



Special Feature: Legal Profession Uniform Law

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— OF WESTERN AUSTRALIA —
The voice of the legal profession in Western Australia



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Important changes for the legal profession in WA and how the Law Society can help you

Western Australia will officially join the Legal Profession Uniform Law scheme on 1 July 2022.

The Legal Profession Uniform Law was introduced to create a simpler and more efficient system for both law firms and their clients by cutting red tape, better protecting consumers and ensuring consistency across our borders. The scheme came into operation in Victoria and New South Wales in July 2015.

To assist the West Australian legal profession in preparing for the changes brought about by the Uniform Law, the Law Society has developed resources and is providing [CPD Seminars](#) on topical Uniform Law matters such as Costs Disclosure, Complaints and Conduct Rules. Visit the CPD Seminars section of the Law Society website for more information. For additional resources and updates, please visit our [Legal Profession Uniform Law online hub](#).

Furthermore, the Law Society and Law Mutual are making available at no cost

new Client Engagement Agreements and Guidelines for both litigated and transactional matters for the purposes of:

- implementing best practice risk management; and
- meeting the costs disclosure obligations in the Legal Profession Uniform Law.

In this special feature on Uniform Law, a comprehensive overview of Uniform Law is provided by the Legal Services Council (LSC), which monitors the overall operation of the Legal Profession Uniform Framework and is responsible for making Uniform Rules. The Law Society and the Legal Practice Board of Western Australia (LPBWA) will continue to be consulted by the LSC on matters relating to the Uniform Law and Uniform Rules, and is presenting an opportunity for the profession to meet the Legal Services Council in a CPD session on 6 July 2022.

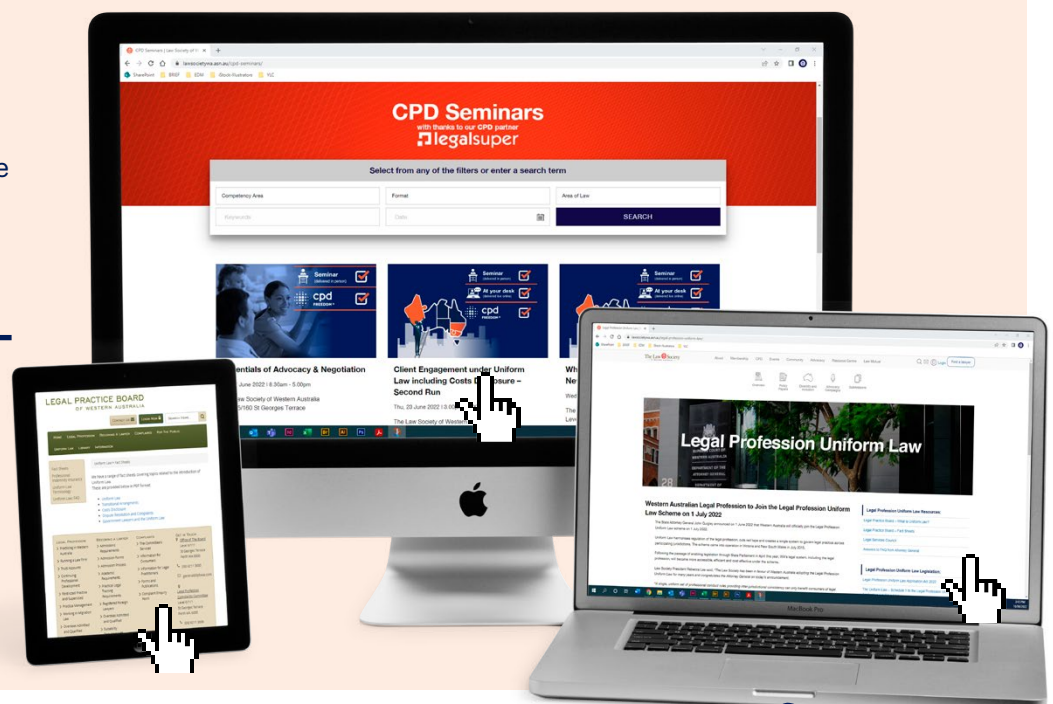
The Attorney General of Western Australia, the Hon John Quigley MLA, provides an important update to the legal

profession, stating that Uniform Law is “a significant milestone in creating a simpler and more efficient system of regulating legal practice in this jurisdiction”.

Roselina Kruize discusses the key differences between the Uniform Law and the *Legal Profession Act 2008* (WA) – what you need to know. This article provides practical advice and insights on practising certificates, trust accounts, legal costs (cost disclosures and billing) and business management and insurance. A key take away is that it is important to understand what changes have been implemented to be able to comply with the new Uniform Law scheme. Some changes attract penalties or may constitute unsatisfactory profession conduct if not complied with.

The LPBWA has a range of fact sheets covering topics related to the introduction of Uniform Law, such as transitional arrangements; costs disclosures; dispute resolution and complaints. The fact sheets are available on the LPBWA's website here: <https://www.lpbwa.org.au/Uniform-Law/Fact-Sheets>

The Law Society and the Legal Practice Board have provided a range of online resources to assist with the transition ahead - click on each screen to visit each resource in turn.





Welcome to the Uniform Law Scheme



by Chelly Milliken,
Senior Principal Policy Officer
Legal Services Council

On 5 April 2022, the *Legal Profession Uniform Law Application Bill 2021* passed the Western Australian Parliament.

The Uniform Law scheme will become operational in Western Australia on 1 July 2022.

This event is a tremendous milestone, in terms of the expansion of the Uniform Law scheme, and a significant step towards the goal of Australia having a national legal profession under a national regulatory regime.

