the only measure of a person’s worth to their employer. Therefore, remuneration should also reflect other non-billable contributions in value, such as attending events, promoting the firm, contributing to overall culture and leadership skill.

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42. Aotearoa Legal Workers’ Union *Employment Information Survey* (2019) at 5.

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# Human resources and procedures for managing workplace issues

Many participants, both at our workshops and in the survey, felt it was crucial that changes take place to how legal workplaces support their staff and manage workplace issues. When we talk about “workplace issues”, we mean everything from preventing and responding to issues such as bullying, sexual harassment, staff retention, over-work, management issues, staff engagement, mental health, personal crises as well as burnout and other issues related to wellness.

Traditionally, in large law firms and in workplaces with in-house counsel, these workplace issues are managed by human resources (HR) or “People and Culture” teams.<sup>43</sup> HR teams occupy a very difficult role trying to make sure that employers’ and employees’ needs are met and that the workplace is complying with its legal obligations. These legal and contractual obligations intersect with very difficult human issues for which judgement calls and superior people skills are required. That HR is difficult to get right is not unique to the legal profession but is a challenge for HR teams everywhere.

Many of our participants expressed disappointment with these teams’ preparedness and effectiveness in dealing with these sorts of issues.<sup>44</sup> As one participant put it, “[w]e need

to redefine the role of HR and make them more robust.” In this section we summarise the concerns raised and the steps participants suggest can be taken to rectify these issues.

Further, in smaller legal workplaces, courts and barristers’ chambers, HR teams and functions are often minimal or non-existent. In these environments, participants highlighted the pressing need to institute adequate mechanisms to support staff and manage complaints and ongoing issues.

We acknowledge there is a disparity in how large legal workplaces are treated compared to their smaller counterparts when it comes to talking about issues of culture change. Often HR teams and processes in large law firms are the focus of solutions and culture change agendas. In our project, we recognise that many of the problems identified and the solutions promoted also focus on these large law firm environments. It is important to recognise, however, that there is no ‘one size fits all’ approach to supporting staff – the problems faced in different sized legal workplaces are unique and deserve tailored responses. Therefore, we have also tried to address, where our participants have identified them, different solutions that might improve a range of legal workplaces to better support their people and manage workplace issues.

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43. We recognise that HR teams typically perform a wide range of functions, many of which are not discussed here. These may include, but are not limited to, performance management, learning and development, recruitment and talent acquisition/retention, career progression and development, advising on employment matters (including employment law) and overseeing disciplinary functions. The focus of this project is on how internal and external mechanisms that deal with complaints, workplace issues and supporting staff can be strengthened and improved.

44. We have endeavored to include as many participant perspectives as possible. Importantly, each of the concerns raised by participants will not necessarily apply to every single HR team in a legal workplace, or every HR staff member.

## Obstacles with current structures

Participants in this project identified a range of issues with the current models of supporting staff and responding to issues that arise.

Some participants felt HR teams were not doing enough, while others recognised that they were simply not adequately equipped or resourced to deal with serious workplace issues such as bullying and harassment. Others identified that, particularly in law firm environments, HR teams can lack independence and might be hamstrung by the need for partnership or leadership approval, which often means they are unwilling or unable to raise serious issues or take meaningful action in response. As one participant put it:

*“It’s difficult to make complaints about senior management in a partnership model. There should be [an] independent HR department, who actually have the ability to do something about it.”*

Several participants raised concerns about not being able to trust HR teams as a result of this structure. In order to mitigate these concerns, some people suggested ideas such as ensuring that HR staff have a seat at the leadership table, giving partners and members of a leadership team HR responsibilities, re-structuring firms to give HR managers and directors more power when dealing with complaints (particularly against partners or senior members of a workplace), and increasing staff awareness about HR’s roles and responsibilities so that they know how HR can, and should, help them.

Many legal workplaces already have written policies to deal with workplace issues and culture which are updated periodically. However, as with other suggestions raised in this report, participants emphasised that it is crucial policies are not simply executed as a “box ticking” exercise without any other steps to shift workplace culture. Not only do the policies need to be regularly and actively promoted to staff, but the policies need to be followed, breaches need to be held to account and HR

teams need to have the power, independence and resources to ensure accountability.

Policies should not only draw clear boundaries as to acceptable and unacceptable behaviour and work practices, they should also clearly identify the process for raising an issue and outline specifically the ways in which the employer can be expected to respond. Participants also observed that policies can be more effective where staff have the opportunity to be involved in their creation and where HR teams ensure they proactively consult with staff before implementing new policies.

Another obstacle under the status quo identified by participants is that, as a general issue, often HR teams or management who are dealing with difficult staff issues are not diverse, or display problematic behaviour themselves. That may impair the HR team or team member’s ability to (a) understand the issue being reported and (b) respond appropriately. In bigger workplaces, diversity within multi-person HR teams can only be a strength. In smaller workplaces, where there are only one or two people responsible for HR matters, cultural competency and an adequate understanding of different staff backgrounds and perspectives is essential. Furthermore, in workplaces of any size, it is important that those who hold HR roles are not immune from scrutiny themselves. These comments are equally relevant to HR’s front-end role of scrutinising applicants, compiling shortlists, conducting interviews, making hiring recommendations, and organising internal training. A lack of understanding of unconscious biases or appreciation of meaningful diversity within the HR team can be damaging to the diversity of a whole organisation.

