

Community Legal Service Practitioners and the Legal Profession Uniform Law

This information sheet explains how the Uniform Law applies to Community Legal Services (CLS) and the legal practitioners who work and volunteer for them.

What is a Community Legal Service?

A CLS is a not-for-profit law practice. It provides legal or legal related services:

- to people who are disadvantaged for financial or other reasons in accessing the legal services system or in protecting their legal rights; or
- that are conducted in the public interest.¹

An organisation that is a CLS (whether incorporated or not) might be:

- a community legal service;
- a community legal centre; or
- an Aboriginal and Torres Strait Islander legal service.²

A CLS may recover legal costs in accordance with Part 4.3 of the Uniform Law. However, as a not-for-profit entity, a CLS does not distribute income to any member or employee otherwise than as reasonable remuneration under a contract of service or for services.³

Uniform Law and Uniform Rules

A CLS and the Australian legal practitioners who engage in legal practice for or on behalf of a CLS are bound by the Uniform Law and Uniform Rules⁴ including the Uniform General Rules, Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules.

This leads to requirements:

- to appoint a supervising legal practitioner;
- for legal practitioners to hold a relevant practising certificate;
- to hold or be covered by professional indemnity insurance;
- for legal practitioners to undertake at least ten continuing professional development points per year; and

- to maintain standards of professional conduct.

The CLSs and the legal practitioners who work and volunteer for them are subject to the same complaints and dispute resolution processes as other law practices.

Supervising legal practitioner requirement

The Uniform Law requires that a CLS or its governing body must have at least one supervising legal practitioner. The supervising legal practitioner is the principal of the service⁵ and must be:

- employed or engaged by it; or
- a member of the governing body; or
- designated by the governing body as a supervising legal practitioner responsible for the legal services provided by the CLS.⁶

A failure to have a supervising legal practitioner for a period exceeding seven days is a contravention of the Uniform Law.⁷

Practising Certificates

Many legal practitioners deliver legal services to their local community free of charge by volunteering at a CLS, or by providing pro bono services to the clients of a CLS.⁸ If you are an Australian legal practitioner you can volunteer at a CLS with any type of practising certificate, provided it has not been issued subject to a condition that you may not do pro bono work or work for a CLS.⁹

The Uniform Law also provides for a specific volunteer practising certificate to enable practitioners, who do not otherwise hold a practising certificate, to engage in legal practice on a voluntary basis for or on behalf of a CLS.¹⁰ For example, some government lawyers are authorised to practice under Commonwealth or State law and do not require a practising certificate for their official duties. Such a person may apply for and be granted a volunteer practising certificate provided he or she is otherwise appropriately qualified.¹¹

The Uniform Law prohibits unqualified legal practice and this includes engaging in legal practice for or on behalf of a CLS on a paid or unpaid basis. The penalty for breaching the prohibition is 250 penalty units or imprisonment for two years or both.¹²

In Victoria, no fee or surcharge is payable for an Australian practising certificate that authorises the holder to engage in legal practice only as a volunteer at a CLS or otherwise on

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a pro bono basis.¹³

In NSW, no fees are payable for solicitors to hold a volunteer practising certificate.¹⁴

In Western Australia, the contribution of \$30 towards the cost of funding the State's contribution to the Uniform Law scheme is not payable for legal practitioners who hold a practising certificate authorising the holder to engage in legal practice only as a volunteer at a community legal service or otherwise on a pro bono basis.¹⁵

In Western Australia, transitional arrangements are in place for certain community legal service lawyers engaging in exempt work, who did not hold an Australian practising certificate when the Uniform Law scheme commenced in Western Australia to continue engaging in exempt work.¹⁶

Professional Indemnity Insurance (PII)

Engaging in legal practice without an approved PII policy is a contravention of the Uniform Law subject to a civil penalty of 100 penalty units.¹⁷

