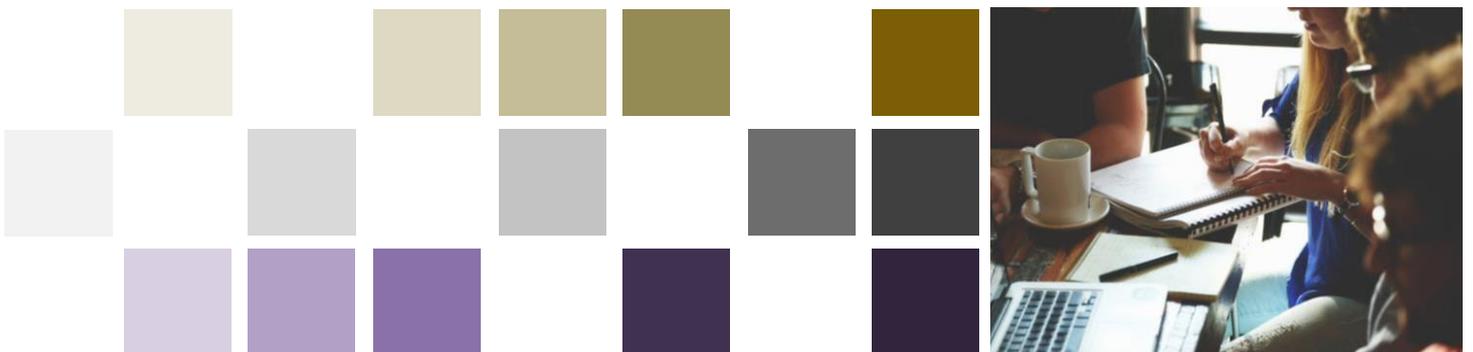


Cost-benefit analysis of options for organising the regulation of lawyers

A report for the Independent Review Panel

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Executive summary

Under the Lawyers and Conveyancers Act 2006 (the Act), the New Zealand Law Society | Te Kāhui Ture o Aotearoa (the Law Society) is both a regulatory body, with a duty to the community, and a representative body, with a duty to its members. We were asked by the Independent Review Panel (the Panel) to analyse the costs and benefits of different models for regulating and handling complaints about lawyers in Aotearoa New Zealand.

To do this we identified a range of options with the Panel, undertook cost modelling of the options and then worked with the Panel to identify aspects of efficiency and effectiveness, how those applied in this situation (through weighting) and then scored each of those aspects. The cost modelling was based on financial analysis, while the benefits were based on literature around best practice regulation and a subjective multi-criteria assessment (informed by a public consultation).

We assessed five reform options against the Base Case (the Law Society remains exactly as it is today without any changes), as outlined below:

- **Option 1 – Base Case enhanced:** This option mirrors the Base Case with one material amendment to the complaint resolution process. Under Option 1, the Law Society is permitted to use a more effective complaints triaging system to filter the complaints it receives about lawyers, as outlined in its recent proposal to the Minister of Justice for legislative reform. This would reduce the number of complaints investigated, relative to the Base Case.
- **Option 2 – Optimised in-house complaints service:** Under Option 2, the Law Society is no longer required by legislation to use Standards Committees comprised of volunteers to resolve complaints. It resolves complaints in-house and utilises an effective complaints triaging system (no longer being required by legislation to accept all complaints). We assume the Law Society screens complaints and resolves a greater proportion of complaints through an informal resolution service, reserving formal disciplinary proceedings for more serious matters (like comparable legal services regulators overseas).
- **Option 3 – Functional separation of the Law Society:** The Law Society is separated into two functionally independent organisations, as has occurred in England and Wales. One organisation is the regulator and the other is a membership body undertaking representative functions. While the regulator would be autonomous and have lay governance members, it would notionally remain part of the Law Society. The regulator would apply the same complaints resolution service as that described in Option 2. Regulatory services would be staffed by paid employees rather than partially compensated volunteers.
- **Option 4 – Independent complaints body:** The Law Society retains all its current membership and regulatory functions except for the management of complaints. A new independent organisation would be established to investigate and resolve complaints about lawyers (like in New South Wales) using the same process as that described in Option 2.
- **Option 5 – Full independent regulator:** All regulatory functions become the sole responsibility of a new independent regulator, including investigating and prosecuting complaints, setting practice rules and CPD requirements, maintaining a register of lawyers,

and advising on law reform. Option 5 uses the same complaints resolution service as Option 2.

We undertook a two-stage analysis with the first stage being an assessment of costs, including a valuation of volunteer time and international cost comparison. The benefits of these options cannot be easily quantified and so the second stage of our analysis was a subjective assessment of the benefits of each model, relative to the Base Case. To combine the two results we used a standard weighting approach: half the weighting was given to quantified costs and half to the subjective assessment of benefits. The framework for analysis including criteria and weightings is set out below in Table 1.

Table 1 Multi-criteria analysis framework

	Criteria	Description	Weighting
Costs			50%
Total costs		All costs	50%
Benefits			50%
Complaints	Complaint resolution	Reduction in waiting time for complaints to be resolved	15%
Perception and trust	Confidence in the regulator - public	The public has trust and confidence in the regulator and providers of legal services.	5%
	Confidence in the regulator – the profession	The profession has trust and confidence in the regulator.	5%
	Transparency and accountability	The regulator has good accountability structures and transparency mechanisms	5%
Regulatory efficiency and effectiveness	Mandate clarity	The regulatory purpose and organisational objectives are clear and prioritised	5%
	Authority to make decisions	The regulator has the authority to make decisions without interference, undue influence, or conflicts.	5%
	Ability to carry out functions	The regulator has access to the necessary knowledge and skills to carry out its functions.	5%
	Funding	The regulator has adequate funding to carry out its functions efficiently	5%

Our cost modelling demonstrated that the lowest cost option, saving \$42.0m over 20 years, is to establish an independent regulator, either as a fully independent body (Option 5) or by functionally separating the Law Society (Option 3). Both options were marginally ahead of Option 4 (establish an independent complaints body), which would generate savings of \$38.1m over the same period. All options are projected to result in cost savings relative to the Base Case.¹

¹ The cost analysis modelled the cost of exercising regulatory functions under various structures. It was done with reference to the status quo and did not consider the potential cost implications of other initiatives being

An independent regulator (Option 5) scored highest on benefit categories. Establishing an independent regulator is therefore the preferred option under our analysis and with our assumptions.

The benefits of the preferred option include significant improvements in complaints resolution (common to Options 2-5), including from a new ability to triage and filter complaints, a renewed focus on informal resolution of 'consumer matters' and moving away from using Standards Committees to make more efficient decisions on complaints through the use of skilled in-house complaints staff. Cost savings result from investigating fewer complaints while also no longer needing to fund the independent Legal Complaints Review Officer (with the move away from self-regulation, there is no longer a need for reviews of complaint decisions to be done by a standalone entity).

Establishing an independent regulator will lead to increased public confidence and trust in the regulator. We also anticipate an independent regulator will lead to increased regulatory efficiency and effectiveness relative to self/co-regulation, including by making the regulator more transparent and accountable and through improved mandate clarity. The regulator will have a clear mandate to focus on protecting consumers, rather than having a dual purpose to also promote the interests of lawyers. An independent regulator (governed by those appointed by a Minister rather than elected by the profession) will also be less likely to face conflicts of interests, will be governed by directors appointed for their competence and skills, and will be more likely to set its funding levels at a level required to effectively fulfil its functions.

considered by the independent review panel (eg, the additional costs that may be incurred with a move to entity-regulation).

1. Our two-stage method of assessment

The cost benefit analysis we undertook was a mix of detailed cost analysis for each of the options, then a multi-criteria analysis (MCA) of perceived benefit.

A brief description of each approach is provided below.

1.1 Identifying costs

We monetised costs as much as possible to assess the quantifiable real costs of each of the options incrementally to the Base Case. Real costs differ from nominal values (or dollars of the day) because they are held constant at the purchasing power of the current financial year 2022-23 (FY23) and ignore inflationary impacts of subsequent years, enabling appropriate comparison of variables. We valued the time contributed by volunteers to undertake regulatory activity as that time still represents a regulatory 'cost' for New Zealand society.

In a cost-benefit analysis, costs and benefits are also measured as incremental to the Base Case, meaning that, for example, if \$1 million of costs are incurred under the Base Case and \$1.5 million is incurred in Option A, the cost-benefit analysis will report \$0.5 million in costs for Option A, relative to the Base Case.

Costs that are quantified in this report are assessed in an economic model by estimating each cost and benefit over a 20-year timeframe commencing 2022-23 (FY23). Costs are discounted over the 20-year modelling period to FY23 using a real discount rate of 5 per cent p.a.² The discounted sum of all costs is expressed as a Net Present Value (NPV).

The NPV measures the net benefit (or cost) to society of implementing the option in monetary terms. The option with the highest positive NPV is the preferred option; however, in this instance the NPV results will not be interpreted on their own. Instead they will be incorporated into a broader MCA analysis.

Table 2 outlines the three categories of cost that we examined in detail through this analysis. Detail on the cost, our assumptions, and the modelling is included in Appendix A.

Table 2 Cost categories

Costs	Description
One-off establishment costs	The one-off cost to establish a new independent regulator or to alter the Law Society's current regulatory functions.
Complaints service costs	The ongoing cost to deal with complaints about lawyers, including the cost of all resources involved in the complaints handling process and any external oversight of the complaints handling process.

² New Zealand Treasury *Discount rates*. Retrieved from <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/guidance/financial-reporting-policies-and-guidance/discount-rates>

Ongoing regulatory costs
(excluding complaints)

The ongoing costs to undertake the Law Society's regulatory functions³ except those related to the complaints handling service.

1.2 Multi-criteria analysis to weigh up benefits

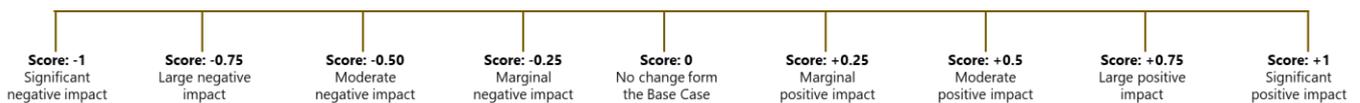
Key benefits that cannot be assessed quantitatively are evaluated by a multi-criteria analysis (MCA).

MCAs use a selection of criteria against which options are subjectively scored using evidence-informed judgement. The criteria are reflective of the literature around efficient and effective regulation and the criteria identified by the Independent Review Panel. The criteria are assigned weights to reflect relative importance of each criterion. Overall, costs and benefit criteria should be evenly distributed at 50 per cent to ensure a balanced analysis.

Each criterion is then scored for each option. This scoring is informed by evidence (where possible) and the evidence could be either qualitative and/or quantitative. Scores are provided relative to the Base Case where positive scores represent an improvement relative to the Base Case and negative scores represent instances that are worse than the Base Case.

The scoring scale used in this analysis is as follows:

Figure 1 MCA scoring scale



A total weighted score is derived from the scoring. For example, if there were two criteria and the option was scored +1 against criteria 1 (weighted at 75 per cent) and was scored -0.5 against criteria 2 (weighted 25 per cent) then the total weighted score would be 0.625, relative to the Base Case. Any option with a total weighted score that exceeds zero is preferred over the Base Case. The overall preferred option is the option with the highest (positive) total weighted score.

