

LEGAL PROFESSION UNIFORM LAW

Overview

Background

1. The Uniform Law was initially developed under the auspices of the Council of Australian Governments (COAG) during the period 2009 to 2011 and more recently the Commonwealth/State Law Crime and Community Safety Council (formerly SCAG). The aim of the Uniform Law is to establish harmonised regulation of the legal profession across all States and Territories of the Commonwealth.
2. Initially the project focused on a national profession. At this time New South Wales and Victoria are the jurisdictions participating in the uniform law scheme. It is anticipated that other states and territories may join the scheme in the future.
3. The *Legal Profession Uniform Law Application Act 2014 (Vic)* ('the Vic Application Act') was enacted by the Victorian Parliament in April 2014. Section 4 of that Act provides that the Legal Profession Uniform Law (set out in Schedule 1 to the Act) applies as a law of Victoria and so applies as if it were an Act.
4. Minor amendments were made to the Legal Profession Uniform Law by the *Legal Profession Uniform Law Application Amendment Act 2015 (Vic)*.

NSW Legislation

5. The NSW Parliament enacted the *Legal Profession Uniform Law Application Act 2014 (NSW)* ('the NSW Application Act') in May 2014. Section 4 of that Act provides that the Legal Profession Uniform Law (set out in Schedule 1 to the Victorian Application Act) applies as a law of this jurisdiction, may be referred to as the *Legal Profession Uniform Law (NSW)*, and so applies as if it were an Act. [The NSW Application Act sets out the text of the Legal Profession Uniform Law as a note to the Application Act, but it is not a schedule of the Act itself. References to 'this Act' in the Application Act do not include references to the Legal Profession Uniform Law (NSW)].

6. The Second Reading Speech of the then NSW Attorney General sets out in some detail the history of the Uniform Law and refers to various provisions of the Act:
[http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/07eb41c6b04dca11ca257ca600183bba/\\$FILE/2R%20Legal.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/07eb41c6b04dca11ca257ca600183bba/$FILE/2R%20Legal.pdf) .
7. The explanatory notes relating to the NSW Legal Profession Uniform Law Application Bill can be found at:
[http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/07eb41c6b04dca11ca257ca600183bba/\\$FILE/XN%20Legal.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/07eb41c6b04dca11ca257ca600183bba/$FILE/XN%20Legal.pdf) The Bill was passed without amendment.
8. The provisions of the legislation necessary to establish the regulatory bodies and the Uniform Rules, and to ensure the scheme can commence on 1 July, have already commenced. The other provisions of the legislation are expected to commence on 1 July 2015. The *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* will be repealed at that time.
9. The Legal Profession Uniform Law establishes a Legal Services Council and a Commissioner for Uniform Legal Services Regulation, and an Admissions Committee.
10. The Legal Services Council is the overarching body that will set policy and ensure consistent application of the Uniform Law across participating jurisdictions. The Commissioner for Uniform Legal Services Regulation promotes compliance and oversees the operation of the complaints handling mechanism.
11. In the Legal Profession Uniform Law, 'the Council' is a reference to the Legal Services Council and 'the Commissioner' is a reference to the Commissioner for Uniform Legal Services Regulation.
12. The co-regulatory model that currently operates in NSW will continue, although with some changes. The Legal Profession Uniform Law does not confer powers and functions directly on the Bar Council (unlike the *Legal Profession Act 2004*). Regulatory functions and powers are instead conferred on *designated local regulatory authorities*. The designation of local regulatory authorities is set out in the NSW Application Act (and the Victorian Application Act in respect of that State). Designated local regulatory authorities and the role of the Bar Council are discussed below.

Legal Services Council

13. The objects of the Legal Services Council are set out in section 394 of the Legal Profession Uniform Law -
 - to monitor the implementation of the Legal Profession Uniform Law and ensure consistent application across participating jurisdictions;
 - to ensure the Legal Profession Uniform Framework remains efficient, targeted and effective, and promotes the maintenance of professional standards;
 - to ensure the Legal Profession Uniform Framework appropriately accounts for the interest and protection of clients of law practices.
14. The functions of the Council include monitoring and review of the functions of the Commissioner for Uniform Legal Services Regulation, promoting consistency in the exercise of functions of local regulatory authorities (other than complaint functions) and reporting to the Standing Committee (the Attorneys-General of the participating jurisdictions). The Council may also make guidelines and directions relating to admission (with the advice of the Admissions Committee) and issue guidelines or directions about the exercise functions under the Legal Profession Uniform Law or Uniform Rules by local regulatory authorities (other than functions relating to professional discipline).
15. The Council consists of 5 members drawn from participating jurisdictions – 1 appointed on the recommendation of the Law Council of Australia, 1 appointed on the recommendation of the Australian Bar Association, 2 appointed on the recommendation of the Standing Committee (on the basis of expertise in the practice of law and/or protection of consumers and/or regulation of legal profession and/or financial management), 1 appointed as the Chair on the recommendation of the Standing Committee in consultation with the LCA and the ABA.
16. The media release announcing the appointment of the Legal Services Council can be found at -
http://www.justice.nsw.gov.au/Documents/Media%20Releases/2014/MR_14_uniform_legal_services_council_appointedt.pdf
17. The membership of the Legal Services Council at this time is:

- The Hon. Mr Michael Black AC QC, former Chief Justice of the Federal Court – Chair
- Steven Stevens, Victoria
- Bret Walker SC, New South Wales
- Fiona Bennet, Victoria
- Kim Boettcher, New South Wales

18. The functions of the Chief Executive Officer of the Legal Services Council are exercised by the Commissioner.

The Commissioner for Uniform Legal Services Regulation

19. The objectives of the office of Commissioner for Uniform Legal Services Regulation are set out in section 398 of the Legal Profession Uniform Law —

- to promote compliance with requirements of the Legal Profession Uniform Law and the Uniform Rules;
- to ensure the consistent and effective implementation of the provisions of Chapter 5 [complaints] and supporting Uniform Rules, through the development and making of appropriate guidelines;
- to raise awareness of the Legal Profession Uniform Framework and its objectives.