Concerns were also raised that are particular to workplaces outside the stereotypical large law firm. Participants in some of these smaller workplace environments reported that mechanisms to adequately support staff do not exist, or there are barriers to people wanting to access support. One individual highlighted that in smaller workplaces it is easy for issues to be ignored because the person you may have an issue with is the person responsible for

resolving your concern. In fact, that person may also be your direct boss or supervisor and it is therefore difficult to raise a concern, or feel as if you have been truly heard when you raise an issue. In these workplaces, several participants identified that having external and independent mechanisms for supporting staff was crucial yet often absent. Participants' specific suggestions for what these external and independent mechanisms could include are discussed in detail below.

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## Internal mechanisms for supporting staff and managing workplace issues

Participants identified various mechanisms that could be instituted to strengthen support for staff and manage workplace issues. The survey results were as follows:

- 73% of respondents said legal workplaces need to ensure they have anonymous avenues for reporting complaints. In addition, several participants felt that HR should proactively collect information, including through regular staff surveys, to monitor staff wellbeing, rather than reacting to specific complaints.<sup>45</sup> One individual observed that these anonymous avenues for reporting might not necessarily lead to formal complaints, but may simply exist to provide HR and management with a clearer sense of the general issues and trends arising in the workplace.
  - 62% of respondents favoured performance reviews being conducted on a 360 degree basis, where colleagues review each other's performance, regardless of their seniority. However, a couple of participants also raised concerns about the feasibility of such reviews, and whether junior staff would feel able to honestly share any criticisms they had of their seniors. Participants also suggested that performance reviews
- should highlight any incidents of bullying or inappropriate behaviour, whether that person models good work practices, as well as concerns about workload, hours worked and general wellbeing.
  - 56% of participants reported that it is important for exit interviews to be conducted with staff who are leaving, and for the content of those interviews to be formally fed back to partners or the leadership team. 44% of participants considered that the content from exit interviews should be anonymised and made public. One person suggested the content could be aggregated at the end of each year to add an extra layer of anonymity. Some participants raised that staff who are leaving should be asked whether they want the content of their exit interview to be made public, rather than this being assumed. One individual supported exit interviews, but observed it is equally important that management and HR take action to improve their workplace following issues identified in exit interviews.
  - Almost 50% of participants considered legal workplaces should organise independent counselling for staff when needed. Several individuals highlighted that this is most effective when accessing counselling is anonymous, paid for by the employer, and is actively promoted as an important service that employees should feel comfortable accessing.
  - As well as counselling services, participants also felt HR teams should be offering support to staff members who reach out. Over half of participants felt that once a staff member makes a complaint, HR or another appropriate support person should have weekly catch up sessions with the complainant to assess their well-being and inform them about the process following their complaint. Participants also suggested other ways HR teams can support staff, such

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45. One participant suggested the online platform "TINYpulse", which creates software tools to help employers engage with their staff and measure their engagement/wellbeing. A range of large international corporations, including Microsoft and Nike, currently use this platform. You can find out more [here](#).

as making stress leave available, ensuring confidentiality at all times, ensuring any processes adopted are flexible enough to respond to the needs of the individuals concerned, and implementing stand down periods for anyone accused of inappropriate behaviour.

Some participants considered many of these processes are often already in place and are simply expected core functions of HR teams. However, others felt they are lacking, or more work needs to be done to improve policies and processes. One individual suggested that staff should also be able to provide feedback on the performance of HR teams and management anonymously to ensure that problems are identified and internal mechanisms are fit for purpose.

## External mechanisms

External mechanisms for supporting staff and responding to workplace issues are necessary for a variety of reasons. First and foremost, they can provide an HR function of sorts for workplaces that are too small or lack resources to provide this function internally. Further, external mechanisms can provide a measure of accountability for workplaces that do have HR teams and clear internal processes, but where staff feel they are not fit for purpose.

### Supporting smaller legal workplaces

Many smaller workplaces, such as barristers' chambers and small law firms, do not have a dedicated HR team or the resources to provide consistent or adequate support for staff. Participants in our project regularly highlighted the need for external mechanisms to be developed to support people in these workplaces. Respondents advocated for a range of mechanisms, including:

- 137 survey respondents considered the Law Society needs to develop its capabilities to assist or intervene in smaller workplaces, including by offering a free mediation

service,<sup>46</sup> or the advice of an external HR consultant. Even if the Law Society cannot fund such a service, participants identified that it is important to have external independent professionals available within the Law Society who can respond to inappropriate behaviour and support employers or individuals in managing the situation.

- Many participants promoted external buddy or support systems as essential to supporting staff through external means. We note that a range of these services already exist, such as the Friends Panel run by the Law Society and the various buddy programmes for young lawyers around the country. We also note that Te Hunga Rōia Māori has launched its own tikanga-based version of the Friends Panel, “Ngā Hoa Aroha”. New Zealand Asian Leaders Lawyers also offers a mentoring programme for its members. However, suggestions for these sorts of mechanisms came up often during this project, indicating there is a real desire for more. We note that it would be helpful to consider what groups are currently being left out of these initiatives, such as non-legal staff in legal workplaces and lawyers who do not live in urban centres, and suggest that the Law Society or other organisations should create buddy or support systems specifically for these groups.
- One contributor suggested establishing external contact points for staff to get support, and noted that their firm is seeking to establish support people on a reciprocal basis with another firm. These individuals would be trained and this would ensure there is someone outside of the organisation who can be contacted for advice or support. Several people identified that it is crucial for anyone in a support capacity to receive appropriate training. Again, participants suggested that the Law Society could play a role in this training.

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46. Although we note that a free mediation service is provided by the Ministry of Business, Innovation and Employment for employment issues: <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation/>.



