Law Council
OF AUSTRALIA

22 May 2026

Advocacy Policy Team
Department of Veterans' Affairs
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Dear Advocacy Policy Team

Veteran advocacy regulation: Strengthening protections for veterans

Introduction

1. The Law Council of Australia welcomes the opportunity to provide a submission to the Department of Veterans' Affairs (**DVA**) in response to the Consultation Paper *Veteran advocacy regulation: Strengthening protections for veterans* (**Consultation Paper**).

2. The Law Council is grateful for the input of the Law Society of South Australia and the Military Law Committee of the Law Council's Federal Dispute Resolution Section in responding to the Consultation Paper.

3. The Consultation Paper seeks views on options to address concerning practices in the commercial veterans' advocacy sector. The purpose of these reforms would be to:

   - restrict exploitative fee practices by commercial veteran advocacy providers;
   - ban overseas hosting of veteran information by advocates;
   - protect veterans from misleading and deceptive conduct, advertising and behaviour; and
   - ensure advocates charging fees are properly trained, insured and conduct themselves ethically.

4. The impetus for the current consultation is the Australian Government's acceptance[1] of key recommendations in the November 2025 Senate Standing Foreign Affairs, Defence and Trade References Committee (**Senate Committee**) Inquiry Report on *Issues relating to advocacy services for veterans accessing compensation and*

[1] Australian Government, Australian Government Response to the Senate Standing Foreign Affairs, Defence and Trade Legislation Committee Inquiry Report into Issues Relating to advocacy services for veterans accessing compensation and income support (11 December 2025).

income support (**Inquiry Report**).[2] The agreed recommendations that are the focus of the present consultations are:

> Recommendation 1. That DVA explore potential legislative action to curb harmful and deceptive business practices in the commercial veterans' advocacy sector, including but not limited to the imposition of fee caps.
>
> Recommendation 4. That DVA investigate solutions to address the specific national security and personal privacy risks posed by offshore commercial advocacy providers and offshore data handling.
>
> Recommendation 7. That DVA work closely with the Institute of Veterans' Advocacy (**IVA**) as it becomes operational to ensure that it provides effective professional oversight and regulation of the veterans' advocacy sector.[3]

5. This submission responds to the background discussion and the questions in the Consultation Paper, and draws upon some broader matters raised in the Inquiry Report and by the Law Council in its 8 October 2025 submission to the Senate Committee.[4]

Context

6. The Law Council's responses to the Consultation Paper are premised on the observation that, by their very nature, statutory schemes require knowledge and understanding of the legislation in question; how that legislation identifies those entitled to compensation, income support and other support and benefits; and the extent of those entitlements in an individual's personal circumstances. As noted by the Senate Committee, veterans' entitlement law is complex and, while there have been recent changes to streamline the legislative framework, the legislative complexity of multiple Acts is likely to continue for many years to come.[5]

7. Veterans seeking access to treatment, compensation and other assistance have traditionally been grouped into three cohorts:

   - veterans who ("self-assess" and) submit claims themselves;
   - veterans who access free advocacy and advocacy assistance services;
   - veterans who choose to pay for advocacy and advocacy assistance services.

8. In relation to the first cohort, the Consultation Paper affirms that DVA is strengthening its support for veterans who self-assess and submit claims themselves by working to simplify and streamline legislative frameworks, ICT systems and business processes to make self-lodgement easier.

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2 Senate Foreign Affairs, Defence and Trade References Committee, Parliament of Australia, Issues relating to advocacy services for veterans accessing compensation and income support (Inquiry Report, November 2025) (**Senate Committee Inquiry Report**).

3 The Law Council notes that the Institute of Veterans' Advocacy has now been established and began accepting applications for membership from in February 2026: Department of Veterans' Affairs, Institute of Veterans' Advocacy, now accepting membership applications (News, 23 February 2026).

4 Law Council of Australia, Submission to the Senate Foreign Affairs, Defence and Trade References Committee, Parliament of Australia, Advocacy services for veterans accessing compensation and income support Advocacy services for veterans accessing compensation and income support (8 October 2025).

5 Senate Committee Inquiry Report, [1.27], [1.32] and [1.33].

9. In relation to the second cohort, the Consultation Paper notes that for over a century Ex-Service Organisations and other volunteer advocates have provided free, professional and expert advice to assist veterans and their families to access treatment, compensation and other assistance, and that the Government regards it as vital that veterans continue to have access to free, high quality advocacy services when they need them. In addition to the assistance and support traditionally provided by voluntary ex-service organisations, there has been the addition of free legal services provided by State and Territory legal aid commissions and pro bono legal services provided by the private practising legal profession.

10. In relation to the third cohort, the situation has changed in recent years. Veterans who have particular support needs for more complex situations or who seek convenience, are now presented with two options:

    - legal services—veterans may (as they have always been able to) seek out a legal practitioner or law practice for legal advice, legal services and representation in legally complex claims; and
    - commercial veterans' advocacy services—a commercial veterans' advocacy sector has emerged whereby commercial entities outside of ESOs or law practices charge fees or commissions to veterans seeking to access statutory entitlements.

11. Underlying the work of the Senate Committee and DVA is the recognition that the commercial advocacy sector presently sits outside of any Commonwealth statutory veterans' compensation and income support regulatory framework. The Senate Committee made the following observation about private commercial businesses offering "advocacy" or "advocacy assistance" services under a fee-for-service model:

> *Fee structures and conditions are generally agreed upon via a signed contract between the veteran and the commercial entity and, as a result, government has "limited capacity to intervene" in these private arrangements.*[6]

12. The Consultation Paper characterises the Government's concerns about commercial veterans' advocacy services as follows:

> *The Government is particularly concerned by an increasing prevalence of commissions-based veteran advocacy providers whose practices and business models seek to exploit the military compensation system and claims process to maximise corporate returns, reducing statutory compensation payments to veterans and families of veterans, and undermining the wellbeing of veterans and families of veterans.*[7]

13. The Law Council agrees with the Senate Committee and the observations in the Consultation Paper. The present limited capacity to intervene means there is a regulatory gap, which is providing an opportunity and an incentive for an unregulated commercial advocacy sector to operate outside of any mandated regulatory controls to safeguard veterans and their families from exploitation and to protect the integrity of the Commonwealth's veterans' assistance, compensation and income support framework.

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6 Senate Committee Inquiry Report, [1.47], references omitted.
7 Consultation Paper, 1.

Approaches

14. The Senate Committee recommended, and the Government agreed, that DVA work closely with the IVA as it becomes operational to ensure that is provides effective professional oversight and regulation of the veterans' advocacy sector.[8]

15. The Consultation Paper notes that, in addition to the Senate Committee's report, consultation with the ex-service community regarding the establishment of the IVA has demonstrated that:

> *… while there appears to be an emerging acceptance of the commercial advocacy sector, a consistent sentiment that commission-based or contingency fee structures are unacceptable, and that Government should protect veterans and their statutory compensation from potentially predatory practices where fees are based on commissions on final payments, or on the number of impairment points determined by DVA.*[9]

16. The Law Council queries whether Commonwealth legislation that statutorily recognises the existence of a distinct **commercial** veterans' advocacy sector**,** creates a regulatory scheme for that sector, and establishes an appropriate oversight body, is required.

17. As is evident from the Law Council's comments in paragraph 6 above, questions about interpretation of (complex) veterans' entitlements legislation, to determine and pursue an individual's entitlements under that legislation, are essentially legal and legal services related questions, arising from the legislation itself. Given this, there are strong arguments for regarding many practices in the commercial veterans' advocacy sector as akin to providing legal advice and legal services. It is important to note that "engaging in legal practice" is an activity reserved under statute and common law, for important public policy reasons, to the qualified legal profession.[10]

18. The Law Council stresses that it is not advocating that veterans' advocacy and advocacy assistance services provided by the commercial veterans' advocacy sector should only be permitted to be provided by the (state and territory) regulated legal profession. This is a policy decision for Government.

19. There are existing examples of services that might otherwise meet the description of legal advice or legal services, and the way that they are conducted might otherwise amount to carrying on legal practice, that are permitted by Commonwealth legislation to be provided and pursued by persons or entities other than legal practitioners. A notable example is the *Tax Agents Services Act 2009* (Cth) (**TASA**), which creates the statutory occupations of tax agent and BAS agent. The TASA regulates those occupations as if they are also established professions, but then excludes from that regulation legal practitioners who provide legal services under the authority of state and territory legal profession laws where those services are also tax agent services under the TASA.

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8 Senate Committee Inquiry Report, recommendation 7.
9 Consultation Paper, 2.
10 Some relevant observations on this are outlined in **Attachment A**.

20. Given that the services provided by the commercial veterans' advocate sector are akin to legal advice and legal services, the Law Council recommends that the alternative and preferred regulatory scheme proposed by the Commonwealth for the commercial veterans' advocates sector should be comparable to the regulatory standards that apply to legal practitioners and the manner in which they provide legal services.

Consultation Paper

Threshold observations

21. The regulatory model referred to by the Senate Committee, and articulated in more detail in the Discussion Paper, is based on a professional association membership model: the entitlement to provide veterans' advocacy and advocacy assistance services flows from membership (or eligibility for membership) of a prescribed body which might be, as the Law Council understands the proposal, an existing professional body (for example a Law Society) or the IVA.

22. The Law Council is aware that this approach is taken in the regulation of the Financial Counselling Sector. However in that sector, this approach is restricted to the free services offered by the not-for-profit sector. This is analogous to providing an exemption for the services provided by free veterans' advocacy services, not commercial operations. The Law Council questions whether this approach provides sufficient consumer protection where services are operating on a commercial basis.

23. The Law Council notes that the approach of creating a professional association as a regulatory body was an early feature of the scheme under the *Migration Act 1958* (Cth) for the regulation of "migration agents" as providers of "immigration assistance" services. This professional association model (involving membership of the Migration Institute of Australia in its capacity as the Migration Agents Regulatory Authority) was, however, eventually abandoned in favour of the current model: an Office of the Migration Agents Registration Authority within the Department of Home Affairs, responsible for registration and regulation of migration agents providing immigration assistance, but not immigration legal assistance or immigration assistance provided by legal practitioners as a legal service. The history of this approach and the difficulties encountered during its history are articulated or referenced in the 2014 *Independent Review of the Office of the Migration Agents Registration Authority* (the Kendall Review).[11]

24. The Consultation Paper suggests that the entitlement of lawyers to provide services is dependent upon membership (or eligibility to gain membership) of a relevant professional body.[12] This is not correct. The Australian legal profession is not "self-regulated" by professional bodies, nor is there a single national regulator. In Australia, the regulation of the legal profession is organised on a co-regulatory model, under which regulatory powers, functions, and activities are distributed between the courts, state and territory statutory authorities, and professional bodies on which regulatory powers and functions have been conferred (outside of and separate to their member representative and service activities). Further, the actual

[11] Christopher Kendall, 2014 Independent Review of the Office of the Migration Agents Registration Authority (Final Report, September 2014).
[12] Consultation Paper, 6.

allocation of regulatory powers and functions varies between individual states and territories.

25. Within this framework, the entitlement to engage in legal practice is not dependent upon membership, or eligibility to gain membership, of a legal professional society or association. The entitlement to engage in legal practice is dependent upon holding and continuing to hold a practising certificate granted by the relevant legal profession regulatory authority in accordance with the State and Territory legal profession laws.

26. The Law Council has a long-settled policy position that legal practitioners and the provision of legal services regulated under stringent and comprehensive state and territory legal profession laws should not also be regulated under Commonwealth laws for the same kinds of services. The Commonwealth has accepted, since as early as the original establishment of a tax agent services regime, that dual regulation is undesirable.

27. In a practical sense then, a threshold question for the current DVA proposals is an economy of scale question—what is the size of the commercial veterans' advocacy sector and how does that impact the approach and cost of regulation?

28. Another threshold question for developing an effective oversight and regulatory system for the commercial veterans' advocacy sector is legislative certainty about:

    (a) what are "advocacy" and "advocacy assistance" services;

    (b) which entities (including potentially individuals and organisations representing veterans) constitute the "veterans' advocacy sector"; and

    (c) which entities within that sector will be required to be members of a professional association (which might be the IVA) and which entities, including voluntary and free service providers and legal practitioners, are to be exempt from the membership requirement.

29. Both the Senate Committee and the Government's response favour an approach that would *restrict* any advocate who is not a member of a prescribed association from engaging with DVA on a veteran's behalf.

30. The Law Council recommends that the "prohibition" point be on "engaging in the provision of" an advocacy or advocacy assistance service when not a member of a prescribed body or otherwise exempt, and not on "engaging with DVA". To do otherwise leaves open an unregulated space where commercially oriented individuals, and other entities that are not legal practitioners or members or a prescribed body, may continue to solicit and offer advocacy assistance services under contractual arrangements that leave the actual interactions with DVA to the veteran, who would appear to DVA as a 'self-assessment' claimant.

Consultation issues

31. The Law Council's responses to the consultation questions are drawn from the principles and objectives that underpin legal profession laws, and specific ways in which the issues raised in the Consultation Paper are addressed under those laws. For this purpose, the *Legal Profession Uniform Law* (which applies in New South Wales, Victoria and Western Australia) will be utilised.

Consultation question 1

What type of charging arrangements and business practices should be in scope for future reform and regulation?

32. Legal practitioners must be admitted to practice by a regulatory authority and may not engage in legal practice in the absence of a practising certificate. A practising certificate ensures that the practitioner is known to the regulatory authorities, provides some assurance of competence, and also requires professional indemnity insurance as a step towards covering losses that may be sustained by a client by malpractice.[13] A lawyer may not engage in legal practice in the absence of a practising certificate issued by the relevant authority. While membership of a Law Society or Bar Association is not mandated, the requirement to be authorised through a practising certificate is mandated—in all jurisdictions. That licensing arrangement goes a long way to ensure supervision, competence and continuing professional education.

33. To be a legal practitioner, the person must not only be properly trained; they are also required to be a fit and proper person, and of good fame and character. There are significant consequences for legal practitioners when any of these issues become manifest. This includes censure, imposition of fines, suspension and in some cases being removed from the roll of legal practitioners.

34. As discussed in Attachment A, advising a client, accepting instructions to represent a client, and charging a fee for those services are strong indicators of engaging in legal practice. The relationship is broadly contractual.[14]

35. The Law Council is particularly concerned about reports of commercial advocates providing unqualified legal advice. There are two reasons for this. First, there is the prospect of inaccurate information or advice being provided as to the state of the law, with the result of a risk of negligent advice being given to the detriment of a veteran or their family. Second, legal practitioners are subject to a host of ethical, professional and legal duties and regulations that provide important client/consumer protections and significantly restrict the potential of financial exploitation. Those protections are notably absent in veterans' advocacy.

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[13] For ease of reference we enclose a copy of the Law Council's *Lawyer Regulation in Australia* paper which provides a broad overview of lawyer regulation (**Attachment B**): Law Council of Australia, *Lawyer Regulation in Australia* (21 November 2024).

[14] Gino Dal Pont, Lawyers' Professional Responsibility (7th ed, Lawbook Co.) 79-92.

36. Legal costs are heavily regulated by legal profession laws. These provisions proceed from three principles/objectives:

- that clients of law practices are able to make informed choices about their legal options and costs associated with pursuing those options;
- that law practices must not charge more than a fair and reasonable amount for legal costs, and in particular that legal costs must be proportionately and reasonably incurred, and are proportionate and reasonable in amount; and
- there is a framework for (independent) assessment of legal costs.

37. Law practices have a statutory obligation to disclose in writing the basis on which legal costs will be calculated and an estimate of total legal costs. Clients also have the right to negotiate a costs agreement. Law practices also have an obligation to disclose any significant changes to anything previously disclosed, including any significant change to the legal costs that will be payable by the client.

38. A costs disclosure must also inform the client of the client's right to seek assistance from a legal profession regulatory authority in the event of a dispute about legal costs[15]

39. Fee agreements can be nuanced in "contentious" matters. A conditional costs agreement may provide that payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate.[16] These kinds of costs agreements are at times referred to as a "no win, no fee" agreement. Alternatively, a conditional costs agreement may provide for a capped "uplift fee" of the legal costs otherwise payable if the outcome of the matter is successful.[17] Conditional costs agreements are regarded as particularly beneficial to individuals who cannot otherwise afford to pay a reasonable fee for legal services, but who have a good prospect of winning their cases in court.

40. A contingency fee agreement, in contrast, is an agreement under which some or all of the legal costs payable are calculated by reference to the amount of any award or settlement, or the value of any property that may be recovered in proceedings to which the agreement relates.[18] Contingency fee agreements are prohibited under all State and Territory legal profession laws, except in very restricted circumstances.

