

LAW PRACTICES – UNINCORPORATED LEGAL PRACTICE

Qualified entity

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

The Uniform Law introduces a new type of qualified entity being a new type of law practice structure known as an unincorporated legal practice (“ULP”).

Under the savings and transitional provisions of the Uniform Law,² an entity that was a multi-disciplinary partnership under the *Legal Profession Act 2008* immediately before commencement of the Uniform Law is taken to be a ULP.

Definition – ULP

A ULP is defined in section 6 of the Uniform Law as an unincorporated body or group that satisfies the following criteria:

- It is:
 - i. a partnership; or
 - ii. an unincorporated body or group or an unincorporated body or group 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”).
- 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.³
- The legal services that the ULP provides or proposes to provide are not limited to either or both of the following services:
 - i. in-house legal services for the unincorporated body or group;

- 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 a ULP.
- It does not include:
 - i. a law firm;
 - ii. a community legal service; or
 - iii. an incorporated legal practice.

Provision of Services by a ULP

Where a ULP intends to engage in legal practice in this jurisdiction, the ULP must give the Law Society of Western Australia at least 14 days written notice of that intention in the approved form before starting to engage in legal practice.⁴ The ULP must also furnish written notice within 14 days after it ceases to engage in legal practice.⁵

A ULP may provide both legal and non-legal services.⁶

Where the ULP provides both legal and non-legal services, certain disclosure obligations apply.⁷ 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).⁸

Professional Indemnity Insurance

The Uniform Law does not require a ULP to be covered by professional indemnity insurance. However, the individual lawyers who work for the ULP must each hold their own individual insurance cover.⁹

Authorised Principal

A ULP must have at least one authorised principal (“AP”).¹⁰ An AP is 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.¹¹ The AP must hold a principal’s practicing certificate and if the law practice is a partnership, must also be a partner in the partnership.

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.¹²

Further Information

For further assistance
or information please contact:

The Law Society of Western Australia

Call: (08) 9324 8600

Email: info@lawsocietywa.asn.au

Disclaimer: This publication provides general information of an introductory nature and is not intended and should not be relied upon as a substitute for legal or other professional advice. While every care has been taken in the production of this publication, no legal responsibility or liability is accepted, warranted or implied by the authors or the Law Society of Western Australia and any liability is hereby expressly disclaimed.

Endnotes

- 1 Legal Profession Uniform Law (WA), s 10(1)
- 2 Note 1 above, Schedule 4
- 3 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]
- 4 Note 3 above, r 28
- 5 Note 3 above, r 29
- 6 Note 1 above, s 103
- 7 Note 3 above, r 31
- 8 Note 1 above, s 35
- 9 Note 1 above, s 211
- 10 Note 1 above, s 105
- 11 Note 1 above, s 47(6)
- 12 Note 1 above, s 106