



**Lawyers and Conveyancers Act
(Lawyers: Complaints Service
and Standards Committees)
Regulations 2008**

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 30th day of June 2008

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to sections 94, 108, and 122 of the Lawyers and Conveyancers Act 2006, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008.
- 2 Commencement**
These regulations come into force on 1 August 2008.

**Part 1
Preliminary provisions**

- 3 Interpretation**
- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Lawyers and Conveyancers Act 2006
- Board** means the executive board of the Law Society
- Branch Council** means the council of a branch of the Law Society
- complaints service** means the complaints service of the Law Society established by regulation 6(1)
- District Society** means a District Law Society constituted under the Law Practitioners Act 1982 and includes, where applicable, a society incorporated under the Incorporated Societies Act 1908 to which the assets and liabilities of a District Society are transferred pursuant to the provisions of section 373(1) of the Act
- Law Society** means the New Zealand Law Society
- lay member** means a member of a Standards Committee whose name is not on the roll
- Operational Standards Committee** means a Standards Committee that the Board has declared to be an Operational Standards Committee under regulation 12(2)

Standards Committee or Committee means a Lawyers Standards Committee established by regulation 12(1).

- (2) Any term that is defined in the Act and used, but not defined, in these regulations has the meaning given in the Act.

4 Delegation of functions, duties, and powers of Law Society
The Law Society may, in writing, delegate (either generally or specifically) to any person or body any functions, duties, and powers of the Law Society under these regulations.

5 Complaints relating to former lawyers, employees, and incorporated law firms

- (1) If a complaint relates to a former lawyer, or to a former employee of a lawyer or an incorporated law firm, any requirement in these regulations to give notice or provide a copy of a document to that person does not apply unless his or her address is known, or can reasonably be ascertained.
- (2) If a complaint relates to a former incorporated law firm, any requirement in these regulations to give notice or provide a copy of a document to that former incorporated law firm—
- (a) is met by notifying or providing a copy of the document to the persons who were directors of the firm at the time it was dissolved; and
 - (b) does not apply unless the addresses of those persons are known, or can reasonably be ascertained.

Part 2

Complaints service

6 Establishment of and access to complaints service

- (1) This regulation establishes the complaints service of the Law Society for the purposes of receiving complaints about—
- (a) lawyers and former lawyers; and
 - (b) incorporated law firms and former incorporated law firms; and
 - (c) employees and former employees of lawyers and incorporated law firms.

- (2) The Law Society must provide, for the public, access to the complaints service at the Law Society's head office and at each of its branch offices.
- (3) The Law Society must provide a telephone line dedicated to receiving and responding to inquiries concerning complaints and the complaints service.

Compare: 2006 No 1 s 131(c)(ii)

7 Publication of information about complaints service

- (1) The Law Society must—
 - (a) make information about the complaints service available to the public on the Law Society's Internet site at all reasonable times; and
 - (b) publish a booklet or brochure advising of the existence of, and containing information about, the complaints service (the **complaints service brochure**); and
 - (c) make copies of the complaints service brochure available to the public on request, without charge, from the Law Society's head office and each of its branch offices; and
 - (d) provide supplies of the complaints service brochure, without charge, to the Consumers' Institute, community law centres, citizens advice bureaus, and such other organisations as the Board determines from time to time.
- (2) The information in the complaints service brochure and to be provided on the Law Society's Internet site must include the following:
 - (a) how to access the complaints service, including the address of the Law Society's head office and each of its branch offices; and
 - (b) the persons about whom a complaint may be made; and
 - (c) the means by which a complaint may be made; and
 - (d) the requirement in regulation 8(2) that the complaints service must give reasonable assistance to any person who wishes to make a complaint to meet the requirements of regulation 8(1).

Compare: 2006 No 1 s 131(c)(i)

8 How to make complaint

- (1) A complaint must be made to the complaints service and must—
 - (a) be in writing; and
 - (b) identify the complainant; and
 - (c) specify an address for service; and
 - (d) identify the firm to which, or the person or persons to whom, the complaint relates; and
 - (e) state the subject matter of the complaint; and
 - (f) be supported with any appropriate documentation held by, or available to, the complainant.
- (2) The complaints service must give reasonable assistance to any person who wishes to make a complaint to meet the requirements of subclause (1).
- (3) A complaint may be submitted by delivering it to the complaints service by hand, or by sending it to the complaints service by email, fax, or post.

