



Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2021

Pursuant to sections 94, 95, and 103 of the Lawyers and Conveyancers Act 2006, the New Zealand Law Society, with the approval of the Minister of Justice and after consultation in accordance with section 103 of that Act, makes the following rules.

Contents

		Page
1	Title	1
2	Commencement	1
3	Principal rules	1
4	Schedule, chapter 1, amended	1
5	Schedule, chapter 2, amended	3
6	Schedule, chapter 3, amended	4
7	Schedule, chapter 4, amended	4
8	Schedule, chapters 10 and 11, replaced	5

Rules

1 Title

These rules are the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2021.

2 Commencement

These rules come into force on 1 July 2021.

3 Principal rules

These rules amend the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **principal rules**).

4 Schedule, chapter 1, amended

- (1) In the Schedule, rule 1.2, revoke the definition of **practice**.
- (2) In the Schedule, rule 1.2, insert in their appropriate alphabetical order:

behaviour includes the use of language (whether written or spoken), the use of digital or visual material, and physical behaviour

bullying means repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm

discrimination means discrimination that is unlawful under the Human Rights Act 1993 or any other enactment

entity means—

- (a) an entity operated by a partnership of lawyers; or
- (b) an incorporated law firm

harassment—

- (a) means intimidating, threatening, or degrading behaviour directed towards a person or group that is likely to have a harmful effect on the recipient; and
- (b) includes repeated behaviour but may be a serious single incident

law practice means—

- (a) an individual lawyer practising on that lawyer's own account; or
- (b) an entity that provides regulated services to the public

racial harassment means behaviour that—

- (a) expresses hostility against, or contempt or ridicule towards, another person on the ground of race, ethnicity, or national origin; and
- (b) is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person)

sexual harassment means—

- (a) subjecting another person to unreasonable behaviour of a sexual nature that is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person); or
- (b) a request made by a person of any other person for sexual intercourse, sexual contact, or any other form of sexual activity, that contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment

violence includes the following:

- (a) physical violence;
- (b) psychological violence;
- (c) sexual abuse;
- (d) sexual assault.

- (3) In the Schedule, after rule 1.5, insert:

1.5.1 These rules set the minimum standards of professional conduct and client care that all lawyers are required to observe in order to maintain the

reputation and integrity of the profession so as to ensure public confidence in the provision of legal services. The rules provide a reference point for discipline.

1.5.2 The preservation of the integrity and reputation of the legal profession is the responsibility of every lawyer.

5 Schedule, chapter 2, amended

(1) In the Schedule, replace rule 2.8 with:

2.8 Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer may have engaged in misconduct must make a confidential report¹ to the Law Society at the earliest opportunity.

2.8.1 This rule applies despite the lawyer's duty to protect confidential non-privileged information.

2.8.2 If a report by a lawyer to the Law Society may breach the lawyer's duty to protect confidential non-privileged information, the lawyer should also advise the lawyer's client of the report.

2.8.3 A report submitted in accordance with rules 2.8 and 2.9 must—

- (a) be in written form; and
- (b) identify—
 - (i) the person making the report; and
 - (ii) the person or persons to whom the report relates; and
- (c) specify details of the alleged conduct; and
- (d) be supported by any appropriate documentation held by or available to the person making the report.

2.8.4 This rule does not apply to—

- (a) a lawyer who has received information in the course of providing confidential advice, guidance, or support to another lawyer, including a member of a panel under a "friend" system, unless disclosure of the information is necessary to—
 - (i) prevent the anticipated or proposed commission of a crime or fraud; or
 - (ii) prevent a serious risk to the health or safety of any person; or
- (b) a lawyer who is a victim of the suspected misconduct; or

¹ The confidentiality of a report made under rule 2.8 or 2.9 is subject to exceptions contained in the Protected Disclosures Act 2000 and the Lawyers and Conveyancers Act 2006.

- (c) circumstances where a lawyer reasonably believes the disclosure would pose a serious risk to the health (including mental health) or safety of a victim.