This article provides an overview of the Uniform Law scheme for the information

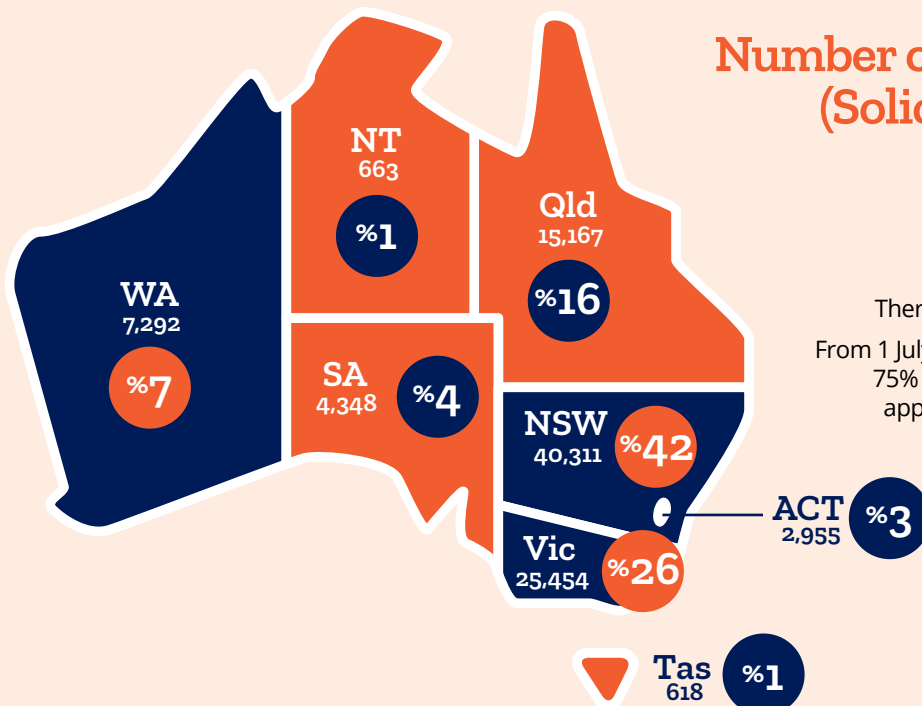
of legal practitioners in Western Australia. Specific details about the operation of the Uniform Law and Rules, in terms of their regulatory impact on legal practitioners in Western Australia, has been and will continue to be provided by the Law Society of Western Australia, the Western Australian Bar Association and the Legal Practice Board of Western Australia.

Overview of the Uniform Law Scheme

In 2014, the Uniform Law was enacted in Victoria, adopted as an applied law in NSW in May 2014, and commenced on 1 July 2015.

The Legal Services Council (Council) oversees the Uniform Law which regulates the legal profession in Victoria and NSW and soon, WA. The Uniform Law scheme currently covers 68% of the Australian legal profession and soon, will cover over 75% of the profession nationally.

The Uniform Law creates two new inter-jurisdictional bodies to oversee the regulatory regime: the Standing Committee of Attorneys General of the participating jurisdictions, and the Council. A diagram showing each of the bodies under the Uniform Law scheme, including the relevant Western Australian bodies, is shown on the opposite page.



Number of Legal Practitioners (Solicitors and Barristers) Australia wide

As at 30 June 2021

Percentage values have been rounded

There are 96,808 legal practitioners in Australia. From 1 July 2022, the Uniform Law scheme will cover 75% of legal practitioners in Australia, as it then applies in NSW, Victoria and Western Australia.

Figures are based on practising certificates issued by State and Territory authorities as at 30 June 2021

Standing Committee of Attorneys General (Standing Committee)

The Standing Committee appoints the Council, approves changes to the law and rules that are recommended by the Council and has a general supervisory role over the Council. Through the involvement of the Attorneys General, the scheme ensures that the interests of each jurisdiction are taken into account.



The Honourable
Jaclyn Symes MP

Victoria



The Honourable
Mark Speakman SC MP

New South Wales



The Honourable
John Quigley MLA

Western Australia

Role of Bodies Under the Legal Profession Uniform Law

Standing Committee – NSW, Victorian and Western Australian Attorneys General

Supervises the Legal Services Council, Commissioner for Uniform Legal Services Regulation and local regulatory authorities to ensure they fulfil their duties consistently with the Uniform Law's objectives.

Approves Uniform Rules.

Admissions Committee

Develops rules about admission to the legal profession.

Gives advice to the Legal Services Council about admissions related matters.

Legal Services Council

Monitors the Uniform Law's implementation and operation.

Develops General Rules and makes all Uniform Rules.

Issues guidelines and directions to local regulatory authorities about the exercise of their functions.

Commissioner for Uniform Legal Services Regulation

Promotes compliance with the Uniform Law and Rules.

Ensures the consistent and effective implementation of Chapter 5 of the Uniform Law.

Raises awareness of the Uniform Law framework and its objectives.

Issues guidelines and directions to local regulatory authorities about Chapter 5 functions.

Local Regulatory Authorities for Functions and Regulation of The Legal Profession

Admission to the Legal Profession

Legal Profession Admission Board (NSW)

Victorian Legal Admissions Board

Legal Practice Board WA

Australian Practising and Registration Certificates

Bar Council (NSW)

Law Society Council (NSW)

Victorian Legal Services Board

Legal Practice Board WA

Trust Money and Trust Accounting

Bar Council (NSW)

Law Society Council (NSW)

Victorian Legal Services Board

Legal Practice Board WA

Compliance Audits and Management System Directions

NSW Legal Services Commissioner

Law Society and Bar Councils (NSW)

Victorian Legal Services Board

Legal Practice Board WA

Chapter 5 Consumer Complaints, Dispute Resolution and Professional Discipline

NSW Legal Services Commissioner

Law Society and Bar Councils (NSW)

Victorian Legal Services Commissioner

Legal Services and Complaints Committee (WA)

Courts and Tribunals

Supreme Court

Appeal or review of some DLRA decisions, disqualification of entities from providing legal services, admission to and removal from the roll of Australian lawyers, appointment of receivers, injunctive relief.

