ENVOY

LEGAL EXECUTIVES NEW ZEALAND
RĀNGAI HĀPAI TURE O AOTEAROA

SUMMER 2022



2022 survey results of Registered Legal Executives' conditions and rewards

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THIS ISSUE.

From the Immediate Past-President	2
Branch updates	3
New wills validation law ensures deceaseds' wishes carried out	8
Cases update	10
New charities law to progress in 2023	13
2022 survey of Registered Legal Executives' conditions and rewards: An overview of RLE responses	**15**
Big regulatory changes considered for legal executives in the United Kingdom	21
Conveyancing update	23
Court of Appeal considers financial responsibilities of fathers to children	25
Taxation update	28
Deceased estates and Australian assets – a refresher	29
Long-standing LENZ National Treasurer retires	31

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FROM THE IMMEDIATE PAST-PRESIDENT



Tēnā koutou katoa

The end of 2022 is now upon us and what a year it has been. It appears Covid is still very much part of our lives; I hope you all keep well over the summer holidays.

This is the last time I write in *Envoy* as my two, two-year terms as LENZ president have come to an end. It comes with mixed emotions; I thoroughly enjoyed my time in the role, not only being able to promote the professional recognition and profile of Registered Legal Executives within the legal community, but also meeting a large number of LENZ members and, in turn, making many friendships and memories.

I would like to take this opportunity to thank the staff at the LENZ office, particularly Jo Buckton, for all the support and assistance given to me over the past four years.

Thank you also to all board and National Council members. We have been through a great deal over the past four years, and they have always been there to listen, to assist and to do whatever was required. Thank you.

Members, thank you for being part of LENZ, without you we would not exist. I believe we belong to a fantastic organisation; I encourage you to continue and participate wherever possible.

I will be involved with LENZ as the immediate past-president for the next 12 months; over that period I look forward to catching up with as many of you as possible.

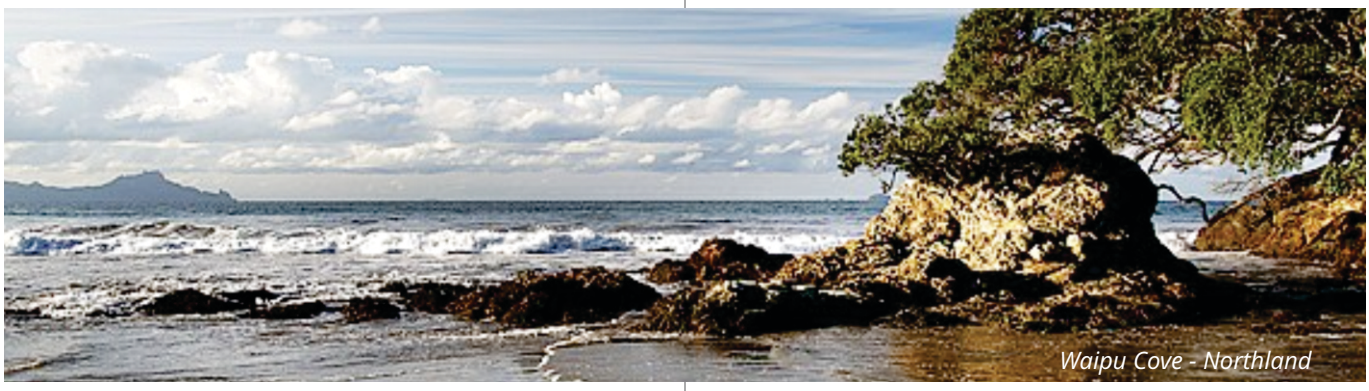
Welcome to our new president, Carmen Franich. I know she will continue to lead LENZ with passion and will always have the best interests of the members at heart.

I wish you all a safe and happy holiday season.



Necia Parker




Waipu Cove - Northland

Northland

Merry Christmas to you all! The end of the year has crept up quickly.

The branch AGM was held on 17 November, followed by our Christmas lunch. We farewelled long-standing committee member Amy Jones and welcomed Robyn Wasson to the committee. Amy, thank you very much for all your time, effort and support. Robyn, we're very happy to have you on board.

Committee members for 2022-23 are:
- President: Jen Overton
- Secretary: Vicky Chafin
- Treasurer: Shannon Boykett
- Education: Alana Lyall and Nicky Dreadon
- Social coordinators: Sarah Anderson (currently on maternity leave), Denise Campbell, Robyn Wasson and Sarah O'Brien
- Branch representative on National Council and newsletter editor: Nicky Dreadon

Education
We were to hold a webinar on turn-key purchases/off the plan builds before the end of the year. We have, however, postponed this because of our heavy end-of-year workloads; the plan is to run it early next year. We hope that by holding the webinar early in the new year more members can attend and benefit from the knowledge of our presenters.

During 2023, we are planning a webinar on subdivisions. We are working on the details and will have more information for you next year.

Please do get in touch with us if you have any topic suggestions or improvements on the way we present our seminars and webinars. We always appreciate the input.

Social events
Our Christmas lunch was held at No.8 Restaurant in Whangārei following the branch AGM. I thoroughly enjoy meeting with members over delicious food and a very relaxing atmosphere.

The branch hopes to have more social functions in the new year. These events are a great opportunity to get to know one another, put faces to names and to network.

We would like to hold more social events for Kaipara and Far North members. If you would like to arrange something in your area, please contact us to discuss. Any social events arranged will be subsidised by the branch.

Your branch committee
Thank you very much to our committee members for their time and effort in keeping our branch running smoothly. It is very much a collaborative effort and it's great knowing that we're all able to help out where needed.

The committee is dedicated to helping and supporting our members, providing you with informative webinars and seminars, and holding social functions that everyone can enjoy. We're always here to help, so please feel free to contact us at any time, at northland@nzile.org.nz

I wish you all a very Merry Christmas, and a happy and safe holiday.



Jennette Overton
Northland Branch President



Devonport

Auckland Waikato

Hello from Auckland Waikato.

No doubt you are all looking forward to the summer/ Christmas break; this year has once again been quite the test, with Covid choosing to linger.

The branch held its AGM on 22 November. At the meeting we said goodbye to Karen Lloyd, a valuable member of our committee over recent years, and welcomed Radha Ranga, who was elected to the committee.

Education
This year the branch arranged three webinars. The first webinar was about 'courageous conversations'; the second had the theme of 'building your resilience' – both are very topical matters for the times. Our thanks to the HR platform Everest for arranging both these webinars.

A third webinar was held on off the plan/turn-key contracts, presented by Shelley Funnell and Pierre Wong of Henderson Reeves. This webinar was extremely well attended, and Shelley and Pierre were great presenters.

We are always open to suggestions for seminars/ webinars, so please don't hesitate to contact us at aucklandwaikato@nzile.org.nz with your ideas.

Social
We held social functions in both Waikato and Auckland this year. A dinner at Thyme Square Restaurant was held in Hamilton, and dinner and a show were enjoyed at Auckland's Caluzzi Cabaret.

With the ability to hold more social functions now becoming possible, the branch committee will work hard to get members together in 2023.

Take care, and I wish you all a Merry Christmas and safe New Year.



Michelle Way
Auckland Waikato Branch President



Lake Taupō - Whakamoenga Point

Bay of Plenty Gisborne

Although 2022 started a little quieter than normal for those working in conveyancing in this region, the number of property sales started improving towards the end of the year.

The effects of Covid continue to plague us as we head into the summer months, with case numbers continuing to climb. It is quite a different world that we now live in, and we have all had to learn to work and communicate in new ways.

Remember to look after yourselves and try to keep a healthy work/life balance.

AGM

The branch AGM was held on 20 October in Tauranga. It was great to have members from Gisborne make the journey to attend the meeting. The AGM was followed by drinks and nibbles, and later dinner at Own Masala.

We farewelled branch president, Ally McEldowney, who stood down after three years. Thank you so much Ally for your hard work and dedication to the branch. We welcomed onto the committee Dianne Duckitt from Nolans in Gisborne. The committee for 2022-23 is:

- President: Cathy Punter
- Secretary: Andrea Haycock
- Education: Raewyn Miller
- Membership: Sue Cameron
- Treasurer: Lorraine Kyle
- Newsletter editor: Anne Hodge
- Social convenors: Debbie Boyd-Collins, Tauranga; Sherrie Slappendel, Rotorua; Andrea Haycock, Whakatāne; Cathy Punter, Taupo; and Dianne Duckitt, Gisborne.

The committee will hold a face-to-face meeting in early 2023 to plan for the coming year.

Social events

End of year functions were held in Tauranga, Rotorua, Taupō, Whakatāne and Gisborne in late November and early December. These events are always good opportunities to catch up in person with other members whom we otherwise would only connect with via email or over the phone.

I trust you all have an enjoyable holiday break with family and friends.



Cathy Punter
Bay of Plenty Gisborne Branch President

Wellington Central Districts

The branch held its AGM at the end of November. A number of committee members, who had served the branch for many years, decided the time was right to step down. We say a very big thank you to our outgoing president, Nicole Mangin, and valued committee members - Letitia Bunting, Debbie Masters, Josie McDermott and Sheryl Thornton. They have worked hard for the branch; we will miss them. We also thank our outgoing secretary, Lesley Cobb (a total whiz with the branch newsletter) who retired in June.

Sallyanne Belmont and I joined the branch committee last year. We were elected vice president and president respectively; we are grateful for the opportunity to serve the branch.

The committee members for 2022-23 are:

- President: Stephanie Bishop
- Vice president: Sallyanne Belmont
- Treasurer: Maureen Haslett
- Secretary: Angelene Stephens
- Committee: Hayley Furneaux, Sonya Harper, Ashleigh Kilpatrick and Jo Reweti

Our aim is to provide opportunities for us all to connect with colleagues within the branch and to support each other with knowledge and experience.

