

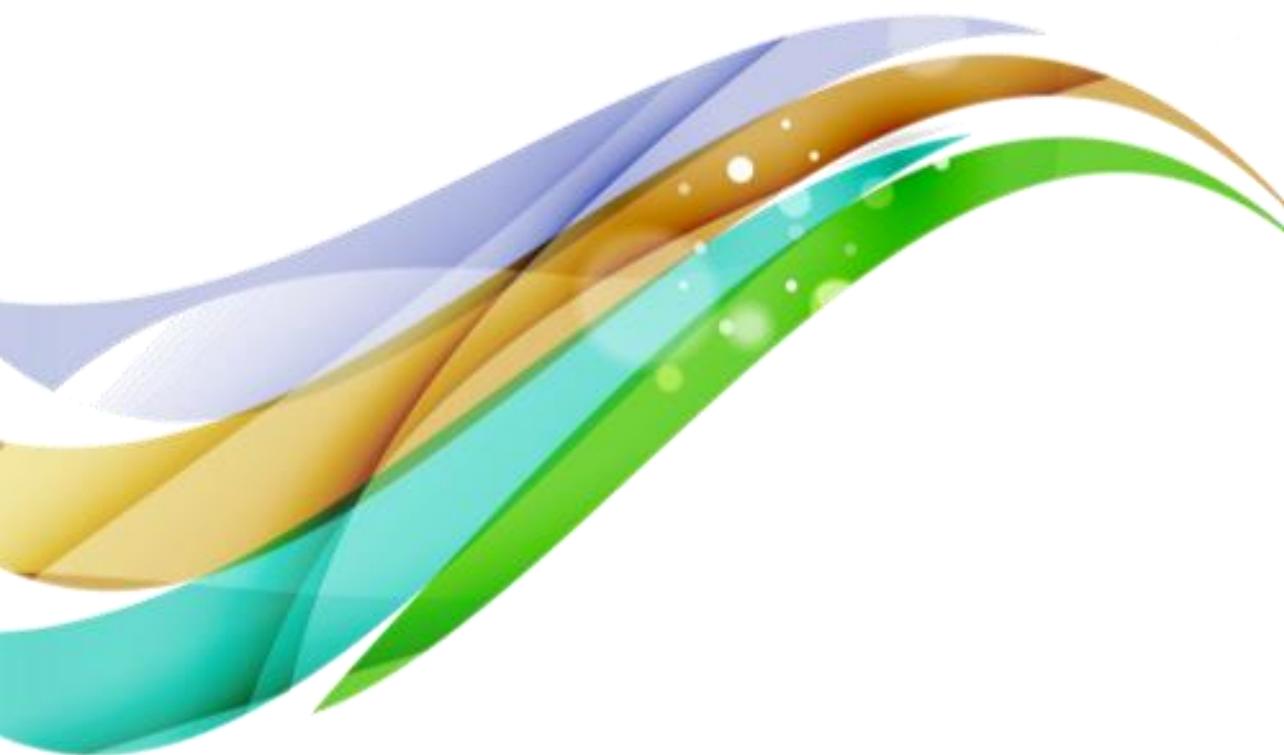
# **International comparison of regulatory frameworks for solicitors**

## **A working paper**

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Prepared for the Independent Review of the Regulation of Lawyers and Legal Services in Aotearoa New Zealand