(2) In the Schedule, replace rule 2.9 with:

2.9 Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer may have engaged in unsatisfactory conduct may make a confidential report to the Law Society.

2.9.1 This rule applies despite the lawyer's duty to protect confidential non-privileged information.

(3) In the Schedule, after rule 2.10, insert:

2.10.1 A lawyer must not victimise a person who, in good faith,—

- (a) makes a complaint or a report under rule 2.8 or 2.9; or
- (b) is otherwise connected with a complaint or a report under rule 2.8 or 2.9.

2.10.2 For the purposes of this rule, examples of victimisation include (but are not limited to)—

- (a) unwarranted adverse employment-related actions:
- (b) unwarranted withdrawal of instructions:
- (c) conduct that amounts to 1 or more of the following:
 - (i) bullying:
 - (ii) harassment:
 - (iii) lack of professional co-operation:
 - (iv) racial harassment:
 - (v) professional disparagement:
 - (vi) sexual harassment.

6 Schedule, chapter 3, amended

In the Schedule, revoke rule 3.8 and the heading above rule 3.8.

7 Schedule, chapter 4, amended

(1) In the Schedule, after rule 4.2.1(e), insert:

- (f) conduct by the client directed towards the lawyer or a person associated with the law practice that amounts to 1 or more of the following:
 - (i) bullying:
 - (ii) discrimination:
 - (iii) harassment:

- (iv) racial harassment:
- (v) sexual harassment:
- (vi) threatening behaviour:
- (vii) violence.

(2) In the Schedule, after rule 4.2.4, insert:

4.2.5 For the purposes of this rule, **person associated with the law practice** includes—

- (a) a barrister instructed by the law practice; and
- (b) a person engaged or employed by the law practice.

8 Schedule, chapters 10 and 11, replaced

In the Schedule, replace chapters 10 and 11 with:

Chapter 10 Professional standards

10 A lawyer must promote and maintain professional standards.

Respect and courtesy

10.1 A lawyer must, when acting in a professional capacity, treat all persons with respect and courtesy.

Reputation of profession

10.2 A lawyer must not engage in conduct that tends to bring the profession into disrepute.

Bullying, discrimination, and harassment

10.3 A lawyer must not engage in conduct that amounts to 1 or more of the following:

- (a) bullying:
- (b) discrimination:
- (c) harassment:
- (d) racial harassment:
- (e) sexual harassment:
- (f) violence.

Communicating with another lawyer's client

- 10.4 A lawyer acting in a matter must not communicate directly with a person who the lawyer knows is represented by another lawyer in that matter except as authorised in this rule.
- 10.4.1 A lawyer may communicate directly with a person who the lawyer knows is represented by another lawyer if the matter is urgent and it is not possible to contact that person's lawyer or an appropriate member of that lawyer's law practice. In communicating with the other lawyer's client directly, the lawyer must act fairly towards the other lawyer's client at all times and must promptly notify the other lawyer of the details of the communication.
- 10.4.2 A lawyer may communicate directly with a person if the lawyer reasonably believes that that person is no longer represented by another lawyer. In that event, the other lawyer must be notified in advance of the lawyer's intention to communicate directly with that person.
- 10.4.3 A lawyer may communicate directly with a former client who is represented by a new lawyer for the purpose of confirming the client's instructions and arranging for the orderly transfer of the client's matters to the new lawyer.
- 10.4.4 A lawyer may recommend to a client that the client make direct contact with any other party.
- 10.4.5 A lawyer may communicate directly with a person represented by another lawyer if the person consents to the communication and the other lawyer has been given reasonable notice of the intended communication. In communicating with the other lawyer's client directly, the lawyer must act fairly towards the other lawyer's client at all times.
- 10.4.6 A lawyer may communicate directly with a person represented by another lawyer if that communication is a notice or proceeding or other document that must be given to that person in order to be effective.