After we are back at work in the new year, the committee will arrange social events such as breakfasts or lunches. If you have any suggestions for events or would like to help arrange one in your area, please email the branch at wellingtonandcentral@nzile.org.nz. All suggestions will be gratefully received!

I wish you all a safe and happy holiday season.



Stephanie Bishop
Wellington Central Districts Branch President

Nelson Marlborough

It has been the wettest year ever that I recall in the Top of the South. The recent floods in our district were devastating for those affected.

On a positive note, however, the seasons have changed - summer is officially here, gardens are blooming and looking beautiful and hopefully giving everyone a bit of a lift.

Seminars
The bright-line tax workshop held in Blenheim on 24 November, presented by Arti Chand (AC Tax Law), was informative and enjoyable. Our thanks to the presenter for an excellent workshop.

Social gatherings
It's always lovely to catch up with as many members as possible at social events and to celebrate the end of another the year.

Our Marlborough liaison person, Cindy Thom, organised an early end of year event in Blenheim on 14 November for Marlborough members. Nelson members celebrated Christmas/end of the year at a dinner on 2 December at Eddyline Pizzeria & Brewpub in Richmond.

AGM
We held our branch AGM quite late this year on 17 November. I am pleased to say we had a quorum! At the time of writing, we have not yet decided committee roles – we will do that at our next meeting and update members with any changes.

I wish you all a wonderful, relaxing Christmas and summer holiday, and all good things for 2023.



Rachael Cooke
Nelson Marlborough Branch President



Otago - Lindis Pass

Canterbury Southern Districts

Our branch AGM was held on 7 November. I was re-elected for a further term as president, and Andrea Murchland, our Southland representative, was elected vice president.

We are joined by new committee members: Gaylene Campbell, Jess Craighead and Shelly O'Connor; Nikki Riach re-joins us after having been away on parental leave (she takes on the role of treasurer). The new committee members are all based in Christchurch.

The comittee for the next 12 months is:

- President: Jo Langton
- Vice president: Andrea Murchland
- Secretary: Jess Craighead
- Treasurer: Nikki Riach
- Education: Nicola Thyne
- Social: Kay Thomson, Gaylene Campbell and Cheryl Clausen
- Membership: Shelly O'Connor
- Publicity: Shelly O'Connor and Cheryl Clausen
- Committee: Jill Forde and Pam Harliwich
- Regional representatives: Penny Green, Ashburton; Diana de Koning, Queenstown; Nicki Howie, Otago; Andrea Murchland, Southland; and Alison Smith, West Coast.

We have no representatives for Oamaru or Timaru so we are keen to hear from members in those areas who may wish to arrange occasional social events for local members.

We farewelled Jill O'Neill from our committee after 15 years of service. Jill's input to the committee was invaluable and she will be sorely missed. Thank you Jill.

Education

A big thank you to our regional seminar co-ordinators; they were integral to the branch delivering CPD to branch members beyond Christchurch.

Social events

It has been another difficult year with Covid. More social events for members, however, are being held and it was good to hear that members organised local catch-ups. Despite Covid still lurking, many people are starting to feel more comfortable getting out and about.

Christmas functions have been held throughout the branch, with the branch subsidising them as a way of giving back to members. Hopefully, by the time you read this, they were all able to be held.



On behalf of Canterbury Southern Districts Branch we wish everyone a Merry Christmas, and safe and healthy New Year.

Jo Langton
Canterbury Southern Districts Branch President

New wills validation law ensures deceaseds' wishes carried out

The Wills Act 2007 brought about a significant and positive change in New Zealand law; it helped to ensure that deceased persons' wishes about the disposition of their estates were carried out, even though all of the requirements for valid wills had not been satisfied.

The law was passed in the wake of similar legislation in Australia and Britain, which also aimed to ensure that a deceased's intentions were fulfilled even if the document setting out those desires failed to meet all technical requirements.

Wills statute history

Before the reforms in 2007, there had long been concern that strict requirements for the valid execution of wills were resulting in expensive court cases and a failure to carry out the wishes of the deceased. Until that time, the Wills Act 1837 was the relevant statute; this was United Kingdom legislation which had been amended multiple times over more than 150 years.

The result was that intended beneficiaries were sometimes deprived of property, or received inheritances under outdated wills that failed to reflect the will-maker's most recent intentions.

Current legislation

The Wills Act 2007 enables the High Court to declare an informal document a valid will. The key provision is section 14, which applies to documents that appear to be valid wills, that do not comply with formal requirements, and that came into existence both within or outside New Zealand.

Under section 14(2), the court may make an order declaring the document valid if the court is satisfied that the document expresses the deceased person's testamentary intentions. In reaching a decision on this, the court may take into account the document, evidence on its signing and witnessing, evidence about the deceased's testamentary intentions and evidence of statements made by the deceased.

The High Court has taken a pragmatic approach to interpretation of section 14; it has validated numerous wills since the 2007 legislation came into force. In a 2013 article, Professor Nicola Peart and lawyer Greg Kelly analysed more than 40 cases in which applications for validation of wills had been made, describing the new law's purpose as being to "give effect to the will-maker's ascertainable intentions in whatever written form they may be found".

In a decision the following year, the High Court observed that there had been around 80 applications under section 14 since the 2007 law had taken effect; validation had been declined in only four cases. The overwhelming focus of the court in such proceedings is on substance and the wishes of the deceased, rather than on technical form.

Five cases decided in the second half of this year illustrate how the High Court is continuing to operate that pragmatic approach to the validation of wills, with the impact of the Covid pandemic making such an approach even more important.

Will intentions on spreadsheet

In *In the estate of MEYER* [2022] NZHC 2040, Hendrik Meyer had died in February 2022. He was survived by his wife and four children.

Before his death, Mr Meyer had prepared a spreadsheet setting out how he wanted to dispose of his estate. Due to a combination of the Covid pandemic and Mr Meyer's health issues, he could not visit a lawyer and sign a formal will.
Mr Meyer had suffered from aplastic anaemia and was highly susceptible to bleeding and infection; this meant that he was largely confined to his home from March 2020.

Mr Meyer died before his wishes could be transferred into a formal document. His daughter applied to the High Court for an order declaring the spreadsheet a valid will. Ms Meyer explained in an affidavit that her father had told her he wanted to put his affairs in order, stating that he had made an

electronic will. The spreadsheet reflected his testamentary intentions and full inquiries had failed to find any evidence that Mr Meyer had made another will, either before or after the creation of the spreadsheet.

Ms Meyer testified that the estate was likely to have a value of less than $70,000 as the family home had passed to Mrs Meyer by survivorship on her husband's death. Both Mrs Meyer and the four children had provided written consent to the spreadsheet being validated as Mr Meyer's last will.

Justice Lang said that the principles to be applied in such cases were now well-established. The onus rested on the applicant to satisfy the court on the balance of probabilities that the document propounded as the deceased's will reflected the deceased's testamentary intentions. In undertaking that inquiry, the court was required to focus on substance and intention rather than on form.

His Honour said there could be no doubt that the spreadsheet reflected Mr Meyer's testamentary intentions. His poor health and the pandemic were the only reasons he could not have it converted into a will that met the technical requirements of the Act. The court accordingly had no hesitation in making an order under section 14 declaring the spreadsheet to be a valid will.

Will not witnessed

In the case of *In the estate of NAM* [2022] NZHC 2023, Sang Woo Nam had died in March 2022 after signing a new will on 24 December 2020. However, the will had not been witnessed as required by law. Mr Nam's wife sought an order under section 14 declaring the December 2020 document to be a valid will.

Justice Lang noted that the failure to execute the will correctly had arisen due to Covid lockdown restrictions. The Epidemic Preparedness (Wills Act 2007 – Signing and Witnessing of Wills) Immediate Modification Order 2020 had been passed to permit witnesses to view wills being signed remotely. The witnesses to the will were then required to confirm on the face of the will that they had witnessed the signing in that way.

The lawyer who had prepared the will took it to Mr Nam's house, where both he and Mr Nam signed in the presence of each other. A second lawyer viewed the signing by cellphone, but the witnessing did not comply with the requirements of the Order.

Justice Lang stated that the failure to comply with the Order had been caused by a misunderstanding of the requirements, but was an error of form rather than of substance. There could be no dispute that Mr Nam had intended the document to be his final will and the defect that had arisen was technical in nature. An order validating the will would be made.

Two unexecuted wills

A third case, *Re The Estate of ALEBEL* [2022] NZHC 2237, involved Zena Alebel making contact with a law firm in July 2021 to inquire about making a will. She had major respiratory issues and was concerned that if she contracted Covid she would not survive.

The law firm prepared a draft will and sent it to Ms Alebel, but she did not execute it before she died in November 2021. An application was made to validate the draft will on the basis that it was a written record of Ms Alebel's testamentary intentions communicated by her to her lawyer.

Justice Venning noted that the deceased had expressed her general testamentary intentions to the law firm receptionist and to the lawyer, as well as providing the full names of her two children when requested to do so. The draft will left Ms Alebel's property to the children.

Ms Alebel had been separated from her husband for eight years, but if the will was not validated the estate would go to her husband under the Administration Act 1969. An order validating the draft will was made.

In *Re Estate of Jocelyn Land* [2022] NZHC 2434 Jocelyn Land had met with a lawyer in April 2021 to provide instructions as to her will. A draft will was prepared and an amendment requested by Ms Land was subsequently made, but repeated pandemic lockdowns meant that the document was not executed before Ms Land died in March 2022.

Justice Gordon made an order declaring that the document was the last will of the deceased.

Only one witness

Finally, *Re Application by Prasad (Wills Act 2007)* [2022] NZHC 2520 involved the death of Rumendra Prasad, who died leaving a will witnessed by only one person. No other wills or testamentary documents were located. Justice Powell held that the document represented the deceased's testamentary intentions and should be validated.

