

BRIEFING PAPER

LEGAL PROFESSION UNIFORM LAW

THE **ESSENTIAL** MEMBERSHIP FOR
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

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Issue

In November 2018, Western Australia announced that it would join the national legal profession and adopt the Legal Profession Uniform Law. As it will be joining with New South Wales and Victoria under the Uniform Law, there is a need to ensure that the legal profession in Western Australia is adequately represented by a uniform set of professional conduct rules.

Background

The Uniform Law Framework is made up of a Legal Profession Uniform Law; Uniform General Rules; Uniform CPD, Legal Practice and Professional Conduct Rules for solicitors; Uniform CPD and Professional Conduct Rules for Barristers; and Uniform Admission Rules.

The Uniform Law was enacted in Victoria and adopted by New South Wales in early 2014. The Uniform Rules have now been approved by the Attorneys-General of New South Wales and Victoria and published on the New South Wales Government legislation website, with a commencement date of 1 July 2015.

An inter-jurisdictional Legal Services Council has been established to oversee and promote a uniform approach to regulating the legal profession and the delivery of legal services across New South Wales and Victoria, together with a Commissioner for Uniform Legal Services Regulation. Day-to-day regulation will remain the responsibility of the existing New South Wales and Victorian regulatory bodies.

The objective of the reforms is to create a common legal services market across New South Wales and Victoria underpinned by a uniform regulatory system. The Uniform Law governs matters such as practising certificate types and conditions, maintaining and

auditing of trust accounts, continuing professional development requirements, complaints handling processes, billing arrangements and professional discipline issues.

Policy Status

Law Council of Australia

The Law Council supports national adoption of the Legal Profession Uniform Law.

Law Society of Western Australia

In a submission dated 26 August 2014, the Law Society of Western Australia recommended to the Attorney General of Western Australia that the Uniform Law should be adopted as a law of Western Australia with the following variations:

- the entrenchment of a Western Australian representative on the national Legal Services Council;
- the continuation of a local regulatory body that is run by representatives of the legal profession and that is independent of government; and
- maintenance of the following aspect of the Western Australian legal costs regime:
 - a legal costs committee with the power to determine costs scales;
 - the power of courts to make special costs orders; and
 - that costs agreements that are not compliant with disclosure obligations are voidable but not automatically void.

On 4 May 2016, the Society wrote to the Attorney General, the Board and WABA expressing its support for adoption of the Australian Solicitors' Conduct Rules.

A single, uniform set of professional conduct rules providing inter-jurisdictional consistency can only benefit consumers of legal services, the legal profession and regulators especially with inter-jurisdictional practices now being commonplace.

Funding implications

There will be an additional cost for the legal profession in participating jurisdictions in the form of funding for the new national bodies to be established by the Uniform Law. It is expected that these additional costs will be offset by reduction in the cost of local regulatory bodies undertaking certain existing functions and savings in the form of reduced compliance costs (which, in turn, would lead to reduced costs for consumers). The extent of the offset cannot be determined without a detailed costing analysis.

Recommendation

The Law Society of Western Australia endorses continuing to lobby for the adoption of the Uniform Law in Western Australia, subject to the following variations:

- The entrenchment of a Western Australian representative on the national Legal Services Council;
- The continuation of a local regulatory body that is run by representatives of the legal profession and that is independent of government; and
- Maintenance of the following aspects Western Australian legal costs regime:
 - A legal costs committee with the power to determine costs scales;
 - The power of courts to make special costs orders; and
 - That costs agreements that are not compliant with disclosure obligations are voidable but not automatically void.



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The voice of the legal profession in Western Australia