Local Court of NSW

Magistrates Court of Victoria

Magistrates Court of Western Australia

Prosecution of summary offences.

Civil and Administrative Tribunals

Chapter 5 consumer complaints, dispute resolution and professional discipline.



UNIFORM LAW SCHEME

Intergovernmental Agreement

On 5 December 2013, the states of NSW and Victoria signed the Bilateral Agreement on the Legal Profession Uniform Framework, pursuant to which NSW and Victoria enacted the Uniform Law in their jurisdictions.

From February 2019, that agreement was replaced by the Intergovernmental Agreement on the Legal Profession

Uniform Framework (Intergovernmental Agreement), made between the states of NSW, Victoria and Western Australia.

The Intergovernmental Agreement sets out the principles and processes for cooperation between NSW, Victoria and Western Australia to expand the Uniform Law framework and addresses the role of the Standing Committee, implementation of the Uniform Law framework, maintenance of national consistency and amendment of the framework,

appointments to the Council and funding arrangements.

Since 2019, Western Australia has been regarded as part of the Uniform Law scheme and has been involved in all consultations undertaken by the Legal Services Council and its Admissions Committee.

Legal Services Council

The Council oversees the operation of the Uniform Law scheme. It formally makes the Uniform Rules and can make recommendations for changes to the Uniform Law, to the Standing Committee.

From 14 October 2014 to 13 October 2020, the Chair of the Council was the Hon Michael Black AC QC FAAL.

The inaugural Council's members included Ms Fiona Bennett, Ms Kim Boettcher, Mr Steve Stevens and Mr Bret Walker SC.

The current Council was appointed in October 2020. The members of the Council are:

- One member appointed as the Chair by the Standing Committee – Mr Alan Cameron AO
- Two members recommended by the Australian Bar Association and Law Council of Australia respectively – Mr Noel Hutley SC and Ms Juliana Warner

- Two members appointed by the Standing Committee on the basis of their expertise in legal practice, consumer protection, legal profession regulation or financial management – Mr Murray Baird and Ms Elizabeth Harris.

Hon Michael Black AC QC FAAL
Former Chair



Chair from 2014 to 2020. Previously, the Hon Michael Black AC QC FAAL was the Chief Justice of the Federal Court of Australia for 19 years, from 1991 to 2010. He commenced practice at the Victorian Bar in 1964 and was appointed Queen's Counsel in 1980. During his outstanding career, he has held various academic, committee and international appointments.

Mr Alan Cameron AO
Chair



Chair from 2020 to date. Previously, Alan Cameron AO occupied a range of senior roles in both the private and public sectors, including as Commonwealth and Defence Force Ombudsman, Chairman of the Australian Securities and Investments Commission from 1993 to 2000, and Chairperson of the NSW Law Reform Commission from 2015 to 2022.

Mr Murray Baird
Member



Murray Baird was the inaugural Assistant Commissioner and General Counsel at the Australian Charities and Not-for-profits Commission (ACNC) from its inception in 2012 until 2019, following a career in private practice as a Partner and Chair of Moores Legal in Melbourne. He is a member of the Law Institute of Victoria's and Law Council of Australia's Charities and Not for Profit Committees.

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mentorships

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advocacy & voice

health & wellbeing

industry news and updates

social & professional networks

improving professional and ethical standards

SOURCE STRENGTH FUTURE

your essential membership

Ms Liz Harris
Member



Liz Harris is a recognised expert in costs law and has been a member of the Victorian Supreme Court Costs Committee, VCAT Legal Practice List and Chair of the LIV Advisory Board on Costs Law and its Cost Lawyers section. Liz consults to government and corporate legal departments and appears as an expert witness in litigation.

Mr Noel Hutley sc
Member



Noel Hutley is a NSW barrister who was appointed as Senior Counsel in 1996 and as Queen's Counsel in Western Australia in 1997. Noel has previously been President of the NSW Bar Association and President of the Australian Bar Association.

Ms Juliana Warner
Member



Juliana Warner is a Partner of the Sydney office of Herbert Smith Freehills and was the President of the Law Society of NSW in 2021. Juliana is also a Director of the Law Council of Australia, a Trustee of the Public Purpose Fund of NSW and a Director of Law Firms Australia.

Western Australia Observers

Since Western Australia indicated its interest in joining the Uniform Law scheme, the Council has had the benefit of an observer from Western Australia. In 2017, the first observer was the Hon Chief Justice of Western Australia, Peter Quinlan QC, when he was the Solicitor General of Western Australia and the current observer is Mr Joshua Thomson, the current Solicitor General.

These Western Australia observers have assisted the Council to understand Western Australia's perspectives and their involvement has enabled Western Australia to gain a greater understanding of the operations of the Council and the Uniform Law scheme. The contribution that these observers have made to the Uniform Law has been significant.

When Western Australia joins the scheme, a permanent appointment to the Council from Western Australia will be made, so that Western Australia will have a direct voice in the scheme. The Law Council of Australia will also nominate an additional Council member.

The Hon Peter Quinlan sc
Chief Justice of Western Australia



Mr Joshua Thomson sc
Solicitor General of Western Australia





Legal Services Council Admissions Committee

The Council's Admissions Committee, chaired by the Hon Arthur Emmett AO QC, is responsible for developing Admission Rules and provides advice to the Council about admission matters generally.