Undertakings

- 10.5 A lawyer must honour all undertakings, whether written or oral, that the lawyer gives to any person in the course of practice.
- 10.5.1 This rule applies whether the undertaking is given by the lawyer personally or by any other member of the lawyer's law practice. This rule applies unless the lawyer giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the lawyer is not personally responsible for its performance.
- 10.5.2 A lawyer who receives funds on terms requiring the lawyer to hold the funds in a trust account as a stakeholder must adhere strictly to those terms and disburse the funds only in accordance with them.

Payments

10.6 A lawyer must not—

- (a) stop a trust account cheque drawn on the trust account of the law practice of which the lawyer is a member, or a bank cheque, which in either case is payable to another law practice, or to a conveyancing practitioner, or to an incorporated conveyancing firm; or
- (b) cancel, reverse, or amend an order for payment made to another law practice, conveyancing practitioner, or incorporated conveyancing firm by way of electronic transfer from the trust account of the law practice of which the lawyer is a member,—

once the cheque or printed verification of the electronic transfer instructions has been handed or dispatched to the payee.

10.7 Rule 10.6 does not apply where the payment—

- (a) is induced by fraud; or
- (b) arises from a mistake in the identity of the payee or the payee's client; or
- (c) is made in other circumstances that are of an exceptional nature.

10.8 If a lawyer stops a payment or cancels, reverses, or amends an order for payment, the lawyer must immediately advise the payee of the action that has been taken.

Misleading and deceptive conduct

10.9 A lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive² anyone on any aspect of the lawyer's practice.

Direct solicitation

10.10 A lawyer must not directly contact a prospective client—

- (a) in a way that is intrusive, offensive, or inappropriate; or
- (b) if the lawyer knows or should know that the physical, emotional, or mental state of the person is such that the person could not exercise reasonable judgement in engaging a lawyer, or the lawyer is aware that the prospective client does not wish to be contacted by the lawyer.

Prevention of crime or fraud

10.11 A lawyer must take all reasonable steps to prevent any person from perpetrating a crime or fraud through the lawyer's law practice.

10.11.1 For the purposes of this rule, **all reasonable steps** includes taking reasonable steps to ensure the security of and access to electronic sys-

² These words are identical to those used in the Fair Trading Act 1986 and lawyers are referred to texts and authorities on that legislation for further guidance.

tems and passwords, the protection of digital certificates and associated passwords, and the security of passwords, usernames, and personal identification numbers relating to electronic banking.

Fees of other lawyers

10.12 A lawyer who, acting in a professional capacity, instructs another lawyer must pay the other lawyer's account promptly and in full unless agreement to the contrary is reached or the fee is promptly disputed through proper professional channels. This rule applies to the accounts of barristers sole and foreign lawyers.

10.12.1 If the instructing lawyer and the lawyer undertaking the work have agreed that the instructing lawyer's client is to be solely responsible for paying the lawyer's account, then (unless agreed otherwise) the instructing lawyer must use all reasonable endeavours to ensure that the client pays the account. The instructing lawyer must promptly inform the instructed lawyer if it appears that the client will be unable or unwilling to pay the account.

10.12.2 A lawyer with a practising certificate as a barrister and solicitor may sue for and recover from the party chargeable any fees paid or payable by the lawyer to a barrister sole for work done or to be done on the instructions of the lawyer in relation to a client's affairs, if those fees are shown as a disbursement in a bill of costs rendered by the lawyer to the party chargeable.³

Making recordings

10.13 A lawyer must not, in the course of the lawyer's professional activity, make a video or sound recording of any person without first informing the person of the lawyer's intention to do so.

Dealings with Law Society

10.14 A lawyer must—

- (a) respond to inquiries from the Law Society respectfully and in a timely manner; and
- (b) act in a way that does not obstruct or hinder the regulatory functions of the Law Society.

10.14.1 Nothing in this rule requires a lawyer to breach privilege held by the lawyer's client that has not been waived by that client.

³ This rule is necessary because a barrister sole is not entitled to sue for the barrister sole's fees: *Atkinson v Pengelly* [1995] 3 NZLR 104.

