

5 December 2023

Hon Brooke van Velden
Minister for Workplace Relations and Safety

By email: brooke.vanvelden@parliament.govt.nz

Tēnā koe Minister

I am writing on behalf of the New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society), to congratulate you on your appointment as Minister for Workplace Relations and Safety.

The Law Society is committed to continuing its active participation in the development and reform of workplace law and policy. We take this opportunity to share some of our key priorities in this area, and we extend an invitation to discuss this further.

Background

The Law Society is the professional body for lawyers in New Zealand. We are an independent statutory body constituted under the Lawyers and Conveyancers Act 2006 to regulate and represent the legal profession. We regulate just over 16,000 practising lawyers, and represent over 98% of lawyers.

The Law Society's role in law reform and advocacy

The Law Society has a statutory function to 'assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law.' This is a regulatory function carried out in the interests of the public.

The Law Society is consistently called upon to ensure workable legislation by providing reasoned and impartial submissions on law reform proposals. Law Society submissions also represent the public interest on matters such as access to justice, the administration of justice, constitutional protections, and the rule of law. We also act as an impartial intervenor in court cases of general and public importance in the higher courts.

The Employment Law Committee

To carry out this work, the Law Society has over 170 volunteer lawyers, sitting on 17 committees,¹ who contribute to submissions on bills, policy papers, working groups, and the like. The **Employment Law Committee**² is one of these committees, comprised of experienced employment and health and safety lawyers.

¹ Further information about our law reform and advocacy work can be found on our [website](#).

² Further information about the Employment Law Committee and its members, can be found [here](#).

Key priorities in this area

Regulation of lay employment advocates

In September 2020, the then-Minister for Workplace Relations and Safety invited the Law Society's feedback on ways that government and public policy could improve New Zealand's workplace relations and safety. Our letter of response is **enclosed**.

Our key suggestion at that time related to the regulation of employment advocates, and this remains a priority. The Employment Relations Act 2000 allows any person to represent and advocate on behalf of an employer or employee at all stages of a dispute including in the Employment Relations Authority and Employment Court. Many are not qualified or practising lawyers, and there are no other requirements for training, qualification, or conduct.

The number of concerns raised with the Law Society about employment advocates' conduct has increased markedly. However, there is no forum for making a complaint about the quality of advocacy services and alleged unprofessional behaviour or misconduct, outside of the voluntary member organisation, the Employment Law Institute of New Zealand.

We understand the previous Government intended to consider the role of employment advocates as part of a review into the employment dispute resolution system. We urge you to instruct officials to continue any work which may have commenced under that review, in relation to the regulation of lay advocates.

Review of the Holidays Act 2003

In October 2018, the Law Society made a submission on the *Holidays Act 2003 Review: Issues Paper* released by the Holidays Act Taskforce. The Taskforce made 22 recommendations in October 2019, and the Ministry of Business, Innovation and Employment states on its [website](#) that 'detailed policy design work has been completed' and a bill is currently being drafted.

As I am sure you are aware, the calculation of annual holiday entitlements, amongst other matters, has been a challenging feature of the Holidays Act. Many of the Taskforce's recommendations relate to this and could provide welcome clarity. We would appreciate your advice as to whether this work will continue.

Further engagement

We are happy to discuss this further, or to answer any questions, whether by correspondence or a meeting. To arrange a meeting your officials are welcome to contact [Aimee Bryant](#), Manager Law Reform and Advocacy.

You can contact me via [Bronwyn Jones](#), General Manager Policy, Courts and Government, or president@lawsociety.org.nz.

Nāku noa, nā



Frazer Barton
President

Encl: letter to former Minister for Workplace Relations and Safety, 4 September 2020

4 September 2020

Hon Andrew Little
Minister for Workplace Relations and Safety
Parliament Buildings
Wellington

By email: c/- andrew.little@parliament.govt.nz

Tēnā koe Minister Little,

Re: Improving workplace relations and safety

Thank you for your letter of 31 July 2020 inviting feedback from the New Zealand Law Society | Te Kāhui Ture o Aotearoa, on ways government and public policy can assist in improving New Zealand's workplace relations and safety.

