



Navigating Into The Future

Regulatory Strategy

2022-2025

“He tawhiti kē tō tātou haerenga
ki te kore e haere tonu, he
tino nui rawa tā tātou mahi
ki te kore e mahi tonu”

We have come too far not
to go further, we have done
too much not to do more.

— Tā James Henare

A legal profession trusted by everyone in Aotearoa

The legal profession plays a vital role in Aotearoa New Zealand. People seek the advice of a lawyer at key times in their lives – whether they are buying a new home, starting a business, or need to have their rights defended in court. Anyone needing a lawyer’s services must feel confident they are in good hands. Lawyers equally want to ensure the public has confidence in them.

Our regulatory purpose is upholding professional standards so everyone can have trust and confidence in the legal profession.

This regulatory strategy will help us to lift our regulatory performance over the next three years. It enables us to consider the purpose of our regulatory role, and allows us to take a broader perspective on our approach to regulation and how we focus our regulatory efforts for the benefit of both the profession and consumers of legal services.

It was important that our staff led the thinking and development of this strategy. This strategy was developed by our staff for our organisation, involving a series of workshops and input from several key stakeholders.

We are committed to evolving our regulatory capability and performance to become the best regulator we can be. This requires some fundamental ‘shifts’ in the way we do things.

We’ll be using our full suite of regulatory and non-regulatory tools – educating and engaging with lawyers, as well as enforcing the rules. We’ll be basing our decisions on the best data, insights and evidence.

While our staff are spread across the country, we’ll be working together as a connected team, and will work more closely with other regulators and partners to improve regulatory outcomes.

We’re also recommending changes to the Lawyers and Conveyancers Act 2006 so that it remains fit-for-purpose into the future.

There’s a lot of hard work ahead, but I have great confidence in our skilled and committed team to make the changes we need to be an effective regulator, promoting public trust and confidence in the legal profession.

KATIE RUSBATCH

General Manager Professional Standards

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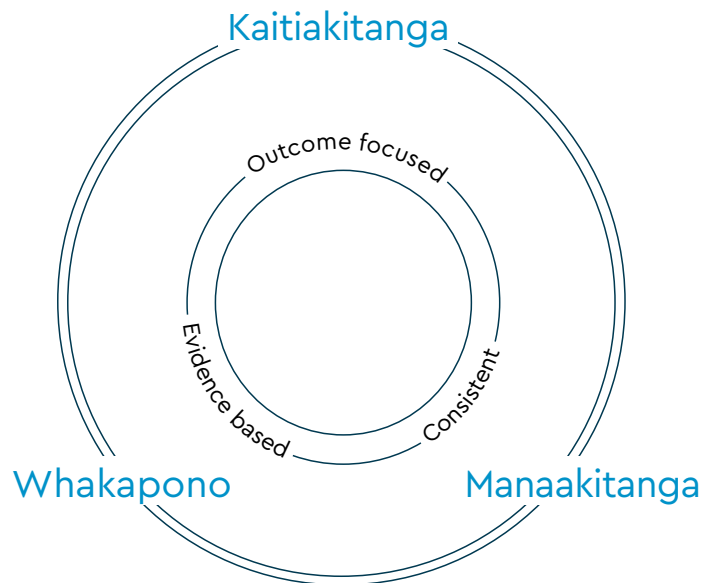
Our strategy

Navigating into the future 2022–2025

Our purpose

Upholding professional standards
so everyone can have trust and
confidence in the legal profession.

Our principles



Our key shifts

Build regulatory capability
Work as one regulatory team
Use our intelligence and evidence
Use our full suite of tools
Work collaboratively with others

Introduction

This strategy sets the direction for the Law Society's regulation of the legal profession over the next three years, 2022-2025.

Our strategy is three years, to align with the findings and final decisions from the Independent Review of the statutory framework for lawyers. The Independent Review has been commissioned to examine the regulation and representation of legal services in Aotearoa New Zealand, including the structure and functions of the Law Society.

But it's important that we start now on our journey to be an effective New Zealand regulator and continue building on this foundation in the years to come.