41. A contravention of any of the costs disclosure and costs agreements provisions of legal profession laws is capable of giving rise to disciplinary proceedings. In addition, civil penalties apply to contraventions of provisions relating to conditional costs agreements involving uplift fees and contingency fee agreements.

42. In our view, all charging arrangements involving commercial veterans' advocates must be within scope for future reform and regulation. The risk of financial exploitation, combined with the vulnerability of the client group, merits, in our view, positive disclosure obligations with associated scrutiny by a regulatory authority.

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[15] See **Attachment B**. Law Council of Australia, *Lawyer Regulation in Australia* (21 November 2024).
[16] *Legal Profession Uniform Law (NSW), s181*
[17] *Legal Profession Uniform Law (NSW), s182*
[18] See for example, *Legal Profession Uniform Law (NSW), s183*

Consultation question 2

Are there any other matters or fee practices that should be prohibited/regulated through future reform?

43. The Law Council has several concerns relating to the privacy, collection, handling and storage of veterans' data and personal information. In our view, there are multiple privacy risks and safeguards relevant to the handling of veterans' information that should be considered in any regulatory landscape.

The sensitivity of veterans' information

44. Veterans' data is likely to include highly sensitive personal information, including health records, service history and details of military engagements. This type of information warrants a heightened level of protection, given both its personal sensitivity and potential national security implications.

45. The Law Council notes that any regulatory framework should reflect the elevated risk profile and require robust safeguards for the collection, protection, storage and use of such information.

Offshore data storage and access risks

46. The Law Council is concerned about the storage or processing of veterans' information outside Australia. Where advocacy providers rely on offshore technology platforms, including cloud-based or artificial intelligence services, there is an increased risk of:

    - access by foreign governments or agencies;
    - exposure to foreign surveillance regimes; and
    - reduced control over data once transferred outside Australian jurisdiction.

47. These risks could undermine both privacy protections and public confidence in the handling of veterans' information.

Use of AI service providers and secondary data use

48. The Law Council has identified emerging risks associated with the use of AI tools by service providers. Concerns arise where AI providers use input data to train large language models or improve services, or have affiliations with defence, surveillance or government entities in foreign jurisdictions. This creates a real risk that veterans' personal information could be repurposed or accessed in ways that are not transparent or consistent with Australian privacy expectations or national security.

Data sovereignty and geopolitical risk

49. The Law Council notes increasing concern across sectors regarding reliance on foreign technology providers, particularly in light of current geopolitical tensions. Risks identified include:

    - sudden service withdrawal or restriction;
    - cybersecurity data risk;

- exposure to sanctions or geopolitical tensions; and
- lack of continuity or certainty in data access.

50. These considerations are relevant when assessing the appropriateness of technology used to manage veterans' information. Indeed, the question of data sovereignty has national implications for the Australian population generally.

Onshore data storage and cross border control

51. Given the sensitivity of the information involved, and the vulnerability of some veterans, the Law Council supports;

    - legislating for onshore data storage for veterans' information;
    - implementing strict controls over cross border data transfer; and
    - ensuring transparency about where and how data is stored and processed, and the extension of privacy and information regulation to the private sector.

52. Stronger data sovereignty measures would assist in mitigating the risks outlined above and support confidence in the regulatory framework.

Consultation question 3

Are there similar prohibitions and/or legislation in other sectors which provide a good example of how veteran advocacy prohibitions could work?

53. There are a number of existing compensation schemes across Australia that provide useful models for the regulation of costs associated with litigated outcomes. In NSW, for example, Part 8 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (**WIM**) provides a range of restrictions on the costs payable in the proper management of workers' compensation. Section 337 of WIM provides a statutory cap on fees payable to lawyers and agents for their services linked to this form of compensation.

Consultation question 4

What should be the role of any prescribed body and DVA in enforcing adherence to future arrangements?

54. It is not possible to answer this question in the abstract. There are many regulatory regime models in place, ranging from the highly detailed legal profession regulatory model described in the Law Council's *Lawyer Regulation in Australia* paper (**Attachment B**),[19] through to regulatory models deployed by the Commonwealth, states and territories.

[19] Law Council of Australia, *Lawyer Regulation in Australia* (21 November 2024).

Consultation question 6

What type of sanctions are appropriate where an advocate breaches the standards set out by Government and/or a prescribed body?

55. The Law Council supports core principles of the rule of law, which require that, when and where sanctions are mobilised by the state and its agents, they are transparent, procedurally fair, lawfully administered, and the sanction applied proportionate to the established wrongdoing. That principle imports a range of sanctions ranging from admonishment and correction through to more serious personal and corporate sanctions. Provisions within the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) provide a standard framework for both investigatory powers and sanctions applicable to civil offences.

56. The Law Council suggests that the professional association model proposed in the Consultation Paper, if adopted, should make clear that the association exercises statutory regulatory powers and functions, including complaints and discipline handling, in its capacity as a regulatory authority, and not in its capacity as a membership body providing membership-related services.

Contact

57. Thank you again for the opportunity to make this submission. For further comment or clarification on any of the matters raised in this submission please contact Murray Hawkins, Principal Advisor, Regulation and Professional Standards [redacted]

Yours sincerely



Elizabeth Shearer
President-elect

ATTACHMENT A

Engaging in legal practice

Primarily a common law question

When setting the policy framework for the Legal Profession Model Laws (the **Model Bill** Project 2002–2006) Australian governments, through the (then) Standing Committee of Attorneys-General, decided not to attempt an exhaustive statutory definition of *legal practice*, preferring instead that a general legal meaning be developed through common law.

The Model Bill was the basis for the State and Territory Legal Profession Acts enacted by all jurisdictions between 2004–2007, apart from South Australia (partial enactment in 2014). The reliance on common law development of the meaning of legal practice was carried into the policy framework of what is now the Legal Profession Uniform Law (applicable in NSW, Victoria and WA).

Statutory definitions

There are five relevant definitions found in legal profession legislation: *client; engage in legal practice; legal services; legal practice* (used only in Queensland) and *practise the profession of law* (used only in South Australia):

- ***Client*** is defined in all jurisdictional legislation as including a person to whom or for whom legal services are provided.
- ***Engage in legal practice*** is defined in the Legal Profession Acts (ACT, Queensland, Northern Territory and Tasmania) to include practise law, while in the Uniform Law jurisdictions (NSW, Victoria and WA) the definition is extended to also include *provide legal services*.
- ***Legal services*** is defined in all jurisdictional legislation to mean work done, or business transacted, in the ordinary course of legal practice.
- The term ***legal practice*** is used only in the Queensland legislation[20] to include the practice of foreign law by a foreign lawyer.
- The term ***practise the profession of law*** is used only in South Australia's *Legal Practitioners Act 1981* (SA), but the definition is to be taken to incorporate *engage in legal practice*.

Reservation of legal work

The public-policy purpose of regulating the provision of legal services is to protect the administration of justice and the public from persons who are either not competent to provide those services—the objective measure of competence is holding a practising certificate—or who are not otherwise entitled or authorised to engage in legal practice or provide legal services.[21]

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[20] *Legal Profession Act 2007* s 85
[21] See, eg, Uniform Law s 9.

This is reflected in criminal offences applying to those who engage in legal practice (or represent such an entitlement) when not authorised to do so.

Uniform Law

The Uniform Law prohibits an entity engaging in legal practice when not a *qualified entity*, where *qualified entity* is defined to mean an Australian legal practitioner (which is in turn defined to mean an Australian lawyer who holds a current practising certificate). There is also a separate prohibition in the Uniform Law on advertising, representing, or doing anything that states or implies an entitlement to engage in a legal practice by an entity that is not a qualified entity.[22]

Legal Profession Acts

These Acts prohibit a person from engaging in legal practice unless the person is an Australian legal practitioner, as well as prohibiting a person representing or advertising an entitlement to engage in legal practice unless the person is an Australian legal practitioner.[23]

South Australia

The *Legal Practitioners Act 1981* (SA) prohibits a natural person from practising the profession of law, or holding himself or herself as entitled to practise the profession of law unless the person is a local or an interstate legal practitioner.[24]

Authority of others to engage in legal work

The law that regulates the provision of legal services does not confine the entitlement only to practising certificate holders. There are specific inclusions, exclusions and qualifications to the statutory definitions and prohibitions.

Two authorised areas of legal practice found in all legal profession legislation are:

- incorporated legal practices are specifically entitled to engage in legal practice (when notification and other requirements are satisfied, including having at least one legal practitioner director with an unrestricted practising certificate);[25] and
- the prohibition of engaging in legal practice when not entitled does not apply to a person who engages in legal practice under the authority of a law of the jurisdiction concerned, or a law of the Commonwealth.[26]

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22 Uniform Law, ss 10-11.
23 See, eg, *Legal Profession Act 2007* (Qld) ss 24-25.
24 *Legal Practitioners Act 1981* (SA) s 21(1).
25 See, eg, Uniform Law s103; *Legal Profession Act 2006* (NT) s 119; *Legal Practitioners Act 1981* (SA) sch 1.
26 See, eg, *Legal Profession Act 2007* (Qld) s 23(1)(a), Uniform Law s 56 (regarding government lawyers); *Legal Profession Act 2007* (Tas) s 13(2)(a).

Other areas or activities where statutory authority is given to engage in legal practice when not holding a practising certificate are jurisdiction-specific and varied. They may (depending upon the jurisdiction) include:

- trustee companies and persons employed by a trustee company in relation to preparing wills and administering trusts, estates and affairs of persons;
- a licensee or employee of a licensee under the *Property Occupations Act 2014* (Qld) but only to the extent of providing, preparing or completing property transaction documents; or
- agents preparing tenancy agreements relating to residential or non-residential premises under the *Land Agents Act* 1994 (SA) subject to maximum prescribed amounts and holding professional indemnity insurance.

Consequences of practising law when not entitled

As mentioned above, legal profession laws have created criminal offences for engaging in legal practice when not entitled. The maximum penalty varies from100 penalty units in the ACT; a $50,000 fine in South Australia; 250 penalty units or 2 years imprisonment or both in a Uniform Law jurisdiction; and 300 penalty units or 2 years imprisonment in Queensland.

Additional consequences include:

- the offender is unable to recover any amounts in relation to anything done in contravention of the prohibition;[27]
- any amounts already paid may be recovered as a debt due;[28]
- professional indemnity insurance is not available;[29] and
- the statutory protections in relation to trust money do not apply.

Common law

The courts are called upon to consider the meaning of expressions such as “engage in legal practice”, “practise law”, “legal issues”, legal work” and “legal advice”. The need to do so often arises when action is taken against a person who continues to engage legal practice after their practising certificate has been suspended, cancelled or not renewed. It also arises in situations where a person who is not a legal practitioner asserts some other basis for lawfully providing legal services, such as through the exercise of a power of attorney, or under a consultancy/agency agreement.

Each case is fact- and circumstance-sensitive, but *some* of the principles and indicia that have emerged are as follows.

- the ordinary and natural meaning of the expression to “engage in legal practice” signifies “to carry on or exercise the profession of law”; “[t]he carrying on of the profession of law is done by none other than a ‘legal practitioner’”; and “the

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[27] See, eg, *Legal Profession Act 2000* (Qld) s 24(4).
[28] Ibid s 24(5).
[29] The Professional Indemnity Insurance policy issued by LawCover, for example, covers *legal services*, which is defined as work done or business transacted in the ordinary course of legal practice.

expression 'engage in legal practice' means 'engage in legal practice *as a legal practitioner*', the italicised words being implicit in the notion of legal practice".[30]

- a person who was neither admitted to practice law nor enrolled as a barrister or solicitor may be regarded as acting or practising as a solicitor in one of three ways:

  (a) by doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person is doing it as a solicitor;

  (b) by doing something that is positively proscribed by legislation or rules of court unless done by a duly qualified legal practitioner; or

  (c) by doing something which, in order that the public may be adequately protected, is required to be done only by those who have the necessary training and expertise in the law.[31]

- The giving of legal advice, at least as part of a course of conduct and for reward, can be said to lie at or near the very centre of the practice of law, and hence the notion of acting or practising as a solicitor.[32]

- Knowledge of relevant aspects of the law and its application is essential to practising other professions or for carrying on other occupations. A person "who, in lawfully pursuing an occupation other than law, gives advice for reward on matters within his area of occupational expertise involving expressing an opinion about relevant legislation" does not necessarily engage in legal practice.[33] However, the provision of legal advice on matters involving legal interpretation or on legal rights and duties is the preserve of the legal profession, and this distinction must and does exist between the professional work of legal practitioners and the professional work of others.[34]

- The issue is one of substance, not form. Hence it is no defence that an unqualified person has not used a title reserved to the legal profession (such as for example, solicitor or legal practitioner) if that person is in fact performing legal work.[35] Also, it is to no avail to adopt labels such as "planning advice", "consultative services" and "strategy" when the context or circumstances of the work requested and performed point to "legal advice", nor is it sufficient to simply state "I am unable to give you legal advice" and then in fact go onto provide legal advice on legal matters and questions.[36]

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30 *Felman v Law Institute of Victoria* [1998] 4 VR 324 [352], cited with approval by Daubney J in *Legal Services Commissioner v Walter* [2011] QSC 132.

31 *Cornall v Nagle* [1995] 2 VR 188, cited with approval by Daubney J in *Legal Services Commissioner v Walter* [ibid]. See also Dal Pont, *Lawyers' Professional Responsibility* (7th Ed) [2.150].

32 *Cornall v Nagle* [1995] 2 VR 188 [208], ibid

33 Dal Pont, op cit, citations omitted.

34 See *Council of the NSW Bar Association v Davison,* op cit [59].

35 Dal Pont, *Lawyers' Professional Responsibility* (7th Ed) [2.150] referring to Hall J in *Council of the NSW Bar Association v Davison* [2006] NSWSC 65 [65].

36 *Council of the NSW Bar Association v Davison* [2006] NSWSC 65 [69], [82], [104].

Law Council of Australia

Lawyer Regulation in Australia

An overview

21 November 2024

Law Council
OF AUSTRALIA

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Foundations

There is a tendency to see lawyers and the work they do as little different to the work that other professional services providers do. However, there are unique features about lawyers and the work they do that makes them, and the way they are regulated, different.

First: The paramount duty every lawyer owes to the court and the administration of justice, through which lawyers, as officers of the court, underpin the third arm of government, the judiciary.

Second: The foundation of the lawyer/client relationship in fiduciary principles, such as the duty of undivided loyalty, and the centrality of trust and confidence between client and lawyer which, in combination with the duty to the court and the administration of justice, compels exemplary ethics and standards of professional responsibility.

Third: The inherent information asymmetries between lawyers and their clients within a national legal services "market" that is diverse in its nature, scope, areas of speciality and its means of delivering legal services requires special and extensive 'consumer protection' measures, alongside exemplary ethics and standards of professional responsibility.

A former Chief Justice of Victoria explained the context of the first feature as follows:

> The foundation of a lawyer's ethical obligation is the paramount duty owed to the court. The reasons for this are long-standing. It is the courts who enforce rights and protect the citizen against the state, who enforce the law on behalf of the state and who resolve disputes between citizens, and between citizens and the state. It is the lawyers, through the duty owed to the court, who form the legal profession and who underpin the third arm of government, the judiciary. Without the lawyers to bring the cases before the courts, who would protect the citizen? Who would enforce the law? It is this inherent characteristic of the duty to the court that distinguishes the legal profession from all other professions and trades. [1]

A former Chief Justice of Queensland explained the context of the second feature as follows:

> [The relationship between lawyer and client is] not like the relationship of supplier to consumer, vendor to purchaser. It is a relationship specially characterized by the expectation, and correlative duty, of confidentiality and privilege, and of exemplary professional ethics. The client accepts that the lawyer is to guide the matter appropriately through the legal process or system, and expects the lawyer to do so. That need usually arises from what has been termed an "information asymmetry". But it does not mean that the delineation of the professional relationship should follow some sort of business model.[2]

[1] Remarks of the Hon. Marilyn Warren AC Chief Justice of Victoria on the Occasion of Joint Law Societies Ethics Forum Melbourne, 20 May 2010.
[2] The Hon. Paul de Jersey AC QC former Chief Justice of Queensland, Opening Address, Queensland Law Society Vincents' Symposium 2010, 27 March 2010

A former Chief Justice of New South Wales explained the context for the third feature as follows:

> For many years the regulation of the legal profession has been determined on the assumption that the primary characteristic of the lawyer/client relationship is the professional paradigm: a personal bond created in the context of a high degree of personal responsibility. Over recent decades, however, the alternative business paradigm – in which the primary bond between a lawyer and client is commercial – has come to the fore. On the former approach regulation proceeds on the basis that professional practice may require modification for purposes of microeconomic reforms, but the basic nature of the relationship would not change. On the latter approach, the activities of legal practitioners are subject to the usual rules applicable to commerce, but they may require modification to service particular public interests.[3]

Legal profession laws in Australia provide facilitative and restrictive regulatory 'responses' to the complexities inherent in the three unique features about the legal profession. This is well-illustrated by section 3 of the Legal Profession Uniform Law[4]

> The objectives of this Law are to promote the administration of justice and an efficient and effective Australian legal profession, by—
>
> (a) providing and promoting interjurisdictional consistency in the law applying to the Australian legal profession; and
>
> (b) ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and
>
> (c) enhancing the protection of clients of law practices and the protection of the public generally; and
>
> (d) empowering clients of law practices to make informed choices about the services they access and the costs involved; and
>
> (e) promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
>
> (f) providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.

