

19 June 2024

### By Email

Regulations Review Committee  
Parliament Buildings  
Wellington

Email: regulations.review@parliament.govt.nz

### Submissions by the Auckland Women Lawyers' Association in response to Mr Gary Judd KC's complaint to Regulations Review Committee

1. This letter concerns Mr Gary Judd KC's complaint to the Regulations Review Committee (**Committee**) dated 17 April 2024 (**Complaint**) in respect of the Professional Examinations in Law (Tikanga Māori Requirements) Amendment Regulations 2022 (**Regulations**).
2. The Auckland Women Lawyers' Association (**AWLA**) understands that the Committee has asked the New Zealand Law Society and the New Zealand Council for Legal Education (**NZCLE**) to provide submissions in respect of the Complaint. AWLA wishes to make a brief submission in opposition to the Complaint.
3. AWLA urges the Committee not to recommend to the House that the Regulations be amended or revoked. In its consideration of the Complaint, AWLA requests that the statements made concerning tikanga Māori be read in conjunction with the authoritative and comprehensive source of Te Aka Matua o Te Ture | Law Commission's 'He Poutama' report.<sup>1</sup>
4. AWLA submits that the Regulation does not offend the principles in Standing Order 327(2). AWLA understands that the Complaint relates to Standing Orders 327(2)(b) and (c).
5. In relation to Standing Order 327(2)(b), AWLA submits that the Regulation does not trespass unduly on personal rights and liberties. The Complaint does not specify which right or liberty has allegedly been trespassed. To the contrary, the AWLA submits that no right or liberty has been trespassed. As a result of the Regulations, law students will gain knowledge and appreciation for an important and well recognised developing area of our law. Indeed, law students have a right to education in respect of tikanga Māori.

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<sup>1</sup> Te Aka Matua o Te Ture | Law Commission *He Poutama* (NZLC SP24, 2023).

6. For nearly two centuries, tikanga Māori has been recognised and incorporated into our legal system in Aotearoa New Zealand.<sup>2</sup> As evident in *He Poutama*, there has been a judicial shift from relying on the rules of incorporation to recognise tikanga Māori as customary law to engaging directly with tikanga as an authoritative source in itself.<sup>3</sup> There is also growing recognition for tikanga Māori in legislation.<sup>4</sup>
7. While adaptable to change, the values and principles of tikanga Māori have always been and remain firmly rooted.<sup>5</sup> To recognise this requires engaging with and understanding tikanga Māori, which has largely been absent from the education of a significant proportion of the legal profession.
8. The Complaint reflects the necessity for the legal profession to have a thorough understanding of tikanga Māori and its significance within Aotearoa New Zealand. Tikanga Māori has an important role within the legal system and with its growth in recognition, it will be instrumental for the future of the legal profession of Aotearoa New Zealand to have a proficient understanding of tikanga Māori.
9. To the extent that any right or liberty is trespassed by the Regulations, then AWLA submits that the trespass is not undue. Law students are already required to complete compulsory subjects in order to obtain a Bachelor of Laws degree. The Regulations are no more burdensome than is necessary to equip law students with the knowledge that they will inevitably require when practicing in the profession.
10. Finally in relation to Standing Order 327(2)(b), AWLA submits that for the reasons discussed above the public interest that is served by the Regulations outweighs the trespass, if any, to the rights and liberties of law students. As a result of the Regulations, future lawyers will be equipped with the necessary knowledge to discharge their obligations to clients under the *Lawyers and Conveyancers Act 2006 (LCA 2006)*.
11. In relation to Standing Order 327(2)(c), AWLA submits that the Regulation does not make some unusual or unexpected use of the powers conferred by the enactment. In enacting the Regulations, the NZCLE was acting within its express function and powers under ss 247, 275 and 278 of the LCA 2006. It is submitted that the NZCLE could not have been acting unusually if it acted in accordance with its prescribed functions and powers.
12. The Complaint alleges only that the Regulations are “unprecedented”. AWLA submits that the fact that the Regulations may be unprecedented is no reason to amend or revoke them. The inclusion of tikanga Māori within the Bachelor of Laws curriculum is a meaningful implementation of the existing judicial and Parliamentary acknowledgement of its

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<sup>2</sup> Te Aka Matua o Te Ture | Law Commission, above n 1, at [1.5]; See also - *Takamore v Clarke* [2012] NZSC 116; *Ellis v R* [2022] NZSC 114, [2022] 1 NZLR 239; *Ellis v R* [2022] NZSC 114; *Ngāti Whātua Ōrakei Trust v Attorney-General (No 4)* [2022] NZHC 843, [2022] 3 NZLR 601; *Baldick and Others v Jackson* (1910) 30 NZLR 343 and *Rangitapiripiri* is (SC, Wellington, 1 December 1847, Chapman J).

<sup>3</sup> At [5.60].

<sup>4</sup> See for example the Resource Management Act 1991 and the Marine and Coastal Area (Takutai Moana) Act 2011.

<sup>5</sup> Te Aka Matua o Te Ture | Law Commission, above n 1, at [1.18].

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importance and rightful place within our legal system. AWLA welcomes this change and firmly supports the Regulations.

13. If the Committee has any questions regarding the position outlined in this letter, AWLA welcomes the opportunity to provide further written submissions.

Nāku noa, nā



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