



Briefing to the Incoming Minister

November 2023

Executive Summary

The New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society) is the professional body for lawyers in New Zealand. We are an independent statutory body constituted under the Lawyers and Conveyancers Act 2006 (the Act) to both regulate and represent the legal profession in Aotearoa, New Zealand.

We support the Ministry of Justice (the Ministry) and the judiciary as a conduit for directly engaging with the legal profession. This was critical during the COVID-19 disruption and recent natural disasters when we worked closely and collaboratively with government, the judiciary and other legal membership organisations to keep the legal profession informed and to maintain court and legal services wherever possible. It remains critical today, as the judiciary and officials consider new ways of working and seek to address ongoing backlogs in the courts.

We meet and engage with a wide range of stakeholders, particularly in our advocacy work, including members of parliament, academics, members of other professions with expertise in areas of interest (including accountancy, psychiatry, other regulatory and disciplinary bodies), and officials from other government agencies.

Under the Act, the Minister of Justice has direct responsibility for approving the annual practising fee for lawyers, tabling the Law Society's Annual Report in Parliament, approving legal professional rules, and submitting regulations to Cabinet.

We operate on a no surprises basis and will raise significant issues, risks, or opportunities through the appropriate channels while maintaining our independence. We traditionally have a close working relationship with members of the Ministerial team as well as Ministry staff and look forward to establishing that relationship with your team.

We engage with you regularly to:

- seek your approval of the annual practising fee for lawyers and the Lawyers' Fidelity Fund
- provide our Annual Report for tabling in Parliament, and
- provide updates on the Law Society's work and discuss key issues in the justice sector.

Upcoming priorities that we will be engaging with you on include:

- our 2023 Annual Report
- amendments to the Lawyers and Conveyancers Act 2006
- the Independent Review, and
- access to justice.

Overview of the Law Society

Established in 1869, the Law Society regulates just over 16,000 practising lawyers, and represents over 98% of lawyers. This year the Law Society published its strategic plan 2023-2026. Our plan sets out the Law Society's areas of focus as we seek to fulfil our purpose of serving as the kaitiaki of an exemplary legal profession. The Law Society's [strategic goals](#) for the next three years are:

- strengthening the profession
- protecting and supporting consumers
- promoting and protecting a just and accessible legal system, and
- ensuring a sustainable, high-performing, and values-driven organisation.

Regulation of the profession

A primary purpose of the Law Society is to maintain public confidence in the legal profession and protect the consumers of legal services. The Act sets out a co-regulatory model in which responsibility for regulatory functions is shared between independent entities, the government, and the Law Society. The Act gives the Law Society various powers to carry out its regulatory functions, which are to:

- regulate the practice of law
- uphold the fundamental obligations imposed on lawyers
- monitor and enforce the provisions of the Act and associated regulations and rules, and
- assist and promote the reform of the law.

A key part of our work is managing the Lawyers Complaints Service, where anyone can make a complaint about a lawyer. We also educate and support the public regarding engaging with lawyers. Last year the Law Society published its [Regulatory Strategy for 2022-2025](#).

Independent Review

In 2021 the Law Society commissioned an Independent Review of the Act because over time it had become clear that the legislation, including the complaints process, was no longer fit-for-purpose and was not serving the public or the profession well. This had been highlighted in 2018 with reports of sexual harassment within the legal profession.

The Law Society also wanted to understand the extent of the issues with the regulatory framework and take the opportunity to shift to a more modern regulatory environment given the changes in New Zealand and internationally since the Act was introduced in 2006. Alongside this, the Law Society needed to ensure the legal profession has a strong representative voice that is responsive to the needs of the profession and the public.

The Independent Review Panel delivered its [final report](#) in March 2023. The report outlines that statutory change is needed if we are going to do more to protect consumers and the public. The report states that, while the Law Society is working within the current legislative framework, it is overly prescriptive and inefficient. Additionally, the report outlines that the dual functions of the Law Society don't serve the interests of the public or the profession well, with the functions tending to be in conflict with each other.

Key recommendations from the report include establishing a new independent regulator (which is also independent of government), overhauling the complaints system, and incorporating more emphasis on Te Tiriti obligations of the regulator (not the profession).

We presented [our response](#) to the Minister on 24 August 2023. After consultation with its Council members and the profession, the Law Society has accepted in principle most of the recommendations, including recommendations to establish a new independent regulator and an overhaul of the system for handling complaints about lawyers. Statutory change is needed if we are going to be able to do more to protect consumers and the public. The Law Society is now looking to government to indicate whether reform will be a legislative priority.