Compare: 2006 No 1 ss 124(c), 131(c)(iii)

9 Procedure on receipt of complaint

- (1) When a complaint is received, the complaints service must—
 - (a) acknowledge receipt of that complaint in writing; and
 - (b) as soon as is reasonably practicable, refer the complaint to a Standards Committee; and
 - (c) notify the firm to which, or the person or persons to whom, the complaint relates; and
 - (d) provide a copy of the complaint to that firm, that person, or those persons.
- (2) When a complaint is referred to a Standards Committee, the complaints service must advise the firm to which, or the person or persons to whom, the complaint relates of their right to make a written submission to the Committee.
- (3) If a complaint relates to matters that arose during the course of a person's employment by a lawyer or an incorporated law firm, the complaints service must also provide a copy of the complaint to that lawyer or that incorporated law firm unless, in the opinion of the complaints service, there are special circumstances that make it inappropriate to do so.

Compare: 2006 No 1 s 135(1)

10 Quality of complaints service

- (1) The Law Society must, in administering the complaints service, take all reasonable steps to ensure that the complaints service—
- (a) deals with complaints in a fair, efficient, and effective manner; and
 - (b) achieves consistency and quality of service throughout New Zealand.
- (2) The Law Society may make, vary, or revoke practice notes or requirements concerning the operation of the complaints service and procedures to be followed by the complaints service.
Compare: 2006 No 1 ss 123(b), 124(e)

11 Publication of information regarding outcomes and performance of complaints service

The annual report furnished to the Minister under section 76 of the Act must include the following information relating to the outcomes and performance of the complaints service:

- (a) the number of complaints received during the year; and
- (b) the outcomes of complaints in general terms, and in particular—
 - (i) the number of complaints where a decision to take no action has been made;
 - (ii) the number of complaints referred to and resolved by negotiation, conciliation, or mediation;
 - (iii) the number of complaints where orders were made pursuant to section 156 or 157 of the Act;
 - (iv) the number of complaints where a decision was made to refer the matter to the Disciplinary Tribunal pursuant to section 152(2)(a) of the Act; and
- (c) the number of outstanding complaints at the conclusion of the relevant year.

Compare: 2006 No 1 s 131(d)

Part 3

Constitution of Standards Committees

12 Establishment of Standards Committees

- (1) This regulation establishes the following Standards Committees:
- (a) the Auckland Standards Committee (No 1) based in Auckland; and
 - (b) the Auckland Standards Committee (No 2) based in Auckland; and
 - (c) the Auckland Standards Committee (No 3) based in Auckland; and
 - (d) the Auckland Standards Committee (No 4) based in Auckland; and
 - (e) the Canterbury Standards Committee (No 1) based in Canterbury; and
 - (f) the Canterbury Standards Committee (No 2) based in Canterbury; and
 - (g) the Gisborne Standards Committee based in Gisborne; and
 - (h) the Hawkes Bay Standards Committee based in Hawkes Bay; and
 - (i) the Manawatu Standards Committee based in Manawatu; and
 - (j) the Nelson Standards Committee based in Nelson; and
 - (k) the Otago Standards Committee based in Otago; and
 - (l) the Southland Standards Committee based in Southland; and
 - (m) the Taranaki Standards Committee based in Taranaki; and
 - (n) the Waikato–Bay of Plenty Standards Committee (No 1) based in Waikato–Bay of Plenty; and
 - (o) the Waikato–Bay of Plenty Standards Committee (No 2) based in Waikato–Bay of Plenty; and
 - (p) the Wanganui Standards Committee based in Wanganui; and
 - (q) the Wellington Standards Committee (No 1) based in Wellington; and
 - (r) the Wellington Standards Committee (No 2) based in Wellington; and

- (s) the National Standards Committee (No 1) based in Wellington; and
 - (t) the National Standards Committee (No 2) based in Wellington; and
 - (u) 15 Reserve Standards Committees, numbered 1 to 15, based in localities nominated from time to time by the Board.
- (2) The Board may declare any of the Standards Committees listed in subclause (1) to be an Operational Standards Committee.
 - (3) The Board may at any time rename a Standards Committee referred to in paragraphs (a) to (r) of subclause (1), or change its area of jurisdiction, or reclassify it as a Reserve Standards Committee.
 - (4) Subject to the Act and these regulations, the Board may appoint members to each Standards Committee as and when the Board determines.