Admission Committee members are nominated by a range of bodies, including the Chief Justice of Victoria with the concurrence of the Chief Justice of each of the other participating jurisdictions, the Law Council of

Australia, the Australian Bar Association, the Dean of a Law School or Faculty of Law, and the Standing Committee. The Council appoints the Committee members and must ensure that there is at least one member from each participating jurisdiction.

Judicial members of the Committee include the Hon David Habersberger QC, formerly of the Victorian Supreme Court, and the Hon Justice Francois Kunc of the NSW Supreme Court.

Since Western Australia expressed an interest in joining the Uniform Law scheme, the Hon Rene Le Miere SC, formerly a judge of the Supreme Court of Western Australia, has been an observer on the Admissions Committee and has made valuable contributions to its work.

A permanent appointment to the Admissions Committee will be made when Western Australia joins the Uniform Law scheme.

The Hon Arthur R Emmett AO QC
Chair



The Hon David Habersberger QC
Member



The Hon Justice Francois Kunc
Member



The Hon Rene Le Miere QC
Observer



Ross Drinnan
Member



Professor Jenni Lightowlers
Member



Professor Tania Sourdin
Member



Robert Hollo sc
Member



Law Admissions Consultative Committee (LACC)

The LACC was set up by the Council of Chief Justices of Australia and New Zealand before the Uniform Law scheme was established, to forge consensus on admission matters nationally. The LACC comprises a delegate of each Australian State or Territory, together with a nominee of the Australian Professional Legal Education Council, the Council of Australian Law Deans and the Law Council of Australia.

Since the Uniform Law scheme came into existence, the Admissions Committee

has worked constructively with the LACC, to promote consensus on admission matters as between the Uniform Law jurisdictions and other Australian jurisdictions.

Recently, the Council of Chief Justices of Australia and New Zealand resolved that in the interests of uniformity, a Chair and as many people in common as possible should carry out the admissions advisory functions in the participating and non-participating jurisdictions. In response, appointments to the LACC resulted in

five joint appointees across both the Admissions Committee and the LACC, including the Chair and the Western Australia observer on the Admissions Committee.

The Council provides secretariat services to the LACC. Both Committees meet three times per year on the same day and inform themselves of the other's issues and business, working cooperatively to maximise uniformity in admissions matters between all Australian jurisdictions.

CEO and Commissioner

The CEO of the Council supports the Council in the performance of its functions, provides advice and heads the Secretariat and its operations.

The CEO is also the Commissioner for Uniform Legal Services Regulation and ensures the dispute resolution and professional discipline arrangements set out in Chapter 5 of the Uniform Law are implemented consistently and effectively. The Commissioner also promotes compliance with the Uniform Law and raises awareness about the scheme and its objectives.

The Commissioner furthers these objectives through regular meetings with the Executives of the DLRAs to discuss their operations under the Uniform Law and obtaining complaints data that is input into a national Uniform Law database. Other mechanisms employed are the Council's website, which highlights developments in the Uniform Law, guidelines and practice directions, annual reports and a quarterly newsletter that is distributed to Uniform Law stakeholders. Additionally, the Council's annual Uniform Law Summit brings together representatives of the

bodies in the Uniform Law framework, to discuss issues and plan priorities.

From 29 September 2014 to 29 September 2017, the inaugural CEO and Commissioner was Dale Boucher. Since 3 October 2017, the CEO and Commissioner has been Megan Pitt.

Secretariat

The Secretariat provides support to the Council and the CEO in administering the day-to-day matters of the Council. It has a policy team led by Chelly Milliken and including Ella Howard and Jessica Wardle. Its corporate work is supported by Bridget Sordo and Tina O'Brien. The Secretariat has extensive experience in legal policy and in advising corporate bodies and committees.

Designated Local Regulatory Authorities (DLRAs)

Under the Uniform Law, regulatory functions are conferred on DLRAs in each jurisdiction. The Council and Commissioner do not have a direct role in the regulation of legal practitioners and law practices and cannot intervene in individual cases.

When Western Australia joins the scheme, the Legal Practice Board of Western Australia and the Legal Services and Complaints Committee will be

Dale Boucher
Former CEO and Commissioner



CEO and Commissioner from 2014 to 2017. Previously, Dale Boucher was the first Chairman of the Tax Practitioners Board, from 2009 to 2013, the CEO of the Australian Government Solicitor and he held the personal office of the Australian Government Solicitor between 1993 and 1997.

Megan Pitt
Current CEO and Commissioner



CEO and Commissioner from 2017 to date. Previously, Megan Pitt led the Sydney office of the Australian Government Solicitor as its Director for over 20 years. Megan has a strong background in Commonwealth litigation and legal practice management, and has chaired various Commonwealth and State-based legal networks.



the DLRAs. The Legal Services and Complaints Committee is a renaming of the current Legal Profession Complaints Committee.

In NSW, the local regulatory authorities are the NSW Legal Services Commissioner, the Law Society of NSW, the NSW Bar Association, the Legal Profession Admission Board and the Civil and Administrative Tribunal of NSW.

In Victoria, the local regulatory authorities are the Victorian Legal Services Board and Commissioner, the Victorian Bar and the Victorian Legal Admissions Board.

The local Admission Boards and Supreme Courts maintain their role in the admissions process under the Uniform Law.

The Council does not interfere with the operation of the DLRAs, except to ensure that the Uniform Law is operating effectively and consistently with the objectives of the Uniform Law.

Western Australian involvement in the Uniform Law Scheme

The Uniform Law scheme has some unique features that distinguish it from the earlier proposed national model. Unlike the previous model for national law, the scheme provides for uniformity, while allowing participating jurisdictions to retain existing local features, as long as they are not inconsistent or irreconcilable with the Uniform Law.