Being an effective regulator means that we are:

- **Risk-based:** we focus on the right things – targeting effort where there is the greatest risk and potential harm, including to consumers of legal services; and
- **Responsive:** we apply the right approach and select the tool based on the attitude and motivation of lawyers towards compliance.

This strategy sets out how we strengthen our ability to be an effective regulator. It describes:

- the wider context that we operate in
- key participants in the legal profession regulatory system
- where we fit in regulating the legal profession
- the principles that guide the way we work
- key shifts that will support the delivery of our regulatory role over the next three years.

This strategy will be reviewed annually and revised to ensure it is achieving the desired purpose and remains relevant. A monitoring framework is also being developed to track progress.

The world we operate in

The legal profession and the world around us are constantly changing, and as a regulator, we need to continually innovate and adapt to keep up with change.

Our context is important for the way we organise ourselves and operate as a regulator. There have been significant changes and challenges in the legal profession, in broader society and in approaches to regulation since the Act came into force in 2008.

Aotearoa New Zealand

- **The COVID-19 pandemic** continues to pose significant challenges in delivering services and upholding the law under various Alert levels. As an organisation we have had to adapt to working remotely from each other and Standards Committees have adapted by using online meetings to continue to determine complaints during lockdowns.
- **Access to justice** is not available for some of our most vulnerable communities. A recent Law Society survey indicates that vulnerable people who cannot afford lawyers and seek legal aid are not able to get it because the number of lawyers providing legal aid has decreased. Further, lawyers providing legal aid are facing unmanageable workloads.
- **New Zealand's population and workforce is becoming more ethnically diverse** but this is not well represented in the legal profession – 77% of lawyers identify as New Zealand European (compared to 66% of New Zealand's working population), 6.9 Māori (compared to working population of 14%), 7.5% Asian (compared to working population of 15%) and 3.3% Pacific peoples (compared to working population of 7%)¹. There is growing recognition of the importance of having a workforce that both reflects and represents the communities it serves.
- **Digital technology** is changing the way we work, as demonstrated in the rapid uptake of remote working during lockdowns. New technology can enable efficiencies but can also pose online security threats.
- **An ageing workforce** also has implications for the legal profession. The average age of all lawyers is 42 years, barristers – 53 years, and sole practitioners – 58 years. There are lawyers holding a practising certificate aged over 90. The profession needs to adapt to a multiple generation workforce, including impacts on culture and working practices.