Membership services

The Act also specifies that the Law Society can provide representative services to its members. As a membership body, the Law Society provides strong national representative services and is the trusted voice for lawyers across Aotearoa. We provide extensive representation and wide geographical support of the profession.

Currently, many of these services are delivered through our NZLS CLE Ltd (legal education arm), branches and sections (Family Law Section, Property Law Section, and In-house Lawyers Section). They include:

- professional development
- collegial and networking events, and
- support and guidance.

Over the past few years, we have launched wellbeing initiatives such as the free and confidential Legal Community Counselling Service and a National Mentoring Scheme. We were also vital in our representation of lawyers throughout COVID-19, giving the profession a voice through the unprecedented disruption to legal services. The wellbeing of the legal profession is of particular concern as lawyers, particularly criminal and family lawyers, are dealing with unprecedented workloads with many advising they are stressed and overwhelmed.

By law, the money that the Law Society receives from practising certificate fees can only be spent on regulatory matters. Currently, most Law Society member services are provided at no cost to members and there is a limited amount of revenue through continuing legal education, events, and section fees. Work is underway on a representative strategy, which will enable the Law Society to deliver representative services that are financially sustainable. As part of this, the Law Society is looking to introduce a modest membership subscription for its more than 16,000 members in 2024. The Law Society has undertaken work to determine and test the amount of a subscription. Any decision on the membership subscription will be confirmed at the Council's annual general meeting in April 2024.

Law Reform

The Law Society is consistently called upon to ensure workable legislation by providing reasoned and impartial submissions on law reform proposals. Law Society submissions also represent the public interest on matters such as access to justice, the administration of justice, constitutional protections, and the rule of law. We also act as an impartial intervenor in leading court cases of general and public importance in the higher courts.

Work Programme and Priorities

The Law Society has several key priorities which inform and guide the various sections of the organisation. Priority areas for us are listed below:

Access to Justice

Legal Aid

We encourage the Government to consider a full review of the legal aid system, to identify how best to ensure the ongoing sustainability of this critical service. We advocate strongly for continued investment in the legal aid system, including increased remuneration. This is essential for the retention and progression of existing legal aid lawyers, and the attraction of new providers.

In many areas of New Zealand, we have aging criminal and family law providers and growing shortages. Our [2023 Workplace Environment Survey](#), published on 17 October 2023, indicates many criminal and family lawyers, in particular, continue to experience lower levels of job satisfaction and higher levels of stress. The number of cases in the system has not reduced and cases are often taking longer, so fewer lawyers are juggling the same amount of work across the system and more individuals are representing themselves in court. This has implications for addressing the current court backlogs and access to justice. The impacts of a struggling legal aid system extend well beyond defendants, to victims and the wider community.

In 2021, we carried out the largest ever survey of lawyers on access to justice. Almost 3,000 lawyers responded to this survey. The [results](#) showed that:

- In the preceding 12 months, three-quarters of legal aid lawyers had to turn away people seeking legal assistance. This equated to over 20,000 individuals being turned away, some likely multiple times.
- 25 per cent of lawyers planned to do less legal aid work – or stop altogether. The key reason for this was inadequate remuneration, as well as the administrative burden of legal aid, and stress.

We have now engaged KPMG to establish the cost of legal practice in 2023. This work will inform our advocacy for sustainable remuneration of both legal aid and duty lawyer work.

We continue to work with the Ministry on improvements to the legal aid system, and advocate for improvements to the administrative processes associated with both becoming and working as a legal aid provider.

Duty lawyers

Like legal aid, the duty lawyer scheme is critical to functioning of our criminal justice system. The Law Society has long advocated for a review of the duty lawyer scheme, and an immediate increase to duty lawyer remuneration. In July 2023, we welcomed the announcement of a 17 percent increase to duty lawyer remuneration (following a nearly 25-year period with no significant increase), and a broad-scope review of the scheme. We are participating in this review, with the support and input of our dedicated [Access to Justice Committee](#), comprised of experienced lawyers who work in both the legal aid and duty lawyer areas.

Culture and Wellbeing

The Law Society is committed to eliminating the culture of bullying, harassment and discrimination which exists in some parts of the legal profession.

Following accusations of sexual harassment at some law firm events and the launch of the #metoo movement, in 2018 the Law Society commissioned a workplace environment survey to ascertain the degree to which lawyers were experiencing this type of behaviour in workplaces across the country.

A follow up Workplace Environment Survey was undertaken in 2023 and was designed to establish any behavioural changes in the legal workplace environment since 2018. The scope of the 2023 survey was expanded to include surveying a selection of non-lawyers working in legal workplaces.