Accordingly, when the Uniform Law commences in Western Australia, although there will be some changes, much will remain the same. In addition, Western Australian legal practitioners will be able to access features of the Uniform Law scheme that are currently available to legal practitioners in NSW and Victoria.

Retention of Western Australian regulatory bodies and provisions

The retention of the Western Australian legal and regulatory bodies is an important feature of the Uniform Law scheme, including the Legal Practice Board and the Legal Profession Complaints Committee, as well as the Law Complaints Officer, the Legal Costs Committee and the Legal Contribution Trust.

Western Australia will also retain some provisions that are important and unique to it, such as the ability of a barrister to accept direct briefs on a pro bono basis or pursuant to a direct grant of legal aid, without breaching the Uniform Law Barristers Conduct Rules.

By enabling Western Australia and other jurisdictions to keep historically important and unique bodies and practices, the Uniform Law framework is inclusive and embracing of difference, rather than requiring total conformity.

Uniform Law data sharing

Western Australia's legal complaints and admissions data will soon be included in the Legal Services Council's national database. This will enable broader analysis of trends and enhance the ability to compare Western Australia's performance against relevant benchmarks, as is the case with NSW and Victoria.

Australian Legal Profession Register

The Council's online Australian Legal Profession Register, available on its website, will soon include the names, practising certificate types and locations of Western Australia legal practitioners. With links to the Registers of Disciplinary Action in the Uniform Law jurisdictions, the ALPR will be a useful enquiry tool for the legal profession and for the protection of consumers in Western Australia, as it is in NSW and Victoria.

Australasian Legal Information Institute Uniform Law Library

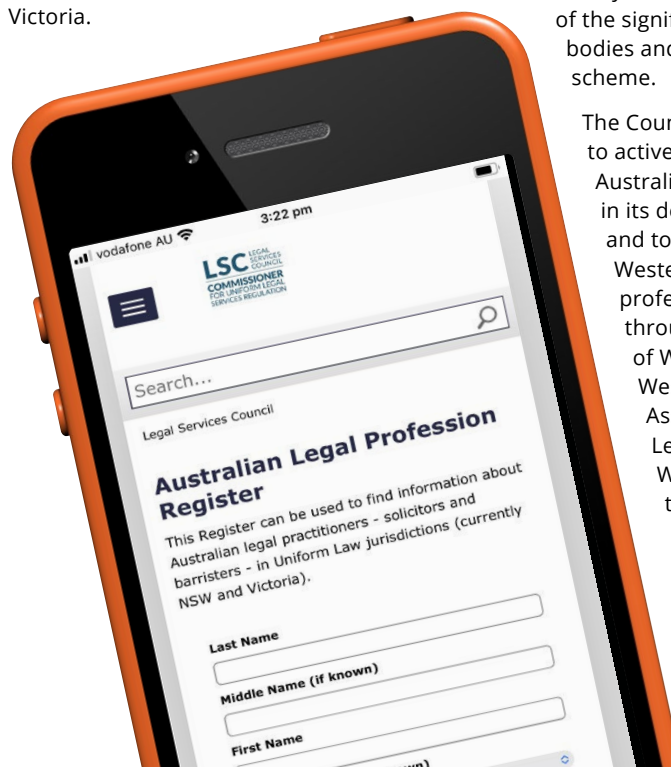
The Australasian Legal Information Institute Uniform Law Library, known as the AustLII Uniform Law Library, will include relevant Western Australia case law in the near future. This will assist Western Australian legal practitioners to keep up to date with relevant Uniform Law developments, as it does legal practitioners in NSW and Victoria.

Ongoing collaboration between Western Australia and the Council

The success of the Uniform Law scheme is dependent upon the collaboration and cooperation of all bodies in the Uniform Law framework. The Council has actively directed its efforts towards ensuring that this collaborative and collegial spirit exists, by its ongoing consideration

of the significant views of all bodies and jurisdictions in the scheme.

The Council will continue to actively involve Western Australian stakeholders in its decision making and to consult with the Western Australian legal profession directly, and through the Law Society of Western Australia, the Western Australian Bar Association and the Legal Practice Board of Western Australia in the future.



Attorney General's

Update to the Profession

by the Hon John Quigley LLB JP MLA



One of the most significant and long-awaited developments in our State's legal profession is Western Australia joining the Legal Profession Uniform Law scheme. Since I signed the Intergovernmental Agreement on the Legal Profession Uniform Framework on 20 February 2019, together with the Attorneys General of New South Wales and Victoria, I have been committed to the Uniform Law and Western Australia's involvement in the scheme.

With the passage of the *Legal Profession Uniform Law Application Act 2022* through the Parliament earlier this year, we will officially join the scheme on July 1, alongside Victoria and New South Wales. This will see the scheme operative in respect of 75 per cent of the legal profession in this country. I trust that Western Australia's involvement will create a critical mass that will encourage other States and Territories to do likewise and in so doing bring us a step closer towards a single regulatory regime and a truly national legal profession.

Increasingly, the legal profession and consumers conduct their business nationally and internationally. The traditional lines between jurisdictions have been blurred and the legal profession should keep pace with these developments. The internet, online legal services and artificial intelligence are good examples of this changing pattern of delivery and access to services, including legal services. Internationally, our system of jurisdiction-based legal services is difficult to understand, cumbersome and expensive to comply with. It also restricts our international competitiveness, in terms of the legal employment market and legal service provision.

The Uniform Law scheme reduces

compliance costs for firms operating across participating jurisdictions by simplifying and standardising regulatory obligations, cutting red tape and creating a common market for legal services. Along with the benefits that come with harmonising the regulation of the legal profession, ordinary consumers of legal services are also likely to benefit from increased consumer protection provisions and faster resolution of disputes and complaints, as well as greater consistency of experience across jurisdictions.