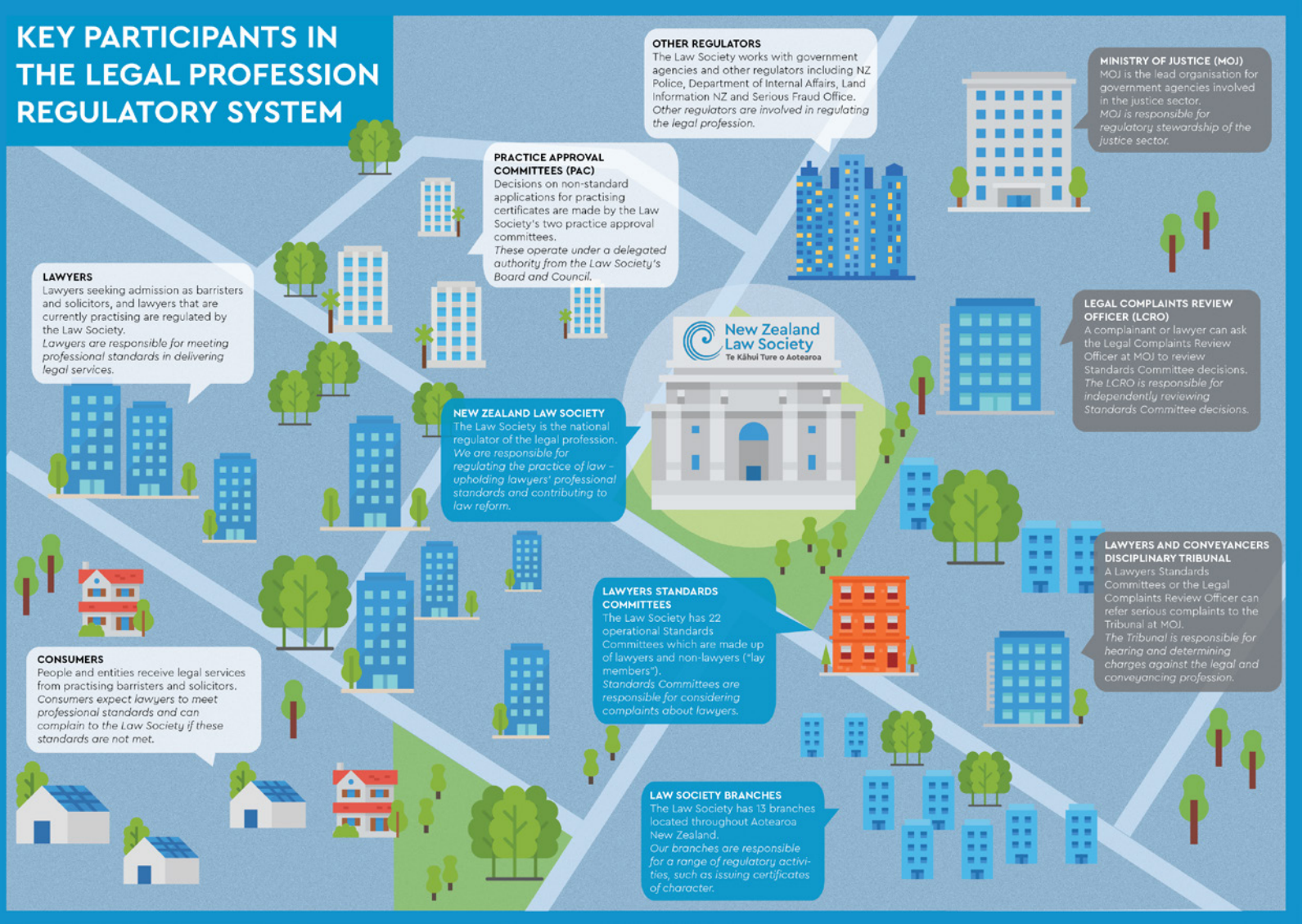
1. Data from 2021. The New Zealand information is taken from the Household Labour Force survey, December 2021 quarter.

Legal profession

- There is a focus on improving the culture of the legal profession. In particular, tackling **sexual harassment, bullying** and other unacceptable conduct, which came to the forefront in 2018. The Conduct and Client Care Rules were amended in 2021 to deal with harassment, bullying and discrimination.
- The amendments mark a significant change, as regulation of the profession traditionally had a client focus, but now we are talking about **how lawyers conduct themselves towards each other**, and their employees.
- There are strong concerns about **lawyer health and wellbeing**. This takes a personal toll and can become a regulatory issue if it means lawyers are unable to maintain professional standards.
- The regulatory framework also needs to **adapt to new workforce trends** such as part-time and flexible working and developments in the provision of legal services.
- There are concerns that the **attorney model** is not fit for purpose, for a number of reasons, including the difficulty of finding someone to manage another lawyer’s practice, which is a substantial undertaking.
- Across New Zealand regulators, there has been an increasing focus on the importance of ‘**effective regulation**’, which has driven the need for a modern and well-functioning legal framework focussed on risk and the prioritisation of resources.

We’re part of a wider regulatory system, and operate alongside other key participants involved in regulating the legal profession.

KEY PARTICIPANTS IN THE LEGAL PROFESSION REGULATORY SYSTEM



Our purpose and regulatory role

Upholding professional standards so everyone can have trust and confidence in the legal profession.

The New Zealand Law Society | Te Kāhui Ture o Aotearoa is the national regulator of the legal profession. We regulate around 16,000 lawyers across New Zealand.

All lawyers are regulated by the Law Society when they provide any legal services, conveyancing services or when undertaking the work of a real estate agent.

Our duties and powers are set out in the Lawyers and Conveyancers Act 2006 (the Act), including to:

- Regulate the practice of law
- Uphold the fundamental obligations imposed on lawyers
- Monitor and enforce the provisions of the Act and regulations and rules made under it
- Assist and promote the rule of law

Our regulatory role includes contributing to law reform and advocating for opportunities to improve the regulatory framework and settings.