Achieving – and maintaining - the right balance is not easy. As has also been observed by a former Chief Justice of Victoria[5]:

> Being admitted means that a lawyer owes a paramount duty to the court in all of their future dealings.
>
> In an increasingly commercialised and global world, the career path that some lawyers choose does not involve working in a court room. But this in no way reduces

[3] Spigelman, James J., Are Lawyers Lemons? Competition Principles and Professional Regulation (October 29, 2002). Australian Law Journal, Vol. 77, p. 44, 2003, Available at SSRN: https://ssrn.com/abstract=1800450

[4] Applies in NSW, Victoria and WA.

[5] *The Duty Owed To The Court – Sometimes Forgotten*, Hon. Marilyn Warren AC (former Chief Justice of Victoria) Judicial Conference of Australia Colloquium, Melbourne, 9 Oct 2009.

> the duty those practitioners owe to the court. They are required to discharge their duty as officers of the court even if that duty comes into conflict with their duty to their client. Part of the duty to the court consists of informing the client that such a duty is, in fact, paramount.
>
> …legal practice in the modern law firm provides a very good example of the complexity that now surrounds the duty. Finding the right balance between the duty to the court and to the client is complicated by the ever increasing and evolving commercialisation of the profession.
>
> The source of much of the tension between the two duties is the potential for divergent objectives arising from each duty. In particular, a lawyer may be influenced by the financial requirements of the client, which may not correspond with recognised notions of the proper administration of justice.

Legal profession laws in Australia are the State and Territory laws that regulate the legal profession and the provision of legal services. Those laws have undergone considerable development over the past 30 years to the point where they are either uniform or sufficiently harmonised in their core standards and regulatory processes to have created a national regulatory scheme for the legal profession, functioning as a national legal profession within a national legal services market, supported by a scheme of regulatory authorities and regulatory cooperation.

This Law Council of Australia information paper provides a general overview of the way the legal profession in Australia is regulated, based upon the Legal Profession Uniform Law.[6]

[6] Applies in NSW, Victoria and WA. The corresponding laws in the other jurisdictions are the *Legal Profession Act 2006* (ACT), the *Legal Profession Act 2007* (Qld), the *Legal Profession Act 2006* (NT), the *Legal Profession Act 2007* (Tas) and the *Legal Practitioners Act 1981* (SA)

Regulation – a State and Territory matter

Historical background

When the Commonwealth was formed in 1901 each of the States (as they became) were already self-governing and brought with them an established and functioning justice system, including an established and functioning legal profession. Also, during the pre-federation period the future States had begun actively enacting legal profession regulatory legislation[7] - a process that has continued ever since.

The connection between the State courts, the legal profession and State regulation was not severed or diminished by federation, nor was a separate federal legal profession established to practice federal law.

By way of illustration, of the *Judiciary Bill 1902* which established the High Court and invested federal jurisdiction on State courts, it was said:

> It is into an already existing judicial system that this High Court now makes its entrance, not by destruction of the State courts, but based upon them, and under this measure, vesting them with federal jurisdiction that they do not at present enjoy.[8]

The following provision was also proposed in the *Judiciary Bill 1902:*

> Any person entitled to practise as a barrister or solicitor in any State shall have the like right to practise as a barrister or solicitor in any Federal Court.

Debate on this provision centered on the fact that in some States the profession was divided (the person could practise only as a barrister or only as a solicitor) but in other States the profession had been amalgamated (a person could practise as both a barrister and as a solicitor). The provision as proposed appeared to have the effect of amalgamating all of the profession so far as practise in federal courts and in courts exercising federal jurisdiction were concerned. This issue was eventually resolved, and the Attorney-General said:

> What I have done is to endeavor not to interfere with the practice in the States, so that if a State law allows a man to practise as both a barrister and solicitor, he may be able to do so in the Federal Court.[9]

The recurring theme of the parliamentary debates on the *Judiciary Bill 1902* was a preference at that time to not interfere with the legal profession in the States by creating different legal practice requirements for federal matters (even though such a course might arguably have been available through the incidental power in 51(xxxix) of the Constitution in relation to federal jurisdiction[10]).

This can be seen in the Judiciary *Act* as Parliament enacted in 1903, which provided that any person entitled to practise as a barrister or solicitor or both in any State shall have the

[7] For example, *Legal Profession Practice Act 1891* (Vic*), Barristers Admission Act 1882* (NSW), *Legal Practitioners Act 1881* (Qld), *Legal Practitioners Ordinance 1855* (WA), *Legal Profession Act 1843* (SA), *Barristers and Attorneys Admission Act* 1863 (Tas)
[8] Hansard, HoR, 18 March 1902 [10965) re the *Judiciary Bill*
[9] Hansard HoR, 25 June 1903 [1454]
[10] Hansard HoR 25 June 1903 [1453-1455] and 30 June 1903 [1549]-[1555]

like right to practise in any federal Court, provided that before doing so he produced evidence that he was so entitled to the Principal Registrar of the High Court, who would then enter the practitioner's name in a Register of Practitioners. Removal from the Register would be occasioned by direction of the High Court on proof that the practitioner was guilty of conduct which rendered the practitioner unfit to continue to practise as a barrister or solicitor, or that the practitioner had been deprived by a State Supreme Court of the right to practice in that State.

Similarly, the federal scheme for registration of tax agents, introduced by the *Income Tax Assessment Act 1943* provided that the prohibition on a person demanding fees for taxation services unless registered as a tax agent:

> ….shall not apply to any solicitor or counsel acting in the course of his profession in the preparation of any objection or in any litigation or proceedings before a board, or so acting in an advisory capacity either in connection with the preparation of any income tax return or with any income tax matter.[11]

The pattern of leaving legal profession matters to the States was also repeated with the conferral of self-government on the Northern Territory and the Australian Capital Territory. By way of example, prior to the *Australian Capital Territory (Self-Government) Act 1988* (Cth) a *Legal Practitioners Ordinance*, administered by the federal Attorney-General, governed the regulation of the legal profession in the ACT. This was changed on 1 July 1990 when the power to legislate and the function of regulating legal practitioners was transferred to the ACT.

Uniformity, harmonisation and coordinated regulation

We can see from the above that regulation of the legal profession is not regarded as a plenary federal matter. While the Federal Parliament can rely on other constitutional powers to support the establishment of regulatory regimes covering certain service and activities (and their providers) including legal services providers, it is acknowledged that these powers are limited and not plenary. In effect, each State and Territory has the ability to make laws regulating the legal profession and the provision of legal services in that State or Territory.

While regulation of the legal profession and the provision of legal services has traditionally been a separate matter for each State and Territory, periods of legal profession reform since approximately 2002 have seen the creation of a national regulatory approach.

In the 1990s legislative reforms began to be implemented to remove jurisdictionally-based restrictive regulation of occupations and professions, which was seen as an impediment to free trade in services in a competitive 'national' market. Mutual recognition laws, as they are known, were designed to entitle a person registered to carry on an occupation or profession in one State or Territory, to be entitled to carry on the same occupation or profession in another State or Territory without the need to undergo any further assessment by the local registration body as to the person's capability and fitness.

[11] *Income Tax Assessment Act 1943* [s.251L(4)]

During the period 2002–2006 a model legal profession law was developed by the (then) Standing Committee of Attorneys-General, and subsequently enacted by each State and Territory as a Legal Profession *Act*, apart from South Australia which ultimately incorporated most of the model law into its *Legal Practitioners Act 1981*. This suite of legal profession legislation is based on principles of mutual recognition by each jurisdiction of admission to the profession and practising entitlements (and conditions), uniform or at least harmonised core regulatory standards, and regulatory cooperation and recognition between State and Territory regulatory bodies.

During the period 2010–2012 the Council of Australian Governments (COAG) established a National Legal Profession Reform Taskforce to further these reforms by developing a proposal for a uniform Legal Profession National Law. The draft national law developed for COAG was subsequently refined and adopted by New South Wales and Victoria (from 1 July 2015) and by Western Australia (from 1 July 2022) as the Legal Profession Uniform Law.

What do legal profession laws regulate?

The regime of the legal profession laws regulating legal practitioners and the provision of legal services in all Australian jurisdictions includes:

- academic, practical legal training and personal suitability requirements for admission to the profession; together with the admission process;
- a mandatory 18-month to 2-year period of supervised practice (followed, in a number of jurisdictions, by practical examinations) before permitting any legal practitioner to practise unsupervised (i.e. establish their own practice or act as a principal in any firm);
- personal suitability requirements for the granting and annual renewal of practicing certificates;
- the ability of the legal regulators in each State and Territory to immediately cancel, suspend or vary practicing entitlements or conditions in response to instances of misconduct, bankruptcy, or commission of certain offences;
- mandatory continuing professional development;
- mandatory professional indemnity insurance;
- ethical and other professional responsibilities;
- trust money and trust accounting regulation, including provision for external intervention;
- fidelity cover to provide recompense to clients following fraud or other defalcations involving trust money;
- complaint mechanisms for consumer and disciplinary matters, and a range of consumer remedies – including, in some cases, formal disciplinary proceedings before courts and tribunals;
- legal practitioners remain at all times officers of the court and are thereby subject to the inherent supervisory and disciplinary powers of the court; and

- rules of professional conduct, legal practice and continuing professional development that are nationally consistent or at least harmonised.

A list of the most significant topics dealt with under the *Legal Profession Uniform Law* is at **Appendix 1**, and an overview of the objectives and key regulatory outcomes is set out in the next part of this Information Paper.

Who regulates the legal profession?

An important characteristic of legal regulation in Australia is *co-regulation* – the distribution of regulatory powers, functions or activities among the courts, the profession and statutory regulatory authorities.

Through the exercise of their inherent jurisdiction and responsibilities, the courts "regulate" admission to the legal profession, as well as the conduct and discipline of legal practitioners.

The legal profession "regulates" through the development of legal profession rules relating to professional conduct, legal practice and continuing professional development. The legal profession also regulates through the guidance, support and information services provided by professional associations in professional conduct and legal practice matters. Professional associations may also directly exercise statutory powers and functions (for example, practising certificate regulation) or undertake regulatory functions under referrals or delegations from statutory bodies (for example, to investigate and report on complaints).

Each State has established statutory bodies (and in the Territories statutory authority has been conferred on professional bodies) to administer regulatory powers and functions, in matters such as general compliance, consumer protections, undertaking investigations and interventions in the affairs of law practices, and in handling complaints about legal services and the conduct of legal practitioners.

Apart from matters entirely within the inherent powers and responsibilities of the courts, each State and Territory has determined the allocation of regulatory powers and functions among local statutory regulatory bodies and professional associations (law societies and bar associations) according to the jurisdiction's norms, characteristics and decisions. For example, because of the relatively small size of the legal profession in the Territories, the principal regulatory bodies are the law societies, while in the States regulatory powers and functions may either be conferred entirely on a statutory body (such as the Legal Practice Board of Western Australia) or between statutory bodies and professional associations (such as the Office of the Legal Services Commissioner, the Law Society and the Bar Association in New South Wales).

A table setting out the various regulatory bodies is at **Appendix 2**.

The dual regulation problem

'Dual regulation' refers to the situation where measures (typically Commonwealth measures) seek to regulate the provision of a particular kind of service or activity (and hence

the provider of that service or activity) which is also a legal service regulated under State and Territory legal profession laws.

Four recent federal proposals have raised the possibility of dual regulation:

- regulation of legal practitioners as *water markets intermediaries* under the *Water Act 2007* in relation to legal services that are also *water markets intermediary services*.
- regulation of legal practitioners by a proposed *Institute of Veterans' Advocates* in relation to legal services that are also veteran's advocacy services.
- regulation of legal practitioners as tax agents in relation to legal services that are also a tax agent service under the *Tax Agents' Services Act 2009*.
- regulation of legal practitioners as reporting entities in relation to legal services that are also *designated services* under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

While the policy merits of regulating each of these services are important and worthwhile objectives, from the legal profession perspective dual regulation is inefficient and undesirable for a number of reasons. These include:

- an increase in the overall regulatory burden on legal practitioners and law practices, inevitably putting upward pressure on the cost of legal services.
- inconsistent and conflicting regulatory standards and obligations for legal practitioners and law practices over the manner in which the same activity or service is to be carried out, leading to the possibility of double-jeopardy (multiple regulatory interventions and sanctions for the same action) and blurred lines of regulatory responsibility across multiple regulatory bodies.
- inconsistent and conflicting professional conduct (including ethical) standards and obligations, noting:
    - that as an officer of the court a member of the legal profession has a paramount duty to the court and the administration of justice, which applies across all activities undertaken as a legal practitioner, and can extend to conduct occurring outside of legal practice; and
    - that as a fiduciary, a legal practitioner has a duty to act at all times in the best interests of the client, and to not put their personal interests ahead of their client's interests.
- uncertainty and confusion for users of legal services about consumer protections, rights, remedies and avenues for raising and resolving complaints.
- the need for legislative-based mechanisms to authorise and facilitate cooperation and coordination between Commonwealth, State and Territory regulatory authorities, including to avoid regulatory "gaps".
- regulation of particular kinds of legal services by agencies other than legal profession regulatory agencies (which are subject to prohibitions from disclosure of information obtained in the course of administering legal profession laws and specific exceptions) inevitably raises complex issues about preservation of the confidentiality of client information and in particular, information that is protected from compulsory disclosure by client legal privilege.

- a cost and complexity disincentive for the 93% of Australian law practices that are micro and small law practices, to continuing to provide (or ceasing entirely to provide) legal services of the kinds subject to dual regulation, putting pressure on the availability of legal services, especially in regional and remote areas.

During the period from 1992 to 2017 legal practitioners providing legal services that were also *immigration assistance* services were regulated as legal practitioners under State and Territory legal profession laws, and at the same time as migration agents under the *Migration Act 1958*. It is notable that this scheme of dual regulation was repealed following the Commonwealth's acceptance of recommendations of the 2014 *Independent Review of the Office of the Migration Agents Registration Authority*.

Overview of legal profession regulation

The State and Territory legal professional laws regulate all aspects of the practice of law, from the requirements for admission to the legal profession; the entitlement to actually engage in legal practice; the duties and obligations of legal practitioners; law practice business structures; and key consumer issues such as legal costs, trust money, professional indemnity insurance, and resolving complaints. In addition, legal profession laws provide regulatory authorities extensive investigatory and intervention powers.

Further, statutory provisions sit alongside self-regulation under the rules of professional conduct, continuing professional development and legal practice, as well the jurisdiction and authority of the Supreme Courts to control and discipline lawyers admitted to the legal profession.

The components of the regulatory framework are explained below, based upon the Legal Profession Uniform Law framework.

Threshold requirements for legal practice

The primary objective is to protect the administration of justice and the public from persons who are not qualified and eligible to practise law. The threshold objectives of the State and Territory legal profession laws are:

- to ensure, in the interests of the administration of justice, that legal work is carried out only by those who are properly qualified to do so; and
- to protect clients of law practices by ensuring that persons carrying out legal work are entitled to do so.

Unqualified legal practice

Legal profession laws prohibit an unqualified (i.e. unauthorised) person from engaging in legal practice. In some jurisdictions a contravention of this prohibition is treated as a criminal offence. The prohibition extends beyond individual persons to include companies and partnerships.

Legal profession laws also prohibit individuals, as well as directors, partners, officers, employees or agents of companies and partnerships, from advertising or making representations that state or imply an entitlement (of the person, or company or partnership) to engage in legal practice, when no such entitlement exists.

A further protection is afforded by “reservation” of titles commonly associated with the legal profession, such as for example “solicitor”, “barrister”, “lawyer”, “legal practitioner”, “attorney” and “counsel”. A person who uses these titles (including as a director, partner, officer, employee or agent of a company or partnership) is presumed to be entitled and to have represented an entitlement to engage in legal practice. Where that is not the case, the individual (and any company or partnership) will have contravened the prohibition on advertising or making representations.

