

LAW | NEWS

Working group launched to outline road to regulation for employment advocates, rein in rogue operators

EMPLOYMENT

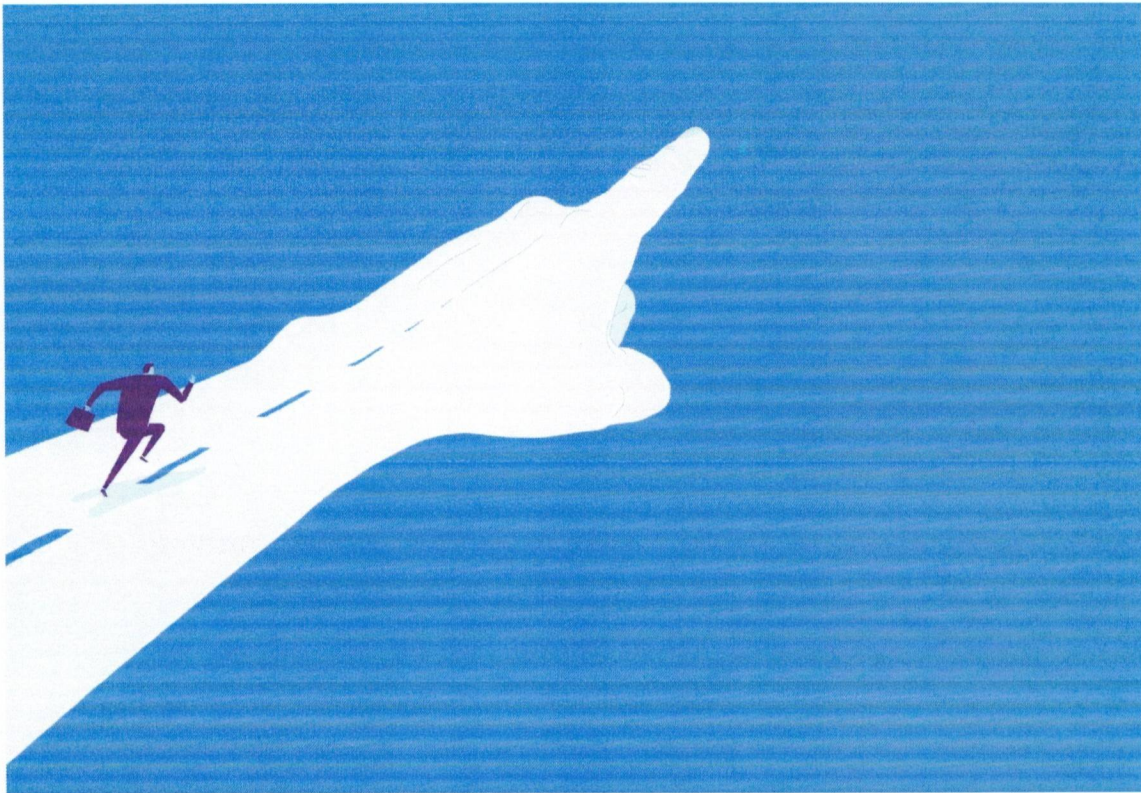
NEWS



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Neil Sands



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The Law Association is launching a working group to examine the regulation of employment advocates, aimed at facilitating much-needed reforms to rein in rogue operators and protect the public.

Led by the association's Employment Law Committee, the working group will assemble expert stakeholders from across the sector, including advocates themselves, to collaborate on a proposed regulatory framework.

"This is an area that's been crying out for legislative reform for the last 26 years, since the Employment Relations Act (ERA) came into force," committee convenor Catherine Stewart said.



Catherine Stewart

"In the meantime, a widespread industry of advocates has developed, which has ballooned and is essentially self-governing. It's unmanaged, it's unfettered and it's an area that we, as an organisation, have said for many years needs to change ... We want this initiative to bring together key stakeholders in the employment law jurisdiction to collaborate and hear their views.

