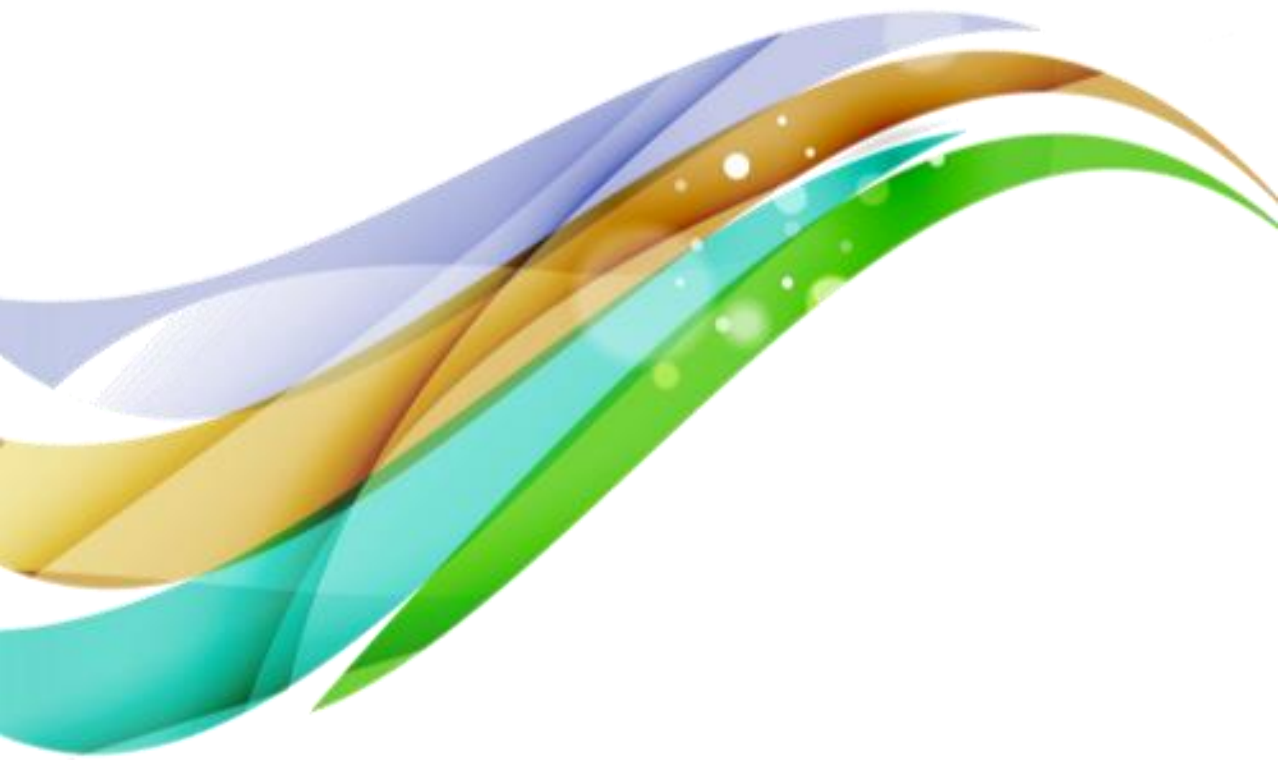


An international comparison of the cost of regulating legal services

A working paper

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

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Summary

This paper compares the cost of regulating legal services in Aotearoa New Zealand with a selection of overseas jurisdictions.

The conclusions should be treated as indicative only. Comparing regulatory costs is made difficult as regulatory functions are often undertaken by multiple bodies and regulators do not undertake the exact same set of functions.

This paper endeavours to do a like-for-like comparison of New Zealand's regulatory costs for legal services. To do this we established a standard definition of regulatory activities and compared the sum of these activities across jurisdictions. The jurisdictions in our analysis include Ireland, Scotland, Victoria (Australia), British Columbia (Canada) and England and Wales. These countries have been chosen based on their comparable legal systems and the availability of cost data.¹

Regulatory services costs refer to the costs incurred from regulating the legal profession. These costs are largely derived from running the regulatory bodies and enforcing the rules governing the legal profession. As outlined below, to enable a comparison to be made we have excluded the costs associated with a number of functions of the New Zealand Law Society | Te Kāhui Ture o Aotearoa (the NZLS) and overseas regulators. It is important to note that the regulatory costs outlined here do not represent the full regulatory costs imposed on lawyers in each jurisdiction.

