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Sustainable Impact

Issue 4

MinterEllisonRuddWatts.

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Holly Hill

Partner and Sustainability Leader
Kaiurungi me te Kaitātaki Ukauka

Tēnā koutou >

When you visit our website, the first words you see are 'Working with you to help shape New Zealand's future'. This statement matters to us at MinterEllisonRuddWatts; it is our shared purpose as a firm and a partnership of people.

We endeavour to help shape Aotearoa New Zealand's future in a number of ways; primarily by working alongside our clients, our people, and our communities. By listening we earn the opportunity to provide solutions that help people to achieve their goals, and to make a positive impact in our communities. It also helps us to build long-term partnerships with organisations that are committed to our strategic pillars of *kia toitū te taiao* (having a positive, sustainable impact on our planet) and *kia toitū te tangata* (caring for our people, clients and communities).

This mahi involves us finding, gathering and offering insights, for it is through advancing collective knowledge and understanding that we can all make progress together.

This is what Sustainable Impact is all about: talking to people to understand what they should do, what their challenges are, and what is needed to drive progress and achieve broader sustainability outcomes.

In this issue, we cover many areas of the ESG spectrum. We talk to people at the forefront of community law who are providing free legal services across communities, without which a large – and sadly growing – number of people would go without access to justice. We also share how the Housing Foundation is enabling home ownership for more Kiwi families.

With human activities putting increasing pressure on Aotearoa New Zealand's unique biodiversity, we examine what is being done

to protect it, including how the Taskforce on Nature-Related Financial Disclosures is a tool to reduce further loss.

Turning to governance and the growing consensus that businesses should provide an economic contribution to society, we highlight practical steps that businesses can take to enhance environmental and social outcomes through an ESG-empowered tax strategy. We also cover the challenging topic of bullying in the workplace, and the need for employers to consider whether their processes, systems, and policies are fostering mental wellbeing.

I hope that this issue of *Sustainable Impact* helps to shape your outlook for the future.

Housing Foundation helps Kiwis into affordable home ownership



For generations, the Kiwi dream has been owning your own home with a backyard big enough to raise a family. This dream is becoming challenging for many to achieve with Aotearoa New Zealand now having the least affordable housing in the developed world.

This high cost of housing affects a family's quality of life, health, and wealth over the longer term. However, the Housing Foundation, a charitable trust that delivers affordable housing options for working households who are finding it difficult to buy a home, is helping Kiwis live the dream.

Sustainable Impact asked the Housing Foundation's CEO, Dominic Foote, how the foundation is creating a positive – and sustainable – difference across Aotearoa New Zealand.

As a charitable trust, Housing Foundation partners with iwi and other organisations, and is supported by leading philanthropic organisations, including The Tindall Foundation, to achieve its affordable housing ambitions.

We were established in the early 2000's because The Tindall Foundation was being approached by households saying that houses were unaffordable – this was shortly after the gap between median incomes and house prices began to separate. We exist to make home ownership affordable and accessible, and to assist whanau to generate wealth through home ownership.

When renting, tenants are putting money into their landlord's bank, and with high rental costs it can be hard to save for the future. Housing is a tool that can generate long term wealth, while providing greater security and stability for people. There is clear evidence that children of parents who own their home are far better able to be homeowners in the future, with research showing they generally have fewer health issues and higher educational outcomes.

Housing Foundation helps Kiwis into affordable home ownership

In recent years, many of the people who have come to us lack the means to buy, but are focused on doing so. Other families have given up the goal of ownership, as their income doesn't always get used in a way that makes them attractive to banks. This usually translates to carrying debt from second or third-tier lenders, or if they are on lower incomes, having no savings. They may also have a record of credit default or warning letters from lenders to deal with too.

A sustainable approach to boost home ownership

We offer two products that are widely used in other countries: shared ownership and rent-to-own, which have been around for a long time. Our products work on the basis of what a household can afford to spend on their housing costs, rental or mortgage payments as a proportion of their gross income. We apply a commonly used ratio of 30%, meaning households should not pay more than 30% of their gross household income on their housing costs. Our affordable housing is predicated on what someone can actually afford to pay.

Our household team focus on building trust with our households so we can have open conversations with them about their debts, savings and expenditures. Through these conversations and with our assistance, the

household develops a financial plan that guides them into either a rent-to-own or shared homeownership programme. These conversations and the development of a financial plan help us understand if the household is better placed in our rent-to-own or shared ownership programmes.

We work with households allocated to our 5-year rent-to-own scheme so over their 5-year rental term, they can pay down debt, clear their poor credit rating and save for their deposit. We will also require households to belong to KiwiSaver, and reap the benefits that come with this great scheme.

This approach means that at the end of their 5-year term, the household is mortgage-ready and can transition into our shared ownership programme.

Households allocated to our shared ownership programme typically have a small amount of savings (usually sufficient for a 5% deposit), little or no debt and a good credit record. We'll also help them develop a financial plan to guide their financial decisions in their early years of being a homeowner.

Financial plans are important for our households and our household team. It helps both parties to measure how well

our households are progressing towards achieving their financial targets, with the end goal of owning their home outright.

The need for our services has grown hugely over recent years, and we are seeing an increasingly large number of people being left behind. Looking ahead, we expect this trend to grow. Our research shows that roughly 200,000 households that would have been able to buy their first home 10 years ago, cannot afford to buy now.