- A few participants highlighted a need for online platforms and mechanisms through which individuals can raise concerns about inappropriate behaviour, or document their engagement at their workplace and overall wellbeing. In particular, the platforms suggested to us included: **Callisto**, which enables individuals to identify perpetrators of inappropriate behaviour and then identify common matches (although this particular piece of software is no longer available); **Vault**, a workplace safety app to check in with staff; **Heelix** (previously Job Vibe), which monitors staff engagement and performance, and allows staff to provide feedback and identify problems in a safe and anonymous way; and **Glassdoor**, as an example of a website where members of the legal community could anonymously rate their workplaces on different aspects (including pay, hours worked, support provided etc).
- Some participants also felt that employers in smaller workplaces, just like other managers, should be required to undertake managerial training and this should be monitored by the Law Society. Ideas such as this are discussed in more detail in the section on Training and Education above.

### **Accountability**

Many participants suggested that there need to be external incentives or accountability mechanisms to ensure legal workplaces are implementing best practices. In this vein, one idea that was repeatedly endorsed was the New Zealand Law Society taking responsibility for auditing legal workplaces or enforcing mandatory reporting obligations on legal employers. Over 297 participants considered an “HR audit” was necessary, under which the Law Society would regularly require workplaces to disclose their policies, overtime hours worked by staff, how many complaints have been made in a given period, how they investigate and respond to complaints, as well as any disciplinary measures taken. This idea is discussed in more detail in the next section.

In terms of other accountability mechanisms, 71% of participants in our survey considered complaints of serious or repetitive misconduct should be raised with the Law Society once brought to the attention of HR or management. 53% of participants believed it should also be mandatory for workplaces to report such misconduct to WorkSafe and/or the Labour Inspectorate.

# Holding the profession to account

## The New Zealand Law Society

Many participants, at both our workshops and in the survey, felt the New Zealand Law Society could be doing more to shift the culture of the legal profession. Although some participants felt NZLS did not need to take any action to respond to the cultural and behavioural issues in our community, these individuals were in the minority. Some participants were angry and frustrated with the lack of action and leadership by NZLS in the wake of the media attention given to stories of sexual assault and harassment at Russell McVeagh. Others simply wanted to see NZLS playing a greater role moving forward in terms of holding individuals and employers to account, as well as supporting our community to model best practice. Respondents commented as follows:

*“The current collective platform (the Law Society) is not working. It has a monopoly but is not acting in our interests.”*

*“NZLS hasn’t really proven itself to be capable of changing people’s behaviour or taking complaints seriously.”*

*“The Law Society’s response to the sexual harassment claims in law firms has been nothing short of disappointing. They’ve failed to take a strong stance on the issue and seem so out of touch with reality. Their safe and conservative approach has changed nothing, as many of those men are still flourishing in the profession.”*

*“This may sound harsh, but the Law Society has a lot of work to do before it earns back the trust*

*of the vast majority of the younger members of the profession.”*

At the outset, we want to acknowledge that since February 2018 NZLS has taken steps to begin addressing the cultural issues in the profession, including:

- issuing the Workplace Environment Survey report;
- forming the Regulatory Working Group, which released its report in December 2018 focusing on what improvements can be made to enable better reporting of harassment in the legal profession;
- forming the Culture Change Taskforce, which organised a Culture Change Symposium in May 2019;
- creating the 0800 Law Care phone line to offer support for people in the legal community to discuss sensitive matters;
- launching the Gender Equality Charter;
- establishing a new national lawyers’ standards committee that is dedicated to specifically responding to complaints of harassment and bullying in the legal profession; and
- delivering a free NZLS CLE webinar on preventing harassment and bullying in the workplace.

Despite these initiatives, the majority of participants felt NZLS needs to do more to prevent and respond to cultural issues. The ideas canvassed were wide ranging and are discussed in detail below. We note the survey was completed before the October 2019

announcement of a review of the structure and function of the Law Society.<sup>47</sup>

## Auditing of legal workplaces

*“Staff long to speak up, but the repercussions of losing their jobs prevent this. This may change, however, if they were approached by the [Law] Society as part of an audit.”*

60% of our survey respondents considered NZLS should conduct audits of legal workplaces about their employment standards and responses to behavioural issues. The idea of audits was also repeatedly raised in our workshops. The purpose behind such an audit would be to have an open, transparent means of holding workplaces to account for preventing and responding to behavioural issues, as well as a way to measure different workplaces against each other. An audit could function both as a source of information for prospective employees, as well as an incentive for employers to proactively confront issues of bullying, harassment, overtime, burnout and stress. As the independent regulator of lawyers, many participants felt it was obvious for NZLS to run an auditing initiative.

In terms of precisely what such an audit would measure, our participants suggested a range of ideas:

- The content and adequacy of policies that address bullying, sexual harassment and overtime.
- Employers’ compliance with those policies.
- Understanding how decisions in relation to organisational change within a workplace are made and who is involved in making those decisions.
- Diversity of staff based on a range of metrics, including ethnicity, gender and sexual orientation as well as how many staff fulfil each role in the workplace.
- Tracking how many complaints were made by employees in a workplace in a given year, the subject matter that these related

to (sexual harassment, bullying, overwork etc), how these were resolved and what the outcomes or consequences were.

- Creating a register of actual hours (both billable and non-billable) worked by all staff (legal and non-legal), salaries of staff and salary progression to track issues of overtime and measure compliance with the Minimum Wage Act 1983.
- Staff engagement and wellbeing, e.g., by requiring workplaces to conduct annual surveys of their staff for NZLS to analyse the data.
- Measuring retention rates of staff, particularly graduates and junior lawyers, and identifying why these staff have left.

One individual highlighted that if an auditing scheme is to be introduced, NZLS must have independent assessors to support legal workplaces in complying with it. While larger firms may already have the resources to track many of the measures suggested above, smaller workplaces will not. Others made reference to the fact that legal staff will already be recording their time and NZLS should be able to access this existing data to measure hours worked and overtime, rather than needing to reinvent the wheel.