13 Operational Standards Committees

- (1) An Operational Standards Committee must have—
 - (a) not fewer than 2 nor more than 7 lawyer members; and
 - (b) not fewer than 1 nor more than 2 lay members; and
 - (c) a convenor or deputy convenor appointed by the Board from the lawyer members of the Committee pursuant to regulation 24.
- (2) Complaints may be referred by the complaints service to Operational Standards Committees only.

14 Mode of appointment of lawyer members

- (1) All lawyer members of a Standards Committee must be appointed by the Board.
- (2) In the case of a Standards Committee established by regulation 12(1)(a) to (r), prior to the Board appointing a lawyer member of the Committee, the Law Society must consult with the District Society or Societies, or Branch Council or Councils, as the case may be, in the locality in which that Committee is based.

15 Criteria to be applied in appointing lawyer members

- (1) To be eligible for appointment as a lawyer member of a Standards Committee, a person must have practised as a lawyer for a period or periods aggregating not less than 5 years.
- (2) In appointing any lawyer member of a Standards Committee, the Board must have regard, among other things, to—
 - (a) the person's personal attributes; and
 - (b) the person's ability by reason of his or her skill, experience, and judgement to deal with and make appropriate decisions in respect of complaints.

16 Tenure of office of lawyer members

- (1) The term of appointment of a lawyer member to a Standards Committee is the period, not exceeding 3 years, that the Board determines at the time of appointment.
- (2) The Board may reappoint a lawyer member to a Standards Committee for further terms, in each case not exceeding 3 years, as the Board determines, but the periods of membership must not in the aggregate exceed 9 years.

17 Mode of appointment of lay members

- (1) All lay members of a Standards Committee must be appointed by the Board.
- (2) In the case of a Standards Committee established by regulation 12(1)(a) to (r), prior to the Board appointing a lay member of the Committee, the Law Society must consult the District Law Society or Societies, or Branch Council or Councils, as the case may be, in the locality in which that Committee is based.

18 Procedure to be followed and criteria to be applied in appointing lay members

- (1) The complaints service must maintain a list of names and addresses of persons who are likely to be suitable to be appointed as lay members of Standards Committees.
- (2) When advised by the Board that it proposes to appoint a lay member of a Standards Committee, the complaints service must—

- (a) take either or both of the following steps to identify potential candidates:
 - (i) contact the persons whose names appear on the list maintained under subclause (1), and who live in the locality in which the Standards Committee is based, to ascertain whether they wish to be considered for appointment;
 - (ii) call for expressions of interest in the locality in which the Standards Committee is based; and
 - (b) convene a panel to—
 - (i) prepare a short list of candidates whom the panel considers are suitable for appointment; and
 - (ii) interview and check the references of those candidates.
- (3) When the panel has completed its assessment of candidates, the panel must make a recommendation to the Board in relation to the proposed appointment.
- (4) Before the Board may appoint a lay member of a Standards Committee, the Board must be satisfied—
- (a) that the person is of good character and is a fit and proper person to serve on the Committee; and
 - (b) that the person has some or all of the attributes of skill, experience, and judgement necessary to deal with and make appropriate decisions in respect of complaints.

19 Tenure of office of lay members

- (1) The term of appointment of a lay member to a Standards Committee is the period, not exceeding 3 years, that the Board determines at the time of appointment.
- (2) The Board may reappoint a lay member to a Standards Committee for further terms, in each case not exceeding 3 years, as the Board determines, but the periods of membership must not in the aggregate exceed 9 years.

20 Resignation of members

A member of a Standards Committee may resign at any time by notice in writing to the Law Society.