How do you ensure 'affordability'?

The question for us is 'how do you help someone purchase a home at a price they can afford?' Housing foundation measures affordability based on what a household can afford to pay from their gross (before tax) income.

If a property costs \$750,000 to buy, we cover the difference between what the household can afford and what the house is worth. The household usually contributes at least 60% to a purchase (it is usually over 60%). So, say the household (with the support of a participating lender) pays \$450,000 of the \$750,000 asking price, Housing Foundation would purchase the balance. Housing Foundation would retain ownership of the remaining share of the property and both the household and



At the end of their 5-year term, the household is mortgage-ready and can transition into our shared ownership programme."

Dominic Foote
Housing Foundation

Housing Foundation helps Kiwis into affordable home ownership

Housing Foundation would be recorded on the property title as owners until the household can buy us out. Most households can do this within 7–10 years.

When we develop and build a home ourselves, we fund the initial land and construction costs. It may cost us \$650,000 to build a house, with the house then being valued at \$725,000. Say the household again contributes \$450,000 (with the support of a participating lender) to acquire its share, this means that the Housing Foundation only needs to fund the \$200,000 balance between the development costs and the household's contribution.

The question is, where do we find the \$200,000 to cover the unfunded cost of developing and building the house?

Currently, the Government's Progressive Home Ownership (PHO) scheme funds the \$200,000 gap with a 15-year (equity) loan to Housing Foundation. Under the terms of the loan, Housing Foundation is required to repay the loan at the end of the 15 year term. There is no interest charged on the loan, on the condition Housing Foundation repays the equity loan in full at the end of the fifteenth year.

Whilst the PHO fund is a big investment by Government in affordable homeownership, it still falls far short of the investment needed to make a significant difference in helping people to home ownership.

Positive impacts on social outcomes

We know through independent research that our programmes have a major impact on the well-being of households, helping families to put down roots in their community. No one in our programmes needs to draw on the accommodation supplement as the cost of housing is directly linked to their income. We believe our programmes create a net reduction over time in Government spend on housing costs.

Research tells us homeowners feel they have stability and control over their home, with significant improvements in their well-being and mental health. It provides children with schooling certainty and stability, leading to improved education outcomes. Homeownership is found to be beneficial for wealth creation, it supplements superannuation, helps with care costs and importantly, as our households frequently tell us, it creates a legacy for their children which will benefit them.

The big question is 'how can we attract the investment funding needed to grow these affordable homeownership programmes and halt the fall in homeownership rates?'

Ideally, shared ownership should become a mainstream lending product. People should be able to go into the bank and be connected with a shared ownership provider like the Housing Foundation as part of the home buyer process. If Aotearoa New Zealand had a programme like that, in 50 years' we would be living in a very different country.

To learn more about the Housing Foundation, please visit: www.nzhf.org



Sustainable workplaces: Keeping bullying and harassment out

By Partner June Hardacre, Senior Associate Joshua Kimpton
and Senior Solicitor Eloise Callister-Baker

“Burnout” and “stress” were on the lips of many employees and employers as we closed 2022. The impact of the spiralling cost of living at home coupled with the intensity of jobs (in part created by home working environments) means that creating a sustainable workplace has never been more crucial. One key aspect of the sustainable workplace is one where every employee feels safe and well at work. Critically, this will mean a workplace free from bullying and harassment.

Workplace bullying and harassment is not a new issue, and it remains a complex matter impacting workplaces across Aotearoa New Zealand. Research suggests that our country [has higher rates of bullying than comparable countries](#), with [as many as one in five workers experiencing bullying or harassment each year](#). In August 2022, the [Human Rights Commission published a report](#) that suggests Māori, Pacific, Asian, as well as disabled and bisexual workers, are disproportionately affected by bullying and harassment in the workplace.

This causes us to reflect on whether our legislative and regulatory frameworks are adequately designed to tackle this complex issue – and do they sufficiently encourage and enable employers to create a sustainable workplace that meets the “social” aspect of environmental, social and governance (ESG) objectives.

Given a growing emphasis on commitments to social considerations as part of employers’ ESG initiatives, such as diversity and inclusion, the absence of a robust framework to manage bullying and

harassment in the workplace will mean an employer’s ability to achieve such objectives is severely hampered.

Workplace bullying and harassment also have a real and measurable impact on workers’ health and performance. It leads to decreased morale and increased absenteeism, turnover, and legal risk. It can also have a negative financial impact on both workers and organisations. For example, a worker may leave their role, but be unable to work or find a role with the same remuneration. Meanwhile, an organisation may have a reduced profit and increased costs in investigating and defending claims. This is simply unsustainable for any organisation, let alone any worker.

Despite the numerous legislative instruments and regulatory bodies available to deal with workplace bullying and harassment, there is no statutory definition for workplace bullying. Instead, employers rely on their own definition of workplace bullying or adopt WorkSafe New Zealand’s definition as set out in its [Good Practice Guidelines on Preventing and Responding to Bullying at Work](#).



