

Application of Legal Profession Uniform Law to Queensland legal practitioners from 1 July 2015

The Legal Profession Uniform Law (Uniform Law) applies to the provision of legal services in NSW and Victoria from 1 July 2015. The Uniform Law framework is made up of the Legal Professional Uniform Law, the Uniform General Rules, Uniform CPD, Legal Practice and Professional Conduct Rules for Solicitors; Uniform CPD, Professional Conduct Rules for Barristers and Uniform Admission Rules.

<http://www.legalservicescouncil.org.au/Pages/information-resources/legislation-and-rules.aspx>

<http://www.lawcouncil.asn.au/lawcouncil/index.php/current-issues/legal-uniform-professional-law-consultation>

The aim of the Uniform Law is to create a common framework for the provision of legal services throughout New South Wales and Victoria (participating jurisdictions). The Uniform Law preserves the right of practitioners from non-participating jurisdictions (including Queensland) to practice in NSW and Victoria. The Law Council of Australia has published a fact sheet about the practising entitlements of non-participant legal practitioners. This fact sheet also contains a summary of terminology.

http://www.lawcouncil.asn.au/lawcouncil/images/Interstate_practitioners_Uniform_Law_fact_sheet.pdf

Schedule 3 of the Uniform Law and Chapter 10 of the Uniform General Rules contain provisions relating to the application of the Uniform law in relation to non-participant legal practitioners.

For holders of Queensland practising certificates practising in NSW and Victoria, the key points to note are:

Right to engage in legal practice	A legal practitioner holding a practising certificate issued in a non-participating jurisdiction has the right to engage in legal practice in a participating jurisdiction. This right is subject to any requirements of the Uniform Law or Uniform Rules that apply to non-participant practitioners and any conditions imposed on the practitioner by the issuing regulatory authority. To the extent of any inconsistency between a condition imposed by the Uniform Law and the issuing regulatory authority, the more onerous condition will prevail. (Schedule 3, Item 3)
Trust money and trust accounts (Part 4.2)	Part 4.2 changes time periods and procedure for withdrawing money from trust for legal costs. The definition of "sophisticated client" has been changed to "commercial or government client".
Receipt of non-trust money	If a law practice receives money that is not trust money (other than money for legal costs), it must give the person who provided the money written notice that it is not trust money, is not subject to the protection of the Uniform Law or Uniform Rules and a that claim cannot be made against the fidelity fund.
Legal cost and costs disclosure (Part 4.3)	Legal costs must be fair, reasonable and proportionate, having regard to matters such as the complexity and urgency of the matter, quality of the work, instructions given and the experience of the lawyers involved. This differs from the <i>Legal Profession Act 2007</i> (LPA). Law practices must avoid unnecessary delay that results in increased costs.

	<p>Law practices must provide written disclosure to clients about estimated legal costs as well as substantial changes to previous disclosures, and take reasonable steps to ensure that the client has understood and given consent to the proposed course of action and proposed costs.</p> <p>Law practices can provide a uniform standard disclosure form to clients if legal costs are not likely to exceed a \$3000 (excluding GST and disbursements). The uniform standard disclosure form is prescribed in the Uniform General Rules.</p> <p>Disclosure is not mandatory where legal costs are estimated to be less than \$750.</p> <p>There are specific requirements and restrictions regarding the content of costs agreements, including contingency and uplift fees.</p> <p>If the client is a commercial or government client (see definitions in Uniform Law), there are serious consequences for not complying with the new costs provisions, including that costs agreement may be void or that the client is not required to pay the legal costs. Non-compliance may also amount to unsatisfactory professional conduct or professional misconduct.</p> <p>Practitioners can issue a lump sum bill or an itemised bill. Bills must include a statement which sets out the client's options in the event of a dispute regarding legal costs, and relevant time limits.</p> <p>A table summarising costs disclosure has been published by the Legal Services Council http://www.legalservicescouncil.org.au/Documents/information-res/Cost disclosure for the Legal Practitioner Info Sheet.pdf</p> <p>Also see the summary on pages 18 – 23 of the Law Institute of Victoria publication entitled "Legal Profession Uniform Law Guide" http://www.liv.asn.au/For-Lawyers/Regulation/Uniform-Law/Uniform-Law-Guidebook/Legal-Profession-Uniform-Law-Guidebook</p>
Dispute resolution (Chapter 5)	<p>A law practice can commence cost recovery action 30 days after the client has been given the bill (shorter than LPA).</p> <p>Interest can be charge on unpaid legal costs if the costs remain unpaid 30 days or more after the client has been given the bill. To apply interest, the bill must be given no later than six months after completion of the matter.</p> <p>The Legal Services Commission (LSC) has expended powers to deal with consumer complaints. It can make a determination about a costs dispute if the total bill is less than \$100,000 (or more than \$100,000 if the disputed part is less than \$10,000). It may also make a compensation order of up to \$25,000 when determining a dispute.</p>
Professional discipline	The LSC has expanded powers and the procedures differ from the LPA.
Government lawyers	Most Government lawyers are required to hold practising certificates under the Uniform Law. An exemption exists in relation to a legal practitioner practising under the authority of a law of the Commonwealth, a State or a Territory.

Liability of Principals	The principal of a law practice is responsible for ensuring that the law practice and its practitioners comply with their obligations under the Uniform Law and Uniform Rules. A principal of a law practice is responsible for the legal costs charged.
Professional indemnity insurance	<p>An Australian legal practitioner is prohibited from engaging in legal practice in a participating jurisdiction unless he or she is covered by an approved insurance policy for that jurisdiction which meets the minimum standard.</p> <p>The minimum standards are specified in the Uniform Rules, but the notable difference is that the policy must provide a minimum cover of \$2 million per claim (compared to the \$1.5 million cover required under the LPA).</p> <p>For the 2015-2016 financial year, the Legal Services Council has decided that a policy of professional indemnity insurance held by a non-participating 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). For holders of Queensland practising certificates, their policies of Professional Indemnity Insurance with Lexon Insurance Pte Ltd are deemed to be approved policies and are sufficient for the 2015-2016 financial year.</p>
Non-compliance	Non-compliance may result in civil penalties or disciplinary action, including a finding of unsatisfactory professional conduct or professional misconduct.