Developing MCA criteria for occupational regulation

There is no single framework of best practice against which to determine the optimal model for regulating lawyers in Aotearoa New Zealand. But it is clear that the purpose of occupational regulation is to protect the public from risks of harm. A submission from the Ministry of Business, Innovation and Employment's (MBIE) Occupational Regulation Experts Group to the Panel highlighted this focus of occupational regulation:⁴

The touchstone or reference point that guides the design and implementation of an occupational regime ... is that occupations are regulated to protect the public from the

³ Regulatory functions/services have been defined as costs incurred in regulating the legal profession and are largely derived from running the regulatory bodies and developing and maintaining the rules governing the legal profession. For the purposes of this paper, the cost of complaints is modelled separately from all other regulatory functions/services.

⁴ Submission from the Ministry of Business, Innovation and Employment received 31 August 2022, responding to the discussion document: Independent Legal Review Panel *The Regulation of Lawyers and Legal Services in Aotearoa New Zealand: Discussion document* (June 2022).

risk of harm by ensuring that services provided by those in an occupation are performed with reasonable skill and care.

To help us assess the benefits of the different regulatory models we identified the key principles of good regulatory practice that are required to protect the public. These features reflect the principles that have been distilled by New Zealand policymakers across several key documents, including the Treasury's *Government Expectations for Good Regulatory Practice*,⁵ the Productivity Commission's *Regulatory Institutions and Practices* paper,⁶ and the Cabinet Circular *Policy Framework for Occupational Regulation*.⁷

Table 3 outlines the criteria and the weighting that underpinned the benefit analysis. Our benefit analysis has focused on three main categories when comparing the options to the Base Case – complaint resolution, perception and trust in the regulator, and regulatory efficiency and effectiveness.

Table 3 MCA framework (benefits)

	Criteria	Description	Weighting
Complaints (15%)	Complaint resolution	Reduction in waiting time for complaints to be resolved.	15%
Perception and trust (15%)	Confidence in the regulator – public	The public has trust and confidence in the regulator and providers of legal services.	5%
	Confidence in the regulator – the profession	The profession has trust and confidence in the regulator.	5%
	Transparency and accountability	The regulator has good accountability structures and transparency mechanisms.	5%
Regulatory efficiency and effectiveness (20%)	Mandate clarity	The regulatory purpose and organisational objectives are clear and prioritised.	5%
	Authority to make decisions	The regulator has the authority to make decisions without interference, undue influence, or conflicts.	5%
	Ability to carry out functions	The regulator has access to the necessary knowledge and skills to carry out its functions.	5%
	Funding	The regulator has adequate funding to carry out its functions efficiently.	5%

The scoring of each option against those three criteria was initially done by staff from Sapere (as secretariat to the Panel), with subsequent moderation input from the Independent Review Panel. We considered this to be appropriate, given the insights and expertise developed over the course of the independent review. The scoring was informed by research on regulatory models used to regulate lawyers overseas and those used for other professions in New Zealand. A key input to the scoring was the insights gleaned from the consultation process that took place following the publication of a discussion document in June 2022, which sought submissions on the pros and cons of the options under consideration.⁸ The engagement that took place around these options is summarised in Table 4.

⁵ New Zealand Treasury *Government Expectations for Good Regulatory Practice* (April 2017).

⁶ New Zealand Productivity Commission *Regulatory institutions and practices* (30 June 2014).

⁷ Cabinet Office Circular *Policy Framework for Occupational Regulation* CO(99) 6.

⁸ The discussion document can be found at www.legalframeworkreview.org.nz/

Table 4 Key consultation steps

Key consultation steps	Views were heard from
An anonymous electronic survey	1,308 responses that answered at least one question, with the majority of responses being from lawyers.
An open call for submissions on our discussion document	183 email submissions, including from over 30 representative groups. These groups collectively represented over 20,000 members. ⁹
Three webinars and five branch events for the profession	Approximately 375 attendees.
Meetings with individuals and representative groups	55 meetings with over 250 stakeholders.
Focus groups	The Panel held four focus groups with 40 attendees. Separate sessions were held for sole practitioners, lawyers from small firms, and lay and lawyer members of Standards Committees.
A representative survey	Kantar was commissioned to include questions in its regular omnibus survey of New Zealanders.
Fact finding missions overseas	The Panel had fact-finding trips to meet regulators and representative bodies in England and Wales, Ireland, Scotland, Australia and Canada.

Detail on the MCA scoring is included in Appendix C.

⁹ Many lawyers are members of multiple representative groups.

2. Results

The preferred option indicated by this exercise is to establish a new independent regulator (Option 5).

The benefits of the preferred option include significant improvements in complaints resolution, public confidence in the regulator, transparency and accountability and mandate clarity, relative to the Base Case. Other major improvements relative to the Base Case include a likely cost saving, better authority to make decisions and an enhanced ability of the regulator to carry out its functions.

These benefits come with set-up costs. However, as indicated in Table 5, the projected cost savings from improvements to the complaints service and delivery of regulatory functions are likely to offset the additional set-up costs, leading to an overall cost saving for all options.

Table 5 Estimated present value of costs relative to the Base Case from 2023-2042 (\$million; negative figures indicate cost savings)

Costs	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 -Full independent regulator
Costs					
One-off establishment costs	\$0.0	\$0.8	\$3.3	\$1.7	\$3.3
Complaints service	-\$21.9	-\$25.5	-\$39.7	-\$39.7	-\$39.7
Ongoing regulatory costs (excluding complaints)	\$0.0	\$0.0	-\$5.6	\$0.0	-\$5.6
Net present value (NPV)	-\$21.9	-\$24.7	-\$42.0	-\$38.1	-\$42.0

Note the scope of the analysis is limited to regulatory functions only, which is where there are direct public policy implications. As such, the analysis does not consider the change in costs to undertake membership functions (e.g. one-off transition costs incurred by the membership component of the Law Society or any increases in the costs to undertake membership functions over time).

As we explore in detail in Appendix A, all options under consideration are expected to generate cost-savings compared to the Base Case. The primary driver for those savings is from improvements made to the current complaints model.

2.1 International comparison highlights opportunities for cost savings

Previous research has highlighted that New Zealand has an inefficient and relatively expensive system for regulating lawyers in Aotearoa New Zealand.¹⁰ The regulatory cost per lawyer is higher in New Zealand under a self-regulatory model than in jurisdictions where independent regulators are used. For example, the per-lawyer regulatory cost in New Zealand is 11 per cent higher than in Ireland, 11 per cent higher than in Victoria (Australia) and 27 per cent higher than in England and Wales – all jurisdictions that have established independent regulators.

Table 6 below shows the cost of regulating lawyers in a range of jurisdictions. It indicates that self-regulatory models tend to be more expensive on a per-lawyer basis. To the extent possible this cost-comparison has been done on a like-for-like basis to address the slightly different functions and activities undertaken by each regulator.

Table 6 International comparison of the cost of regulating lawyers (2021)¹¹

Country	Independent regulator or self-regulatory	Regulatory cost (adjusted) (NZD) ¹²	Number of lawyers (2021)	Regulatory cost per lawyer (NZD) ¹³
British Columbia	Self-regulatory	\$19.2m	13,049	\$1,475
Scotland	Self-regulatory	\$17.2m	12,621	\$1,392
New Zealand	Self-regulatory	\$19.4m	15,842	\$1,224
Ireland	Independent	\$16.4m	14,787	\$1,106
Victoria (Australia)	Independent	\$28.0m	25,454	\$1,101
England and Wales	Independent	\$165.1m	170,886	\$966

There could be many reasons to explain why independent regulation of lawyers looks to have slightly lower costs than self-regulation. One possible explanation is that the legislation to support self-regulatory schemes tends to be more prescriptive on how consumer complaints must be handled,

¹⁰ Working papers produced by Sapere show independent legal services regulators in Victoria, Ireland, and England and Wales all have materially lower regulatory costs (on a per-lawyer basis) than the self-regulatory models in New Zealand, Scotland and British Columbia: Sapere Research Group *An international comparison of the cost of regulating legal services: A working paper* (February 2023). The working papers are accessible via www.legalframeworkreview.org.nz/independent-legal-review-resources/.

¹¹ In a separate exercise we adjusted the regulatory cost of each country by using purchasing power parity indexes (<https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm>). The relative ranking of each country, in terms of the regulatory cost per lawyer, remained the same as presented in this table.

¹² These are not full regulatory costs in each jurisdiction. As outlined in the working paper, the regulatory costs have been adjusted to enable a like-for-like comparison of the cost of core regulatory functions – so, for example, Table 6 excludes the additional regulatory cost lawyers in New Zealand incur to support the provision of library services.

¹³ This is the regulatory cost divided by number of lawyers, rather than the practising fee in each jurisdiction. Our analysis is therefore unaffected by whether regulators have access to significant funds or reserves to lower the cost of regulation on individual lawyers (e.g. some regulators have access to the interest generated from lawyers' trust accounts, which may lower the practising fee but not the 'regulatory cost').

which limits the discretion of the regulator and increases costs. Another feature of self-regulatory models is that additional oversight bodies (with associated costs) are often created to provide an independent review mechanism for dissatisfied parties (such as the Legal Complaints Review Officer in New Zealand).

2.2 Multi-criteria analysis scoring

To translate the identified cost savings into the MCA framework each option was given a subjective scoring from 0 to 1 relative to the Base Case, with 0.25 indicating a marginal improvement, 0.5 a moderate impact, 0.75 a large impact and 1 a significant impact.

Option 1 had the lowest cost-saving relative to the Base Case (\$21.9 million) but still generated present value savings of approximately \$1 million/year – we scored it and Option 2 (savings of \$24.7 million) as having a moderate positive impact (a score of 0.5). We assessed the cost-savings from Option 3 (\$42.0 million over 20 years), Option 4 (\$38.1 million) and Option 5 (\$42.0) as all having a large positive impact (a score of 1.0).

Table 7 MCA score: Total costs criteria

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Total costs	All costs	50%	0	0.50	0.50	1.0	1.0	1.0

Table 8 below summarises the results of the MCA analysis. All the scores across various criteria are weighted to determine an overall weighted score in the last row of the table. The table illustrates all options score higher than the Base Case. Option 5 – establish a full independent regulator – is assessed as the preferred option.

The benefits and the basis for each score are outlined in Appendix C.

Table 8 MCA results (qualitative scoring)

Criteria	Description	Weighting	Base Case	Option 1 – Enhanced Status quo	Option 2 – Optimised in-house complaints	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 – Full independent regulator
Costs (50%)								
Costs	All costs	50%	0	0.50	0.50	1.0	1.0	1.0
Benefits (50%)								
Complaint resolution	Reduction in waiting time for complaints to be resolved.	15%	0	0.25	1	1	1	1
Public confidence in the regulator	The public has trust and confidence in the regulator and providers of legal services.	5%	0	0	0	0.75	0.50	1
Profession's confidence in the regulator	The profession has trust and confidence in the regulator.	5%	0	0	0	0.50	0.25	0.50
Transparency and accountability	The regulator has sufficient accountability structures and transparency mechanisms.	5%	0	0	0	0.75	0.25	1
Mandate clarity	The regulatory purpose and organisational objectives are clear and prioritised.	5%	0	0	0	0.75	0.25	1
Authority to make decisions	The regulator has the authority to make decisions without interference, undue influence, or conflicts.	5%	0	0	0	0.50	0.25	0.75
Ability to carry out functions	The regulator has access to the necessary knowledge and skills to carry out its functions.	5%	0	0	0.25	0.50	0.25	0.50
Funding	The regulator has adequate funding to carry out its functions efficiently.	5%	0	0	0	0.50	0	0.50
Total weighted score (the higher the number the stronger the case for change)			0	0.29	0.41	0.86	0.74	0.91

Appendix A Quantifying costs

This section outlines the quantified costs incurred under each of the options and captured in the CBA. We have modelled the costs over a 20-year time period from 2023.