Western Australian practitioners will also be able to practise seamlessly across the three jurisdictions.

However, while providing for uniformity the scheme also accommodates local variations in the way in which Western Australia and the other participating jurisdictions operate. Our unique Western Australian legal and regulatory bodies, such as the Legal Practice Board and the Legal Profession Complaints Committee as well as the Law Complaints Officer, the Legal Costs Committee and the Legal Contribution Trust, are also preserved.

It is a significant milestone in creating a simpler and more efficient system of regulating legal practice in this jurisdiction and I'm sure it will be welcomed by all those in the legal profession. I am pleased that this Government has been able to deliver this important reform.

Another reform that has been close to two decades in the making is the overhaul of the laws relating to de facto couples separating in Western Australia. For many years, de facto couples in our State have been at a considerable disadvantage when it came to the splitting of superannuation when their

relationship broke down. I recently introduced a Bill into Parliament which, if enacted, will overcome the Family Court of Western Australia's current inability to make an immediately enforceable order splitting superannuation assets. When superannuation is a couple's biggest asset, these outdated arrangements have meant women, who retire on average with half the superannuation of men, are disproportionately disadvantaged. This is in marked contrast to married couples in Western Australia and married couples, as well as de facto couples, elsewhere in Australia, whose superannuation could be the subject of such a court order. I am pleased to be part of the Government which has developed legislation to address this injustice.

The Government has also recently overhauled Western Australia's outdated laws relating to how property is distributed amongst family members following the death of a loved one who dies intestate. The recent enactment of the *Administration Amendment Act 2022* brings Western Australia into line with the rest of the nation. The updated scheme increases the payment to a surviving spouse or partner from \$50,000 to \$472,000 if the deceased dies leaving direct descendants, such as children or grandchildren. If the deceased dies leaving a surviving spouse or partner but no direct descendants, the amount has increased from \$75,000 to \$705,000. The parental statutory legacy has been increased from \$6,000 to \$56,500. The Act includes appropriate mechanisms to avoid Western Australia falling behind again.

The Government's promised laws targeting serious and organised crime came into effect on Christmas Eve last year and I am pleased to see that the



WA Police Force have wasted no time putting them to good use. The laws allow our police to disrupt and restrict criminal activities through the prevention of unlawful consorting between offenders; the prohibition of displaying insignia of identified organisations in public; and the power to disperse gang members who gather together in public places. The new laws make it an offence to consort contrary to an unlawful consorting notice, attracting a maximum five-year jail term. Displaying insignia of an identified organisation in a public place is no longer permitted with offenders facing a maximum 12-month jail term and fines of up to \$12,000 or \$60,000 for corporations. Consorting contrary to a dispersal notice attracts a maximum 12-month jail term and \$12,000 fine. The Minister for Police has also implemented firearm prohibition order laws closing the loopholes bikies were exploiting to get access to firearms. This represents a coordinated approach across Government to tackling these criminal gangs. The community is right behind us, with police receiving reports from the general public when they observe individuals flouting the laws. There has never been a worse time to be a bikie in WA.

As Minister for Electoral Affairs I oversaw the passage of the *Electoral Equality Act 2021*, which effectively means that the vote of every Western Australian is now equal when electing representatives to sit in the Legislative Council. The 2021 Upper House election results and the election of Wilson Tucker from the Daylight Saving Party in the Mining and Pastoral Region with just 98 first preference votes left many of us scratching our heads. How could it be that the Nationals WA received 5,032 votes in the Mining and Pastoral Region but did not get a member elected and yet Mr Tucker was elected on 98 votes in a region that is fundamentally opposed to daylight saving? The result

exposed a deeply flawed system that needed reform. Following an open and transparent public consultation process under the Ministerial Expert Committee chaired by former Governor, Malcolm McCusker AC CVO QC, the Government devised a solution. Under the reforms, WA moved to a new whole-of-State electorate so that from the 2025 election on, every Western Australian will be represented by their local lower house member and 37 Legislative Councillors.

The Government's laws introducing a statutory right for second and subsequent criminal appeals against a conviction on indictment have passed through State Parliament. Previously, convicted persons who had exhausted all of their appeals had no further right to appeal. Even when new evidence was available showing that a person is innocent, their only avenue of redress was to lodge a petition for the exercise of the Royal Prerogative of Mercy by the Governor or petition the Attorney General to refer the case to the Court of Appeal. In 2018 I granted such a request in regard to Mr Scott Austic, whose case demonstrated how allowing for fresh or new evidence to be heard and assessed can rectify a substantial miscarriage of justice. However, Mr Austic's petition to a previous Attorney General had not been granted, and it has long been my view that a court – not politicians – should be the arbiter of such matters. The *Criminal Appeals Amendment Act 2021* makes this important change.

I'd like to touch on another Bill that is currently before the Parliament, because it has been a long time in the making and, when passed, will represent the most rigorous and comprehensive laws in the nation in relation to charitable trusts. Just two months after being sworn in as the Attorney General in 2017, I used long-dormant investigatory powers under the *Charitable Trusts Act*

1962 to order the first inquiry into a charitable trust. The Njama People's Trust was the subject of the investigation by Mr Alan Sefton SC, the then Deputy State Counsel at the State Solicitor's Office. This inquiry uncovered systemic problems with charitable trusts being the vehicle for multi-million dollar payments to indigenous groups, often flowing from Native Title settlements. What I had initially hoped would be a short, sharp inquiry into governance and administration grew into an 18-month behemoth weighing in at 675 pages when tabled in State Parliament in December 2018. It became blatantly apparent that neither the legal instrument by which the funds are held, distributed and administered, nor the legislative regime in place were fit for purpose. The Bill before the Parliament implements the 21 legislative reforms recommended in the Sefton Report. It establishes the Western Australian Charitable Trusts Commission, constituted within the office of the Ombudsman WA, to undertake inquiries under significantly expanded powers akin to a standing Royal Commission. It addresses gaps in the current regulatory regime, including the lack of compulsive powers to require a person to attend and give evidence on oath or affirmation and significantly increases penalties for those who refuse to cooperate with the commission. I hope to see these significant reforms passed without delay.

