



Legal Profession Uniform Law

Interstate practitioners – practising entitlements

The Legal Profession Uniform Law will commence in New South Wales and Victoria on 1 July 2015, creating a common legal services market in those States, under a framework based on a Legal Profession Uniform Law and Uniform Rules. The new regulatory framework preserves the entitlements of practitioners from other Australian states and territories (“interstate practitioners”) to practise in New South Wales and Victoria.

This fact sheet provides an overview of the arrangements that will apply to interstate practitioners when practising in New South Wales and Victoria from 1 July 2015, and discusses other aspects of the Uniform Law framework of relevance to interstate practitioners.

WHICH LEGISLATION APPLIES?

The Legal Profession Uniform Law framework is based on a Legal Profession Uniform Law (“the Uniform Law”) enacted by Victoria in March 2014 as Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (the Act). Section 4 of the Act applies the Uniform Law as a law of New South Wales, with the title Legal Profession Uniform Law (NSW).

The operational aspects of the Uniform Law are contained in a package of Uniform Rules that were made by the Legal Services Council and published on the New South Wales Government legislation website on 27 May 2015. The package consists of: Uniform General Rules; Uniform Admission Rules; Uniform Professional Conduct Rules, Continuing Professional Development Rules and Legal Practice Rules for Solicitors; and Uniform Professional Conduct and Continuing Professional Development Rules for Barristers.

There are a number of provisions of the Uniform Law and Uniform Rules that apply to any legal practitioner practising in New South Wales and Victoria, including practitioners from other jurisdictions. Schedule 3 to the Uniform Law and Chapter 10 of the Uniform General Rules also contain provisions specifically relating to the interoperability and modified application of the Uniform Law in relation to the legal profession laws and legal practitioners from other jurisdictions.

Legal practitioners intending to practise in New South Wales and Victoria from 1 July 2015 will, therefore, need to familiarise themselves with the Uniform Law and Uniform Rules and administrative arrangements.



TERMINOLOGY

There are some terminology changes that interstate legal practitioners need to be aware of. The key terms are *summarised* (but not reproduced verbatim) below.

participating jurisdiction - s6(1)

A reference to a participating jurisdiction is a reference to NSW and Victoria. Any other state or territory that joins the Uniform Law Framework will also become a participating jurisdiction.

non-participating jurisdiction - s6(1)

A reference to a non-participating jurisdiction is a reference to any state or territory that is not a participating jurisdiction.

admission or admission to the Australian legal profession - s6(1)

In the Uniform Law these terms apply to a person admitted as a lawyer in a participating jurisdiction and to a person admitted in non-participating jurisdictions.

Australian lawyer – s6(1)

An Australian lawyer is a person admitted to the Australian legal profession in any Australian jurisdiction.

Australian legal practitioner

An Australian legal practitioner is an Australian lawyer who holds a current Australian practising certificate.

Australian practising certificate – s6(1)

An Australian practising certificate is a practising certificate issued under the Uniform Law, as well as a practising certificate issued under the law of a non-participating jurisdiction. The Uniform Law itself does not use the expressions local practising certificate and interstate practising certificate.

Australian registration certificate – s6(1)

This is a registration certificate granted under the Uniform Law, or a registration certificate granted to a foreign lawyer, or a document acknowledging the registration of a foreign lawyer, under a law of a non-participating jurisdiction entitling the lawyer to practise foreign law.

commercial or government client – s6(1), s170

This definition replaces “sophisticated client” and is relevant to the application of provisions of the Uniform Law relating to legal costs and consumer complaints.

designated local regulatory authority – s6(1)

This is a general descriptor for the person or body exercising a power or function under the Uniform Law or Uniform Rules.



engage in legal practice – s6(1)

This term includes to practise law or provide legal services, but does not include engaging in policy work (which includes developing and commenting on legal policy).

non-participant practising certificate - Sch. 3, Item 1

This term refers to a practising certificate granted to an Australian lawyer under the law of a non-participating jurisdiction and authorising the lawyer to engage in legal practice in that non-participating jurisdiction.

non-participant legal practitioner – Sch. 3, Item 1

This term refers to a person who holds a current non-participant practising certificate and who does not hold a current Australian practising certificate from a participating jurisdiction.

unincorporated legal practice – s6(1)

An unincorporated legal practice is an alternative business structure that is a partnership or unincorporated body or group approved to provide legal services, but does not include a law firm, a community legal service or an incorporated legal practice. Multi-disciplinary partnerships are a form of unincorporated legal practice.

Practising certificate categories of practice and trust money – section 47

The Uniform Law does not prescribe different classes of practising certificates but instead differentiates practice entitlements in terms of the conditions that are attached to an Australian practising certificate. Thus, for example, what may currently be referred to as a Principal's Practising Certificate is referred to under the Uniform Law as an Australian practising certificate to which is attached a condition that the holder is authorised to engage in legal practice as a principal of a law practice.

ENGAGING IN LEGAL PRACTICE

General

Unless specifically excluded or modified, the provisions of the Uniform Law and Uniform Rules will apply to non-participant legal practitioners as they do to legal practitioners in participating jurisdictions.

Right to engage in legal practice – Section 10, Schedule 3, Items 3(1) and (2)

In general terms, a legal practitioner holding a practicing certificate issued in a non-participating jurisdiction (non-participant legal practitioner) has a right to engage in legal practice in a participating jurisdiction. The scope of that right is, to the greatest practicable extent, the same as the legal practitioner's right to engage in legal practice in his or her home jurisdiction.