All options under consideration require new legislation. Due to the uncertainty as to the date of any potential legislative reform we have modelled hypothetical scenarios whereby all options are fully operational in 2023 (the start date does not affect the relative ranking of any option).

Through this cost-benefit analysis we broke our cost analysis into three components:

- One-off establishment costs in moving away from the status quo.
- The regulatory costs of responding to complaints about lawyers.
- The ongoing regulatory costs (non-complaints) incurred under each option.

This framework will help to identify the extent to which the cost of regulating lawyers in New Zealand is out of line with other models, including whether there are particular aspects of the current model that could be driving unnecessary costs (as noted in the Panel’s final report, the complaints process stands out as being highly prescriptive and inefficient).

As outlined below, the costs for each option were primarily identified through a benchmarking process – examining the costs that are incurred in similar circumstances in New Zealand and overseas. We did not undertake a bottom-up analysis of the likely cost of each option (e.g. identifying number of FTEs, salary ranges etc).

One-off establishment costs

One-off establishment costs are the set-up costs to establish a new independent regulator or to alter the Law Society’s current regulatory functions. One-off establishment costs are incurred in the first year of the analysis (FY23) under all options except the Base Case and Option 1; there is no change to the Law Society as an organisation under Option 1, relative to the Base Case.

One-off establishment costs for all other options are outlined in the table below. The implementation costs are relatively small and are not a significant driver of the CBA results.

Table 9 One-off implementation costs

Option	Assumption	Cost, relative to Base case (undiscounted)
Option 1 – Enhanced status quo	No additional cost relative to the Base Case because there are no material differences to the Law Society relative to the Base Case.	\$0.0m in FY23 (one-off)
Option 2 – Optimised in-house complaints resolution	Sapere assumption. This costs 50% of Option 4’s implementation costs (\$1.7 million x 50%). There will not be costs of setting up a new entity, but significant internal changes will be required to move to in-house complaint resolution.	\$0.8m in FY23 (one-off)

Option 3 – Functional separation	Sapere assumption. This option has the same one-off costs as those incurred under Option 5. The set-up costs of establishing functionally independent regulator will not differ from those to set up a new independent regulator.	\$3.3m in FY23 (one-off)
Option 4 – Independent complaints body	Sapere assumption. This costs 50% of Option 5's implementation costs (\$3.3 million x 50%). A complaints entity will have a much narrower focus and will be a smaller organisation. It is reasonable to assume the set-up costs will not be as significant as those of a full independent regulator.	\$1.7m in FY23 (one-off)
Option 5 – Full independent regulator	Based on a mid-point cost estimate of the one-off costs incurred to establish four domestic agencies (the Productivity Commission, the Climate Change Commission, the Infrastructure Commission, and the Real Estate Authority). This is discussed further below.	\$3.3m in FY23 (one-off)
Total one-off implementation costs between FY23-FY42 in present value terms		
Option 1 – Enhanced status quo		\$0m
Option 2 – Optimised in-house complaints resolution		\$0.8m
Option 3 – Functional separation		\$3.3m
Option 4 – Independent complaints body		\$1.7m
Option 5 – Full independent regulator		\$3.3m

As outlined above, we have assumed a one-off set up cost of \$3.3 million to establish the new regulatory body (in addition to year 1 operating costs). This is a mid-point estimate of the one-off costs incurred to establish four domestic agencies:

- The Climate Change Commission: \$2.77 million one-off costs (adjusted to 2023).¹⁴
- The Productivity Commission: \$2.99 million one-off costs (adjusted to 2023).¹⁵
- The Infrastructure Commission: \$3.67 million one-off costs (adjusted to 2023).¹⁶

¹⁴ The establishment and operating costs for the Climate Change Commission in 2019/20 (over a seven month period) was \$4.87m (including \$0.60m capital injection). *Treasury Vote Environment: Supplementary Estimates of Appropriations 2019/20*. To exclude the operating costs over this seven-month period we applied average Public Service Commission (2021) salary figures to the mid-point of employee figures from the beginning and end of the seven-month period, converted this to an FTE count, and applied a 50% overhead estimate. This provides a year 1 one-off cost estimate of \$2.61m, which we adjusted for inflation.

¹⁵ The establishment and commencement costs for the Productivity Commission in 2010/11 were agreed between agencies to be \$2.355m. *Treasury Aide Memoire: Confirmation of Agency Contributions to Funding of the New Zealand Productivity Commission* (17 March 2010).

¹⁶ The cost of the establishment group and interim arrangements were \$3.392m in 2018/19. *Treasury A New Independent Infrastructure Body – Background Papers* (October 2018).

- The Real Estate Authority: \$4.22 million one-off costs (adjusted to 2023).¹⁷

We cross-checked these New Zealand set-up costs against those costs incurred establishing the Legal Services Regulatory Authority (LSRA) in Ireland. The LSRA's one-off costs (in NZD and inflated to 2023) were \$2.42 million.¹⁸ We are confident that our set-up cost assumption is reasonable.

Complaints service

The ongoing costs of handling complaints about lawyers (including receiving, investigating, making determinations and undertaking prosecutions) is a significant line item in the CBA. Our approach has been to take an aggregate cost for a complaints service under each option for 2023 and translate this into a cost per complaint. Projections of future costs are estimated by multiplying the number of projected complaints (by type) and the cost per complaint (depending on the complaint pathway used).

Complaint volumes received by the regulator

The number of complaints being generated by each lawyer (including own-motion investigations) has shown a relatively steady decline over time – that is, while the number of lawyers has continued to grow, the absolute number of complaints has remained stable or declined only slightly.

For our analysis we have projected that, over the long-term, complaints will remain relatively stable. We have fixed the number of complaints received each year in the period 2023-2042 at 2021 levels (1,375 complaints). The Law Society has confirmed that this would be a reasonable assumption to make in light of our assumption that there will continue to be an annual increase in the number of practising lawyers each year (examined below).

The complaint volumes received by the regulator do not change under any of the options we model.

Treatment of complaints

Basic screening (admissible complaints)

Once received by the regulator/complaints body, the complaints are subject to basic screening to determine the number of admissible complaints entering the system that require resources to be prioritised.

At present the Act requires the Law Society to accept all complaints and to refer them to a Standards Committee (comprising volunteers) for consideration. Our model therefore assumes that under the

¹⁷ The cost of establishing both the Real Estate Authority and Disciplinary Tribunal was \$4.3 million in 2010 (Real Estate Authority *Annual Report 2009-2010*). This was discounted by 25% to exclude the potential costs of establishing the Tribunal and then inflated to FY23.

¹⁸ The LSRA's 2017 Annual report disclosed an advance of €2 million (FY17) to establish the LSRA, of which there was a €650,000 underspend of this allowance meaning the actual cost was €1.35 million (LSRA *Annual Report 2017*). This was converted to NZD based on the average exchange rate in 2017 (\$2.1 million) and subsequently inflated to FY23.

Base Case no complaints are removed at this initial screening stage. The total number admissible complaints is the same as the total number of complaints received.

International evidence shows there are clear opportunities to filter out complaints at this screening stage. Grounds for filtering complaints typically used by overseas regulators include considering the time that has elapsed since the complainant knew about the matter complained about, whether the subject matter of the complaint is trivial, whether the complaint is frivolous or vexatious or is not made in good faith, or whether the matter is relatively minor or there is another more appropriate avenue for addressing the complaint.

Table 10 below shows that the current complaints model in New Zealand, with its inability to summarily dismiss or redirect complaints, is examining a considerably higher proportion of complaints about lawyers than other jurisdictions.

Table 10: Comparison of lawyer complaint volumes accepted by the regulator for investigation/decision¹⁹

	Lawyer complaints accepted by regulator (annual average, 2017/18 – 2020/21)	Complaints accepted per 1,000 lawyers (by 2021 lawyer numbers)
New Zealand	1,449	93.1
Scotland	916	72.6
England and Wales	9,797	57.3
Victoria	1,338	52.5
Ireland	748	50.6

We have assumed that giving the regulator the ability to triage and dismiss complaints means that up to 22 per cent of complaints can be addressed at the screening stage with minimal resources. This is consistent with what occurs at the Legal Services Board and Commissioner in Victoria. It reports that 13 per cent of complaints are dismissed for being inconsequential/vexatious, 3 per cent for being too delayed, 3 per cent where there had already been resolution and 3 per cent that could be better resolved elsewhere.²⁰ The number of admissible complaints would therefore drop from 1,375 to 1,035 complaints per year (for all options except for the Base Case).

Treatment of admissible complaints

Once complaints become ‘admissible’ we modelled complaint volumes as falling into one of three categories:

1. complaints that are potentially amenable to informal complaint resolution
2. ‘standard’ complaints, where the regulator is required to make a determination on whether the complaint is upheld

¹⁹ Sourced from the regulator’s respective Annual Reports

²⁰ Victorian Legal Services Board and Commissioner *Annual Report 2021*.

3. 'complex' complaints, where the regulator is required to make a determination and which are more likely to result in findings of unsatisfactory conduct or charges of misconduct.

We considered using a standard cost per complaint for our modelling, but concluded that the nature of the complaints vary so significantly that there was a case for a more nuanced assessment of complaint volumes. These complaint categories are examined in more detail below.

Informal complaint resolution

After screening, we have modelled that a proportion of admissible complaints will enter informal dispute resolution service where complaints are resolved in a less confrontational manner. This will primarily occur for 'consumer matters' (e.g. complaints about delay, poor communication, fee complaints) where the consumer is looking for a resolution of the complaint, but there is not necessarily a need for a disciplinary response from the regulator. This is consistent with the Panel's conclusions on a future complaints model.

Under the Base Case and Option 1, it is assumed that around 35 per cent of admissible complaints enter the informal dispute resolution service, with 97 per cent of those complaints being resolved or determined to require no further action. This is consistent with proportion of complaints currently utilising the Law Society's Early Resolution Service.²¹ Although the Law Society cannot filter out complaints or summarily dismiss them, it effectively uses the Early Resolution Service to identify those complaints that do not require further consideration.

Under Options 2-5 the more efficient in-house complaints resolution system means it is reasonable to assume the regulator will look to use informal dispute resolution mechanisms for a greater proportion of complaints. All of these options have dedicated in-house complaints teams, which we would expect to be trained in mediation, negotiation and the use of tikanga processes; complainants would be offered the option of a facilitated outcome.

Based on our examination of overseas approaches, we think it reasonable to assume that informal resolution will be attempted for 70 per cent of admissible complaints. This is a deliberately conservative estimate and it is possible the regulator could, over time, *attempt* to resolve a greater proportion of complaints through informal dispute resolution. There will remain certain types of complaints where it would be inappropriate for the regulator to attempt complaint resolution (e.g. misconduct).

Note, not all complaints that enter the informal dispute resolution service are resolved through this system. Overall, it is assumed that 40 per cent of complaints that enter the informal dispute resolution service are resolved through this service for options 2-5.²² This is consistent with the results produced by the Victorian Legal Services Board and Commissioner, which successfully used informal resolution procedures to resolve 42 per cent of the admissible consumer matters it closed in 2022.²³

²¹ Law Society *Annual Report 2021*. Approximately 12% are 'resolved'; the rest are dismissed under the Early Resolution Service.