A couple of participants were interested in having the equivalent of the “Rainbow Tick” for healthy workplace culture. They suggested that this would provide a public platform for prospective employees and law students to identify those workplaces that offer a healthy and safe environment. However, others were concerned that the Rainbow Tick is not an effective scheme, it simply is a “tick box” exercise that has not resulted in meaningful change for LGBTIQ+ staff, and were hesitant about replicating this in legal workplaces for such a complex issue.

In this vein, some participants raised that it was crucial any auditing scheme involved a two-way reporting system between workplaces and NZLS, so that any compliance is not

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47. “NZ Law Society to Commission comprehensive review” (23 October 2019) New Zealand Law Society <[lawsociety.org.nz](http://lawsociety.org.nz)>.

tokenistic. Nevertheless, there appeared to be consensus among many participants that a public and open measure for auditing legal workplaces would incentivise legal employers to implement meaningful change and provide a method to hold them to account for ensuring a healthy workplace.

### **Disciplinary and regulatory action**

*“Bullies need to be outed.”*

As the regulator of the profession, the majority of participants in this project discussed the need for the Law Society to expand and develop its role in disciplinary and regulatory matters. As noted, the Law Society’s Working Group has already produced a report that discusses these issues at length and provides comprehensive recommendations for improving the regulatory functions of NZLS.<sup>48</sup> We do not wish to reproduce their recommendations here and we understand the Law Society has already begun implementing some of these recommendations. However, here, we outline the regulatory issues that participants in this project highlighted as important to them. We do so to encourage further reflection about the status quo and to identify common areas in which many members of the community feel passionate about seeing change.

As an introductory comment, it is important to acknowledge, as advocated for by Te Hunga Rōia Māori o Aotearoa and the authors agreeing, that greater cultural nuance in the Law Society’s systems and processes are not only important for properly representing the diverse spectrum of our profession, but are likely to also be of benefit to all members of the profession. The inclusion of tikanga Māori and Māori values such as manaakitanga (caring for others), aroha (love) and awhina (support) help with healing and restoring relationships and mana. In addition to the suggestions below, tikanga-led dispute resolution processes should be made available as well as the NZLS formal process for discipline.

Many participants felt that the current scheme for inquiring into and responding to

bad conduct was not fit for purpose. 63% of our survey respondents felt the complaints process needs to be more transparent and open. Although we recognise that there are confidentiality limitations in disciplinary cases until they have been referred to the Lawyers and Conveyancers Disciplinary Tribunal,<sup>49</sup> many participants felt the complaints process was a mystery, processes and outcomes were unknown, and this discourages others from coming forward.

Some participants suggested that NZLS could do more to publicise how its complaints process operates, who is involved and how it can be accessed when needed, particularly for those who are new to the profession. Some felt that NZLS also needs to actively promote what the standards of misconduct and unsatisfactory conduct mean, or as one individual put it, “support lawyers to understand what appropriate standards of behaviour are and avoid the problem in the first place”. As part of this marketing, one participant felt it was important that members of the community were told making a complaint would not inhibit their success in the profession – complaints should be encouraged as necessary when an individual sees or experiences bad conduct.

In terms of the complaints process itself, some participants identified concerns with the delays in progressing a complaint. Not only could steps be taken to improve the efficiency of the process, where possible, but more regular support could be given to complainants, to ensure they are regularly updated about the progress of their case and given support when needed.

Some participants at our workshops highlighted that the adversarial approach to complaints does not always work for victims and there should be a range of options available to address complaints. One individual suggested that any time a standards committee reviews a complaint of sexual assault or harassment it should be assisted by an adviser that has

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48. New Zealand Law Society *Report of the New Zealand Law Society Working Group* (December 2018).

49. We recognise this is a simplistic explanation of the current status quo when it comes to confidentiality. For more detail, refer to the *Report of the New Zealand Law Society Working Group*, above n 48, at 83-84.

specific experience and training dealing with these types of complaints.

Another participant identified that disciplinary committees lack prestige and clout because they are currently made up of lawyers who volunteer. They suggested that having a paid, full-time board of regulators who run disciplinary committees would demonstrate that this function is valued by the legal community.

One participant, who has previously made a formal complaint to NZLS about sexually inappropriate behaviour of a peer, said they were woefully disappointed with the complaints process. This individual felt that having lawyers regulate themselves only perpetuated the “old boys club” nature of the profession and suggested that the legal community would be better served by an independent regulator, made up largely of non-lawyers, to respond to complaints about behaviour within the profession. The idea of an independent body to respond to complaints about bullying and sexual harassment was also discussed in detail by another individual. She proposed creating a National Bullying and Sexual Harassment Complaints Investigation in the Legal Profession Unit and saw it operating as follows:

- The unit would be completely independent from the Law Society. The individuals involved would be employed by the Crown to work in this centre. They would be specially trained in the area and be vetted.
- Where there is a “mixed claim” e.g., one that contains aspects of bullying and sexual harassment and other aspects (say a complaint of theft from a trust account), the complaint would be split into two parts with each part going to their respective places for investigation (NZLS and the national unit).
- All complaints that concern bullying and sexual harassment could be made directly into this unit by the complainant themselves or sent there by NZLS.
- It would be free of charge to make a complaint to this service.
- The national investigation unit would be run in accordance with best practice guidelines,

which would most likely be a variance of the WorkSafe best practice guidelines.