21 Circumstances in which member may be removed

The Board may remove a member of a Standards Committee from office if the Board is satisfied that—

- (a) the member has for any reason displayed an inability to perform the functions of that office; or
- (b) the member has neglected his or her duties, including in particular where the member's attendance, conduct, or performance at meetings of the Committee has not been satisfactory; or
- (c) the member has engaged in personal or professional conduct that the Board considers brings the Law Society into disrepute; or
- (d) the member has been declared bankrupt or is the director of a company that is put into receivership or liquidation; or
- (e) the member has been convicted of a criminal offence punishable by imprisonment and the Board considers that the conviction reflects on the fitness of the member to serve on the Committee; or
- (f) in the case of a lawyer member, a Standards Committee or the Disciplinary Tribunal has determined that the member has been guilty of misconduct or of unsatisfactory conduct.

22 Procedure for removal of member

- (1) When the Board decides to remove a member of a Standards Committee from office, the Board must immediately give written notice of its decision to the member.
- (2) The removal from office takes effect from the time of service on the member of the notice referred to in subclause (1) unless the notice provides otherwise.

23 Vacancies

- (1) If a vacancy occurs in an Operational Standards Committee that would render the Committee no longer compliant with the requirements of regulation 13(1), the Board must, as soon as is reasonably practicable, fill the vacancy by appointing another person to the Committee.

- (2) If a vacancy otherwise occurs in the membership of a Standards Committee, the Board may fill the vacancy by appointing another person to the Committee.

24 Convenors

- (1) The Board must, in respect of each Operational Standards Committee, appoint a convenor of the Committee from the lawyer members of the Committee.
- (2) The Board may, in respect of a Standards Committee, appoint from the lawyer members of the Committee a deputy convenor of the Committee who will act as convenor when the appointed convenor is unavailable for any reason.
- (3) The functions of a convenor include chairing meetings of the relevant Standards Committee.

25 Validity of proceedings

The validity of any proceedings or decision of a Standards Committee is not affected by any defect or deficiency in the appointment of a member.

Part 4**Operation of Standards Committees****26 Procedures in relation to complaints**

- (1) The procedures of each Standards Committee must accord with the provisions of the Act and these regulations and in particular the requirement to act in accordance with the rules of natural justice.
- (2) The quorum of each Standards Committee is a majority of members, at least 1 of whom must be a lay member.
- (3) A decision supported by a majority of the votes cast at a meeting of a Standards Committee is the decision of the Committee.
- (4) The person chairing a meeting of a Standards Committee has a casting vote as well as a deliberative vote.
- (5) Each Standards Committee must cause full and accurate minutes to be kept of the proceedings of each meeting, which minutes must record all decisions reached and orders made by the Committee at the meeting.

- (6) Each Standards Committee must otherwise adopt, as far as practicable, procedures that comply with any practice notes or requirements laid down by the Law Society from time to time.

27 Performance of functions and exercise of powers by Standards Committees

Each Standards Committee, in performing the functions or exercising the powers conferred on it by the Act, must comply with any practice notes or requirements from time to time made by the Law Society.

28 Practice notes or requirements

- (1) The Law Society may make, vary, or revoke practice notes or requirements concerning—
- (a) procedures to be followed by Standards Committees; and
 - (b) the manner in which Standards Committees are to perform their functions and exercise their powers.
- (2) Practice notes or requirements must promote uniformity of approach amongst Standards Committees.

29 Complaints relating to bills of costs

If a complaint relates to a bill of costs rendered by a lawyer or an incorporated law firm, unless the Standards Committee to which the complaint is referred determines that there are special circumstances that would justify otherwise, the Committee must not deal with the complaint if the bill of costs—

- (a) was rendered more than 2 years prior to the date of the complaint; or
- (b) relates to a fee that does not exceed \$2,000, exclusive of goods and services tax.

30 Publication of identity

- (1) If a Standards Committee makes a censure order pursuant to section 156(1)(b) of the Act, the Committee may, with the prior approval of the Board, direct publication of the identity of the person who is the subject of the censure order.

- (2) When deciding whether to publish the identity of a person who is the subject of a censure order, a Standards Committee and the Board must take into account the public interest and, if appropriate, the impact of publication on the interests and privacy of—
- (a) the complainant; and
 - (b) clients of the censured person; and
 - (c) relatives of the censured person; and
 - (d) partners, employers, and associates of the censured person; and
 - (e) the censured person.

31 Confidentiality of decisions

Decisions of Standards Committees must remain confidential, unless the Committee makes a direction under section 142(2) of the Act or regulation 30(1).