Legal executives should check dates of wills

The Wills Act 2007 only applies to documents that came into existence after 1 November 2007. Legal executives should check that clients have updated wills as older documents failing to comply with the technical requirements will fall under the previous law. ■

CASES UPDATE



Professional conduct

Lawyer suspended for three months for acting on loan transactions in which he had personal interest

The Lawyers and Conveyancers Disciplinary Tribunal has made a finding of misconduct against a lawyer who acted for a borrower on loan transactions in which the lawyer was personally involved as a lender.

The lawyer acted for a client and friend of 20 years in respect of two loan transactions involving money being lent by the lawyer in his personal capacity to two different companies, of which his friend was the sole director and shareholder.

The first loan was guaranteed by a trust, of which the lawyer was a trustee. The lawyer acted for the trust in respect of the loan and other matters. The lawyer also provided a personal guarantee in respect of the second loan.

The lawyer recognised the conflict of interest, but decided to continue to act as he had a waiver from the borrower. The Tribunal held that, by participating in and acting on the transactions, the lawyer had failed in his responsibility to be independent under Rule 5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. He had also breached his obligations not to enter into financial transactions with clients if there was a possibility of the relationship of confidence and trust being compromised; not to act if there was a risk of conflict of interest; and not to act for more than one client where there was a more than negligible risk of being unable to discharge his obligations to a client.

The lawyer was suspended from practice for three months.

Property

Whether kiwifruit licence to be included in rateable value of property

The case of *Gisborne District Council v Bushmere Trust* [2022] NZHC 2085 involved the issue of whether the value of a licence to sell SunGold kiwifruit should be included in the capital value of a property for rating purposes.

The Bushmere Trust owned a property of 5.859 hectares northwest of Gisborne, over which it had a licence from Zespri Group Ltd to grow and sell the highly valuable kiwifruit, SunGold. For rating purposes, the Land Valuation Tribunal held that the value of the licence should be deducted from the value of the property so that it was valued at a level equivalent to a green kiwifruit orchard.

The Gisborne District Council, supported by the Valuer-General, brought a test case to the High Court, arguing that the licence should be included in the land value. The council was the first to take a new approach in valuing SunGold licences for rating purposes, with around 49 growers likely to be affected.

The High Court granted the appeal, holding that the capital value of the land, which was a proxy for fair market value, included the value of the land as enhanced by the licence. In practice, the licence ran with the land.

Accordingly, under the Rating Valuations Act 1998, the rateable value of the property included the value of the SunGold licence. That



interpretation was consistent with the relevant case law and the purpose of the rating regime.

Trusts

Restrictive deed wording frustrates charitable distributions

Re Trevor Wilson Trustee Ltd [2022] NZHC 2118 was an application brought by Trevor Wilson Trustee Ltd as trustee of the Trevor Wilson Charitable Trust (No 2) seeking to modify the terms of the No 2 Trust's deed. The No 1 Trust had been settled by Trevor Wilson in 1990 and held the shares in his bulk cartage business. The objects of the No 1 Trust were to provide for and benefit the Order of St John and Presbyterian Support Services, or their respective successors 'but only within the Mid-Canterbury provincial region in New Zealand.'

The No 1 Trust settled the No 2 Trust by deed in 2008, after which the assets of the No 1 Trust were resettled on the No 2 Trust. The No 2 Trust had significant assets of approximately $24.5 million and the capital base continued to grow. However, the trustee had in recent times experienced difficulty in identifying meritorious charitable purposes or objects that provided benefit only to the Mid-Canterbury region. The increasing centralisation of charitable organisations exacerbated that issue.

As a result, the trustee had been forced to decline making distributions to the Mid-Canterbury region, as they would not benefit that region alone. One example of that was the trustee declining a request to construct a helipad at Christchurch Hospital, as it would not be used exclusively for Mid-Canterbury.

The trustee accordingly sought to amend the geographical restrictions so as to provide that a distribution could be made 'so long as it provides a material benefit to the Mid-Canterbury provincial region in New Zealand and its residents.' The trustee also wished to define the Mid-Canterbury provincial region, which was not defined in the deed.

Justice Dunningham said she considered that the most appropriate route by which the amendments to the trust deed could be made was pursuant to a scheme under Part 3 of the Charitable Trusts Act 1957. Her Honour said she had not considered whether the changes could be introduced through the variation power alone, as the approval of a scheme under the Charitable Trusts Act was a formal public process which avoided any future disputes over whether there was scope to amend the deed in the way proposed under the terms of the No 1 Trust.

The court said that the purposes of the trust had for some time been frustrated by the strict geographical restrictions in the charitable purposes clause. Orders were accordingly made approving the scheme proposed by the trustee.

High Court rules on validity of trustee retirements and appointments

In *Re Hayward Trustee Services Ltd* [2022] NZHC 2217, the Wayne Hayward Family Trust had been settled in November 1993 for the benefit of Wayne and his family. The original trustees were a lawyer, Alister Argyle, and an accountant, John Falloon.

Continued on page 12 ...

...Continued from page 11

By clause 11 of the trust deed, Wayne had control over the appointment and removal of trustees. By deed dated 23 August 2017, the original trustees purported to retire from trusteeship and Wayne appointed himself and Hayward Trustee Services Ltd as trustees. At that time, Wayne owned all the shares in Hayward Trustee Services Ltd (the current trustee) and was a co-director with Mr Argyle.

Mr Argyle retired as a director in February 2020 and was replaced by Mark Dineen of Tavendale & Partners. Wayne was diagnosed with dementia in 2020 and, by deed dated October 2020, removed himself as a trustee of the trust, with the intention that the current trustee remain as the sole continuing trustee. He also retired as a director and was replaced by Mark Tavendale. Wayne transferred his shares to Mr Dineen and Mr Tavendale to be held jointly.

Following Mr Dineen's retirement, Mr Tavendale became the sole director and shareholder of the current trustee. He was subsequently replaced by Timothy Keenan, who commissioned a review of the trust which raised issues as to the removal and appointment of trustees as well as the validity of the trust's current management.

An application was brought to the High Court seeking orders that the original trustees had been validly discharged and, if they had not been, that they should now be removed and validly discharged. The issue of whether the trust deed permitted its assets to be held by a sole trustee and a corporate trustee also arose.

The High Court held that the deed permitted there to be a sole trustee and the deed could not be read as ousting the ability of a company to act as a trustee. The retirements and appointments had been valid pursuant to the trust deed and were not precluded by statute. The orders sought by the current trustee would accordingly be granted.

High Court approves variation of trust deed

Re M I Clifford Trust No 2 [2022] NZHC 2015 involved an application by the trustees of the M I Clifford Trust No 2 for orders under section 124 of the Trusts Act 2019 for approval of a variation of the trust on behalf of unborn beneficiaries.

The M I Clifford Trust No 1 was established in 1963 by a deed of trust, with the effective settlor being Ogilvie Clifford and the beneficiaries being his children, except Deidre Wood. The M I Clifford Trust No 2 was created in 1966 to provide for Deidre to the same extent as her siblings and to make further provision for all four siblings.

The trust was varied by deed of variation in 1993. In the current proceedings, the trustees sought to vary the deed so that two funds in the trust could be combined into a single trust fund. They also sought to replace the varied trust deed with a modern, flexible instrument giving the older grandchildren the power to appoint and remove trustees, and to allow for an earlier final distribution.

The current trust deed provided for accumulated undistributed income and capital in Fund A and Fund B to be held until the final date of distribution. That was 20 years after the death of the last sibling.

The siblings currently range in age from 59 to 69, meaning that the final distribution was unlikely for at least another 40 years and, potentially, longer than that.

Justice Nation said that he considered that the trust was now essentially being held for the great-grandchildren, given the length of time until the trust was vested and the restrictions on an earlier distribution.

A report prepared by Buddle Findlay explained that the strict requirement for equality between beneficiaries meant the trust was in the nature of a fixed, rather than a discretionary, trust. The trustees had no discretion in relation to objects or distribution.

His Honour concluded that he had no difficulty in approving the proposed variations as there were unlikely to be any further grandchildren who would benefit as younger grandchildren in terms of the trust deed as it stood. The court was satisfied that, given the ages and circumstances of three of the siblings, it would not be possible for them to have any more children. There was also little likelihood of the fourth sibling having any more children. It was therefore highly unlikely there would be any younger grandchild who might benefit from Fund B in terms of the trust deed.

Having regard to the interests of great-grandchildren, there were good reasons for the court to approve the proposed variation. The variation of the trust deed would be approved in terms of the draft trust deed attached to the notice of application. ■



New charities law to progress in 2023

The Charities Amendment Bill is due to be reported back from the Social Services and Community Committee on 28 March 2023; it will then continue progressing through Parliament.

The bill was introduced to the House on 21 September 2022 and received its first reading on 28 September. Submissions to the select committee on the bill closed on 9 December and are now being considered by the committee.

Purpose of new legislation

Community and Voluntary Sector Minister, the Hon Priyanca Radhakrishnan, said that the aim of the law change was to increase transparency for the public, improve access to justice services and reduce the burden on smaller charities. The reforms include reducing reporting requirements for very small charities, increasing transparency for accumulated funds and a more accessible tribunal for charities that want to appeal decisions.

"There are about 28,000 registered charities that contribute greatly to New Zealand society, we want to ensure that our legislative settings are fit for them to continue supporting our communities into the future.

"The past two years have shone the spotlight on the important role they play in supporting New Zealanders. We are progressing tangible changes that will support charities to thrive while ensuring the public have trust and confidence in the charitable sector," said the minister.

Compliance requirements

New financial reporting standards for charities were introduced in 2015 and smaller charities have subsequently raised concerns that the requirements create a high compliance burden.

There are four tiers of reporting standards based on the annual expenditure of a charity. Over half of registered charities report to tier four (under $140,000 annual operating payments).

Over time, however, the rates of compliance with annual return filing have declined.

The bill empowers the chief executive of the Department of Internal Affairs to exempt very small charities from the External Reporting Board's reporting standards. An annual return provided to the chief executive outlining minimum information will still be required for transparency. The minimum information required – which is likely to include income and expenditure information – will be prescribed by regulations.