- There would be a set timeframe, established in the guidelines for (amongst other matters):
  - appointing an investigator from the national panel – this investigator would be taken from a different place of practice (e.g., a complaint about a Wellington practitioner is not determined by a person who practises in Wellington) so that they are neutral and seen to be impartial;
  - appointing a support person for the complainant (in that person’s geographical area);
  - appointing a support person for the accused (in that person’s geographical area);
  - identifying any evidence that needs to be preserved;
  - summoning (which they would have the power to do) any witnesses and requiring them to produce documentation etc;
  - identifying whether the complaint was a compulsory or voluntary report under the Rules of Conduct and Client Care for lawyers; and
  - issuing an order that requires neither party to make media comment about each other or any aspects that concern the matters being complained about until further notice (this is to avoid intimidation).
- The investigator is able to make findings of fact and to make recommendations to a national director of the unit, who then has the power to make a determination on penalty (subject to the best practice guidelines on permitting submissions, and natural justice etc).
- There should be a presumption that all decisions are public, except on the standard grounds e.g., protecting the identity of the complainant.

- All decisions of the national unit and director are appealable as of right to the High Court.
- The national unit is paid for out of the levy on all practitioners, but the Law Society should have a reduced levy in the equivalent amount for their Standards Committee work.

Several participants in this project also raised the idea of an ombudsperson as a means of offering external support to individuals who choose not to make a formal complaint to NZLS. This service would neither represent the employer nor the employee. It would provide support to people to work through any bullying or harassment issues they face. It would not necessarily involve contact with the perpetrator, but the ombudsperson could also support any contact or mediation if the complainant wanted this. This service could also provide a pathway for complainants where the Law Society does not have the power to take action, including for non-lawyers in legal workplaces. The ombudsperson could also provide anonymised reporting to NZLS on the prevalence of individuals accessing it, and where common themes and issues are repeatedly arising.

Many participants highlighted concerns that the disciplinary process currently lacks “teeth” and is failing to adequately hold perpetrators to account who are found guilty of misconduct or unsatisfactory conduct. One individual stated that there are already adequate regulations in place for NZLS to hold perpetrators to account, they just are not being used. A range of possible sanctions were proposed, including:

- revoking practising certificates more readily when serious allegations are proven;
- naming and shaming to ensure accountability where complaints are proven;
- perpetrators should be financially accountable for their actions, and should be required to pay compensation to victims;
- lawyers lose their ability to ever practice on their own account to reflect the fact that leadership carries responsibility; and
- where a finding of misconduct or unsatisfactory conduct has been made, the

perpetrator should be required to attend supervised sessions to address ethical or personal issues and supported to improve their behaviour.

Many participants also highlighted that legal employers were crucial to ensuring accountability in the profession and it should be mandatory for employers to report serious allegations of bullying and harassment to NZLS. One individual suggested employers should be fined for failing to disclose known incidents of bad behaviour to NZLS to ensure they are equally accountable. Another person commented that we will not see change until there are consequences for abusive behaviour, both for perpetrators and their employers. Others suggested it was vital NZLS worked alongside employers and HR teams to manage problematic behaviour and that clear communication lines and processes needed to be established to foster this.

Participants repeatedly raised issues with the regulatory standard of “fit and proper” and how that is measured when it comes to admission to the bar and renewing practising certificates. 61% of our survey respondents considered the Law Society needed a more transparent process and set of criteria around how it assesses whether an individual is “fit and proper”. Again, many felt the Law Society needs to do more to promote what this standard means as well as how it is actually measured and applied.

When it comes to renewing practising certificates, the standard should be laid out in considerable detail, as some participants felt it currently operates as an annual tick box where individuals can self-select without understanding what it actually means to be a fit and proper individual.

Some suggested it was especially important to capture and identify individuals who have been the subject of previous complaints when renewing their practising certificates, regardless of whether or not they have been subject to formal disciplinary action. Although such individuals may still meet the fit and proper standard, some participants felt it was crucial that anyone in this category should be subject to close scrutiny and monitoring when renewing their practising certificates.

One person highlighted that while their mental health issues received a high degree of scrutiny before they could be admitted to the bar, they felt the same standard was not being applied to perpetrators of harassment and bullying.

### **Training and CPD**

As discussed in the section on Training and Education above, many participants felt NZLS has a role to play in training and educating the legal community in relation to behaviour and creating healthy workplaces. 67% of our survey respondents said NZLS should be providing training resources for legal workplaces about unconscious bias, sexual harassment and bullying.

Some participants felt NZLS should be providing best practice advice to individuals so that the standards are clear for everyone in the profession about: what a healthy workplace looks like; how to make a complaint and receive support for issues of bullying and harassment; and how members of the legal profession can model healthy and safe behaviour. By building in requirements for lawyers to attend such training as part of their Continuing Professional Development, NZLS could play a key leadership role in shifting the culture of our profession by making training mandatory and offering resources for employers to use. Another participant felt that NZLS should play a role in training clients so that they too are on the same page about what standards are expected in our workplaces and in the law.

### **Other proposals**

Our participants proposed a wide range of other steps that NZLS could be taking, including:

- Forming closer and more robust relationships with organisations such as Te Hunga Rōia Māori o Aotearoa and the Pacific Lawyers Association, who are currently often considered as an afterthought, and consulted late if at all.
- Making sure NZLS has an increased presence at Law School so that junior lawyers are aware of NZLS, what they do and the services available. One participant noted that

there is barely any information available on the NZLS website that is specific to students; the complaints helpline exists under the section titled “For Lawyers” and the website does not feel like it offers support to students.

