



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

New Zealand Country Report

October 2022

I. Introduction

Like many organisations and countries, we are still recovering from the impact of COVID. Our courts are still facing a backlog at unprecedented levels. Lawyers are under significant pressure from not just the backlogs but also from difficulties with recruitment and retention of staff.

Pressures on access to justice is consistent theme across the many different parts of the legal profession. The profession is concerned about the future viability of the legal aid system and its ability to attract and retain providers. The aging nature of the bar in a number of practice and geographical areas is causing significant disquiet combined with the low levels of remuneration.

Next month we anticipate the final report on an independent review of the statutory framework for lawyers. This was a review instigated by the Law Society itself as we believe it is an important step in the legal profession's work towards ensuring the Law Society is a fit-for-the-future body, ready to tackle the challenges and opportunities of the 2020s and beyond.

II. Overview of membership organisation

The New Zealand Law Society (NZLS) was established in 1869. The current legislation - the Lawyers and Conveyancers Act 2006 (LCA) - came into force on 1 August 2008.¹ The Act continues the Law Society and sets out its regulatory and representative functions and powers. The Law Society regulates all lawyers, but membership with the organisation is voluntary.

The Law Society Constitution² sets out the membership, election processes and meeting procedures for the Law Society's governing bodies. The Law Society is governed by a Council and managed by a Board.

The Council comprises the President (and President-Elect where applicable), four Vice-Presidents, one member from each branch of NZLS, the chair or president of each of the Law Society's sections, the chair or president of the New Zealand Bar Association, and a representative of the large law firm corporation. The Council meets twice a year.

The Board acts as the executive body, managing the affairs of the Law Society and exercising most of the functions and powers of the Council under delegation. The Board comprises the President (and President-Elect where applicable), four Vice-Presidents and an Independent Observer. The Board also currently has two Observers who are former Board members. Board members:

President

Frazer Barton Contact: president@lawsociety.org.nz

Vice-Presidents

David Campbell, Caroline Silk, Ataga'i Esera, Taryn Gudmanz.

The NZLS is supported by a permanent secretariat under the CEO/Executive Director, Katie Rusbatch (acting). Contact: katie.rusbatch@lawsociety.org.nz. Contact details for the NZLS are:

¹ <http://www.legislation.govt.nz/default.aspx>

² http://www.lawsociety.org.nz/about_us/nzls_constitution

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Information on our website at www.lawsociety.org.nz gives an overview of NZLS, the practice approval functions and the complaints and disciplinary functions, particularly the operation of the Lawyers Complaints Service operated by the NZLS.

The code of ethics/rules of professional conduct are the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, accessible on www.legislation.govt.nz.

NZLS membership (and associate membership for non-lawyers) is on an individual basis. As at 30 August 2022 there were 15,524 NZLS members and 535 associate members. NZLS comprises:

- a national office
- 13 branches
- 3 sections (the Property Law Section –members; the Family Law Section –members, and ILANZ (In-house lawyers’ section –members), all established over the last 20 years
- a national library service
- NZLS CLE Ltd (a wholly-owned continuing legal education provider).

NZLS regulates all 15,777 lawyers of whom 98% are NZLS members. A number of the non-members are based overseas.

III. Attorney/lawyer system

1. Qualifications

To practise as or to call yourself a New Zealand lawyer you must:

- complete a Bachelor of Laws Degree (LLB) approved by the [New Zealand Council of Legal Education \(NZCLE\)](#). Overseas law graduates or those who have been admitted in another jurisdiction (except [Australia](#)) may be required to complete further New Zealand university subjects and/ or parts of the New Zealand Law and Practice Examination; and
- complete the Professional Legal Studies Course at either the [Institute of Professional Legal Studies](#) or [College of Law](#). Overseas trained lawyers may be exempted from this, once their qualifications and experience have been assessed by the [NZCLE](#); and
- obtain a certificate of completion from the [NZCLE](#); and
- obtain a certificate of character from the Law Society; and
- be admitted to the roll of barristers and solicitors of the High Court of New Zealand; and
- hold a current practising certificate issued by the Law Society.

People without current practising certificates cannot describe themselves as lawyers under the LCA. See [enrolled practitioners without practising certificates](#) for more information.

The prerequisites for practising as a lawyer in New Zealand are admission as a barrister and solicitor of the High Court of New Zealand and holding a current practising certificate from the Law Society. A lawyer may practise either as a barrister and solicitor or as a barrister sole. A barrister and solicitor may be:

- employed by a law firm or incorporated law firm
- employed as a corporate lawyer (in-house counsel)
- a director and/or shareholder in an incorporated law firm
- in [practice on own account](#) as a sole practitioner or partner in a law firm.