Charities that qualify for the exemption will be defined by financial thresholds set by regulations, with the aim of providing greater flexibility for adjusting the thresholds.

Larger charities with annual operating expenses over $140,000 will be required to declare and explain any accumulated major funds such as cash, assets or other resources.

Expanded ability to object

A second aspect of the bill is an expanded ability for entities to object to decisions made under the Charities Act.

Other changes include permitting charities to be heard by the decision-maker in person and requiring the Charities Registration Board (CRB) to publish all declined and deregistration decisions.

The process aims to ensure natural justice in decision-making that impacts charities.

Appeals framework

A significant change contained in the bill is that the Taxation Review Authority – rather than the High Court – is empowered to hear first instance appeals under the Charities Act. The Taxation Review Authority will be known as the Taxation and Charities Review Authority when hearing Charities Act appeals.

The High Court will remain an appeal court for the authority's decisions and the authority will be able to refer cases to the High Court on questions of law or in other appropriate circumstances.

The range of decisions that can be appealed will be expanded to include some decisions of the chief executive as well as all decisions of the CRB. The time for lodging appeals is to be increased from 20 working days to two months. Charities will be able to self-represent before the authority in a bid to reduce their legal costs.

Charities Registration Board

The bill also increases the number of CRB members from three to five, with the aim of improving the board's diversity and experience, and addressing potential quorum and conflict of interest issues. In future, the chief executive of the Department of Internal Affairs will be required to consult the charitable sector when developing significant guidance material to ensure that charities can have input into proposals affecting them. ■

"It follows the same process as before but is more intuitive and straightforward."

Caroline Mason, Senior Associate
Cavell Leitch



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2022 survey of Registered Legal Executives' conditions and rewards

An overview of RLE responses

We are pleased to share the results of this year's 'biennial' survey of Legal Executives New Zealand members. Last carried out in 2019, the survey had a year's hiatus in 2021 due to the difficulties around Covid. It is good to see it back!

Why do we do this?

The key purpose of LENZ is to protect, represent and advance the interests of its members. It achieves this by providing support, information and opportunities for CPD, and through promoting the benefits of membership to the profession and the community.

This survey underpins the above and serves to inform Registered Legal Executives (RLEs) of the terms and conditions of members' employment on a national basis and in their region.

The 2022 survey focuses on:

- Salary levels and percentage changes
- Contract and actual working hours
- Annual and long-service leave entitlements, additional leave offered and payment for additional hours worked
- Bonus pay systems, KiwiSaver and other employment benefits, and
- Fee budgets, billable hours and charge-out rates.

Prior to 2022, survey data was collected and reported by Longdill & Associates. With the death of Judi Longdill in 2020, LENZ engaged Gravitas OPG for this year's survey.

Methodology

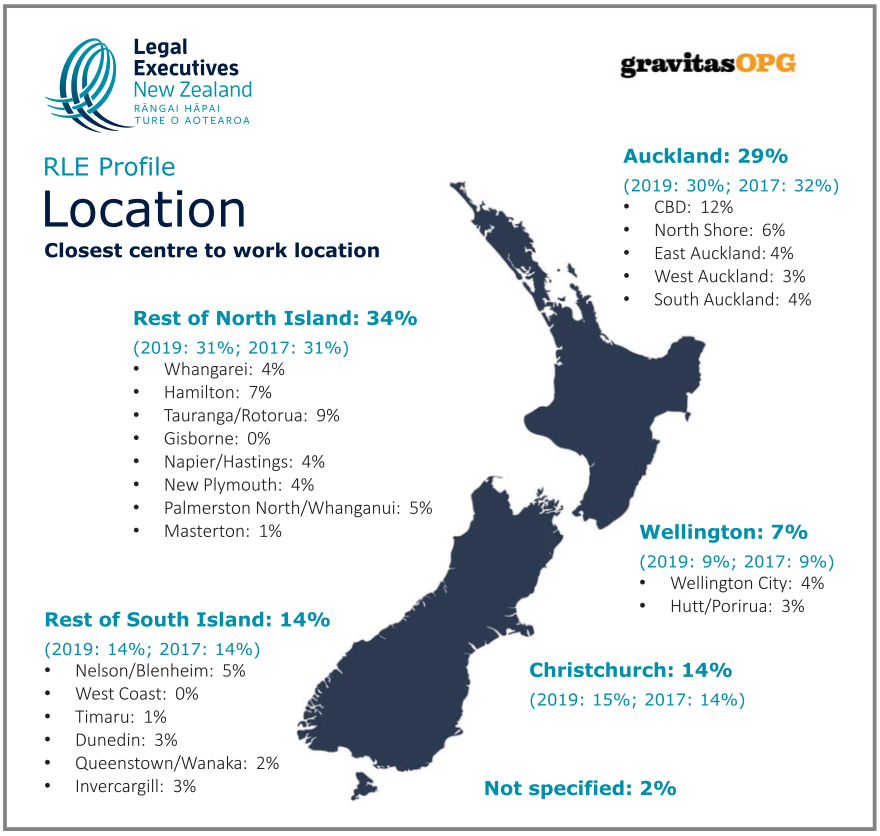
The survey was emailed to 1,228 RLEs in July with 952 (78%) submitting their responses online, compared with 73% in 2019 and 67% in 2017. In this 2022 survey, the margin of error is 1.5%.

RLE profile

Location

Of the 952 respondents, 70% of RLEs are North Island-based. Auckland had 29% of respondents (30% in 2019 and 32% in 2017) with 12% working in its CBD.

Continued on page 16 ...



...Continued from page 15

Wellington's RLE population is dropping – 7% in 2022, down from 9% in both 2019 and 2017.

The South Island had 28% of respondents, half of whom are based in Christchurch – a consistent figure for the last few years. Nelson/Blenheim had 5%, Dunedin and Invercargill both 3% and Queenstown/Wanaka had 2%. Again, these figures are consistent with previous years. Two percent of respondents did not disclose their location.

RLE length of service
The share of RLEs with less than 10 years' experience continues to increase; 42% have worked as a legal executive for 0-9 years – broken down to 22% having 0-4 years' and 20% with 5-9 years' experience. This compares with 36% in 2019 (in 2011 it was 41%). At the other end of the scale, 30% of respondents had 20+ years of experience (12% had 20-24 years' experience and 18% had 25+ years' experience).

Organisations where you work
Unsurprisingly, 96% of RLEs work in law firms. This compares with 93% in 2019.

A further 1% work in central/local government (2% in 2019); 1% work in a community law centre, and the final 1% are employed by other organisations.

Salaries

Current salaries
The upward trend in salaries continues, with 85% of RLEs now having an annual salary of more than $50,000 – up from 73% in 2019, and compared with 33% when monitoring began in 2009. Just less than half (45%) now have a salary of more than $80,000 (up from 26% in 2019), including 4% earning more than $120,000.

Nationwide, the median current salary is $61,000-$80,000; the average current salary is $81,000.

Salaries are highest among RLEs with 20 years' legal executive experience or more (23% earning more than $100,000) and those living in Auckland (21% earning more than $100,000).

In the New Zealand-wide $100,000+ salary range (12%), 8% earn up to $120,000, 2% between $121,000-$140,000 and the remaining 2% is spread over the $141,000-$200,000+ range.

Salaries

Current Salary

Legal Executives New Zealand
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Current salary by RLE profile

	Median	Average
Location		
Auckland	$80 - $100K	$89,315
Wellington	$80 - $100K	$86,648
Other North Island	$70 - $80K	$77,454
Christchurch	$70 - $80K	$80,570
Other South Island	$70 - $80K	$71,082
Working Hours		
Full-time	$70 - $80K	$83,075
Part-time	$55 - $60K	$61,059
Hours not stipulated	$80 - $100K	$85,440
Experience		
0-4 years	$60 - $70K	$67,608
5-9 years	$70 - $80K	$74,662
10-19 years	$80 - $100K	$86,664
20 years or more	$80 - $100K	$90,172

Base: All respondents

gravitasOPG

Current salaries by RLE profile
By profile, the average salary for an Auckland RLE is $89,315; Wellington $86,648; 'Other North Island' $77,454; Christchurch $80,570; and the 'Other South Island' average salary is $71,082.

Full-time RLEs earn an average of $83,075; part-time $61,059; and those who did not stipulate their hours earn an average of $85,440.

Salary reviews
In the last year, 77% of respondents had a salary review – up significantly from 2019 (72%) and the highest share reported since monitoring began.

Almost all of those who had had a salary review (94%) reported having received a salary increase, up from 82% in 2019.

This year, 5% of respondents had not had a review for more than two years (including 10% of those RLEs who have worked 30+ years).

Two-thirds of RLEs (67%) reported that their most recent salary review resulted in a salary increase of 5% or more – this share up from 40% in 2019. In 2022, 29% reported receiving a salary increase of 10% or more, compared with just 13% in 2019.

Salary increases of 10% or more were most common among RLEs with the least experience (0-4 years; 46% receiving a salary increase of 10% or more), on the lowest salaries (less than $60,000: 35%) and Wellington RLEs (36%). In contrast, RLEs working part-time (25%), or with the most experience (20+ years: 21%), were least likely to have received a salary increase of 10% or more.

Working hours

Contracted hours
The greatest share of RLEs (62%) are contracted to work between 30-39 hours/week; this is consistent with previous years. A further 22% are contracted to work 40 hours or more. Six percent of RLEs have contracts that don't stipulate the actual number of hours – although this share has shown a steady decline over time, from a high of 21% in 2010 and 2011.

Auckland (31%) and Wellington (28%) RLEs are over-represented among those contracted to work 40+ hours/week a week. 'Other North Island' (18%) and 'Other South Island' (17%) RLEs are significantly less likely to work 40+ hours/week.

At the other end of the scale, 16% of 'Other South Island' RLEs are contracted to work less than 30 hours/week compared with 11% of all RLEs – and only 4% of those in Wellington.