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	<b>Australia: New South Wales/ Victoria/Western Australia</b>	<b>Ireland</b>	<b>England and Wales</b>	<b>Scotland</b>	<b>Canada: British Columbia</b>
<b>Summary</b>	<p>States and territories regulate their own legal professions. The Uniform Law applies in New South Wales (NSW), Victoria and will apply in Western Australia in 2022.</p> <p>Oversight is by the <a href="#">Legal Services Council</a> and commissioner. Day-to-day regulation by state-based Legal Services Commissioners and professional bodies.</p> <p>Individuals and entities are regulated, including Alternative Business Structures (ASBs) and Multi-disciplinary Practices (MDPs)</p>	<p>Independent regulator Legal Services Regulatory Authority. Individuals and entities are regulated.</p> <p>MDPs are permitted.</p>	<p>Independent regulation by the <a href="#">Solicitors Regulation Authority</a> and Bar Standards Board under the Legal Services Board.</p> <p>Individuals and entities are regulated, including ASBs and MDPs.</p>	<p>The <a href="#">Law Society of Scotland</a> regulates lawyers.</p> <p>ASBs and entity regulation are allowed for in the legislation but are not yet in place.</p>	<p>Law Societies in each province and territory regulate the legal profession. For example, the <a href="#">Law Society of British Columbia</a> regulates the legal profession in the province.</p> <p>ASBs and MDPs are not permitted in British Columbia.</p>
<b>Regulatory bodies</b>	<p>The <a href="#">Legal Services Council</a> and <a href="#">Commissioner for Uniform Legal Services Regulation</a> oversee the implementation of the Uniform Law. The Council sets the rules and policy to ensure the Uniform Law is applied consistently. The Commissioner oversees the dispute resolution and compliance functions. Neither has a role in the direct regulation of law practices or practitioners.</p> <p>Day-to-day regulation of the legal profession remains with the state-based Legal Services Commissioners. The Law Society of New South Wales is a co-regulator in NSW.</p> <p>The <a href="#">Law Council of Australia</a> represents 16 Australian state and territory law societies and bar associations at the national level.</p>	<p>The <a href="#">Legal Services Regulatory Authority (LSRA)</a> is the independent regulator.</p> <p>The <a href="#">Law Society of Ireland</a> admits solicitors to the Roll of Solicitors and issues practising certificates.</p> <p>The Law Society is the main representative body.</p>	<p>The Legal Services Board is the independent oversight regulator of the 10 regulators of providers of legal services under the <a href="#">Legal Services Act 2007</a>.</p> <p>The regulators are part of but operationally separate from their representative bodies. Solicitors are regulated by the <a href="#">Solicitors Regulation Authority (SRA)</a>.</p>	<p>Solicitors practising in Scotland are regulated by the <a href="#">Law Society of Scotland</a>. Barristers are also regulated by the Faculty of Advocates.</p> <p>These two groups also serve as the main representative and regulatory bodies for each profession.</p>	<p>The <a href="#">Federation of Law Societies of Canada</a> is the national coordinating body of law societies.</p> <p>Law Societies in each province and territory regulate the legal profession. The <a href="#">Law Society of British Columbia</a> regulates the legal profession in the province.</p>

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<b>Complaints and discipline</b>	Complaints and discipline are dealt with by independent statutory bodies: the <a href="#">Office of the Legal Services Commissioner</a> in NSW and the <a href="#">Victorian Legal Services Commissioner</a> in Victoria.	The <a href="#">Legal Services Regulatory Authority (LSRA)</a> deals with complaints against solicitors.	The independent <a href="#">Legal Ombudsman</a> deals with complaints about poor service.  The <a href="#">Solicitors Regulation Authority</a> deals with complaints about a solicitor's conduct or behaviour.	The independent <a href="#">Scottish Legal Complaints Commission</a> (SLCC) deals with complaints about poor service.  Complaints about conduct are dealt with by the Law Society.	Each provincial and territory Law Society deals with complaints.
<b>Objectives</b>	The <a href="#">Legal Profession Uniform Law (NSW) No 16a of 2014 s 1.1(3)</a> sets out the objectives of the regulation as: The objectives of this Law are to promote the administration of justice and an efficient and effective Australian legal profession, by— (a) providing and promoting interjurisdictional consistency in the law applying to the Australian legal profession; and (b) ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and (c) enhancing the protection of clients of law practices and the protection of the public generally; and (d) empowering clients of law practices to make informed choices about the services they access and the costs involved; and (e) promoting regulation of the legal profession that is	The <a href="#">Legal Services Regulation Act 2015 s 13(4)</a> sets out the objectives of the LSRA as follows: (4) The Authority shall, in performing its functions of the regulation of the provision of legal services under this Act, have regard to the objectives of— (a) protecting and promoting the public interest, (b) supporting the proper and effective administration of justice, (c) protecting and promoting the interests of consumers relating to the provision of legal services, (d) promoting competition in the provision of legal services in the State, (e) encouraging an independent, strong and effective legal profession, and (f) promoting and maintaining adherence to the professional	The <a href="#">Legal Services Act 2007</a> sets out its objectives in s 1.1: (a) protecting and promoting the public interest; (b) supporting the constitutional principle of the rule of law (c) improving access to justice; (d) protecting and promoting the interests of consumers (e) promoting competition in the provision of services within subsection (2) (f) encouraging an independent, strong, diverse and effective legal profession (g) increasing public understanding of the citizen's legal rights and duties (h) promoting and maintaining adherence to the professional principles.	The <a href="#">Legal Services (Scotland) Act 2010</a> sets out its objectives in section 1 as (a) supporting— (i) the constitutional principle of the rule of law (ii) the interests of justice, (b) protecting and promoting— (i) the interests of consumers, (ii) the public interest generally, (c) promoting— (i) access to justice (ii) competition in the provision of legal services (d) promoting an independent, strong, varied and effective legal profession (e) encouraging equal opportunities (as defined in Section L2 of Part II of Schedule 5 to the Scotland Act 1998) within the legal profession (f) promoting and maintaining adherence to the professional principles.	For example, in British Columbia, the <a href="#">Legal Profession Act 1998</a> confirms the continuation of the Law Society of British Columbia and sets out its objectives in s 3: It is the object and duty of the society to uphold and protect the public interest in the administration of justice by (a) preserving and protecting the rights and freedoms of all persons (b) ensuring the independence, integrity, honour and competence of lawyers (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission (d) regulating the practice of law (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling

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	<p>efficient, effective, targeted and proportionate; and</p> <p>(f) providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.</p> <p>The Uniform Law also sets out the objectives of Parts.</p>	<p>principles specified in subsection (5).</p>			<p>their duties in the practice of law.</p>
<b>Admission</b>	<p>Admissions in Victoria are managed by the <a href="#">Victorian Legal Admissions Board</a> and in NSW by the <a href="#">Legal Services Admissions Board</a>. Once admitted, solicitors become officers of the Supreme Court of that state.</p> <p>Practising certificates are issued by the <a href="#">Law Society of New South Wales</a> in NSW, which also maintains the Register of Solicitors, and from the <a href="#">Victorian Legal Services Board</a> in Victoria, which also maintains the Victorian Legal Profession Register.</p> <p>Practising certificates for barristers are issued by the <a href="#">New South Wales Bar Association</a> in NSW and the <a href="#">Victorian Bar</a> in Victoria.</p>	<p>The <a href="#">Law Society of Ireland</a> admits solicitors to the Roll of Solicitors and issues practising certificates.</p> <p>The <a href="#">Kings Inns</a> governs entry to the profession of barrister.</p>	<p>The <a href="#">Solicitors Regulation Authority</a> admits suitably qualified persons to the roll of solicitors and issues practising certificates to solicitors on the roll.</p> <p>The <a href="#">Bar Standards Board</a> governs entry to the profession of barrister.</p>	<p>The Law Society of Scotland admits solicitors and issues practising certificates.</p> <p>The <a href="#">Faculty of Advocates</a> governs entry into the profession of advocate.</p>	<p>Each Law Society admits lawyers. For example, the <a href="#">Law Society of British Columbia</a> admits lawyers to the Bar and issues practising certificates.</p>

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<b>Reserved activities</b>	<p>Under the Uniform Law, only qualified entities may engage in legal practice.</p> <p>The Uniform Law defines 'engage in legal practice' as: Includes practise law or provide legal services but does not include engage in policy work (which, without limitation, includes developing and commenting on legal policy).</p> <p>The term 'practise law', is not defined in the Uniform Law; however, 'legal services' are defined as: means work done, or business transacted, in the ordinary course of legal practice. There are a number of cases which assist in the interpretation of what it means to 'engage in legal practice' or 'provide legal services'.</p>	<p>The <u>Solicitors Act 1954</u> s58 sets out reserved activities:</p> <p>(a) the drawing or preparing of a document relating to real or personal estate or any legal proceeding</p> <p>(b) the procuring or attempting to procure the execution by an Irish citizen of a document relating to—</p> <p>(i) real or personal estate, or movable or immovable property, situate or being outside the State and the United Kingdom, or</p> <p>(ii) any legal proceeding, actual or in contemplation, of which the subject-matter is any such estate or property</p> <p>(c) the making of an application, or the lodging of a document for registration, under the Registration of Title Act, 1891, or any Act amending that Act, at the Land Registry or to or with a local registering authority</p> <p>(d) the taking of instructions for, or drawing or preparing of, documents on which to found or oppose a grant of probate or letters of administration.</p>	<p>The <u>Legal Services Act 2007</u> s12 sets out reserved activities that can only be carried out by a solicitor with a practising certificate include:</p> <p>(a) exercising rights of audience (the right to appear before a court)</p> <p>(b) conducting litigation</p> <p>(c) probate services</p> <p>(d) reserved instrument activities (conveyancing)</p> <p>(e) acting as a notary</p> <p>(f) administering oath</p> <p>Immigration work is effectively reserved.</p>	<p>The <u>Solicitors (Scotland) Act 1980</u> s 32 set out reserved activities:</p> <p>(a) any writ relating to heritable or moveable estate (ie documents of property title),</p> <p>(b) any writ relating to any action or proceedings in any court,</p> <p>(c) any papers on which to found or oppose an application for a grant of confirmation in favour of executors.</p> <p>(d) witnessing and authenticating the execution of certain types of documents.</p> <p>Some unreserved legal services such as immigration advice and services and insolvency practices, are regulated by a statute other than the Solicitors (Scotland) Act 1980.</p>	<p>The <u>Legal Profession Act 1998</u> s 15 prohibits any person, other than a practising lawyer, from engaging in the practice of law. A 'practising lawyer' is one who holds a practising certificate.</p> <p>The 'practice of law' is defined in s 1 as a list of activities including appearing as counsel or advocate and giving legal advice.</p>

