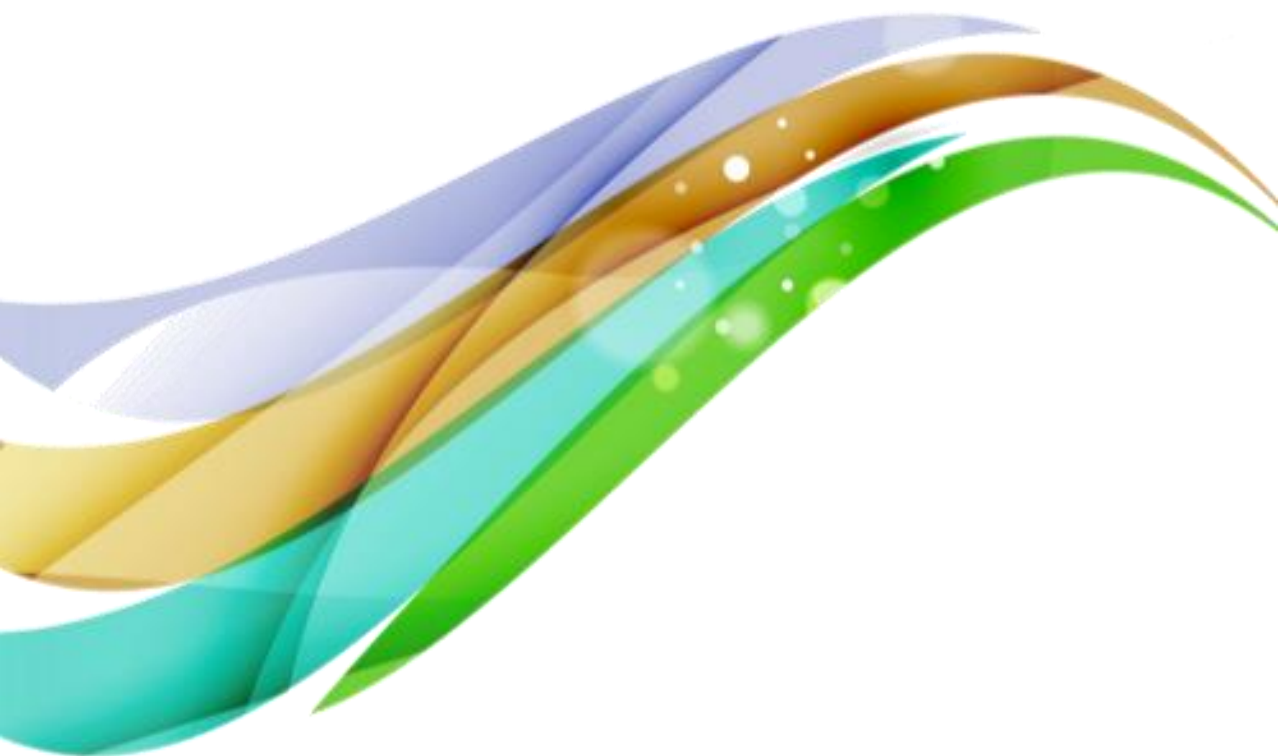


Legal regulation and representation: a summary of international approaches

A working paper

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

Prepared by consultants from Sapere Research Group
June 2022





Summary

This paper provides an overview of the arrangements for regulation and representation of the legal industry in comparable jurisdictions overseas and the settings for other professions in New Zealand. Table 1 provides a summary of models used in different jurisdictions and other professions. These are discussed further below.

Table 1: Models for regulation and representation

Type of model	Jurisdictions	New Zealand professions
<p>A membership body has both representative and regulatory functions</p> <p>This includes where only complaints are dealt with independently (as indicated)</p>	<p>New Zealand</p> <p>Scotland*</p> <p>Northern Ireland**</p> <p>Canada***</p> <p>Australian Capital Territory and Northern Territory</p> <p>Queensland, New South Wales, South Australia, and Tasmania (all have an independent complaints body)</p>	<p>Teachers</p>
<p>Separate entities provide regulatory and representative functions:</p>	<p>England and Wales</p> <p>Ireland</p> <p>Victoria and Western Australia</p>	<p>Engineers and engineering associates</p> <p>Architects</p> <p>Health practitioners</p> <p>Financial advisors</p> <p>Builders</p> <p>Electrical workers</p> <p>Plumbers, gasfitters and drainlayers</p> <p>Real estate agents</p> <p>Residential property managers (proposed)</p>

* The Law Society of Scotland has an independent Regulatory Committee. The Robertson [report](#) suggested establishing an independent legal regulator in Scotland. ** There is also oversight by the Lord Chief Justice of Northern Ireland and a Lay Observer. *** The Attorney General of British Columbia recently announced that a new independent regulator is to be established for all legal professionals in the province.



