

INCORPORATED LEGAL PRACTISES UNDER THE LEGAL PROFESSION UNIFORM LAW

Qualified entity

The *Legal Profession Uniform Law (WA)* (the “Uniform Law”) prohibits an entity from engaging in legal practice in Western Australia unless it is a qualified entity.¹

A qualified entity includes an incorporated legal practice (“ILP”).

Definition – ILP

An ILP is defined in section 6 of the Uniform Law as a corporation that satisfies the following criteria:

- It is a company within the meaning of the *Corporations Act* or a corporation of a kind approved by the Legal Services Council under section 114 of the Uniform Law or specified in the *Legal Profession Uniform Rules* (the “Uniform Rules”) for the purposes of this definition.
- It has given notice to the Law Society of Western Australia under section 104 of the Uniform Law of its intention to engage in legal practice in Australia and that notice is still operative.²
- The legal services that the ILP provides or proposes to provide are not limited to either or both of the following services:
 - i. in-house legal services for the corporation or a related entity;
 - ii. services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner.
- It is not excluded by the Uniform Rules from being an ILP.

Provision of Services by an ILP

An ILP must provide 14 days written notice to the Law Society of Western Australia in the approved form of its intention to engage in legal practice and must also furnish written notice within 14 days after it ceases to engage in legal practice.³ An entity must not engage in legal practice in this jurisdiction as an ILP if the required notice is not given.

An ILP may provide both legal and non-legal services.⁴

Where the ILP provides both legal and non-legal services, certain disclosure obligations apply.⁵ The law practice must disclose to the client in writing:

- which of the services are legal services;
- whether or not all of the services are to be provided by an Australian legal practitioner;
- if some or all of the services are not to be provided by an Australian legal practitioner, identifying those services and indicating the status or qualifications of the person or persons who are to provide the services; and
- that the Uniform Law and the Uniform Rules apply to the provision of legal services but do not apply to the provision of non-legal services.

Whilst the obligation to disclose is on the law practice, if a law practice contravenes any provision of the Uniform Law imposing an obligation on the law practice, a principal of the law practice is taken to have contravened the same provision in certain circumstances (for example, if the principal knowingly authorised or permitted the contravention or was in or ought reasonably to have been in a position to influence the conduct of the law practice in relation to the contravention and failed to take reasonable steps to prevent the contravention).⁶

Professional Indemnity Insurance

Professional indemnity insurance must be held by the incorporated legal practice itself.⁷

Authorised Principal

The Uniform Law specifies that an ILP must have at least one authorised principal (“AP”)⁸. An AP is defined in the Uniform Law as a principal who is authorised by his or her Australian practising certificate to supervise others.

An Australian practising certificate authorises the holder to supervise others unless the certificate is subject to a condition requiring the holder to engage in supervised legal practice or a condition to the effect that he or she may not supervise others.⁹ The AP must hold a principal’s practicing certificate and be a validly appointed director of the company.

A law practice shall be in contravention if it does not have an AP for a period exceeding 7 days and must not provide legal services during any period of non-compliance.¹⁰

Further Information

For further assistance
or information please contact:
The Law Society of Western Australia
Call: (08) 9324 8600
Email: info@lawsocietywa.asn.au

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Endnotes:

- 1 Legal Profession Uniform Law (WA), s 10(1)
- 2 Legal Profession Uniform General Rules 2015, r 28 [Note: WA may make its own Uniform General Rules, however s 4 of the Legal Profession Uniform Law Application Bill 2020 defines the Uniform Rules as those in force in Victoria]
- 3 Note 2 above, r 28, 29
- 4 Note 1 above, s 103
- 5 Note 2 above, r 31
- 6 Note 1 above, s 35
- 7 Note 1 above, s 212
- 8 Note 1 above, s 105
- 9 Note 1 above, s 47(6)
- 10 Note 1 above, s 106