We have a “dual” role – to regulate and represent the legal profession

Under the Act, the Law Society is required to both regulate and represent the legal profession. This “dual” model is being considered as part of the independent review. Our membership services include professional development, networking events, support and guidance.

We regulate access to the legal profession

Authorising entry

The New Zealand Law Society manages entry to the legal profession. To practise as a lawyer in New Zealand, people must first obtain a certificate of character and be admitted as a barrister and solicitor of the High Court of New Zealand, which are both managed through the Law Society.

Maintaining fitness to practise

Once a lawyer’s name is on the roll of barristers and solicitors, they need to hold a current practising certificate to practise as a lawyer, which is issued by the Law Society. Barristers and solicitors may be employed by a law firm, employed as a corporate lawyer (in-house counsel) or as a director and/or shareholder in an incorporated law firm. All lawyers wanting to practise on their own account

as a sole practitioner or partner in a law firm must satisfy the Law Society that they are suitably qualified with the right skills and experience. Lawyers are required to complete at least 10 hours per year of Continuing Professional Development.

Complaints

The Law Society operates the Lawyers Complaints Service to respond to complaints made about members of the legal profession. This service involves the management of independent Standards Committees which are made up of lawyers and members of the public, who make decisions on complaints. Standards Committees provide expertise in dealing with various complaints, including about costs, harassment and bullying, complaints considered appropriate for early resolution and legal aid complaints.

Enforced accountability or exit from the profession

For the most serious matters, strike off or suspension are potential outcomes. Standards Committees can lay charges before the Lawyers and Conveyancers Disciplinary Tribunal.

Regulatory services

As a regulator we have dedicated duties and powers focused on monitoring, regulating and enforcing the rules that apply to lawyers and the way they practice law.

Our regulatory services include:

- Maintaining a public register of lawyers
- Issuing practising certificates and certificates of standing
- Continuing Professional Development
- Managing the Lawyers Complaints Service
- Managing a Financial Assurance Scheme, including trust account reviews
- Managing the Lawyers' Fidelity Fund
- Law reform and advocacy activities including submissions on legislation
- Making practice rules: processes for change in modes of practice

Important considerations for our future regulatory role

The Independent Review of the statutory framework for legal services, including the Law Society's structure and functions will have implications for future regulatory work. The Review may recommend changes to the New Zealand Law Society constitution, the Lawyers and Conveyancers Act 2006, and associated rules and regulations.

The Review will also consider the tradition of the voluntary model of Standards Committees, where lawyers contribute their time and expertise to regulation of the profession.

Every complaint must go to a Standards Committee. A lot of our regulatory resources are focused on administering complaints, with 1,376 complaints received in the year to 30 June 2020. The average time to close complaints was 242 days. We're focused on reducing the number of complaints and resolving complaints promptly.

We currently operate under a highly prescriptive Act. The Act constrains our ability to be an effective regulator, for example by limiting our ability to be as transparent about our complaints process as we would like and by setting strict guidelines on publication of information relating to Standards Committee decisions. Our highly prescriptive Act is why we're recommending changes to the Act to make it more fit-for-purpose.