The 2023 survey shows that the profession has made some progress, but ongoing work is required. The prevalence of sexual harassment among all lawyers has decreased, but there is still a reluctance to seek support and speak up about unacceptable behaviour for fear of the consequences or a distrust in the process. Bullying remains a common experience in the legal community, with half of respondents having experienced bullying in a legal setting in their lifetime. However, the number of lawyers experiencing bullying in the last six months has decreased from 21 per cent in 2018 to 17 per cent in 2023.

The survey outcomes will input into further work we are undertaking as part of our regulatory and representative strategies.

What we are already doing

The Conduct and Client Care Rules (RCCC) were comprehensively reformed in July 2021 to tackle bullying, discrimination, harassment in all forms, including introducing mandatory reporting obligations. The Law Society has published [Guidance on professional standards and reporting obligations](#). This guidance is intended to help lawyers to understand their obligations, and to support and empower people who are affected by unacceptable behaviour.

Unacceptable behaviour can be reported in several different ways to the Law Society. We have a specialist team in the Lawyers Complaints Service that handles sensitive matters and can discuss these matters with the reporter on a confidential basis.

We provide support services for the profession through [Practising Well](#) initiatives.

The National Friends Panel is made up of lawyers who can be contacted on a confidential basis with questions or concerns relating to practice issues. Additionally, several lawyers are also available to discuss sensitive matters such as workplace harassment.

The Law Society's dedicated LawCare 0800 phone line (0800 0800 28) is a confidential point of contact for lawyers and law firm employees who have experienced, witnessed, or been affected by sexual assault, sexual harassment, or other unacceptable behaviour. Between January 2022 and September 2023, the LawCare 0800 line has taken 32 calls from people needing assistance with sensitive matters such as sexual harassment, bullying, and other unacceptable behaviour.

Additionally, we have partnered with Vitae to offer a free and confidential counselling service to anyone experiencing distress in a legal workplace, whether they're a lawyer or not. Since its launch in May 2019, over 1,320 people have accessed the Law Society counselling service. In the reporting year ending 30 June 2023, 420 people attended nearly 870 sessions.

Proposed amendments to the Lawyers and Conveyancers Act 2006

It is anticipated that reform of the Act following the Independent Review could take time. In 2022 we consulted the profession on some more immediate changes to the Act which will enable the Law Society to operate in a more transparent and efficient manner for both consumers and the legal profession, until broader legislative change can be considered. The purpose of this consultation was to obtain early feedback from the profession and to assist the Ministry of Justice with the work necessary to initiate these amendments. Overall, there was support for each of the proposed changes.

We hope that these amendments may reduce delay in the consideration of complaints. They relate to four key amendments to the Act, which would:

- maintain public confidence in the complaints process
- free up resources to focus on the right complaints
- ensure technical complaints with no merit do not impact resources, and
- ensure conveyancer undertakings are enforceable.

The consultation document and feedback can be found [here](#).

We are liaising with the Ministry of Justice to progress the proposed amendments through a suitable legislative vehicle, which we hope will be a proposed Justice System Stewardship Amendment Bill.

Climate Change

There is a growing expectation that businesses and organisations such as the Law Society join the efforts to reduce their own carbon emissions and adapt to the inevitable effects climate change.

Following consultation with the profession we are finalising a Climate Change Policy. The draft climate change policy was modelled off the climate change resolution of the Law Society of England and Wales and the Law Council of Australia's Climate Change Policy. It is intended to help ensure the Law Society joins national and international climate change efforts and assist and prepare the profession for climate change implications in their legal practice.

If the policy is adopted, the Law Society will:

- Consider climate change implications when reviewing policy and legislation in its law reform and advocacy role
- Operate in a climate change conscious manner by developing plans and taking action to reduce the organisation's carbon emissions and mitigate the effects of climate change in line with the objectives of the Act
- Urge lawyers and law firms to operate in a climate conscious manner and equip them to consider and advise on the likely legal impacts of climate change (always in a way that is compatible with their professional duties and the administration of justice)

- Engage with others for the greatest impact in addressing climate change, including international professional bodies, and
- Support lawyers to be fully informed on climate change and how they might act to mitigate it by providing information and guidance (including educational tools and resources) aimed at:
 - informing lawyers and law firms on how to operate in a climate conscious manner; and
 - supporting lawyers to incorporate into their daily practice advice on the impacts of climate change.

Law reform and advocacy

In the 2022/23 year, the Law Society examined all bills introduced to Parliament, made submissions on 30, appeared before 14 select committees; and made 43 submissions on government agency discussion documents – 73 submissions in total.