Table 1 shows a summary of each jurisdiction's core regulatory costs. On a per lawyer basis, the costs are relatively similar across jurisdictions. On a per lawyer basis, British Columbia is the most expensive with a cost of \$1,475 per lawyer and New Zealand is the third most expensive.

Table 1: Summary of costs for regulating lawyers / legal services

Country	Total cost (million NZD)	Number of lawyers	Cost per lawyer (NZD)
British Columbia	\$19.2	13,049	\$1,475
Scotland	\$17.2	12,621	\$1,392
New Zealand	\$19.4	15,842	\$1,224
Ireland	\$16.4	14,787	\$1,106
Victoria	\$28.0	25,454	\$1,101
England and Wales	\$165.1	170,886	\$966

¹ We attempted to analyse Northern Ireland's and New South Wales' (Australia) regulatory services costs; however, due to lack of data, we are unable to do so at this stage.



Scope of analysis

In New Zealand, lawyers are governed by the Lawyers and Conveyancers Act 2006 (the Act). The Act grants the NZLS power to admit, regulate, and discipline barristers and solicitors practising in New Zealand. Under the Act, the NZLS is both a regulatory and representative body for lawyers. Our focus in this document is to compare the costs of the NZLS' regulatory functions with overseas regulators.

We first identified a core set of activities that are deemed regulatory services and are common across jurisdictions. The following activities are largely based on the regulatory functions outlined in the Lawyers and Conveyancers Act 2006 and thus the NZLS' categorisation of services.

We classify regulatory services as:

- regulating practising lawyers
- enforcing the obligations and provisions of the governing regulation, including disciplinary activities and tribunals
- administering a complaints service
- setting standards for legal training to be admitted to the practising certificate register
- operating and maintaining the practising certificate register, including admissions to the register.

Cost exclusions

There are several definitions of regulatory services across jurisdictions. Where possible, we have scaled back known regulatory costs to ensure they match the activities listed above, which means we have excluded any representative costs. We acknowledge that ambiguities can remain — where this occurs, we have noted and clarified our assumptions and treatment.

Using this classification, costs attributed to funds are excluded. The provision of continuing professional development (CPD) courses is also excluded, though the monitoring of CPD compliance is a regulatory function and is included.

The cost of education services more generally are also omitted due to significant irregularities across jurisdictions and the lack of granular data. For example, the NZLS clearly categorises which educational activities are regulatory in nature (eg, the Council of Legal Education's role in setting admission standards) and which are representative (eg, the provision of education). However, Ireland's educational activities are quite broad — including traineeships, external exams, student development services, professional practice courses, and its information centre — and cost data is not available in a disaggregated form.

New Zealand, Ireland, and Victoria all require lawyers to contribute to the law reform activity of the respective regulators. There are discrepancies in the classification of law reform across jurisdictions. New Zealand classes law reform as a regulatory service (and requires lawyers to pay for the function), while Ireland classes it as a voluntary membership service. We have excluded the cost of law reform activity to enable like-for-like comparisons and to better reflect the core functions of a regulator.



To enable a like-for-like comparison we have also excluded the cost of providing library services from the NZLS' costs – which is typically provided as a voluntary member service overseas. We have also excluded costs associated with Fidelity Funds, which can vary significantly across jurisdictions and are not necessarily incurred by all lawyers.

All costs are reported in NZD and converted from their respective currencies using the average exchange rate for 2021—given financial statements are observed for the 2021 year.

New Zealand's core regulatory services cost \$19.4m

The NZLS oversees the administration of New Zealand's legal regulatory services. In addition to its own services, the NZLS is supported by the Legal Complaints Review Office (LCRO), which independently reviews complaints against lawyers.

The NZLS releases annual financial statements that separate out its regulatory and representative functions. Observing the NZLS's Statement of Comprehensive Revenue and Expenses for the year ended 30 June 2021, the adjusted cost of providing regulatory services costs totalled \$19.4 million. These costs largely follow those on the financial statements, although to enable a like-for-like comparison we have excluded:

- library costs of \$1.5 million
- the New Zealand Council of Education's expenses of \$0.3 million
- law reform costs of \$890,000.