International comparisons

Scotland

The Law Society of Scotland regulates lawyers and also undertakes representative functions. Under the Legal Services (Scotland) 2010 the Regulatory Committee was established to carry out the Law Society's regulatory functions. The Committee acts independently from the Law Society, must have 50 per cent lay membership and must have a lay convenor and lay chairperson.

The 2018 [Robertson Review](#) recommended:

- a single super-regulator, independent of profession, that was also the gateway for complaints about legal services/profession and responsible for oversight of education, standards and continuing professional development,
- all providers of legal services having to register with the independent regulator,
- a clearer link from failure to meet standards to redress procedures for individuals and entities.

The Scottish Government implemented short-term improvements to complaints and was consulting on other aspects up to 24 December 2021. In the interim:

- The Scottish Legal Complaints Commission (SLCC) acts as a single point of contact for all complaints against lawyers in Scotland. The SLCC resolves complaints about service and refers conduct complaints to the Law Society of Scotland. The SLCC operates independently of the Scottish Government and of the Scottish legal profession.
- The Law Society of Scotland will refer a complaint about a conduct matter to one of its Professional Conduct Sub Committees (PCSCs), investigate and prepare a report for the PCSC, and the PCSC will make its own decision. The Law Society can decide to prosecute more serious cases before the Scottish Solicitors' Discipline Tribunal. The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. As part of its regulatory duties, it sets and upholds standards with a statutory duty to work in the public interest.
- The Scottish Solicitors' Discipline Tribunal (SSDT) is an independent body which mainly deals with serious disciplinary issues that arise from time to time within the Scottish legal profession.

Ireland

The Legal Services Regulatory Authority (LSRA) is an independent body with functions including:

- establishing and administering a system of inspection of legal practitioners
- receiving and investigating complaints and sanctioning legal practitioners if misconduct is found
- maintaining the register of practicing barristers
- promoting public awareness and disseminating information about legal services including their cost
- keeping the Minister of Justice informed of developments relating to the provision of legal services and making recommendations on policies



- undertaking research on the provision of legal services which may promote an improvement in standards of legal services and public awareness
- making recommendations about the education and training of legal practitioners and the structure of the legal profession.

The Legal Practitioners Disciplinary Tribunal is an independent statutory tribunal that considers complaints of misconduct.

The Law Society exercises statutory functions in relation to the education, admission, enrolment, discipline, and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support. The King's Inns governs entry to the profession of barrister-at-law.

Northern Ireland

The Law Society of Northern Ireland is the professional body for the approximately 2,300-plus solicitors in Northern Ireland, with the aim of protecting the public. Under the Solicitors (Northern Ireland) Order 1976, the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors in order to maintain the independence, ethical standards, professional competence and quality of services offered to the public.

There is no independent complaints body to receive complaints about lawyers in Northern Ireland. The Law Society of Northern Ireland deals with complaints about solicitors regarding both poor service and professional misconduct. The Society's procedures are open to public scrutiny through the offices of the Lay Observer, an official appointed by the Government to oversee the way in which the Society investigates complaints about solicitors.

The Bar Council of Northern Ireland investigates and considers complaints about barristers.

England and Wales

The Legal Services Act 2007 resulted in:

- an independent super-regulator (Legal Services Board) and a consumer panel that advises the super-regulator
- a dedicated complaints agency, the Office for Legal Complaints that receives complaints and refers to front-line regulators to investigate and discipline where necessary
- all regulators were required to prioritise consumers' interests and powers devolved from the Legal Services Board
- front-line regulators' regulatory and representative functions were separated (affecting five bodies) – for instance the Solicitors Regulation Authority is the independent regulatory body that deals with complaints about dishonesty and a lawyer's behaviour (formally an arm of the Law Society, it is operationally independent).