Priorities

In relation to the justice sector, our priorities are in the following areas:

Delays across the system

We continue to engage with the Ministry of Justice, the judiciary and other justice participants to address backlogs, particularly at the District Court level. Many of the delays arose from the closure of courts and restriction of proceedings during COVID-19. We have also been involved in raising concerns about the wellbeing of lawyers, and the need to ensure that initiatives to address the backlog are appropriately considerate of the pressures currently facing lawyers.

System reform

We remain heavily involved in the District Court Criminal Process and Backlog Improvement Programme work being led by Chief District Court Judge Taumaunu. We have also been in contact with the Ministry of Justice and Oranga Tamariki around youth justice reform and appeared before the Justice Select Committee during its inquiry into youth offending, to encourage evidence-based discussion of the causes and responses to youth offending, including the repeal of Schedule 1A of the Oranga Tamariki Act 2017.

Access to Justice

The Law Society is participating in the review of the Duty Lawyer Scheme and is currently working with the Ministry of Justice on the review of court-appointed counsel remuneration. In addition, we are undertaking work to understand the current costs of practice in New Zealand, which will inform our ongoing work around the legal aid regime. We are also focusing on legal aid provider shortages.

Courts and health and safety

Many of the court buildings in New Zealand are no longer fit for purpose. Concerns from the profession range from leaking buildings, air quality, plumbing issues as well as serious concerns around the health and safety of court users. A failure to maintain these buildings creates significant risks and can lead to closures for remediation purposes, for example if there was a significant leak. Proceedings either have to be adjourned, or moved to courts in other centres. These are unsatisfactory outcomes that create further delays and increase pressure on the backlog we already have. It also makes it more difficult for participants and their supporters to attend court. We have already seen this in the closure of the Ohakune Courthouse in late 2022, which resulted in appearances being moved 60km away to Taihape with no feasible public transport options. There has been significant underfunding of court buildings over many years.

In addition to the wellbeing concerns arising from the pressures currently facing lawyers (noted above), we are advocating strongly for improvements to safety in courthouses. Following the serious assault of a lawyer in March 2023, the Law Society canvassed lawyers across the country to collate the concerns they hold about their local courthouses. We have raised these concerns with the Ministry, but often the main roadblock to resolving these issues comes down to the funding available. We continue to work constructively with the Ministry to identify solutions to these issues.

Intervening in cases raising significant justice concerns

The Law Society is intervening in two cases raising significant issues for both the profession and public:

MW v Spiga

An Employment Court case which will consider issues relating to the way in which non-publication orders are dealt with in the employment jurisdiction. Eight other parties have also been granted leave to intervene in this proceeding.

Hawkins v Te Hei

An appeal in the Court of Appeal concerning the award of exemplary damages, and damages for emotional harm and/or bereavement, to an immediate family member of a person who dies because of an intentional tort.

Ministerial engagement

We operate on a no surprises basis and will raise significant issues, risks, or opportunities through the appropriate channels.

Practising fee increases

The Minister of Justice approves the practising fee for lawyers. This is the annual payment all lawyers must make to the Law Society to obtain a practising certificate. Only those with a current practising certificate can describe themselves as a lawyer and practise as one.

The fee can only be used to fund the regulatory activities of the Law Society.¹ Prior to 2021, the practising fee had not increased for a number of years. The Independent Review noted their concern with the historic underfunding of regulatory functions, indicating that despite the recent increases, in real terms the practising fee (\$1,290 in 2022) had declined by 9 per cent since 2010. The practising fee for 2023/2024 is \$1,430. However, the Law Society had sought a higher increase to enable it to continue work underway to modernise and improve our regulatory operations and the stability and security of our core information technology systems, as well as improving compliance and outreach to consumers.

The table below sets out the key steps and timeline for setting the practising fee.

Key steps	Date
Early indication of proposed fee sent to your office	March 2024
Law Society Board and Council approve proposed fee	April 2024
Request for Ministerial approval of fee	April 2024
Usual date for practising certificate renewals to start	May 2024

Annual Report

We will provide you with our Annual Report for 2022/23 before the end of the year for you to table in Parliament. The report covers our regulatory activities, membership services and financial statements.

Meetings

The President, Chief Executive and General Manager Policy, Courts and Government have traditionally met quarterly with the Minister of Justice. We would like to check with you whether you wish to continue that frequency.

Ahead of these meetings we work with your staff and key people in the Ministry of Justice to agree an agenda.

We will liaise with your office to set a date for an initial meeting, and for the remainder of 2024.

¹ <https://www.lawsociety.org.nz/professional-practice/legal-practice/practising-certificates/practising-fee-breakdown/>

Appendix A: Overview of the Law Society

The legal profession plays a vital role in supporting a well-functioning society in Aotearoa New Zealand. We are responsible for maintaining trust and confidence in the provision of legal services and protecting consumers of legal services.