The Department of Justice is continuing its work on the development of a new Evidence Act for Western Australia. Targeted amendments to the *Bail Act 1982* to strengthen protections for alleged child victims of sexual abuse were introduced into State Parliament on 14 June 2022. The establishment of a Judicial Commission remains on my list of priorities for this term of Government, as do reforms to the *Criminal Law (Mentally Impaired Accused) Act 1996*.

Key differences between the Uniform Law and the *Legal Profession Act 2008* (WA)

What You Need to Know.



By Roselina Kruize,
Mills Oakley

The Uniform Law scheme is coming into effect on 1 July 2022. It is designed to promote the administration of justice and create a more efficient system for lawyers across Australia to practice and to comply with their legal requirements.

The Legal Profession Uniform Law (WA) is made up of the following:

1. Legal Profession Uniform Law Application Act 2022 (WA);
2. *Legal Profession Uniform Law* (Uniform Law), which may be found in Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic); and
3. Uniform Rules.¹

In this article, we address four important areas of change implemented by the Uniform Law and the practical

implications which will follow in everyday legal practice. These are not all the differences between our current *Legal Profession Act 2008* (WA) and the soon to be implemented Uniform Law and should only be used as a starting guide.

Practising Certificates

When a person (the applicant) applies to be admitted as a practitioner of the Court, there are certain steps the applicant must comply with. One of these steps is to file an admission application form with the Legal Practice Board. The Legal Practice Board will then review the application and if satisfied (of completion of further academic qualifications and that the applicant is a fit and proper person), it will issue a compliance certificate to the Supreme Court of WA. If the Legal Practice Board is not satisfied, it may refuse to issue a compliance

certificate or provide a declaration. The usual process, should an applicant wish to object to either decision, is to apply to the State Administrative Tribunal for a review of the decision.²

Under the Uniform Law, this has now changed. Now, an applicant has a right of appeal to the Supreme Court of WA against the refusal of the Legal Practice Board to make the declaration. This is applicable for both early assessment applicants and applicants applying in the usual timeframe.³

This new appeal process will also apply if a compliance certificate is issued and then revoked by the Legal Practice Board.⁴

Trust Accounts

Under the Uniform Law, a law practice is now required to give the Legal Practice



Board written notice of the associates and Australian law practitioners (including their names and addresses) who are authorised, as at 1 July in that year:

1. to sign cheques drawn on a general trust account of the practice; or
2. otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.

There is no need to provide this information if it has already been provided (or the law practice reasonably expects that the information will be provided) in an external examiner's report.⁵

Legal Costs

Part 4.3 of the Uniform law deals with legal costs. Except for certain cost agreement requirements (see sections 170, 181 to 183 and 185 of the Uniform Law), this Part does not apply to commercial or government clients or third party payers who would be a commercial or government client if the third party payer were a client of the law practice.⁶

Costs Disclosure

A law practice must, when or as soon as practicable after:

1. instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs; and
2. there is any significant change to anything previously disclosed, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable to the client,

together with the standard information relating to the client's rights to negotiate the costs agreement and billing method, request an itemised bill to seek the assistance of the Legal Practice Board in the event of a dispute about legal costs (main disclosure requirements).⁷

This is something law practices already adhere to under the current regime.

However, the cost disclosure requirements have changed as follows:

1. No disclosure is required if the estimated costs threshold is unlikely

to exceed \$750,⁸ exclusive of GST and disbursements.⁹

2. Where the legal costs fall between \$750 to \$3,000,¹⁰ not including GST and disbursements, a law practice may comply with its disclosure obligations by either:
 - a. making full disclosure to their client or third party payer in accordance with the main disclosure requirements; or
 - b. providing to their client or third party payer a completed uniform standard disclosure form as set out in Schedule 1 of the *Legal Profession Uniform General Rules 2015* (NSW) (General Rules).
3. Where the estimated legal costs exceed \$3,000, excluding GST and disbursements, then full disclosure is required.

As soon as the law practice becomes aware that it will exceed the lower threshold, and disclosure has not been made, the law practice must, when or as soon as practicable, inform the client in writing of that expectation and make the disclosure required.¹²

Be aware that if the law practice fails to comply with its disclosure requirements:

1. the costs agreement is void (please note that there could be a possibility it will not be void if steps to satisfy rule 72A of the General Rules are met, and a void costs agreement does not mean that the law practice isn't entitled to be paid for services rendered);
2. the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the designated regulatory authority (the Legal Practice Board¹³ or the Supreme Court of WA depending on the amount disputed);
3. the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority or under jurisdiction legislation; and
4. the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.¹⁴

Billing and Interest Charged

A bill issued by a law practice, or a letter accompanying the bill, must be signed by the principal of the law practice who is the responsible principal for the bill or a nominated principal as the responsible principal of for the bill.¹⁵

A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable¹⁶ (in the *Legal Profession Act 2008* (WA) there was no set date but a law practice could commence legal proceeding to recover the legal costs after 30 days after the date on which the person is given the lump sum bill).

A law practice must not charge interest to a client under a costs agreement on a bill given more than 6 months after completion of a matter, unless the law practice has provided a lump-sum bill within the 6 month period after completion but the client or third party payer has requested an itemised bill outside this time or the bill has not been issued within the 6 month period at the request of the client or associated third party payer.¹⁸

Costs Assessment

The Board is the Designated Local Regulatory Authority under the WA Application Act for the Uniform Law. It can delegate certain functions to the new LSCC or otherwise.

