

RESEARCH REPORT

Legal Services Council

**CONSUMER REMEDIES UNDER THE LEGAL PROFESSION
UNIFORM LAW**

DECEMBER 2024



HEARTWARD

STRATEGIC

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Executive summary

ABOUT THE RESEARCH

The Legal Services Council (Council) and the Commissioner for Uniform Legal Services Regulation oversee the Legal Profession Uniform Law (Uniform Law) scheme, under which three quarters of Australian lawyers, those in New South Wales, Victoria and more recently in Western Australia, are regulated.

Following the receipt of informal feedback about the impacts of the treatment of consumer matters under the Uniform Law, the Council commissioned independent research to canvass such views more rigorously. These findings are from stakeholder research which aimed to understand how treatment of consumer remedies under the Uniform Law has been impacting regulators, consumer complainants and lawyer respondents across participating jurisdictions.

Individual and group video interviews were conducted in June 2024 with representatives from seven designated local regulatory authorities and professional associations operating in New South Wales, Victoria and Western Australia. These comprised: New South Wales Office of the Legal Services Commissioner, Law Society of New South Wales, Victorian Legal Services Board and Commissioner, Law Institute of Victoria, Victorian Bar, Legal Practice Board in Western Australia and Law Society of Western Australia.

RESEARCH FINDINGS

This research among stakeholder organisations indicated that, while the jurisdictions varied greatly in terms of the system prior to the Uniform Law and how long ago it was adopted, stakeholders in all locations agreed that the Uniform Law has codified a process for handling consumer matters that did not previously exist (entirely or in part). It has simultaneously made powers and a wider range of tools available to regulators to ensure the handling of consumer complaints is efficient and appropriate, and any regulatory responses are proportional to the risk of consumer harm, fit for purpose and able to be enforced.

Despite active adoption of and participation under the Uniform Law, there was a perception that inconsistencies remain between jurisdictions in terms of understanding of the Uniform Law and its implementation. These observations did not appear to dilute support for and commitment to the way consumer matters are dealt with under the Uniform Law.

Stakeholders in all jurisdictions were asked how the treatment of consumer remedies under the Uniform Law has been impacting regulators, consumers and practitioners. A summary of these findings is tabulated overleaf.

	REGULATORS	CONSUMERS	PRACTITIONERS
BENEFITS	<ul style="list-style-type: none"> • Recognition and resolution of consumer matters separately from disciplinary matters • Regulator staff legally endorsed to pursue informal resolution first • Approaches and responses can be proportional to the risk of consumer harm • Flexibility from wider range of regulatory powers/tools • Regulator has more ‘teeth’ to make determinations and enforce them • Regulator is an independent arbiter • Greater focus on continual improvement of complaints experience 	<ul style="list-style-type: none"> • Building community knowledge regarding legal complaint processes • Supports management of consumer expectations about outcomes • Independent resolution of complaints • Time and cost benefits • Specific and appropriate outcomes for complainants • Sense of closure of consumer matters • Enhanced public trust in the legal profession • Wellbeing benefits for consumers 	<ul style="list-style-type: none"> • Building practitioners’ knowledge regarding legal complaint processes • Supporting practitioners to comply with regulatory requirements • Independent resolution of complaints • Time and cost benefits • Sense of closure of consumer matters • Wellbeing benefits for legal practitioners
CHALLENGES	<ul style="list-style-type: none"> • Inflexibility of the legislation to adjust • Aggrieved, difficult or abusive complainants • Consumer matter determinations and remedies solely directed at individual practitioners • Queries and misperceptions regarding regulator roles, responsibilities and powers • Resource and process pressures on regulator 	<ul style="list-style-type: none"> • Unfulfilled consumer expectations • Challenges regarding time taken to resolve disciplinary matters 	<ul style="list-style-type: none"> • Time and cost issues in responses to complaints • Confusion about regulatory requirements • Legacy of fear surrounding the role of the regulator

CONCLUSIONS

Stakeholders participating in this research described many ways in which the treatment of consumer matters under the Uniform Law has impacted regulators, consumer complainants and lawyer respondents in New South Wales, Victoria and Western Australia. How the change was perceived, and the benefits it was seen to have delivered varied somewhat by jurisdiction, but overall, the approach to consumer matters enshrined in this legislation was seen as advantageous for all three groups.

Further, this research revealed benefits that may not initially have been anticipated, such as a more supportive, educative, learning-oriented, communication-driven complaints handling process, the realisation of wellbeing benefits, and a more collaborative orientation across organisations, consumers and practitioners and jurisdictions.

Though some issues and challenges with the handling of these matters under the Uniform Law were raised by stakeholders in this research, none were considered insurmountable, or sufficiently great as to undermine the benefits perceived. This research found widespread support for the principles underpinning and treatment of consumer matters under the Uniform Law.

About the research

CONTEXT AND OBJECTIVES

CONSUMER REMEDIES UNDER THE UNIFORM LAW

The Legal Services Council (Council) and the Commissioner for Uniform Legal Services Regulation oversee the Legal Profession Uniform Law (Uniform Law) scheme, under which three quarters of Australian lawyers are regulated. The Uniform Law commenced first in New South Wales and Victoria in 2015, with Western Australia joining the scheme in mid-2022.

One significant feature of the Uniform Law is the treatment of complaints, with the separation in treatment of 'disciplinary matters' (those which relate to lawyers' professional conduct and ethics) and 'consumer matters' (those which relate to other elements of legal service provision, including cost disputes). This approach aims to enable a more efficient and more targeted resolution of complaints which raise consumer issues. The resolution of consumer matters under the Uniform Law enables local regulatory authorities, where warranted, to resolve consumer matters informally as soon as possible, including by ordering mediation between parties. They can also make a fair and reasonable determination in consumer matters, which may include a range of practical remedies.

AIM OF THE RESEARCH

Following the receipt of informal feedback on ways in which the treatment of consumer matters under the Uniform Law has impacted regulators, consumer complainants and lawyer respondents, the Council commissioned independent research to canvass such views more rigorously.

The Council engaged Heartward Strategic, an independent Australian social research agency, to undertake this research. This report covers qualitative research with representatives from local regulatory authorities and legal professional associations in New South Wales, Victoria and Western Australia, which aimed to understand their experiences and views of consumer remedies under the Uniform Law and how they have been impacting regulators, consumer complainants and lawyer respondents across these jurisdictions.

RESEARCH APPROACH

Individual interviews and group interviews with up to four participants each were conducted with more than 20 representatives from seven organisations operating in New South Wales, Victoria and Western Australia. Participant organisations included designated local regulatory authorities and professional associations in these jurisdictions.

The organisations participating in interviews are listed below, along with acronyms or abbreviations by which they may be referred if mentioned in any part of this report:

- New South Wales Office of the Legal Services Commissioner (NSWOLSC)
- Law Society of New South Wales (LSNSW)
- Victorian Legal Services Board and Commissioner (VLSB+C)
- Law Institute of Victoria (LIV)

- Victorian Bar (Vic Bar)
- Legal Practice Board in Western Australia (LPBWA)
- Law Society of Western Australia (LSWA)

Interviews were conducted by senior Heartward researchers via the Zoom video-meeting platform between 5 June and 26 June 2024.

All organisations were provided with a draft version of the report for review, to ensure the findings and quotations it contained accurately represented the organisation's view and experiences. No material changes in content or meaning were made as a result of this review process.

Research findings

This section of the report describes stakeholder views on the benefits and challenges regulators, consumer complainants and practitioners experience regarding the treatment of consumer matters under the Uniform Law.

THE EXPERIENCE OF REGULATORS

This section describes the experience of regulators responding to consumer complaints under the Uniform Law, as seen through the eyes of the regulators and/or professional bodies in the three relevant jurisdictions. This section commences with a summary of the way in which stakeholders perceive that the Uniform Law has changed aspects of the work of the regulator/s overall, and specifically in each jurisdiction. This is followed by discussion of the perceived benefits and challenges of the consumer matters provisions of the Uniform Law for regulators.

PERCEIVED CHANGES FOR REGULATORS

Prior to describing the perceived benefits and challenges for regulators upholding the parts of the Uniform Law pertaining to consumer matters, stakeholders were asked to comment on what has changed for regulators since the introduction of these elements of the Uniform Law. Some of the responses to this question pertained to changes that were common across all jurisdictions adopting the Uniform Law, and these are discussed under the following headings, with changes specific to each jurisdiction covered in the subsequent coloured breakout boxes.

Codifies a process that didn't exist previously

One prominent way in which stakeholders perceived regulators' operations had changed under the Uniform Law and with respect specifically to consumer complaints, was that for all jurisdictions it had codified a process that didn't exist in legislation previously. Specifically, the Uniform Law was described as clearly setting out for regulators:

- the alternative dispute resolution process, i.e. the process for recognising, prioritising and responding to complaints that constitute consumer matters
- the powers to make determinations drawing on a range of legislated consumer remedies.

While New South Wales and Victoria did recognise consumer matters as separate from disciplinary matters prior to the introduction of the Uniform Law and had some provision for alternative dispute resolution in their legislation, stakeholders across New South Wales, Victoria and Western Australia all noted that the Uniform Law has codified and unified these aspects of the complaints handling and dispute resolution process. Prior to their respective state laws explicitly providing for the alternative resolution of disputes that constitute consumer matters, regulators in New South Wales, Victoria and Western Australia all reported using a more informal process to resolve consumer complaints where there was no disciplinary element, though they lacked the powers to compel practitioners to participate in the process or comply with the outcome.

We did have the option before to do that [attempt to resolve consumer complaints informally], but there wasn't a legislative process of how that was to happen. That's at least been codified now. That is clear.

WESTERN AUSTRALIA

For all complaints, the imperative is to try and resolve things quickly and informally, expressly when it comes to a consumer matter. So people go, 'Is it a consumer matter? Is it a disciplinary matter?' And the legislation helps there as well because it explicitly says you prioritise any consumer matter.