The greatest share of RLEs (55%) work between 30-39 hours/week; this share is a significant increase from 2019 (48%).

Actual hours worked
The greatest share of RLEs (55%) work between 30-39 hours/week; this share is a significant increase from 2019 (48%).

A further 32% work 40+ hours/week, including 3% who work 50+ hours/week. This figure has declined significantly since the 2019 survey (down from 40%).

It's hard work in two main centres: Auckland (43%) and Wellington (40%) RLEs and those earning $100,000+ (58%) are amongst those working 40+ hours/week.

Contracted hours v actual hours worked
Overwhelmingly, the greatest share of RLEs who have contracted hours (83%) work a similar number of hours they are contracted to do; 12% work more hours and 5% work fewer hours than contracted.

Compensation for additional hours worked
Since 2013, the broad picture of compensation for additional work is fairly consistent.

Well over half of RLEs (61% - including 72% in Auckland receive no compensation for additional hours worked over those agreed or stipulated in their contract – up from 58% in 2019.

Where compensation is offered, it is a mix of time in lieu (21%) and payment (20% - especially those on the lowest incomes; 41% of those earning $60,000 or less). The most experienced legal executives (30+ years' experience) are over-represented among those with informal compensation arrangements (4%).

Leave

Annual leave entitlement
Since 2011, annual leave entitlements have remained relatively stable. In 2022, 86% of RLEs are entitled to the statutory minimum of four weeks' annual leave

Continued on page 18 ...

...Continued from page 17

(2017 – 85%; 2011 - 81%:). Five weeks' leave is given to 13% of respondents, and 1% are entitled to more than five weeks' leave.

Leave entitlements increase with experience; only 5% of RLEs with less than five years' experience are entitled to more than four weeks of annual leave compared with 28% of RLEs with 25+ years' experience.

Additional leave
Over the last 12 months, 17% of RLEs were offered additional leave (other than health, bereavement or parental leave), a slight increase from 14% in 2019.

Interestingly, 25% of Christchurch RLEs are offered additional leave; RLEs in other parts of the South Island are least likely at 11%.

Among the RLEs who have been offered additional leave in the last 12 months, almost half (47%) were offered just one to two days. Additional leave entitlements have declined from 2019; 76% received less than five day's additional leave in 2022 compared with 67% in 2019.

Long service leave entitlements
Just over 40% of employers do not offer long service leave – a similar percentage from previous years. North Island RLEs working outside Auckland and Wellington are over-represented in this group (48%). Another 36% are unsure whether their employer offers long service leave or not.

Only 7% of RLEs are entitled to long service leave after 10 years with their employer; a further 9% are eligible after 12 years; 3% are required to work more than 15 years before being entitled to long service leave.

More than one-third (36%) continue to be uncertain about their long service leave entitlements. This level of uncertainty is highest for the least experienced RLEs (48%) who have less than five years' experience.

Employee benefits

Bonus pay system
Just over a third (37%) of RLE employers have a bonus system (paid either as dollars or rewards such as gifts and hoidays); the same percentage as in 2019; it was 29% in 2011.

Bonus pay systems are most common for RLEs with a salary of $81,000-$100,000 (42%) or $100,000+ (48%).

KiwiSaver
It is good to see that RLEs' participation in KiwiSaver continues to increase: 93% in 2022 (89% in 2019, 83% in 2017).

Employee Benefits

Other Employer Benefits

	2011	2013	2015	2017	2019	2022
Flexible hours/ability to work around family needs	*	35%	39%	41%	44%	55%
Laptop computer	*	*	*	*	1%	46%
Parking	37%	38%	38%	38%	43%	41%
Cell-phone (2022: Personal use: 21%; Work only: 12%)	12%	18%	19%	21%	25%	33%
Health/wellbeing services	0%	3%	3%	2%	4%	16%
Employee assistance (EAP)	*	*	*	*	14%	16%
Extra leave	*	8%	8%	6%	9%	9%
Medical/health insurance	8%	10%	9%	10%	12%	9%
Gym membership (2022: Subsidy: 5%; Fully paid: 2%)	8%	8%	7%	6%	6%	7%
Petrol/mileage/car	0%	5%	6%	5%	6%	6%
Insurance (e.g. income protection)	5%	4%	4%	5%	6%	5%
Home phone/Wi-Fi	*	4%	4%	4%	3%	3%
Ability to work from home	*	*	*	*	*	2%
Home office set up/WFH payment/consumables reimbursed	*	*	*	*	*	1%
Clothing allowance	1%	3%	3%	0%	1%	1%
Gift vouchers, Christmas bonus	*	*	*	*	*	1%
Free food at work	*	*	*	*	*	1%
Assistance with childcare	1%	0%	1%	0%	1%	0%
No other employee benefits offered				26%	19%	13%

* Not included in list of possible benefits

Grey shading denotes benefits mentioned unprompted by respondents (so not included in survey list)

Base: All respondents Multiple responses permitted

For the greatest share of KiwiSaver participants (81%), their employer contributes 3% to the scheme. The share contributing 3% is up significantly from 2019 (74%); the share contributing 4% has dropped from 13% to 9%; 1% of employers contribute 6% and a further 1% contribute 8%.

Other employment benefits
Other employment benefits range from flexible hours/ability to work around family needs, laptop, parking, mobile phone, health/wellbeing services, employee assistance, medical/health insurance, petrol/mileage/car, home office set up, to assistance with childcare.

(See the chart on the left for more detailed information on this topic).

Almost half of RLEs (46%) receive three or more additional employee benefits, including 8% who receive six or more. In contrast, one in five RLEs (20%) receive only one additional benefit – and 13% do not receive anything additional.

> Sixty percent of RLEs report they may work from home.

Christchurch-based RLEs are most likely to be receiving three or more additional benefits (57%), along with those in the highest salary bracket ($100,000+: 62%).

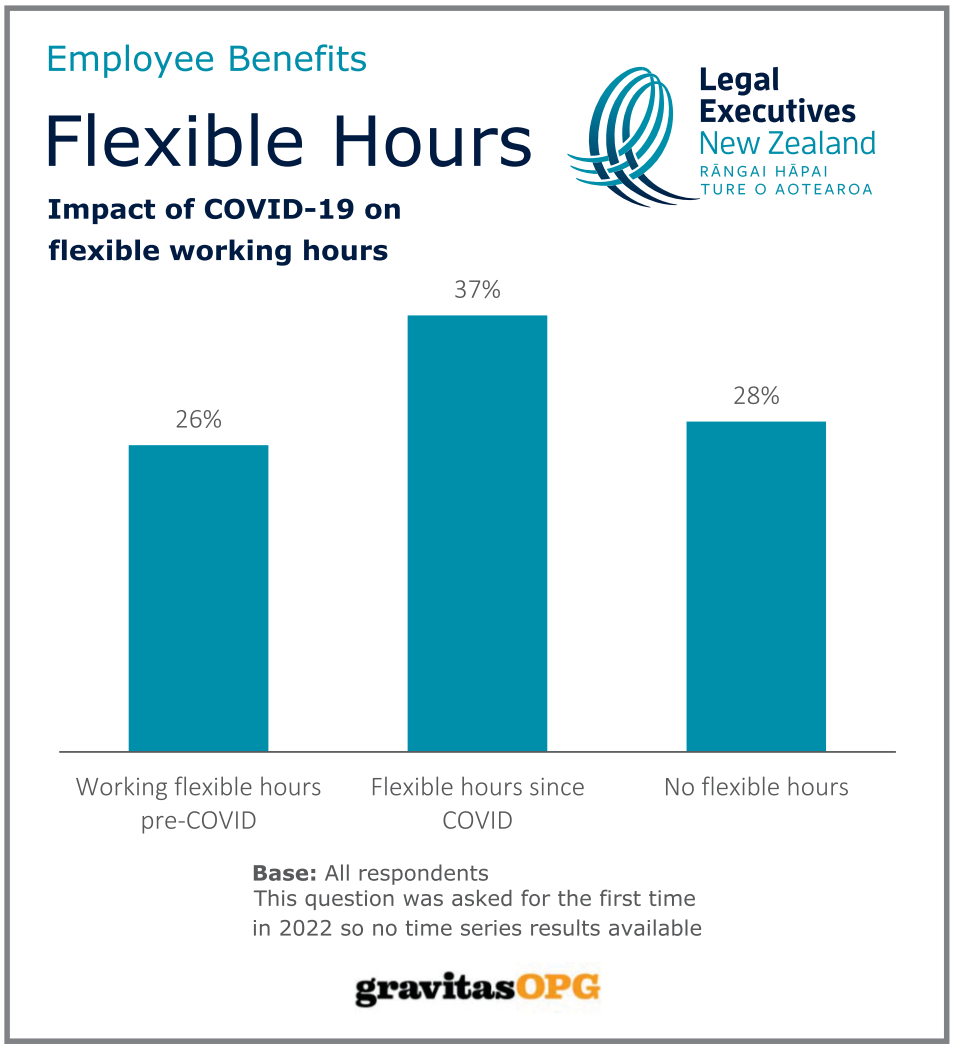
In contrast, the least experienced RLEs (those with less than five years' experience: 41%) and those on the lowest salary ($60,000 or less: 36%) are least likely to receive three or more benefits. RLEs with the lowest salaries are also the most likely to be receiving no additional employer benefits (16% of RLEs earning $60,000 or less and 17% of those earning between $60,001 and $80,000).

Working from home
Sixty per cent of RLEs report that their employer allows them to work from home – occasionally at least. The greatest share (50%) can work from home one to two days/week. Forty per cent of RLEs are never, or almost never, allowed to work from home.

Part-time staff are over-represented amongst those able to work from home permanently (9%). RLEs on the highest salaries ($100,000+) are over-represented amongst those able to work from home for three days or more (11%).