A CLS that is a corporation must have an approved PII policy that applies to the jurisdiction in which the CLS engages in legal practice. The policy must cover:

- the CLS itself;
- each Australian legal practitioner who engages in legal practice for or on behalf of the CLS; and
- the legal practice engaged in by the practitioner.¹⁸

A CLS that is not a corporation must not engage in legal practice unless:

- each Australian legal practitioner who engages in legal practice for or on behalf of the CLS holds or is covered by an approved PII policy; and
- the policy covers the legal practice.¹⁹

Exemptions²⁰

Under Uniform General Rule 82(1)(d) a CLS may be exempted from the requirement to hold or be covered by the PII of their home jurisdiction.

In Victoria, a CLS that holds, or proposes to hold, PII under a policy other than the approved National Association of Community Legal Centres and Victorian Managed Insurance Authority policies, must apply to the Board for approval of the policy terms and conditions, prior to commencing legal practice in Victoria.

In NSW, the Council of the Law Society of NSW provides for exemption of insurable solicitors at CLSs on an individual application basis. Evidence of insurance held by CLSs through the National Association of CLCs is sufficient to obtain that exemption.

In Western Australia, the Legal Practice Board provides for

exemption of insurable solicitors on an individual application basis, provided that the solicitor:

- holds a practising certificate with a condition imposed that the holder only engages in the provision of legal services on a not-for-profit basis and does not charge any person nor seek to recover a fee from any person, except for any fee arrangements that are specified in that condition
- holds or is covered by PII issued in accordance with the National Pro Bono Resource Centre's PII arrangement, and
- does not otherwise engage in legal practice in the jurisdiction.²¹

These exemptions do not relieve an individual practitioner from holding or being covered by PII when:

- engaging in legal practice as a volunteer at a CLS or otherwise on a pro bono basis; or
- engaging in legal practice on the practitioner's own account.²²

¹ Legal Profession Uniform Law (**Uniform Law**), s 6

² Uniform Law, s 6. This definition applies whether or not a CLS is a member of a State or Territory association of Community Legal Centres, or accredited or certified by the National Association of Community Legal Centres

³ Uniform Law, s 116

⁴ Uniform Law, s 118

⁵ Uniform Law, s 6

⁶ Uniform Law, s 117(1)

⁷ Uniform Law, s 117(2)

⁸ Uniform Law, s 8 defines pro bono work as the provision of legal services without fee, gain or reward or at a reduced fee to a client who would not otherwise have access to legal services; or where the client's case raises a public interest issue. It also includes free community legal education or law reform or free legal advice or representation to charitable and community organisations

⁹ Uniform Law, s 47(5). An Australian registered foreign lawyer may also practise foreign law as a volunteer at a CLS and otherwise on a pro bono basis: Uniform Law, s 70(1)(c)

¹⁰ Uniform Law, s 47(1)(c)

¹¹ Uniform Law, s 45(1)

¹² Uniform Law, s 10(1)

¹³ *Legal Profession Uniform Law Application Act 2014* (Vic), s 73(5)

¹⁴ See <https://www.lawsociety.com.au/practising-law-in-NSW/working-as-a-solicitor-in-NSW/your-practising-certificate/fees>.

¹⁵ *Legal Profession Uniform Law Application Regulations 2022* (WA), cl 36(2)

¹⁶ *Legal Profession Uniform Law Application Act 2022* (WA), s 285

¹⁷ *Legal Profession Uniform Law*, s 213

¹⁸ *Uniform Law*, s 213(1)

¹⁹ *Uniform Law*, s 213(2)

²⁰ *Uniform Law*, s 215(8); *Legal Profession Uniform General Rules 2015*, r 82

²¹ See: <https://www.lpbwa.org.au/Uniform-Law/Professional-Indemnity-Insurance>.

²² *Uniform Law*, s 211 and s 215(8); *Legal Profession Uniform General Rules 2015*, r 82(2)