WESTERN AUSTRALIA

For consumer matters, section 287 says that with consumer matters, you must attempt informal resolution. So more often than not, unless there's really good reason to skip that step, we will look to attempt to informally resolve all consumer matters.

VICTORIA

We always have to attempt to resolve them informally first before we move to considering whether a determination should be made. And that's been in the legislation for the 30 years that we've been around... What's really changed is the power to make an order now. If we can't resolve informally, we used to just have to close the complaint and move on to the next one, whereas now we can take that extra step and actually make a consumer matter determination or a binding determination about costs.

NEW SOUTH WALES

Wider range of powers/tools for the regulator

Stakeholders from all three jurisdictions perceived regulators' powers to make determinations on consumer matters and some cost disputes, and the wide range of consumer remedies they can order under the Uniform Law to be a significant change for regulators. It was noted that these powers have changed how regulators communicate with consumer complainants and lawyer respondents and the outcomes that they are able to achieve in resolving consumer complaints.

The powers to deal with consumer matters were expanded considerably under the Uniform Law, in that we can now impose a caution in relation to consumer matters, which is a consumer matter caution, but doesn't result in a disciplinary finding against the solicitor... So that power, and the prospect of that power being exercised, more importantly, is quite important in ensuring compliance with those professional obligations for the protection of the public.

NEW SOUTH WALES

There are a number of things that we can actually do under the consumer powers, specifically. Section 290 is basically a whole new section in the legislation. That was really what brought in all the various remedies.

NEW SOUTH WALES

We've got some amazing tools, in particular in that consumer matter space, consumer remedies... in particular, the ones that I think are pretty amazing in so far as our statutory powers, the determinations, compensation orders, the binding determinations for cost disputes (and that amount is indexed). At the moment, that sits at 18,500, the indexed amount. That's pretty significant.

VICTORIA

A third big change was the power to make determinations where if you couldn't resolve something informally, you could actually make a decision rather than having to send them off elsewhere.

WESTERN AUSTRALIA

The Uniform Law as a legislative regime, as compared to the other one, when it comes to consumer remedies is vastly superior.

WESTERN AUSTRALIA

Mechanisms that the law provides in terms of putting together a settlement agreement where we can get the parties to document what it is that they're going to do for each other, what they're not going to do from here on in, and it's explicitly enforceable if one party doesn't comply.

WESTERN AUSTRALIA

NEW SOUTH WALES

In New South Wales, the Office of the Legal Services Commissioner (the NSW Commissioner) has been the primary body for handling consumer complaints about the legal profession for many decades and continues to do so with the adoption of the Uniform Law.

From the perspective of consumers, stakeholders reported that the changes in complaint management processes for consumers have been minimal since the Uniform Law. The regulator was established specifically to deal with what were previously called 'consumer disputes'. Under the previous system, consumer disputes were matters that prompted people to complain but would fall short of indicating a need for disciplinary action to be taken against the lawyer. However, prior to the Uniform Law, consumer matters handled by the regulator were not limited to complaints by clients but also included those lodged by third parties (commonly beneficiaries of deceased estates), which can no longer be dealt with as consumer matters under the legislation.

New South Wales-based stakeholders noted that the greatest change for the regulator in this jurisdiction in dealing with consumer matters was the expansion of powers to make determinations in consumer matters and cost disputes. Stakeholders from New South Wales observed that these powers are rarely exercised, however the fact that they are available if required was perceived to support compliant and best practice provision of legal services and in motivating the informal resolution of consumer complaints.

The process for attempting informal resolution of consumer matters in New South Wales was reported to be based on written correspondence between the NSW Commissioner and the parties to the matter. This was observed by New South Wales stakeholders to have extended the time it takes to resolve consumer matters informally compared to when contact was made by phone but is perceived as necessary to ensure transparency and procedural fairness for all parties.

The professional associations representing solicitors and barristers in New South Wales have some regulatory powers related to the investigation of disciplinary complaints referred to them by the NSW Commissioner. However, since the adoption of the Uniform Law, the Law Society of New South Wales reports now conducting a preliminary assessment for all referred complaints as quickly as possible, and that this process means most of these complaints do not proceed past preliminary assessment to investigation.

We always have to attempt to resolve consumer matters informally first. That's been in the legislation for 30 years. It was very much shuttle diplomacy, where we will talk to the lawyer, talk to the consumer, try and find a middle ground.

Having those powers to make a binding determination now means we have to be quite careful about being open, transparent, according to procedural fairness.

If we write to them formally and say, 'Here's the complaint, here's what we would like you to respond to, and do you have any settlement offers?' It gives them a chance to provide a considered reply, but it does take a little bit longer.

When we contact a lawyer to get their response and go through that informal resolution process, we definitely inform them of our powers and our role and use that information if we need to, to try to leverage and get them to resolve the complaint...

VICTORIA

The Victorian Legal Services Commissioner (the Victorian Commissioner) receives and manages all complaints about Victorian solicitors and barristers. Few stakeholders in Victoria were in a position to comment on how the process of handling consumer complaints has changed for the regulator since the Uniform Law was established.

One stakeholder identified three major changes to the handling of consumer complaints under the Uniform Law compared with the previous Act, including the increased threshold and indexation of the threshold to consider cost disputes, the power to make determinations in consumer matters and certain cost disputes, and the removal of the need for costs in dispute to be paid to the regulator before the cost dispute could be considered. Stakeholders in Victoria also noted that although the Victorian Commissioner is able to delegate investigation of disciplinary-related complaints to other bodies and has done so in the past, these delegation powers are not currently exercised.

One Victorian stakeholder organisation that does not typically have direct contact with consumers under the Uniform Law commented that the rules and regulatory structure in relation to consumer matters is similar to that which existed prior, and suggested that it may not have changed significantly from the consumer point of view.

There's two elements: there's an 'enquiry', which is how it currently sits when it first comes in the office, and a 'complaint' when we flip it to a formal investigation. [Sometimes there's] a conduct and consumer issue pinned together. So most of those are flipped to complaints. But certainly in that early resolution space, most of the informal things happen in that enquiry phase. The recent stat is only a bit over 9% actually turned into a complaint that we'll actually take further.

WESTERN AUSTRALIA

Based on the reports of the stakeholders in Western Australia, this jurisdiction has experienced the greatest and most recent change in the way consumer complaints are handled.

There have been many changes in the role of the regulator in Western Australia with the introduction of the Uniform Law including, most significantly, the formal recognition of a category of complaint designated as consumer matters, as distinct from disciplinary matters. Prior to the Uniform Law, the complaint handling scheme was reportedly concerned with whether or not a lawyer should be disciplined. What would now be considered consumer matters were dealt with through a 'workaround' outside of the legislation to avoid having to go through a formal complaint handling process. This comprised a voluntary conciliation process, referral of the consumer to other options, or inviting the complainant to withdraw their complaint.

The Uniform Law also enshrines in law in Western Australia the process and priority given to seeking informal resolution of consumer matters, the powers to make determinations on consumer matters and some cost disputes and the range of consumer remedies available to the regulator, none of which were provided for under the previous legislation.

It was acknowledged that the recency of the change to the Uniform Law means that Western Australia is still in a transitional period, with some matters (engagements prior to 1 July 2022) being dealt with under the previous system and few of the new regulatory powers being exercised so far. However, stakeholders expressed the view that further improvements for consumers and practitioners are only a matter of time as the changes become embedded.

The Western Australian regulator also noted a major cultural shift within the organisation and the profession that is currently still in process regarding consumer complaints, which previously were seen through a disciplinary lens.

For a consumer who came to us beforehand and said, 'Look, I want a hundred bucks off the bill', I'd say, 'That's not really our role. We can try and engage the lawyer voluntarily, but our focus is on looking at what conduct issues we might investigate.'

To have a whole new species of complaints here has been a big cultural shift, and even for the staff who come on board to do it, and even staff who work in other spaces around the office.

With the Uniform Law, came the power to make determinations where if you couldn't resolve something informally, you could actually make a decision rather than having to send them off elsewhere. We had to bring in new skills to deal with making those determinations. The culture here had always been, if a complaint isn't unsatisfactory professional conduct or misconduct, then it's unmeritorious.

At the Board, we were preparing for it for quite a while. We knew it was coming in, though we didn't know exactly what the Bill was going to look like and how it was going to operate in WA. Even really, until the last moment, we were preparing on the basis that we were going to get effectively what was in Victoria. What we did was started to prepare new fact sheets and look at the requirements in terms of the Board's processes and also educating the profession.

PERCEIVED BENEFITS FOR THE REGULATOR

Recognition and resolution of consumer matters separately from disciplinary matters

Stakeholders in all jurisdictions perceived the explicit recognition and separate treatment of consumer matters as distinct from disciplinary matters under the Uniform Law as essential for regulators to respond appropriately to consumer complaints, given the wide range of reasons why consumers make complaints and the outcomes they seek in lodging a complaint. Further, it was noted several times that not all complaints raise a question of improper lawyer conduct and many of these complaints may be easily addressed informally and without disciplinary investigation.

In New South Wales and Victoria, stakeholders observed that consumer complaints have been differentiated on this basis for as long as they can remember, indicating a belief that it is a sensible and useful distinction. Stakeholders from the Western Australian regulator reported having informally adopted this distinction in practice even though it was not part of the previous legislation. Stakeholders in all jurisdictions observed that the distinction between consumer and disciplinary matters in the Uniform Law (and some previous Acts) importantly preserves access to justice for consumers, as complaints not meeting the threshold of disciplinary matters can still be dealt with by the regulator and outside of the courts.

[The prior approach] was unhelpful and adversarial and culturally embedded. Now you've got a much more holistic picture of all the different issues, where you can really target your energy into those lawyers that need to be investigated And you can have a better overview of that and separate it quite explicitly from the complaint process.

WESTERN AUSTRALIA

Sometimes that line between a consumer complaint and a disciplinary complaint is really hard to draw. But sometimes dealing with a complaint as a consumer complaint might actually resolve the issues and be a better outcome for both the complainant and the respondent lawyer.