We welcome the opportunity to raise three key issues impacting employment law currently. We would also be happy to discuss these issues and workplace issues more generally with you and your officials in more detail at an appropriate time.

Regulation of (non-union) employment advocates

The lack of regulation of employment advocates has been a concern for a considerable period. This has been highlighted over the course of this year with the increasing vulnerability of employees and businesses dealing with unique COVID workplace issues. The number of concerns raised with the Law Society about employment advocates conduct has increased markedly in the past year.

As you will be aware, many employment advocates are not qualified or practising lawyers but are able to represent clients in employment disputes. The Employment Relations Act 2000 allows *any person* to represent and advocate on behalf of an employer or employee at all stages of a dispute including in the Authority and Court.¹

The right of representation is a significant responsibility which ought to sit alongside professional obligations. There is currently no statutory mechanism in place to regulate the training, qualifications, or conduct of non-lawyer employer advocates. Importantly, there are no channels for making a complaint about the quality of advocacy services and alleged unprofessional behaviour and/or misconduct, outside of the voluntary member organisation, the Employment Law Institute of New Zealand (ELINZ).²

¹ Employment Relations Act 2000, section 236.

² At present, the only form of regulation exists via the ELINZ complaints process and Disciplinary Investigation Process. These processes are however limited to ELINZ members and do not apply to non-member employment advocates.

We understand the Ministry of Business, Innovation and Employment (MBIE) was reviewing the position of employment advocates in 2017. We would welcome an update on progress of that review.

We note that Immigration advisers are required to hold a licence granted under the Immigration Advisers Licensing Act 2007.³ This licence allows immigration advisers to represent and provide specialist immigration advice to clients. The Immigration Advisers Code of Conduct sets out the required standards of professional and ethical conduct. The Immigration Advisers Authority (IAA) administers this Code of Conduct and investigates complaints relating to any violation of that Code of Conduct. A similar statutory framework could provide an effective mechanism for regulating the conduct and services provided by employment advocates.

Delays in the Employment Relations Authority

There are increasing delays in Employment Relations Authority (Authority) proceedings, particularly in relation to cases filed in the last few months.⁴ We appreciate the Authority will have experienced increasing file numbers from matters arising out of the COVID-19 pandemic and acknowledge the impact this will have had on Authority members and staff.

These delays are impacting on parties' access to justice and therefore need to be addressed promptly. A possible solution to address the immediate backlog would be to consider providing additional resourcing (possible short-term support staff and/or appointing Authority members on short-term warrants) to address the cases that have not progressed in the last few months. We would support this being raised as a matter of urgency with MBIE officials and the Chief of the Employment Relations Authority.

Holidays Act 2003 Review

In October 2018, the Law Society made a submission on the *Holidays Act 2003 Review: Issues Paper* released by the Holidays Act Taskforce. We understand the Taskforce subsequently provided a progress report to the then Minister, with the aim of making recommendations for change in mid-2019. The Law Society has a keen interest in seeing the review progressed to reduce Holidays Act complexity. We would be grateful if your office (or the Taskforce) could provide us with a progress update (including an update on any recommended changes that are currently under review).

Thank you again for the opportunity to raise these issues and we are happy to discuss them in more detail if that would assist. I can be contacted via the Law Society's Law Reform Adviser, Nilu Ariyaratne at Nilu.Ariyaratne@lawsociety.org.nz.

Nāku noa, nā



Maria Dew QC
Convenor, NZLS Employment Law Committee

³ Of relevance here is the purpose of the Act, which is to “*promote and protect the interests of consumers receiving immigration advice... by providing for the regulation of persons who give immigration advice.*”

⁴ For example, some lawyers have informed the Law Society that the Authority is yet to schedule case management conference calls for matters that were filed over three months ago.