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<b>Protected titles</b>	The Uniform Law protects the use of the titles of 'lawyer, legal practitioner, barrister, solicitor, attorney, counsel proctor, Senior Counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel or His Majesty's Counsel'.	The title of 'solicitor' is protected.	The terms 'solicitor' (a lawyer who has been admitted as a solicitor by the <a href="#">Solicitors Regulation Authority</a> and 'barrister' (a lawyer regulated by the <a href="#">Bar Standards Board</a> ) are protected titles.  There are no restrictions on the use of the term 'lawyer'.	The term 'solicitor' is a protected title. The title of 'advocate' is not protected.  There are no restrictions on the use of the term 'lawyer'.	The titles 'lawyer', 'articled student', 'student-at-law' and 'law clerk' are protected. A practising lawyer is entitled to use the style and title of 'Notary Public'.
<b>Alternative business structures (ABSs) and multi-disciplinary practices (MDPs)</b>	Both ASBs and MDPs are permitted. A solicitor can practise under any business structure.  An unincorporated legal practice (ULP) is an unincorporated partnership or an unincorporated body or group. A ULP may provide both legal and non-legal services. Where the ULP provides both legal and non-legal services, certain disclosure obligations apply. A ULP must have at least one authorised principal (AP) authorised by his or her Australian practising certificate to supervise others. If the law practice is a partnership, the AP must also be a partner in the partnership.  An ILP is a corporation which is a company. An ILP may provide both legal and non-legal services. Where the ILP provides both legal and non-legal services, certain disclosure obligations apply. An ILP must have at least one 'authorised principal' (AP). The AP must hold a principal's practicing certificate and be a validly	The <a href="#">Legal Services Regulation Act 2015</a> permits MDPs, legal partnerships between barristers and solicitors and limited liability partnerships for legal and MDPs.	Both ABSs and MDPs are permitted. The SRA can authorise and regulate different types of business entities including <ul style="list-style-type: none"> <li>• sole practices;</li> <li>• legal services bodies (partnership, company or limited liability partnership (LLP)) in which all managers/interest holders are lawyers; and</li> <li>• licensable bodies (multi-disciplinary practice (MDP)) in which the managers/interest holders include both lawyers and non-lawyers.</li> </ul> <p>Licensed bodies can provide a mix of services. They can solely provide legal services, or they can provide a mixture of legal and non-legal services.</p> <p>Entities are subject to regulations that require them to have systems in place to assure that the solicitor's professional obligations are met.</p>	The Legal Services (Scotland) Act 2010 allows investment in law firms by both solicitors and non-solicitors. Implementation has stalled since 2017.  The <a href="#">Law Society of Scotland Rules</a> prohibit MDPs.	ABSs and MDPs are not permitted.

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	appointed director of the company.		<ul style="list-style-type: none"> <li>• Entities providing only non-reserved legal services do not need to be authorised.</li> <li>• Entities providing immigration services and reserved legal services to the public must be authorised and regulated by the SRA.</li> </ul> <p>Entities providing reserved activities as well as other professional services (MDPs) must be authorised by the SRA, which also regulates the legal work.</p>		