Flexible hours – impact of Covid
RLEs were asked what impact Covid had had on flexibility of working hours. In response, 37% report that, since the pandemic, their employer had allowed them to work flexible hours. A further 26% had been allowed to work flexible hours before the pandemic. One per cent reported having flexible hours but it was unclear when these had started. In contrast, 28% of RLEs had no provision for flexible hours.

On a regional basis, RLEs from Wellington (47%), Christchurch (41%) and Auckland (40%) are most likely to be able to work with flexible hours since the pandemic. Contrastingly, the least experienced RLEs (those with less than five years'



Continued on page 20 ...

...Continued from page 19

experience) are most likely not to have flexible hours (33%).

Work and responsibilities

Annual fees budget
The absence of a fees budget continues for 40% of RLEs; this share has been stable since 2009. This group is mostly represented among part-timers (55%), RLEs without contracted hours (57%) and on the lowest incomes ($60,000 or less: 62%).

For the 60% of RLEs who do have a fees budget, the budget figure continues to increase. At the upper end of the fees budget ($200,000-$400,000+) the share has increased to 39%, up from 34% in 2019. At the 'upper-upper' end, 11% of RLEs report having a fees budget of $300,000+.

Billable hours/day
The number of expected billable hours remains stable. In 2022, the greatest share of RLEs (46%) are expected to bill between five and six hours/day. A further 3% are expected to bill between seven to eight hours/day. Just over one-third (36%) continue to report there is no expectation to meet billable hours' targets.

RLEs who have no stipulated contracted hours (59%), part-timers (45%) and RLEs working in Auckland (41%) are least likely to have billable hours' targets. Contrastingly, 62% of RLEs on the highest incomes ($80,000+) are expected to charge five or more hours/day.

Charge-out rates
Hourly charge-out rates continue to increase with 45% of RLEs currently having a charge-out rate of more than $250/hour (up significantly from 35% in 2019). Interestingly, 12% of RLEs have no hourly charge-out rate. Historically, this figure has been much less in previous surveys (nil in 2019: 3% in 2015: 2% in 2011: 4% in 2009).

Median rates vary by the level of an RLE's experience; the charge-out rates increase from $201-$250/hour for those with less than 10 years' experience, rising to $251-$300/hour for RLEs with 10+ years' experience.

To find out more

We hope you have found the survey findings to be not only interesting, but also useful.

If you want to drill down further into the survey results, there is more detail available. To access this data, log into the members' section of the website (www.nzile.org.nz). ■

Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

Kaiārahi service



The term *kaiārahi* means 'someone who guides; leader, mentor, counsellor'.

LENZ has long acknowledged the importance of providing a support network for its members in both professional and personal capacities. We are pleased to have a national Kaiārahi service to supplement the ongoing informal support offered through our branches via their networking events and seminars.

Whilst our members can access the professional counselling service provided by the New Zealand Law Society, we also saw a need for LENZ to provide members with direct and personal support on every level.

We have senior members who are approachable and empathetic, and members who have specific technical knowledge that they are prepared to share.

If you would like to talk with a kaiārahi, please look at the contact list in the members' section of our website, or contact the National Office.

Big regulatory changes considered for legal executives in the United Kingdom

The Chartered Institute of Legal Executives (CILEX) has initiated formal talks with the Solicitors Regulation Authority (SRA) to explore a proposal to transfer the regulation of its members to this body. Its aim is to ensure that the regulation of CILEX members continues to be independent and financially sustainable.

In its July 2022 statement announcing the review, CILEX referred to its "rapidly deteriorating financial position", but subsequently clarified that it remained in a stable financial position with reserves of over £6 million and property assets of £2.3 million. However, the organisation said that its assets had been built and were held to support the work of CILEX as a professional body and education provider. Its reserves were not available to subsidise the cost of regulation. Since September 2021, CILEX had provided an additional £250,000 by way of temporary underwriting to the compensation fund for CILEX entities as CILEX Regulation Ltd had been unable to meet that commitment.

CILEX said its position was that, for independent regulation to be effective, it must be sustainable without third-party subsidy and financial dependence.

'Too many cooks' in legal services regulation

CILEX said that the Legal Services Act 2007 and the work of CILEX's independent regulator, CILEX Regulation Ltd, had raised the status of CILEX professionals, allowing them to become partners, set up their own firms and gain independent practice rights. There were now around 1,000 CILEX professionals who were partners in law firms.

The Institute said, however, that the number and variety of models involved in the regulation of legal services could be confusing for consumers and professionals, as well as raising issues of financial viability.

"CILEX believes that the SRA has the scale and reach to provide effective regulation. It already sets clear standards for those that it regulates and all who work in SRA-regulated firms – around 70% of CILEX practitioners. Dealing with only one regulator has the potential to make life easier for employers too."

Following a review which explored the issues involved, CILEX has written to the SRA to initiate formal talks. CILEX chair, Professor Chris Bones, said that the first step would be for the SRA to consider a model. If that process produced positive results, CILEX would consult on the

Continued on page 22 ...



Royal Courts of Justice, London

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implications of the proposed change.

"We believe that bringing the regulation of CILEX members into the SRA could give clients and others real clarity and confidence that regardless of who does the work, the outcomes will be of the same high quality. Any new model would need to preserve the distinct identity of CILEX lawyers, CILEX paralegals and CILEX advanced paralegals and retain the CILEX route to qualification. Importantly, there would be no cross-subsidy between CILEX practitioners and solicitors on the cost of regulation."

Professor Bones said that both solicitors and CILEX members would continue to have their own representative bodies.

Eyebrows raised at proposal

A week after announcing the proposal to launch talks with the SRA, CILEX issued a media release stating that the announcement had 'raised some eyebrows.' It provided an article to the *Law Society Gazette* to explain the proposal. CILEX said that the SRA would develop proposals to be considered by the CILEX board in the northern autumn.

"This process enables CILEX to determine the feasibility and viability of delegation to the SRA, and whether it is in the interests of our 20,000+ members and the public to proceed to a consultation with our membership. CILEX will also consider any proposals received from CILEX Regulation to revise their regulatory model to meet the challenges identified in the case for change."

The case for change reviewed the model of delegated regulation which has operated since 2007, concluding that the business model that supported CILEX Regulation Ltd as a smaller regulator was now in question, with the issue being thrown into sharp relief by the Covid pandemic. With low or no growth in regulated practitioner numbers and with an entity regulation model facing challenges around the funding of client protection arrangements, there was now a 'serious question' over the sustainability of CILEX Regulation in the short to medium term. The cost of regulation through CILEX Regulation Ltd was already higher for individuals than that paid by solicitors.

More changes afoot for UK legal executives

In other changes affecting legal executives in the United Kingdom, the then-Lord Chancellor, Dominic Raab, announced the government was considering enabling CILEX advocates to apply to be crown prosecutors, instead of being limited to associate prosecutor roles unless they cross-qualified as solicitors.

Other mooted changes were granting higher rights of audience to CILEX lawyers and permitting direct applications to higher tribunal positions in the judiciary.

In May 2022, the University of Law announced a new partnership with CILEX to provide a four-year part-time online LLB aligned with the CILEX professional qualification. The qualification is particularly aimed at students who want to go on to qualify as CILEX lawyers, authorised to practice unsupervised in a specialist area of law.

The CILEX professional qualification was launched in February 2021, with the aim of producing uniquely-qualified, specialist lawyers. In January 2022, 230 students in England and Wales sat assessments forming the first step in the foundation stage of the CPQ, which is targeted at school leavers, non-law graduates and professionals without legal experience.

CILEX has also partnered with the Law Society and the Welsh government to bring new legal services apprenticeships to Wales. The new Level 3 and Level 5 apprenticeships are open to students aged over 16 who have a high standard of numeracy and literacy, and are sponsored by their employers. Apprentices can study remotely or in-person, with enrolments having opened in June 2022. An estimated 700 organisations in Wales have been identified as potentially suitable to sponsor legal apprentices. ■

Source: www.cilex.org.uk

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CONVEYANCING UPDATE



Update from LINZ

Toitū Te Whenua LINZ launches new website

Toitū Te Whenua Land Information New Zealand's upgraded website went live at the end of September. Kaihautū Organisational Effectiveness, Claire Richardson, said the aim was to make it easier for people to find information about New Zealand's land, sea and waterways.

She said that the search function had been improved and the layout had been streamlined.

The new website would continue to evolve over time. Feedback is welcome on the LINZ site at: digitalcommunications@linz.govt.nz

New Landonline – Dealings application

The first step in the New Landonline – Dealings application went live in November as part of the Modernising Landonline programme. LINZ said that the new application includes the key features needed to process most tasks, including transfers, mortgages and mortgage discharge instruments end-to-end. Legal professionals can now complete almost all sale and purchase and refinancing transactions on the modernised web-based application. They can use any device as long as it has a Digital Certificate to certify and sign.

The programme to modernise Landonline was approved by Cabinet in 2018 and is due to be completed in 2023.

Two-year Digital Certificates phased in

From 3 October, only two-year Digital Certificates are being issued. The move follows the upgrade of the Landonline Digital Certificate infrastructure, with customers now using the new certificates in Legacy and New Landonline. The two-year certificates are compatible with current Microsoft Windows operating systems.

Interim A+I Guideline remains in force

LINZ has advised that its Interim Guideline for Authority and Identification Requirements and Electronic Signing of Documents, published in March 2020 to assist practitioners in dealing with Covid, remains in force. LINZ said that the Registrar-General of Land would give notice of his intention to revoke the guideline prior to doing so, but had not yet done that.

The interim guideline could be relied on in any case in which a practitioner could not meet a client in person due to Covid.

Utility Location Standard published

A new national standard the utility sector can apply locally to record the positions of utility assets such as water infrastructure, electricity, gas, telecommunications and fuel is now available from the LINZ website.

The standard is designed to assist in relocating and maintaining assets, as well as reducing the risk of damage and disruption to services.