All lawyers must comply with the [fundamental obligations](#) as set out in s4 of the LCA, including obligations to uphold the rule of law and to facilitate the administration of justice in New Zealand, and to protect the interests of their clients (subject to their overriding duties as officers of the High Court and under legislation).

All New Zealand lawyers are regulated by the Law Society when they provide any legal services, conveyancing services or services provided by undertaking the work of a real estate agent. In New Zealand anybody may provide legal services, but only lawyers may carry out work in the reserved areas of law.

It is an offence for anybody who is not a lawyer or incorporated law firm to provide legal services under a [misleading description](#).

2. Regulation of foreign-registered lawyers

New Zealand does not require the registration of foreign lawyers. If you are a lawyer from another jurisdiction you can provide any legal services but generally you may not carry out work in any of the reserved areas of work. Both 'legal services' and 'reserved areas of work' are defined in [s6 of the Lawyers and Conveyancers Act 2006](#) (LCA).

Under [s25 of the LCA](#) you may also:

- do any work, or transact any business in New Zealand that concerns the law of another country or international law
- provide legal services (including appearances) in New Zealand in relation to any proceedings before a court or other body if it is essential for the purposes of the proceedings that you have knowledge of the law of another country or international law
- use your home jurisdiction description, subject to certain constraints.

Lawyers in New Zealand are regulated by the New Zealand Law Society pursuant to the [Lawyers and Conveyancers Act 2006](#). The Act prescribes the regulatory functions of the Law Society, which include the regulation of lawyers and the practice of law in New Zealand; and assisting and promoting, for the purpose of upholding the rule of law and facilitating the administration of justice, the reform of the law.

IV. Regular activities

A more detailed list of the activities of the Law Society can be found in Appendix 1. The Law Society has approximately 160 staff employed across the regulatory and representative parts of the organisation. The Law Society's Board is remunerated (President and Vice-Presidents) as are a number of governance committee members (for example Finance, Audit and Risk Committee). There are a number of parts of the organisation that are reliant on volunteers. In particular:

- 1. Regulation of the legal profession.** There are 22 independent Standards Committees nationwide with 177 volunteer lawyers (and lay people who are paid) that consider complaints against lawyers. There are a number of other regulatory areas that are reliant on volunteers, for example the Practice Approval Committees (considering matters such as applications to become a partner in a law firm), and volunteer investigators and mediators (for the Lawyers Complaints Service).
- 2. Law reform and advocacy.** The Law Reform Committees play a vital regulatory role in the reform of law in New Zealand. Underneath the Law Reform Committee, there are 17 specialist law reform committees (all voluntary lawyer-members) looking at: ACC; Civil Litigation and Tribunals; Commercial and Business Law; Courthouse Committee; Criminal Law; Employment Law; Environmental Law (including a Climate Change Law Subcommittee); Health Law; Human Rights and Privacy Law; Immigration and Refugee Law; Intellectual Property Law; Legal Services; Public and Administrative Law; Rule of Law; Tax Law. These committees account for 153 volunteer lawyers working on them, to help shape law in Aotearoa New Zealand, at no cost to the people of New Zealand.

V. Law Society main activities and challenges

1. Independent review

In 2021 the Law Society's Board commissioned an independent review of the statutory framework for legal services in New Zealand. The [terms of reference](#) for the review include both the regulation and representation of legal services, including the structure and functions of the Law Society. The review was launched in response to a need to ensure the framework is fit for purpose for a modern profession and organisation. It was also needed to look at the constraints the current Lawyers and Conveyancers Act 2006 places on the Law Society's ability to be transparent about the complaints process, and to deal with a broad range of unacceptable behaviour, including complaints of sexual harassment and bullying within the profession. Consultation on the review closes on 31 August 2022 and the review is expected to be completed by the end of 2022.

This is an ambitious review, with the potential to result in significant change to how legal services are regulated, including the conduct of lawyers, and how the profession is represented.

2. Representation Strategy

The Law society carries out both regulatory and representation functions. We have published our [regulatory strategy](#) for 2022-2025. We are currently preparing our representation strategy and have consulted with the profession so as to inform the what scope that will take and what services we will provide to the profession going forward.

3. Access to justice

In 2021, we shared our [stocktake report on New Zealanders' Access to Justice](#), and noted we had engaged a large external survey company to survey all lawyers on the justice system, legal aid, and pro bono. That survey took place in September 2021, and in October 2021 we published a [report on the results of the survey](#), alongside six case studies designed to elicit further qualitative insights.