Sustainable workplaces: Keeping bullying and harassment out



Regulation of workplace bullying and harassment in Aotearoa New Zealand

As a nation, we are still grappling with the complexities and intricacies associated with workplace bullying and harassment. This is reflected in the fact that Aotearoa New Zealand has a range of legislation and regulatory bodies that deal with aspects of workplace bullying and harassment. The table below summarises aspects of the most relevant legislation. In serious cases of workplace bullying and harassment, the Crimes Act 1961 and Harassment Act 1997 may also apply.

Legislation	Relevant regulatory body	Link to bullying and harassment in the workplace
Health and Safety at Work Act 2015 (HSWA)	WorkSafe New Zealand	A person conducting a business or undertaking (PCBU) must ensure, so far as is reasonably practicable, the health and safety of its workers. A PCBU must eliminate risks to health and safety, so far as is reasonably practicable, and if it is not possible to eliminate risks, must minimise those risks so far as is reasonably practicable.
Employment Relations Act 2000 (ER Act)	Ministry of Business, Innovation and Employment (MBIE) and our courts (the Employment Relations Authority and Employment Court)	An employee can raise a personal grievance against an employer if the employee has been unjustifiably disadvantaged, discriminated against, sexually harassed or racially harassed in the employee's employment, or if the employer has engaged in adverse conduct for a prohibited health and safety reason.
Human Rights Act 1993	Human Rights Commission	A person can make a complaint against an employer if the person has been discriminated against, sexually harassed, or racially harassed at work.
Privacy Act 2020	Office of the Privacy Commissioner	A person can make a complaint against an agency if the agency has interfered with their privacy.
Protected Disclosures (Protection of Whistleblowers) Act 2022	The Organisation or Approved Authority as defined in the Act	A person can make a protected disclosure about serious wrongdoing in the workplace.
Harmful Digital Communications Act 2015	Netsafe or the NZ Police	A person who has suffered, or will suffer, harm as a result of a digital communication can bring proceedings in the District Court.

What are other jurisdictions doing?

Recently, we have seen changes to the regulation of workplace bullying and harassment in comparable jurisdictions, especially in Australia, which suggest that Aotearoa New Zealand may be falling behind on the legislative and regulatory front. These are set out below.

Recent developments in Australia

In June 2022, Safe Work Australia announced a range of amendments to the model work health and safety (WHS) laws. One of the most significant amendments was in relation to the management of psychosocial risk in the workplace. In short, these amendments include:

- the introduction of definitions for psychosocial hazard and psychosocial risk;
- prohibiting insurance and other indemnity arrangements covering liability for WHS penalties;
- enabling any inspector to issue a notice to produce documents or information within 30 days of an inspection; and
- enabling regulators to share confidential information or documents, obtained when exercising WHS functions, with another WHS regulator.

It is now up to each State and Territory to adopt these amendments. MinterEllison in Australia has discussed these amendments further [here](#).

Sustainable workplaces: Keeping bullying and harassment out

Victoria has also proposed additional regulations in relation to the management of psychosocial risk. These proposed regulations include:

- requiring employers, so far as is reasonably practicable, to:
 - identify psychosocial hazards; and
 - eliminate any risk associated with a psychosocial hazard;
- if an employer identifies one or more of the prescribed psychosocial hazards, an employer must implement a written prevention plan that identifies the risk, identifies measures to control the risk, and includes an implementation plan for any identified measures; and
- establishing an additional reporting scheme for employers with more than 50 employees, including penalties for a failure to comply.

In New South Wales, legislation has recently been developed to explicitly address the risks associated with the impact of workplace bullying, including:

- amendments to the Fair Work Act 2009, giving the Fair Work Commission powers to make orders to stop ongoing workplace bullying or harassment in some instances;
- amendments to the Crimes Act 1990, classifying more severe forms of bullying

or harassment as a criminal offence. This includes bullying that involves violence, including any sort of unwanted touching, or bullying that is threatening or harassing; and

- amendments to the Workers Compensation Act 1987, giving employees the right to lodge a claim for a workplace injury where they have suffered an injury (physical or psychological) because of bullying.

Recent developments in Canada

In Canada, legislation has been developed to expressly define and/or address workplace bullying (depending on the relevant state). Unlike in Aotearoa New Zealand, many Canadian jurisdictions have defined bullying separately or have included bullying as part of the definition of behaviours associated with harassment or violence. For example, Prince Edward Island has defined harassment in its Workplace Harassment Regulations.

Last year, Canada also introduced legislative requirements relating to employers preventing harassment and violence in federally regulated workplaces, including requiring those employers to develop a workplace harassment and violence prevention policy with the policy committee, the workplace committee or the health and safety representative.



Recent developments in the United Kingdom

Like Aotearoa New Zealand, the United Kingdom does not have a single piece of legislation that deals with workplace bullying and, instead, has a range of legislation, including the Equality Act 2010 and Employment Rights Act 1996. However, in March 2022, the United Kingdom became the eleventh country to ratify the International Labour Organisation's Violence and Harassment Convention which, when it comes into force next year, will create a duty for employers to protect employees from all forms of violence and harassment at work, including from third parties such as customers or clients.

As at the date of this article, Aotearoa New Zealand has not ratified this Convention.

The state of play in Aotearoa New Zealand

While there have been no recent significant legislative or regulatory changes in this

space, the New Zealand Government has turned its mind to the issue of workplace bullying. This can be seen in MBIE's recent Issues Paper on Workplace Bullying, the proposed income insurance scheme, and through increasing engagement by regulators on this issue. We expect this will result in the development of a more robust regulatory framework for tackling the issue of workplace bullying in Aotearoa New Zealand.