Jail term sought for alleged contempt over right of way

In *Botev Trustee Ltd v Tait* [2022] NZHC 2129, Botev Trustee Ltd contended that Brendon Tait had committed contempt of court by failing to comply with court orders relating to a right of way and sought an order that he be imprisoned or fined.

The case related to a property divided into three cross-lease flats in 1974. Flat 3 was furthest from the road, with its driveway being on the western side of the property. It enjoyed a right of way over the property's eastern side, with the right of way having been created in 1975 by variation of the lease.

'Area B' was to the east of Flat 2 and was also subject to the right of way in favour of Flat 3. Botev Trustee Ltd

Continued on page 24 ...

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owned Flat 3. It contended that the right of way in favour of Flat 3 was vehicular. Mr Tait contended that it was pedestrian.

The parties submitted the above, and two other disputes relating to the properties, to arbitration. In an award in 2019, the arbitrator held that the right of way was vehicular and made orders allowing the construction of a concrete or asphalt right of way and requiring the removal of any obstructions preventing reasonable use of the right of way.

The parties entered into an agreement to implement the orders, but it foundered when the Auckland City Council declined Mr Tait's application for resource consent on the grounds that removal of the patio space currently occupying the land would be contrary to the Unitary Plan.

Botev Trustee Ltd purported to cancel the agreement due to Mr Tait's failure to implement it. Botev Trustee Ltd was then granted an order by the High Court that the arbitrator's award be treated as a judgment of the court. In March 2022, Botev Trustee Ltd applied to imprison or fine Mr Tait for non-compliance with the orders.

Mr Tait submitted that he had complied with the orders and provided photographs illustrating changes made. Both parties called expert evidence. The High Court held that it was not clear to the criminal standard exactly what the orders required Mr Tait to do, but it was also reasonably arguable that he had complied with the orders.

Justice Downs concluded that, even if the standard for exercise of the court's discretion had been reached, it would not have been exercised as the sanctions sought were typically reserved for recalcitrant defendants or egregious breaches, and this case did not involve either. The application was dismissed.

High Court grants application for modification of covenant

The case of *Manawa Development Holdings Ltd Partnership v Tauranga City Council* [2022] NZHC 2138 involved an application by Manawa Development Holdings Ltd Partnership under sections 316 and 317 of the Property Law Act 2007 to modify a covenant to allow the business to complete a subdivision and development as originally intended.

Manawa was a limited partnership established to subdivide and develop land in Papamoa returned to Ngā Pōtiki as part of a Treaty settlement. The partnership was undertaking a subdivision called 'Manawa – the Heart of Papamoa' - that aimed to develop quality, affordable housing for iwi members, social rental housing, a kaumātua village and other amenities.

However, the partnership was impeded from proceeding with the development as planned. A drafting error meant that construction on one lot was limited to a single residential dwelling and land was unable to be vested in the council for roading unless the consent of all dominant landowners to the vesting of the land for roading was obtained under section 238 of the Resource Management Act 1991.

Justice Muir observed that, to succeed in its application, Manawa must satisfy one of the grounds set out in section 317(1) of the Property Law Act. Those grounds included the court being satisfied that modification was required because of changes since the creation of an easement or covenant, or the continuation of the easement or covenant impeding reasonable use of the burdened land in a different way from that which could reasonably have been foreseen by the original parties.

Justice Muir accepted that there had been a drafting error, with the original grantee and grantor not intending for the covenant to make Lot 101 servient – it had only been intended to be dominant. The trustees' plain intention had been that Lot 101 would be retained for future stages of the subdivision. The proposed modification would not result in any net detriment to the owners of the residential sections and the application for modification was accordingly granted.

Overseas investment consents granted

In August, Toitū Te Whenua Land Information New Zealand granted consent for the purchase of freehold interests in two Wellington buildings: the Charles Fergusson Building in Bowen Street and Mayfair House on The Terrace, as well as leasehold interests in neighbouring properties in Auckland. The land is not considered sensitive and no sensitive land consent was therefore required under section 12(a) of the Overseas Investment Act 2005.

In the same month, LINZ also granted consent to Japanese-owned Southland Plantation Forest Company of New Zealand Ltd for special forestry one-off purchases of 419.784 hectares of land in Taringatura and 473.9895 hectares at Lillburn. The consent was granted under the special test relating to forestry activities under section 16A(4) of the Act. The purchaser is a repeat forestry investor in New Zealand and has existing forests in South

Otago and Southland, and intends to continue using the land for production forestry and to replant the land following harvests.

Also in August, the Overseas Investment Office (OIO) granted consent to Darley-Graze Holding Ltd and FinaNuts Holding Pty Ltd to buy all of the shares in Trees for Kiwis Ltd, a New Zealand-owned company holding a profit a prendre forestry right over 6,294 hectares of land in Wairoa.

The OIO said that the applicants had satisfied the investor criterion, with the main benefits to New Zealand including additional investment of $3 million, the creation of three new jobs and expanding the plantation by replanting 1,000 hectares of native mānuka trees. ■

Sources: Landonline; Overseas Investment Office; Judicial Decisions Online.

Court of Appeal considers financial responsibilities of fathers to children

The Court of Appeal has ruled on two cases in which fathers failed to provide financially for their children through their estate; instead they took steps to leave their property away from their families.

The law seeks to deal with such situations through the Family Protection Act 1955; this legislation provides for family members to claim against will-makers' estates if wills do not provide for them. The legislation aims to strike a balance between freedom for will-makers to bequeath their properties as they wish, and the obligation to provide for dependents and other close relations. Testators who fail to make provision for close family members may accordingly find their wills rewritten by the High Court.

But what happens when will-makers dispose of their property prior to death and there is nothing left on which to base a family protection claim?

Claim by difficult son defeated

In *Pollock v Pollock & Washer as executors of the Estate of Rex David Pollock* [2022] NZCA 331, Steven Pollock's claim under the Family Protection Act against the estate of his father, Rex Pollock, was defeated. The Court of Appeal said that this was "because the cupboard was intentionally bare."

"With the object of frustrating such claims, prior to his death Rex had gifted substantial assets to Cheryl Pollock, his second wife, and to the Judea Valley Trust that would otherwise have formed part of his estate."

Steven Pollock had originally been a final and discretionary beneficiary of the Judea Valley Trust and might therefore have benefited from his father's gift to the trust, but at Rex's request the trustees had removed Steven as a beneficiary.

The background to the case was that Rex had married his first wife in 1969 and had three children, including Steven. Rex and his first wife separated in the early 1990s and Rex began a relationship with Cheryl, who had three children from a previous marriage.

In 1992, Rex's mother settled the original Judea Valley Trust, with the final beneficiaries being Rex and his three children. Rex had been very successful in business, selling one of his companies for $18 million in 2006 and going on to set up other businesses after that.

Rex made a number of wills which, after his marriage to Cheryl, made no direct provision for his children. He set up a new Judea Valley Trust and made other arrangements to include provision for Cheryl's children in his dispositions.

Steven worked in his father's business from the age of 15 but was forced out after Cheryl discovered his affair with an employee. Steven later returned to the business, but left again due to his methamphetamine addiction. For a

Continued on page 26 ...

...Continued from page 25



number of years, Steven had no contact with Rex and Cheryl. A subsequent attempt to bring Steven back into the business was unsuccessful, and in 2013 Rex, Cheryl and CLM Trustees as the directors of the Judea Valley Trust signed a deed deleting Steven as a final and discretionary beneficiary.

On the same day the deed was executed, Rex signed a memorandum to his trustees stating that he had not made any provision for Steven in his will or trusts because Steven no longer wished to work in the business. Rex also signed a new memorandum of wishes relating to the Judea Valley Trust, directing his trustees to exercise caution in distributing funds to his children, and to consider the needs of his grandchildren.

In 2014, Rex became ill and Steven wrote to him expressing regret and saying he would like to hear from him. Rex did not reply but instead wrote a 'Record of Events' he had endured with Steven, which stated that because of the heartache, stress and Steven's selfishness, Rex wished Steven to receive nothing from his estate.

Rex subsequently made further arrangements which a written note said were to 'prevent legal challenges by family members and unnecessary legal fees in the future.' He died in 2015.

In 2017, Steven commenced proceedings, making claims under the Family Proceedings Act and the Law Reform (Testamentary Promises) Act 1949, as well as alleging undue influence, unjust enrichment and breach of fiduciary duty.

The High Court held that Rex bore significant responsibility for the breakdown of his relationship with Steven, and that provision should be made for Steven under the Family Protection Act. However, as there were no assets in Rex's estate, the court was unable to make any award. Justice van Boheman said that, although Rex had transferred his shares in his business to Cheryl to frustrate a family protection claim, it was not unlawful to do that. Steven's other claims failed and he appealed to the Court of Appeal. The issue on appeal was whether the High Court had erred in dismissing the claims of undue influence, unjust enrichment and breach of fiduciary duty.

The Court of Appeal canvassed in detail evidence about Rex and Cheryl's relationship before concluding that it did not give rise to a presumption of undue influence. The pair had enjoyed a close personal and business relationship but Rex's mind had remained clear and he had remained in charge until his death.

In relation to unjust enrichment, the court noted that the reshaping of Steven's argument in relation to unjust enrichment in the Court of Appeal required their Honours to examine whether they should recognise a new category of unjust enrichment in New Zealand.

However, the court concluded that Steven's submissions did not provide a principled basis for recognising as a new category of unjust enrichment the scenario of a gift of assets, even if it was made with the intention of defeating a family protection claim.

"[I]f testators are intent on denuding themselves of all their assets, will the court contemplate a remedy to prevent them doing so during their lifetime? Are such persons to be injuncted from spending their own money? ... the Family Protection Act, while imperfect, is preferable to the impractical consequence which is the logical extension of Steven's argument."

The breach of fiduciary duty claim also failed and the appeal was dismissed, meaning that Steven received nothing from his father's estate.