Through this study, we identified the key pressures facing legal aid lawyers; low remuneration, stress, and the administrative burden of being a legal aid provider. Twenty-five percent of current legal aid lawyers indicated they intend to reduce their provision of legal aid services or stop all together. We also learnt they were turning away clients at concerning levels, due to lack of capacity.

With remuneration being the most cited barrier to continuing or commencing the provision of legal aid services, we focused initial advocacy efforts on securing additional budget for legal aid in the 2022 Budget. A 12% increase to hourly rates was secured, but there remains work to be done on both remuneration (including fixed fee remuneration and continuing increases to meet historical and ongoing inflation) and administrative requirements. The Law Society will be continuing advocacy efforts in this area.

Access to justice, particularly in COVID times, remains a challenge for the legal profession and criminal justice system. The Law Society remains involved in various initiative to improve access to justice, including transformational work within the court system, in both civil and criminal jurisdictions.

4. Law reform and advocacy

Key law reform and advocacy work since our last report has included:

- Three Strikes Legislation repeal: The Law Society has long advocated for repeal of the three strikes regime in New Zealand. This has been achieved, and the repeal is now in effect. Although unsuccessful, [our efforts](#) also focused on the need for review and correction of sentences passed under the regime.
- Access to civil justice initiatives: the Law Society has ongoing involvement (see '[Access to justice](#)' submissions) in the [Rules Committee's](#) review of costs for self-represented litigants, and other proposals to reform aspects of the civil jurisdiction, including discovery, institutional capability, and protocols. There has been consultation on a [draft national strategy](#) to improve access to civil justice, and a [Law Commission review](#) of class actions and litigation funding.
- Review of the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime: The Law Society provided [substantial feedback](#) on this review, recognising the importance of an effective AML/CFT regime, but noting the need for compliance obligations to be risk-based.
- Review of adoption and surrogacy law: The Law Society has contributed to reviews of New Zealand's [adoption](#) and [surrogacy](#) laws. These reviews are likely to lead to large-scale, significant law reform.

5. Diversity and inclusion

Each year, the Law Society collates the data it holds on lawyers in New Zealand and publishes a report entitled *Snapshot of the Legal Profession*. The reports include information on the gender, ethnicity, languages spoken, areas of work and geographic location of the profession. In December 2021 we released our [2021 Snapshot](#) report. In terms of gender, it indicates that lawyers who identify as female make up 53.9% of the profession compared with males making up 43.9% (with the remainder either identifying as either gender diverse or choosing not to state their gender).

In terms of ethnicity, the report indicates that while Pacific people make up 8.1% of the New Zealand population, they account for only 3.3% of lawyers. Likewise, while Maori make up 16.5% of the New Zealand population, they only account for 6.9% of lawyers.

The Law Society recognises the underrepresentation of Pacific and Maori Lawyers in the profession and this is an area we continue to work on in conjunction with other organisations such as the Maori Law Society and Pacific Lawyers Association.

Appendix 1: list of regular activities

Activities of the Law Society include:

- ***Regulating the legal profession***
 - Maintaining public register of lawyers
 - Issuing practising certificates and certificates of standing
 - Issuing certificates of character regarding suitability for admission
 - Managing Lawyers Complaints Service
 - Managing processes for approval/notification of changes in modes of practice (including becoming a partner in a law firm)
 - Managing the Continuing Professional Development regulatory regime
 - Managing Financial Assurance Scheme, including trust account reviews
 - Managing the Lawyers' Fidelity Fund

- ***Library and information services***
 - National catalogue
 - Legal information online (library access)
 - Research and document delivery

- ***Law reform***
 - Making influential submissions on bills and discussion documents
 - Providing opportunities for all lawyers to be involved and have their say

- ***Collegiality and networking***
 - branch social, sporting and educational events and support
 - section membership, educational and social events

- ***Advocacy on behalf of the profession***

- ***Communications***
 - Law Points (weekly e-bulletin)
 - LawTalk (quarterly print publication)
 - Branch and section publications and e-bulletins
 - Law Awareness pamphlets
 - Websites – main site, sections, branches, NZLS CLE Ltd
 - Public 'Find a Lawyer' database

- ***Sections***

- ILANZ
- Property Law Section
- Family Law Section

- ***Continuing legal education***
 - NZLS CLE Ltd - extensive, top quality programme with first-rate presenters
 - enrol and pay online
 - Branch education (shorter seminars)

- ***Support services***
 - Mentoring services
 - Counselling service
 - National Friends Panel and locum list
 - Practising Well – professional and personal support include Law Care
 - In Practice – information on practice matters