NEW SOUTH WALES

... a complaint to the Legal Services Commissioner, it's really out of the complainant's hands. If the Legal Service Commissioner thinks that the barrister has stepped out of line far enough, there may be a prosecution, there may be potentially quite serious consequences for the barrister. Some people have complaints against barristers, but don't want the consequences to be as severe.

VICTORIA

Regulator staff legally endorsed to pursue informal resolution first

The Uniform Law's explicit endorsement of alternative dispute resolution as the first step in resolving consumer matters was reported by stakeholders as providing comfort and clarity to the regulators and their staff and supports investment in the resources and procedures to enable this approach to be effective. In particular, in Western Australia, regulator staff who engage parties in an alternative resolution process now have the confidence of knowing they are following a process formally prescribed in law, rather than one that sits outside of it.

For all jurisdictions, the Uniform Law defines the next steps such as tools and powers available to the regulator to support resolution if alternative methods of dispute resolution fail to achieve an outcome, which some stakeholders believe has motivated more parties to come to a resolution informally.

... [A] massive increase in informal dispute resolution has been achieved by the VLSB+C in the last few years.

VICTORIA

Well, there's an actual legislative regime now that means that we need to prioritise that process and that we've got power in that process. It's not us saying, 'Let's sidestep the legislative process and do something that's voluntary and probably won't work and will be unsatisfactory for you.'

WESTERN AUSTRALIA

What we do a lot is point out to the solicitor that if the matter cannot be informally resolved, the Commissioner can determine the costs, and that previously couldn't occur. So that often draws the attention of the solicitor to determining it or to resolving it short of a determination being made. So, we do use that as leverage quite a lot, and it does, I think, encourage solicitors to engage in the informal resolution process.

NEW SOUTH WALES

Approaches and responses can be proportional to the risk of consumer harm

Stakeholders in all jurisdictions perceived that the treatment of consumer matters under the Uniform Law has enabled regulators to be able to execute their role in a more nuanced and tailored way. Regulators commented that the specific provisions, powers and remedies associated with consumer matters in the Uniform Law supports the implementation of a more risk-based regulatory approach. Regulators have adopted structures, processes and allocated resources that allow them to handle consumer and disciplinary matters separately, and, at the individual complaint level, can expend effort and exercise powers more proportional to the complaint than under previous legislation.

Getting that balance right of not spending too much time on matters that may not warrant it. If you're stepping through the whole process, you don't necessarily want to be giving a complaint more airtime than it deserves.

NEW SOUTH WALES

The Uniform Law has the tools to give a proportionate response.

NEW SOUTH WALES

The hard work [transitioning to the Uniform Law] has paid off, and we're in a much better place. We are fulfilling our objectives to be efficient, effective, proportionate, and targeted. One of our achievements is that we've been able to set KPIs for handling a complaint.

WESTERN AUSTRALIA

There's a range of regulatory tools that we can look to utilise and take that risk-based consumer harm approach as well, which is really important.

VICTORIA

We are a risk-based regulator... We don't have infinite resources. So we need to have mechanisms like this in place so we can have that resourcing strategic flexibility to move our resources to the complaints that have the potential to have the most consumer harm. So having that consumer level enables us to do that.

VICTORIA

Flexibility from wider range of regulatory powers/tools

The wider range of regulatory powers and remedies under the Uniform Law to deal with consumer matters was described as offering regulators the benefit of flexibility in how they respond to consumer complaints. This means that the response to complaints can be individualised, a wider range of complaints can be addressed to the complainant's satisfaction and, where warranted, tailored outcomes can be more effective in motivating better practice in legal service delivery.

Uniform Law is a house with many rooms. Sometimes it takes a bit of a while to find the right room for the right problem. It's quite flexible.... The Uniform Law gives us a whole bunch of different tools to regulate with.

NEW SOUTH WALES

I think if you were focusing on compliance and getting people, you're differentiating between people who are just struggling to comply with the Uniform Law on one end to the other end, where people are just dishonest and untrustworthy and all that stuff. When you've got a spectrum of behaviours, you want a spectrum of solutions.

NEW SOUTH WALES

I think under the Uniform Law, now, the armoury of options that are available to the Board is wider. We never had that before, so there's a lot more that can be done.

WESTERN AUSTRALIA

Mediation power is a useful one to have up your sleeve when resolution is difficult, to say, 'Look, we're here not to work out how much we should punish the lawyer, but to work out an outcome that's agreeable to you both'.

WESTERN AUSTRALIA

Regulator has more 'teeth'

Another benefit of the powers given to regulators to make binding determinations in consumer matters and some costs disputes under the Uniform Law is the ability to communicate that the regulator has 'teeth'. Stakeholders believe this increases public confidence that the legal profession is appropriately regulated, supports better compliance with regulatory requirements such as costs disclosures, as well as increasing the willingness of lawyer respondents to negotiate an informal resolution. Stakeholders also believe it ensures lawyers will comply with any agreements and determinations.

Having the power, being able to say, 'Well, this isn't the end of it'. We can now go that extra step. That focuses the mind sometimes for lawyers, whereas before they would just fold their arms and that was that. Now we do have that power to take that extra step.

NEW SOUTH WALES

It's not something I take lightly. These powers are quite significant. ... Now, I've spoken with some other regulators and they're pretty amazed as to some of the powers we've got and the amount that we can award.

VICTORIA

I guess it makes the focus on [costs] disclosure more important because the law practices now are having a provision automatically voiding their agreement, which is a big financial ramification for law practices.

WESTERN AUSTRALIA

Recalcitrant lawyers, I think they would probably feel that they're forced to the table more than maybe they were in the past.

NEW SOUTH WALES

Regulator is an independent arbiter

Some stakeholders commented that the treatment of consumer matters under the Uniform Law allows the regulator to be clearly positioned as an independent arbiter of disputes between consumers and lawyers, rather than being seen as more aligned with one side or the other. This has the additional perceived benefit that any outcomes from the process of dealing with consumer matters are more likely to be accepted as fair, reasonable or at least a clear end to the matter in dispute.

We're there to act as an independent statutory authority. Some lawyers will accuse us of being client-focused, and some clients will accuse us of being solicitor-focused. So perhaps that means that we're striking the right balance.

NEW SOUTH WALES

We're part way along building a reputation where you're here to try and help deal with both clients and lawyers and bring people to a satisfactory resolution within an appropriate period of time, rather than having a reputation where the profession fear you because you're just out to get them, and where complainants expect that you're just part of the boys club and you're there to protect lawyers.

WESTERN AUSTRALIA

Greater focus on continual improvement of the complaints experience

Several stakeholders in Victoria perceived an increased focus of the VLSB+C on continual improvement in the services they provide for consumers to lodge and seek resolution of complaints, associated with the handling of consumer matters under the Uniform Law.

What I've noticed is a complete focus on continuous improvement on how the VLSB+C actually deals with consumer complaints.

VICTORIA

Consumer complaint processes, as you can imagine, are very timely and very costly. So actually, developing a framework that makes it easier for the consumer to make a complaint through their lodgement system, through the development of a portal to lodge complaints with some associated guidance, I think really has streamlined that process.

VICTORIA

We actually have a head of customer experience, so we're really thinking about how we deliver services to the consumers of our services, which are the general public and complainants, but also the lawyers.

VICTORIA

PERCEIVED CHALLENGES FOR THE REGULATOR

Stakeholders reported several challenges which they perceive regulators encounter in applying the Uniform Law as it pertains to consumer matters. These are summarised under the following headings.

Inflexibility of the legislation

Stakeholders noted several ways in which they perceived the Uniform Law provisions for consumer matters were inflexible, causing challenges in implementation, including:

- Limited ability to make changes to rules and guidance as consumer and practitioner needs, behaviours and expectations change over time.
- Prescriptive nature of the law in how processes for handling consumer matters are framed, for example mandating certain elements and order of processes such as a 'preliminary assessment'.
- Limited approach/guidance around the opening of a disciplinary matter when a complaint is already being handled as a consumer matter, if more information comes to light at a later date.

I think the current framework lacks agility, the ability to make changes, to modernise rules, to change the guidance. As consumer expectations continue to change, the way professionals access education, guidance, resources, continues to change... that is a real risk of the current regulatory framework. It would be really good to actually make the framework for changing those rules or regulations more agile.

VICTORIA

It's very prescriptive, like the whole preliminary assessment, and that needs to be done at a particular stage, but it's not very clear on when it's done, should be done... If you've treated something, for example, as a consumer matter up until whatever stage, and then you decide, 'Ooh, we've just received this information. Now we might want to open up a disciplinary matter'. It's not as easy as that under the current Act.

VICTORIA

Aggrieved, difficult or abusive complainants

Some stakeholders noted that though the additional powers to make determinations under the Uniform Law does mean more complainants may be able to experience more targeted outcomes, if warranted, a challenge still exists for regulators in dealing with difficult complainants. It was recognised that the process of handling consumer matters itself can further frustrate or aggrieve complainants who are already aggrieved by the legal process, particularly if complainants cannot get the outcome they desire from the resolution process. One stakeholder also noted the emotional pressure that this places on regulator staff who handle complaints every day.

It depends on the complainant, how much we involve them in the process. We have some difficult complainants who can be abusive and threatening to us.

NEW SOUTH WALES

You do deal with some challenging and unreasonable behaviours. We've still got room to improve in dealing with those difficult behaviours because people don't come to us full of joy. They come to us because someone's died or they're getting divorced or someone's going to jail. They've had to go and see a lawyer, and they don't understand the lawyer, and the lawyer wants to charge them a fortune, and things are taking forever, and it's all legalistic, and they're upset for whatever reason, and they come to us. They can see an escalation of grievances by the time they come to us. They're triply aggrieved, so if we can't help them, that's challenging. If we don't try and do with them as best we can, we'll just add to that, they'll be quadruply aggrieved.

WESTERN AUSTRALIA

I've worked in complaints environments [in other industries] where you just feel the weight of those relentless calls day in, day out, and it makes the job more difficult. Sure, we have got times where it's tricky for staff. You naturally do in a complaint environment. But I think the culture that we've worked very hard to create plays a role with people feeling supported and perhaps being able to wear that a little bit better.