32 Maximum compensation

The maximum amount of compensation that a Standards Committee may order pursuant to section 156(1)(d) of the Act is \$25,000.

Part 5 Investigators

33 Standards Committee may appoint investigators

- (1) Any Standards Committee may, under section 144 of the Act, appoint investigators to assist in the investigation of complaints.
- (2) To be eligible for appointment as an investigator, a person must be—
- (a) a lawyer; or
 - (b) a chartered accountant; or
 - (c) an inspector appointed to the Law Society's inspectorate under the Lawyers and Conveyancers Act (Trust Account) Regulations 2008; or
 - (d) a person with special skills required for a particular investigation.

34 Revocation of appointment of investigator

A Standards Committee may revoke the appointment of an investigator at any time if the Committee is satisfied that the person—

- (a) has for any reason displayed an inability to perform his or her functions as an investigator; or
- (b) has not suitably carried out a particular function assigned to him or her; or
- (c) is or has become, in the opinion of the Committee, unsuited to be an investigator.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 August 2008, relate to the complaints service and Standards Committees of the New Zealand Law Society (the **Society**).

Preliminary provisions

Part 1 contains preliminary provisions of general application. *Regulation 3* is an interpretation provision, and *regulation 4* allows the Society to delegate its functions and powers. *Regulation 5* relates to complaints about former lawyers, former employees, and former incorporated law firms. It provides that requirements to notify and provide copies of documents to persons in these categories do not apply unless an address for the person is known, or can reasonably be ascertained.

Complaints service

Regulation 6 establishes the complaints service, and provides that the public must be given access to that service at the Society's head office and at each of its branch offices. The Society must also provide a telephone line dedicated to inquiries about complaints.

Regulation 7 obliges the Society to publish information about the complaints service, including how to access the service and how to make a complaint.

Regulation 8 specifies how a complaint is to be made, and requires the complaints service to give reasonable assistance to persons who wish to make a complaint. *Regulation 9* sets out what the complaints service must do when a complaint is received. In particular, the complaints service must acknowledge receipt of the complaint, and provide a copy to the firm, or person or persons, to whom the complaint relates. The complaints service must refer the complaint to the Standards Committee as soon as is reasonably practicable.

Regulation 10 provides that the Society must take reasonable steps to ensure the complaints service deals with complaints consistently throughout New Zealand, and in a fair, efficient, and effective manner. It also empowers the Society to make practice notes concerning the operation and procedures of the complaints service.

Regulation 11 specifies certain information that the Society must provide to the Minister, annually, in relation to the outcomes and performance of the complaints service.

Standards Committees

Regulation 12 establishes—

- 18 local Standards Committees that will provide services in specified localities; and
- 2 national Standards Committees based in Wellington; and
- 15 reserve Standards Committees.

Not all the Standards Committees established under *regulation 12* will be operational at the time when these regulations come into force. *Regulation 12* empowers the Board to appoint members to the Standards Committees as and when it determines, and to declare Standards Committees to be operational. *Regulation 13* sets out the membership requirements for operational standards committees, each of which must have between 2 and 7 lawyer members and 1 or 2 lay members.

Regulations 14 to 25 provide for the appointment, tenure, and removal of members of Standards Committees.

Regulation 26 sets out the procedures to be followed at meetings of Standards Committees.

Regulations 27 and 28 empower the Law Society to make practice notes concerning the procedures to be followed by Standards Committees, and require Standards Committees to comply with those practice notes.

Regulation 29 prevents consideration of a complaint about a bill of costs, if the bill does not exceed \$2,000, or if it was rendered more than 2 years prior to the complaint, unless there are special circumstances.

Regulation 30 allows a Standards Committee, with Board approval, to publish the identity of a person who is the subject of a censure order.

Regulation 31 provides that decisions of Standards Committees are confidential, unless a direction is made under section 142(2) of the Lawyers and Conveyancers Act 2006 or under *regulation 30*.

Regulation 32 limits the amount of compensation that a Standards Committee may order to \$25,000.

Investigators

Regulation 33 allows for the appointment of investigators to assist Standards Committees in the investigation of complaints, and *regulation 34* sets out when an investigator's appointment may be revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 3 July 2008.

These regulations are administered by the Ministry of Justice.