Practising certificate conditions – Sch. 3, Items 3(2) and (3)

A non-participant legal practitioner must, to the greatest extent practicable, abide with any conditions imposed on his or her practising certificate (or admission) when engaging in legal practice in a participating jurisdiction.

The entitlement to engage in legal practice is also subject to any requirements of the Uniform Law or the Uniform Rules that apply to a non-participant legal practitioner, as well as any conditions that may be imposed by the designated local regulatory authority of the participating jurisdiction. If there is an inconsistency between a condition imposed on the non-participant practising certificate and a condition imposed pursuant to the Uniform Law, the more onerous condition prevails to the extent of the inconsistency – Sch. 3, Item 3(3).

A condition that a non-participant legal practitioner only engage in supervised legal practice must always be observed – Sch 3, Item 2(1) and section 49.

Exclusions and modifications – Sch. 3, Item 2

Certain parts of the Uniform Law do not apply to a non-participant practising certificate and to a non-participant legal practitioner, or apply in a modified way:

- part 3.3 of the Uniform Law, which deals with practising certificates, **conditions on practising certificates** and certain **notification requirements**, does not apply to a non-participant legal practitioner, apart from section 49 which deals with the statutory condition relating to supervised legal practice.
- part 3.5 of the Uniform Law, which deals with the **variation, suspension and cancellation** of, and refusal to renew, practising and registration certificates, as well as show cause events.
- part 3.6 of the Uniform Law, which deals with **appeal and review provisions** about practising and registration certificates.
- part 9.3 of the Uniform Law, which deals with Legal Profession Registers.

Trust money and trust accounts – Part 4.2

This part introduces changed time periods and procedures for withdrawing money from a trust for legal costs, and replaces the definition of “sophisticated client” with “commercial or government client”.

Legal costs and costs disclosure – Part 4.3

This part introduces a requirement that a practitioner take all reasonable steps to be satisfied that the client has understood and given consent to the proposed course of action and proposed costs. Also, disclosure is not obligatory when legal



costs are estimated to be less than \$750, and a standard disclosure form has been introduced where the estimated legal costs are less than \$3000.

Dispute resolution – Chapter 5

This part provides a new dispute resolution process for complaints involving a consumer matter, together with an expanded range of remedies available to the regulatory authority where the dispute cannot be resolved informally or through mediation. The regulatory authority may make a formal determination about legal costs as an alternative to a costs assessment where, in general terms, the total amount of the bill is less than \$100,000 or the total amount of the bill is more than \$100,000 but the amount of costs in dispute is less than \$10,000. Also, the regulatory authority may make a compensation order of up to \$25,000 when determining a dispute.

CHANGING JURISDICTION

A non-participant legal practitioner who engages solely or principally in legal practice in a participating jurisdiction during a financial year and reasonably expects to do so in the following financial year cannot continue to rely on his or her non-participant practising certificate for that following year, and must apply for a practising certificate in the relevant participating jurisdiction in respect of the following financial year – Sch. 3, Item 5. This requirement does not apply to a non-participant legal practitioner if the practitioner's intention is to engage in legal practice in the participating jurisdiction in the following year under a temporary arrangement, but this exemption may only be for a maximum of 12 months – Sch. 3, Item 5(2) and (3) and Uniform Rule 113.

PROFESSIONAL INDEMNITY INSURANCE

The basic rule in the Uniform Law is that an Australian legal practitioner is prohibited from engaging in legal practice in a participating jurisdiction unless the legal practitioner holds or is covered by an approved insurance policy for that jurisdiction, and that insurance policy meets the minimum standards set out in the Uniform Rules – sections 210 and 211.

Two of the minimum standards set out in the Uniform Rules for solicitor law practices are that:

- the policy must cover any civil liability, including professional negligence, incurred in connection with the legal services provided by the law practice; and
- the policy must provide a minimum cover of \$2 million per claim (inclusive of defence costs) - Rules 78(2) and (4).



For a barrister, the policy must indemnify against civil liability incurred while engaging in legal practice as a barrister within Australia and provide a minimum cover of \$1.5 million per claim (inclusive of defence costs) up to a minimum aggregate limit of \$4.5 million – Rules 79(2) and (4).

A non-participant legal practitioner will not be required to take out an additional professional indemnity insurance policy to cover legal practice in a participating jurisdiction if his or her current professional indemnity insurance covers legal practice in a participating jurisdiction and the policy is a policy approved by the Legal Services Council – section 215(1) and 210(2).

For **2015-16**, the Legal Services Council has decided that a professional indemnity insurance policy held by a non-participant legal practitioner in his or her home jurisdiction will be **an approved policy** if it provides cover for legal practice in New South Wales and Victoria and the minimum amount of cover is \$1.5 million per claim (inclusive of defence costs).

FURTHER INFORMATION

Further information about the Uniform Law framework can be found at:

Legal Services Council:	http://www.legalservicescouncil.org.au/
Law Society of NSW:	https://www.lawsociety.com.au/
Law Institute of Victoria:	http://www.liv.asn.au/
NSW Bar Association:	http://www.nswbar.asn.au/for-members/uniform-law
The Victorian Bar:	http://www.vicbar.com.au/

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