

A summary of international reviews of how legal services are regulated

A working paper

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

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June 2022





Summary

Internationally, reviews have stimulated changes in how legal services are regulated. Key themes of the reviews include the provision of legal services to consumers, competition in the legal services market and the impact of technology on legal services.

The reforms have been different in each jurisdiction, but have typically included a focus on protecting the interests of consumers, moves towards a single regulator, and allowing alternative business structures and multidisciplinary practices with regulation of both individuals and entities providing legal services.

Australia: New South Wales, Victoria and Western Australia

Changes to the regulation of the legal profession in Australia have sought to harmonise the regulatory regime for the legal profession across jurisdictions in Australia to increase competition by creating a national market, and to introduce 'co-regulation' by independent regulatory authorities and the profession. The changes followed a number of reviews of competition in the legal profession, including a review by the Auditor General's Department in 1987 and study of the legal profession by the Trade Practices Commission in 1994 which made a number of detailed recommendations for change, including:

- applying the Trade Practices Act in full to the legal profession
- repealing any anti-competitive regulations concerning the legal profession
- recognising lawyers accredited in other jurisdictions in Australia
- opening up the supply of legal services to appropriate qualified non-lawyers
- implementing mechanisms to determine what work needed to be reserved for lawyers
- identifying the need for any additional consumer safeguards for accredited non-lawyers
- removing the artificial separation of the profession e.g. between solicitors and barristers
- ensuring specialist accreditation schemes are not used to restrict entry into specialist areas
- removing restrictive rules on the ownership and organisation of legal practices.

Following the reviews, New South Wales and Victoria in 2013 agreed to harmonise their regulation of the legal profession, cut red tape and create a single system to govern legal practice. The two states did this by developing a 'uniform law' that would be applicable in both states, which would improve harmonisation through:

- consistency in the law applying to legal profession across states and territories
- ensuring legal practitioners are competent and maintain high ethical and professional standards
- enhancing the protection of clients and the public
- empowering clients to make informed choices about their legal options
- efficient, effective, targeted and proportionate regulation
- a co-regulatory framework with appropriate independence for the legal profession.



The Legal Profession Uniform Law came into force in 2015 through local application Acts in New South Wales and Victoria, covering three quarters of lawyers in Australia. Western Australia will officially join the scheme on 1 July 2022.

England and Wales

In July 2003, Sir David Clementi carried out an [independent review](#) of the regulatory framework for legal services in England and Wales following a report by the Office of Fair Trading that recommended unjustified restrictions on competition should be removed. The Clementi review recommendations included:

- simplifying regulatory oversight by creating a new independent oversight regulator, the Legal Services Board
- creating new front-line regulators and requiring a clear separation of the regulatory and representative functions of the previous seven regulators
- simplifying the complaints system by creating a new Office for Legal Complaints
- allowing Alternative Business Structures to permit non-lawyers to own and manage companies that provide reserved services as a whole or part of their business.

The reforms have been in place for over 10 years. A number of recent reviews have examined the impact of the reforms and recommended further changes. In 2016 the Competition and Markets Authority [recommended](#) a package of measures to help consumers engage with the legal services sector better, including:

- developing standards for disclosures of price, service, redress and regulatory status
- making better information available to help consumers identify their legal needs, shop around and secure good value, such as through the development of digital comparison tools
- reviewing the regulatory framework to make it more flexible and risk-based
- reducing the number of regulators.

A 2020 [review](#) by Stephen Mayson recommended changes to create a level playing field for legal services and enhance consumer protection through targeted and proportionate regulation, including:

- regulating legal services to differing degrees depending on the risk to the public interest of the work, instead of regulating lawyers
- regulating all providers of legal services, whether legally qualified or not, by a single regulator
- replacing the reserved legal activities by categorising all legal services according to risk and applying differing levels of protections as required.

Scotland

In 2018, Esther Roberton concluded an [independent review](#) of the Scottish legal services sector to reform and modernise the system to better serve the public, the profession and the Scottish economy. The review recommended a number of changes including:

- a new regulatory model



- a single independent regulator of legal services with oversight of education, standards and continuing professional development across all legal professional groups
- requiring the legal regulator to implement an efficient complaint handling process
- requiring all those who provide legal services to be registered with the independent regulator
- introducing entity regulation to support more innovative business models and delivery methods
- introducing regulation of the term 'lawyer', due to public misunderstanding about the differences between the terms 'solicitor' and 'lawyer'.

A [review](#) of legal services in Scotland by the Competition and Markets Authority recommended a number of measures to improve competition and benefit of consumers, including:

- improving the availability of information to consumers on price, service and quality to enable them to shop around to get a better deal and secure good outcomes
- reducing the adverse effects of regulation on competition, in particular on entry and innovation that can offer consumers increased choice and quality
- promoting timely regulatory reform underpinned by an independent regulator to ensure a clear focus on the consumer interest.

The Scottish Government is considering reforms to legal services in Scotland; public [consultation](#) closed in December 2021.

Ireland

The reforms to regulation of the legal profession in Ireland followed a number of critical reviews and an economic crisis. A 2006 Competition Authority [review](#) found that the legal profession was in need of substantial reform with many unnecessary and disproportionate restrictions on competition. Its most important recommendation was the introduction of an independent regulator.

As part of the bailout package, the Government signed a Memorandum of Understanding with the International Monetary Fund, the European Central Bank and the European Union in November 2010 that included a commitment to implement an independent regulator.

Canada: British Columbia

Canada has a long history of self-regulation by the legal profession by law societies in each province and territory. To date, the Canadian law profession has not undergone reviews of the kind undertaken in England and Wales, Scotland or Ireland. However, there have been some moves towards liberalising business structures and encouraging competition.

British Columbia is one province that has embarked on reform. In 2019 the British Columbia Law Society commissioned the Futures Task Force, chaired by Craig Ferris, to consider future trends facing the profession. Its [final report](#) in 2020 made a number of wide-ranging recommendations to the Law Society, including:

- addressing regulatory impediments to the use existing and emerging technologies in the provision of legal services



- amending regulatory structures to allow for innovation in legal service delivery and alternative business structures while protecting the public
- re-evaluating current regulations and restrictions on law firm ownership and investment, as well as multidisciplinary practice
- ensuring that current and future regulation is amended and created to be in accordance with equity, diversity and inclusivity principles.

A subsequent [governance review](#) of the Law Society of British Columbia in 2021 by Harry Cayton found that the Law Society meets most of the Standards of Good Governance, and made a number of recommendations for improvements including:

- reinforcing consideration of the public's interests, including equity and diversity
- reducing risks of harms to legal clients and the public
- making it easier to make a complaint
- strengthening processes for conflicts of interest
- amending the composition, role and responsibilities of the board
- improving the efficiency and effectiveness of board and committee meetings.

In March 2022 the Attorney General [announced](#) proposed changes to modernise the regulatory framework for legal professionals, including:

- regulating all legal professionals under a single statute and by a single regulator
- establishing a mandate for the regulator that clarifies its duty to protect the public, including the public's interest in accessing legal services and advice
- establishing a modern regulatory framework that is consistent with best practices in professional regulatory governance
- establishing clearly defined scopes of practice for each regulated profession with procedures to allow for expanded scopes as needed.