Canada

There is a law society in each of Canada's 10 provinces and three territories, established by provincial legislation. These membership bodies, which are led by and chosen by lawyers, exercise control over legal services regulation in their respective provinces and territories. They establish licensing requirements, promulgate codes of conduct, and exercise discipline.

In contrast to the law societies that require mandatory membership by lawyers wishing to practise law in Canada, membership of the Canadian Bar Association is optional but most practising lawyers are members, as it provides regular access to valuable continuing legal education opportunities.

In March 2022 the Attorney General of British Columbia [announced](#) proposed changes to modernise the regulatory framework for legal professionals, including establishing a new independent entity to regulate the activities of all legal professionals.

Australia

The Legal Profession Uniform Law 2015 (Uniform Law) is a common framework for New South Wales (NSW) and Victoria, which other jurisdictions are encouraged to join. Under the Uniform Law:

- The Legal Services Council makes the Uniform Rules and monitors implementation of the law to ensure consistency across states. The Council can issue guidelines or directions to local authorities (except in relation to complaint handling and professional discipline functions).
- The Commissioner for Uniform Legal Services Regulation is responsible for raising awareness and promoting compliance. It monitors and reviews complaint handling and professional discipline functions and can issue guidelines and directions to local authorities on these matters.
- Neither has a role in the direct regulation of law practices or practitioners and cannot intervene in individual cases. Day-to-day regulation of the legal profession remains with the state-based Legal Services Commissioners and professional bodies. Local admission boards maintain a role in the admissions process.
- In each state, local legislation deals with functions and power of local authorities, admission fees, and transitional arrangements and exemptions.

The Uniform Law has been operating in NSW and Victoria since 2015 and currently regulates around 68 per cent of all legal practitioners Australia-wide. On 5 April 2022, the Legal Profession Uniform Law Application Bill 2021 passed in the Parliament of Western Australia. The commencement date for the legislation has not yet been announced. When Western Australia joins the scheme, this will increase to 75 per cent of the profession nationally.

Western Australia

In Western Australia, the Law Society of Western Australia is the peak professional association and there is a separate Legal Practice Board of Western Australia whose statutory operations include: reservation of legal work (prohibition on unqualified legal practice); admission of local, interstate and foreign lawyers; issuing and renewal of practising certificates; monitoring of continuing professional



development (CPD) obligations; assessment of applicants for Quality Assured CPD provision; co-ordination of inter-jurisdictional regulatory matters; monitoring of legal practice structures, including incorporated legal practices and multi-disciplinary partnerships; monitoring of trust accounts; the conduct of the complaints and disciplinary process through the Legal Profession Complaints Committee; and compliance with relevant public service, government and statutory obligations.

New South Wales

In NSW, complaints are referred to the government-appointed Legal Services Commissioner that oversees the agency receiving complaints, settles consumer matters, and refers misconduct cases to either of the two professional bodies (the Law Society of NSW and the Bar Association, responsible for Codes) which investigate under the Commissioner's oversight.

As well as representing the interests of more than 35,000 members of the legal profession, the Law Society of New South Wales also has co-regulatory duties with the Office of the Legal Services Commissioner: it sets and enforces professional standards, licenses solicitors to practise, investigates complaints and administers discipline to ensure that both the community and the profession are properly served by ethical and responsible solicitors.

Victoria

The Victorian Legal Services Board and Commissioner are independent statutory authorities responsible for the regulation of the legal profession in Victoria. The Victorian Legal Services Commissioner is responsible for developing and maintaining an independent, impartial, and accessible system for managing complaints against legal practitioners. The Commissioner can initiate a complaint and commence an investigation into the conduct of a lawyer, even where a complaint has not been made by another person, or if a complaint has been withdrawn.

If an investigation uncovers serious wrongdoing, the Commissioner can take disciplinary action against the lawyer, including bringing charges against the lawyer before the Victorian Civil and Administrative Tribunal (VCAT). Separately, the Law Institute of Victoria represents more than 19,000 lawyers and people working in the law in Victoria.