- Ensuring NZLS is more open to change and confronts the fact that the profession is, in areas, sexist, elitist, mono-cultural, racist and exclusionary. Some participants felt NZLS could better use the platforms it has, such as LawTalk, to model what inclusivity and diversity look like.
- NZLS should provide clear leadership for the profession about what best practice looks like and support employers and lawyers to build healthy and strong cultures in their workplaces.
- Provide a service where lawyers can anonymously report complaints and have independent experts to support and advise anyone who reports.
- Some participants suggested that NZLS could conduct research into: alternative models of practising law; structuring legal workplaces; review of the partnership model; flexible working; and how to create more diverse and inclusive hiring practices.
- Ensure that NZLS staff and representatives on committees and boards are diverse themselves.
- Review the NZLS Constitution and replace all appointments to Law Society positions within Standards Committees and Disciplinary Tribunals with elections, where all members of the profession get to vote on everyone who puts themselves forward.
- Continue to provide support networks such as friends panels and increase awareness about these networks.
- Keep metrics about the cost that unhealthy workplace cultures have on business so employers can place a value on changing current practice.
- Work collaboratively with WorkSafe and the Labour Inspectorate to investigate breaches



of the Minimum Wage Act and uphold minimum employment standards.

- Provide an opportunity for people to do exit interviews when they cease to renew their practising certificates and leave the profession, in order to understand why that person has left the profession. The Law Society could then also provide support for those who are choosing to transition out of the law.
- Law firms could self-report on wellbeing, gender equality, and diversity – almost like a restaurant grading of A to F. Relatedly, firms who are diverse and have a great culture ought to be rewarded for this, for example, in various listings or rankings of lawyers and at the New Zealand Law Awards.

## Union

The concept of a union for lawyers was frequently raised in workshops and received strong support in survey responses. Just over 50% of survey participants supported a union as a method for addressing the structural issues they considered to be important, or as

a way to achieve change generally. Participants explained that a union could be a good way to address power imbalance and information asymmetry, and could be a good place to go to voice concerns with reduced fear of repercussions. Respondents said that a union would be “a really good idea”, “very necessary”, “great”, “fantastic”, “the biggest priority”, “hugely beneficial” and “needed to deal with structural unfairness”.

Some participants did not think a union would assist or work, raising the concern that lawyers would not want to be seen to be part of a union, the belief that unions are for blue and not white collar workers, and that lawyers are competitive and not collaborative by nature.

The Aotearoa Legal Workers’ Union (ALWU) launched in May 2019 and gained over 400 members in its first month. At the date of publication of this report, ALWU has reached 700 members. Membership is open to both lawyers and anyone who is employed in a legal workplace. There is also an option for student membership. In its first campaign, ALWU is tackling legal employers’ compliance with the Minimum Wage Act 1948. More information about ALWU can be found [here](#).

# Clients

Clients, as the drivers of demand, have a critical role to play in shaping the experiences of people associated with the legal profession. It is important not to over-state this role, however. The machinations behind the production of a piece of legal work product are mostly invisible to clients, as one participant noted on our website: “[i]n my experience clients are far more understanding and supportive of these issues than fellow practitioners or judges tend to be”.

Clients often do not see what goes on between the issuing of their instruction and the presentation of the work. Moreover, they might (sometimes legitimately) feel that the fees they are paying merit their high expectations. They might even be used as a veil or excuse for putting profit over people. As one client-respondent put it, “Law firms blame clients and client demands! Partners pretend clients are demanding stuff on tight deadlines to keep productivity up (I should know, I’m a client!) Ask the clients!”

In other cases, clients are simply difficult or even abusive, and lawyers who put their staff first will be financially penalised for having principles – because no doubt a lawyer down the road will accept the instruction (“Yes, clients can be d\*\*\*\* who cause a negative atmosphere at times, but this is the nature of the job.”) Quite a few respondents described instances of clients behaving badly by harassing, discriminating or bullying staff. Racism and sexism by clients were specifically noted by some respondents.

Ultimately, all people associated with the legal profession deserve to feel safe and respected. As one respondent put it “[o]ur people must come before our clients.”

This section deals with participant suggestions about how to manage clients so as to keep staff safe, and explores what clients can do to foster a positive working environment for their lawyers.

## Managing clients

A number of survey respondents commented on the unrealistic demands of clients both in terms of deadlines and in terms of cost. Quite often, this work was not genuinely urgent and the short deadline was arbitrary. This can be a knowledge gap issue – clients are made to believe that their expectations are reasonable because lawyers enable their unrealistic expectations. Appropriate boundaries are then not set by lawyers.

There is also an interrelationship with fees. As one respondent put it, “if [clients] pay a lot of \$ they expect work when they want it. ... I would if I paid a partner \$800 an hour”. On the one hand, some lawyers’ fees are objectively high, seem unreasonable, and are not actually worth the service provided. On the other hand, some lawyers produce outstanding work, get fantastic results efficiently, or genuinely deal with complex subject-matter. The following are ideas from participants about how legal workplaces can manage client demands so as to improve the experiences of their people.

### Fees

- Fixed fees for some work.
- Urgency fees for work that genuinely needs to be turned around quickly.

- Higher fees for work that needs to be completed out of usual office hours.
- Commensurate sharing of any higher fees with the staff who are tasked with completing the work.
- Where clients take issue with junior lawyers participating in aspects of the file due to cost, that lawyer's professional development is hindered. Firms should let juniors join on a non-billable basis where possible.

### Setting expectations

- In the letter of engagement, the following matters could be covered:
  - working hours and availability, including a request not to be contacted out of hours unless there is urgency, in which case a premium will be charged.
  - educating the client about how to get the best result from their lawyers: being proactive about instructions and giving ample time for completion of work.
- Expectations should also be outlined in initial meetings and conversations, covering, for example, detail about the specific tasks staff will need to undertake and how long they take.