Snapshot of regulatory activities

Year to 30 June 2021

Entry to the legal profession

1,126

Admissions to the High Court

1,187

Certificates of Character

Financial assurance scheme

373

Inspectorate reviews of trust accounts

Maintaining fitness to practise

15,420

Current practising certificates

226

Lawyers approved to practise on their own account

83

Barristers sole approved to practise on their own account

Complaints and discipline

1,376

Complaints

1,280

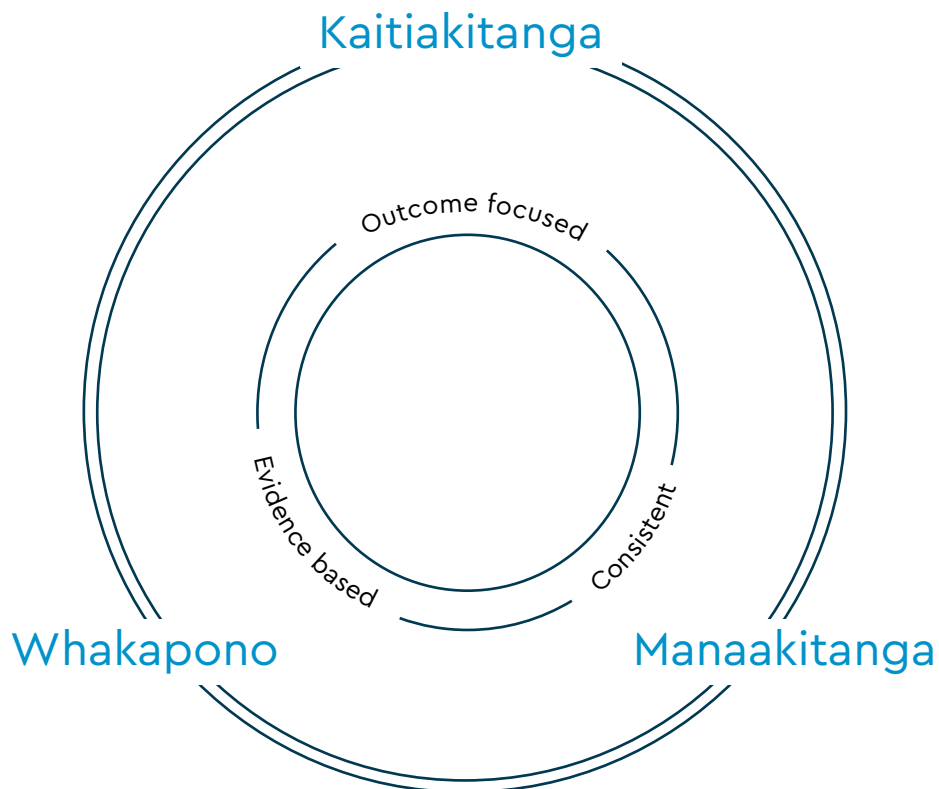
Complaints closed (including 1,009 complaints not upheld)

Our regulatory approach

Our approach is guided by Te Ao Māori values and principles of effective regulation.

Our response to immediate and emerging issues is guided by Te Ao Māori values of kaitiakitanga (guardianship), whakapono (open and transparent) and manaakitanga (caring for and valuing others), alongside key principles of effective regulation.

We identified these values and principles as core to our desired regulatory approach.



How they fit together

| | Outcome focused | Evidence based | Consistent |
|---|---|---|---|
| Kaitiakitanga² <i>Guardianship</i> | <p>We aim to achieve practical outcomes when taking regulatory action, protecting consumers and the profession.</p> <p>We proactively challenge regulatory settings and influence system change to deliver better outcomes.</p> | <p>We actively build tools and knowledge to support an evidence-based approach.</p> <p>We make choices based on the best available data and intelligence.</p> | <p>We use robust decision-making processes and criteria to ensure our decisions are fair and accurate.</p> <p>We provide clear guidance and expectations.</p> |
| Whakapono³ <i>Open and transparent</i> | <p>We present information in a way that is easy to understand and explain our decisions in a clear and timely way.</p> | <p>We report on our activities to demonstrate our performance.</p> | <p>We consistently act with integrity and honesty so that we can uphold the high professional standards we expect from lawyers.</p> |
| Manaakitanga⁴ <i>Caring for and valuing others</i> | <p>We work collaboratively to find solutions.</p> | <p>We share knowledge, insights and expertise with other regulators and partners.</p> | <p>Our teams are connected and communicate consistent messages.</p> |

These principles reflect the way we currently approach our work and the type of regulator we aspire to become. They underpin the way we will carry out our regulatory role as we make targeted changes to become an effective New Zealand regulator.

2. Kaitiakitanga refers to our role as steward to maintain and uphold professional standards of the legal profession. We have responsibilities to make sure we maintain our stewardship role within the wider legal system.
3. Whakapono refers to our responsibility to maintain faith and trust in our systems, structures and processes by being open and transparent. Lawyers and the public should have confidence that we will maintain integrity.
4. Manaakitanga refers to our intention to care and value the input of others and each other.