Queensland

In Queensland, the Legal Services Commission is an independent statutory body, with the power to regulate the legal profession, including receiving and, where appropriate, investigating complaints about the conduct of lawyers, their employees, and unlawful operators in relation to the provision of legal services in Queensland.

The Bar Association of Queensland (BAQ) and the Queensland Law Society (QLS) are the professional representative bodies of barristers and solicitors respectively. As regulatory authorities, the BAQ and the QLS perform certain functions under the Act, including the issue and regulation of practising certificates, setting of legal profession rules and (in the case of the QLS) the audit of trust accounts and other practice matters.



The Legal Services Commissioner has the sole authority to prosecute lawyers or legal practitioners in relation to professional conduct matters. The Commissioner has the discretion to refer professional conduct investigations involving barristers to the BAQ; all other investigations are undertaken by the Legal Services Commission.

South Australia

In South Australia, complaints and discipline are dealt with by the independent Legal Profession Conduct Commissioner.

The Law Society of South Australia's principal mission is to represent its members and the legal profession. The Society also has statutory responsibilities which include a significant role in admission of practitioners, control of practising certificates, administration of an appropriate professional indemnity insurance scheme, responding to matters relating to professional conduct and standards, providing trust account supervision and the supervision or management of practices in difficulty or trouble, administration of the Fidelity Fund, and involvement in the disciplining of legal professionals.

Australian Capital Territory

The Law Society of the ACT's principal purpose is to represent its members. The Legal Profession Act 2006 requires the Society to regulate for the benefit of the consumers of legal services. Its regulatory services include: maintaining professional standards, providing a register of law firms and practitioners, protecting client and public monies, handling complaints about professional conduct, prosecuting disciplinary matters, and administering grants to community legal services.

Northern Territory

The Law Society Northern Territory is a statutory body constituted under the Legal Profession Act (NT), which controls and regulates the affairs of the legal profession in the Northern Territory and offers services to lawyers. The Society is the only body in the Northern Territory that is able to issue practising certificates to lawyers.

Tasmania

Tasmania has an independent Legal Profession Board of Tasmania that receives and investigates complaints about lawyers and determines how they should be dealt with. The Board also advises lawyers on appropriate standards of professional conduct, monitors emerging issues and trends in the legal profession, and conducts education programmes for the community about client-lawyer relationships.

The Law Society of Tasmania is a peak industry and statutory body that has two major functions: regulating legal practice in the State of Tasmania; and providing services to its members to assist in maintaining high standards of practice in the Tasmanian legal profession.



How other professions in New Zealand are regulated and represented

Teachers

The Teaching Council | Matatū Aotearoa is the professional body representing teachers. It is also responsible for registering teachers, setting and maintaining professional standards and ensuring teachers are competent and fit to practice. Disciplinary matters are heard by a dedicated Tribunal under a formal process where charges are laid.

Engineers

Cabinet agreed in March 2022 to a new occupational regulatory regime for engineers to replace the voluntary regime under the Chartered Professional Engineers of New Zealand Act 2002. A new statutorily independent Engineers Registration Board, accountable to the Minister, will oversee the new regime. The Board will: a) oversee performance of others performing functions in the regime; b) set rules for eligibility for registration and licensing, the assessment process and continuing professional development; and c) establish the Disciplinary Committee.

The Board will include a Registrar responsible for receiving applications for registration and licensing, assessing and deciding applications, and maintaining the Register of Engineers, and a Complaints Officer who receives and triages complaints, appoints investigators, and prosecutes complaints at the Disciplinary Committee.

Architects

The New Zealand Registered Architects Board (NZRAB) is an independent statutory entity appointed by the Minister for Building and Construction. The Board reports annually to the Minister. The Board is tasked with registering, monitoring and disciplining architects.

Te Kāhui Whaihanga New Zealand Institute of Architects (NZIA) is the main membership organisation for architects.

Health practitioners

The Health Practitioners Competence Assurance Act 2003 establishes separate regulatory authorities ('responsible authorities'), including the Medical Council of New Zealand and the Nursing Council, to enact the legislation for each group of 16 health professions. Any person who wants to practise in one of those 16 regulated professions must be registered with the relevant authority and hold an annual practising certificate issued by that authority. The authorities are regulatory and not representative bodies such as the New Zealand Medical Association or the Royal New Zealand College of General Practitioners. Registered practitioners can only perform activities within the scope of practice for which they are registered.



