

THE BAR COUNCIL as a DESIGNATED LOCAL REGULATORY AUTHORITY

The *Legal Profession Uniform Law (NSW)* 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*.

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.

The designation of local regulatory authorities is set out in the *Legal Profession Uniform Law Application Act 2015* (the NSW Application Act), in section 11.

The Council of the New South Wales Bar Association is the designated local regulatory authority for purposes including –

- 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).

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.

Delegation of functions under the Legal Profession Uniform Law

The Bar Council, as a local regulatory authority, may delegate its functions under the *Legal Profession Uniform Law* (s. 406).

Each designated local regulatory authority is required to maintain register of delegations under the *Legal Profession Law* (s. 413).

Register of Delegations made by the Bar Council under the Legal Profession Uniform Law

The current delegations made, pursuant to section 30 of the *Legal Profession Uniform Law Application Act 2014* (NSW) (**Application Act**), by the Council of the New South Wales Bar Association as delegated regulatory authority are set out below:

- A.** To each of the Professional Conduct Committees as constituted from time to time:
- i. all powers and functions contained in section 14, Part 2.1 of the *Legal Profession Uniform Law (NSW)* (**Uniform Law**) (unqualified practice);
 - ii. all powers and functions contained in Part 3.3 Division 2 of the *Uniform Law* (admission);
 - iii. all of its powers contained in Chapter 3 Part 3.5 Divisions 4 and 5 of the *Uniform Law* in relation to **show cause events** (as defined in section 85 of the *Uniform Law* save and except the power to refuse to grant or renew, vary (amend), suspend, cancel or impose conditions on a local practising certificate;
 - iv. all powers and functions contained in Part 3.9 of the *Uniform Law* (disqualifications).
- B.** To the Executive Director, In House Counsel, the Director, Professional Conduct, the Manager, Professional Conduct and each of the Deputy Directors, Professional Conduct, the power to issue notices which may be, or are required to be, issued under the *Uniform Law* and the *Application Act*.
- C.** To the Bar Council Executive, the authority to require a barrister and/or an applicant for the grant of an Australian practising certificate as a barrister to be medically examined pursuant to section 95(1)(b) of the *Uniform Law*.
- The Executive is to use this authority only where it was not reasonably practicable for the Council to make such a requirement, and on the basis that any such requirement made by the Executive be put before the next meeting of the Council.
- D.** To the Executive Director:
- i. authority to issue practising certificates on behalf of the Bar Council;
 - ii. the power under rule 12(3) of the *Legal Profession Uniform General Rules 2015* (**Uniform Rules**) to require an applicant for the grant or renewal of a local practising certificate to provide further relevant information;
 - iii. the power under section 45(1) of the *Uniform Law* to refuse to renew a local practising certificate where the applicant has not obtained professional indemnity insurance in accordance with the *Uniform Law* and *Uniform Rules* on or before 30 June in the relevant renewal period;
 - iv. the power under section 45 of the *Uniform Law* and rule 13(3) of the *Uniform Rules* to refuse to grant a local practising certificate if the applicant has not successfully completed the Bar Exams;
 - v. the function of specifying classes or descriptions of barristers for the purposes of section 45(2) of the *Application Act* and clause 23 of the *Legal Profession Uniform Law Application Regulation 2015* (**Application Regulation**);
 - vi. all powers and functions contained in section 74(1) of the *Uniform Law*;

- vii. the powers and functions contained in section 74(2) of the *Uniform Law* to vary, suspend or cancel a certificate at the request of the holder;
- viii. the power under section 89 of the *Uniform Law* to determine automatic show cause events disclosed by applicants for a practising certificate by deciding that the applicant is a fit and proper person to hold a local practising certificate, but only in respect of an automatic show cause event:
 - a. being a conviction for common assault, provided that a custodial sentence was not imposed in respect of the conviction; or
 - b. falling within paragraph (a) of the definition of automatic show cause event in section 86 of the *Uniform Law*, provided that the Australian Taxation Office is not the petitioning creditor or a substantial creditor;
 - c. which has been disclosed to the relevant admission authority and any relevant body responsible for issuing practising certificates;
- ix. the powers granted to and the functions which the Council may exercise under Chapter 3 Part 3.5 Division 4 Subdivision 2 of the *Uniform Law* with respect to disclosures:
 - a. made under section 51 of the *Uniform Law* by holders of local practising certificates; or
 - b. made by applicants for renewal of local practising certificates
 in respect of convictions for any offence, other than a serious offence or a tax offence, save and except for the powers of and functions of making a determination under the *Uniform Law* to refuse to grant or renew, to vary (amend), suspend, cancel or impose conditions on a local practising certificate;
- x. the authority to approve, subject to consultation with members of the Bar Council Executive and, where appropriate PCC chairs, financial and medical experts nominated by barristers for the purposes of financial management and/or medical conditions being attached to their local practising certificates;
- xi. in respect of compliance with conditions attached to local practising certificates, the authority to make determinations as to:
 - a. whether time for compliance with a condition is extended;
 - b. whether a barrister has satisfactorily complied with a condition; and
 - c. whether the nature and extent of any non-compliance with a condition is such that there is no requirement for it to be brought to the attention of the Bar Council;
- xii. in exercising the delegations in paragraphs ix. to xii. the Executive Director consider whether before making a determination whether the matter should be discussed with a member of the Bar Council Executive, Professional Conduct Committee chair or relevant financial and medical experts;
- xiii. the powers and functions contained in section 277(1)(j) of the *Legal Profession Uniform Law (NSW)* only in circumstances where the respondent has died;
- xiv. the power to issue a certificate under section 446 of the *Uniform Law*.

[Note: in New South Wales the designated local regulatory authority in respect of complaints functions (Chapter 5 of the *Legal Profession Uniform Law*) and complaint investigations (Chapter 7) is the NSW Legal Services Commissioner. The register of delegations made by the Commissioner is available on the OLSC website.]