²² Compared to a 'resolution' rate of approximately 12% through the Law Society's current Early Resolution Service from 2017-2021. See Law Society *Annual Report 2021*.

²³ Victorian Legal Services Board and Commissioner *Annual Report 2021*.

Determinations (standard and complex complaints)

Those complaints that were not resolved through the informal dispute resolution service, and those that never entered the informal dispute resolution service (e.g. disciplinary matters), will require the regulator / complaints body to make a decision on whether an investigation and determination is warranted.

We have assumed that the number of complex cases will remain the same across all our scenarios. This is because the number of complex cases, and instances of unsatisfactory conduct and misconduct within the profession, will not be influenced by the resolution methods or structure used by the regulator / complaints body.

For the Base Case we have assumed that 35 per cent of remaining complaints will be 'complex' with the remaining being 'standard' cases. This equates to 329 complex cases per year – a figure that we hold constant for Options 1-5. This is broadly consistent with recent data from the Law Society, which shows that in 2021 there were 158 cases where a Standards Committee issued an order for a lawyer to take action (typically corresponding with a finding of unsatisfactory). We have assumed the likely pool of 'complex' cases may be twice as large as the number of orders issued and have also made an allowance for those cases that are referred by Standards Committees to the Lawyers and Conveyancers Tribunal.

The per-complaint cost of each model

To calculate the cost of handling complaints under each option we took as our starting point the aggregate cost of a complaints model (either the current model or benchmarked model) and then calculated a per-complaint cost. This provided us with the flexibility to model cost scenarios where the volume of complaints (and the associated costs) might fluctuate.

Cost of the complaints model under the Base Case

The annual cost of the complaints service under the Base Case is estimated at \$9.0 million in 2023. This represents the cost of the Law Society's Lawyers Complaints Service, the Legal Complaints Review Officer and the time contributed by volunteers on Standards Committees.

The financial cost of the Lawyers Complaints Service was \$6.1 million²⁴ in the 2022 financial year (inflated to \$6.2 million in 2023), including Lawyers and Conveyancers Disciplinary Tribunal costs. The cost of the Legal Complaints Review Officer is estimated at \$2.2 million for 2023.²⁵

We have also valued the time contributed by Standards Committee volunteers, as this reflects an economic cost to the country under the Base Case and Option 1. We have assumed that the time spent by volunteers considering complaints displaces their leisure time rather than paid work and that the opportunity cost of that time is not particularly high. The annual cost of volunteers' time sitting on Standards Committees is estimated at \$0.6 million based on extrapolating a survey of the time

²⁴ Cost data supplied by the Law Society

²⁵ A levy of \$130 per lawyer was applied in 2022 to the 16,401 practising lawyers in order to fund the LCRO. The cost was then inflated to 2023.

commitments from lay members, convenors and lawyers.²⁶ This is a deliberately conservative assumption designed to increase the hurdle for moving away from the status quo – we note that if the value of volunteers’ work was assessed at a much higher rate (such as at a lawyer’s hourly rate) then the Base Case would be much more expensive and the case for change stronger.

Cost of the complaints model under Option 1 (enhanced status quo: improved triaging)

Under Option 1 the cost per complaint incurred by the Law Society would be the same as the Base Case (there is no difference in the resourcing required to handle a complaint) – but there would be a reduction in the aggregate cost due to the reduction in admissible complaints (resulting from the Law Society’s new ability to triage and filter complaints).

The complaints closed by the Early Resolution Service are not resource-intensive; they are complaints that are amendable to resolution, and the service is often used by the Law Society in lieu of a screening process to take ‘no further action’ on minor or frivolous complaints. In 2021 early resolution cases comprise 32 per cent of closed complaints and we have assumed they comprise 16 per cent of resources allocated to complaints handling (half the resources compared to what they would comprise if they were ‘standard’).

‘Standard’ or straightforward complaints are modelled as representing 44 per cent of cases and we have assumed they represent a similar share of total costs. They require significantly more effort to resolve relative to those in the informal dispute resolution service. The remaining 40 per cent of the total costs are assumed to be allocated to more complex complaints. These are the most resource-intensive complaints and require detailed investigation, decision-making and review.

The respective average cost estimates for 2023 we have used for our modelling are not an estimate of the marginal cost of resolving a complaint. All complaint costs have been allocated across these three complaint categories (including, for example, the cost of the Legal Review Complaint Officer, the cost of overheads, the cost of managing enquiries, the cost of screening out complaints, Tribunal costs etc). Recognising that there will inevitably be costs that are significantly higher and lower in these categories, we have modelled the following ‘fully allocated’ cost estimates:

- The cost to resolve / close a complaint through the informal dispute resolution service / Early Resolution Service is estimated at \$3,278.
- The cost to resolve a complaint requiring a standard investigation is estimated at \$6,556.
- The cost to resolve a complaint through a complex investigation is estimated at \$10,890.

Cost per complaint under an in-house complaint resolution service (options 2-5)

An optimised in-house complaints system would no longer require Standards Committee hearings to make decisions on complaints. Specialist in-house staff would be assigned complaints – to facilitate resolution, investigate, to make determinations on whether the complaint was upheld, or to refer them to the Lawyers and Conveyancers Disciplinary Tribunal.

²⁶ In addition to the payments made to convenor and lay members we have assigned a value of \$27.51/hour for volunteers’ time (calculated from Statistics New Zealand *Non-profit institutions satellite accounts 2018*), reflecting that this activity is unlikely to be displacing paid work.

Significant opportunities for efficiencies and cost savings

There are strong reasons to conclude the current complaints model is inefficient. While many parties interviewed by the Panel noted that a benefit of the status quo was its use of volunteers, this does not necessarily make the status quo a low-cost model. The profession undoubtedly saves some costs by not paying Committee members, but these costs are more than outweighed by the inefficiencies of the current model and the resources required to support Standards Committees.

Decisions on complaints can currently only be made by a Standards Committee. There are 22 Standards Committees around the country that typically meet monthly to make decisions on complaints. If a decision cannot be made at one meeting or further information is required, then it is deferred to the following monthly meeting or it is set down for a hearing. Similarly, if a complainant or respondent lawyer misses a deadline, then the matter may be deferred until the following month.

Each Standards Committee is supported by a paid Professional Standards Officer (with an additional 'floating' Professional Standards Officer in Auckland), who has responsibility for case management of complaints and supporting the Standards Committee. They are required to provide written briefs to Committee members which set out the facts and issues at dispute for each complaint (along with all submissions from parties), capture minutes of deliberation, and draft written decisions on the complaint, for review and subsequent sign-off by Committee members.

It is also pertinent to note that, even in the simplest of cases, the Professional Standards Officer cannot make a decision on a case. They must instead provide a written brief of the issues to Standards Committee members for discussion.

By the time a standard track complaint gets to a Standards Committee, a Professional Standards Officer from the Lawyers Complaints Service will have contacted both parties and provided the complaint to the lawyer or law firm who is the subject of the complaint for a response. The process from that point is laid out in the Act:

1. Initial consideration: at its monthly meeting the Standards Committee will consider a complaint for the first time. The Committee is provided with a briefing from the Professional Standards Officer and all material regarding the complaint (including the complaint and any submissions). Under section 137(1), the Committee has to decide whether to inquire, direct the case to mediation, or conclude 'no action' is required.
2. If a Committee decides to 'inquire' into the complaint, it must advise both parties of that decision (section 137(2)). The person who is the subject of the complaint must then be invited to provide a written explanation (section 141), and parties can respond to submissions made by the other party.
3. The Committee must decide whether to determine a complaint under section 137 or set the complaint down for a hearing.
4. If the Committee decides to conduct a hearing on the complaint, the relevant parties are invited to make submissions and cross submissions on the notice of hearing before the complaint is determined (section 152), which is a hearing on the papers unless the Standards Committee otherwise directs (section 153).

5. The Committee must provide a written notice of its determination, including the reasoning for it (section 158).

There is no discretion to depart from this process. Although a Standards Committee may possess all the information it requires to make a finding of unsatisfactory conduct against a lawyer at its initial meeting (having already received submissions), it is required by the Act to hold a hearing before making an unsatisfactory conduct finding (section 152). We are also aware that Committees often decide they need to request further information from a party, so rather than this being a two-step deliberation model, a Committee can end up discussing the same complaint at many different monthly meetings.

Finally, we note that, as the Law Society is both a regulator and representative body, the Lawyers and Conveyancers Act 2006 established an independent Legal Complaints Review Officer. This entity offers an important review function but costs in excess of \$2 million a year (which, based on its most recently available 2021 Annual Report, equates to approximately \$10,000 per complaint reviewed).²⁷ Under options 3, 4 and 5, there would be no need for the Legal Complaints Review Officer. As the profession would no longer be regulating its own conduct, there would be opportunities for the independent regulator / complaints body to provide a lower-cost review function. In our cost estimates below, we have assumed the in-house review function could be undertaken at 50 per cent of the cost of the Legal Complaints Review Officer (options 3-5). The full cost of the Legal Complaints Review Officer will be incurred under option 2 where the Law Society continues to exercise complaints functions.

An aggregate cost based on current volumes

Our benchmarking identified significant cost-saving opportunities from moving to an in-house complaint model.

As noted above, the total projected cost of the complaints model under the status quo is expected to be \$9.0 million in 2023 (comprising Law Society costs, volunteer time, and the Legal Complaints Review Officer).

Using Ireland's Legal Services Regulatory Authority (LSRA) as a cost input indicates a new in-house complaints model could be put in place with an annual operating cost of \$6.0 million for options 3-5 and \$7.1 million for option 2²⁸ in 2023.²⁹ This calculation includes an uplift to align with New Zealand's higher complaint volumes (1,375). As the LSRA's costs already included the cost of internal staff filtering and dismissing non-admissible complaints we did not consider it necessary to make a further

²⁷ In 2021 the LCRO received revenue of \$1.9 million and received 189 applications.

²⁸ Under option 2 the Legal Complaints Review Officer will still continue to operate as an independent body, given the self-regulatory structure of this option.

²⁹ Based on the change in the LSRA's costs between 2019 and 2020 attributable to the LSRA taking on the function of providing a new in-house complaints service (and include cost of a disciplinary tribunal and review mechanism). In 2019, the LSRA's total costs were €1.7 million or \$3.1 million (NZD) inflated to 2020 (LSRA *Financial statements for the year ended 31 December 2020*). In 2020 the LSRA's total costs were €3.4 million or \$5.8 million (NZD) in 2020 (LSRA *Financial Statements for the year ended 31 December 2020*). The difference between 2019 and 2020 (\$2.7 million in 2020), equates to \$2.9 million for the first year of our model 2023. The cost for the LSRA model was incurred closing 812 complaints (LSRA *Annual Report 2020*). This uplift provides a New Zealand cost estimate, including 50% of the cost of the current LCRO review function, of \$6.0 million.

adjustment to reflect the additional cost-savings that might be generated from reducing the volume of admissible complaints (as per Option 1).

For options 3-5 this cost estimate includes 50 per cent of the current cost of the LCRO review function. This recognises that, should the complaints body no longer be part of a self-regulatory model, then there would no longer be a need to have a separate independent oversight body to review complaint decisions. As per the Panel’s final report, we have assumed the new regulatory body could establish a much lower-cost review function without the overheads this function being done by a separate body. This new review function was envisaged by the Panel as comprising a three-person review committee convened by the regulator and able to be staffed by external members or by an external adjudicator.