MBIE Issues Paper

In 2021, MBIE published an Issues Paper on bullying and harassment (including sexual harassment) at work. The Issues Paper sets out what MBIE understands about the nature and extent of bullying and harassment at work in Aotearoa New Zealand and examines the current systems for preventing and responding to such behaviour. This full Issues Paper can be viewed [here](#).

Sustainable workplaces: Keeping bullying and harassment out

The key findings of Issues Paper are that:

- there is ineffective leadership and systems in place for the prevention of harm in the workplace;
- greater support is required for the implementation of bullying and harassment initiatives;
- bullying and harassment incidents are being addressed too late; and
- organisations should be able to respond in informal ways where appropriate, rather than treating it as a formal employment issue (e.g. using mediation with the focus on resolving the issue).

The recommendations of the Issues Paper include the following:

- the interfaces between regulatory systems could be improved (e.g. the Employment Relations Authority or Employment Court could refer an ongoing safety risk in an organisation to WorkSafe New Zealand);
- WorkSafe New Zealand could increase its role in engaging with, and supporting change in, sectors or organisations where an ongoing risk of bullying or harassment has been identified;
- further work on prevention could be done, noting that WorkSafe New

Zealand is already undertaking further work in the psychosocial space, including:

- developing new approaches in the psychosocial space to intervene where organisations have not adequately managed their risks, as well as where incidents of harm have occurred; and
- embarking on a multi-year programme that will include developing a broad view on where to prioritise efforts to support organisations to better identify, assess and manage psychosocial risks in work environments (including unreasonable behaviours at work) and prevent physical and psychological harm); and

- the disputes resolution system under the ER Act and selected aspects of the HSWA need to be reviewed to address the issue of workplace bullying more effectively.

Public submissions on the Issues Paper closed on 31 March 2021. In November 2021, MBIE published [a further report](#) which summarises the feedback received. MBIE advised that this feedback will help inform:

- whether there are potential operational improvements that could be made to the services and information provided by

regulators and operational agencies (e.g. MBIE and WorkSafe New Zealand);

- upcoming reviews of the disputes resolution system under the ER Act and selected aspects of the HSWA; and
- whether potential system changes are required to the country's approach to managing psychosocial risk at work, including the role of organisations in managing their risks.

We have not seen any further proposed legislative changes to the ER Act and HSWA as yet. However, as MBIE progresses with some of the key recommendations listed above, this seems likely.

Regulator engagement

Regulators, including [WorkSafe New Zealand](#), Netsafe and [MBIE](#), also appear to be engaging more with the issue of workplace bullying and harassment. However, there is no indication that one of these regulators is going to take the primary place over others when it comes to regulating this issue.

Bullying and harassment in the workplace remains a complex but serious issue in New Zealand. Public consultation on this and related issues indicates change could be on the horizon. However, given the range of legislation and regulators involved, there are

a lot of moving parts that need to fit together to enable that change to take place.

Organisations do not need to wait for legislative change to make improvements to their workplace environments. Positive changes will make employment more sustainable for both the organisation and the workforce.

We encourage organisations to critically consider whether their own systems, processes and policies are fit-for-purpose to address workplace bullying and harassment. This could include assessing the risk of workplace bullying and harassment and implementing strategies to eliminate or minimise that risk, including a comprehensive policy, training and fostering a speak up culture.

Waiho i te toipoto Kaua i te toiroa

In an era of rapidly rising living costs and Covid-enforced employment changes, Community Law services continue to be vital for thousands of people around Aotearoa New Zealand.

Without free legal services provided within communities, a large – and growing – number of people would go without access to justice. This is why supporting Community Law is a core pillar of MinterEllisonRuddWatts' Community Investment Programme. The firm has supported grassroots and community organisations in Aotearoa New Zealand for many years to make a greater impact and help shape the country's future for the better.

Community Law has a network of 24 centres, and many outreaches, across the country. We talked to leaders from two Community Law Centres to find out why their services are so important.

Sabrina Muck, Senior Lawyer from Waitematā Community Law Centre (WCLC), and Community Law Wellington & Hutt Valley's (CLWHV) Olive Grant (Kaiārahi Project Coordinator) and Tina Walker-Ferguson (Kaihautū Tānga/Publications Director) share their insights below.

"Community Law services are all about providing access to legal support for people who are otherwise unable to find or fund access to those services by themselves – those most harmed by structural inequity," says Olive Grant.

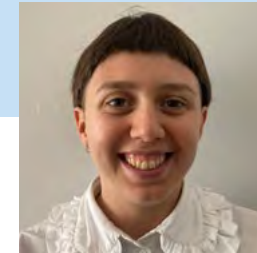
"Our centre provides services for our community, and our services are driven by the struggles of the community. We provide legal support on family, employment, immigration, discrimination, tenancy, consumer and debt, criminal, traffic and other matters. We offer a range of legal services including prison outreach, writing and publishing the Community Law Manual, our student rights service, restorative justice services and legal education.

"We are hugely reliant on volunteers and pro bono support to meet the needs of the community and keep our services afloat."