Chapter 11

Proper professional practice

- 11 A lawyer practising on their own account must ensure that—
- (a) their law practice is administered in a manner that ensures that each of the following duties is adhered to:
 - (i) the overriding duty to the court;
 - (ii) the duties to persons engaged or employed by the law practice, including all persons who perform legal and non-legal services (whether paid or otherwise) at or for the law practice, whether under a contract of employment, under a contract for services, as a volunteer, or otherwise;
 - (iii) the duties to existing, prospective, and former clients; and
 - (b) the reputation of the legal profession is preserved.

Supervision and management

- 11.1 A lawyer practising on their own account must take all reasonable steps to ensure that—
- (a) the operation of the law practice (including separate places of business) is at all times competently supervised and managed by a lawyer who is practising on their own account; and
 - (b) the conduct of all persons engaged or employed by the law practice is at all times competently supervised and managed by a lawyer who is practising on their own account.
- 11.2 A lawyer practising on their own account must ensure that the lawyer's law practice has effective policies and systems in place to prevent and protect all persons engaged or employed by the law practice from the effects of unacceptable conduct, including conduct that amounts to 1 or more of the following:
- (a) bullying;
 - (b) discrimination;
 - (c) harassment;
 - (d) racial harassment;
 - (e) sexual harassment;
 - (f) violence.

Designated lawyer

- 11.3 A lawyer practising on their own account must ensure that at all times the lawyer's law practice has a lawyer who is designated for meeting the requirements

specified in rules 11.4 and 11.5. A lawyer designated for this purpose must be practising on their own account.

Reporting and certification

11.4 A lawyer designated under rule 11.3 must notify the Law Society, within 14 days, if any person is issued a written warning or dismissed by the law practice for conduct that amounts to 1 or more of the following:

- (a) bullying:
- (b) discrimination:
- (c) harassment:
- (d) racial harassment:
- (e) sexual harassment:
- (f) theft:
- (g) violence.

11.4.1 A lawyer designated under rule 11.3 must notify the Law Society, within 14 days, if—

- (a) any person leaves the law practice; and
- (b) within the 12 months before the person's leaving, the law practice had advised that person that it was dissatisfied with, or intended to investigate, their conduct in relation to any of the types of conduct referred to in rule 11.4.

11.4.2 Rule 11.4.1 does not apply to circumstances where the investigation has been concluded and there were no grounds to report the matter under rule 2.8 or 11.4.

11.4.3 A report submitted under rules 11.4 and 11.4.1 must—

- (a) be in written form; and
- (b) identify—
 - (i) the person making the report; and
 - (ii) the person or persons to whom the report relates; and
- (c) specify details of the alleged conduct; and
- (d) be supported by any appropriate documentation held by or available to the person making the report.

11.4.4 A lawyer designated under rule 11.3 must certify to the Law Society annually, by a date prescribed by the Law Society, whether—

- (a) the law practice has complied with all of the mandatory reporting obligations imposed under the Lawyers and Conveyancers Act 2006; and

- (b) the law practice has policies and systems in place as set out in rule 11.2 and is complying with its obligations under the Health and Safety at Work Act 2015; and
- (c) the designated lawyer has complied with rule 11.4.

11.4.5 For the purposes of this rule, **person** includes any lawyer or any other person who ceases to perform legal or non-legal services for the law practice, including after the termination or expiry of a fixed-term contract, resignation, or otherwise.

Complaints mechanisms

11.5 A lawyer practising on their own account must ensure that the lawyer's law practice establishes and maintains appropriate procedures for handling complaints by clients with a view to ensuring that each complaint is dealt with promptly and fairly by the law practice.

11.5.1 When a lawyer owns a sole law practice, the complaints procedure may include the reference of complaints to an independent lawyer for consideration.

11.5.2 This rule does not bind a lawyer whose status in a law practice is solely that of an employee.

Dated at Gisborne this 26th day of March 2021.

Tiana Epati,
President, New Zealand Law Society.

