



New South Wales

Legal Profession Uniform Law Application Bill 2014

Explanatory note

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

Overview of Bill

The Legal Profession Uniform Law (the *Uniform Law*) provides a scheme to regulate the legal profession and is the subject of an agreement between New South Wales, Victoria and potentially other jurisdictions.

The objects of this Bill are:

- (a) to apply the text of the Uniform Law as a law of this State, and
- (b) to enact complementary provisions having effect for this State, and
- (c) to repeal the *Legal Profession Act 2004* (the *repealed Act*).

The text of the Uniform Law is set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria. A copy of the Uniform Law is included as a note at the end of this Bill.

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 contains definitions of terms used in the proposed Act.

Part 2 Application of Uniform Law

Clause 4 applies the Uniform Law as a law of this State.

Clause 5 excludes certain Acts of this State from applying in relation to the Uniform Law.

Clauses 6 and 7 provide for the way certain Acts of this State apply in relation to the Uniform Law.

Clause 8 provides for the scrutiny and review of Uniform Regulations in this State. However, if a Uniform Regulation is disallowed in this State, the regulation does not cease to have effect in this State unless the regulation is disallowed in a majority of the participating jurisdictions.

Clause 9 provides a person cannot be punished twice for the same offence under the Uniform Law as applying in 2 jurisdictions.

Clause 10 defines the term *this jurisdiction* where used in the Uniform Law as applied in this State to mean New South Wales.

Clause 11 declares which persons or bodies are “designated local regulatory authorities” and “designated tribunals” where used in the Uniform Law as applied in this State.

Clauses 12–18 make various declarations and other arrangements for this State, as contemplated by the Uniform Law.

Part 3 Local regulatory authorities

Division 1 provides for the Legal Profession Admission Board. This is supplemented by **Schedule 3**.

Division 2 provides for the Legal Services Commissioner. This is supplemented by **Schedule 4**.

Divisions 3–5 contain provisions about the Bar Council and the Law Society Council, including requiring annual reports and lay representation on committees.

Part 4 Practising certificates and registration certificates

Division 1 relates to applications for practising certificates by Australian lawyers in this State under the Uniform Law, and **Division 2** relates to applications for registration certificates by foreign lawyers in this State under that Law. These provisions provide for the fees and fidelity fund contributions payable in connection with an application. **Division 3** carries over provisions relating to the Attorney General and Crown Solicitor, and authorises regulations to be made exempting government lawyers from certain provisions of the Uniform Law (this is contemplated as jurisdictional legislation referred to in section 56 of that Law).

Part 5 Trust accounts and Public Purpose Fund

Part 5 provides for the Public Purpose Fund and for statutory deposits to be made to it from interest payable on general trust accounts. **Schedule 5** contains provisions relating to the Trustees of the Public Purpose Fund.

Part 6 Legal costs—particular kinds of costs

Part 6 contains provisions, carried over from the repealed Act, for 3 kinds of costs. The first is in **clauses 59 and 60** and authorises costs to be fixed by regulation. The second is in **clause 61 and Schedule 1** and relates to the maximum costs in personal injury damages matters. The third is in **clause 62 and Schedule 2** and relates to costs in civil claims where there are no reasonable prospects of success.

Part 7 Legal costs—costs assessment

Division 1 contains definitions.

Division 2 provides for the assessment of solicitor-client costs.

Division 3 provides for the assessment of party-party costs.

Division 4 provides for appeals relating to decisions of costs assessors and review panels.

Division 5 sets up the Costs Assessment Rules Committee and provides for costs assessment rules (the rules are expected to play a greater role in the procedures for costs assessment).

Division 6 contains general provisions. This Division and **Schedule 6** contain provisions relating to costs assessors, including their appointment.

Part 8 Professional indemnity insurance

Part 8 complements provisions contained in Part 4.4 of the Uniform Law relating to professional indemnity insurance.

Division 1 contains arrangements for the approval of kinds of insurance policies for professional indemnity insurance. Policies that comply with the arrangements are approved insurance policies for the purposes of Part 4.4 of the Uniform Law. This provision corresponds with arrangements under the repealed Act and has a similar effect to section 13 of the *Legal Profession Uniform Law Application Act 2014* of Victoria.

Division 2 deals with professional indemnity insurance for barristers.

Division 3 deals with professional indemnity insurance for solicitors, and carries provisions over from the repealed Act, including provisions for the Solicitors Mutual Indemnity Fund, contributions and levies.

Division 4 deals with professional indemnity insurance for incorporated legal practices.

Division 5 carries over provisions authorising the Law Society to extend Division 3 to other persons and also referring to provisions in **Schedule 7** relating to HH insurance.

Part 9 Fidelity cover

Division 1 provides for the Legal Practitioners Fidelity Fund and its management.

Division 2 relates to claims about defaults of a law practice to which Part 4.5 of the Uniform Law applies.

Division 3 provides that Part 4.5 of the Uniform Law does not apply to defaults of a law practice consisting of a barrister.

Part 10 Mortgage practices

Part 10 carries over provisions of the repealed Act relating to mortgage practices. It is supplemented by **Schedule 8** (also carried over) containing special provisions regarding mortgages entered into before 7 September 2001.

Part 11 Procedures of NCAT as designated tribunal for disciplinary matters

Part 11 contains provisions relating to the procedures of the Civil and Administrative Tribunal when exercising functions in connection with disciplinary matters. Provisions are contemplated by section 301 of the Uniform Law. Some procedures are covered by the *Civil and Administrative Tribunal Act 2013*.

Part 12 Registers and publicising disciplinary action

Part 12 provides for various registers to be kept by the Law Society Council, Bar Council or Legal Services Commissioner, the availability of the registers for inspection, and other means of publicising disciplinary action.

Part 13 Miscellaneous

Part 13 contains miscellaneous provisions, including provisions enabling regulations to be made, the repeal of the *Legal Profession Act 2004* and the re-enactment of provisions preventing the appointment of Queen's Counsel and official schemes for recognising seniority or status of legal practitioners.

Schedule 1–8

Schedules 1–8 are referred to above.

Schedule 9 Savings, transitional and other provisions

Schedule 9 contains savings, transitional and other provisions. This Schedule authorises regulations to be made for this purpose. It also contains a provision for the construction of references to the repealed Act in other legislation and instruments, and a provision carrying over the effect of orders made under the repealed Act in connection with the approval of policies of insurance for professional indemnity insurance.

Schedule 10 Amendments

Schedule 10 contains amendments to the *Interpretation Act 1987* and the *Public Notaries Act 1997*. References in other legislation to the repealed Act and associated matters are covered by transitional provisions in Schedule 9. It is expected that future legislation will deal with these matters by direct amendment.

Note Legal Profession Uniform Law

The note reproduces the text of the Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria. The explanatory memorandum for the Uniform Law can be accessed at <http://www.legislation.vic.gov.au/>.