



New South Wales

Legal Profession Uniform Law Application Legislation Amendment Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The Legal Profession Uniform Law (the *Uniform Law*) establishes a scheme to regulate the legal profession in New South Wales and Victoria. The *Legal Profession Uniform Law Application Act 2014* (the *application Act*) applies the text of the Uniform Law as a law of this State, enacts complementary provisions for this State and repeals the *Legal Profession Act 2004* (the *repealed Act*). The formal and ancillary provisions of the application Act and the Uniform Law commenced on 1 July 2014. The remaining provisions of the application Act and the Uniform Law are yet to commence.

The object of this Bill is to amend the application Act to enable the commencement of the Uniform Law scheme.

The Bill also makes amendments to other legislation consequent on the commencement of the Uniform Law scheme and the repeal of the repealed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent, other than the Schedule containing amendments to legislation other than the application Act, which commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Legal Profession Uniform Law Application Act 2014 No 16

General definitions

Schedule 1 [7] inserts general definitions for terms that are used throughout Acts and instruments in NSW. *Admission to the Australian legal profession*, *Australian practising certificate* and *Australian registration certificate* have the same meaning as in the Uniform Law. *Legal costs legislation* is defined to mean Parts 6 and 7 of, and Schedules 1, 2 and 6 to, the application Act and Part 4.3 of the Uniform Law. *Legal profession legislation* is defined to mean:

- (a) the application Act and regulations made under that Act (referred to as *local regulations*), and
- (b) the Uniform Law, and
- (c) the Legal Profession Uniform Regulations made under Part 9.1 of the Uniform Law (*Uniform Regulations*) as they apply in NSW, and
- (d) the Legal Profession Uniform Rules made under Part 9.2 of the Uniform Law (*Uniform Rules*) as they apply in NSW.

Legal costs legislation and legal profession legislation are terms used throughout the legislation amended by Schedule 2 to the proposed Act.

Legal Profession Admission Board

Schedule 1 [15] enables the Legal Profession Admission Board (referred to in the application Act as the *NSW Admission Board*) to make rules in relation to various matters, including administrative matters, registration of students-at-law, examination of candidates for registration and committees of the Board.

Schedule 1 [11] enables the Board to delegate its functions under the application Act or the Uniform Law to any of its committees or officers.

Schedule 1 [13] requires the Board to notify the Bar Council and Law Society Council of any applications for admissions. **Schedule 1 [12] and [14]** are consequential amendments.

Legal Services Commissioner, Bar Council and Law Society Council

Schedule 1 [16] authorises the Legal Services Commissioner (the *NSW Commissioner*) to delegate any of his or her functions under the Uniform Law to any member of the staff of the NSW Commissioner or to a person of a class prescribed by the regulations. **Schedule 1 [17]** authorises the NSW Commissioner to delegate any of the Commissioner's functions under Chapter 5 of the Uniform Law (which relates to dispute resolution and professional discipline) to the Bar Council or the Law Society Council.

Schedule 1 [19] and [22] authorise the Bar Council and the Law Society Council to delegate any of their functions under the Uniform Law to their committees, officers or employees. **Schedule 1 [20] and [23]** make it clear that the Councils are also authorised to delegate functions that are delegated to them under the Uniform Law.

Schedule 1 [18], [21] and [24] make consequential amendments.

Government and corporate lawyers

The application Act currently provides that the local regulations may exempt certain government lawyers from the requirement to hold an Australian practising certificate and may exclude or modify the operation of specified provisions of the Uniform Law in relation to government lawyers. **Schedule 1 [25]** extends this to excluding or modifying the operation of specified provisions made under the Uniform Law. **Schedule 1 [26]** provides a similar regulation-making power for corporate lawyers.

Legal costs—costs assessment

Schedule 1 [27] substitutes Part 7 of the application Act, which supplements Part 4.3 of the Uniform Law. Rather than applying provisions of the Uniform Law relating to solicitor-client costs to the assessment of party-party costs as the existing Part did, the new Part deals with the assessment of costs ordered by a court or tribunal (*ordered costs*) and costs payable on a solicitor-client basis (*Uniform Law costs*).

Division 2 deals with the assessment of both types of costs. Division 3 contains additional provisions for ordered costs and Division 4 contains additional provisions for Uniform Law costs. Division 5 deals with reviews of costs assessments and Division 6 deals with appeals against those reviews. Division 7 establishes the Costs Assessment Rules Committee, which may make rules (*costs assessment rules*). Division 8 contains miscellaneous provisions.

The new Part also extends the operation of the provisions of the Uniform Law that apply to solicitor-client costs to the costs of a barrister briefed directly by a client (proposed section 65 of the application Act).