20. The Commissioner’s power to issue directions about the exercise of complaint functions permits directions to be issued to ensure inter-jurisdictional consistency, but directions cannot be issued in relation to the outcome of a particular matter.

21. The Commissioner’s functions in relation to local regulatory authorities include promoting consistency in the exercise of complaint functions and, for that purpose, monitoring and reviewing the exercise of complaint functions.

22. Mr Dale Boucher, has been appointed Commissioner. In the media release announcing his appointment, the New South Wales and Victorian Attorneys General said ‘as Commissioner he will also oversee the implementation of system that will ensure complaints against lawyers are investigated rigorously, fairly and efficiently’ -

http://www.justice.nsw.gov.au/Documents/Media%20Releases/MR14_Uniform_Legal_Services_Commissioner.pdf

Designated Local Regulatory Authorities

23. Section 6 of the Legal Profession Uniform Law defines designated local regulatory authority as:
- a person or body specified or described in a law of this jurisdiction for the purposes of a provision, or part of a provision, of this Law in which the term is used.*
24. Section 11 of the New South Wales Application Act sets out the designated local regulatory authority for the various provisions of the Legal Profession Uniform Law. The Council of the New South Wales Bar Association is the designated local regulatory authority for the purposes of –
- investigating and instigating proceedings in respect of unqualified legal practice (s.14);
 - recommending the removal of the name of a person from the Supreme Court roll (s.23);
 - practising certificates – including grant, renewal, imposition of conditions, variation, suspension and cancellation and show cause events;
 - compliance audits and management system directions (ss. 257 and 258);
 - appointment of a manager for a barrister's law practice (Part 6.4);
 - investigatory powers except those provisions relating to complaint investigations (Chapter 7);
 - exchanging information (ss. 436 and 437);
 - evidentiary certificates (s. 446); and
 - applying for an injunction to restrain contraventions of the Legal Profession Uniform Law and the Uniform Rules (ss. 447 – 449).
25. The Law Society Council and the New South Wales Legal Services Commissioner are also prescribed as designated local regulatory authorities for many of the above provisions.
26. In New South Wales the designated local regulatory authority in respect of complaints (Chapter 5) functions and complaint investigations (Chapter 7) is the NSW Legal Services Commissioner.
27. The Legal Profession Uniform Law requires a local regulatory authority exercising chapter 5 functions to be an independent entity and not a professional association (s.

405 and s. 6 – definition of *independent entity*). However a local regulatory authority may delegate any complaint functions to a professional association.

28. It is intended in New South Wales that chapter 5 functions will be delegated by the NSW Legal Services Commissioner to the Bar Council and the Law Society Council. This will preserve the co-regulatory model that currently exists in this state.
29. The Bar Council, as a local regulatory authority, may delegate its functions under the Legal Profession Uniform Law (s. 406). Delegates are to be prescribed in regulations to be made under the New South Wales Application Act (see also NSW Application Act s. 166).
30. A local regulatory authority may issue guidelines or directions (not inconsistent with guidelines or directions issued by the Legal Services Council or the Commissioner) to its delegates about the exercise of functions under the Legal Profession Uniform Law or Uniform Regulations by the delegates.

Regulations

31. Regulations are to be made under the Legal Profession Uniform Law and the Legal Profession Uniform Law Application Act 2014 (NSW) to commence on 1 July 2015.

Rules

32. The Legal Profession Uniform Law provides for categories of Uniform Rules –
 - General Uniform Rules
 - Legal Practice Rules
 - Legal Profession Conduct Rules
 - Continuing Professional Development Rules
 - Admission Rules
33. The General Uniform Rules contain the mechanical provisions of the type found in the current Legal Profession Regulation.
34. The contents of the other categories of rules are set out in Part 9.2 of the uniform law. Separate conduct rules will be made for barristers and solicitors and separate CPD

Rules will be made for barristers and solicitors. Legal Practice Rules for solicitors will be made, but this point in time practice rules for barristers are not proposed.

35. The Legal Profession Uniform Law prescribes the process for making the various uniform rules. The ABA develops the conduct and CPD rules for barristers. All of the uniform rules are made by the Legal Services Council.
36. The various uniform rules are currently being finalised.
37. The uniform rules will commence at the same time as the remaining provisions of the Legal Profession Uniform Law.

Interpretation

38. Section 7 of the Legal Profession Uniform Law provides that the *Interpretation of Legislation Act 1984* of Victoria applies to the interpretation of the Legal Profession Uniform Law, the Uniform Regulations and the Uniform Rules in the same way as it applies to the interpretation of legislation and statutory instruments of Victoria.
39. The *Interpretation Act 1987 (NSW)* does not apply to the Legal Profession Uniform Law (NSW) or to instruments made under that Law. The NSW Interpretation Act does however apply to the Legal Profession Uniform Law Application Act 2014 (NSW) and regulations made under that Act.

8.05.2015 j