The costs are outlined in Table 2 below.

Table 2: New Zealand's regulatory costs

Costs	\$ Million
Audit fees	\$0.1
Depreciation and amortisation	\$0.2
Employee benefit expenses (adjusted)	\$11.4
Legal Complaints Review Office	\$1.9
Lease costs	\$0.9
Legal opinions and prosecution costs	\$1.3
Presidents' honoraria	\$0.3
Other administration costs	\$3.4
Total regulatory costs	\$19.4

Dividing the total 2021 regulatory cost figure of \$19.4 million by the 15,842 lawyers with practising certificates in 2021 results in a regulatory cost per lawyer estimate of \$1,224.

Ireland's core regulatory services cost \$16.4m

The primary regulatory bodies in Ireland are the Law Society of Ireland (LSS) and the Legal Services Regulatory Authority (LSRA).



- The LSI's statutory functions under the Solicitors Act 1954 to 2015 include education, admission, enrolment, and handling of historic disciplinary matters. The LSI's non-statutory functions relate to representation services. The LSI collects a levy from practising lawyers to fund the LSRA.
- The LSRA is responsible for investigating complaints against solicitors and the regulation of the profession.

To avoid double-counting the activities of the LSRA and the LSI (which includes funding of the LSRA as a regulatory expense), we have focused on the costs of the LSI. On top of the LSI's regulatory costs we have then added the costs spent by others in funding the LSRA, including the Bar of Ireland (\$0.5m) and levies imposed directly on lawyers by the LSRA (\$0.1m). Out of an abundance of caution we also included direct government funding (\$1.8m), which appears to be a temporary contribution to support the establishment of the LSRA – this may not be an enduring operating cost though.

The LSI's activities are separated into five key departments (excluding human resources).

- Policy and public affairs—supports the LSI in its representative functions with Government departments, policymakers, other law societies, and other stakeholders.
- Representation and member services—looks after communications and public relations as well as providing support for members.
- Education—manages professional practice courses, professional training, CPD compliance, diplomas, examinations, student development services, traineeships, admissions, and the Information Centre.
- Regulation—includes managing complaints, anti-money laundering compliance, practising certificates, and regulatory litigation.²
- Finance and administration—provides a range of internal services to support the Society's core areas of representation, regulation, and education.

The regulatory services costs can be derived from the LSI's published financial statements. Observing the Statement of Comprehensive Income and Retained Earnings for the year ended 31 December 2020,³ there are several cost categories based on the above five departments. We have attributed the regulation cost category to regulatory services. Admission costs of \$18,000 are also included.

We acknowledge that a portion of the finance and administration department's cost could be included to cover the administration of the regulatory activities. However, it is not clear whether administration costs are already included in the regulation category. Out of an abundance of caution we have allocated \$1.5m in additional costs to cover possible administrative functions (allocating administration expenditure between regulatory and representative functions based on their proportion of spend).

² It is assumed regulatory litigation costs cover the reimbursements to the Legal Practitioners Disciplinary Tribunal.

³ The financial statements for the year ended 31 December 2020 are the most recently published at the time of writing.



Education costs for Ireland totalled \$18.2 million. CPD compliance costs (which are a regulatory function) are included in this figure; however, these are not separated out. Based on other jurisdictions, we know these fees will be small and therefore have not included them in our estimate.

Our summary of Ireland's regulatory costs can be seen in Table 3 below (all inflated to 2021).

Table 3: Ireland's regulatory costs

Costs	\$ Million
Law Society of Ireland (regulatory costs, including funding of the LSRA)	\$12.5
Law Society of Ireland allocation of regulatory administration costs	\$1.5
Admission expenditure	\$0.0
Bar of Ireland levy to LSRA	\$0.5
LSRA levy on non law library members	\$0.1
Annual advance from the Department of Justice and Equality	\$1.8
Total regulatory costs	\$16.4

Total regulatory costs are estimated at \$16.4 million. Dividing this figure by the 14,787 lawyers (11,854 solicitors and 2,933 barristers) provides an estimate of regulatory costs of \$1,106 per lawyer.

