

**Regulating Lawyers in
Aotearoa New Zealand**

**Te Pae Whiritahi i te Korowai
Rato Ture o Aotearoa**

'Fit for purpose regulation: lessons from reviews'

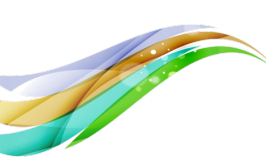
Prof Ron Paterson,
University of Auckland

*Professional Standards Forum,
30 March 2023*



Common themes in reviews of the regulation of professions & the work of PSCs

- Prioritising the interests of consumers over the interests of the members of the regulated profession
- Promoting professionalism and the improvement of professional standards
- Maintaining public confidence in a profession
- Ensuring appropriate accountability of professionals via a complaints system that is independent, fair, accessible, efficient and effective



What is 'fit-for-purpose' regulation?



Regulators need to maintain public trust & confidence in the face of changing public expectations



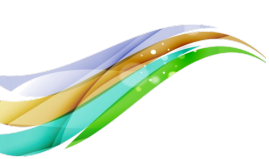
Old tools may no longer meet community expectations

Independent review of the use of chaperones to protect patients in Australia

Commissioned by the Medical Board of Australia and the Australian Health Practitioner Regulation Agency

Report by Professor Ron Paterson

February 2017



Professionalism and regulation – seeking balance

What makes a good doctor? Why are there bad doctors out there still practising? And how can we protect patients, increase trust and improve medical care?

In his decade serving as New Zealand's Health and Disability Commissioner, Ron Paterson listened to thousands of stories from patients and doctors – accounts of outstanding medical care as well as of negligence, incompetence and distrust. In this book, he draws on those stories to identify the key competencies of a good doctor, the ways in which medical care goes wrong and the roadblocks to ensuring that every licensed doctor is a good doctor.

Paterson argues that it is possible to improve patient care: by lifting the veils of secrecy and better informing patients, by establishing more effective ways of checking doctors' competence and by ensuring that medical watchdogs protect the public. *The Good Doctor* is a powerful prescription for change.

With law degrees from the University of Auckland and Oxford University, Ron Paterson is Professor of Health Law and Policy at the University of Auckland. He was Deputy Director-General, Ministry of Health in 1999–2000, and the Health and Disability Commissioner from 2000 to 2010. He is co-editor of the textbook *Medical Law in New Zealand* (2006). Paterson researched and wrote *The Good Doctor* during his time as New Zealand Law Foundation International Research Fellow.

COVER DESIGN: JASON GABBERT

ISBN 978-1-86940-576-2



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THE GOOD DOCTOR

RON PATERSON

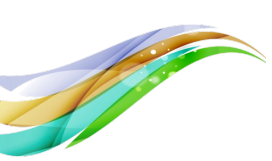


THE GOOD DOCTOR

WHAT PATIENTS WANT

RON PATERSON

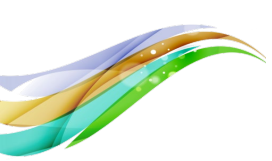




Why did NZ Law Society initiate review of legal services regulatory framework?



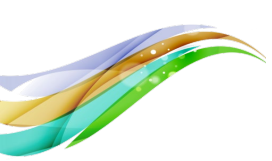
- concerns about sexual harassment, bullying and poor mental health in the NZ legal profession
- delays and lack of transparency in complaints system
- reforms of regulatory models for lawyers internationally and in other NZ professions
- changing expectations re cultural competence in diverse population
- how to acknowledge Te Tiriti and biculturalism in statutory framework?
- how to promote innovation and competition in delivery of legal services?



Wide terms of reference for NZ review



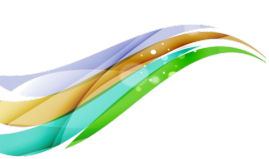
1. whether the Law Society's regulatory and representative functions should be separated
2. how unacceptable conduct is prevented and addressed
3. how complaints are made and responded to
4. which legal services are regulated
5. optimal organisational and governance arrangements for the Law Society
6. the role Te Tiriti should play in the statutory framework and regulator governance
7. how inclusion and diversity should be expressed in the regulatory framework



Review process



- Independent steering group consulted profession on Terms of Reference and appointed panel
- Our task was to identify changes needed for the fit-for-purpose regulation and representation of lawyers in 21st century
- Discussion document June 2022
- Consultation from June-August with the profession, consumer groups and policy makers
 - 1,308 survey responses
 - 183 email submissions
 - 60+ meetings with stakeholders
- Meetings with regulators and experts in UK, Ireland, Australia and Canada



Is the statutory framework fit for purpose?