Approved professional indemnity insurance policies

Schedule 1 [28] and [29] relate to the Attorney General's power to approve, by order in writing, professional indemnity insurance policies. Rather than providing that compliance with any conditions of an order is a prerequisite for a policy to be regarded as an approved policy, proposed section 95 (3A) of the application Act provides that, if any terms or conditions imposed by an order are not complied with by the insurer or provider of the policy, the order may be amended to prohibit or restrict the future issue of policies by that insurer or provider and that the Attorney General may take into account any such failure to comply when deciding whether to approve future policies.

Schedule 1 [30] omits provisions relating to evidence of approved professional indemnity insurance policies that are no longer necessary as the matter is proposed to be dealt with by the Uniform Rules.

Rights of review

Schedule 1 [31] provides for the rights of review to the Civil and Administrative Tribunal of New South Wales (*NCAT*) for matters relating to Australian practising certificates and registration certificates and certain consumer and disciplinary matters. It also restates a provision (currently section 166 (5) of the application Act) that enables local regulations to provide for further rights of review to NCAT.

Registers and publicising disciplinary action

Schedule 1 [32]–[35] broaden the application of Part 12 of the application Act, which currently deals with the keeping of registers and the publicising of disciplinary action in relation to Australian legal practitioners, so that it will also apply to Australian-registered foreign lawyers, Australian lawyers (who are not Australian legal practitioners) and to former Australian legal practitioners, Australian-registered foreign lawyers and Australian lawyers.

Savings and transitional provisions

Schedule 1 [43] inserts savings and transitional provisions consequent on the enactment of the proposed Act. In particular, proposed clause 10 of Schedule 9 to the application Act sets out transitional arrangements in relation to mortgage practices and managed investment schemes. For a period of 3 years, the prohibition on a law practice operating a managed investment scheme in section 258 of the Uniform Law will not apply. The existing prohibition in section 135 (2) of the *Legal Profession Act 2004* will continue to apply to incorporated legal practices and Part 3.5 of, and Schedule 8 to, that Act, will continue to apply in respect of existing mortgages and managed investment schemes. **Schedule 1 [31] and [41]** omit the provisions relating to mortgages in the application Act which are no longer necessary.

Schedule 1 [10] provides that the savings and transitional provisions in Part 3 of Schedule 4 to the Uniform Law apply in New South Wales (proposed section 18A of the application Act).

Schedule 1 [42] provides that local savings and transitional regulations are to have effect despite anything to the contrary in Schedule 4 to the Uniform Law (which contains savings and transitional provisions).

Miscellaneous

Schedule 1 [10] provides an exception to section 468 (1) of the Uniform Law, which provides that certain persons are not compellable in legal proceedings to give evidence or produce documents in relation to their involvement in the administration of the Uniform Law. The provision will not apply to proceedings, hearings or inquiries under the *Royal Commissions Act 1923*, the *Special Commissions of Inquiry Act 1983*, the *Independent Commission Against Corruption Act 1988*, the *Police Integrity Commission Act 1996* or the *Ombudsman Act 1974*. Proposed section 18B of the application Act reflects section 38A of the repealed Act.

Schedule 1 [8] and [9] make minor amendments to the bodies designated as local regulatory authorities and the courts and tribunals designated as tribunals for the purposes of the Uniform Law.

Schedule 1 [36] provides for the manner in which certain offences under the application Act and the Uniform Law are to be dealt with. It also inserts a provision providing that a contravention of the local regulations or the costs assessment rules may constitute unsatisfactory professional conduct or professional misconduct, whether or not the lawyer has been convicted of an offence in relation to the contravention.

Schedule 1 [37] makes it clear that local regulations may be made in relation to matters arising under the Uniform Law.

Schedule 1 [39] provides that local regulations may be made in relation to a barrister receiving or holding money for legal costs in advance of the barrister providing legal services.

Schedule 1 [40] restates a regulation-making power in relation to costs assessments.

Schedule 1 [44] omits amendments to the *Interpretation Act 1987* that are now located in Schedule 2 to the proposed Act.

Schedule 1 [1]–[3] make minor amendments to definitions used in the application Act. **Schedule 1 [4], [5], [6] and [38]** are statute law revision amendments.

Schedule 2 Amendment of other legislation

Schedule 2 amends the various Acts, Regulations and Rules set out in that Schedule as a consequence of the repeal of the *Legal Profession Act 2004* and the commencement of the uncommenced provisions of the application Act and Uniform Law. References to the repealed Act and its provisions are replaced with references to the application Act or the Uniform Law as appropriate.