VICTORIA

Consumer matter determinations and remedies are solely directed at individual practitioners¹

Stakeholders from one organisation in Victoria pointed out that a challenge or limitation for regulators in the powers given to resolve consumer matters is that they focus on resolving individual matters about individual practitioners, and no provision exists within the legislation that allows regulators to track and respond to patterns within complaints that may signal practice-level process or market-related deficiencies or failings. Examples given included difficulties tracking and responding appropriately if multiple lawyers within the same firm have similar complaints made, for example about billing and costs disclosures, or where there appears to be an underlying issue around pricing and marketing strategies used to attract clients. Specifically noted as missing from the suite of consumer remedies that would support professional service standards was the ability to caution or issue an infringement notice against practices.

¹ NOTE: Under the Uniform Law (s256, 257), to address systemic issues, regulators can give a law practice a management system direction, following a compliance audit of the law practice or after the conduct of a complaint investigation or examination.

There's very much a focus on professional conduct and individual conduct, and I'm not saying that we should not have that, but I think it would also be super helpful for us to have powers around the way the market functions, and particularly around pieces in the market where there's competition. Costing and how people price their services and what they tell consumers to get them in the door, that's not really personal, that's market-driven.

VICTORIA

We have very limited powers over law practices. To be able to say to a law practice, for example, 'You know what? You guys are really not doing a great job of cost disclosure as a practice'. Having better powers to actually be able to look at the way a practice is conducting itself, particularly, I think, in the consumer space, where they're always delayed, or the service levels are just not great.

We don't have any powers, for example, to do infringement notices against practices. Everything has to go through the laborious [individual] process. If there was a way to make some improvements, there that really looked at where we get multiple consumer complaints it would be good.

VICTORIA

Queries and misperceptions regarding regulator roles, responsibilities and powers

Several stakeholders across the three jurisdictions commented on perceptions surrounding the roles, responsibilities and powers of the relevant bodies in their jurisdiction when it comes to the handling of consumer and disciplinary matters under the Uniform Law. Specifically mentioned was:

- lack of consumer awareness of the different roles of the regulator and professional bodies
- practitioners and consumers believing that professional bodies have a regulatory role they never had or no longer have – particularly when it comes to disciplinary matters
- perception that regulators lack 'teeth', i.e. lack of awareness of the powers regulators now have to make determinations or perception that these powers are not being fully utilised
- perception that the regulator lacks expertise or contextual understanding to assess certain types of complaints, such as complaints about barristers or complex costs disputes
- questions around the operation and efficiency of regulators' processes that appear to duplicate other parallel or pre-existing processes, such as court-based cost assessment processes and professional ethics committees.

There are quite a lot of practitioners who still believe we're the regulator, and they contact us, and some consumers think we're the regulator, too...

VICTORIA

But I do still think sometimes there's this perception that the Board, at least in WA, in terms of regulation, is limited in its functions when it isn't. Certainly, you still hear from some clients, 'toothless tiger', 'doesn't do much' and things like that.

WESTERN AUSTRALIA

I can well understand there being a view that the Commissioner not having practised as a barrister wouldn't understand the particular issues that barristers are under. And that could flow both ways. From being too soft on the barrister to being too tough on the barrister.

VICTORIA

The cost assessors are well qualified to understand hourly rates and how much time is allowed to be charged, what's allowed to be charged and what's not. And they get a detailed bill, and they literally go through every time entry and determine how much they're going to allow for each entry in the bill and then produce a certificate of determination. Whereas I don't know whether the people at the Legal Services Commission really have that.

NEW SOUTH WALES

I have a bit of a sense that they're too soft on some who step out of line.

VICTORIA

Resource and process pressures on the regulator

Several stakeholders observed that regulators face pressures handling consumer complaints under the Uniform Law, noting:

- increases in the volume and complexity of consumer complaints being made
- indexation of threshold amounts determining the regulator's jurisdiction over costs disputes meaning more complaints fall into their remit
- the extra time required to communicate determinations or reasons for closing a complaint under the Uniform Law.

We've had to increase our resources as well - with more powers means more time we have to spend on every complaint, right? So that also has meant that our team has expanded to a certain degree because of the extra work that we can do now... Now we have to either make a determination, which takes time to properly explain what we are proposing to do and why, or we close the file because we don't think there's any merit to the complaint to make a determination. But then we have to explain why, and that obviously increases our workload. So that to some extent has meant we use more resources with these new powers.

NEW SOUTH WALES

We have had to resource up considerably. We've invested heavily on that front with a focus around trying to make us more effective and more productive and getting people through the journey as quickly as possible. [But] we can't just keep recruiting over and over again. We've got to do things smarter, which we're endeavouring to do.

VICTORIA

People will always complain. The complaints are getting bigger. And since the advent of accepting complaints by email, I think they get complaints that have multiple attachments with attachments within attachments. And so as a result, they don't have the resources to deal with those matters quickly.

NEW SOUTH WALES

Certainly, our complaints have gone up. But as our co-regulator points out, 'if you look at how much the profession is increasing, the complaints haven't gone up as much as you might expect'.

NEW SOUTH WALES

THE EXPERIENCE OF CONSUMER COMPLAINANTS

This section describes the experience of consumer complainants under the Uniform Law, as seen through the eyes of the regulators and/or professional bodies in the three relevant jurisdictions. This section covers stakeholder perceptions of the benefits and challenges consumer complainants currently experience related to raising and having consumer matters resolved.

BENEFITS OF THE UNIFORM LAW FOR CONSUMER COMPLAINANTS

The benefits outlined in this section are those organisational stakeholders in each jurisdiction perceive that consumer complainants experience under the Uniform Law, specific to its treatment of consumer matters. On balance, regulators and professional bodies believed the handling of such complaints has improved for consumer complainants under the Uniform Law.

Building community knowledge regarding legal complaint processes

Stakeholders observed that the process for handling consumer complaints under the Uniform Law educates consumers about the legal complaints process. This was seen as a benefit to consumers, who face challenges due to the complex nature of the legal system and distance most people have from it. One stakeholder observed that this change was evidenced by consumers appearing to have greater knowledge about complaints under the Uniform Law than they did previously. Specifically, the system under the Uniform Law was perceived to offer consumers:

- a greater understanding of their own matter/complaint
- guidance on how best to lodge a complaint for expediency
- an explanation of a lawyer's role in the legal system
- appropriate steps to engage a lawyer
- an understanding of cost agreements
- referral to other relevant bodies/pathways
- education on the legal system in general including the range of services provided.

Stakeholders mentioned delivering this information to consumers through various channels including email, factsheets and by telephone.

Various aspects of the law are complicated and difficult, and to have a third party independently being able to explain to people what's happened, how the legal system works, what our role is, what the lawyer's role in the legal system is... One way or another, even if we determine that we can't take the matter further, often they'll have received an explanation, which particularly matters where there's been limited communication from the lawyer.

NEW SOUTH WALES

Lack of communication is one of the main reasons a complaint occurs in the first place. It's about the timeliness or the consumer not being kept up to date, or the consumer is not really understanding the scope of the engagement or that different options come with different costs. Often it is that they just don't understand the cost agreement in the first place and when they actually understand it, often the complaint disappears or is closed.

VICTORIA

If there's something that is better handled by another body, we'll refer them there. We'll give them a pathway; we won't just cut them loose. What's important is to put the person in a better position from when they started. If that means that we haven't been able to get the outcome they wanted, at least they're being provided with all this information so they can make informed decisions.

VICTORIA

I think making sure that both clients and law firms know what is required and needs to be done helps.

WESTERN AUSTRALIA

Managing consumer expectations about outcomes

Under the Uniform Law, stakeholders mentioned that a benefit to consumers is the complaints process allows for the clear management of expectations, so that complainants have a sense of what to expect, what will be required of them and what the possible outcome will be.

We want to manage their expectations and we don't want them to expect they will get this particular outcome... then if the matter doesn't resolve, we advise them that we'll refer the file to the Commissioner to see if any further action should be taken.

NEW SOUTH WALES

Managing them through the process in a more structured way and in a more prompt way as set out in the legislation is much more useful in managing their expectations, even if at the end of the day, they don't ultimately get what they want.

WESTERN AUSTRALIA

We are as clear as we can be at the outset about what we can and can't do.

WESTERN AUSTRALIA

Independent resolution of complaints

Stakeholders perceived a further benefit for consumer complainants under the Uniform Law was that complaints are responded to by an independent body with no vested interests. This was seen as helpful in addressing inherent disparities in knowledge and pausing the expression of strong adverse feelings between complainant and respondent.

We do a form of mediation. There's a potential power imbalance when you have somebody trained in advocacy versus a client and a member of our staff in the middle, so I think the written submission approach actually works much better. We are engaging as a third party and trying to resolve the dispute.

NEW SOUTH WALES

For the person who's unhappy, it's highly likely they've had a fight with someone that they once cared about or that they're very invested in. Then they've had a fight with their lawyer, and now they're with us. By that stage, there's a level of distress that's hard to manage. Our teams are very skilled at dealing with both the people who are upset that are coming to us and also the lawyer who then is upset because they've had a complaint made.

VICTORIA

Time and cost benefits

Stakeholders expressed an awareness that for consumers, pursuing a complaint can be very time consuming and potentially involve legal costs, as well as a universal appreciation of the Uniform Law in supporting the resolution of consumer matters expeditiously and at little or no cost to the consumer.

With regards to the speed of resolving matters, the Uniform Law was perceived to achieve this by facilitating:

- prioritisation of consumer complaints ahead of disciplinary matters
- provision of an online complaint portal to facilitate ease of making a complaint
- quick action in engaging with and responding to complainants and respondents
- repair of communication breakdown through fast, informal processes
- inclusion of voiding provisions, removing need for a 'setting aside' application in some cost disputes.

