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**NZLS CLE Ltd**  
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# NEW CONDUCT AND CLIENT CARE RULES

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## Introducing



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## Introduction

### Report of the Working Group

- Need for closer regulation of legal workplace obligations
- Enhanced lawyer reporting obligations
- Complaints processes
- Changes to the RCCC
- Core obligations reflect general law
- Accountability as a matter of professional standards



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## Topics

- Complaints and discipline scheme
- Prohibited behaviour – key definitions
- Reporting obligations
- Professional standards
- Professional practice
- Terminating a retainer
- CPD
- Help and support

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## Complaints and discipline

### Key features of the scheme

- Maintenance of standards
- Standards Committees
  - Decision maker (unsatisfactory conduct)
  - Prosecutor (misconduct)
- Special nature of disciplinary proceedings
- Not a substitute for criminal or private civil proceedings

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## Sequencing with other proceedings

### Interaction with related processes

- Overlapping investigations?
- Criminal proceedings usually take priority
  - Interim suspension?
- Civil proceedings
  - Degree of duplication
  - Prejudice
- Employment processes
  - Employment relationship context

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## Prohibited behaviour

### Key definitions

- *Beckwith*
  - Legal certainty
- Bullying/harassment
- Discrimination
- Racial/sexual harassment
- Violence
- Victimisation

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## Proof of harm is not required

Consequences must be “likely”

- Standard of proof
  - Real and substantial risk
- Personal characteristics
- Knowledge
  - Risk applies generally
  - Special risk

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## Reporting

Rules 2.8 and 2.9

- Report vs a complaint
- Mandatory vs discretionary reporting
  - Unsatisfactory conduct vs misconduct
- Threshold test
  - “reasonable grounds to suspect”
  - “may have”

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## Reporting – confidentiality

- Confidentiality in complaints process generally
  - Section 188
  - Publication of decisions
- Reports are confidential
  - Intersection with rules of natural justice
- Exceptions to confidentiality
  - LCA
  - Protected Disclosures Act

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## Exceptions to mandatory reporting

Mandatory reporting is not required:

- Victims
- Serious risk to health and safety of the victim
  - Must genuinely hold this view on reasonable grounds
  - Bear in mind the nature of reporting process
- Information received confidentially
  - But not if necessary to prevent
    - Crime
    - Serious risk to health and safety

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## Professional standards

### Chapter 10 RCCC

- Professional, not purely personal, conduct
  - LCA, s 7(1)(b)(ii)
  - Practice rules
- Expansive approach to regulated services
- Work-related functions

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## Prohibited behaviour

### Rule 10.3

- Absolute prohibition
- Misconduct vs unsatisfactory conduct
  - Wilful or reckless
  - Ignorance of rule changes will not avoid a misconduct finding
  - Negligence or incompetence
    - Assessment required of level of seriousness of failure/s

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## Professional practice

### Chapter 11 RCCC

- Reflects RWG's recommendation for closer regulation of workplace obligations
  - Rule 11(a)(ii)
- Supervision and management (r 11.1)
  - Law practice as a whole
  - All persons engaged or employed by law practice

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## Policies and systems

### To protect against prohibited behaviours

- Policies
  - Not one size fits all
  - Must ensure compliance with RCCC but not confined by them
- Systems
  - Risk assessment
  - Proactive rather than reactive
  - Training

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## Designated lawyer

- Reporting to NZLS
  - Reactive reporting
  - Designed to address concern about moving the risk on to a new law practice
- Annual certification
  - Reporting requirements
  - Policies and systems
  - HSWA obligations
  - Already required – now expressly a matter of professional standards

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## In-house lawyers

- Professional standards apply
  - Rule 10.3
- Chapter 11
  - Law practice – not an in-house team
  - Good practice
  - General standards apply

A manager of an in-house team who is aware of prohibited behaviour occurring in the team and does not act to prevent it and protect the victim may be guilty of unsatisfactory conduct or misconduct

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## Good cause to terminate a retainer

### Rule 4.2

- Cab rank rule
- Good cause
  - Inclusive definition
  - Now expressly includes unacceptable behaviour by a client
- Are protective steps reasonably available?

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## CPD

### CPD Rules

- New provision for a mandatory component
- Included in minimum 10 hour annual requirement
- Anticipated training

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## Help and support

- Legal Community Counselling Service (Vitae)
  - Online
  - Phone
  - App
- National Friends Panel
- Community organisations

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# QUESTIONS

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## Thank You



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