Scotland's core regulatory services cost \$17.2m

Scottish regulatory services are governed by four key bodies:

- The Law Society of Scotland (LSS) is the professional governing body and regulator for Scottish solicitors. The LSS's core legislative framework is set out in the Solicitors (Scotland) Act 1980 and pertains to a range of regulatory and representation services.
- The Scottish Solicitors Discipline Tribunal (SSDT) is the regulatory body responsible for disciplining Scotland's solicitors. It operates independently from the LSS.
- The Scottish Legal Complaints Commission (SLCC) is an independent body acting as the first point of contact for complaints against all lawyers in Scotland. The SLCC refers complaints to the LSS or Faculty of Advocates (FA) and becomes involved if an individual is unhappy about the handling of their complaint.
- The FA is the regulator of lawyers admitted to practise as advocates (England and Wales equivalent barrister) before the courts of Scotland.

The Law Society of Scotland

The LSS operates through five directorates covering its main areas of work.

- Regulation and standards—comprises teams dealing with complaints, financial compliance, interventions, rules and policy matters, and the Civil Legal Quality Assurance regime.
- Member services and engagement—consists of three areas that support the LSS's members. These include professional practice, commercial activity, and non-commercial activity.



- Education, training, and qualifications—deals with all matters relating to the education, training, and qualification of members.
- External relations—responsible for the Society's communications, policy work, research, and international work. This includes representing the Society with Government, stakeholder groups and other influencers.
- Finance and operations—this directorate includes registrar functions, IT, HR, central administrative services, budgeting, production of relevant financial information and long-term financial planning for the Society.

We have classified regulation and standards as regulatory costs. Finance and operations expenditure sits across both the regulatory and representative functions of the LSS. The other three directorates are excluded, though we note the education, training, and qualifications directorate totalled \$1.2 million for the year.

The LSS have released its financial statements for the year ended 31 October 2021. The notes for the Group and Society Income Statement outline the costs for the year. Costs are separated into the five directorates above as well as a shared services category.

To deal with the finance and operations directorate, and in the absence of more granular data, we split finance and operations into regulatory and representative cost categories using the relative proportion of the known regulatory costs. That is, we sum the costs for regulation and standards, and divide them by the total regulatory and representation costs. This calculation estimates 47 per cent of all costs are regulatory costs, so we assigned 47 per cent of the finance and operations to regulatory costs. Though a suitable approximation, this estimate is likely conservative given registrar functions are included under finance and operations, where registrar functions are included as a regulatory service.

Shared services are the overheads and other costs shared across all directorates. As the distribution of this cost to regulatory and representative functions is also unknown, we treated this cost the same as finance and operations and attributed 47 per cent to regulatory costs.

Scottish Solicitors Discipline Tribunal

The SSDT is funded via the LSS's Scottish Solicitors Guarantee Fund and government funding. Total funding for the SSDT was observed directly from its annual report.

The Scottish Legal Complaints Commission

The SLCC is funded through an additional levy, collected by the SLCC and FA on behalf of solicitors and barristers. As it is an independent entity only tasked with investigating complaints — a regulatory function — all its expenses are attributed to Scotland's regulatory services costs.

The Faculty of Advocates

The FA does not publish an annual report or financial statements, meaning we are unable to ascertain a regulatory cost figure from their financial statements.

Instead, we infer the regulatory costs of the FA from the levies charged. Observing the SLCC's levy revenue from the LSS and the FA, the FA accounts for 2 per cent of the total expenditure. We extrapolate this 2 per cent along with the LSS's regulatory costs to estimate the FA's regulatory costs,



i.e., we assumed the FA cost is 2 per cent of the combined LSS and FA regulatory costs. This process estimates the FA's regulatory costs of \$200,000.

Scotland's regulatory costs are summarised in the following table.