The complete focus is on actually engaging with practitioners when a complaint is made, picking up the telephone, having a conversation, which often means that a consumer complaint can be closed very, very quickly.

VICTORIA

Speed has improved. The way we engage with the consumer right at the start to try and resolve their dispute with the lawyer as soon as we can and as informally as we can. That's great news for most consumers, and we've got a bit of teeth at the end of the day, and we can force some of those outcomes.

WESTERN AUSTRALIA

Avoiding costs for consumer complainants was also perceived to be a benefit of the Uniform Law, particularly in the areas of law where more cost disputes were reported to arise - such as family law, litigation, workers compensation. One stakeholder observed that any legal costs hit complainants in these types of matters hard, because they are in a vulnerable situation with limited funds to litigate. In these cases, resolving the matter through regulatory processes under the Uniform Law was seen to be the most cost sensitive approach.

Cost was reported to be a primary concern of people using legal services, so the capacity under the Uniform Law to enforce cost disclosure, by communicating with and cautioning a solicitor about the issue, was seen as beneficial to all people using legal services.

If we didn't have these powers, the client has no choice. If they wished to pursue it, they'd have to go to the tribunal or court, at their own cost.

VICTORIA

If people have been properly given legitimate expectations (of costs) at the beginning, it is much harder for them to justify a negative feeling about their experience dealing with the legal profession.

NEW SOUTH WALES

Every dollar they spend on a lawyer hurts.

WESTERN AUSTRALIA

Specific outcomes for complainants

The range of powers available under the Uniform Law was cited as important in enabling regulators to provide more specific and tailored outcomes for consumer complainants. This was seen as distinct from the disciplinary process, which affects the lawyer but does not result in a directed or favourable outcome for the complainant (such as money may not be returned to them following a disciplinary matter).

Stakeholders acknowledged the benefit to consumer complainants of the various powers under the Uniform Law being applied not only to identify a targeted resolution, but to enforce it.

Where a complaint is available to be dealt with as a consumer complaint, it actually can give them a particular outcome. It's more tangible for the complainant.

NEW SOUTH WALES

We get both parties to document what it is that they're going to do for each other, what they're not going to do from here on in, and it's explicitly enforceable if one party doesn't comply. Both sides can have some reassurance that that's going to be the outcome.

WESTERN AUSTRALIA

Sense of closure

Stakeholders indicated that the capacity to make a determination under the Uniform Law potentially allows for the resolution of matters with minimal escalation, which in itself delivers consumer benefit. It was acknowledged that beyond the outcome, under which consumers may only receive something quite small such as an apology or the return of their file, the finalisation and closure of the matter alone, is of benefit.

There's the finality aspect. It's finality and certainty, and the dispute being completed. We are able to explain a little bit more. And if the Commissioner determines not to exercise her powers, they get an explanation as to why not. It provides some form of closure.

NEW SOUTH WALES

If people are coming to us, they've still got unmet legal needs because they're unhappy with something their lawyer has done, and it could be small, or it could be big. So, we help resolve disputes and help the consumer to move on.

VICTORIA

Public trust in the legal profession

Stakeholders believed that the handling of consumer complaints under the Uniform Law had the potential to increase public trust and confidence in the legal profession. It was suggested that, in taking both the complainant and respondent through the process under the Uniform Law, whilst they may hold different positions or not agree with the outcome, both could be confident that the matter was being looked at, being dealt with in a timely manner, and that there would be a firm resolution either way, after which it could be decided if and how to proceed.

I think it gives the consumer a feeling of more protection, that those powers exist. Particularly with cost matters.

NEW SOUTH WALES

Ultimately the intent is to maintain and enhance public trust and confidence. So, every time the regulator can resolve a dispute for a consumer and a lawyer, that's giving back that element of public trust and confidence. Not just for that particular consumer, but for the whole profession.

VICTORIA

They [parties] may not agree, but at least they can have some confidence in the process doing what it's designed to do, rather than just delaying and nothing coming of it.

WESTERN AUSTRALIA

Wellbeing benefits

Stakeholders perceived that the handling of consumer matters under the Uniform Law would likely have a net positive impact on consumer wellbeing, by alleviating anxiety brought about by the dispute in the first place, providing a buffer between the respondent and the consumer, and ultimately bringing relief when the matter is closed.

It was widely expressed that consumers making complaints under the Uniform Law are likely to be aggrieved by the matter the lawyer is handling in the first place, and that stress surrounding this would increase when they have cause to make a complaint. An expeditious resolution by the regulator as an independent arbiter was seen as having the potential to reduce stress and overwhelm for those making complaints about non-disciplinary matters.

We now have that ability to talk to both consumers and lawyers about a range of possible outcomes, which is helpful and of some relief to consumers, even though the actual reality of what ends up happening may not always be what they hoped.

NEW SOUTH WALES

CHALLENGES WITH THE UNIFORM LAW FOR CONSUMER COMPLAINANTS

The challenges described here are those perceived by organisational stakeholders in each jurisdiction to be faced by consumers under the Uniform Law. Overall few challenges were mentioned by regulators and professional bodies, and those raised related to disciplinary matters as well as consumer matters.

Unfulfilled consumer expectations

Stakeholders identified that a pain point for consumers can occur when they believe they have gone as far as they are prepared to in negotiations, and the lawyer has offered a discount, but not to the extent the consumer would like. This, including where complainants' expectations are unreasonable, leads to disappointment and disgruntlement on the part of consumers, who may have expected the regulator to exercise powers that have not been applied.

Also noted by stakeholders was that consumer matters may at times be misconceived, unmeritorious complaints where, rather than an error or misstep on the part of the lawyer, the complaint reflects a lack of understanding of legal process or the justice system. In these situations, consumers can also be disappointed or disgruntled by the outcome or closure of the matter.

It was reported by a stakeholder in Western Australia that once a determination is made on a consumer matter under the Uniform Law, there is no right of review for the consumer. Consumer expectations can then remain unfulfilled if, following the regulatory process, there is no settlement. Clients were seen as already being upset about their costs and then further having to engage a specialty lawyer to file an application and bear the costs associated with this. This was seen as unfortunate, especially given the small amounts in dispute.

Sometimes the consumer would anticipate or expect that these powers will be exercised in their favour, which obviously isn't always going to be the case. Quite a few people are looking for a complete refund, and that's not a realistic option often, either under informal resolution or in terms of a determination.

NEW SOUTH WALES

If you're just looking for a financial outcome that's quick and recognises what your concern is, then you'd probably be happier. If you're looking for punishment, we handle things differently under the Uniform Law.

WESTERN AUSTRALIA

It's the end of the line for the client. I know it gives the Board more flexibility for dealing with meritless claims, but it seems to me to be a little bit backward because the client has no rights going forward. The practitioner, on the other hand, still can make a review application, but not the client.

WESTERN AUSTRALIA

Challenges regarding disciplinary matters

In some cases, stakeholders raised challenges for consumers relating to the handling of disciplinary matters, rather than consumer matters, under the Uniform Law. Feedback centred on delays and the length of time it takes for these matters to be finalised, as well as the lack of voice complainants have through the process and the disconnect between their expectation of a satisfactory outcome and what the regulator may decide to finalise the matter.

It takes such a long time. I think the complainants who've made consumer complaints and then make a disciplinary complaint, don't appreciate that it's quite a different kettle of fish. There is a lack of understanding about the process, about confidentiality requirements, what their role is in it and about what the disciplinary complaints process can deliver.

NEW SOUTH WALES

If a complaint is made and there's a potential disciplinary issue, it then becomes the Board's complaint, not the consumers. The Board decides how it goes and whether it's prosecuted and how it's prosecuted. They'll obviously keep the complainant informed but they are only a witness in disciplinary matters, and have no control over where it goes.

WESTERN AUSTRALIA

THE EXPERIENCE OF PRACTITIONERS

This section describes the experience of lawyer respondents under the Uniform Law, as seen through the eyes of the regulators and/or professional bodies in the three relevant jurisdictions. This section covers stakeholder perceptions of the benefits and challenges lawyer respondents currently experience if consumer matters are raised against them.

BENEFITS OF THE UNIFORM LAW FOR PRACTITIONERS

Stakeholders reported that the handling of consumer matters under the Uniform Law had, on balance, benefited practitioners in most instances. Practitioners themselves, however, were not necessarily seen as being aware of this. This is in part due to legacy perceptions of the regulatory bodies and processes, and lack of awareness of changing roles - exacerbated in Western Australia due to the relative recency of the transition in that jurisdiction.

The perceived benefits described below were seen to emerge from the context that practitioners are invested in the process because their livelihood is at stake, and the consequence of any complaint has the potential to be significant and devastating. The overall advantage of the handling of consumer matters under the Uniform Law was perceived by stakeholders to be centred on the informality and swiftness with which minor matters can be resolved without severe or lasting consequences for the practitioner.

We're not looking at everything singularly through a disciplinary prism so for the majority of respondent lawyers, it's a much better process. Practitioners' expectation in the past was that most complaints were micro-analysed by a committee of their peers focusing on that issue and that issue alone and whether or not they should be prosecuted. Whereas now, they'll get an email from us saying, 'someone has complained about you, but it was not going anywhere, so we closed it'. Or we'll just contact them and say, 'your client has complained about you, and they don't want to pay for this. Are you willing to negotiate an outcome?' So that is a bit of a surprise to them. I think for most of them, it has been a pleasant surprise.

WESTERN AUSTRALIA

Often for things that aren't going anywhere and aren't particularly serious, we can write to them and say, 'Well, we're not treating this as a disciplinary matter'.

NEW SOUTH WALES

I do think where there is a consumer complaint that's amenable to resolution, it's actually far better for a solicitor.

NEW SOUTH WALES

Specific perceived benefits are described in the next section.

Building practitioners' knowledge regarding legal complaint processes

Under the Uniform Law, stakeholders perceived that practitioners potentially have become more aware and educated about the complaint process. This knowledge has been gained through intentional education forums such as seminars, as well as by experiencing the complaints process firsthand as a respondent to a non-disciplinary complaint.