### Training and systems for the effective management of client demands

- Systems for prompting clients about instructions that you can anticipate so as to front-foot any potential future work and better manage your own workload.
- Communication training (or effective communication modelling and mentoring by senior lawyers, such as by including juniors in email chains and meetings) to manage expectations e.g., "we will get it to you tomorrow if needed but it will be of a better standard if we have two more days"; or "I have [XYZ] plans this evening

that I would need to cancel. Can I get this to you tomorrow?"

- Job sharing where two lawyers are responsible for a file so if one is not there another can take over.
- Self-regulation with firms agreeing on baseline ethical employment standards and not allowing competition for clients to undermine those standards.

### Dealing with poor conduct by clients

- The Rules of Conduct and Client Care 2008 do not specifically address how a lawyer is supposed to deal with a prospective or existing client who behaves badly and/or makes a lawyer or their staff feel unsafe. The Rules could be amended so as to make clearer the circumstances under which an instruction could be refused or a retainer terminated e.g., due to harassment, bullying or discrimination, or other conduct that makes a lawyer feel unsafe. It would need to be made clear to prospective or existing clients that their instruction might be refused or retainer terminated should they behave abusively towards a lawyer. The terms of engagement would be a good place to spell this out.
- Juniors should not be used as a human shield against abusive clients. However, juniors also need to develop client management skills and this should be supported with appropriate training.
- Senior lawyers need to be willing to have difficult conversations with clients about their conduct.
- Senior lawyers must resist discriminatory conduct by clients (e.g., requesting reassignment of staff that is based on gender or race) and must make efforts to show respect, support and trust towards their staff who might fall prey to the unconscious biases of clients.

- Senior staff need to listen and act if concerns are brought to their attention by junior staff e.g., temporarily removing a junior from a file with an abusive client and/or not requiring only one person to bear the brunt of dealing with such clients.

## Proactive behaviour by clients

Not all clients can be made (or even encouraged) to behave well or support proactive firms. Moreover, some participants made the point that managing and changing the culture of the legal profession is a burden that should not fall on clients. Nevertheless, some suggestions were offered by respondents for how clients who have their own diversity, inclusion and culture targets might help. Moreover, some clients are in-house lawyers: these clients actually do come within the Law Society's purview and additional requirements can be put on them around workplace conduct of the external lawyers they engage. The following were offered as concrete steps that can be taken by clients:

- Creating a Conscious Clients Charter, and signing up to it, as well as signing up to any existing charters such as the Gender Equitable Engagement and Instruction Policy.<sup>50</sup>
- Clients can conduct due diligence on the culture of legal workplaces and shift work away from legal workplaces with a negative culture.
- Be more realistic about timing expectations and understand that good workplace culture equals better work product.
- Have inclusive networking events that people of all backgrounds can enjoy – and during school hours.
- Drop firms or lawyers who are known to have bullying or harassment issues.

- Large clients who have panels of lawyers can impose criteria or quotas relating to diversity, equal pay, fair working hours, appropriate internal procedures around dealing with misconduct etc.
- Clients can speak out to their lawyers e.g., expressing concern to senior lawyers when receiving communications from junior staff at unreasonable hours.
- Direct work to women within firms to assist with their promotion prospects, such as requiring lawyers to have 50% of billable hours done by women.
- The government, as a major client, can use its purchasing power to secure change. The government contract process should be extended to take into account factors beyond cost including measures of diversity and inclusivity.
- Committing to briefing out external legal work equally among the panel and publishing data to prove it. This would reassure at-capacity external legal teams that they could say no to work without having a pipeline of future work cut off.
- One participant thought it was unfortunate that government departments appear not to have reviewed their contracts with law firms who have demonstrably unsafe working environments.

50. <https://www.lawsociety.org.nz/law-society-services/women-in-the-legal-profession/gender-equitable-engagement-and-instruction-policy>.

# Appendix

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SURVEY QUESTIONS 63

# Survey questions

## Question 1

What age group best describes you?

Select from:

- Under 25
- 25-29
- 30-39
- 40-49
- 50-59
- 60-69
- 70+

## Question 2

What is your gender identity? [free form]

## Question 3

What is your ethnicity? [free form]

## Question 4

Which of these descriptions best describes your current role? Select from:

- Law student (undergraduate or postgraduate)
- Non-legal staff in a legal workplace
- Law clerk, judges' clerk or recent graduate
- Employee in law firm
- Employee in-house counsel
- Partner
- Director
- In-house lawyer in charge of staff
- Barrister sole
- Employed barrister
- Other (please specify) [free form]

## Question 5

Which region are you based in? [free form]

## Question 6

If applicable, how many years PQE do you have? [free form]

## Question 7

If you are a young lawyer or recent graduate, what do you see as being the biggest barriers to your success? Select as many as you like from:

- Job-related stress
- Working long hours without fair recognition or remuneration
- Pay and remuneration
- Lack of support in the workplace
- Lack of opportunities to progress or be promoted
- Competitiveness amongst colleagues
- Workplace sexual harassment or bullying
- Lack of support outside the workplace and with peers
- Other (please specify) [free form]
- Not applicable to me

## Question 8

If you are non-legal staff in a legal workplace, what do you see as being the biggest barriers to your success? Select as many as you like from:

- Not being treated equally as compared with legal staff
- Being bullied or belittled by legal staff

- The seating arrangements of my workplace separate legal and non-legal staff
- I am not included in social activities with legal staff
- Other (please specify) [free form]
- Not applicable to me

### Question 9

Please rank in order, 1 being most important, which of the below structural issues you think need to be addressed in law firms:

- Pay disparity between senior and junior staff
- Diversity of staff
- Ability to work flexibly without negative consequences
- Ensuring equal parental leave for all staff
- Partnership model
- Profit focus / the primary purpose of lawyers being to bill the most hours
- All senior leadership staff are lawyers
- Lack of remuneration for overtime work