Children sought claim from abusive father's estate

In the case of *D & E Ltd v A, B and C* [2022] NZCA 430, the children also walked away empty-handed. Their father

had repeatedly raped and sexually abused his daughter when she was between seven and 13 years of age, and emotionally abused her during her childhood and teenage years. He also physically and emotionally abused his sons until they left home in their mid-teens.

The father had virtually no contact with his children after they left home but approximately 30 years later he gifted his home and shares worth approximately $700,000 in total to a trust. The trust's beneficiaries were the children and grandchildren of a friend of the father. The children were not named as beneficiaries in their father's will. His remaining estate was worth $47,000.

Following their father's death, the children brought a High Court claim against the trustees of the trust, alleging that the childhood abuse was a breach of the fiduciary duties owed by their father to the children. They submitted that there had been a further breach of fiduciary duty 30 years later when their father established the trust for the benefit of another family and gifted his principal asset to it, thereby depriving the children of any meaningful claim against their father's estate.

The High Court upheld the children's claim, accepting that the trustee had received the father's principal assets knowing that the transfers breached the father's fiduciary duties to his children and accordingly were deemed to hold the assets as constructive trustees for the benefit of the father's estate. This meant that the assets were available for the related claim brought by the children under the Family Protection Act. The trustees appealed against the findings.

In a majority decision, the Court of Appeal granted the appeal, with Justice Kós holding that the fiduciary relationship between the father and the children did not continue into adulthood because there was no longer any relationship of trust. Justice Gilbert held that, if there was a fiduciary relationship between the parties, it did not continue into adulthood because the father held no power for the children's benefit and there was no duty of undivided loyalty. As there was no fiduciary duty, the children could have no proprietary claim to the trust's assets.

Justice Collins dissented, holding that the fiduciary relationship between the father and his daughter continued into adulthood because his abuse had left her unable to live a normal and independent life. The father's fiduciary duty would have involved providing economic security to his daughter, and this had been breached when he gifted his assets to the trust.

The appeal was accordingly allowed and the children had no claim to the trust's assets. ■

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Taxation update



New tax bill introduced

In September, the Minister of Revenue, the Hon David Parker, introduced to Parliament the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2). The bill modernises and clarifies rules for employers and taxpayers in relation to cross-border workers; introduces a fringe benefit tax exemption for public transport; and reforms the GST apportionment and adjustment rules.

Other changes include implementing the OECD's information reporting and exchange framework for activities facilitated by digital platforms in the sharing and gig economy, and collecting GST on accommodation and transport services provided through electronic marketplaces.

The bill also ensures that New Zealand companies affected by recent changes to Australia's corporate residency tax rules have uninterrupted access to this country's loss grouping, consolidation and imputation credit regimes.

Report on regulatory review of fringe benefit tax

Inland Revenue has released a report on the regulatory review of fringe benefit tax. The document considered the policy and design of the tax, the compliance and administrative experience of FBT and whether it was fit for the future.

The paper concluded that FBT continued to perform its primary task of ensuring that remuneration from employment was taxed whether it was paid in cash or provided by way of a non-cash benefit. However, it was not clear that FBT was a tax that functioned well.

"Consistently, views expressed to the review team were that FBT is complex and that it imposes a high administrative and compliance burden relative to the tax at stake. Although FBT was designed to tax employment-related benefits-in-kind, many interview participants felt that any intuitive connection with remuneration had been lost."

Inland Revenue said that submitters had said they did not believe all businesses complied with FBT, and that perception could undermine the integrity of the tax system as a whole. The document recommended that this risk be addressed, possibly by commissioning a policy project at the upper end of the spectrum with the aim of re-establishing the remuneration basis of the tax, modernisng FBT and reducing compliance costs.

Update to use of money rates

An Order in Council was made in August updating the rates for use of money interest. The order increases the taxpayer's paying rate of interest on unpaid tax from 7.28% to 7.96% per annum. The Commissioner of Inland Revenue's paying rate of interest on overpaid tax is increased from 0.0% to 1.22% per annum. ■

Sources: Inland Revenue; www.taxpolicy.ird.govt.nz.

Deceased estates and Australian assets – a refresher



Andrew Johnstone of APEARS, Sydney, Australia

With many Registered Legal Executives working in the deceased estates field, every couple of years I refresh my general advice about dealing with these matters in Australia.

There is no set statutory limit for probate in Australia; rather it is up to the company, lender, titles offices or other institutions as to their individual requirements. This is further complicated by the fact that each institution may have different requirements based on the state in which the asset is held.

The following is a basic synopsis of the requirements.

Shares

Currently limits for transferring shares without probate are set by the share registry that maintains that particular company's share register. For each shareholding, Computershare's limit is a value of A$50,000; the limits for both Link Market Services and Boardroom are A$15,000.

Shares that are registered under the CHESS system (through a stockbroker) are subject to the rules of that particular broker. When overseas probate is not available, generally an Australian grant is required to effect a transfer.

If selling shares, the limits vary again and are subject to the stockbroker's own internal requirements, but generally these are set at similar rates to the share registries.

Bank accounts

ANZ has a probate limit of A$80,000 that reduces to A$50,000 for intestacies. Westpac has a limit of A$100,000. CBA and NAB each have limits of A$50,000.

The banks can negotiate on this but it depends on the actual bank involved. Some banks insist on probate being obtained in the state in which the account is held. Others insist on probate but are not concerned with where it is obtained in Australia.

Real property (including timeshares)

Most dealings with real property, except where held as joint tenants, require probate to be obtained in the same state as the property is held.

In Queensland, however, it's possible to deal with property with the production of a foreign exemplification. Please be careful getting property dealt with in Queensland – you can spend money unnecessarily!!!

In New South Wales, timeshare interests can be dealt with without a reseal, provided its value is not 'excessive', ie: more than A$10,000.

Managed funds

There are no steadfast rules with any of the fund managers in Australia. A good guide to use, however, is the same as for shareholdings.

Superannuation

Superannuation in Australia is compulsory for most workers, and with these schemes most employees also have a death benefit insurance cover.

It is essential, initially, to ascertain from the deceased's superannuation fund to whom they intend to pay the death benefit. Superannuation funds will always avoid

Continued on page 30 ...

...Continued from page 29

paying the funds to the estate if they can!! If there are no dependents, an Australian grant or reseal is normally required. If paid to the estate, there are various taxation complications that arise, including the possible withholding of up to 30% from the payout to non-financial dependents.

Where to obtain a grant?

Real property is the only asset that requires probate to be obtained in the same state as the location of the property. Some banks will insist on the probate being obtained in the state in which the account is held. When dealing with shares or managed funds, a grant can be obtained in any state.

To further confuse this issue, all Australian states have different probate procedures and costs.

Unclaimed/lost money

Many people receive offers of assistance to claim funds that have been found and may belong to them. These funds are discovered by money-finding organisations that scour the government gazettes, and then hope to hit the big time by charging fees of up to 25% of the funds claimed.

Basically, unpaid company dividends (except for bank dividends) are paid over to the state governments. Company takeover proceeds, bank deposits and bank dividends are paid to the Commonwealth government. When paid, the amounts are advertised and become public knowledge. If you, or a client, receive such a letter, you can search the government's online facilities (contact me for the websites or google them). Once found, you can lodge the claims directly.

What should you do when assets are discovered in Australia?

Firstly, ensure you have all details of every asset held.

Secondly, don't take it as read that you have to do what the company or issuer has advised you to do. If you think the value of the asset is borderline around the limits mentioned above, make a special request to the company to waive their probate requirements in that instance.

Finally, contact me for assistance! ■

Regards from Australia,
Andrew Johnstone
APEARS

APEARS

To contact Andrew, please email him at andrew@apears.com.au
His full contact details are on page 22.



Long-standing National Treasurer retires

Farewell Linda, and thank you

It was a sad occasion at the National Council meeting on 19 November when National Treasurer, Linda Whatson, was farewelled after 12 years in her role and presented with a gift to mark her years of service.



It is, however, a positive move for Linda as she inches closer towards her retirement plan when Scholefield Law (the Invercargill law firm for which she works) can bear to part with her.

At Linda's leaving function, Executive Officer Jo Buckton remarked that a legal career wasn't Linda's first choice, but she found her way there and very much liked what she saw.

Studying for the legal executive qualification, Linda graduated in 1992. Fast forward to 2000 when Linda joined the institute (now LENZ) as an Associate member. Her committee involvement began a couple of years later when she was the Invercargill liaison person on the Otago Branch committee.

One thing led to another and, in 2004, Linda was elected to the National Council, and became a Fellow in 2005. Concurrently, after the Otago branch folded, Linda continued as Invercargill liaison person for Canterbury Southern Districts Branch (as it is now called) and organised events for local members.

In 2010, Linda was elected national treasurer (perhaps also a national treasure for the institute) and is, as far as Jo is aware, the longest serving treasurer in LENZ's 47 years. Linda is the first member outside Auckland to hold the role, thanks to the advent of internet banking!

In her farewell speech, Jo said Linda will be much-missed by National Council members. "We are all most grateful for your 18 years on the council and 12 years of sterling service as national treasurer. On a personal level, it has been wonderful working with you. I shall miss our regular chats - *mostly* about LENZ business - and your fine company as we drove from Invercargill to visit members in Queenstown. Those cheese rolls in Kingston were perfect."

We wish Linda all the best for the future. We've loved working with you. ■

RECENT NEW AND UPGRADED MEMBERS

...Continued from back cover

Karen Leigh Slater	New Plymouth
Nicola Sullivan	Hamilton
Anni Tang	Auckland
Genevieve Lana Tarry	Napier
Meretiana Jade Tihema	Whangarei
Kate Thornton	Palmerston North
Angela Barbara Valk	Blenheim
Shazeen Norman vanHaaren	Hamilton
Jacinda Leigh Ward	Christchurch
Tina May White	Auckland

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Leana Beumer	Auckland
Maria Anna Griffin	Dunedin
Danielle Janis Mooney	Tauranga
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Continued on page 35...

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