As a lawyer going through that process, it's educative because they resolve it, which might actually assist them to better understand what their obligations are. That really does help with the maintenance of professional standards because it's practical.

NEW SOUTH WALES

The change brought a full focus on the issue of compliance. People were concerned about making sure, 'What do we need to do now to ensure we comply?' The education around the change was very good, and it's still going.

WESTERN AUSTRALIA

Supporting practitioners to comply with regulatory requirements

Stakeholders put forward the view that under the Uniform Law, practitioners benefited by receiving support to comply with regulatory requirements. This support was seen to include coaching-style interactions between regulators or professional bodies and the respondent lawyers, where guidance is provided about the nature and cause of the complaint and how to avoid it in future. This was perceived to support compliance with obligations under the Uniform Law, in preference to a punitive approach.

Also mentioned by stakeholders were support resources for the profession as a whole, including forms, templates and fact sheets. Particular mention was made of costs disclosure forms (currently being reviewed and updated), for their utility in arriving at cost disclosure that clients can more easily understand and that comply with regulatory requirements. This was perceived to minimise the risks of disputes and practitioners being unable to recover costs.

It's good for the profession, understanding what it is that causes people to complain and how they might need to tweak in their processes.

NEW SOUTH WALES

Our job is to keep you off the regulator's radar. And the idea is to say, look, we can help you with this, we can help you deal with this and avoid you getting into a problem.

VICTORIA

The Legal Services Council has been quite good in terms of providing guidance on their website for lawyers and fact sheets. It's more transparent, it's more available. The information being provided now is more up to date as well.

WESTERN AUSTRALIA

They've provided some simpler forms in terms of disclosure to clients that were quite useful but very generic. I know that the Legal Services Council is currently updating them. The recent drafts are more detailed, and I think that will strike a better balance between giving the clients enough information but not too much. It may then be relied on to avoid providing clients with pages and pages of cost agreements, which is tedious, and often clients won't read it or understand.

WESTERN AUSTRALIA

Independent resolution of complaints

According to stakeholders, the Uniform Law delivers a benefit to practitioners in terms of having a fair and independent party step in between consumer complainant and lawyer. Particularly for 'very difficult clients', the process for handling consumer matters was seen as providing a buffer between the complainant's disgruntlement, annoyance and sometimes hostility and the respondent lawyer. It was noted this reactivity was sometimes transferred from the lawyer to the regulator in this process.

This role as an independent buffer for resolving disputes between clients and lawyers was perceived as particularly beneficial for practitioners since the source of many disputes was considered to be miscommunication or communication failures. Poor communication between practitioners and consumers was noted by stakeholders as especially problematic when it related to costs, or departures from client expectations of servicing or the actual outcomes of the original matter.

While the value of the independence of the regulator may not be immediately evident to practitioners, stakeholders pointed out that a service is being provided to the lawyer, in that there is a dispute and an unhappy client. While the matter may not meet the conduct threshold, it is nevertheless causing grief to both parties and requires resolution, which can best be achieved by an independent party.

No lawyer wants an unhappy client, and often they are very grateful to have a third party coming into the picture to act as a go between... They have an independent arbiter of the reasonableness of the complaints that have been made against them. In appropriate cases, we can say that effectively the suggestions of the client are not reasonable. I think for some lawyers, that's an endorsement of their position by an independent party.

NEW SOUTH WALES

It might well be in some cases that there's not a case to be heard. And we've ruled that the lawyer has done all the right things, and we say as much, and we've educated the consumer as well. Sometimes that is the feedback we get from practitioners, 'Thank you for clarifying that with my client.'

VICTORIA

If there was no capacity for people to raise consumer issues with us, then they'd have to battle that out themselves. And a lot of these are small practitioners that don't have a lot of resources to be able to put into client disputes. That's a bit of an unspoken benefit of the Uniform Law.

VICTORIA

Time and cost benefits

It was acknowledged by stakeholders that for practitioners, the combined impact of the time associated with responding to a complaint, the opportunity cost of this time and potential unrecoverable costs of the engagement could have serious implications for their legal practice. This was seen to be particularly important, since the majority of respondents were reportedly small practices or sole practitioners.

Stakeholders saw the Uniform Law as providing benefit to practitioners by distinguishing between disciplinary matters and consumer matters, and explicitly focusing on the speedy resolution of consumer matters. A contrast was repeatedly drawn between the much longer time taken to finalise disciplinary matters compared with consumer matters under the Uniform Law, as evidence of this benefit.

The willingness to take that informal approach very quickly to resolve a complaint is a recognition that it's not only about the consumer, but it's about the wellbeing of the practitioner. There's no practitioner that wants to have a complaint outstanding for a period of months, let alone years.

VICTORIA

You're going to help the lawyer to hopefully resolve it and then bring it to a conclusion relatively quickly. Rather than having it going for four years and we're going to go down every nook and every cranny.

WESTERN AUSTRALIA

Sense of closure

Stakeholders perceived that, like for complainants, regulator powers under the Uniform Law to finalise consumer matters can give practitioners a sense of closure - and earlier than might otherwise have been the case. Whether or not specific powers have been applied, under the Uniform Law, lawyers go through a process that results in a sense of finality, resolution and end. Including that, if communication has been fraught or the client 'difficult', the relationship with the complainant finishes and the practitioner no longer has to deal with them.

It is good for the profession for us to be dealing with these matters to finality, rather than just letting them go because we didn't have any powers to finalise the matters.

NEW SOUTH WALES

Where it's purely a consumer issue, we can generally resolve that really quickly, really informally. The fact we can nip these consumer issues in the bud, there's benefits for everyone to be able to move on with their lives more quickly.

VICTORIA

Wellbeing benefits

All stakeholders appreciated the challenges, uncertainty and anxiety for practitioners associated with having a complaint of any kind made against them. In view of this, the capacity to separate consumer from disciplinary or conduct matters, and prioritise those non-disciplinary matters, was perceived to be of benefit to the mental health and wellbeing of practitioners. The speed and informality of resolution of consumer matters under the Uniform Law was seen as important in alleviating unnecessary stress, overwhelm and fear of losing their livelihood for practitioners.

Also mentioned was that many practitioners who are subject to a complaint appear unaware of the way non-disciplinary matters are dealt with under the Uniform Law, and still approach a complaint as though their conduct is in question and their licence under threat. This includes behaviours such as avoiding communications from the regulator which in the case of minor consumer matters can worsen the situation. The point was made that despite the Uniform Law potentially being beneficial on balance for practitioner wellbeing, this is currently limited by legacy fears and a lack of awareness among some sections of the profession.

There was recognition by some stakeholders that practitioner wellbeing in and of itself impacted client dealings, and therefore whether or not a complaint might arise. From this viewpoint, providing non-punitive support to practitioners and managing the process in a conciliatory, empathic way was seen as both effective in resolving the current matter at hand, as well as acting as prevention of future complaints.

We're conscious that having a complaint made against you is a really incredibly stressful thing.

NEW SOUTH WALES

For the wellbeing of the professional, it has been recognised that if there is a complaint or investigation underway, it can have a big impact. Sometimes something that's been burning on their mind - they think it's a big issue, but it can be resolved in a day or two. And the sense of relief can never be underestimated.

VICTORIA

That uncertainty is a source of significant stress for practitioners. It is helpful to have some clarity about the process in terms of what they're doing, how long it's going to take, just so they can put that in perspective.

WESTERN AUSTRALIA

It could be the most simple matter, but every lawyer thinks they're going to get their licence removed because of some complaint with us. That's all that they see. They actually go into this frame of thinking that 'I'm going to lose my livelihood as a result of this'. So these consumer ones, because they're generally informal and we can expedite them reasonably quickly, that experience isn't prolonged. The fact that it's cleared from their mind as quickly as possible is beneficial.

VICTORIA

It's a personal licence that the lawyers hold. So therefore, when someone complains or raises an issue, it is personal. It is about that particular lawyer. And we, we're acutely aware of that. And we appreciate that that's not a nice thing. We're all humans. No one likes to be told that someone doesn't think they've done a very good job, even if that's not true or is true.

VICTORIA

The vast majority of complaints, the root cause relates to wellbeing issues. It's very clear when you do your root cause analysis that you identify, it's actually not the technical competency, it'll be the failure in the soft skills. Not the day-to-day management of the client, but related to how they're feeling, how they feel about a particular client, where they are in their life cycle as a professional, et cetera.

VICTORIA

CHALLENGES WITH THE UNIFORM LAW FOR PRACTITIONERS

The challenges described here are those organisational stakeholders in each jurisdiction perceive that practitioners face under the Uniform Law and its handling of consumer matters. Overall few challenges were mentioned by regulators and professional bodies.

Time and cost to respond to complaints

Though stakeholders acknowledged that the time and cost burden for practitioners in responding to complaints being handled via formal processes or through disciplinary channels under previous legislation was high, it was noted that some time and cost challenges remain for practitioners under the Uniform Law. Specific challenges mentioned included:

- the (non-chargeable) time required to respond in writing to communications and requests from the regulator, or engage in other alternative dispute resolution processes such as mediation
- the perception that the focus on streamlining the complaints process for consumers under the Uniform Law has resulted in an increase in potentially meritless complaints being made, meaning more time spent by lawyers responding to such matters
- delayed access to self-initiated cost recovery processes when regulators pursue alternative resolution of cost disputes.

To respond to us, they can't charge for that time. So, there's maybe a thought process that we are a bit onerous as well.

NEW SOUTH WALES

Practitioners can perceive that anybody can make an unmeritorious complaint now to try and get money off their bill, and they have to go through at the least some attempt to try and resolve it.

WESTERN AUSTRALIA

One of the difficulties is that when a client complains about solicitor's costs to the Legal Services Commissioner, that puts a stay on any other enforcement action, including getting your costs assessed through a costs assessment process... under the legislation, you cannot now take any action to have your costs assessed. You've got to wait while we deal with this matter. Now, that might be okay if it was dealt with quickly, but from my experience, it's not. And also, it might be okay if you were to end up with a final determination. But from my experience, that doesn't happen either.