The Law Society has a long history of work and engagement with lawyers, the public, and the New Zealand government. It is a strong and trusted voice for the rule of law, democracy, law reform, and proficient legal practice.

Governance and leadership

The Law Society is governed by a council and a board. The president is the head of the Law Society. The management, administrative functions and day-to-day operations are the responsibility of the Law Society's Chief Executive.

Law Society President

The President heads the Law Society, acting as the main ambassador for the legal profession and representing and speaking for the Law Society at home and overseas. The President is also the chair of our Board and the Council and is elected by the Council. Presidents hold office for a term of one year and are eligible for re-election for two further consecutive years. The role of president is part-time.

The current President, Frazer Barton, was re-elected for a 12-month term in April 2023. Mr Barton is a partner at Anderson Lloyd and is based in Dunedin. Frazer has extensive governance experience outside the Law Society as well, serving on the boards and councils of the University of Otago, Columba College, and Presbyterian Support Otago.



Frazer Barton

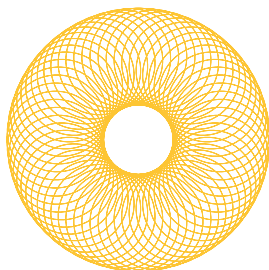
Chief Executive

Katie Rusbatch has been the Law Society's Chief Executive Officer since September 2022. Previously she was the Law Society's General Manager Professional Standards (Regulatory) and oversaw regulatory work, including the Lawyers Complaints Service, Registry, and the Inspectorate.

Before joining the Law Society, Katie was Head of Competition at the Commerce Commission where she led the cartel, merger, and abuse of market power investigation teams. Ms Rusbatch started her legal career in New Zealand before working in the United Kingdom and Singapore.



Katie Rusbatch

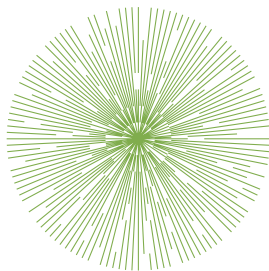


Our purpose

Kaitiaki of an exemplary legal profession in Aotearoa

We have goals and priorities that support our purpose to be the kaitiaki (guardian) of an exemplary legal profession in Aotearoa. We achieve this purpose through both our regulatory role and membership services.

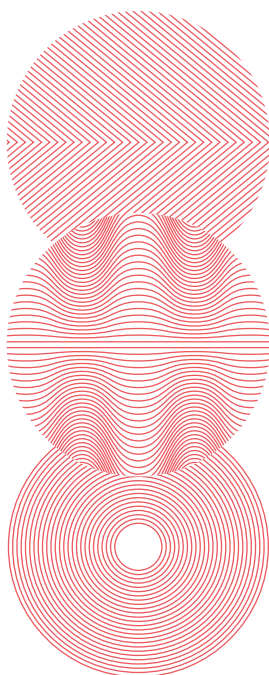
- We maintain professional standards and ensure that lawyers are fit to practise.
- We represent lawyers and enhance their practice through education, health and wellbeing, and connection.
- We engage with lawyers, the public and the government to provide a strong and trusted voice for the rule of law.



Our vision

All people in Aotearoa benefit from a strong, progressive, and trusted legal profession

- A strong profession will meet the needs of consumers and the justice system.
- A progressive profession will reflect Aotearoa's diversity and support access to justice.
- A trusted profession will meet high standards of expertise, ethics, and conduct.



Our values

Kaitiakitanga – tāria te wā

- We support the profession and consumers – responsively and effectively.
- We nurture and embed best practice.
- We think forward and progressively.

Manaakitanga

- We have a spirit of generosity and respect for all.
- We work well together and with all parties.
- We listen well.

Pono

- We do what's right.
- We do what we say we will.
- We own what we do.
- We stand strong when needed.
- We are always trustworthy.

Strategy 2023 – 2026

Our [Strategic Plan for 2023-2026](#) sets out the Law Society’s areas of focus as we strive to fulfil our purpose of serving as the kaitiaki of an exemplary legal profession in Aotearoa. To do this effectively, we must ensure that we modernise and continue to adapt to new challenges. This will require us to lead change where needed, while building on our work over many years to strengthen the profession and society. Our strategy highlights the outcomes and priority actions we’ll be concentrating on as we move towards 2026.

Strategic Goals 2023 – 2026



Strengthening the profession



Protecting and supporting consumers



Promoting and protecting a just and accessible legal system



Ensuring a sustainable, high-performing and values-driven organisation