The Board or its delegate will be able to resolve costs disputes where the total bill for the matter is less than \$100,000 (indexed) or where the total amount in dispute is less than \$10,000 (indexed).¹⁹

The Board or its delegate may make a binding determination about costs where it is unable to resolve a costs dispute and the total amount still in dispute is less than \$10,000 (indexed).²⁰

Legal costs that are the subject of a costs dispute within the parameters above, may not be subject to a costs assessment until the Board or its delegate is unable to resolve the dispute and has notified the parties of their entitlement to apply for a costs assessment.²¹

Business Management and Insurance

Local authorities can audit a law practice's compliance with the Uniform Law obligations. This is a new requirement for law practices which are not incorporated.²² An audit may be sought if the Legal Practice Board considers there are



Key differences between the Uniform Law and the *Legal Profession Act 2008* (WA)

reasonable grounds to do so based on the conduct of the law practice or one or more of its associates or a complaint against the law practice or one or more of its associates.²³

Management system directions can now be given to ensure law practices implement and maintain appropriate management systems. Directions can be given by the Legal Practice Board if they consider it reasonable to do so after carrying out a trust record examination or investigation, compliance audit or complaint investigation. Failure to comply is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.²⁴

A positive duty will apply to principals of law practices to take reasonable steps to ensure that:

1. all legal practitioners of the law practice comply with the Uniform Law; and
2. the legal services provided by the law practice also comply.

A failure to uphold that responsibility is capable of constituting unsatisfactory professional conduct or professional misconduct.²⁵

Principals are only liable for contraventions of the Uniform Law by the law practice if they knowingly authorised or permitted the contravention or were in (or ought reasonably have been in) a position to influence the law practice's conduct.²⁶ The onus rests on the principal to establish that they should not be held liable. Previously, the default position was that the liability of

the principals was the same as the liability of the law practice.²⁷

While legal practitioners always needed professional indemnity insurance to obtain a practicing certificate under the *Legal Profession Act 2008* (WA),²⁸ there is now a maximum civil penalty of 100 penalty points imposed for a contravention of the Uniform Law's requirement that practitioners hold or are covered by an approved insurance policy.²⁹

Key Takeaway

Although there are some similarities between the *Legal Profession Act 2008* (WA), which we currently practise under, and the Uniform Law, it is important to understand what changes have been implemented to be able to comply with the new Uniform Law scheme. Some changes attract penalties or may constitute unsatisfactory profession conduct if not complied with.

In this article, not all changes have been addressed. It is prudent that you consider the changes to the Uniform Law yourself to make sure you adhere to the new requirements.

End Notes

- 1 Section 3 of the *Legal Profession Uniform Law Application Bill 2021* (WA) defines the Uniform Rules as those in force in Victoria. Section 431 of the Uniform Law defines the Uniform Rules as those published on the NSW legislation website.
- 2 Sections 23(6), 24 and 31(3) of the *Legal Profession Act 2008* (WA).
- 3 Sections 26(1), 27 and 28 of the Uniform Law.
- 4 Section 26(2) of the Uniform Law.
- 5 Rule 50(2) of the *Legal Profession Uniform General Rules 2005* (NSW).

6 Section 170 of the Uniform Law and includes definitions for a commercial or government client.

7 Sections 174(1) and (2) of the Uniform Law.

8 Clause 18(3) of Schedule 4 to Uniform Law.

9 Section 174(4) of the Uniform Law.

10 Clause 18(3) of Schedule 4 to Uniform Law.

11 Section 174(5) of the Uniform Law.

12 Section 174(7) of the Uniform Law.

13 Note that although the Legal Practice Board of WA is the designated local regulatory authority under the Uniform Law, the power to deal with complaints will be delegated to the Legal Services and Complaints Committee (formerly Legal Profession Complaints Committee).

14 Section 178(1) of the Uniform Law.

15 Section 188 of the Uniform Law.

16 Section 187(2) of the Uniform Law.

17 Section 292(4) of the *Legal Profession Act 2008* (WA).

18 Sections 195(5) and 195(6) of the Uniform Law – note there is no such limitation under Section 273 of the *Legal Profession Act 2008* (WA).

19 Section 291 of the Uniform Law.

20 Section 292 of the Uniform Law.

21 Section 197 of the Uniform Law.

22 See Section 118 *Legal Profession Act 2008* (WA) and Section 256 of the Uniform Law.

23 Section 256(1) of the Uniform Law.

24 Section 257 of the Uniform Law.

25 Section 34 of the Uniform Law.

26 Section 35 of the Uniform Law.

27 Section 212 of the *Legal Profession Act 2008* (WA).

28 Section 40 of the *Legal Profession Act 2008* (WA).

29 Section 211 of the Uniform Law.

Law Mutual (WA)[®] Professional Indemnity Insurance Arrangements

The Law Mutual (WA) insurance arrangements will not change as a result of the coming into effect of the *Legal Profession Uniform Law Application Act* on 1st July 2022. Please direct all your insurance, claims and risk management enquiries to the current contacts at Law Mutual (WA) which are listed below.

However, the responsibility for Exemptions from those insurance arrangements will move to the Legal Practice Board from that date. Therefore, from 1st July 2022, please direct all enquiries regarding Exemptions to the Legal Practice Board. Staff of the Law Society and Law Mutual will not be able to assist you.

Law Mutual (WA)

Telephone - (08) 9481 3111

Insurance – info@lawmutualwa.com.au

Claims – claims@lawmutualwa.com.au

Risk Management – risk@lawmutualwa.com.au