Admission to the legal profession

Like other professions, an aspiring lawyer first needs to acquire a substantial level of academic knowledge and practice skills. But that is as far as the analogy with other professions usefully goes. Being admitted to the legal profession is not simply a case of joining a professional association after obtaining qualifications, agreeing to abide by the association's membership rules and, if necessary, obtaining a registration.

To become a *lawyer* a person needs to demonstrate to the Supreme Court that they are a fit and proper person to be admitted to the legal profession. The three prerequisites are encapsulated in objectives statements in Australia's legal profession laws[12]:

> The objective…is to protect the administration of justice and the clients of law practices by providing a system under which persons are eligible for admission to the Australian legal profession only if –
>
> - they have appropriate academic qualifications and practical legal training; and
> - they are fit and proper persons to be admitted.

The fit and proper person requirements for admission are onerous, as outlined in **Appendix 3**.

Being admitted to the legal profession is a judicial proceeding – an exercise by the Supreme Court of an inherent function in the administration of justice. A person seeking admission must first take an oath or affirmation before the court. In New South Wales for example, the person takes an oath or affirmation to truly and honestly conduct themselves in the practice of law as a legal practitioner of the Supreme Court of New South Wales and to faithfully serve as such in the administration of the laws and usages of New South Wales to the best of their knowledge, skill and ability.

A lawyer is first and foremost an officer of the Supreme Court

It is by taking the oath or affirmation and then being admitted to the legal profession that a lawyer becomes an officer of the court. As such, a lawyer becomes and remains at all times subject to the power and function of the court to regulate the conduct of its officers, in furtherance of the administration of justice. There are fundamental standards of conduct that frame and shape a lawyer's duty as an officer of the court:

- A paramount duty to the court and the administration of justice, which prevails to the extent of inconsistency with any other duty.
- A duty to act in the best interests of the client.
- A duty to be honest and courteous in all dealings in the course of legal practice.
- A duty to deliver legal services competently, diligently and as promptly as reasonably possible.
- A duty to avoid any compromise to their integrity and professional independence.

[12] These are the *Legal Profession Uniform Law* (applicable in NSW, Victoria and WA), the *Legal Profession Act 2006* (ACT), the *Legal Profession Act 2007* (Qld), the *Legal Profession Act 2006* (NT), the *Legal Profession Act 2007* (Tas). See also the *Legal Practitioners Act 1981* (SA) section 15.

- A duty to comply with the standards of professional conduct and the law.
- A duty to not engage in conduct in the course of legal practice or otherwise, which demonstrates that the lawyer is not a fit and proper person to practise law.
- A duty to not engage in conduct in the course of legal practice or otherwise, which is likely, to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice.
- A duty to not engage in conduct in the course of legal practice or otherwise, which is likely, to a material degree to bring the profession into disrepute.
- A duty to honour, and ensure the timely and effective performance of all undertakings given in the course of legal practice.

Admission is not permanent

The fundamental standards of conduct that frame and shape a lawyer's duty as an officer of the court and the administration of justice strike at the heart of whether a lawyer continues to be a fit and proper person to be a person admitted to the legal profession. These are ongoing standards, and a lawyer who is found guilty of professional misconduct may have his or her name 'struck of the roll' of persons admitted by the Supreme Court. In some cases the misconduct may be so egregious that the Court will decide that protection of the public requires that the person never again be considered for admission to the legal profession. In other cases the Court may contemplate the person re-applying for admission at some future time when the person is again able to demonstrate that he or she is a fit and proper person to be admitted to the legal profession.

Legal practice

The object of legal profession laws relating to legal practice include:

- enable legal services to be provided through a range of business structures.
- ensuring that any particular type of business structure does not hinder a law practice and the legal practitioners within it from complying with the legal profession laws and *other professional obligations* of Australian legal practitioners.
- ensuring that clients of law practices are adequately protected regardless of the business structure through which a law practice provides legal services.

The term "other professional obligations" is defined in legal profession laws to include:

- duties to the Supreme Court; and
- obligations in connection with conflicts of interest; and
- duties to clients, including disclosure; and
- ethical rules or standards a legal practitioner must observe.

Threshold matters about business structures in legal practice

Legal profession laws reflect a long-standing view that legal practitioners should be able to adopt business structures that enable the provision of legal and non-legal services. The two recognised 'alternative' business structures to the traditional law firm partnership are the incorporated legal practice and the unincorporated (otherwise known as "multidisciplinary") legal practice.

A law practice that intends to provide legal services through an 'alternative' business structure must notify the regulatory authority of that intention before commencing to provide legal services. These law practices must also have at least one "authorised principal" - a legal practitioner authorised by his or her practising certificate to supervise others. Not having any authorised principals for more than 7 days is a contravention, and has to be notified to the regulatory authority. The law practice cannot provide legal services while non-compliant with these requirements – a criminal penalty applies.

A disclosure in writing has to be made setting out the legal services to be provided, and whether or not all of them are to be provided by an Australian legal practitioner. If legal services are not to be provided by an Australian legal practitioner, the status and qualifications of the person providing the legal services has to be disclosed. The disclosure also has to include a statement that the Uniform Law and Rules apply to provision of legal services, but not to non-legal services.

Uniform Rules can be made in respect of any aspect of these kinds of law practice so far as concerns the provision of legal services or matters that affect or may affect the provision of legal services.

Other important general duties and obligations apply to these 'alternative' business structure law practices:

- an Australian legal practitioner and a law practice must comply with the Uniform Law, Uniform Rules and his or her or its professional obligations, regardless of the business structure in which or in connection with the practitioner provides legal services.
- each principal of a law practice is responsible for ensuring reasonable steps are taken to ensure the law practice and the legal practitioner associates comply with their obligations under the Uniform Law, Uniform Rules and their other professional obligations.
- each principal of a law practice is taken to have contravened any provision of the Uniform law or Uniform Rules contravened by the law practice if the principle knowingly authorised or permitted the contravention or ought reasonably to have been in a position to influence the conduct and failed to take reasonable steps to prevent it.
- legal practitioners who provide legal services in their capacity as a director, officer, partner, or employee do not lose their professional privileges, nor is the law relating to client legal privilege excluded or otherwise affected.

In important protection provided for is that a person must not cause or induce, or attempt to cause or induce a law practice or legal practitioner associate of a law practice to contravene the Uniform Law, Uniform Rules or other professional obligations – a criminal penalty applies.

Granting or renewing a practising certificate

Admission to the legal profession does not automatically entitle a lawyer to actually engage in legal practice. That entitlement is now a statutory entitlement conferred, on application by a lawyer, to a legal profession regulatory authority responsible for granting or renewing practising certificates. The practising certificate regime is a system for granting and renewing practising certificates only to persons who are already admitted to the legal profession and are eligible and suitable persons to hold a practising certificate.

To be granted a practising certificate, or to have a practising certificate renewed (an annual requirement) an applicant must meet a number of prerequisites, including:

- The applicant must be a *lawyer* – i.e. a person who has been and remains admitted to the legal profession by a Supreme Court.
- The applicant must, if required, hold or be covered by professional indemnity insurance during the period of currency of the practising certificate.
- The applicant must not already hold a practising certificate granted in another (Australian) jurisdiction.
- The applicant must be a fit and proper person to hold a practising certificate.
- The applicant must have met his or her continuing professional development obligations.

The fit and proper person requirements for the grant or renewal of a practising certificate, while not the same as those for admission, are also onerous, as outlined in **Appendix 4**.

Practising certificates are granted by the legal profession regulatory authority for the State or Territory which is the applicant's principal place of practice, although under the mutual recognition scheme built into every State and Territory's legal profession law, the grant or renewal of a practising certificate by one State or Territory automatically entitles the holder to engage in legal practice in every other State and Territory.

Maintaining a practising certificate

Maintaining a practising certificate is an ongoing matter. A legal practitioner must, during the period to which the practising certificate relates, maintain or be covered by professional indemnity insurance, must adhere to any conditions imposed by statute or by the regulatory authority on the legal practitioner; and must fulfil their continuing professional development obligation. A list of the statutory and discretionary conditions that may be imposed on a practising certificate under the Uniform Law is at **Appendix 5**.

A legal practitioner is also subject to a continuous disclosure regime for "automatic" show cause events – these are where there has been a bankruptcy-related event, or a conviction for a serious offence or a tax offence, or any other event that may be prescribed. In these cases the practitioner is required to notify the regulatory authority for practising certificates

of the happening of the event and submit a written statement showing cause as to why the legal practitioner nevertheless regards himself or herself to be a fit and proper person to continue to hold a practising certificate.

In addition to automatic show cause events, a regulatory authority may serve notice a legal practitioner alleging a “designated” show cause event – these events encompass practising outside of the conditions on which the practising certificate was granted, or providing impermissible legal services, or any other matter that may be prescribed. As with automatic show cause events, a legal practitioner served with a notice of a designated show cause event is required to submit a written statement showing cause as to why the legal practitioner nevertheless regards himself or herself to be a fit and proper person to continue to hold a practising certificate.

In both cases, the regulatory authority must determine whether the person concerned is a fit and proper person to continue to hold a practising certificate, and may determine that the practising certificate be cancelled, suspended, or varied by imposing additional conditions.

Further, a regulatory authority may cancel, suspend or vary a practising certificate in response to determinations or orders made as a result of investigating and/or resolving consumer complaints and disciplinary matters, or in response to other matters such as the failure to pay compulsory annual contributions or levies to a fidelity fund.

The manner in which legal services are provided

Legal profession laws extensively regulate the manner in which legal services are provided – the overarching theme being protection of consumers of legal services.

Classes or categories of practising certificates

Practising certificates are granted or renewed under various categories, types or classes, depending upon the circumstances of the legal practitioner. Under the Uniform Law a practising certificate will authorise the holder to engage in legal practice in one or more of the following categories:

- as a principal of a law practice.
- as an employee of a law practice.
- as a corporate legal practitioner.
- as a government legal practitioner.
- as or in the manner of a barrister only.
- both as a volunteer at a community legal service and otherwise on a pro bono basis only.

A practising certificate may also have other important conditions attached, such as:

- the holder may or may not be authorised to received trust money.
- the holder may or may not be authorised to supervise other legal practitioners.
- the holder may be required to only engage in legal practice under supervision.

- the holder must comply with any conditions imposed on admission to the legal profession.
- the holder must not hold a practising certificate issued in another State or Territory.
- the holder, if a barrister, must undertake and complete a reading program.
- the holder must comply with the requirements to undertake continuing professional development.
- the holder must comply with any other conditions imposed by the practising certificate regulatory authority.

A practising certificate holder who fails to comply with a condition attached to his or her practising certificate commits a contravention of the Uniform Law.

Employees and associates of law practices

Legal profession laws protect against an unsuitable person (referred to as a "disqualified person") being employed by or otherwise connected with a law practice.

A tribunal or court may declare a person to be a "disqualified person" on one or more grounds, if the disqualification is justified. The grounds for disqualification are:

- the person has been convicted of a serious offence.
- the person is not a fit and proper person to be employed or paid in connection with the practice of law or to be involved in the management of a law practice.
- the person was formerly an Australian legal practitioner and has, when an Australian legal practitioner, been guilty of conduct that constituted unsatisfactory professional conduct or professional misconduct.
- the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct.
- the person could be disqualified under the *Corporations Act 2001* (Cth) from managing a law practice if the law practice were a corporation.

In addition to persons disqualified by a tribunal or court, a "disqualified person" also includes:

- a person whose name has been removed from the roll of lawyers by a Supreme Court and has not subsequently been readmitted to the legal profession.
- a person who has been refused the grant or renewal of a practising certificate and has not been granted a practising certificate at a later time.
- a person whose practising certificate has been suspended (for the period of the suspension).
- a person whose practising certificate has been cancelled and who has not been granted a practising certificate at a later time.
- a person whose practising certificate has been cancelled or suspended, and who is not permitted to apply for another practising certificate for a specified period of time.

A law practice must not have any person who is a "lay associate" (which means a person other than a legal practitioner, who is a partner, director, employee, officer, agent or consultant, or a person who shares receipts, revenue or other income arising from the law practice) that any principal or other legal practitioner associate of the law practice knows to be a disqualified person or a person who has been convicted of a serious offence, without the specific approval of the legal profession regulatory authority. A contravention of this prohibition is treated as a criminal offence.

In addition, a disqualified person or a person who has been convicted of a serious offence is prohibited from seeking to become a lay associate of a law practice without first informing the law practice of the disqualification or conviction. A contravention of this prohibition carries a civil penalty.

Professional indemnity insurance

The objective of the professional indemnity insurance obligation is to ensure that clients of law practices have adequate protection against the consequences of professional negligence, by ensuring that each Australian legal practitioner who engages in legal practice is covered by approved professional indemnity insurance.

It is a statutory prerequisite for the grant or renewal of a practising certificate that a legal practitioner has or will have professional indemnity insurance (unless exempt[13]) that meets at least the prescribed minimum standards for professional indemnity insurance. The requirement to be covered by professional indemnity insurance is ongoing - a legal practitioner is prohibited from engaging in legal practice unless the legal practitioner holds or is covered by an approved professional indemnity insurance policy.

An approved professional indemnity policy must provide a minimum amount of $2 million (costs inclusive) for each and every claim. The other statutory minimum standards for solicitors are, in summary:

- The insurance must cover any civil liability, including professional negligence, incurred in connection with providing legal services.
- Cover must operate on a "claims made" basis, covering claims made and notified during the period of insurance, and claims made after the period of insurance from circumstances notified during the period of insurance.
- The insurance must cover all current and former principals and employees of the law practice.
- The insurance must provide indemnity for run-off liabilities for a period of seven years from the date the law practice ceases to practice or the date of expiry of the insurance (if not already provided for in another current insurance policy).

Where the amount 'at risk' in a particular client matter is greater than the statutory minimum, normal practice is that the law practice and client will reach agreement about additional insurance coverage—law practices that deal with matters involving amounts greater than

[13] For example, government legal practitioners, or holders of a statutory office of the Commonwealth are not required to hold professional indemnity insurance.

the statutory minimum level of coverage will hold or obtain additional ('top-up') cover for the law practice.

An approved professional indemnity insurance policy cannot deny future cover in either extent or amount that is less than the minimum standards because of previous claims history, although the cost of the premium may be affected by the prior claims history.

A legal practitioner is not permitted to engage in legal practice unless he or she holds or is covered by an approved professional indemnity insurance policy (unless otherwise exempt). A legal practitioner who engages in legal practice without professional indemnity insurance commits a contravention of the Uniform Law, which carries a civil penalty.

Fidelity schemes

The objective of a fidelity scheme is to provide a source of compensation for persons who have suffered a pecuniary loss as a result of defaults by law practices arising from acts or omissions by legal practitioners involving fraud or dishonesty in dealing with trust money and trust property.

Fidelity funds consist of monies contributed by legal practitioners either as compulsory annual contributions or levies, interest or other income accruing from the investment of money in the fund, and any other money paid into the fund by the relevant jurisdiction.

Trust money and trust accounts

The objective of trust money and trust account regulation is to ensure that trust money is held by law practices in a manner that protects the interests of the persons for whom or on whose behalf it is held. Regulation covers matters such as the authority to receive and hold trust money, establishing and maintaining trust accounts with authorised deposit-taking institutions, authority to withdraw or disburse trust money, internal accounting and record-keeping, annual external examination of trust money and trust accounting records, external investigations and intervention in law practice management by regulatory authorities. Some of the key features are:

- A law practice must not receive trust money unless a principal of the law practice holds a practising certificate authorising the receipt of trust money, or the law practice is otherwise authorised. A principal of a law practice will usual not be so authorised until after successfully completing a law practice management program which includes trust accounting.
- Trust monies may only be held in specifically designated trust accounts, with an authorised deposit taking institution (ADI) approved by the relevant regulatory authority.
- Legal profession laws extensively regulate all aspects of trust monies and trust accounting procedures.
- It is a criminal offence for a legal practitioner or any other person to cause, without reasonable excuse, a deficiency in any trust account or trust ledger account, or to fail to pay or deliver trust money.

- In addition to the requirement that a law practice's trust records be examined annually by a qualified external examiner, a legal profession regulatory authority may undertake or appoint a suitably qualified person to undertake an investigation into particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice.
- Legal profession laws provide for a regulatory authority to intervene in the business and professional affairs of a law practice to protect the interests of the general public or clients, including the appointment of a supervisor of trust money of a law practice or appointment of a manager for a law practice. In addition, a court or tribunal may appoint a receiver for a law practice.

Legal costs (including disclosures)

The objectives of legal costs regulation are to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options; that law practices must not charge more than fair and reasonable amounts for legal costs; and that there is a framework for independent assessment of legal costs if a dispute arises.

The regulatory regime for legal costs covers matters such as costs disclosure obligations, costs agreements, billing for legal costs, and independent assessments of legal costs where costs payable are in dispute.