### Question 10

What do you think could be done to address the structural issues you consider important? (For example: moving away from the partnership model, having a lawyers' union, strengthening the Law Society's ability to regulate or assist, having a junior lawyer and non-legal staff member on the management board, moving away from the 9am-5pm desk-based model and utilising technology for remote working, paying over-time, more regular bonus periods, allowing junior lawyers to claim back more of their hourly rate) [free form]

### Question 11

Which of the below qualities do you think your supervising partner, manager or boss displays? Select as many as you like from:

- A good lawyer
- Smart
- You feel comfortable approaching them to ask for help

- Cares about my welfare and learning
- Good communication skills
- Provides feedback
- Supportive of me when I am facing personal difficulties
- A good people manager
- Does not provide feedback
- Does not respect my time (e.g., frequently gives me work at 5pm that could have been given to me earlier)
- Never explains my work clearly
- Asks me to do work that is unrelated to my job (e.g., personal tasks)
- Yells at me when I make a mistake
- Other (please specify) [free form]

### Question 12

Which of the below qualities do you think senior staff should be assessed on before being considered for promotion? Select as many as you like from:

- Good communication skills
- You feel comfortable approaching them to ask for help
- A good people manager
- Cares about my welfare and learning
- Supportive of me when I am facing personal difficulties
- A good lawyer
- Smart
- Provides feedback
- Respects my time
- Other (please specify) [free form]

### Question 13

How do you think promotion into leadership roles should be assessed? Select as many as you like from:

- Purely by reference to ability as a lawyer / fee earning ability

- Based on leadership and management skills
- After sufficient due diligence has been conducted regarding whether the person has bullied, harassed or abused people in the past
- Other (please specify) [free form]

#### Question 14

What are some of the things that leaders can do to 'lead from the top'? (For example: going home at a reasonable time, flexible working, making positive comments about work/life balance and having diverse interests, encouraging diverse interests through giving you the time and space to take them up. Please be specific if you have examples that have worked for you) [free form]

#### Question 15

Please rank in order, 1 being most important, which of the following areas should have mandatory training for lawyers on unconscious bias, sexual harassment, bullying and how to combat these behaviours?

- Before being promoted to a leadership position
- Every year for all staff
- Requirements as part of regular CPD (continuing professional development) hours
- When doing the Stepping Up course for partners or those who want to become barristers sole
- Training of graduates entering law firms or legal workplaces
- While undertaking Professionals study
- Ethics papers at Law School, or as part of general more practical training during Law School

#### Question 16

What do you think HR teams could be doing better to support staff? Select as many as you like from:

- Ensure there are anonymous avenues for reporting complaints
- Performance reviews should be done on

a 360 basis, i.e. my colleagues review my performance and equally I review theirs, regardless of seniority

- Exit interviews where the content is then fed back to partners / senior staff
- Organising independent counselling for staff when needed
- Prioritising supporting staff over recruitment of staff
- Exit interview where content is anonymised but made public
- HR should be external / independent from the firm (remuneration not linked to how many people stay / don't leave)
- Other (please specify) [free form]

#### Question 17

If your legal workplace does not have an HR department, what is the best way to deal with workplace/staff issues? Select as many as you like from:

- Proactive engagement by the partners and self-education e.g., regular training, partnership meetings focused just on staff management and wellbeing, regular catch ups with staff etc
- Strengthen the Law Society's capabilities of being able to assist or intervene (e.g., offering a free mediation service, or the advice of a mediator or HR person)
- Have a designated person senior or junior representative to discuss in the first instance
- A lawyers' union
- Other (please specify) [free form]

#### Question 18

How do you think legal workplaces could deal better when complaints are made about staff? Select as many as you like from:

- Raise complaints of serious or repetitive misconduct with the New Zealand Law Society
- Identify clearly and publicly what processes will be followed once a complaint is made

- Mandatory reporting of serious or repetitive misconduct to WorkSafe and/or the Labour Inspectorate
- Have independent counselling for all staff (as many sessions as needed)
- Have weekly catch ups with the person who has made the complaint to assess their well-being and inform them about the process following their complaint
- Other (please specify) [free form]

### Question 19

What do you think the New Zealand Law Society could be doing to positively change the culture of the profession? Select as many as you like from:

- Provide training resources for legal workplaces about unconscious bias, sexual harassment and bullying
- Have a more transparent and open process for inquiring into misconduct
- Have a more transparent process about how “fit and proper” is assessed, especially for those who have been subject to complaints
- Conduct audits of legal workplaces about their employment standards, such as policies in place, assessing complaints made about sexual harassment or bullying, what was done to resolve complaints
- Review sanctions in place for findings of misconduct and ensure there is consistency among different categories of misconduct
- Keep a register of hours worked by legal employees to assess average hours
- Keep metrics on the cost of retention to legal workplaces
- Other (please specify) [free form]

### Question 20

Do you think a union for lawyers is a good idea? Select one from:

- Yes
- No
- Other (please specify) [free form]

### Question 21

Do you think it is a good idea to require law firms to undergo a regular ‘HR’ audit? This could cover, for example, harassment and bullying policies, handling of complaints about staff, disciplinary procedures, etc. Select one from:

- Yes
- No
- Other (please specify) [free form]

### Question 22

Do you have any specific examples of technology that have helped foster a positive work culture such as by enabling flexible working / reducing pressure, or others? [free form]

### Question 23

Do you have any specific examples about how clients can help or hinder positive culture, and what legal workplaces can do about it? [free form]

### Question 24

Do you have any other ideas for changes that are needed in the legal profession (no idea is too big or too small!) [free form]

### Question 25

Do you have any final comments you would like to share? [free form]



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