NEW SOUTH WALES

Confusion about requirements

Several stakeholders commented on practitioner confusion about requirements under the Uniform Law related to, or that tend to lead to, consumer complaints, particularly confusion around:

- the requirements relating to costs agreements and disclosures, either providing too much or too little information to clients
- what it means for practitioners if a complaint is made about them that constitutes a consumer rather than disciplinary matter, including the process to resolve the complaint, the role of the practitioner and their options if they disagree with the outcome
- how binding determinations made against a lawyer are enforced.

A small number of stakeholders observed that confusion about requirements can lead to a practitioner perception of being over-regulated.

There's a lot of information that is provided through seminars, etc, especially around costs agreements and costs disclosures. But for whatever reason, practitioners are still struggling to meet those minimum requirements. Is that the fault of the Uniform Law? Probably not because the legislation is there. It's just a willingness to understand the obligations that are bestowed upon practitioners in this area.... There probably still is a bit of reliance on what people understood 20, 25 years ago.

VICTORIA

There is still a high level of confusion, particularly for older practitioners, as it relates to responding to a complaint and actually understanding the role of the regulator.

VICTORIA

Some people still struggle with this issue of total cost concept.

WESTERN AUSTRALIA

There was this issue of those standard disclosure forms. I still don't think there's a lot of uptake by the profession on those. I think there might be a little bit of concern from the law practice, 'we need to give them a full cost agreement just to make sure we're complying'.

WESTERN AUSTRALIA

There's a percentage of the profession that think they are overregulated. And they would consider that this is just additional regulation on top of all of the things they have to do. And particularly the costs disclosure aspect, some of them consider it very onerous. And we're seen as jumping on them and telling them what to do in a way that I think they think other professions aren't.

NEW SOUTH WALES

Legacy of fear surrounding the role of the regulator

Some stakeholders mentioned a legacy of fear that remains from past regulatory regimes and the previous handling of disciplinary complaints. These stakeholders expressed that this legacy of fear presents a barrier to practitioners:

- absorbing information about changed roles and requirements under the Uniform Law
- engaging in alternative dispute resolution processes and mediation of consumer matters due to fear of a disciplinary outcome.

It may also lead to:

- misunderstanding of the implications of decisions and correspondence from the regulator on consumer matters
- engaging with bodies that no longer play a role in disciplinary investigations.

It's just that some people remember that when the Law Institute knocked on the door, you ran away and hid because they were coming to get you.

VICTORIA

Our profession is coming from a place where 'once it's in the hands of the regulator, it's probably not going to be let loose'. And that's pervasive. And that's not going to be diluted by the incoming members of the profession for a very long time.

WESTERN AUSTRALIA

Conclusions

Stakeholders participating in this research described many ways in which the treatment of consumer matters under the Uniform Law has impacted regulators, consumer complainants and lawyer respondents in New South Wales, Victoria and Western Australia. How the change was perceived, and the benefits it was seen to have delivered did vary by jurisdiction, with New South Wales and Victoria, where the Uniform Law is more embedded, seeing more benefits realised for all groups in practice. In Western Australia, which remains in a transition period, the benefits promised by the Uniform Law were clear to stakeholders, though the full impact of changes was seen as yet to be realised.

Across jurisdictions, stakeholders who could comment on regulatory regimes in place prior to the Uniform Law, perceived the approach to consumer matters enshrined in this legislation to be better overall for all three groups - regulators, consumers and legal practitioners - with the number of benefits perceived for each group far outweighing any challenges they were perceived to face.

Further, this research revealed specific benefits that stakeholders perceived for each group, that may not initially have been anticipated prior to the introduction of the Uniform Law. Central among them are:

- a more supportive, educative, learning-oriented, communication-driven complaints process for consumer matters
- the realisation of wellbeing benefits due to a faster (in many cases), more informal, less adversarial and non-punitive approach to resolution of these matters
- a more collaborative orientation at three levels: between professional bodies and regulators, between these organisations and consumers and practitioners, and between jurisdictions.

Though some stakeholders in some jurisdictions raised issues and challenges with the handling of these matters under the Uniform Law, none considered these to be insurmountable, or to be sufficiently great as to undermine the perceived benefits. This research found widespread support for the principles underpinning and treatment of consumer complaints not involving conduct issues or requiring a disciplinary response.

While some stakeholders were able to reflect on ways in which they believe the Uniform Law is benefitting consumers, others wondered whether this would represent consumers' own perceptions and showed interest in understanding the experience from the perspective of consumers themselves.

Appendix – Research materials

INVITATION EMAIL FROM THE LEGAL SERVICES COUNCIL TO REGULATORS AND PROFESSIONAL ASSOCIATIONS

Subject line: Research project on consumer remedies under the Uniform Law

Dear [Name]

The Legal Services Council has engaged Heartward Strategic to undertake a research project on consumer remedies under the Uniform Law. [You'll recall we discussed this research at the last DLRA Executive meeting and further information about the project is attached / I appreciated your time yesterday to introduce the research and further information about the project is attached.]

It is proposed that the research will involve interviews with regulators and legal professional associations in New South Wales, Victoria and Western Australia to understand their experiences and views of consumer remedies under the Uniform Law. We would be very grateful if the [name of organisation] agreed to participate in the project.

It is anticipated that between one and four nominees from your organisation will participate in a group interview. The interview will be held by Zoom, for approximately one hour, at a day and time suitable to your organisation, between Wednesday 4 June and Tuesday 18 June.

We have noted possible interview participants from your organisation as [insert name]. We would appreciate if you could please confirm your organisation's interest in participating and the names and contact details of your interview participant/s by return email by **Thursday 30 May 2024**. Heartward will then be in contact with your participant/s directly to schedule the interview.

The report prepared by Heartward may be published on the Legal Services Council's website. Participants will have the opportunity to check the draft report for inaccuracies prior to the report being finalised.

In the meantime, if you have any questions, please do not hesitate to contact [CEO] me or [name] Policy Manager, on [number].

STAKEHOLDER INTERVIEW PROMPTS

The aim of these interviews is to canvass the experiences and views of stakeholder organisations in New South Wales, Victoria and Western Australia regarding consumer remedies under the Uniform Law. Specifically, the research seeks to draw out any benefits to regulators, consumer complainants and lawyer respondents that are being experienced.

This document provides an outline of areas to explore through the interviews, as relevant and needed. Specific prompts and follow-up questions will be determined by the role, experiences and views of participant organisations.

Set-up and introduction (5 mins)

Welcome	I'd like to thank you for giving up your time to participate in this research. This interview will take no more than 60 minutes.
Ethics and Recording	<p>Confirming that your participation in this research is entirely voluntary.</p> <p>All aspects of this research project, including this interview and the data from it, will be undertaken in compliance with the requirements of federal and NSW state privacy laws and our research industry standards and Code of Professional Behaviour.</p> <p>I'd like to confirm your consent for the recording of this discussion. The recording will be stored securely and will be destroyed after the end of the project. A transcript of this interview will be produced by a specialist transcriber. We will then refer to the transcript to help with our analysis and reporting.</p> <p>[IF NEEDED] Only transcripts with any identifying details removed will be retained after the completion of the project. These will be securely stored on Heartward's server for 12 months, after which they will be archived. They will not be shared with anyone outside of the research team.</p> <p>While we will refer to your jurisdiction and organisation in the report, no comments or quotes will be specifically attributed to any identifiable individuals participating in these interviews.</p>

SECTION 1 - Unprompted experiences and views (10 mins)

OVERALL EXPERIENCES	To start off with, and to the best of your knowledge, can you tell me broadly how the treatment of consumer matters under the Uniform Law differs in your jurisdiction from how such matters were dealt with under previous legislation?
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	<ul style="list-style-type: none"> • What aspects have changed the most? • What aspects have changed the least? • And in your view, what have been the main impacts of this changed approach in your jurisdiction?
SECTION 2 – Specific lines of enquiry (35 mins)	
Impacts by specific changes	<p><i>Probe on the impacts of the following specific aspects of dealing with consumer matters under the Uniform Law:</i></p> <ul style="list-style-type: none"> • <i>Specific provision for consumer matters, allowing separate treatment to disciplinary matters</i> • <i>Enabling DLRA to make determinations in consumer matters</i> • <i>Remedies available to DLRA's in determining consumer matters</i> • <i>Specific provision for costs disputes</i> • <i>Enabling DLRA to make determinations in certain costs disputes</i> • <i>Alternative dispute resolution methods for consumer matters and costs disputes</i>
How things have changed for CONSUMER COMPLAINANTS	<p>How do these aspects of how consumer matters are dealt with under the uniform law specifically impact consumer complainants?</p> <p><i>Prompts:</i></p> <ul style="list-style-type: none"> • How has the experience of consumer complainants changed compared to how consumer matters were dealt with under previous legislation in your jurisdiction? <ul style="list-style-type: none"> ○ What has improved/in what ways have they benefitted? ○ Are there any particular types of consumer complainants that particularly benefit from the approach to dealing with consumer matters under the Uniform Law? ○ Under what circumstances/at what stages of raising and resolving consumer matters have consumer complainants' experiences improved? ○ Are there any drawbacks for consumer complainants under the current approach? <ul style="list-style-type: none"> ▪ For whom, under what circumstances, at what stages of raising and resolving consumer matters? <p><i>Explore:</i></p> <ul style="list-style-type: none"> • <i>Time to report and have consumer complaints resolved</i> • <i>Consumer complainant effort, involvement, costs to raise and pursue complaint</i> • <i>Engagement with alternative/informal dispute resolution approaches such as mediation</i>