Sabrina Muck

Senior Lawyer
Waitematā Community
Law Centre



Olive Grant

Kaiārahi Project Coordinator
Community Law Wellington
& Hutt Valley



Tina Walker Ferguson

Kaihautū Tānga
Publications Director
Community Law Wellington
& Hutt Valley

Core to the foundation of the service, says Olive, was a deep and continuous commitment to making law more available for the community, by the community.

"The organisation as a whole was founded on providing help for people who have been marginalised. A big part of our work is helping Māori, who are hugely overrepresented in our criminal justice system. Moana Jackson's 1987 report He Whaipaanga Hou highlighted the huge inequities in our justice system and the need for a legal service for Māori by Māori. We run a number of kaupapa Māori outreach clinics with this in mind. Honouring Te Tiriti o Waitangi is a priority for Community Law Wellington & Hutt Valley.

"When we were established, the vision for our centre was that in 100 years we would no longer need to exist. Unfortunately, our services are more popular today than ever.

"Our priority is to try to restore balance and support people who are most affected by the inequalities of our justice system. And, as the percentage of Māori in prison increases, our centre is part of a movement trying to change that trend."



Access to justice in New Zealand is a significant issue. For most people, it is very difficult to afford legal services.”

Sabrina Muck
Waitematā Community Law Centre



Access to information, advice and options

Sabrina Muck, from WCLC, shares this viewpoint.

“Access to justice in New Zealand is a significant issue. For most people, it is very difficult to afford legal services. Many people fall outside the legal aid criteria and simply can’t afford legal advice. Even people who are eligible for legal aid support will often find the system too overloaded to help them. Clients living with mental health issues or other vulnerabilities tend to experience further barriers to understanding their rights and finding appropriate legal representation.

“At Community Law, our aim is to centre the needs of our clients and the community. We are here to ensure everyone can access legal information and advice about their rights and obligations, and understand the best way forward for their situation. We strive to deliver high quality advice in a professional, non-judgmental way.”

Improving social and sustainable outcomes

Respect is a common theme. Olive says that the law is full of barriers and can be intimidating for people.

“When people come to our centre, we treat them with respect. We acknowledge that whatever they are feeling is true and valid. Talking in a more conversational way about the law allows us to rebalance the access to justice so it is available.”

To provide further help, the Community Law Manual, which covers many areas of law, is available online and in hard copy. Editor Tina Walker-Ferguson says: “We distribute about 400 copies each year, about 100 of which are sponsored by firms and businesses so that we can send them out to kaupapa that would otherwise not be able to afford a copy. The manual provides people with tools to navigate many situations, delivering information to support and empower people.

“Our other work includes a restorative justice service for people going through the court system, bringing parties together for a restorative hui where they can discuss, identify and reframe justice. This also delivers an approach that is more holistic and aligned with Māori world views.”

Supporting the changing needs of the community

There’s no doubt that Covid has required community law practices to adapt significantly as pre-existing issues have become more pronounced and the need to reach people has intensified.

Sabrina says that the constantly shifting landscape of employment law since March 2020 resulted in a huge spike of enquiries, with many employees needing to understand their rights and obligations in such an uncertain time.

“We also saw tenancy issues jump up, with landlords wanting to exit tenants during lockdown and not abiding by the law. This has given rise to a more pronounced general sense of dissatisfaction with landlords who are not meeting their obligations currently. As we came out of lockdown, we also saw a rise in family law enquiries about separation, care of children and family violence.”

Sabrina also highlights that there was a huge increase in immigration enquiries at the start of Covid.

“When Immigration NZ delayed processing applications, many people on temporary visas found themselves out of work and were then unable to access any type of government assistance. Immigration issues are ongoing, alongside other effects of the past few years.

“The sharp rise in the cost of living and ongoing lack of access to stable housing means we are seeing an increase in crimes borne of poverty. Coming into the Christmas period, we always experience a significant increase in enquiries due to job losses,

Waiho i te toipoto Kaua i te toiroa

financial strain, tenancy evictions, and family issues. It's always our busiest time of year, and not necessarily a cheery time of year for our clients."

Tina adds that these challenges don't just affect people who use the service.

"The rising cost of living has also impacted our client-facing mahi. It is harder for us to find staff, as what we can pay doesn't compete with the rest of the market. This means we have gaps in our offering and we have to fundraise, which takes time away from our purpose of meeting legal needs within the community. We're always on the lookout for more support."

Partnering to deliver resources and advice

This need is why the support of firms like MinterEllisonRuddWatts is so important, says Sabrina.

"MinterEllisonRuddWatts offers pro bono advice for issues and access to their organisation for expert insight across different areas of law. It's a partnership that is incredibly valuable for us and our clients, because the more people understand their rights and obligations, the more they can fully participate in and contribute to society.

"Our role as lawyers is to advocate for our community and ensure legal advice and information is available to the people who need it most."

Ultimately, all three practitioners agree that access to legal advice, and understanding your legal rights, should be a right, not a privilege.

For more information on Waitemata Community Law Centre and Community Law Wellington & Hutt Valley, please visit waitematalaw.org.nz and wclc.org.nz.



Investing in our communities

MinterEllisonRuddWatts is working to make a positive impact for our communities because we are passionate about helping to shape Aotearoa New Zealand's future.