Table 4: Scotland's regulatory costs

Costs	\$ Million	\$ Million
Finance, IT, and central operations (adjusted)	\$2.4	
Regulation	\$5.5	
Shared services (adjusted)	\$1.8	
Total Law Society of Scotland		\$9.7
Scottish Solicitors Discipline Tribunal		\$0.4
Scottish Legal Complaints Commission		\$6.9
The Faculty of Advocates (estimated)		\$0.2
Total regulatory costs		\$17.2

Total regulatory costs are estimated at \$17.2 million. Dividing this total by the 12,621 lawyers—both solicitors and advocates—results in regulatory costs of \$1,392 per lawyer.⁴

Victoria's regulatory services cost \$28.0m

The regulation of Victoria's legal services involves three main bodies:

- The Victorian Legal Services Board and Commissioner (VLSBC) is the independent statutory body responsible for regulating the legal profession in Victoria. It licenses solicitors and barristers, and oversees service standards and conduct, including handling complaints, investigating poor conduct, and overseeing the management of trust accounts.
- The Victorian Legal Admissions Board (VLAB) is the statutory body responsible for overseeing admissions into the profession in Victoria. It receives funding for this role from the VSLBC.
- The Victorian Civil and Administrative Tribunal (VCAT) is a state-wide tribunal that deals with a range of civil and administrative disputes. As part of this role, VCAT can review decisions made by the VLSCB about complaints or issuing of a practising certificate. For its role for the legal profession, it receives funding from the VSLBC.

We can use the VSLBC's financial statements to analyse Victoria's cost of regulatory services. The comprehensive operating statement for the year ended 30 June 2021 lists costs for the year. We exclude costs involving non-regulatory funding, grants, and the CPD reimbursement to the Law Institute of Victoria. We note CPD is excluded given it is designated for the provision of CPD activities and not the monitoring of CPD compliance. The remaining costs are listed in Table 5 below.

The professional bodies for barristers (the Victorian Bar) and solicitors (the Law Institute of Victoria) also play minor roles in regulation of the profession.

⁴ The 12,621 lawyers are comprised of 12,369 practising solicitors and an estimated 252 advocates. Advocates are estimated by extrapolating the ratio of LSS to FA levy fees and the 12,369 practising solicitors.



- The Victorian Bar receives funding for issuing practising certificates and complaints handling. This funding is observed from the VLSBC’s financial statements and captured under ‘Payment to service providers’ in Table 5.
- The Law Institute of Victoria (LIV) receives funding from the VLSBC’s regulatory and non-regulatory activities. Observing the LIV’s financial statements, they receive \$3.2 million AUD from the VLSBC. We attribute half of this figure to Victoria’s regulatory costs following information directly from the LIV.⁵

The VLAB’s and VCAT’s financial statements are not published. However, because they are both funded via the VLSBC, we can observe their allocated funding from the VLSBC’s financial statements. The cost of their respective operations is therefore assumed to be their allocated funding.

Table 5: Victoria’s regulatory costs

Costs	\$ Million	\$ Million
Employee benefits expenses	\$14.8	
Payment to service providers	\$0.4	
Depreciation and amortisation expense	\$2.3	
Board and committee member fees	\$0.3	
Legal expenses (inc. complaints)	\$3.0	
Other operating expenses	\$2.8	
Total Victorian Legal Services Board and Commissioner		\$23.7
Victorian Civil and Administrative Tribunal		\$1.0
Victorian Legal Admissions Board		\$1.6
Law Institute of Victoria		\$1.7
Total regulator costs		\$28.0

Victoria’s total regulatory costs are \$28.0 million. Dividing this figure by the 25,454 lawyers, the cost per lawyer is estimated to be \$1,101.

England and Wales’ core regulatory services cost \$165.1m

England and Wales’ regulation is split into regulating bodies for solicitors, barristers, and costs lawyers. Solicitors are governed and represented by the Law Society (TLS) with the Solicitors Regulation Authority (SRA) acting as the regulator. Barristers (and specialised legal services businesses) are regulated by the Bar Standards Board (BSB), and costs lawyers are regulated by the Costs Lawyer Standards Board (CLSB). We sum these regulatory components to estimate England and Wales’ total regulatory costs.

Regulation of solicitors (and the overarching regulator)

TLS is the professional body for solicitors in England and Wales, and the SRA is the regulator. The SRA is an independent regulator of the profession and was established in accordance with the Legal

⁵ The regulatory funding includes funding for ethics, compliance and professional practice framework.



Services Act 2007. In addition to the SRA, three other entities relate to regulatory services as per our definition of core regulatory activities.

- The Legal Ombudsman—investigates complaints against solicitors.
- The Legal Services Board—an independent body responsible for overseeing the regulation of lawyers in England and Wales.
- The Solicitors Disciplinary Tribunal—adjudicates on alleged breaches of rules and regulation by solicitors and their firms.