Complaints about a registered health practitioner are made to the Health and Disability Commissioner (HDC). If a responsible authority receives a complaint alleging that the conduct of a practitioner has affected a consumer, the authority must refer the complaint to HDC. The Health Practitioners Disciplinary Tribunal (the Tribunal) hears and determines disciplinary proceedings brought against health practitioners, including doctors. The Tribunal is independent and is separate from the responsible authorities.

Financial advisers

The Financial Markets Authority is an Independent Crown Entity accountable to the Minister. The Authority: a) licenses firms and professionals to provide certain financial products and services; b) monitors the industry to ensure it complies with the law and treats customers fairly; c) enforces the law, investigating misconduct and prosecuting companies and individuals for breaches; d) provides independent information to help consumers make good investment and financial decisions; e) provides information and guidance to set expectations for how industry should treat customers fairly and comply with the law. The Reserve Bank of New Zealand and the Commerce Commission also regulate financial markets, and the Commission for Financial Capability provides independent analysis, review and promotes financial capability.

All financial service providers must adhere to the Code of Professional Conduct for Financial Advice Services, which sets standards of competence and professional conduct, and be part of a Dispute Resolution Scheme. Complaints against financial services providers are forwarded to the relevant scheme to be dealt with.

Building practitioners

There is a Ministerially appointed Building Practitioners Board with functions including: a) approving rules relating to licensed building practitioners; b) receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners; and c) hearing appeals against certain decisions of the Registrar. There is also a Registrar of Licensed Building Practitioners responsible for the register of licensed building practitioners and registration, cancellation, and suspension decisions.

These functions are independent of any membership or representative bodies such as Master Builders.

Electrical workers

The Electrical Registration Board's main functions are to register electrical workers and ensure competency of those workers in order to guarantee public safety. This is carried out through auditing of electrical workers, holding hearings into complaints and the promotion of electrical safety and competency. The board is appointed by the Minister and is independent of any membership or representative bodies.



Plumbers, gasfitters and drainlayers

The Plumbers, Gasfitters and Drainlayers Board's functions can be broadly categorised into registration, licensing, competence (minimum standards), discipline and prosecution. These functions are independent of any membership or representative bodies.

Real estate agents

The Real Estate Agents Authority (REA) is a Crown entity. It: a) licenses people and companies working in the real estate industry; b) maintains a Code of Conduct setting out the professional standards real estate professionals must follow; c) provides independent information for people who are buying and selling property through its settled.govt.nz website; d) provides advice and guidance for real estate professionals and deals with complaints about real estate professionals' behaviour; e) maintains a public register of real estate professionals that includes information about disciplinary action taken in the last three years.

REA is separate from the Real Estate Institute of New Zealand (REINZ) which is a membership organisation representing more than 16,000 real estate professionals.

Residential property managers

The Ministry for Housing and Urban Development released a [discussion document](#) in February 2022 on proposed options to regulate residential property managers. Under the document, an independent regulator's functions (REA or MBIE) would include: a) education and professional development; b) registration and licensing; c) standard setting; d) compliance management (including disciplinary action); and e) dispute resolution.



References

- Clementi, D. (2004). *Review of the Regulatory Framework for Legal Services in England and Wales*. http://www.avocatsparis.org/Presence_Internationale/droit_homme/PDF/Rapport_Clementi.pdf
- MHUD. (2022). *Residential Property Management Regulatory Option* [Discussion Paper]. Ministry of Housing and Urban Development Te Tūāpapa Kura Kāinga. https://consult.hud.govt.nz/policy-and-legislation-design/property-managers-review/user_uploads/regulation-of-property-managers-discussion-paper---february-2022-1.pdf
- Roberton, E. (2018). *Fit for the Future: Report of the Independent Review of Legal Services Regulation in Scotland*. <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/11/review-of-legal-services-independent-report/documents/legal-services-regulation-report-of-independent-review/legal-services-regulation-report-of-independent-review/govscot%3Adocument/Review%2Bof%2Blegal%2Bservices%2Bregulation-independent%2Breport.pdf>