We cross-checked the appropriateness of using cost data from the Irish Legal Services Regulatory Authority, by undertaking a similar benchmarking exercise for the complaints models used by the NSW Office of Legal Service Complaints and the Health and Disability Commissioner in New Zealand:

- Cost data from the NSW Office of Legal Service Complaints indicates a new in-house complaints model could be put in place for \$4.5 million³⁰ for options 3-5 (increasing to \$5.6 million for option 2 with the Legal Complaints Review Officer).
- Cost data from the Health and Disability Commissioner indicates a new in-house complaints model could be put in place for \$5.9 million³¹ for options 3-5 (increasing to \$7.0 million for option 2 with the Legal Complaints Review Officer).

We chose the higher of the three cost estimates to ensure our model does not attribute excessive cost savings to moving to an in-house complaints model.

Ongoing costs of the complaints service

The ongoing cost of the complaints service is estimated by multiplying the number of complaints by type by the relevant cost per complaint as demonstrated in the table below. The negative costs relative to the Base Case indicate a cost saving relative to the Base Case.

Table 11 Ongoing costs of the complaints service

Option	Assumption	Cost, relative to Base case (undiscounted, over 20 years)
Base Case	Volume and cost per complaint is outlined above.	\$0.0m between FY23-FY42, relative to the Base Case
Option 1 – Enhanced status quo	Volume of admissible complaints reduces under options 1-5, as outlined above, through improved screening/triaging of lower-level complaints. Cost per complaint is the same as the Base Case. Includes the full cost of the Legal Complaints Review Officer.	-\$33.4m between FY23-FY42, relative to the Base Case

³⁰ This represents total costs in 2021 (New South Wales Legal Services Commissioner *Annual Report 2021*) converted to NZD and inflated to 2023 (\$5.0 million), then adjusted to reflect the lower projected complaint volumes in New Zealand, and 50% of the cost of the current review function.

³¹ This represents total costs in 2021 (Health and Disability Commissioner *Annual Report 2021*) of \$8,280,754, adjusted to reflect the lower projected complaint volumes for lawyers, and 50% of the cost of the current review function.

Option 2 – Optimised in-house complaints resolution	Volume of complaints as outlined above. Cost is outlined above as per the cost assumptions of an in-house model. Includes the full cost of the Legal Review Officer.	-\$39.0m between FY23-FY42, relative to the Base Case
Option 3 – Functional separation	Volume of complaints as outlined above. Cost is outlined above as per the cost assumptions of an in-house model. Includes an internal review function (50% the full cost of the Legal Review Officer). Same cost for options 3-5.	-\$60.1m between FY23-FY42, relative to the Base Case
Option 4 – Independent complaints body	Volume of complaints as outlined above. Cost is outlined above as per the cost assumptions of an in-house model. Includes an internal review function (50% the full cost of the Legal Review Officer). Same cost for options 3-5.	-\$60.1m between FY23-FY42, relative to the Base Case
Option 5 -Full independent regulator	Volume of complaints as outlined above. Cost is outlined above as per the cost assumptions of an in-house model. Includes an internal review function (50% the full cost of the Legal Review Officer). Same cost for options 3-5.	-\$60.1m between FY23-FY42, relative to the Base Case

Total ongoing regulatory complaints costs between FY23-FY42 in present value terms, relative to Base Case

Option 1 – Enhanced status quo	-\$21.8m
Option 2 – Optimised in-house complaints resolution	-\$25.5m
Option 3 – Functional separation	-\$39.7m
Option 4 – Independent regulator (complaints only)	-\$39.7m
Option 5 – Full independent regulator	-\$39.7m

Ongoing regulatory costs (excluding complaints)

In this paper we use the term 'ongoing regulatory costs' to refer to those costs incurred providing regulatory functions, except those related to the complaints handling service (which are outlined above).

These ongoing regulatory costs are incurred under all options; however, only Options 3 and 5 incur costs that differ to the Base Case. Nonetheless, for transparency purposes, the sections below outline the ongoing regulatory costs for all options.

Overall, the ongoing regulatory costs are determined as an average cost per annum per lawyer and then applied to the number of lawyers in the corresponding financial year. This enables the overall cost of regulatory functions to remain commensurate with the number of lawyers that need to be regulated within the system. This is a reasonable assumption and reflects that many of the regulator's costs will scale with the size of the profession (e.g. CPD audits, trust account reviews, practising certificates, certificates of character).

Number of lawyers

Our forward projections of the number of lawyers affects the quantum of the regulatory costs in our model. It is a common assumption across all scenarios and so does not impact the relative ranking or cost savings of scenarios.

Recently the number of practising lawyers in New Zealand has grown by a constant annual growth rate of 2.96 per cent (from 2018-2022),³² although this is slightly below the longer-term growth rate of 3.21 per cent (from 2010-2022).

Rather than using a compounding growth rate, we have chosen to do a linear projection of the number of lawyers in New Zealand, using the average annual increase in practising lawyers over the 2010-2022 period – 432 new lawyers. This projection is outlined below in Table 12.

Table 12 Projection of lawyer numbers

FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32
16,833	17,265	17,697	18,129	18,561	18,993	19,425	19,857	20,289	20,721
FY33	FY34	FY35	FY36	FY37	FY38	FY39	FY40	FY41	FY42
21,153	21,585	22,017	22,449	22,881	23,313	23,745	24,177	24,609	25,041

We are satisfied that this is a reasonable growth rate to model and reflects long-term trends in the profession.

Ongoing regulatory costs (excluding complaints)

Ongoing regulatory costs are estimated as a fixed cost per lawyer in 2023 for each option, which is multiplied by the number of lawyers outlined above.

Ongoing regulatory costs for the Base Case, Options 1, 2 and 4

Ongoing regulatory costs (excluding complaints) for the Base Case, Options 1, 2 and 4 are assumed to be the same – with the Law Society continuing to exercise the same (non-complaints) regulatory functions and having the same cost structure.

We estimated the costs for the 2023 financial year based on the following assumptions:

- The Law Society's total regulatory expenses in the 2022 financial year were \$25.9 million.³³
- From this figure we deducted:
 - the annual cost associated with providing a library service (\$3.4 million), which we have classified as a members' cost rather than as a regulatory cost (as per the Panel's conclusion). This cost has been excluded from all scenarios (including the Base Case) so does not affect the options analysis or relative ranking of any option.

³² In 2018 there were 14,177 practising lawyers, increasing to 16,401 in 2022.

³³ Cost data supplied by the Law Society.

- the annual cost of the Law Society’s current complaints model (\$6.1 million), as our analysis of these costs treats them separately (outlined above).
- To enable a like-for-like comparison and to reflect the economic cost to New Zealand under the Base Case we added to the regulatory costs the value of the time that volunteers contribute to (non-complaint) regulatory functions that could be undertaken by paid staff under other options. This includes:
 - Practice Approval Committees: the value of this volunteer time in 2023 is estimated to be \$0.04 million.³⁴ As outlined below, we consider this admissions activity could conceivably cost more under options 3 and 5 if the independent regulator paid for this service.
 - section 30 interviewers: the value of the time contributed by volunteers to interview lawyers applying to practice on their own account in 2023 is estimated to be \$0.03 million.³⁵ This is activity that could conceivably cost more under options 3 and 5 if the independent regulator paid for this service.

After adjusting the figures for inflation and growth in lawyers we estimate that the (non-complaint) regulatory cost for 2023 to be \$16.9 million for the Base Case, Options 1, 2 and 4. Over the period 2023-2042 this would equate to a regulatory cost of \$421.1m undiscounted or \$266.5 million in present value terms.

This cost figure includes costs incurred by the Law Society relating to law reform,³⁶ but does not include the value of volunteers’ time to provide law reform activities.³⁷ We did not value the time contributed by law reform volunteers as their activities would be unaffected by any of the models under consideration and valuing their time would not have any impact on our modelling or the relative ranking of options (e.g. we anticipate an independent regulator would continue to utilise volunteers for law reform activity as under the Base Case).

Ongoing regulatory costs for options 3 and 5

Both option 3 and 5 represent a shift away from self-regulation. We are satisfied that there are unlikely to be any material differences for a regulator that is fully independent (Option 5) and one which has been functionally separated from the Law Society (Option 3).

³⁴ There were 12 volunteers serving on Practice Approval Committees in 2021, which make decisions under delegated authority on ‘non-standard’ practising certificates, and complex practising on own account applications etc. A recent Law Society survey found these members spend 3.95 hours a month on related activities. In addition to the payments made to convenor and lay members we have assigned a value of \$27.51/hour for volunteers’ time (calculated from Statistics New Zealand *Non-profit institutions satellite accounts 2018*), reflecting that this activity is unlikely to be displacing paid work. We assumed the number of volunteers on Practice Approval Committees would grow at the same proportion as the growth in practising lawyers.

³⁵ Over the past five years the number of section 30 applications has been constant at 2% of the total number of practising lawyers. We applied this ratio to the number of practising lawyers each year, multiplied it by three hours work per application (as advised by the Law Society) and used a value of \$27.51/hour for volunteers’ time (as per the above).

³⁶ The Law Society spent \$889,856 on law reform activities in 2021.

³⁷ In 2022 there were 168 law reform volunteers.

To calculate the per-lawyer cost of independent regulation we used the cost of regulation from Ireland, which is a jurisdiction of a similar size and with a similar legal system and has an independent regulator.

The independent regulator in Ireland, the Legal Services Regulatory Authority (LSRA), spent €4.2 million on regulatory activities for the year ended 31 December 2021.³⁸ The LSRA is primarily funded via a levy imposed on the Law Society of Ireland, which the Law Society then collects via practising fees – in addition to undertaking some regulatory activities itself, such as admission and administering the roll. To avoid double-counting the regulatory expenses of both the LSRA and the Law Society of Ireland (which accounts for its funding of the LSRA as a regulatory cost), we used the Law Society of Ireland's accounts as our starting point.

We estimated the costs for the 2023 financial year based on the following assumptions:

- The most recently available regulatory accounts show the total regulatory cost in Ireland was €9.4 million for 2021. This includes all regulatory activities (including complaints handling and Tribunal costs) and includes the regulatory costs incurred by both the LSRA and the Law Society of Ireland.³⁹
- After converting this cost to New Zealand dollars we subtracted the cost of the Irish complaints service (as above), to identify the non-complaint regulatory cost.⁴⁰
- There is always some uncertainty about the extent to which the functions of different regulators align. To address this uncertainty we added in additional costs to the cost of Irish regulation to reflect the known scope and scale of regulation in New Zealand (we chose not to remove costs from the Irish model, although could have done so):
 - We included an additional \$0.4 million cost for law reform activity.⁴¹ We note the Law Society of Ireland already does some law reform activity as part of its regulatory activities, so adding in this cost may understate the case for independent regulation.

³⁸ Legal Services Regulatory Authority *Financial Statements for the Year Ended 31 December 2021*.

³⁹ This cost of regulation included the Law Society of Ireland spending €6.3 million on 'regulatory activities' (which included funding the LSRA), €3,836 on admissions and a proportional allocation of common costs such as administration, salaries and premises (€2.6 million) (see *Law Society Annual Report and Accounts 2021/22*). To avoid double-counting we only included additional income received by the LSRA that would not appear in the Law Society of Ireland's accounts, including €421,000 from a Bar Council levy (see the Bar of Ireland Annual Report 2021/22) and €77,615 from an LSRA levy on non-law library members (see *LSRA Annual Report 2021*). The LSRA received a €1 million advance from the Department of Justice and Equality in 2021, which we did not include in our analysis as the loan was fully repaid the same year (it effectively helped the relatively new LSRA bridge the period between when it incurred its regulatory expenses and when it received its levy revenue from the Law Society of Ireland).