"Our aim is to achieve consensus on a broad framework that we can then put to the relevant ministers and MBIE,

hopefully for them to act on."

The case for change has been made many times across the employment law sector, including remarks made by Chief Employment Court Judge Christina Inglis in 2019, when she noted the impact of unregulated advocates "on often vulnerable litigants, the opposing party, and more generally in terms of the efficient and effective administration of justice".



Chief Judge Christina Inglis



Brooke van Velden

Workplace Relations Minister Brooke van Velden also highlighted the issue last month when launching a wide-ranging consultation on the employment dispute resolution process, saying: "I've heard examples of advocates displaying abusive and unprofessional behaviour and encouraging clients to pursue unfounded cases or seek disproportionate settlements."

Legal loophole, public exposed

Before the Employment Relations Act, union and employer association advocates could appear in the Employment Court, even if they were not lawyers.

The Act broadened this, allowing "any person" to represent employees and employers, leading to an explosion in advocate numbers. Exactly how many is not known because they are unregulated and do not need to register or meet mandatory professional standards.

"Anyone can call themselves an employment advocate. There's a loophole in the Employment Relations Act which leaves the public exposed," Stewart said.

"There are long-standing concerns about quality of service, overcharging and the poor conduct of some advocates. The reason it's a concern is that the public is commonly confused. They don't understand that their representative is not a lawyer. There have been many situations where clients have suffered through poor representation and feel misled."

LawNews has reported several cases involving questionable behaviour by employment advocates, including one instance that a judge described as "entirely inappropriate". There are also concerns about the quality of service they provide to clients, ranging from lack of basic knowledge about courtroom procedure to overcharging.



Clayton Kimpton

"Due to the poor behaviour of a few employment advocates, the need for a regulatory regime of all advocates has become evident," The Law Association's CEO Clayton Kimpton said. "That's why this cross-disciplinary working group has been set up. Concerns have come from unions, from lawyers and from good advocates themselves."

Kimpton said the high level of experience and expertise on the TLANZ Employment Law Committee made it a good choice to lead the initiative.

"The Law Association has had a very senior and effective Employment Law Committee for many years. It's very well connected within the sector and able to play a leadership role in bringing different stakeholders together within this working group.

"The committee has seen an obvious regulatory gap relating to employment advocates and is looking at what needs to be done to address it."

Rogue advocates

Stewart said the working group currently includes unions and the Employment Law Institute of New Zealand (ELINZ), and the committee would invite other interested parties from across the sector.

She said unions offered a "ground level" view on how the activities of unregulated advocates were affecting employees, while ELINZ – which has a voluntary code of conduct and complaints process – offered the perspective of advocates themselves.

"ELINZ is the key representative body for employment law advocates, and we're delighted they've agreed to join us, so we can hear their views on what they see as important for regulation... I think it's fair to say that all advocates are probably tarred with the same brush and there's been so much negative

publicity about the conduct of a number of advocates that it does no credit for the rest of the advocates. That's why we see some advocates themselves wanting regulation."

Kimpton said everyone would benefit from proper regulation of employment advocates, particularly the public.

"One of the things that's been said to me is 'oh, it's just lawyers protecting their patch'. That's not the case. It's about protecting the public from those rogue advocates who might take advantage of them, and ensuring that the tribunal and court processes are kept as efficient as possible to help reduce costs for the public."

Stewart said the current system was eroding public confidence in the employment disputes regime and needed to change.

"Ultimately, the reason that I feel so passionate about this is that it actually affects public confidence in the employment law industry," she said.

"We see that, and my colleagues see that, time and time again, where clients come to us and they're devastated because they thought they were being represented by a lawyer. They didn't understand that the person wasn't necessarily the best person for their case.

"Lay people don't understand that there's this unregulated body of advocates. That's when it becomes an issue of eroding public confidence in employment law and in the disputes resolution process. This is about giving a sense to justice to these people and making our jurisdiction fair and reasonable."