What needs to change

We identified five key shifts for this regulatory strategy that will support us to achieve our regulatory purpose of upholding professional standards so everyone can have trust and confidence in the legal profession.

| | Now | In future (2025) |
|--|---|--|
| Build regulatory capability | Staff support more effective regulation but more investment in training and capacity is required. | Staff have the tools and knowledge to be effective and efficient regulators. |
| Work as one regulatory team | Teams operate in their separate areas, and there is not a consistent approach to sharing information across the collective organisation. | Individuals and teams feel they are part of a cohesive organisation, who share their insights and learnings to achieve common outcomes. |
| Use our intelligence and evidence | There is a significant amount of information and intelligence collected and held by regulatory teams, but it is inconsistently stored and not evaluated or used to its full extent. | Information is stored and evaluated in a way that makes it more accessible for regulatory teams and easier to connect it to other information. |
| Use our full suite of tools | The Act is prescriptive and influences our approach. Innovation has not been prioritised in using the regulatory and non-regulatory tools available to us. | We use our full range of tools to address immediate and emerging issues. |
| Work collaboratively with others | We are starting to develop relationships with other regulators and external partners. | We have connected and enduring relationships with a range of regulators and key partners, including NZ Police, Department of Internal Affairs (DIA), the Ministry of Justice – Legal Aid and other enforcement agencies. |

Our shifts and how we achieve them

1. Build regulatory capability

We're building the regulatory capability of our team and investing in technology to support our transformation into an effective New Zealand regulator.

We need to ensure that our people have the required skills to be innovative and effective in their regulatory roles in a modern New Zealand context. It is important that our regulatory approach takes account of the interests of Māori and incorporates Māori perspectives where appropriate. We want to be a modern organisation that is an effective regulator and able to work in culturally appropriate and responsive ways. Our journey will involve supporting our current staff and Standards and Practice Approval Committees by providing resources and training and may also involve bringing new talent into our organisation. To support this change and make efficiency improvements we also want to implement better IT systems.

Areas of focus:

- Being an effective regulator including via training and providing resources for staff and Standards and Practice Approval Committees
- Being more culturally appropriate/responsive
- IT improvements to support efficiency and more consistent processes

Key actions for year one:

- Deliver staff training (effective regulation, project management, updates on new rules, dealing with sensitive issues like sexual harassment and handling difficult communications)
- Consider ways to make our organisation more responsive to cultural needs, including wider use of te reo Māori
- Develop an approach for resourcing our capability shift
- Provide up-to-date resources to Standards Committees (such as guidance on enforcement response options)
- Work with Corporate Services to upgrade the registry system, case management and file management systems

- Develop case for investment to resource this capability shift

How we will know if we are successful:

- Staff are skilled and supported in priority areas (including effective regulation, case management, updates on new rules and cases, dealing with sensitive issues like sexual harassment and handling difficult communications)
- Staff work in culturally appropriate ways
- IT systems support more consistent processes and procedures, such as for inspectorate reviews and complaints management

2. Work as one regulatory team

We're working towards a one regulatory team approach where our structure, practices, and processes and decision-making are consistent

We will be more effective as an organisation if we consistently work as one team with consistent approaches. We need to understand each other's work and ensure that our different functions and responsibilities don't become reasons to operate or think differently. Working as one regulatory team may involve more opportunities for cross team sharing, and identifying opportunities to work together to progress joint outcomes. Through working across our organisation, we can strengthen our use of information, education and guidance as important regulatory tools and ensure consistency of structure, practices and processes.

Areas of focus

- Enhance regulatory team culture
- Shared outcomes across the regulatory team
- Shared work programmes

Key actions for year one

- Establish an in-house investigations team
- Team building, such as the inspectorate team away day
- Start developing a decisions database
- Start upgrading the registry system, case management and file management systems

How we will know if we are successful

- More consistent structure, practices, processes and decision-making
- Transitions between and across teams is seamless (staff understand other teams' work and can move easily between teams as required (in response to surge demand, or staff changes)

3. Use our intelligence and evidence

We use the data collected in the course of our work to identify future trends and prioritise our regulatory work to proactively address emerging risks.