⁴⁰ €9.4 million converted to NZD at 2021 rates equates to \$15.8 million. We subtracted the 2021 (inflated) NZD cost of the Irish complaints scheme (\$2.8 million). We then inflated the total for a six-month period to align the Irish calendar year reporting with our analysis of the financial year ending 30 June 2022 (\$13.2 million).

⁴¹ The Law Society in New Zealand spent \$889,856 on law reform activity in 2021. After inflating this figure to 2022 we pro-rated this cost based on the slightly smaller number of lawyers in Ireland (14,787 compared to 15,842 in New Zealand) and allocated 50% to the Irish costs (which recognises this activity is already undertaken in Ireland but there is some uncertainty about the scale of the activity).

- We included an additional \$0.7 million cost for inspectorate activity.⁴² We note the Law Society of Ireland already does financial inspections as well as monitoring anti-money laundering compliance, so adding in this cost may understate the case for independent regulation.
- This equates to an ongoing (non-complaint) regulatory cost in Ireland of \$14.3 million (NZD) for the 2022 financial year.

After adjusting this figure for inflation and the larger number of lawyers in New Zealand we estimate that the annual (non-complaint) regulatory cost for 2023 for options 3 and 5 would be \$16.6 million. Over the period 2023-2042 this would equate to a regulatory cost of \$412.3 million undiscounted or \$260.9 million in present value terms.

A summary of ongoing regulatory costs (excluding complaints)

The ongoing regulatory costs for all other options are outlined in the table below.

Table 13 Ongoing regulator costs (excluding complaints)

Option	Assumption	Cost, relative to Base case (undiscounted)
Option 1 – Enhanced status quo	Ongoing regulatory costs are assumed to be the same as the Base Case.	\$0.0m between FY23-FY42, relative to the Base Case
Option 2 – Optimised in-house complaints resolution	Ongoing regulatory costs are assumed to be the same as the Base Case.	\$0.0m between FY23-FY42, relative to the Base Case
Option 3 – Functional separation	We have assumed the cost of regulation for a functionally independent regulator is the same as the cost for an independent regulator. The ongoing regulatory cost for option 3 is assumed to be the same as option 5 (see below). We considered using the 'non-complaint' costs of functionally-separated Solicitors Regulation Authority in England and Wales as a proxy. However, data was not readily accessible to allow us to strip out the cost of complaint handling; and we also considered its cost structure was likely to be influenced by the different size of the profession (170,886 lawyers in England & Wales compared to 15,842 in New Zealand).	-\$8.9m between FY23-FY42, relative to the Base Case
Option 4 – Independent complaints body	Ongoing regulatory costs are assumed to be the same as the Base Case.	\$0 between FY23-FY42, relative to the Base Case
Option 5 – Full independent regulator	As above, this is based on Sapere's assessment of ongoing costs of regulating lawyers in Ireland. The LSRA provides an important reference point as a relatively recently established independent regulator and there are similarities in the size of the professions	-\$8.9m between FY23-FY42, relative to the Base Case

⁴² The Law Society in New Zealand spend \$1.5 million on inspectorate costs. We pro-rated this cost based on the number of lawyers in Ireland and allocated 50% to the Irish costs (which recognises this activity is already undertaken in Ireland, but there is some uncertainty about the scale of the activity).

	(14,787 lawyers in Ireland compared to 15,842 in New Zealand).	
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Total additional ongoing regulatory costs between FY23-FY42 in present value terms, compared to Base Case

Option 1 – Enhanced status quo	\$0
Option 2 – Optimised in-house complaints resolution	\$0
Option 3 – Functional separation	-\$5.6m
Option 4 – Independent complaints body	\$0
Option 5 – Full independent regulator	-\$5.6m

These results indicate that over a 20-year period, the ongoing 'non-complaint' regulatory costs are likely to be slightly lower for options 3 and 5 (functional separation and full independent regulator). In the first full year of operation these savings would only amount to \$0.4 million.

It is relevant to note that the lower costs we have used for option 3 and 5 (from both the LSRA in Ireland and the regulatory activities of the Law Society of Ireland) include activity costs that may typically be done in New Zealand through volunteers – including the Practice Approval Committees and law reform. Despite the widespread use of volunteers in New Zealand, independent regulation in Ireland is done at a lower cost.

We are satisfied our assumptions about the lower cost of independent regulation are supported by evidence and that our cost model may potentially understate the costs of independent regulation. Where possible we have chosen to make conservative assumptions about the cost of regulation – choosing cost inputs and assumptions that support the Base Case rather than the case for change. We think this is important when considering whether a case can be made to fundamentally change a regulatory model.

For example, the Law Society of Ireland's 2021 accounts note that its regulatory costs (which we used) include its consideration of 285 historic complaints about lawyers (our model accounted for the cost of complaints separately). Similarly, the Irish regulatory costs include the costs of monitoring lawyers' compliance with anti-money laundering activity, which is not a cost currently incurred by the Law Society in New Zealand. We considered it prudent not to adjust the Irish costs downwards, which would favour the case for independent regulation. Instead, as outlined above, we added on additional costs to the Irish model (for law reform and inspectorate functions) to remove the possibility that the Irish regulatory costs may not fully cover what is required by regulation in New Zealand.

Finally, although the regulatory costs from Ireland are lower than the Base Case / status quo in New Zealand, the costs we used are higher than other independent legal services regulators (as shown in Table 6). Using input costs from the Solicitors Regulation Authority (England and Wales) or the Victorian Legal Services Commissioner and Board would have resulted in additional cost savings in our model and further strengthened the case for an independent regulator.

A summary of costs for each option

Table 14 below summarises the net present value of the five options relative to the Base Case.⁴³

It indicates that the least-cost option, saving \$42.0 million over 20 years, is to establish an independent regulator, either as a fully independent body (option 5) or to functionally separate the Law Society (option 3).

Table 14 Estimated present value of costs relative to the Base Case from 2023-2042 (\$million; negative figures indicate cost savings)

Costs	Option 1 – Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 – Full independent regulator
Costs					
One-off establishment costs	\$0.0	\$0.8	\$3.3	\$1.7	\$3.3
Complaints service	-\$21.9	-\$25.5	-\$39.7	-\$39.7	-\$39.7
Ongoing regulatory costs (excluding complaints)	\$0.0	\$0.0	-\$5.6	\$0.0	-\$5.6
Net present value (NPV)	-\$21.9	-\$24.7	-\$42.0	-\$38.1	-\$42.0

As is highlighted in table Table 14, the majority of the financial cost savings come from reforming how complaints about lawyers are handled - allowing filtering of complaints, moving to an in-house model and replacing the Legal Complaints Review Officer with a lighter touch review function, would all generate considerable regulatory cost savings.

⁴³ The negative cost values indicate cost savings.

Appendix B Sensitivity analysis

There are a number of assumptions that underpin the analysis. We summarise these assumptions, the evidence for them and how sensitive our results are to those assumptions, in the table below.

Table 15 Key cost assumptions

Assumption made regarding:	Evidence	Sensitivity of results
Establishment cost for a new regulator	We assumed it would cost \$3.3m to set up a new regulator for lawyers. This is based on a mid-point estimate of the set-up costs for the Productivity Commission, the Climate Change Commission, the Infrastructure Commission and the Real Estate Authority. It is higher than the set-up costs to establish the LSRA in Ireland (equivalent to \$2.4m in 2023).	This assumption about set-up costs has minimal impact over the 20-year period modelled. For example, if the set-up cost was instead \$5m the NPV cost savings for options 2 and 5 (independent regulator) would decrease from \$42.0m to \$40.3m; while option 4 would decrease from \$38.1m to \$37.2m. The relative rankings and MCA scoring remain unchanged.
Number of lawyers	We assumed the legal profession in New Zealand would increase by 432 lawyers each year. This reflects the average annual growth from 2010-2022.	This assumption has a negligible impact on our model and affects all options equally. For example, if the growth was half this rate (216 new lawyers annually) the projected cost of regulation would fall slightly. NPV cost savings for options 1-5 would decrease by about \$0.5m over 20 years for option 5).
Number of complaints	We assumed complaint volumes would remain stable, at an average of 1,375 complaints per annum over the 20 year period. Complaints have been declining slightly over the past decade. In light of projecting a continued growth in the number of practising lawyers we did not consider it reasonable to project that complaint volumes would continue to fall at a consistent rate over the next 20 years.	This assumption has a minimal impact on our model. For example, it is plausible that complaint volumes will continue to decline at an annual rate of -1.66% (a 10-year trend) but the number of complex cases will remain relatively static (i.e. the regulator will deal with fewer low-level complaints). Under this scenario (an annual decline in complaints volumes of 1.66%, with a stable number of 'complex' complaints) the NPV of all options to improve complaints handling would decrease by approximately \$3m over the 20 year period. The relative rankings and MCA scoring would be unaffected.
In-house complaint resolution	We assumed the cost of an in-house complaint resolution service would be similar to that incurred by the Legal Regulation Services Authority in Ireland (adjusted on a per-complaints basis, and including additional review costs). This assumption affects options 2-5.	This assumption has a moderate impact on our model. If costs were 10% higher or lower this would affect the NPV in either direction, by \$7.8m over 20 years. We are satisfied this assumption is robust and could even understate the case for change. We chose the higher per-complaint cost figure from data available from the LSRA (Ireland), the Office of Legal Services Commissioner (NSW), and the Health and Disability Commissioner (NZ).
Ongoing (non-complaint) regulatory costs	For options 3 and 5 we assumed the cost of regulation would be similar to that incurred by the Legal Services Regulation Authority in Ireland (adjusted on a per-lawyer basis, and including additional inspectorate and law reform costs). This is reasonable given Ireland established an independent regulator relatively recently and there are	Our model is sensitive to this input assumption. This assumption results in options 3 and 5 having NPV cost savings of \$5.6m over 20 years. If costs were 10% higher or lower this would affect the NPV, in either direction, by \$26m over 20 years. As noted in Appendix A, this Irish figure could underestimate the cost savings from independent regulation – it includes some complaint costs and we

similarities in the size of the professions (14,787 lawyers in Ireland compared to 15,842 in New Zealand).	added in additional costs for law reform and inspectorate activity (activities that the LSRA and Law Society of Ireland already undertake to some degree, but where there is some uncertainty about the scale of that activity). We note we could have chosen lower regulatory cost inputs from Victoria or England and Wales (both of which have an independent regulator), which would have made the case for independent regulation even stronger.
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We are satisfied the costs we have used for Option 5 (including one-off establishment costs, lower regulatory costs, and cost-savings from complaints handling) provide a reasonable basis for modelling the cost of the independent regulator.

Benchmarking confirms our model is conservative on potential cost savings

If anything our model risks understating the potential cost savings from moving to independent regulation by using a number of conservative assumptions.

In a separate exercise we cross-checked our total cost estimates for an independent regulator using domestic and international benchmarked costs. This analysis focused only on year 1 (2023) operating costs (excluding establishment costs). It was therefore not dependent on variables such as changes in the number of lawyers or complaints over the period 2023-2042.

Under the Base Case or status quo, the cost of regulation by the Law Society (including the LCRO) was projected to cost \$25.9 million in 2023. Our model showed that this annual cost of regulation could decrease under an independent regulator (Option 5) to \$22.5 million. Table 6 below demonstrates that there are a number of other cost-inputs and assumptions we could have used that would result in a lower estimate for the cost of independent regulation.

