

21 October 2024

Una Jagose KC
Solicitor-General

By email: una.jagose@crownlaw.govt.nz

Tēnā koe, Una

Re: Review of Prosecution Guidelines

The New Zealand Law Society Te Kāhui Ture o Aotearoa notes your statement of 18 October 2024, advising that you are reviewing the recently updated Prosecution Guidelines, following media coverage of their reference to the disproportionately adverse impact that the justice system has on Māori and other communities.

As you stated in the introduction to the Guidelines, the guidance is not intended to ‘*promote different treatment based on ethnicity or membership of a particular group.*’ Rather, as the resources cited in the Guidelines demonstrate, it reflects the fact that – all other factors equal – Māori are more likely to be apprehended by Police, prosecuted, convicted, and sentenced to a period of imprisonment.¹

The Law Society is of the view that the inclusion of guidance as to structural, institutional and interpersonal bias is appropriate. These factors are a legitimate consideration for a prosecutor determining, for example: whether to prosecute or to consider diversion; the sentence that will be sought; and how best to meet the interests of the victim(s). The Guidelines appropriately identify the relevance of a range of cultural, socio-economic and other factors relevant to different communities.

To ensure the justice system delivers fair and equitable outcomes, prosecutors must be alive to the potential influence of these factors on not just the case at hand, but their own decision-making processes. Contrary to some commentary, we see the Guidelines as seeking, transparently, to ensure similar (rather than the currently worse) outcomes for Māori.

We agree that current misunderstandings should be addressed, and we welcome clarification that will improve understanding and provide assurances to the public. However, we urge that such clarity does not come at the expense of what is overdue and appropriately targeted content throughout the substantive Guidelines.

The Law Society is available to discuss this further with you.

Nāku noa, nā



Jesse Savage
Vice President

¹ Recent research indicates that variability in the rate of prosecution remains even when adjusted for category of offence, and all other variables remaining constant. Dr Paul Brown, *Understanding Policing Delivery: The Assessment of Factors Influencing Police Prosecution Decision-Making* (August 2024).