We collect a lot of information but we limit our access and use of it due to privacy restrictions, resource constraints and some of our internal systems and processes. Through regularly analysing our data and evidence we will identify patterns and trends that can inform our work and enable us to be more effective. This evidence can help us to develop information and education for consumers and lawyers, which could be delivered through the Lawyers Complaints Services and Continuing Professional Development (CPD). We want to check if we're collecting the right information and then use the information we are collecting to its fullest extent. We also want to report on information that is useful to others.

Areas of focus

- Improve reporting and data analysis
- Improve access to information across the regulatory functions and with other parts of the Law Society where appropriate
- Work with representative function to support the health and well-being of lawyers
- Review the Early Resolution Service

Key actions for year one

- Development of information sharing policy (internal and external)
- Development of key performance indicators
- Creation of a regulation performance dashboard
- Analyse data and evidence in key areas to improve our understanding of critical issues
- Changes to Early Resolution Service as recommended by external review
- The Board receives regular reporting and data on areas of interest

How we will know if we're successful

- Improved ability to identify trends and inform how we prioritise our work
- Information is used to inform what we do and choices we make
- Early Resolution Service changes are implemented and demonstrate improvements
- Other agencies are using data reported by the Law Society to inform their work
- Data and evidence provide regular assurance to the Board

4. Use our full suite of tools

We use our full range of tools to address immediate and emerging issues – guiding and educating to support lawyers to comply and taking action to enforce compliance when necessary.

As an effective regulator, we have a range of regulatory and non-regulatory tools available to us, including:

- Laws, regulations, rules and standards
- Compliance and enforcement
- Information, education, guidance
- Partnership, collaboration, influence, and relationship management

The tool (or combination of tools) that we use will vary depending on the scale and complexity of the issue. We will use 'light touch' tools where appropriate to help lawyers comply with their obligations. However, we also have 'harder edge' tools to address serious issues, particularly where there is serious harm to consumers of legal services and damage to the reputation of the legal profession. Our new resources to support speaking Te Reo Māori in court demonstrate how we can be more responsive to the interests of Māori. We're also working to make changes to the Lawyers and Conveyancers Act to enable us to use tools that will enable us to be a more effective, modern regulator.

Areas of focus

- Lawyers and Conveyances Act amendments
- Working within our existing rules and standards to their fullest intent
- Greater use of education and information to support compliance
- Using our tools to be more responsive to the interests of Māori
- Improve recovery of monetary orders and costs

Key actions for year one

- Advocate for amendments to the Lawyers and Conveyancers Act
- Use education as a tool to prevent complaints
- Establish debt recovery policy and implement approach for recovering debt
- Prepare penalty guidelines and enforcement response guidelines for Standards Committees
- Evaluate the Continuing Professional Development (CPD) requirement to ensure it is fit for purpose

How we will know if we're successful

- Increased mediation and early resolution of complaints
- Reduction in
 - the number of complaints

- the amount of time taken to review and close complaints
- Feedback from Māori that our tools and support is more responsive to Māori
- Outstanding monetary orders owed to the Law Society successfully recovered.

5. Work collaboratively with others

We proactively develop connected relationships to share information, build trust and target risks effectively.

Working collectively within the legal system will be more effective than working alone. By working collaboratively with other regulators and partners, we can gain valuable insights, share examples of good regulatory practice, share relevant knowledge and training and avoid duplication of effort. We'll be building enduring connections, which are sustained through structural and staff changes. We have already signed a MOU with the Ministry of Justice – Legal Aid.

Areas of focus

- Build and strengthen our relationships with:
 - NZ Police
 - Ministry of Justice – Legal Aid
 - DIA in relation to anti-money laundering
 - Lawyers and Conveyancers Disciplinary Tribunal
 - LINZ
 - Legal Complaints Review Officer

Key actions for year one

- Sign MOU with NZ Police
- Regular meetings with the Legal Complaints Review Officer

How we will know that we're successful

- We are working effectively with key agencies and these relationships are underpinned by agreed ways of operating for mutual benefit
- Active collaboration and sharing of knowledge with partners on projects of mutual benefit to achieve positive outcomes for the legal profession and consumers of legal services.