Table 16 The cost of an independent regulator in NZ using different benchmarks

Benchmarked profession	2023 operating costs (\$ million NZD)
<i>Cost-benefit analysis – Base Case (Law Society regulation)</i>	25.9
<i>Cost-benefit analysis – independent regulation (option 5)</i>	22.5
The cost of option 5 (independent regulation) if different cost inputs were used:	
Ireland – lawyers ⁴⁴	18.6
Victoria – lawyers	18.5

⁴⁴ This would be the cost of regulation in New Zealand if the current Irish regulatory costs were adjusted to reflect the number of lawyers in New Zealand – but without the additional adjustments we made in the CBA analysis (e.g. adding in additional costs to cover a review function, law reform activities, and inspectorate activities).

NZ – engineers	17.9
NZ – doctors	16.5
England and Wales – lawyers	16.2
NZ – real estate agents	11.0

Our approach to benchmarking for sensitivity analysis

The costs used for legal services regulators overseas in were adjusted up or down to reflect the differences in the number of lawyers.⁴⁵ Domestic regulatory benchmarks were not adjusted to reflect differences in the number of regulated professionals – there are too many differences in how each profession is regulated and, in any event, as there are fewer lawyers than the regulated professionals in three benchmarked sectors, any adjustment would lead to a significant reduction in projected costs for Option 5 (which may overstate the case for an independent regulator).

Occupational regulation of doctors

Doctors are regulated by the Medical Council of New Zealand (MCNZ). The MCNZ is the national standards and assessment body for medical education and training. It is responsible for doctors' registrations and has the power to revoke the right to practise medicine in New Zealand. The MCNZ's costs can be used to estimate the regulatory costs for doctors.

The MCNZ's total expenditure can be used to observe the cost of regulating the profession. Total expenditure in FY 2021 was \$15.9 million, which includes the costs of handling complaints and regulator expenses related to the profession's 'disciplinary levy' (used to fund the Health Practitioners Disciplinary Tribunal).⁴⁶

Occupational regulation of real estate agents

Real estate agents are regulated by the Real Estate Authority (REA). The REA, formerly the Real Estate Agents Authority, is the New Zealand Crown entity responsible for regulating the real estate industry and the agents within it. It licenses those working in the real estate industry, maintains a public register, maintains a code of conduct, audits trust accounts, investigates complaints about licenses professionals and provides information to consumers.

The Statement of Comprehensive Revenue and Expenses for the year ended 30 June 2021 is used to observe the REA's total expenditure of \$10.6 million for FY 2021, which includes the costs of the profession's disciplinary levy of \$29,000 (used to fund the Real Estate Agents Disciplinary Tribunal).

⁴⁵ See Sapere Research Group *An international comparison of the cost of regulating legal services: A working paper* (June 2022) for the break-down of how the international costs were calculated. The working papers are accessible via <www.legalframeworkreview.org.nz/independent-legal-review-resources/>.

⁴⁶ Medical Council of New Zealand *Annual Report 2021*.

Occupational regulation of engineers

To estimate the cost for regulating engineers, we used figures from the cost-benefit analysis for the Ministry of Business, Innovation, and Employment on the cost of occupational regulation of engineers (which is not yet in place).⁴⁷

Ongoing regulatory costs for engineers are observed from the projected steady-state operating costs of the regulator. We excluded the costs associated with the transition to the new scheme. Forecasting these forward using the compound annual growth rate of entrants into the profession results in an estimate of year 1 operating costs of \$17.9 million.

⁴⁷ Sapere Research Group *Occupational regulation of engineers – cost benefit analysis* (2022).

Appendix C Adding up benefits

As outlined above, as the benefits from independent regulation were not easily quantifiable, we applied MCA scoring against our cost-benefit framework. This is a subjective exercise but reflects Sapere's expertise in this area. Our scoring was moderated by the Panel, who are very aware of the issues facing the profession as a result of their research and engagement. In this appendix we summarise how we have assessed the benefits under different criterion.

This summary of the benefits of various options should be read in conjunction with the Panel's final report on the regulation of lawyers in Aotearoa New Zealand, which examines the status quo and alternative models in considerable detail.

Criteria 1: Reduction in waiting time for complaints to be resolved (15 per cent)

This criterion assesses the extent to which there is a reduction in consumer time spent waiting for complaints to be resolved by the Law Society or equivalent independent organisation. It is possible to quantify the value of consumer time spent waiting for complaints to be resolved, which is typically done by multiplying the average wait time by an appropriate value of leisure time. In this instance, however, the CBA did not quantify these benefits given the broad range of wait times experienced by customers depending on their complaint. For instance, in 2021 it took on average 93 days to close out complaints within the Early Resolution Service and 308 days to close standard track complaints, while there was a very long tail of more complex cases (19 per cent of all complaints took more than one year to close).⁴⁸

Under the Base Case there are no positive or negative impacts on wait times relative to the Base Case, hence this criterion is scored 0.

In Option 1, there is a more effective complaints triaging system as outlined in the Law Society legislative proposal, reducing the number of complaints that need to be resolved by the Law Society. This is assumed to result in less pressure on the Law Society's complaints handling resource and a marginal improvement in waiting times (scored +0.25).

Options 2 to 5 adopt and expand upon the improvements made in Option 1 by utilising a more effective complaints triaging and resolution system. This enables the Law Society (or equivalent) to both screen complaints reducing the number of complaints investigated (like Option 1) and, also, resolve a greater proportion of complaints through informal resolution procedures. As outlined in the Panel's final report, complaints about 'consumer matters' would rarely require the regulator to issue a determination, which would free up resources for timely investigations and determination on complaints that give rise to potential disciplinary concerns.

Abolishing the 22 Standards Committees and moving to a centralised complaints model with empowered internal complaints staff will result in faster and more consistent decisions. Together these improvements in the complaints management system are assumed to make a significant positive impact on consumer wait times (+1).

⁴⁸ Law Society Annual Report 2021.

Table 17 MCA score: complaint resolution

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Complaint resolution	Reduction in waiting time for complaints to be resolved	15%	0	0.25	1	1	1	1

Criteria 2: The public has trust and confidence in the regulator (5 per cent)

The Panel’s final report has comprehensively set out why the status quo could be improved, including how moving to an independent regulator will improve public trust and confidence.

Maintaining public confidence in the provision of legal services is expressed as the first purpose of the Lawyers and Conveyancers Act 2006.⁴⁹ Yet the Panel observed:

A common theme of many submitters in favour of changing the current arrangements was that having both regulatory and representative functions co-existing within the same organisation undermined public confidence in the regulator and in the legal profession. The regulator is essentially perceived as a compromised entity by many consumers and even by lawyers.

The Panel referenced a survey undertaken by Kantar for the Panel which found that “33 per cent of respondents were not confident that the Law Society (as the regulator and representative body for lawyers) could effectively protect consumers of legal services”. Public trust and confidence in the regulator is therefore a genuine concern under the Base Case, which the proposed options could address.

The OECD notes, “There is a need for the regulator to be seen as independent from politicians, government and regulated entities, to maintain public confidence in the objectivity and impartiality of decisions and effective operation for trust in the market.”⁵⁰

In Options 1 and 2 there are no amendments to the structure, governance and integrity of the Law Society as the primary regulator of the legal profession. As such, these options are scored the same as the Base Case (i.e., 0).

In Option 3 the Law Society is completely separated into two functionally separate organisations, one for the regulator and one for the membership body, meaning no regulatory functions are performed by the membership organisation and vice versa (the regulator is effectively an autonomous arm of the representative body). The separation between regulatory and membership functions is assumed to largely resolve the perception that the Law Society acts in the interest of lawyers rather than consumers. As such, this option has a large positive impact on consumer confidence in the regulator (score of +0.75). We have not given this option a full score (+1) as we are aware of some issues in

⁴⁹ Lawyers and Conveyancers Act 2006, s 3(1)(a).

⁵⁰ OECD *The Governance of Regulators Creating a Culture of Independence Practical Guidance Against Undue Influence*.

England and Wales where there is concern about the independence of the Solicitors Regulation Authority from the Law Society.

Like Option 3, Option 5 results in the establishment of a full-scale independent regulator for the legal profession, severing the connection between membership and regulatory functions that undermines public confidence. Public confidence is assumed to be higher under Option 5 than Option 3 because the regulator proposed under Option 5 is entirely independent from any membership body, which is a step further than a functional separation model. As such, Option 5 is assumed to create a significant positive impact on consumer confidence in the regulator (score of +1).

Under Option 4, an independent complaints resolution service is established, which is arguably the key service that consumers would interact with. However, considering other core regulatory functions remain within the realm of the Law Society (as it exists today, such as admission and rule-setting), it is likely that regulatory services carried out by the membership organisation will continue to be perceived as activities undertaken in the interest of lawyers. As such, Option 4 is assumed to create only a moderate positive impact on consumer confidence in the regulator (score of +0.5).

Table 18 MCA score: public confidence in the regulator

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Confidence in the regulator - public	The public has trust and confidence in the regulator and providers of legal services.	5%	0	0	0	0.75	0.5	1

Criteria 3: The profession has trust and confidence in the regulator (5 per cent)

The Panel’s final report observes that an effective regulator needs to not only have the trust of public, but also the trust of those that it regulates. The regulator needs to be connected to those it regulates, but also be seen as a trusted and independent arbiter and responsive to the issues facing a regulated profession.

The consultation process undertaken by the Panel highlighted contrasting opinions on the confidence the legal profession has in the Law Society. Some said they see the Law Society as a trusted institution with high standards, while others in the profession noted that the Law Society is not viewed as a regulator they can trust to protect their interests.

In Options 1 and 2 there are no amendments to the structure, governance and integrity of the Law Society as the primary regulator of the legal profession. As such, these options are assumed to have no impact on the profession’s confidence and they are scored the same as the Base Case (i.e., 0).

Option 3 and Option 5 involve significant structural transformation and, for reasons like those above, are expected to increase the profession’s confidence in the regulator. However, for some in the legal profession, the move towards an independent regulator may not necessarily increase the profession’s confidence beyond that of the functional separation because some lawyers may have less confidence when being regulated by non-lawyers. For instance, the Panel noted:

The line of reasoning we heard was that an independent regulator would be too removed from the profession, which would lead to poor decision-making and lawyers lacking trust in the regulator. Submitters also raised the prospect that lawyers would no longer be willing to volunteer their time to support the regulator provide submissions on matters such as law reform.

Similarly, Healy notes "...professionals may trust and comply with directives from others within their profession who understand the scope of their work."⁵¹ As such, Options 3 and 5 are scored the same, as having a moderate positive impact on confidence (score +0.5).

Option 4's only amendment to the structure, governance and integrity of the Law Society relates to the establishment of an independent complaints service. This is expected to provide a marginal positive impact on the profession's confidence in the regulator (score 0.25).

Table 19 MCA score: profession's confidence in the regulator

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Confidence in the regulator – the profession	The profession has trust and confidence in the regulator.	5%	0	0	0	0.5	0.25	0.5

Criteria 4: The regulator has sufficient accountability structures and transparency mechanisms (5 per cent)

The OECD noted:⁵²

Transparency is a means that contributes to fostering credibility and trust on the regulator's decisions and processes, including on operational policies and the way in which the regulator engages with stakeholders. Accountability is the way to ensure checks and balances on the regulators' actions to enable responsible behaviour. Transparency can be described as a subset of accountability.