Our Community Investment Programme (CIP) supports grassroots and community organisations so we can make a greater impact and we are dedicated to building long-term partnerships with organisations that are committed to *kia toitū te taiao* (having a positive, sustainable impact on our planet) and *kia toitū te tangata* (caring for our people, clients and communities) providing support through a combination of pro bono, community programmes, volunteer support and sponsorship.

In our Sustainability Strategy we have committed to having 90% of all partners and staff involved in pro bono client work, regardless of their role at our firm. We have also committed to providing at least \$250,000 per year of in-kind support to our CIP partners focused on at least two of the following issues: poverty, gender equality, reduced inequality, and rule of law.

Protecting Aotearoa New Zealand's biodiversity

By Partner Stephanie de Groot and Solicitor Henry Sullivan

Biodiversity, or biological diversity, describes the variety of life on earth, including plants, animals, bacteria, and fungi. Biodiversity provides critical life supporting systems that enable all organisms, including humans, to survive.

However, human activities are increasingly putting pressure on biodiversity and causing a rise in the rate of extinction of various species, including in Aotearoa New Zealand. For example, between 1996 and 2018, 40,800 hectares of indigenous forests, scrub, and shrublands, and 44,800 hectares of indigenous grasslands were converted to exotic grasslands, exotic forests, and urban uses.

This decline is largely due to pressures from human activities, including:

- introduced invasive species;
- drainage of wetlands and conversion of land to production uses;

- exploitation, including the historic hunting of marine mammals;
- pollution and leaching of nutrients from fertiliser and stock into waterways; and
- more frequent and damaging storm and flood events, increased fire risk, sea level rise, and ocean acidification as a result of climate change.

In this article we explore why biodiversity is so important to Aotearoa New Zealand, take stock on what we are doing to protect biodiversity and consider the Taskforce on Nature-Related Financial Disclosures as a tool to further reduce loss.



Protecting Aotearoa New Zealand's biodiversity

Why is biodiversity so important to Aotearoa New Zealand?

Much of the country's biodiversity is indigenous, meaning that it is not found anywhere else in the world. Our unique biodiversity provides a range of life supporting functions, and is important for a number of reasons:

- It provides economic benefits: biodiversity is essential to clean air and water, the food that we grow, farm, catch, and hunt, and other primary production such as forestry, and tourism. Aotearoa New Zealand's unique biodiversity is thought to give us a competitive advantage in primary production, exports, and tourism.
- It is of cultural importance: biodiversity is culturally important for Māori because te hauora o te koiora (the health of indigenous biodiversity), te hauora o te taonga (the health of taonga), and te hauora o te taiao (the health of the wider environment) are intrinsically linked to te hauora o te tangata (the health of the people).
- It is of social importance: biodiversity is generally important because many people spend time in, and have a special connection with, nature.
- It has health benefits: humans rely on

ecosystem products and services, such as food, fuels, and medicine to survive. These are pre-requisites for human health and productive livelihoods, without which, human health would be significantly impacted.

Biodiversity loss is inherently connected to other environmental issues such as climate change. In addition to the pressures noted above, the changing climate causes species-specific changes, such as leaf-unfolding, bird migration, and egg-laying, which have flow on effects for other species. On the other hand, protecting biodiversity can also help us adapt to climate change because biodiversity provides stability and resilience to the fluctuations and disturbances caused by a changing climate.

Avoiding biodiversity loss is clearly a critical issue because of the wide-ranging economic, cultural, social, and health impacts that may result.

What is Aotearoa New Zealand doing to protect biodiversity?

At present, there are two key parts to our country's strategy to protect and restore biodiversity: Te Mana o te Taiao (New Zealand's indigenous biodiversity strategy) and the development of the National

Policy Statement for Indigenous Biodiversity (NPS-IB).

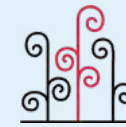
Te Mana o te Taiao

Te Mana o te Taiao, New Zealand's Biodiversity Strategy, was released in 2020. Te Mana o te Taiao sets a strategic direction for the protection, restoration, and sustainable use of biodiversity in New Zealand for the next 30 years.

Te Mana o te Taiao sets out the outcomes that it aims to achieve by 2050. The outcomes generally relate to thriving indigenous species, habitats, and ecosystems, prosperity and enriching lives through biodiversity, and Māori exercising their role as rangatira and kaitiaki.

An Implementation Plan was released in April 2020 alongside Te Mana o te Taiao. It sets out the various actions that have been, are being, and will be undertaken to achieve the goals and objectives in Te Mana o te Taiao. One of the actions in the Implementation Plan is to develop national direction for councils on their responsibilities for protecting and maintaining indigenous biodiversity. This national direction has come in the form of the National Policy Statement for Indigenous Biodiversity.

Main principles of Te Mana o te Taiao



Tūāpapa

Having the right governance, legislation, and funding systems in place to enable delivery of the strategy outcomes.



Whakahau

Empowering all New Zealanders to protect and restore biodiversity through collaboration, co-design and partnership.



Tiaki me to whakahaumanu

Managing natural resources, biological threats, and pressures to protect and restore biodiversity.

Protecting Aotearoa New Zealand's biodiversity

National Policy Statement for Indigenous Biodiversity (Draft NPS-IB)

The Ministry for the Environment consulted on an Exposure Draft of the NPS-IB (Draft NPS-IB) in June and July 2022 and it is expected for it to be finalised and gazetted.