Disclosure

The legal services to be provided and related matters will normally be set out in an engagement letter/retainer agreement between the client and law practice that would typically include an agreement about legal costs. Legal profession laws set out statutory disclosure obligations which must be in writing and fulfilled when, or as soon as practicable after instructions are initially given, and which:

- disclose the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs; and
- provide information about the client's rights to negotiate a costs agreement, to negotiate the billing method, to receive a bill and request an itemised bill; and to seek the assistance of the relevant regulatory authority in the event of a dispute about costs.

If there has been a significant change to anything previously disclosed the law practice must, at the time of or as soon as reasonably practicable after the change, provide the client, in writing, with information disclosing the change, including information about any significant change in the legal costs. This disclosure must include sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to enable the client to make informed decisions about the future conduct of the matter.

Fair and reasonable legal costs

The concept of *fair and reasonable legal costs* means that the costs must be proportionately and reasonably incurred, and proportionate and reasonable in amount. Factors relevant to

this can include the level of skill, experience, specialisation and seniority of the lawyers concerned; the complexity, novelty or difficulty of the issues involved; the quality of the work; and particular circumstances such as urgency, time spent on the matter and the number and importance of any documents involved.

Costs disputes and assessments

Depending on the jurisdiction involved, a dispute about legal costs may be resolved by either the statutory complaints handling authority (for example, in Uniform Law jurisdictions and within certain monetary limits) or by referral to a costs assessor appointed by a Supreme Court.

Where a dispute about legal costs is determined by a costs assessor, the objective is to determine whether a valid costs agreement exists, and whether the legal costs are fair and reasonable, and if not, to determine the amount of legal costs (if any) that are to be payable.

Disciplinary consequences

In addition, if a costs assessor does not consider that costs charged were fair and reasonable, the matter may be referred to legal profession regulatory authority, and must be referred if the costs assessor considers the legal costs charged, or any other issue raised in the costs assessment may amount to unsatisfactory professional conduct or professional misconduct.

Professional conduct

Exemplary standards of professional conduct are the core of a legal practitioner's relationship with the courts and with their clients - and are central to the administration of justice.

Professional conduct rules are developed by the legal profession and express the collective judgment of the legal profession about the standards of professional conduct to be "observed or approved of by members of the profession of good repute and competency".

Professional conduct rules reflect principles developed and explained by the courts over many years, supplemented by rules relating to specific aspects of legal practice. The Australian Solicitors' Conduct Rules, which have been adopted as the professional conduct rules for solicitors in all States and Territories (apart from the Northern territory which is expected to adopt them in the near future). Those rules are grouped into the following categories:

1. Fundamental duties of solicitors
2. Relations with clients
3. Advocacy and litigation
4. Relations with other persons
5. Law practice management

A list of the specific topics dealt with in the Australian Solicitors' Conduct Rules is at **Appendix 6**.

The professional commitment to abide by the conduct rules is reinforced by State and Territory legislation, which sets out the statutory authority and processes for developing professional conduct rules, and the formal requirements for those rules to be "made" (usually as a legislative instrument). In addition, each legal profession law provides that a breach of a professional conduct rules is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

Complaints and disciplinary matters

Complaints and disciplinary schemes centre on three objectives:

- Discipline of the legal profession, in the interests of the administration of justice and for the protection of consumers and the public generally.
- Promotion and enforcement of professional standards, competence and honesty of the legal profession.
- Means of redress for complaints about lawyers.

The core components of complaints and discipline schemes are assessment and investigation of complaints; resolution of complaints by regulatory authorities and tribunals; mechanisms for alternative dispute resolution; remedies for consumers including compensation orders; and disciplinary sanctions for unprofessional conduct.

Complaints about the quality of legal services and/or the professional conduct of legal practitioners are lodged with and managed by legal profession regulatory authorities, separate from the practitioner who is the subject of complaint.

Consumer matters

The scheme of the complaints-handling framework for consumer matters contained in the Uniform Law, for example, is as follows.

- The objective is timely and effective resolution of disputes and issues between clients and lawyers.
- The complaints handling authority conducts a preliminary assessment of the complaint, and may request additional information to be provided. Following the preliminary assessment the complaint may be closed with no further action (for example, because the complaint is vexatious, frivolous, or lacking in substance).
- The legal practitioner subject to the complaint will be notified of the complaint and may be given a summary or details of the complaint. The legal practitioner is also given an opportunity to respond and make submissions. There are exceptions to this notification requirement—for example where the complainant or another person could be placed at risk of intimidation or harassment.

- The complaint may be investigated, and if so, the investigation is not limited solely to matters relating to the actual complaint, but may extend to other legal practice and professional conduct matters.
- The complaints handling authority will not take action toward resolving a consumer complaint unless at least one the parties has made a reasonable attempt to resolve the complaint and has failed, or it would be unreasonable to expect the complainant to be involved in an attempt.
- The complaints handling authority must attempt to resolve a consumer complaint informally, and may order the parties to that complaint to attend mediation in good faith. If mediation is not successful, the complaints handling authority may further investigate and proceed to making a determination to resolve the complaint.
- The complaints handling authority will determine a consumer complaint on the basis of what is fair and reasonable in the circumstances. The remedies that may be ordered can include a caution, an apology, requiring the work to be redone at no cost or a reduced cost or determining the amount of legal costs to be paid (within money limits). In addition, the complaints handling authority may make a compensation order to compensate the aggrieved person for loss suffered because of the conduct that led to the complaint.

Disciplinary matters

The scheme of the complaints-handling framework for disciplinary matters contained in the Uniform Law, for example, is explained below.

Any person or body may make a complaint. In addition, a legal profession regulatory authority may initiate a complaint involving a disciplinary matter.

A complaint may be made in relation to the conduct of a lawyer (a person admitted to the legal profession) or a legal practitioner (a lawyer who holds a practising certificate),or an Australian-registered foreign lawyer. A complaint may also be made about a person who was formally a lawyer, legal practitioner or Australian-registered foreign lawyer.

Disciplinary matters are based upon the core concepts of *unsatisfactory professional conduct* or *professional misconduct*.

- *Unsatisfactory professional conduct* means any conduct occurring in the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.
- *Professional misconduct* includes:
    - unsatisfactory professional conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and
    - conduct occurring whether to not in connection with the practise of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice (having regard to the matters that would be considered in an application for admission of an application the grant or renewal of a practising certificate).

There is no complete list of what kinds of conduct constitute *unsatisfactory professional*

conduct or *professional misconduct*, but there are some matters specifically identified as conduct capable of constituting *unsatisfactory professional conduct* or *professional misconduct.* These include (but are not limited only to):

- conduct consisting of a contravention of the legal profession law, whether or not the contravention is an offence punishable by way of a pecuniary penalty order; the person has been convicted of an offence in relation to contravention; or a civil penalty order has been made against the person.
- conduct consisting of a contravention of the Uniform Rules, which includes the professional conduct, legal practice and continuing professional development rules.
- charging more than a fair and reasonable amount for legal costs in connection with the practice of law.
- conduct in which there is a conviction for a serious offence, a tax offence or an offence involving dishonesty.
- conduct as or in becoming an insolvent under administration.
- conduct in becoming disqualified from managing or being involved in the management of a corporation under the *Corporations Act 2001* (Cth).

The processes and procedures under the Uniform Law for dealing with disciplinary complaints is as follows:

- The complaints handling authority conducts a preliminary assessment of the disciplinary complaint, and may request additional information to be provided. Following the preliminary assessment, the complaint may be closed with no further action (for example, because the complaint is vexatious, frivolous, or lacking in substance).
- The complaints handling authority may recommend the immediate suspension of a practising certificate if that is considered warranted in the public interest because of the seriousness of the complaint.
- The legal practitioner subject to the complaint will be notified of the complaint and may be given a summary or details of the complaint. The legal practitioner is also given an opportunity to respond and make submissions. There are exceptions to this notification requirement—for example, where to do so would prejudice the investigation of the complaint, or would prejudice an investigation by the police or other investigatory or law enforcement body; or would place the complainant or another person at risk of intimidation or harassment; or would prejudice impending court proceedings.
- The complaint may be investigated, and if so, the investigation is not limited solely to matters relating to the actual complaint, but may extend to other legal practice and professional conduct matters revealed in the investigation.
- The complaints handling authority may make a finding the lawyer has engaged in *unsatisfactory professional conduct* and determine the disciplinary matter by making orders which include: a caution, a reprimand, an apology, redoing the work at no cost or reduce fees, requiring training, education, counselling or supervision, a fine, and the imposition of conditions on a practising certificate.

Matters involving what might amount to *professional misconduct* are resolved by the complaints handling authority initiating proceedings before a Tribunal or Supreme Court. The complaints handling authority may also refer matters involving *unsatisfactory professional conduct* to a tribunal or Supreme Court if the authority considers the matter would be better dealt with by a Tribunal or Supreme Court.

A tribunal or Supreme Court that finds a legal practitioner guilty of professional misconduct may make any of a range of orders. These are set out in **Appendix 7**.

The objective of disciplinary proceedings is not punishment, although some sanctions will operate from a practitioner's perspective as a form of punishment. The objective is to protect the public, and the administration of justice, from a legal practitioner who displays a lack of competence or diligence in legal practice, or a legal practitioner who engages in kinds of conduct that call into question the fitness and propriety of that person to continue to be an officer of the court entitled to engage in legal practice.

Thus, a legal practitioner who commits a civil or criminal offence will incur the appropriate civil or criminal penalty for that offence and may also, depending on the circumstances surrounding that offence, incur disciplinary consequences. This is why the legal profession laws applying in all States and Territories include as conduct *capable* of constituting unsatisfactory professional conduct or professional misconduct, conviction for a serious offence, a tax offence or an offence involving dishonesty.

Regulatory powers and functions

Legal profession regulatory authorities exercise many regulatory powers and functions, including monitoring, investigation and enforcement powers, and do so through interjurisdictional cooperation mechanisms where required. An overview of the more significant Uniform Law arrangements is set out below.

Threshold requirements for legal practice

The regulatory authority may take any steps that, in the regulatory authority's opinion, are necessary or proper for investigating the conduct of any entity that is, or may be, a contravention of the prohibition on engaging in legal practice or advertising an entitlement to engage in legal practice, when the entity is not qualified to do so.

Admission

The Uniform Law provides for regulatory authorities (generally referred to as "admitting authorities") to provide the Supreme Court with a *compliance certificate* confirming an applicant for admission satisfies the academic and practical legal training prerequisites, and is a fit and proper person to be admitted to the Australian legal profession. Before doing so, the admitting authority may:

- require the applicant to provide further information, and if necessary, require the applicant to appear before the admitting authority.
- seek and obtain further information from the applicant's academic and practical legal training institutions.

- communicate with and obtain information from Australian and foreign authorities or courts in connection with an application for admission.
- require the applicant to provide a health report.

Practising certificates

The regulatory authority for practising certificates exercises a wide range of powers and functions, as explained below.

An application for the grant or renewal of a practising certificate can only be made in the jurisdiction in which the applicant intends will be his or her principal place of practice during the currency of the certificate, and may seek further relevant information from the applicant.

More specifically, in considering whether or not to grant, renew, vary, suspend or cancel a practising certificate, the regulatory authority may require the applicant or holder:

- to give the regulatory authority specified documents or information.
- to be medically examined by a medical practitioner specified by the regulatory authority.
- to provide a police report as to whether the applicant or holder has been convicted or found guilty of an offence in Australia.
- to cooperate with any inquiries considered appropriate by the regulatory authority.

Variation, suspension or cancellation of a practising certificate.

The regulatory authority *may* vary a practising certificate for a formal or clerical reason (i.e., to correct errors) or for another reason that does not adversely affect the holder's interests. A practising certificate may also be varied, suspended or cancelled at the request of, or with the concurrence of the practising certificate holder – for example, where the holder has retired from legal practice.

The regulatory authority *must* vary, suspend or cancel a practising certificate to give effect to a direction to do so by a tribunal following the determination of disciplinary proceedings against a lawyer – i.e. the practising certificate holder has been found guilty of unsatisfactory professional conduct or professional misconduct.

If the regulatory authority refuses to grant or renew a practising certificate, or cancels a practising certificate, the regulatory authority may also decide the person is not entitled to apply for a practising certificate for a specified period of up to and including 5 (five) years.

In addition, the regulatory authority may vary, suspend or cancel a practising certificate where:

- the holder has contravened a condition imposed on the practising certificate.
- the holder has failed without reasonable excuse to comply with requirements relating to an investigation, or has committed an offence relating to an investigation.
- a complaints-handling authority has recommended the immediate suspension of a practising certificate on public interest grounds because of the seriousness of the complaint that has been made against the legal practitioner.

- a complaints-handling authority has recommended the imposition of a condition on a practising certificate following a determination that the legal practitioner has engaged in unsatisfactory professional conduct.
- a legal profession regulatory authority has recommended that the practising certificate be suspended because the holder of the practising certificate has: failed to notify a trust account or trust records irregularity; or to provide documents or information to a receiver, or as part of a trust records examination, investigation of compliance audit; or has failed to produce documents, provide information or assist and cooperate with an investigation, including where an investigator is on premises conducting an investigation; or has failed to produce documents, provide information or do other things required as part of an audit or investigation of an incorporated legal practice.
- the regulatory authority reasonably believes the holder of the practising certificate is unable to fulfil the inherent requirements of an Australian legal practitioner.
- the regulatory authority considers it necessary to suspend or vary a practising certificate before a charge for a serious offence, a tax offence or other specified offence has been determined or proceedings have been completed, where the regulatory authority considers it appropriate because of the seriousness of the offence and the public interest.
- the practising certificate holder has failed to provide a show cause statement; or has provided a statement but the regulatory authority does not consider the holder is or can be considered to be a fit and proper person to hold a practising certificate; or has failed to comply with any requirements relating to an investigation into the show cause event.

Trust money

Trust money is broadly defined as money entrusted to a law practice in the course of, or in connection with the provision of legal services and attracts specific regulatory controls and consumer protections. Trust money falls into four broad categories:

- money received on account of legal costs in advance of providing legal services, which is held in a general trust account;
- controlled money, which is money received or held with a written direction that it be deposited into an account other than a general trust account, over which the law practice has exclusive control.
- transit money, which is money received subject to instructions to pay or deliver it to a third party; and
- money that is the subject of a power exercisable by a law practice, to be dealt with for or on behalf of another person.

The main powers and functions exercised by regulatory authorities over trust money and trust accounting are as follows:

- To determine whether or not money held by a law practice is or is not trust money, where there doubt or a dispute over the status of the money.
- To access and receive copies of records relating to trust accounts, deposits, and transactions at an approved deposit-taking institution where a trust account is maintained.
- To receive written notifications from law practices of each account maintained at an approved deposit-taking institution holding trust money received by the law practice.
- To receive written notifications of irregularities in trust accounts and trust ledger accounts from legal practitioner associates of a law practice, external examiners and approved deposit-taking institutions.
- To receive written notifications from legal practitioners who believe on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of trust money by another law practice.
- To receive a written report from an external examiner of the examination carried out.
- To examine, or appoint a suitable qualified person as an external examiner to examine, a law practice's trust records if the regulatory authority is not satisfied that the law practice has had an external examination carried out, or the external examination was not carried out in the way required.
- To investigate, or appoint a suitably qualified person as an external investigator to investigate, the affairs or specified affairs of a law practice to ascertain whether the law practice has complied with or is complying with the trust money requirements, to detect and prevent fraud or defalcation, and to investigate any other matters.

Professional indemnity insurance

To consider exemptions from the local professional indemnity insurance requirements in specified circumstances, where legal practitioners or law practices are adequately covered by the insurance arrangements of another jurisdiction, or on other grounds considered sufficient, subject to possible concomitant restrictions on the scope of legal practice of the person so exempted – for example, a corporate legal practitioner may be exempted from the requirement to hold professional indemnity insurance, provided the legal practitioner only provides legal services to his or her employer.

Business management and control

Compliance audits

The Uniform Law provides for a regulatory authority to conduct, or appoint a suitably qualified person to conduct, an audit of the compliance of any law practice[14] with the Uniform Law, Uniform Rules and other applicable professional obligations if there are reasonable grounds to do so, based on the conduct of the law practice or one or more of its legal practitioner associates, or because of a complaint against the law practice or one or more of its associates.

Management system directions

The Uniform Law provides that a regulatory authority may issue a management system direction to a law practice if it considers it reasonable to do so after conducting a trust records examination, a trust records investigation, a compliance audit, or a complaint investigation.

The object of a management system direction (which may be given to a law practice or a class of law practices) is to ensure that appropriate management systems are implemented and maintained to ensure legal services are provided in accordance with the Uniform Law, Uniform Rules and other applicable professional obligations. A management system direction includes a direction that periodic reports be provided to the regulatory authority.