On accountability structures and transparency mechanisms, the Panel found that the Law Society's current model was insufficient. Its final report notes that:

A key concern raised by many through our consultation process was that the Law Society was seen as a black box. Decision-making processes are opaque, and there is no ability to interrogate decisions made by the Board or Council or by delegated Law Society staff, due to a complete lack of public information.

More specifically, the Panel noted in its final report a broad lack of transparency regarding the Law Society's regulatory functions compared to other occupational regulators, which are obligated to publish minutes from their Board meetings and disclose their decision-making processes. It also

⁵¹ Healy, K. *Norma Parker Address: Being a Self regulating Profession in the 21st Century: Problems and Prospects* (2015).

⁵² OECD, above n 50.

flagged concerns that the complaints resolution model is opaque and that when it comes to naming censured lawyers, the Board can overrule independent decisions of the Standards Committee. The concerns raised about a lack of regulatory transparency are also heightened in a self-regulatory model such as this, where the regulator is governed by members who are elected from within the profession that they are regulating.

The proposed reform options provide an opportunity to enhance the regulator’s current level of accountability and transparency.

Once again, since Options 1 and 2 do not change the structure, governance and integrity of the Law Society, they are assumed to produce no change to transparency and accountability and hence are scored 0, relative to the Base Case.

Option 3’s functional separation model is assumed to grant the regulatory arm a moderate improvement in transparency and accountability (score +0.75) but the independent regulator’s complete autonomy from the membership body is expected to result in maximum transparency and accountability (score +1). Option 4’s independent complaints authority is only expected to increase transparency and accountability regarding complaints resolution, leaving all other regulatory functions unchanged. As such, Option 4 is only expected to generate a marginal positive impact on transparency and accountability (score +0.25)

Table 20 MCA score: transparency and accountability

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Transparency and accountability	The regulator has sufficient accountability structures and transparency mechanisms	5%	0	0	0	0.75	0.25	1

Criteria 5: The regulatory purpose and organisational objectives are clear and prioritised (mandate clarity) (5 per cent)

The OECD states, “Regulators should be given a clear mandate and the powers and resources to fulfil it.”⁵³

The Panel concluded that the Law Society currently faces an unmanageable conflict between its competing objectives to both regulate in the public interest and to promote the interests of the legal profession. The Panel noted several instances where it was not clear when the Law Society was acting as a regulator or as a representative body and that there were instances where this lack of mandate clarity resulted in poor outcomes for consumers. The Panel’s report noted the following on the Law Society’s current dual roles:

⁵³ OECD, above n 50.

No matter the degree to which regulatory and representative functions can be separated at the operational level, key regulatory and representative decisions will ultimately be made at a governance level within the Law Society by the same people – members who are elected from within the profession..

With conflicting interests between regulatory objectives and membership interests, there is an opportunity for the proposed reforms to remove such conflict and promote a clear regulatory mandate.

Options 1 and 2 do not change the structure or governance of the Law Society so they result in no change to objectives and mandate clarity, hence are scored 0, relative to the Base Case.

With functional separation in Option 3, more autonomy is expected between regulatory and membership functions enabling the regulatory arm to clarify its mandate and reduce the conflict of interest. However, given this is not an independent regulator with full autonomy and independence, the ability to sever all conflicts of interest is likely more difficult to achieve under functional separation compared to a full independent regulator. Independent regulators (if established correctly) should be given clear regulatory objectives, powers to act autonomously to achieve those objectives and should also be transparently accountable for its activities undertaken to achieve its mandate/objectives. For this reason, Option 3 is likely to produce a moderate positive impact (score +0.75) while Option 5's independent regulator is expected to produce significant positive impact (score +1) on mandate/objectives clarity.

Under Option 4, a key regulatory function of resolving complaints will become the sole responsibility of an independent regulator with a clear mandate and no anticipated conflicts of interest. This is expected to clarify regulatory objectives for this important regulatory role; however, other regulatory activities will remain constrained by the existing conflicts of interest. As such, Option 4 is considered to have a moderate positive impact on mandate clarity (score +0.5) given only some regulatory activities are expected to benefit.

Table 21 MCA score: mandate clarity

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Mandate clarity	The regulatory purpose and organisational objectives are clear and prioritised	5%	0	0	0	0.75	0.25	1

Criteria 6: The regulator has the authority to make decisions without interference, undue influence, or conflicts (5 per cent)

The Panel concluded that “a key feature of any effective regulator is its ability to make decisions without interference, undue influence or conflicts.”

The current model, whereby the Law Society exercises both regulatory and representative functions creates a situation where conflicts of interests may arise in regulatory decision making. This is particularly the case in a model where both the Council and Board comprise of elected lawyers.

The Panel noted several examples where areas of concern arose about the ability of the regulator to act in the interests of consumers, without being deferential to the interests of the profession.

As is common in self-regulatory models, regulators may also be heavily influenced by vested interests within a profession so may be less willing to challenge the status quo (i.e., there is a higher likelihood of 'regulatory capture'). Specific examples of concern noted in the Panel's final report include an inability to initially identify and respond appropriately to sexual harassment allegations with the profession,⁵⁴ a lack of any debate about whether lawyers should be required to have professional indemnity insurance (making New Zealand an international outlier), a lack of policy leadership from the regulator on wider market issues (such as pricing transparency and new business models), historic underinvestment in certain capabilities, and the cross-subsidisation of law libraries from the regulatory budget.

In summary, there are opportunities for the proposed reform options to increase regulatory autonomy and to minimise undue influence and conflicts of interest in regulatory decision making.

In Options 1 and 2 there are no changes to the structure or governance of the Law Society, so it is assumed there is no improvement in the autonomy of decision making (score of 0).

Option 3's functional separation would result in further autonomy of the regulatory functions enabling improvements in the regulators' ability to make decisions without interference. However, Option 5's full independent regulator is expected to have even more autonomy than Option 3 (we are aware of past concerns about the influence of the Law Society of England and Wales over the Solicitors Regulation Authority, which is a functional separation model). It is noted though that:⁵⁵

...independence of regulators is rarely sufficient to ensure that its day-to-day work embodies this culture of independence, and most regulators need to guard against some form of undue influence that seeks to change their behaviour and the outcomes of their regulatory decisions or activities. This is inevitable, given the interaction and dialogue with stakeholders that regulators must engage in.

For this reason, the independent regulator is scored slightly below the highest score of 1. Option 5 is assumed to have a large positive impact (score +0.75) on autonomous decision making while Option 3 is scored slightly lower at +0.5.

In Option 4, only decisions about complaints are expected to benefit from greater authority to make autonomous decisions, hence it is scored slightly lower than Option 3 at +0.25.

⁵⁴ We acknowledge the Law Society has more recently done a lot of work on this topic and has a specific framework to support regulatory activity around harassment within the profession.

⁵⁵ OECD, above n 50.

Table 22 MCA scoring: Authority to make decisions

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Authority to make decisions	The regulator has the authority to make decisions without interference, undue influence, or conflicts.	5%	0	0	0	0.5	0.25	0.75

Criteria 7: The regulator has access to the necessary knowledge and skills to carry out its functions (5 per cent)

The success of a regulatory scheme depends on the quality of the staff of the regulator. The Law Society has, over many decades, benefitted from a team of highly professional and dedicated staff. Its Executive Leadership Team is committed to ensuring that the Law Society operates as a modern, responsive regulator. Changing the regulatory model by itself is unlikely to affect the knowledge and skills available to the regulator – it will still have access to a similar pool of staff to undertake regulatory functions.

However, what will change is the skillsets of those at the governance level. At present only lawyers can serve on the Council and Board of the Law Society, with members being elected. This creates a dynamic where individuals may be chosen, not for their governance skills, but by their appeal to local constituencies. Some of the issues with the current governance arrangements that were noted in the Panel’s final report included:

- the current system does not necessarily provide members with governance experience
- elections from within the profession resulted in issues with diversity within governance
- having both a Board and Council was unwieldy
- Council and Board tenure was too short (two years), with turnover causing disruption
- a lack of lay members
- electoral college voting on poll votes provided a lot of power to Auckland.

Many of the options under consideration would also change how complaints are handled, by moving away from lawyers on Standards Committees making decisions on complaints (which, as the Panel observed do not have diverse membership). Trained in-house staff who specialise in complaints will be empowered to facilitate resolution and make decisions on complaints.

In Option 1 there are no changes to the governance or skillsets available to the Law Society, so it is assumed there is no improvement in the autonomy of decision making (score of 0).

Moving to in-house complaints resolution under Option 2 and Option 4 will have a marginal impact on the skills available to the regulator (+0.25).

We anticipate that there will be a moderate positive impact (+0.5) from both Option 3 and 5. The regulators under both options will not only benefit from access to skilled in-house complaints staff, but will be governed by a board appointed for their skillsets and competence (including having lay

members). It is reasonable to expect board membership will include core skills in the areas of governance, regulatory practice, cultural competence, understanding of Te Tiriti and te ao Māori, and insights into the needs of consumers. A move away from elections to appointments (by the Minister of Justice) will also result in a more diverse board.

Table 23 MCA score: Ability to carry out its functions

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Ability to carry out functions	The regulator has access to the necessary knowledge and skills to carry out its functions.	5%	0	0	0.25	0.5	0.25	0.5

Criteria 8: The regulator has adequate funding to carry out its functions efficiently (5 per cent)

The OECD says, “Appropriate funding is essential to determine the extent to which the regulator can carry out its mandate and act independently.”⁵⁶ It also notes that: “For regulators that are funded through fees, an appropriate cost-recovery mechanism is essential to set the ‘right’ fee and avoid a regulator that is under-funded, captured by industry or undermined by the executive.”⁵⁷

The Panel’s final report noted concern that practising fees may not have been set at appropriate levels. A former Law Society President acknowledged to the Panel that the complaints service has been starved of resource because “the group sitting around the table are self-interested” in keeping the practising fee low. In their view, the practising fee has been too low for the Law Society to be able to effectively fulfil its functions.

The Law Society has recently acknowledged that practising fees had, for some time, been set lower than what was required for the Law Society to effectively fulfil its functions.

The options being considered through this cost-benefit analysis do not change the funding mechanism of the regulator, which will continue to be funded through a practising fee levied on the profession. However, by changing the governance of the regulator (including moving away from elections and use of lay members) there is an opportunity to ensure the regulator is not unduly responsive to the interests of the profession.

Options 1, 2 and 4 do not change the governance of the regulator, or how it takes funding decisions, with all options scored as 0.

Both options 3 and 5 are assumed to have a moderate positive impact on whether the regulator will have adequate funding to carry out its functions efficiently (score of +0.5). The governance of the regulator will no longer be accountable to the profession (through elections) under these options,

⁵⁶ OECD, above n 50.

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with the use of lay members also likely to remove any potential for the regulator to be seen as having vested interests. The move to a competence-based board with longer term lengths is also more likely to result in a board that can provide appropriate strategic direction to the regulator and to challenge the Executive on their work programmes and forward looking investment plans (e.g. IT). We have not assumed a large positive impact as regulatory funding will still be subject to other cost pressures that are typically experienced by independent regulators.

Table 24 MCA scoring: funding

Criteria	Description	Weighting	Base Case	Option 1 - Enhanced Status quo	Option 2 – Optimised in-house complaints resolution	Option 3 – Functional separation	Option 4 – Independent complaints body	Option 5 - Full independent regulator
Funding	The regulator has adequate funding to carry out its functions efficiently	5%	0	0	0	0.5	0	0.5

About Sapere

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