Version
as at 28 October 2021



Lawyers and Conveyancers Act 2006

Public Act 2006 No 1
Date of assent 20 March 2006
Commencement see section 2

Contents

	Page
1 Title	15
2 Commencement	15
Part 1	
Preliminary provisions	
3 Purposes	15
4 Fundamental obligations of lawyers	16
5 Fundamental obligations of conveyancing practitioners	16
6 Interpretation	16
7 Misconduct defined in relation to lawyer and incorporated law firm	28
8 Misconduct defined in relation to conveyancing practitioner and incorporated conveyancing firm	30
9 Misconduct defined in relation to provision of regulated services by employees	31
10 Exceptions to section 9	33
11 Misconduct defined in relation to employees who are not practitioners	35

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

The current 2006 Act:

- does not set regulatory objectives
- is silent on Te Tiriti
- focuses on protecting titles, rather than the risk to consumers
- restricts corporate models
- focuses regulation on individuals, not entities
- sets a prescriptive model for handling complaints



Key recommendation: a new independent regulator

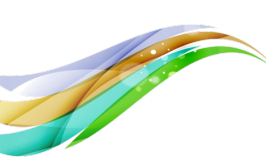
- The Law Society's dual functions – to lawyers and the public – are squarely in conflict:
 - trust in the Law Society is eroded
 - regulatory efficiency and effectiveness is undermined
 - the Law Society is constrained in its ability to represent the interests of lawyers effectively
- International trend towards independent regulation
- Cost-benefit analysis highlights the case for independent regulation
- Board of 8 appointed for competence: 4 public members, 4 lawyer members, Chair a public member – with appointment process to protect independence and rule of law
- Important ongoing role for the Law Society as the national representative body for lawyers



A new Act, with new statutory objectives and obligations



- A new overarching clause: those exercising powers/functions must give effect to the principles of Te Tiriti o Waitangi
- Regulatory objectives set out in legislation. The primary objective for the regulator to protect and promote the public interest – with 5 subsidiary objectives
- Preserve but update lawyers' fundamental obligations



Addressing cultural challenges



- Significant diversity issues remain, as do concerns about culture and conduct.
- Regulation has limited role in changing culture, but more can be done to build on work to date
- Our recommendations include
 - new regulatory objectives, Te Tiriti clause, diversity in Board of new regulator, entity regulation, freelance lawyer (flexible working)
 - remove regulatory barriers to participation and progression
 - improved transparency through firm-level reporting requirements

Tailoring the scope of legal services regulation



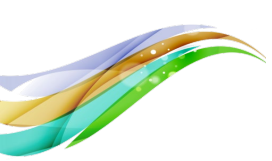
- Regulation should not be extended to non-lawyers
- A new 'freelance lawyer' model should be introduced
- Employed lawyers should be permitted to provide pro bono services
- New business arrangements should be permitted
- Law firms should be directly regulated