Complaints and discipline matters

The time limit that usually applies (in the case of complaints other than costs disputes) is that the complaint must relate to conduct that occurred within the 3 (three) years immediately preceding the making of the complaint; however, the regulatory authority may waive the time limit if satisfied it is just and fair to deal with the complaint, having regard to the delay and the reasons for the delay; or because the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.

The regulatory authority for complaints may recommend the immediate suspension of a practising certificate if it considers that is warranted in the public interest on the grounds of the seriousness of the complaint. Such a recommendation may be made regardless of whether or not an investigation of the complaint has begun or been completed.

The respondent to a complaint is normally notified of the complaint and given a summary, and notified of the right to make submissions; however, the regulatory authority is not required to do so if it reasonably believes doing so would prejudice the investigation; or prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the complaint is concerned; or would place the complainant or another person at risk of intimidation or harassment; or would prejudice pending court proceedings.

[14] In non-Uniform law jurisdictions, the equivalent powers are exercisable only in relation to incorporated legal practices – see for example *Legal Profession Act 2007* (Qld) [s. 130].

When conducting a complaint investigation, the scope of the investigation can be extended to any other conduct revealed during the investigation.

The Uniform Law provides that a regulatory authority for complaints handling has duties to deal with complaints in accordance with the Uniform Law and Rules; to exercise discretions in a fair manner, having regard to the respective interests of the complainant, the respondent and the public interest; and to deal with complaints, including investigations, as efficiently and expeditiously as possible.

Where a regulatory resolves a consumer matter by making a determination, that determination must be fair and reasonable in all the circumstances.

A regulatory authority may determine a disciplinary matter involving unsatisfactory professional conduct, and if this is done, no further action is to be taken in relation to the complaint however, before doing so the regulatory authority must provide the respondent or associate and the complainant with details of the proposed determination, and invite written submissions within a specified period; and take into consideration any written submissions received during that specified period.

A regulatory authority may make a compensation order against a respondent in respect of a loss suffered by a complainant or another person who is a client of the respondent because of the conduct the subject of the complaint, and it is in the interests of justice that the compensation order be made. A compensation order under the Uniform Law may include monetary compensation up to $25,000, an order preventing the lawyer or law practice from recovering, or repaying, amounts charged to the complainant, and an order discharging a lien over documents held by the law practice.

External intervention

The objective of the external intervention powers into the business and professional affairs of a law practice is to protect the interests of the general public, of clients and of law practices and others, including owners and employees of law practices. The external intervention powers exercisable by regulatory authorities under the Uniform Law may be invoked where:

- a legal practitioner associate involved in a law practice has died, ceases to hold a current practising certificate, has become an insolvent under administration, or is in prison; or
- a law firm or an unincorporated legal practice has been wound up or dissolved; or
- an incorporated legal practice ceases to be an incorporated legal practice, is being or has been wound up, or has been deregistered or dissolved: or
- the designated local regulatory authority forms a belief on reasonable grounds that the law practice or an associate of the law practice:
    - is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the law practice; or
    - has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the law practice; or

- has failed to properly account in a timely manner to any person for trust money or trust property received by the law practice for or on behalf of that person; or
- has failed to properly make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
- is in breach of the Uniform Rules with the result that the record-keeping for the law practice's trust accounts is inadequate; or
- has been or is likely to be convicted of an offence relating to trust money or trust property; or
- is the subject of an adverse finding in relation to a complaint relating to trust money or trust property received by the law practice; or
- has failed to comply with any requirement of an investigator or external examiner appointed under this Law; or
- has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the law practice or for properly winding up the affairs of the law practice; or

- where any other proper cause exists in relation to the law practice.

Where any of the above circumstances exist, the regulatory authority may determine to appoint an appropriate external intervener, as explained below.

Supervisor of trust money

The role of a supervisor of trust money is to exercise the powers and functions of the law practice in relation to trust money, including to receive trust money and open and close trust accounts. The supervisor does not have a role in the management of the affairs of the law practice except to the extent the affairs relate to a trust account of the law practice.

To do this, the supervisor of trust money may enter and remain on the law practice's premises, require access to files and documents the supervisor reasonably required and obtain information relating to trust money reasonably required. In addition, the supervisor may operate any equipment, take possession of and retain relevant material, secure that material against interference, and take possession of any computer or computer program reasonably required to perform the supervisor's functions.

Once a supervisor of trust money has served a notice of his or her appointment on an approved deposit taking institution (an ADI) the ADI must ensure no funds are withdrawn or transferred from a trust account unless withdrawals or transfers made by cheque or other instrument are signed by the supervisor or nominee of the supervisor, withdrawals or transfers by electronic or internet banking are made by the supervisor or nominee of the supervisor, or the withdrawal or transfer is made in accordance with an authority signed by the supervisor or nominee of the supervisor.

Once a supervisor of trust money has served a notice on a person of his or her appointment as supervisor of a law practice, the person must not deal with any of the law practice's trust money, must not sign any cheque or other instrument drawn on a trust account of the law

practice, and must not authorise the withdrawal or transfer of funds from a trust account of the law practice.

Manager of a law practice

The role of a manager of a law practice is to carry on the law practice and do all of the things the law practice or legal practitioner associate of the law practice might lawfully have done. This includes:

- transacting any business of the law practice the manager reasonably believes to be urgent.
- transacting, with the approval of an existing client, any business on their behalf, including commencing, continuing, defending or settling proceedings, and receiving, retaining and disposing of property.
- accepting instructions from new clients and transacting business on their behalf.
- charging and recovering legal costs.
- entering into, executing and performing agreements.
- dealing with trust money.
- winding up the affairs of the law practice.

A manager of a law practice also has authority to enter and remain on the law practice's premises, to require access to files and documents the manager reasonably requires and obtain information relating to trust money reasonably required. The manager may also operate any equipment, take possession of and retain relevant material, secure that material against interference, and take possession of any computer or computer program reasonably required to perform the supervisor's functions.

Once a manager has served a notice on a legal practitioner specified or referred to in the instrument of appointment, that legal practitioner is not permitted to participate in the affairs of the law practice except under the direct supervision of the manager.

Also, once a manager has served a notice of his or her appointment on an ADI, the ADI must ensure no funds are withdrawn or transferred from a trust account unless withdrawals or transfers made by cheque or other instrument are signed by the manager, or a receiver, or a nominee of the manager or receiver, withdrawals or transfers by electronic or internet banking are made by the manager, or a receiver, or a nominee of the manager or receiver, or the withdrawal or transfer is made in accordance with an authority signed by the manager, or a receiver, or a nominee of the manager or receiver.

Receivers

A regulatory authority may initiate action for the appointment by a tribunal of a receiver for a law practice. A receiver may be an Australian legal practitioner authorised to supervise other legal practitioners and to receive trust money, or a person holding accounting qualifications with experience in law practice accounts.

The role of a receiver is to be the receiver for the regulated property of the law practice, and to wind up and terminate the affairs of the law practice. In undertaking this function,

and in recognition of the interests of the clients of the law practice, the tribunal appointing the receiver may authorise a receiver who is a legal practitioner (or another legal practitioner or law practice) to carrying on the legal practice for the purpose of winding up its affairs. In this case, the receiver holds all of the powers and functions of a manager appointed to manage the affairs of a law practice.

Investigatory powers

Investigators exercise considerable powers for the purpose of conducting trust records examinations and investigations, compliance audits and compliant investigations. The main elements include:

- Access to documents relating to the affairs of the law practice the investigator reasonably requires.
- Access to information relating to the affairs of the law practice (which may be by way of statutory declaration).
- Production of documents, provision of written information and assistance and cooperation by a lawyer or legal practitioner associate of a law practice served with a notice in writing.
- Authority to inspect and make copies of documents.
- Authority to enter premises with the consent of the occupier, or under authority of a search warrant.
- Power to search premises for any information, documents or other materials relating to the matter to which the investigation relates, and to take possession of and seize and take away relevant material.
- Power to require any person on the premises to state their full name, date of birth and address; to answer (orally and in writing) questions asked that are relevant to the investigation; to produce relevant material and to give other assistance the investigator reasonably requires to carry out the investigation.

In addition to the general investigator powers, trust records investigations, compliance audits and complaint investigations conducted into an incorporated legal practice also invoke additional investigatory powers (including to hold hearings) that are conferred on and exercisable by the Australian Securities and Investments Commission (ASIC) under the *Australian Securities and Investments Commission Act 2001* (Cth).

Regulatory cooperation

Consistent with the principles of mutual recognition, the State and Territory legal profession laws are framed around cooperation and mutual recognition amongst regulatory authorities[15]. Regulatory cooperation also extends to foreign and other Australian regulatory bodies. To this end, the Uniform Law provides, for example:

- The Legal Services Council, Commissioner for Uniform Legal Services Regulation, the Admissions Committee and local regulatory authorities may negotiate and enter

[15] See for example *Legal Profession Act 2007* (Qld) [Part 2.6 – Inter-jurisdictional provisions regarding admission and practising certificates]

into arrangements with Australian and foreign authorities or courts for exchanging, obtaining or disclosing information relevant to any of their respective functions under the Uniform Law or Uniform Rules.

- The Legal Services Council, Commissioner for Uniform Legal Services Regulation, Committees and their members, local regulatory authorities, delegates, and staff members may disclose information obtained in the administration of the Uniform Law or Uniform Rules to a person or body in a non-Uniform Law State or Territory in relation to a function of that person or body under a corresponding law.
- The Legal Services Council, the Admissions Committee and local regulatory authorities may negotiate and enter into arrangements with foreign authorities for the mutual recognition for admission purposes of academic course and practical legal training programs.
- The Legal Services Council, Commissioner for Uniform Legal Services Regulation, the Admissions Committee and local regulatory authorities may disclose information to a foreign authority or court in response to a request for relevant information, but may do so only if satisfied that it is not likely that the information provided will be inappropriately disclosed by the foreign authority or court.
- The Commissioner for Uniform Legal Services Regulation or a local regulatory authority may disclose to ASIC information concerning a corporation that is or was an incorporated legal practice that the Commissioner or authority acquired in the course of exercising functions under this Law and that is relevant to ASIC's functions.
- The Legal Services Council, Commissioner for Uniform Legal Services Regulation and local regulatory authorities are each to ensure, as far as practicable, that relevant information in connection with the exercise of their respective functions is shared between them in accordance with arrangements agreed between them; and provided expeditiously, at the request of one of them to the other; and their respective functions are, where relevant, exercised in a cooperative manner.
- The Legal Services Council, Commissioner for Uniform Legal Services Regulation and local regulatory authorities may each exercise any of their functions in cooperation with, or with the assistance of, the Commonwealth, a State or a Territory, including in cooperation with, or with the assistance of, any of the following entities—
    - a government authority[16];
    - a professional association;
    - an educational body or other body established by or under a law of the Commonwealth, a State or a Territory.

Foreign lawyers

[16] A "government authority" is defined to include a Minister, government department or public authority of the Commonwealth or of a State or Territory, and a body or organisation declared by Uniform Rules to be within the definition.

The objective of the foreign lawyer provisions the legal profession laws is to encourage and facilitate the internationalisation of legal services available in Australia. Legal profession laws provide a regulatory framework for practising foreign law as a recognised aspect of legal practice in Australia.

Foreign lawyers, other than those who provide legal services in foreign law in Australia for periods not exceeding in aggregate 90 days over 12 months (known as “fly-in, fly-out”) must apply for and become registered as an Australian-registered foreign lawyer.

The practice of foreign law by an Australian-registered foreign lawyer is subject to a number of requirements and restrictions, as explained below by reference to the Uniform Law.

Granting or renewing a registration certificate

The regulatory authority must grant a registration certificate to a foreign lawyer if it is satisfied that:

- the person is an individual aged 18 years or over; and
- the person is registered or authorised to engage in legal practice in one or more foreign countries with an effective system of legal practice regulation and is not an Australian legal practitioner[17]; and
- the person demonstrates an intention to engage in legal practice in Australia within a reasonable period after registration; and
- the person is not subject to any special conditions or undertakings concerning his or her engagement in legal practice as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country that would make registration inappropriate; and
- the person is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as a foreign lawyer; or an Australian-registered foreign lawyer; or an Australian lawyer; and
- the person’s registration or authorisation is not cancelled or currently suspended in any place as a result of disciplinary action; and
- the person is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place as a result of criminal, civil or disciplinary proceedings in any place; and
- the person satisfies any other requirements of the Uniform Rules

However, the regulatory authority may refuse to grant or renew registration certificate on a number of grounds:

- the application is not accompanied by, or does not contain, sufficient information.
- the applicant has contravened an Australian law relating to the legal profession.

[17] An Australian legal practitioner who is also registered or authorised by a foreign jurisdiction to practice the law of that foreign jurisdiction may practice that foreign law in Australia without additional Australian registration.

- the applicant has contravened an order of a tribunal or corresponding disciplinary body, including but not limited to an order to pay any fine or costs.
- the applicant has contravened an order of a local regulatory authority or corresponding authority of any jurisdiction, including but not limited to an order to pay any fine or costs.
- the applicant has failed to comply with a requirement under an Australian law relating to the legal profession to pay a contribution to, or levy for, a fidelity fund.
- the applicant has contravened a requirement of or made under an Australian law relating to the legal profession in relation to professional indemnity insurance.
- the applicant has failed to pay any expenses of receivership payable under an Australian law relating to the legal profession.
- the applicant's foreign legal practice is in receivership (however described),
- an authority of another jurisdiction has under a corresponding law refused to grant or renew registration for the applicant, or has suspended or cancelled the applicant's registration.
- the regulatory authority is satisfied that the applicant is not a fit and proper person to be registered, after considering the nature of any offence of which the applicant has been found guilty in Australia or a foreign country, how long ago the offence was committed and the person's age when the offence was committed.

Scope of practice

The scope of legal practice in foreign law in Australia is primarily limited to doing work, or transacting business concerning the law of a foreign country in which the foreign lawyer is registered or authorised to practice law.

Foreign lawyers are specifically prohibited from practising Australian law or appearing in any court (except on their own behalf or otherwise as permitted under a legal profession law or rule). However, a foreign lawyer is permitted to:

- provide legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law is considered by the regulatory authority to be essential;
- provide legal services in relation to arbitration proceedings or conciliation, mediation and other forms of consensual dispute resolution;
- any other kinds of legal services that may be prescribed in the Uniform Rules;
- give advice on Australian law if that is necessarily incidental to the practice of foreign law, and is advice expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

Form of practice

An Australian-registered foreign lawyer is entitled to practice foreign lawyer under a range of business structures. Those set out in the Uniform Law are:

- as a sole practitioner;

- as a partner in a law firm (i.e. as a partner in partnership with Australian legal practitioners).
- in a partnership with other Australian-registered foreign lawyers.
- as a volunteer at a community legal service or otherwise on a pro bono basis.
- as a partner, director, officer or employee of an incorporated legal practice or an unincorporated legal practice.
- as an employee of a law practice or another Australian-registered foreign lawyer.

Duties and professional obligations of foreign lawyers

The regulatory duties and professional obligations that apply to an Australian-registered foreign lawyer broadly correspond to those that apply to Australian legal practitioners, with some modifications:

- The Australian Solicitors' Conduct Rules apply to Australian-registered foreign lawyers acting in the manner of a solicitor.
- An Australian-registered foreign lawyer's registration certificate is subject to statutory conditions relating to authorisation to receive trust money; to only hold one registration certificate; to notify the regulatory authority of events such as being charged with or convicted of a serious offence, a tax offence and other specified offences; or a bankruptcy-related event; and that the holder of the registration certificate is the subject of disciplinary proceedings or other disciplinary actions as a lawyer in a foreign country.
- An Australian-registered foreign lawyer's registration certificate is also subject to discretionary conditions imposed by the regulatory authority, which can relate to the type of legal practice the foreign lawyer may and may not engage in, to engage in legal practice only under supervision or other restriction on practising entitlements, and any other condition that may be imposed on an Australian legal practitioner.
- The grounds or circumstances under which an Australian legal practitioner's practising certificate may be varied, suspended or cancelled apply also to registration as an Australian-registered foreign lawyer, as does the requirements relating to automatic show cause events and designated show cause vents.
- An Australian-registered foreign lawyer is not compelled to hold or be covered by an approved (Australian) professional indemnity insurance policy, but must disclose to clients whether or not the foreign lawyer is covered by professional indemnity insurance, and if so, the nature and extent of that cover.
- An Australian-registered foreign lawyer may be required to make fidelity contributions (except where the person is not and reasonably expects not to be an associate of a law practice).
- The complaints and disciplinary provisions apply to an Australian-registered foreign lawyer and a former Australian-registered foreign lawyer.