At present, the Resource Management Act 1991 (RMA) is the main framework for maintaining and protecting biodiversity from adverse effects. However, the RMA relies on local authorities to implement rules relating to biodiversity and to ensure compliance with those rules. The Ministry for the Environment considers that the reliance on local authorities has led to an inconsistent and fragmented approach to protecting biodiversity throughout New Zealand. The Draft NPS-IB is intended to streamline the approach to protecting and restoring biodiversity.

The objective of the Draft NPS-IB is to protect, maintain, and restore indigenous biodiversity in a way that:

- recognises tangata whenua as kaitiaki, and people and communities as stewards, of indigenous biodiversity; and
- provides for the social, economic, and cultural wellbeing of people and communities, now and into the future.

At a practical level, the main mechanism in the Draft NPS-IB is the identification and protection of significant natural areas (SNAs). The Draft NPS-IB requires local authorities to undertake an assessment of the land in its district to identify areas of significant indigenous vegetation or significant habitat of indigenous fauna that qualify as SNAs. The criteria for SNAs is set out in the Draft NPS-IB and includes representativeness, diversity and pattern, rarity and distinctiveness, and ecological context.

Local authorities will then be required to make changes to their policy statements and plans to ensure that certain adverse effects on SNAs are avoided (e.g. loss of ecosystem representation and extent). Other adverse effects must be managed by applying the 'effects management hierarchy'. The effects management hierarchy requires adverse effects of an activity to be avoided where practicable. If the adverse effects cannot be avoided, they must be minimised, remedied, offset, or compensated.

The Draft NPS-IB also includes specific provisions for managing adverse effects on SNAs on Māori land, geothermal SNAs, and SNAs in plantation forestry and for managing the adverse effects from

existing activities and other activities such as infrastructure and mineral extraction, where those activities provide a national or regional public benefit.

The Draft NPS-IB provides that local authorities must notify changes to their plans and policy statements to give effect to the SNA provisions of the NPS-IB within five years of commencement of the NPS-IB. Local authorities must notify changes to their plans and policy statements to give effect to the rest of the NPS-IB within eight years. By the time local authorities are required to amend their plans under NPS-IB, we anticipate that New Zealand will be transitioning to its new resource management system and that the NPS-IB will be incorporated into the proposed National Planning Framework under the new resource management system.

Can we do more to protect biodiversity in Aotearoa New Zealand?

Due to the critical nature of this issue, there is an opportunity for New Zealand to explore further means to fulfil its biodiversity strategy.

The Taskforce on Nature-Related Financial Disclosures (TNFD) is an international initiative launched in 2022 to develop



Protecting Aotearoa New Zealand's biodiversity

and deliver a risk management and disclosure framework for organisations to report and act on nature-related risks and opportunities, with a view to shift away from nature-negative outcomes and toward nature-positive outcomes. This is an interesting development that could be further explored in New Zealand as a tool to enhance the restoration and protection of biodiversity.

The TNFD consists of 34 individual taskforce members representing financial institutions, corporates, and market service providers with US\$19.4 trillion in assets, including Bank of America, BlackRock, GSK, and Nestlé. The TNFD is also supported by public sector institutions, science and information organisations, and other interested groups. ANZ and Chartered Accountants Australia and New Zealand are two of the New Zealand related entities on the TNFD Forum, which is made up of over 700 organisations that are helping to develop the TNFD framework.

The TNFD recognises that nature loss poses a major risk to business with more than half of world's economic output moderately or highly dependent on the natural environment. It aims to provide information to financial institutions and companies to allow those organisations to incorporate

nature-related risks and opportunities into their strategic planning, risk management, and asset allocation decisions.

The TNFD framework includes four pillars:

- **Governance:** how nature-related risks and opportunities are overseen by boards and assessed by management to evaluate whether appropriate attention is given to those risks;
- **Strategy:** the actual and potential impacts of nature-related risks and opportunities on business, strategy and financial planning over the short, medium, and long term to inform expectations of future performance;
- **Risk management:** how the organisation identifies, assesses, and manages nature-related risks and opportunities; and

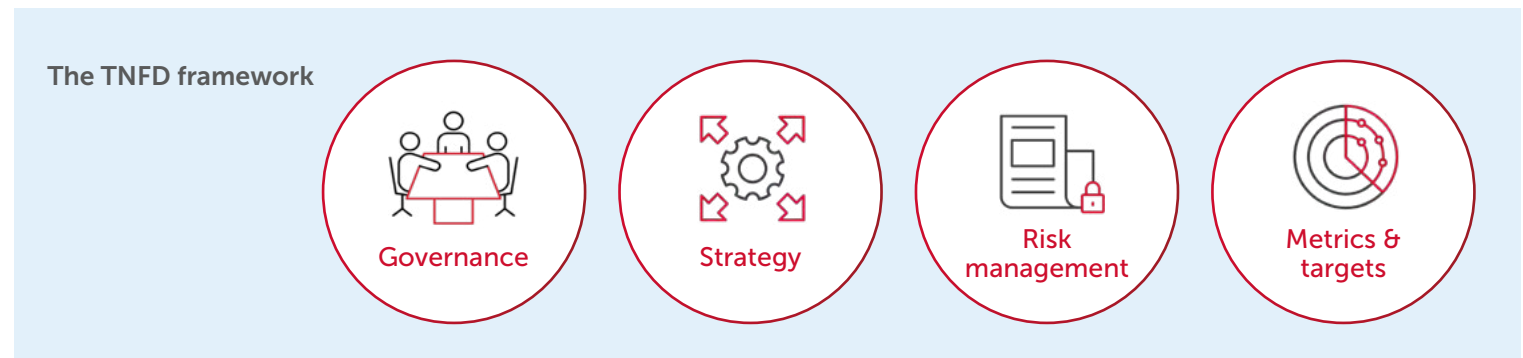
- **Metrics and targets:** the business' measurement and monitoring approach allowing for the assessment of potential risk-adjusted returns, exposure, adoption, and financial obligations relating to nature-related risks and opportunities.