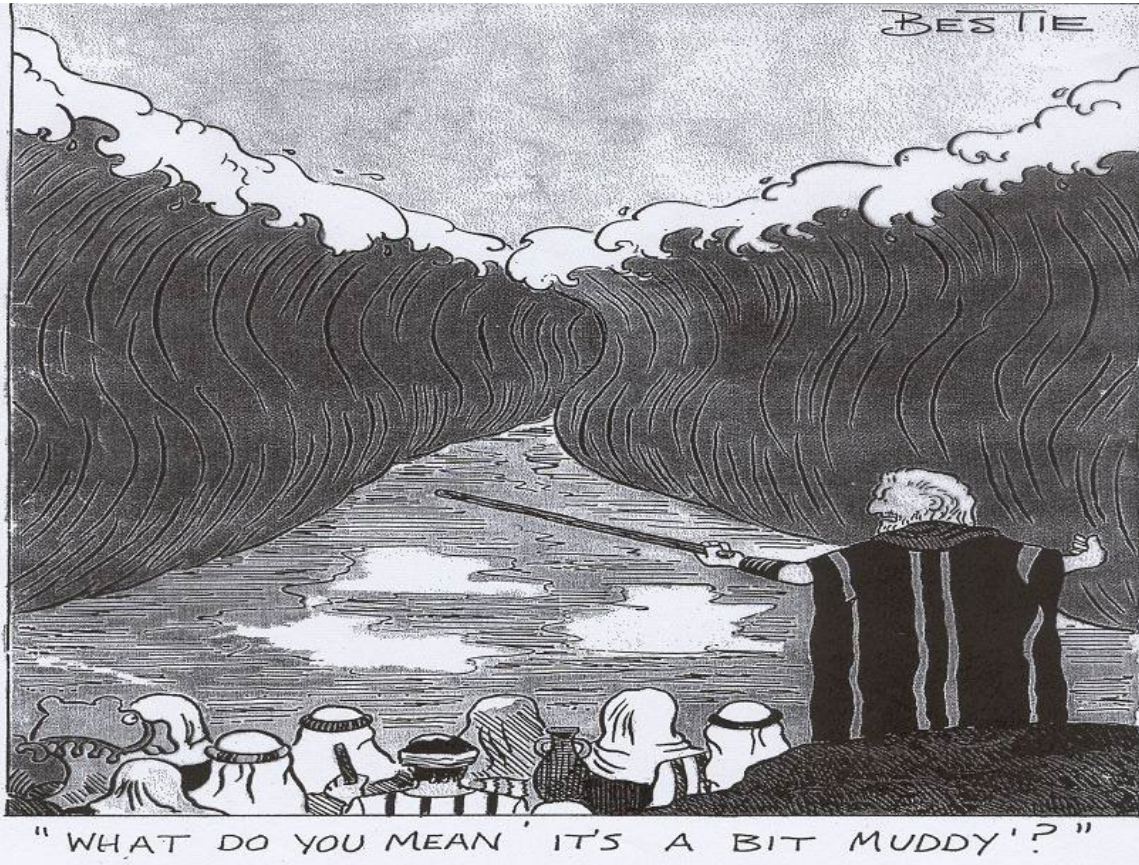
Placing consumers at the heart of the regulatory framework



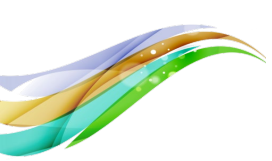
- Shift in emphasis to clients' rights to good-quality care and information, including about fees
- Much stronger focus on competence assurance in regulation of lawyers
- New regulatory tools recommended, including
 - Health and competence reviews
 - Power to impose bespoke conditions on a practising certificate
- Current 10-hour CPD is a blunt instrument. Replace minimum hours with verification of steps to stay competent in practice areas? Add some core non-technical components



A reformed complaints system



- We recommend moving away from using volunteer Standards Committees to a professional in-house complaint service
- The propose new model includes:
 - 'consumer matters' will be subject to informal dispute resolution (not disciplinary)
 - resources will be prioritised towards more serious disciplinary matters
 - Naming Policy for exceptional cases
 - LCRO will be replaced by a new review mechanism
- Lawyers should be required to ensure complaints are 'dealt with promptly, fairly and free of charge'

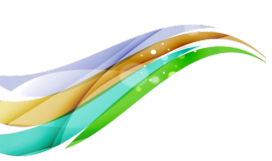


The value of complaints

“When complaints are freely heard, deeply considered, and speedily reformed, then this is the utmost bound of civil liberty attained that wise men look for.”



John Milton, *Areopagitica*, 1644



Final report handed over



Report handed over to NZ Law Society
1 March 2023

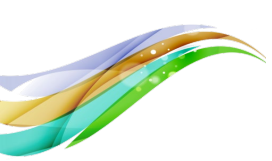
Three parts:

- A current state
- B the case for a new independent regulator
- C what needs to happen

Eight recommendations for reform

Full report at:
legalframeworkreview.org.nz

Analysis of consultation responses,
Cost benefit analysis and 11 working papers at:
legalframeworkreview.org.nz/independent-legal-review-resources/



Next steps in NZ review

- The NZLS Board will make recommendations to the Minister of Justice by the end of July
- In deciding what to recommend, the Board will take soundings from the 25 member Council that represents the broader interests of the profession
- Improvements are already being made by the NZLS, but our key recommendations will require legislative change, and will depend on political will



Prof Ron Paterson
University of Auckland
r.paterson@auckland.ac.nz