England and Wales’ regulatory costs are observed from TLS’s financial statements, specifically note 4 of the Consolidated Income Statement. We included the SRA and the three above entities in our estimation of England and Wales’ regulatory costs.

Regulation of barristers

The BSB is a regulatory body focused on the regulation of advocacy, litigation, and legal advisory services. The BSB has eight key regulatory objectives that adhere to our classification of regulatory services. Therefore, we can use its total expenditure figure to reflect the total cost of regulating barristers.

Regulation of costs lawyers

The CLSB regulates costs lawyers—lawyers who are qualified experts in legal costs—in England and Wales. The CLSB exists to protect the interests of the consumer and the wider public.

The CLSB publishes annual data on its cost of regulation. We used the cost of regulation for 2020 in our analysis, given that 2021 costs have not yet been released.

Table 6 shows England and Wales’ total regulatory costs and the relevant cost components.

Table 6: England and Wales’ regulatory costs

Costs	\$ Million	\$ Million
Solicitors Regulatory Authority	\$112.3	
Legal Ombudsman	\$20.4	
Legal Services Board	\$6.1	
Solicitors Disciplinary Tribunal	\$6.0	
Total cost of solicitors’ regulatory services		\$145.0
The Bar Standards Board	\$19.8	
Total cost of barristers’ regulatory services		\$19.8
The Costs Lawyer Standards Board	\$0.3	
Total cost of Costs Lawyers		\$0.3
Total regulatory costs		\$165.1

England and Wales’ total regulatory costs are \$165.1 million, composed of \$145.0 million to regulate solicitors, \$19.8 million to regulate barristers, and \$0.3 million to regulate costs lawyers. Dividing this figure by 170,886 lawyers (153,082 solicitors, 17,123 barristers, and 681 costs lawyers) provides a regulatory cost estimate of \$966 per lawyer.



British Columbia’s core regulatory services cost \$19.2 million

British Columbia’s (BC) legal services are governed by the Law Society of British Columbia (LSBC). The LSBC was established with the Legal Profession Act, giving the LSBC the authority to determine the qualifications to practise law in BC, to establish rules and a code of conduct for lawyers, and to enforce these rules. The LSBC also enforces the standards of professional conduct by investigating complaints to protect public’s interests. The LSBC is a self-regulatory model.

The LSBC’s financial activities are accounted for through two funds—the General Fund and the Lawyers Indemnity Fund. The General Fund comprises activities associated with the operations of the Society, other than those designated to the Lawyers Indemnity Fund. The Lawyers Indemnity fund is the insurance fund for the lawyers. Our focus is on the General Fund’s financial statements.

We observe the LSBC’s Fund Statement of Revenue and Expenses for the year ended December 31, 2021. Regulation costs are split into the five cost categories of custodianship costs, discipline, professional conduct, forensic accounting, and trust assurance, which are summed to estimate total regulatory costs. We note the LSBC records education expenses of \$6.8 million, though these are excluded from our analysis.

We also include a portion of general and administrative costs. It is not clear whether general and administration expenses have been included in the total regulatory cost figure. However, these have been noted separately. We split general and administrative expenses into regulatory and non-regulatory expenses using a similar method to that used in Scotland’s administrative expenses estimation. That is we attribute general and administrative expenses to regulation by the portion regulatory expenses are of total expenses. This process estimates general and administrative expenses of \$2.8 million.

Our estimation can be seen in Table 7.

Table 7: British Columbia’s regulatory costs

Costs	\$ Million
Custodianship costs	\$2.0
Discipline	\$3.2
Professional conduct - intake and investigations	\$7.2
Forensic accounting	\$0.8
Trust assurance	\$3.2
General and administrative expenses (adjusted)	\$2.8
Total regulatory costs	\$19.2



Total regulatory costs are estimated to be \$19.2 million. Dividing this figure by the 13,049 practising lawyers generates an estimate of the per lawyer regulatory cost of \$1,475.⁶

⁶ There were 13,049 in 2020. However, the annual report for 2021 has not yet been released, meaning we use the 2020 figure in place of a more recent figure. We argue this is a reasonable approximation.