The TNFD framework is modelled on the Taskforce for Climate-related Financial Disclosures (TCFD) framework which was developed to improve and increase reporting of climate-related financial information.

In 2021, Aotearoa New Zealand passed legislation aligned with TCFD that requires banks, managers of investment schemes, insurers, and listed entities that meet certain thresholds to disclose how climate change relates to their business.

It is possible that similar legislation for nature-related disclosures could be introduced in Aotearoa New Zealand in the future. Legislation would likely require companies to report on nature-related risk and opportunities, allowing stakeholders to hold those companies to account for any negative impacts on nature and biodiversity. This would likely incentivise positive change.

Commentators are encouraging businesses to quickly get to terms with the principles of the TNFD to boost stakeholder confidence and to manage the potential regulatory obligations if they arise in the future. We may see the TNFD included as a Tūāpapa in Te Mana o te Taiao Implementation Plans in the future.



Transparent tax strategy is key to ESG

By Partner Andrew Ryan

There is a growing consensus that businesses should pay a fair share of tax to provide an economic contribution to society. Rather than being forced to do so by Inland Revenue, businesses will be incorporating that goal into their environmental, social and governance (ESG) programme.

Meeting ESG outcomes is an essential requirement for business leaders who are held to account by an ever-widening array of stakeholders.

To meet diverse stakeholder expectations, an ESG programme must extend well beyond sustainability and into the very heart of a business, where attitudes to tax planning and accountability will be tested.

An ESG-empowered tax strategy is more than just having good governance. Environmental and social outcomes should also be enhanced through the tax strategy. There are fiscal levers that contribute to environmental targets, from offsetting carbon emissions for employees' flights, through to entering the emissions trading scheme.

Societal norms regarding what is a fair amount of tax to pay should also influence how businesses design their tax strategies. We have seen a clear shift in corporate tax planning. There has been a noticeable shift



from businesses engaging in aggressive tax planning to a mindset of tax as a responsibility, where certainty is of more value than mitigation. On a day-to-day basis this has seen our clients seeking comfort from binding tax rulings or front-footing underpayments of tax with Inland Revenue rather than waiting for a tax audit.

Good tax governance requires board-endorsed tax strategies, with transparent tax reporting that goes beyond reporting effective tax rates. Consideration should also be given to publishing key tax policy documents. Having an effective tax strategy is not just relevant for the back office.

Directors and senior management need to pay attention too, because if their tax strategy is found lacking it can strike at the heart of a company's (and the individuals') reputation and values.

These principles have been endorsed internationally and in New Zealand by Inland Revenue. The World Economic Forum published 21 core metrics and disclosures of sustainable value creation following consultation with more than 200 companies. That included reporting of total tax paid as a contribution to government revenues which support government functions and public benefits.

Transparent tax strategy is key to ESG



Meanwhile, Inland Revenue has endorsed the Forum on Tax Administration's guidance on corporate tax governance – including that the tax strategy should be clearly documented and owned by the board of directors, who are accountable for the design, implementation, and effectiveness of the tax control framework.

Practical steps to take now

A robust tax strategy should identify the types of transactions that attract enough risk to be escalated to the board of directors and senior executives. It identifies how those leaders will be made aware of important tax law and Inland Revenue policy changes, and establishes a monitoring plan which will ensure actions are implemented.

The strategy needs to determine when to seek external sign off; how and when to work with Inland Revenue; and how best to manage legal professional privilege of tax advice and documents within the ambit and spirit of the law. It should show that appropriate resources are applied to tax matters, and there are sufficient internal

controls, and checks and balances in place – and that they are actually being documented and applied. That requires directors and senior executives to have a good understanding and visibility of tax issues and legislative changes affecting critical business areas, and extend beyond solely relying upon their finance team.

Many businesses will have work to do to comply with their ESG programme. When the tax paid by companies generates stakeholder and shareholder interest, the stakes are high. Boards and senior executives should protect their businesses by reviewing their tax strategies from an ESG perspective. Our highly regarded Tax team and Sustainability practice are perfectly placed to assist.



MinterEllisonRuddWatts is taking an active role in Aotearoa New Zealand's sustainability journey.

We are passionate about helping to shape Aotearoa New Zealand's future, and we believe in using our collective skills, time and resources to make a positive impact for our people, our clients, our communities and our planet.

Sustainable Impact is a collection of articles highlighting Aotearoa New Zealand's progress towards a sustainable future, curated by our firm. To discuss any of the themes or topics in this issue, please get in touch.

Holly Hill

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