An additional note about penalties

It was explained earlier in this Information Paper in relation to the threshold matters about business structures that an important protective measure is that a person must not cause or induce, or attempt to cause or induce a law practice or legal practitioner associate of a law practice to contravene the Uniform Law, Uniform Rules or other professional obligations, and that a contravention is a criminal offence under the Uniform Law.

The Uniform Law extends the protection against undue influence by providing that a person must not:

- aid, abet, counsel or procure a contravention of a civil penalty provision; or
- induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
- be in anyway directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
- conspire to contravene a civil penalty provision.

A person who contravenes any of these prohibitions is treated as if they had also contravened the civil penalty provision in question.

APPENDIX 1

Key topics of regulation - Legal Profession Uniform Law

CHAPTER 1

Objectives of the Uniform law
Extraterritorial operation
Jurisdictional arrangements

THRESHOLD REQUIREMENTS FOR LEGAL PRACTICE

Unqualified legal practice

Prohibition on engaging in legal practice by unqualified entities
Prohibition on advertisements or representations by or about unqualified entities
Entitlement of certain persons to use certain titles, and presumptions with respect to other persons
Functions of local regulatory authority with respect to offences

Admission to the Australian legal profession

Admission
Prerequisites for compliance certificates
Exemption from certain prerequisites
Compliance certificates
Conditional admission of foreign lawyers
Declaration of early assessment of suitability for a compliance certificate
Supreme Court roll
Removal from Supreme Court roll
Notice to be given of interjurisdictional action
Australian lawyer is officer of Supreme Court
Accreditation of law courses and providers of practical legal training

LEGAL PRACTICE.

Business structures

Obligations not affected by nature of business structures
Responsibilities of principals
Liability of principals
Privileges of practitioners
Undue influence
Approval of relationships regarding principals

Australian legal practitioners

Entitlement to practise
Grant or renewal of Australian practising certificates in this jurisdiction
Prerequisites for grant or renewal of Australian practising certificates in this jurisdiction
Notification of principal place of practice

Conditions of Australian practising certificates

Conditions—categories of practice and trust money
Statutory conditions—to comply with admission conditions and to hold only one practising certificate

Statutory condition—to engage in supervised legal practice
Statutory condition—barrister to undertake reading program
Statutory condition—to notify certain events
Statutory condition—continuing professional development
Discretionary conditions
Compliance with conditions
Government lawyers

Foreign lawyers

Practice of foreign law without registration but for limited periods
Entitlement to practise
Grant or renewal of Australian registration certificates
Notification of principal place of practice
Conditions—trust money
Statutory condition—to hold only one Australian registration certificate
Statutory condition—to notify certain events
Discretionary conditions
Compliance with conditions
Scope of practice
Form of practice

Variation, suspension and cancellation of, and refusal to renew, certificates

Variation, suspension or cancellation for minor matters, or at request or with concurrence
Variation, suspension or cancellation at direction of tribunal
Variation, suspension or cancellation – specific grounds and show cause events
Immediate variation or suspension before or during consideration of proposed action
Lifting of suspension and renewal during suspension
Matters involving convictions
Grounds for action

Show cause events

Nature of automatic show cause events
Automatic show cause events—applicants
Automatic show cause events—holders
Automatic show cause events—action by local regulatory authority
Nature of designated show cause events
Designated show cause events—holders
Designated show cause events—action by local regulatory authority
Events or matters occurring before admission or registration
Restriction on making further applications
Consideration and investigation of applicants or holders
Deferral of action or temporary renewal for limited purposes

Incorporated and unincorporated legal practices

Services that may be provided
Notice of intention to engage in or terminate legal practice
Principals
Law practice without principal
Disclosure obligations
Approval of business structures

Incorporated legal practices only

External administration proceedings under Corporations Act or other legislation

Incorporated legal practice that is subject to receivership under this Law and external administration under Corporations Act
Incorporated legal practice that is subject to receivership under this Law and external administration under other legislation
Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices
Relationship of Uniform Law to constitution of, or legislation establishing, incorporated legal practice
Relationship of Uniform Law to Corporations legislation

Community legal services

Status of community legal services
Supervising legal practitioner

Disqualifications

Disqualification of individuals (other than practitioners)
Disqualification of entities from providing legal services
Contravention by law practice—disqualified or convicted person as lay associate
Contravention by disqualified person
Contravention by Australian legal practitioner
Disqualified entity ceases to be incorporated or unincorporated legal practice
Spent convictions

BUSINESS PRACTICE AND PROFESSIONAL CONDUCT

Trust money and trust accounts

Objective
Meaning of trust money
Application to law practices and trust money
Australian-registered foreign lawyers
Former practices, principals and associates
Receiving or holding money by or on behalf of barristers on account of legal costs for legal services
Provisions relating to certain money
Dealing with trust money
General trust account for each jurisdiction
Certain trust money to be deposited in general trust account
Holding, disbursing and accounting for trust money in general trust account
Controlled money
Transit money
Trust money subject to specific powers
Trust money subject to a written direction
Trust money received in the form of cash
Withdrawal of trust money
Protection of trust money
Intermixing money
Keeping trust records
Deficiency in trust account
Authorised deposit-taking institutions
Authority to receive trust money
Disclosure of accounts used to hold money
Determinations about status of money
When, how and where money is received
Reporting irregularities and suspected irregularities
Unclaimed money

External examinations of trust records

Appointment of external examiner to conduct external examination of trust records
Qualifications of external examiners
External examinations
Carrying out external examination
External examiner's report
Costs of external examination

External investigations

Principal purposes of external investigation
Appointment of external investigators
External investigations
Carrying out external investigation
Investigator's report
Costs of external investigation

Legal costs

Objectives
Commercial or government clients
Third party payers
Legal costs must be fair and reasonable
Avoidance of increased legal costs
Disclosure obligations of law practice regarding clients
Disclosure obligations if another law practice is to be retained
Disclosure obligations of law practice regarding associated third party payers
Disclosure obligations regarding settlement of litigious matters
Non-compliance with disclosure obligations
Client's right to costs agreement
Making costs agreements
Conditional costs agreements
Conditional costs agreements involving uplift fees
Contingency fees are prohibited
Effect of costs agreement
Certain costs agreements are void
Form of bills
Request for itemised bills
Responsible principal for bill
Giving bills
Progress reports
Charging for bills prohibited
Notification of client's rights
Interim bills
Restriction on commencing proceedings to recover legal costs
Interest on unpaid legal costs
Security for legal costs
Unreasonable legal costs—disciplinary action

Costs assessment

Application generally
Application where complaint made
Applications for costs assessment
Costs assessment

Factors in a costs assessment
Reasons to be given
Referral for disciplinary action
Admissibility determinations in disciplinary proceedings
Costs of costs assessment
Right of appeal or review

Professional indemnity insurance

Objectives
Approved insurance policy
Australian legal practitioners
Incorporated legal practices
Community legal services
Australian-registered foreign lawyers
Exemptions
Notification of proposed change of jurisdiction in which professional indemnity insurance is obtained

Fidelity cover

Objective
Meaning of relevant jurisdiction
Defaults to which this Part applies
Fidelity fund for this jurisdiction
How this Part applies to this jurisdiction

Fidelity fund

Funding
Annual contributions
Levies
Failure to pay annual contribution or levy
Insurance
Borrowing
Caps on payments for claims
Sufficiency
Audit

Fidelity fund claims

Entitlement to make a claim
Making a claim
Advertisements
Time limit for making claims
Processing and investigation of claims
Advance payments
Claims by law practices or associates about notional defaults
Determination of claims
Maximum amount allowable
Costs
Interest
Reduction of claim because of other benefits
Repayment of certain amounts
Subrogation
Right of appeal against decision on claim
Right of appeal against failure to determine claim
Court proceedings

Business management and control

Compliance audits
Management system directions
Prohibited services and business

DISPUTE RESOLUTION AND PROFESSIONAL DISCIPLINE

Introductory matters

Objectives
References to lawyers
Application to conduct of lawyer or law practice
Application to lawyers and law practices
Jurisdiction of Supreme Courts

Making complaints and other matters about complaints

What is a complaint?
Who may make a complaint?
How is a complaint made?
Matters in a complaint
Consumer matters (including costs disputes)
Disciplinary matters
Mixed complaints
Time limits on making complaints
Withdrawing complaints
Where complaint is dealt with
Other rights not affected

Preliminary assessment of complaints

Preliminary assessment
Closure of whole or part of complaint after preliminary assessment
Immediate suspension of practising or registration certificate

Notification to and submissions by respondents

Notification to respondent about complaint
Submissions by respondent
Exceptions to requirement for notification of complaint

Investigation of complaints

Power to investigate complaints
Extending scope of investigation
Referral of matters for costs

Consumer matters

Prerequisite to resolution action by local regulatory authority
Informal resolution of consumer matters
Mediation
Settlement agreements
Determination of consumer matters by local regulatory authority
General role of local regulatory authority in costs disputes
Binding determinations in costs disputes
Cases where binding determinations are not made in costs disputes

Disciplinary matters

Application of this Part
Unsatisfactory professional conduct
Professional misconduct
Conduct capable of constituting unsatisfactory professional conduct or professional misconduct
Determination by local regulatory authority—unsatisfactory professional conduct
Initiation and prosecution of proceedings in designated tribunal
Procedure of designated tribunal
Determination by designated tribunal—disciplinary matters
Costs
Compliance with orders of designated tribunal

Compensation orders

Making of compensation orders
Request by complainant for compensation order
Nature of compensation orders
Prerequisites for making of compensation orders
Enforcement of compensation orders
Other remedies not affected

Appeal or review

Finality of determinations of local regulatory authority
Internal review of decisions of local regulatory authority
Right of appeal or review of decisions of local regulatory authority

General duties of local regulatory authority

Duty to deal with complaints
Duty to exercise discretions fairly
Duty to deal with complaints efficiently and expeditiously
Notice of decisions and determinations

Other matters

Rules of procedural fairness
Power to make orders includes power to make recommendations
Waiver of privilege or duty of confidentiality—complaints

EXTERNAL INTERVENTION

Objectives
Operation of appointment of external intervener in another participating jurisdiction

Initiation of external intervention

Circumstances warranting external intervention
Determination to initiate external intervention
Appointment of external intervener may be general or limited

Supervisors of trust money

Appointment of supervisor of trust money
Effect of service of notice of appointment
Role of supervisor of trust money
Records of and dealing with trust money of law practice under supervision

Termination of supervisor's appointment

Managers

Appointment of manager
Effect of service of notice of appointment
Role of managers
Records and accounts of law practice under management and dealings with trust money
Deceased estates
Lien for costs on regulated property
Termination of manager's appointment

Receivers

Appointment of receiver
Effect of service of notice of appointment
Role of receivers
Records and accounts of law practice under receivership and dealings with trust money
Power of receiver to take possession of regulated property
Power of receiver to take delivery of regulated property
Power of receiver to deal with regulated property
Power of receiver to require documents or information
Examinations about regulated property
Lien for costs on regulated property
Regulated property not to be attached
Recovery of regulated property where there has been a breach of trust etc.
Improperly destroying property etc.
Deceased estates
Termination of receiver's appointment

General

Conditions on appointment of external intervener
Status of acts of external intervener
Right of appeal or review about appointment of external intervener
Directions of designated tribunal
Manager and receiver appointed for law practice
ADI disclosure requirements
Confidentiality
Provisions relating to requirements under this Chapter
Obstruction of external intervener
Fees, costs and expenses
Protection from liability

INVESTIGATORY POWERS

Objective
References to lawyers

Requirements relating to documents, information and other assistance

Requirements—trust records examinations, trust records investigations and compliance audits
Requirements—complaint investigations
Inspection and copying of documents
Retention and return of documents

Entry and search of premises

Investigator's power to enter premises—trust records investigations, compliance audits and complaint investigations
Powers of investigator while on premises
Provisions relating to entry and search with consent
Search warrants
Search warrants—announcement before entry
Search warrants—details of warrant to be given to occupier
Retention and return of things seized during search
Copies of seized things to be provided

Additional powers in relation to incorporated legal practices

Application and operation of this Part
Examination of persons
Inspection of books
Power to hold hearings

Miscellaneous

Report to local regulatory authority of disciplinary matters
Obstruction of investigator
Obligation of lawyers
Protection from liability

REGULATORY AUTHORITIES

Standing Committee (Attorneys-General of participating jurisdictions)

Role of Standing Committee
Decisions of Standing Committee
Reports for Standing Committee

Legal Services Council

Establishment and objectives of Council
Provisions relating to Council
Functions of Council in relation to Commissioner
Delegation of Council's functions

Commissioner for Uniform Legal Services Regulation

Establishment and objectives of office of Commissioner
Provisions relating to Commissioner
Delegation of Commissioner's functions
Independence of Commissioner

Admissions Committee

Establishment and functions of Admissions Committee
Provisions relating to Admissions Committee

Local regulatory authorities

Independence of local regulatory authorities
Local regulatory authority for (complaints and discipline) functions to be independent entity
Delegation of functions of local regulatory authorities
Guidelines and directions by Council or Commissioner for local regulatory authorities
Guidelines and directions by local regulatory authorities for their delegates
Functions of Council in relation to local regulatory authorities
Functions of Commissioner in relation to Chapter 5 functions of local regulatory authorities

Power of local regulatory authority to take over exercise of delegated function

OTHER MATTERS

Legal Profession Uniform Regulations

Legal Profession Uniform Regulations
Publication of Uniform Regulations

Legal Profession Uniform Rules

Power to make Uniform Rules
Categories of Uniform Rules
Contents of Admission Rules
Contents of Legal Practice Rules
Contents of Legal Profession Conduct Rules
Contents of Continuing Professional Development Rules
Development of general Uniform Rules
Development of Admission Rules
Development of Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules
Making of Uniform Rules
Cases where public consultation not required
Urgent matters
Publication of Uniform Rules

Legal Profession Registers

Australian Legal Profession Register
Public availability of Australian Legal Profession Register
Local legal profession register
Content of registers

Cooperative and other arrangements

Arrangements with authorities
Ad hoc communication with authorities
Disclosure of information to ASIC
Disclosure of information between relevant persons
Information, assistance and cooperation
Cooperation with Commonwealth, States and Territories

Notices and evidentiary matters

Service of notices on lawyers and law practices
Service of notices on Council, Commissioner, Admissions Committee, local regulatory authority or delegate
Service of notices on other persons
Time of service
Evidentiary matters

Injunctions

Injunctions to restrain contraventions of Law or Uniform Rules
Amendment or discharge of injunctions
Interim injunctions—undertakings about costs or damages
Supreme Court's other powers not limited

Criminal and civil penalties

Criminal penalties

Civil penalties
Designated tribunal may order payment of pecuniary penalty
Contravening a civil penalty provision is not an offence
Persons involved in contravening civil penalty provision
Civil proceedings after criminal proceedings
Criminal proceedings during civil proceedings
Criminal proceedings after civil proceedings
Evidence given in proceedings for penalty order not admissible in criminal proceedings

General

Prohibition on disclosure of information
Effect of decision on appeal or review
General provisions about appeal or review
Duty to report suspected offences
Protection from liability
Non-compellability of certain witnesses
Investigation of offences
Contraventions by partnerships or other unincorporated bodies
Supreme Court may order delivery up of documents etc

APPENDIX 2

Legal profession regulators

	Uniform Law Jurisdictions				Non-Uniform Law Jurisdictions				
	Uniform Law Framework	New South Wales (NSW)	Victoria (VIC)	Western Australia (WA)	Queensland (QLD)	South Australia (SA)	Tasmania (TAS)	Northern Territory (NT)	Australian Capital Territory (ACT)
Rule setting and development									
Legislation	Standing Committee (NSW, VIC and WA Attorneys-General)	NSW Attorney-General	VIC Attorney-General	WA Attorney-General	QLD Attorney-General	SA Attorney-General	TAS Attorney-General	NT Attorney-General	ACT Attorney-General
Professional Rules	Developed by the Law Council of Australia, Australian Bar Association and made by the Legal Services Council				Queensland Law Society, Bar Association of Queensland	Law Society of South Australia	Law Society of Tasmania, Tasmanian Bar	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Admission Rules	Developed by the Legal Services Council Admissions Committee and made by the Legal Services Council				Supreme Court of Queensland	Legal Practitioners Education and Admission Council (SA)	Supreme Court of Tasmania	Supreme Court of the Northern Territory	Supreme Court of the ACT
Other Rules	Legal Services Council, Commissioner for Uniform Legal Services Regulation (complaints)				Queensland Law Society	Supreme Court of South Australia, Law Society of South Australia	Law Society of Tasmania, Tasmanian Bar (with Legal Profession Board of Tasmania)	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Guidelines and directions	Legal Services Council, Commissioner for Uniform Legal Services Regulation (complaints)	Local regulatory authorities to local delegates	Local regulatory authorities to local delegates	Local regulatory authorities to local delegates					
Oversight of regulators	Legal Services Council, Commissioner for Uniform Legal Services Regulation (complaints)	NSW Attorney-General	VIC Attorney-General	WA Attorney-General	QLD Attorney-General	SA Attorney-General	TAS Attorney-General	Solicitor General for NT in capacity as the Statutory Supervisor	ACT Attorney-General