Explanatory note

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

These rules amend the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **principal rules**). They come into force on 1 July 2021.

The rules are published in the Legislative Instruments series in accordance with section 106 of the Lawyers and Conveyancers Act 2006. The rules have been published on the New Zealand Law Society website.

Background to amendments to principal rules

The amendments to the principal rules arise from the recommendations of a report prepared by a 5-person independent working group established by the Law Society and chaired by Dame Silvia Cartwright. The working group was established in March

2018 and reported in December 2018. It reviewed the regulatory processes for lawyers if unacceptable workplace behaviour occurs.

A copy of the working group's report is available at: <https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>

The Law Society undertook public consultation on the proposed amendments to the principal rules in June and July 2020.

Amendments to principal rules

Amendments to chapters 1 to 4

The amendments made to chapters 1 to 4 of the principal rules are as follows:

- rule 1.2 is amended by inserting new definitions, including definitions of behaviour, bullying, discrimination, harassment, racial harassment, sexual harassment, and violence:
- rule 1.5 is added to by clarifying the purpose and nature of the principal rules:
- rules 2.8 and 2.9 are replaced with *new rules 2.8 and 2.9*, specifying the obligations for a lawyer who has reasonable grounds to suspect that another lawyer may have engaged in misconduct or unsatisfactory conduct:
- rule 2.10 is added to by prohibiting a lawyer from victimising a person who makes a complaint or a report under *new rule 2.8 or 2.9*:
- rule 3.8, which is about complaints mechanisms, is revoked because it has been moved to become *new rule 11.5*:
- rule 4.2 is amended to enable a lawyer who has been retained by a client to terminate the retainer because of certain types of conduct by the client directed towards the lawyer or a person associated with the law practice, including bullying, harassment, and threatening behaviour.

Amendments to chapter 10

Chapter 10 of the principal rules is replaced with *new chapter 10*, about professional standards. The changes to chapter 10 are as follows:

- the existing heading to chapter 10 is amended to refer to professional standards, rather than professional dealings:
- existing rule 10 is amended to provide that a lawyer must promote and maintain professional standards:
- existing rule 10.1 is amended to provide that a lawyer must, when acting in a professional capacity, treat all persons with respect and courtesy:
- *new rule 10.2* is inserted to provide that a lawyer must not engage in conduct that tends to bring the profession into disrepute:
- *new rule 10.3* is inserted to provide that a lawyer must not engage in conduct that amounts to bullying, discrimination, harassment, racial harassment, sexual harassment, or violence:

- *new rules 10.9, 10.10, and 10.11* were previously rules 11.1, 11.2, and 11.4, respectively:
- *new rule 10.14* is inserted to require a lawyer to conduct themselves appropriately in their dealings with the Law Society.

Amendments to chapter 11

Chapter 11 of the principal rules is replaced with *new chapter 11*, about proper professional practice. The changes to chapter 11 are as follows:

- rule 11 is amended to provide that a lawyer practising on their own account must ensure that their law practice is administered in a manner that ensures that their duties to persons engaged or employed by the law practice are adhered to:
- *new rule 11.1* was previously rule 11.3, which has been amended to clarify its application:
- *new rule 11.2* is inserted to provide that a lawyer practising on their own account must ensure that their law practice has effective policies and systems in place to prevent and protect all persons engaged or employed by the law practice from the effects of unacceptable conduct, including bullying, discrimination, harassment, racial harassment, sexual harassment, or violence:
- *new rule 11.3* is inserted to provide that a lawyer practising on their own account must ensure that their law practice has a lawyer who is designated for meeting the requirements specified in *new rules 11.4 and 11.5*:
- *new rule 11.4* is inserted to provide that a lawyer designated under *new rule 11.3* must notify the Law Society, within 14 days, if any person is issued a written warning or dismissed by the law practice for conduct that amounts to bullying, discrimination, harassment, racial harassment, sexual harassment, theft, or violence:
- *new rule 11.5* was previously rule 3.8.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 1 April 2021.

These rules are administered by the Ministry of Justice.