	Uniform Law Framework	New South Wales (NSW)	Victoria (VIC)	Western Australia (WA)	Queensland (QLD)	South Australia (SA)	Tasmania (TAS)	Northern Territory (NT)	Australian Capital Territory (ACT)
Exercise of regulatory functions									
Admission – eligibility and suitability matters		Legal Profession Admission Board (NSW)	Victorian Legal Admissions Board	Legal Practice Board (WA)	Legal Practitioners Admissions Board (QLD)	Law Society of South Australia Board of Examiners	Board of Legal Education (TAS)	Legal Practitioner Admission Board (NT)	Legal Practitioners Admission Board (ACT)
Admission		Supreme Court of New South Wales	Supreme Court of Victoria	Supreme Court of Western Australia	Supreme Court of Queensland	Supreme Court of South Australia	Supreme Court of Tasmania	Supreme Court of the Northern Territory	Supreme Court of the ACT
Unauthorized practice		Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Legal Practice Board (WA)	Queensland Legal Services Commissioner	Law Society of South Australia	Legal Profession Board of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Disqualified persons		Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Legal Practice Board (WA)	Queensland Law Society, Bar Association of Queensland	Law Society of SA, Legal Practitioners Disciplinary Tribunal (for ILPs[1])	Legal Profession Board of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Practising certificates		Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Legal Practice Board (WA)	Queensland Law Society, Bar Association of Queensland	Law Society of South Australia	Law Society of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Trust money and accounting		Law Society of NSW	Victorian Legal Services Board	Legal Practice Board (WA)	Queensland Law Society, Bar Association of Queensland	Law Society of South Australia	Law Society of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Cost disclosure matters		Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Legal Practice Board (WA)	Queensland Law Society, Bar Association of Queensland	Law Society of South Australia	Law Society of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
PII matters	Legal Services Council approves non-participating jurisdictions[2]	Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Law Society of Western Australia	Queensland Law Society, Bar Association of Queensland	Law Society of South Australia	Law Society of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Fidelity Fund matters		Law Society of NSW	Victorian Legal Services Board	Legal Contribution Trust WA	Queensland Law Society	Law Society of South Australia	Solicitors' Trust, Supreme Court of Tasmania	Funds Management Committee, Law Society Northern Territory	ACT Law Society

	Uniform Law Framework	New South Wales (NSW)	Victoria (VIC)	Western Australia (WA)	Queensland (QLD)	South Australia (SA)	Tasmania (TAS)	Northern Territory (NT)	Australian Capital Territory (ACT)
Exercise of regulatory functions (Cont.)									
Compliance audits		Office of the Legal Services Commissioner (NSW), Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Legal Practice Board (WA)	ILPs only – Queensland Legal Services Commissioner or Queensland Law Society	ILPs only – Law Society of South Australia	ILPs only – Law Society of Tasmania	ILPs only – Law Society Northern Territory	ILPs only – ACT Law Society
Compliance investigations		Law Society of NSW, NSW Bar Association	Victorian Legal Services Board or appointee	Legal Practice Board (WA) or appointee	Queensland Law Society	Law Society of South Australia	Law Society of Tasmania appointee	Law Society Northern Territory appointee	ACT Law Society, ACT Bar Association
Complaints handling		Office of the Legal Services Commissioner (NSW), with certain delegations[3] currently in place to the Law Society of NSW and the NSW Bar Council	Victorian Legal Services Commissioner	Legal Services and Complaints Committee as delegate of Legal Practice Board (WA)	Queensland Legal Services Commissioner, who may refer to Queensland Law Society or Bar Association of Queensland for investigation and report	Legal Profession Conduct Commissioner (SA)	Legal Profession Board of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association
Disciplinary proceedings		NSW Civil and Administrative Tribunal	Victorian Civil and Administrative Tribunal	WA State Administrative Tribunal	Legal Practice Committee (QLD) or Queensland Civil and Administrative Tribunal	Legal Practitioners Disciplinary Tribunal or Supreme Court of South Australia	Legal Profession Board of Tasmania, Disciplinary Tribunal or Supreme Court of Tasmania	Legal Practitioners Disciplinary Tribunal (NT)	ACT Administrative Tribunal
External intervention		Law Society of NSW, NSW Bar Association	Victorian Legal Services Board	Legal Practice Board (WA)	Queensland Law Society	Law Society of South Australia	Legal Profession Board of Tasmania or Law Society of Tasmania	Law Society Northern Territory	ACT Law Society, ACT Bar Association

APPENDIX 3

Fit and proper person and other considerations for admission to the legal profession

The matters that must be considered in determining whether a person is a fit and proper person to be admitted to the legal profession (and other matters) contained in, for example, the *Legal Profession Uniform Admission Rules* are as follows.

Evidence of character

- Two statutory declarations as to the applicant's character made by persons, known to the applicant for at least 2 years, who are not related to the applicant by blood, marriage or as a domestic partner.
- If the applicant is or was a legal practitioner in foreign jurisdiction, 2 statutory declarations as to the applicant's character made by persons known to the applicant for at least 2 years, with whom the applicant has been associated in legal practice in the foreign jurisdiction.
- If called for, any other evidence about the applicant's fame and character.

Disclosure statement

- A statutory declaration by the applicant disclosing any matter to which a reasonable applicant would consider might be regard as not being favourable to the applicant when considering whether the applicant is currently of good fame and character and a fit and proper person to be admitted to the Australian legal profession (including available documentary evidence relating to the matter disclosed).

Police reports

- A police report on the applicant's criminal history in Australia.
- If required, a police report on the applicant's criminal history in another country.

Student conduct reports

- Student conduct reports from the relevant tertiary academic institutions and practical legal training providers, including whether or not the applicant was subject to any disciplinary action taken by the institution or provider, and if so, the outcome.

Certificate of good standing

- If the applicant has been admitted in another Australian (non-Uniform Law) jurisdiction, or a foreign jurisdiction, a statement from by the relevant professional body in that jurisdiction that the applicant is a member of the legal profession in good standing and is not subject to any current or pending disciplinary actions.

Health assessments

If required on reasonable grounds, because of concerns about whether an applicant may currently be unable for reasons of health not be able to satisfactorily carry out the inherent requirements of legal practice, an applicant may be required to provide a health report prepared by a registered medical practitioner.

English language

- The applicant must have sufficient knowledge of written and spoken English to engage in legal practice.

APPENDIX 4

Fit and proper person and other considerations for the grant or renewal of a practising certificate

The matters that must be considered in determining whether a person is a fit and proper person to be granted a practising certificate, or to have a practising certificate renewed, contained in, for example, the *Legal Profession Uniform General Rules* are as follows.

- Whether the applicant is currently of good fame and character.
- Whether the applicant is, or has been an insolvent under administration, or a director or principal of an incorporated legal practice while the legal practice is or was insolvent, or a director of a company while the company is or was insolvent.
- Whether the applicant has been convicted or found guilty of an offence in Australia or a foreign country, and if so, the nature of the offence, how long ago the offence was committed, and the applicant's age when the offence was committed.
- Whether the applicant has engaged in legal practice in Australia:
    - when not permitted to do so under a law or previous law of a State or Territory, or
    - if admitted, in contravention of a condition to which the admission was subject, or
    - if holding an Australian practising certificate, in contravention of a condition to which the certificate was subject or while the certificate was suspended.
- Whether the applicant has engaged in legal practice in a foreign country:
    - when not permitted to do so by or under a law of that country, or
    - if permitted to do so, in contravention of a condition to which the permission was subject.
- Whether the applicant:
    - is currently subject to an unresolved complaint, investigation, charge or order under an Australian law relating to the legal profession or under a corresponding foreign law, or
    - has been the subject of disciplinary action, however expressed, under an Australian law relating to the legal profession, or under a corresponding foreign law, that involved a finding adverse to the applicant.
- Whether the applicant:
    - is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country, or
    - has been the subject of disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country that involved a finding adverse to the applicant.
- Whether the applicant's name has been removed from:
    - a roll of Australian lawyers, however described or expressed, in any jurisdiction, or
    - a foreign roll of practitioners,

- Whether the applicant's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country,
- Whether the applicant has contravened, in Australia or a foreign country, a law about trust money or trust accounts.
- Whether, under an Australian law relating to the legal profession or a law of the Commonwealth, a supervisor, manager or receiver, however described, is, or has been, appointed in relation to any legal practice engaged in by the applicant.
- Whether the applicant is, or has been, subject to an order under an Australian law relating to the legal profession or a law of the Commonwealth, disqualifying the applicant from being employed by, or a partner of, an Australian legal practitioner, or from managing a corporation.
- Whether the applicant is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner.
- Whether the applicant has provided incorrect or misleading information in relation to any application for an Australian practising certificate under an Australian law relating to the legal profession.
- Whether the applicant has contravened a condition of a previous Australian practising certificate under an Australian law relating to the legal profession.
- Whether the applicant has contravened an Australian law relating to the legal profession.
- Whether the applicant has contravened an order of a court or tribunal made in any proceedings, or (without limitation) an order of a designated local regulatory authority or other person or body under legislation of any jurisdiction so far as the legislation relates to the control or discipline of any Australian lawyers or to the practice of law.
- Whether the applicant has failed at any time to pay a required contribution or levy to the fidelity fund of a jurisdiction.
- Whether the applicant has failed to comply with a requirement under an Australian law relating to the legal profession in relation to professional indemnity insurance,
- Whether the applicant has failed to pay any costs or expenses for which the applicant was liable under an Australian law relating to the legal profession.
- Any other matter that is related to any of the above.

APPENDIX 5

Practising certificate conditions

Statutory conditions

The following conditions are specifically provided for in the Uniform Law.

1. The holder of a practising certificate as a principal of a law practice is also authorised to engage in legal practice as an employee of a law practice, or as a corporate legal practitioner or a government legal practitioner, or as a volunteer at a community legal service or otherwise on a pro bono basis.

2. The holder of a practising certificate as an employee is also authorised to engage in legal practice as a corporate legal practitioner or a government legal practitioner, or as a volunteer at a community legal service or otherwise on a pro bono basis.

3. The holder of a practising certificate as a corporate legal practitioner is also authorised to engage in legal practice as a government legal practitioner.

4. The holder of a practising certificate as a government legal practitioner is also authorised to engage in legal practice as a corporate legal practitioner.

5. The holder of a practising certificate is authorised to supervise legal practice by others, except where the holder is himself or herself subject to a condition that he or she must engage in supervised legal practice, or is otherwise not permitted to supervise other legal practitioners.

6. The holder of a practising certificate must not contravene any conditions imposed on admission to the legal profession.

7. The holder of a practising certificate must not apply for or hold another practising certificate.

8. The holder of a practising certificate (other than as a barrister only) must engage in supervised legal practice only until the required periods of supervision are completed.

9. The holder of a practising certificate as a barrister only must undertake and complete a reading program and read with a barrister for a specified period.

10. To notify the regulatory authority of having been charged with or convicted of a serious offence, a tax offence, or other specified offences; or of the occurrence of a bankruptcy-related events; or of becoming the subject of disciplinary proceedings as a lawyer in a foreign country.

11. The holder of a practising certificate must comply with the applicable continuing professional development requirements.

Discretionary conditions

The following conditions may be imposed by the practising certificate regulatory authority.

1. A condition as to the type of legal practice the practising certificate holder may, or must not engage in.
2. A condition requiring the practising certificate holder to undertake and complete continuing legal education, specified legal education or training, and/or a period of supervised legal practice.
3. A condition restricting the practising certificate holder to particular arrangements concerning employment of supervision.
4. A condition that the practising certificate holder must not supervise legal practice by others.
5. A condition that the practising certificate holder undergo counselling or medical treatment and conform with the medical advice given to the practising certificate holder.
6. A condition that the practising certificate holder use the services of an accountant or other financial specialist in connection with the legal practice.
7. To provide the regulatory authority with evidence as to any outstanding tax obligations and the provisions made to satisfy those obligations.
8. That the holder of a practising certificate as a barrister only must not engage in legal practice other than as a sole practitioner; must not engage in legal practice in partnership with anyone else or as an employee of another person; and must not hold office as a principal or director of an incorporated legal practice or an unincorporated legal practice.
9. Any other conditions agreed to by the holder of the practising certificate.
10. Any other condition that the Uniform Law provides for.

APPENDIX 6

Australian Solicitors' Conduct Rules

Nature and purpose

1. Application and interpretation
2. Purpose and effect

Fundamental duties

3. Paramount duty to the court and the administration of justice
4. Other fundamental duties
5. Dishonest or disreputable conduct
6. Undertakings in the course of legal practice

Relations with clients

7. Communication with advice
8. Client instructions
9. Confidentiality
10. Conflicts concerning former clients
11. Conflict of duties concerning current clients

11A Short-term legal assistance services

12. Conflict concerning a solicitor's own interests
13. Completion or termination of engagement
14. Client documents
15. Lien over documents
16. Charging for document storage

Advocacy and litigation

17. Independence – avoidance of personal bias
18. Formality before the court
19. Duty to the court
20. Delinquent or guilty clients
21. Responsible use of court process and privilege
22. Communication with opponents
23. Opposition access to witnesses
24. Integrity of evidence – influencing evidence
25. Integrity of evidence – influencing evidence
26. Communication with witnesses under cross-examination
27. Solicitor as a material witness in a client's case
28. Public comments in proceedings
29. Prosecutor's duties

Relations with other persons

30. Another solicitor's or other person's error
31. Inadvertent disclosure
32. Unfounded allegations
33. Communication with another solicitor's client
34. Dealing with other persons
35. Contracting with third parties

Law practice management

36. Advertising
37. Supervision of legal services
38. Returning judicial officers
39. Legal and non-legal services
40. Sharing receipts
41. Omitted
42. Anti-discrimination and harassment
43. Dealing with the regulatory authority

APPENDIX 7

Orders that may be made in a disciplinary matter

The Orders provided for in the Legal Profession Uniform Law following a finding of *unsatisfactory professional conduct* or *professional misconduct* are set out below

Complaint handling authority determines there has been *unsatisfactory professional conduct*

- An order cautioning the respondent or a legal practitioner associate of the respondent law practice.
- An order reprimanding the respondent or a legal practitioner associate of the respondent law practice.
- An order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
- An order requiring the respondent or a legal practitioner associate of the respondent law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work.
- An order requiring the respondent lawyer or the respondent law practice to arrange for a legal practitioner associate of the law practice to undertake training, education or counselling or be supervised.
- An order requiring the respondent or a legal practitioner associate of the respondent law practice to pay a fine of a specified amount not exceeding $25 000.
- An order recommending the imposition of a specified condition on the Australian practising certificate or Australian registration certificate of the respondent lawyer or a legal practitioner associate of the respondent law practice.

Tribunal or Court finds lawyer guilty of *unsatisfactory professional conduct* or *professional misconduct*

- One or more of the orders set out above.
- An order that the lawyer do or refrain from doing something in connection with the practice of law.
- An order that the lawyer cease to accept instructions as a public notary in relation to notarial services.
- An order that the lawyer's practice be managed for a specified period in a specified way or subject to specified conditions.
- An order that the lawyer's practice be subject to periodic inspection by a specified person for a specified period;
- An order that the lawyer seek advice in relation to the management of the lawyer's practice from a specified person.
- An order recommending that the name of the lawyer be removed from a roll kept by a Supreme Court, a register of lawyers kept under jurisdictional legislation or the Australian Legal Profession Register.
- An order directing that a specified condition be imposed on the Australian practising certificate or Australian registration certificate of an Australian-registered foreign lawyer.

- An order directing that the lawyer's Australian practising certificate or Australian registration certificate be suspended for a specified period or cancelled.
- An order directing that an Australian practising certificate or Australian registration certificate not be granted to the lawyer before the end of a specified period.
- An order that the lawyer not apply for an Australian practising certificate or Australian registration certificate before the end of a specified period.
- A compensation order against the lawyer.
- An order that the lawyer pay a fine of a specified amount not exceeding $100 000 if the lawyer is found guilty of professional misconduct.
- Ancillary or other orders, including an order for payment by the lawyer of expenses associated with orders assessed or reviewed in or in accordance with the order or as agreed.
- An interlocutory or interim order, including an order of the kind referred to above.