	<ul style="list-style-type: none"> • <i>Practical remedies available to consumer complainants (e.g. cautions, apologies, work redone at no cost, fee reduction or waiver, lawyer counselling, supervision or further training, compensation orders)</i> • <i>DRLA making cost determinations without formal costs assessment process</i>
<p>How things have changed for RESPONDENT LAWYERS</p>	<p>How do these aspects of how consumer matters are dealt with under the uniform law specifically impact lawyers who may be the subject of consumer complaints?</p> <p><i>Prompts:</i></p> <ul style="list-style-type: none"> • How has the experience of lawyer respondents changed under the current approach compared to how consumer matters were dealt with under previous legislation in your jurisdiction? <ul style="list-style-type: none"> ○ What has improved/in what ways have lawyer respondents benefitted? ○ Are there any particular types of lawyer respondents that particularly benefit from the approach to dealing with consumer matters under the Uniform Law? ○ Under what circumstances/at what stages of legal service provision and/or consumer matters being raised and resolved have lawyer respondents' experiences improved? ○ Are there any drawbacks for lawyer respondents under the current approach? <ul style="list-style-type: none"> ▪ For whom, under what circumstances, at what stages of legal service provision and/or consumer matters being raised and resolved? <p><i>Explore:</i></p> <ul style="list-style-type: none"> • <i>Time to resolution of consumer complaints</i> • <i>Separation of consumer from disciplinary matters</i> • <i>Effort, involvement, costs to lawyer respondents involved in the process</i> • <i>Engagement with alternative/informal dispute resolution approaches such as mediation</i> • <i>Impact on lawyer respondents of the specific remedies now available to consumer complainants</i>

<p>How things have changed for REGULATORS</p>	<p>How do the aspects of how consumer matters are dealt with under the Uniform Law specifically impact the regulator/s overseeing these?</p> <p><i>Prompts:</i></p> <ul style="list-style-type: none"> • How has the experience/work of regulators changed compared to how consumer matters were dealt with under previous legislation in your jurisdiction? <ul style="list-style-type: none"> ○ What has improved/in what ways have they benefitted?
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	<ul style="list-style-type: none"> ○ Under what circumstances/at what stages of receiving complaints and resolving consumer matters has the process improved for regulators? ○ Have there been any drawbacks for regulators? ○ Under what circumstances, at what stages of raising and resolving consumer matters? <p><i>Explore:</i></p> <ul style="list-style-type: none"> ● <i>Time taken to respond to and resolve consumer matters</i> ● <i>Resources used by regulators in responding to and resolving consumer complaints</i> ● <i>Triaging of complaints/ separation of consumer matters from disciplinary matters (i.e. are regulator responses now more proportionate to severity of the complaint)</i> ● <i>Range and type of consumer remedies available in determining consumer matters</i> ● <i>Determining costs disputes (i.e. without need for formal costs assessment)</i>
Overall assessment of direction of impacts	<p>On balance, would you say that the handling of consumer matters under the Uniform Law has:</p> <ul style="list-style-type: none"> ● generally improved, worsened or had no/minimal impact on the experience of consumer complainants involved in the process? ● generally improved, worsened or had no/minimal impact on the experience of lawyer respondents involved in the process? ● generally improved, worsened or had no/minimal impact on the process of dealing with these matters for regulators?
Process of change [WA interviews only]	<p><i>If time available, explore:</i></p> <ul style="list-style-type: none"> ● Process of change specific to consumer complaints – how have regulators/professional associations/individual lawyers found the change process? Were there any barriers or challenges adjusting to the changed approach to consumer matters? ● What do you see as the main benefits, if any, in terms of dealing with consumer matters, of other jurisdictions adopting the Uniform Law? <ul style="list-style-type: none"> ○ For your jurisdiction? ○ For your organisation? ○ For the other jurisdictions adopting the Uniform Law?

Summary, debriefing and close (5 mins)

Review and thanks	Is there anything else you'd like to say about your experiences of consumer remedies under the Uniform Law in your jurisdiction?
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	<p>Thank you so much for your time today and for being so open and candid. Your contribution is greatly appreciated. If there is anything further you would like to add after the interview, please feel free to email these through to us at office@heartward.com.au before 21 June so we can incorporate these into our synthesis and reporting.</p> <p>The report prepared by Heartward may be published on the Legal Services Council's website. You will have the opportunity to check the draft report for inaccuracies prior to the report being finalised – the Legal Services Council will be in touch about this in July.</p>
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BACKGROUND PAPER FOR REGULATORS AND PROFESSIONAL ASSOCIATIONS - CONSUMER REMEDIES UNDER THE LEGAL PROFESSION UNIFORM LAW

Please note that this background paper provides a summary only, and any references should be checked in the relevant legislation.

BACKGROUND

Consumer remedies under the Legal Profession Uniform Law (**Uniform Law**) are intended to provide for efficient and targeted resolution of complaints which raise consumer issues. The Legal Services Council (**Council**) has received informal feedback about the impact of these remedies for regulators, consumer complainants and lawyer respondents and has now commissioned independent research with the aim of capturing this feedback more formally.

The Council has engaged Heartward Strategic, an independent Australian social research agency, to undertake this research. The Council would be grateful for the participation of representatives from the local regulatory authorities and legal professional associations in New South Wales, Victoria and Western Australia to understand their experiences and views of consumer remedies under the Uniform Law.

COMPLAINTS UNDER THE UNIFORM LAW

Types of complaint

Under the Uniform Law, a complaint may contain either or both a consumer matter and/or a disciplinary matter.

Consumer matters are complaints about a lawyer or a law practice that relate to the provision of legal services to the complainant by the lawyer or law practice.² Costs disputes are also consumer matters.

Complaints about a lawyer or law practice that would, if the conduct concerned was established, amount to unsatisfactory professional conduct or professional misconduct are referred to as disciplinary matters.³

If a complaint contains or may contain both a consumer matter and a disciplinary matter, the designated local regulatory authority (**DLRA**) may give priority to resolving the consumer matter as soon as possible and, if necessary and appropriate, separately from the disciplinary matter.⁴

Consumer matters

Before the DLRA takes action to resolve a consumer matter, it must be satisfied that:

² *Legal Profession Uniform Law, s 269(1).*

³ *Legal Profession Uniform Law, s 270.*

⁴ *Legal Profession Uniform Law, s 271.*

- at least one of the parties has made a reasonable attempt to resolve the matter and the attempt has been unsuccessful, or
- it would be unreasonable to expect the complainant to be involved in such an attempt.⁵

The DLRA must attempt to resolve consumer matters informally as soon as possible.⁶ The DLRA may order the parties to mediate the matter.⁷

The DLRA may resolve a consumer matter by making a determination that, in the DLRA's view, is fair and reasonable in all the circumstances.⁸ Determinations can include a requirement for:

- the lawyer to be cautioned or reprimanded
- the lawyer or law practice to apologise
- the lawyer or law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work
- the lawyer to undertake counselling, supervision or further training
- a compensation order.⁹

A failure to comply with a determination is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of a respondent law practice and any lawyer involved in the contravention.¹⁰

Costs disputes

The DLRA may deal with a costs dispute if the total bill for legal cost is less than \$185,460 or if the total costs in dispute is less than \$18,550 (including disbursements, excluding interest and GST).¹¹ These amounts are indexed annually.

If the costs in dispute are less than \$18,550 the DLRA may make a binding cost determination, by having regard to what is fair and reasonable in the circumstances including consideration of the factors that a costs assessor would be required to consider.¹²

A costs dispute which is, or has been, the subject of a complaint to the DLRA may not be the subject of a costs assessment except if:

- the DLRA is unable to resolve the dispute,¹³ or

⁵ *Legal Profession Uniform Law, s 286.*

⁶ *Legal Profession Uniform Law, s 287.*

⁷ *Legal Profession Uniform Law, s 288.*

⁸ *Legal Profession Uniform Law, s 290(1).*

⁹ *Legal Profession Uniform Law, s 290(2).*

¹⁰ *Legal Profession Uniform Law, s 290(3).*

¹¹ *Legal Profession Uniform Law, s 291(1).*

¹² *Legal Profession Uniform Law, s 292.*

¹³ *Legal Profession Uniform Law, s 197(a).*

- the matter is referred by the DLRA for assessment for the purpose of investigating a disciplinary matter.¹⁴

Unsatisfactory professional conduct

If the DLRA finds the lawyer has engaged in unsatisfactory professional conduct, the DLRA may make various orders including to:

- caution or reprimand the lawyer
- require an apology from the lawyer
- require the lawyer to undertake training or counselling or be supervised
- require the lawyer to pay a fine (not exceeding \$25,000), or
- recommend the imposition of specified conditions on the lawyer's practising certificate.¹⁵

If the DLRA is of the opinion that the conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the designated tribunal, the DLRA may initiate and prosecute disciplinary proceedings in the Tribunal.¹⁶

Professional misconduct

If the DLRA is of the opinion that the alleged conduct may amount to professional misconduct, the DLRA may initiate and prosecute proceedings in the designated Tribunal.¹⁷

COMPLAINT PROVISIONS TO DEAL WITH CONSUMER MATTERS PRIOR TO THE UNIFORM LAW

A comparison of the complaint provisions to deal with consumer matters under the Uniform Law with the provisions that existed immediately before the commencement of the Uniform Law in New South Wales, Victoria and Western Australia is attached (**Attachment A**).¹⁸ In summary:

- **Consumer matters** – The Uniform Law makes provision for consumer matters and allows regulators to make determinations in relation to these matters. The previous legislation in New South Wales and Victoria made provision for consumer matters but regulators were unable to make determinations in relation to those matters. The previous legislation in Western Australia did not make provision for consumer matters.
- **Costs disputes** – The Uniform Law makes provision for costs disputes where the total bill is less than \$185,460 or total costs in dispute are less than \$18,550, and allows regulators to make determinations in relation to these matters subject to monetary limits. The previous legislation in

¹⁴ *Legal Profession Uniform Law, s 197(b)*.

¹⁵ *Legal Profession Uniform Law, s 299(1)*.

¹⁶ *Legal Profession Uniform Law, s 300(1)(a)*.

¹⁷ *Legal Profession Uniform Law, s 300(1)(b)*.

¹⁸ *Legal Profession Act 2004 (NSW), Legal Profession Act 2004 (Vic) and Legal Profession Act 2008 (WA)*.

New South Wales and Victoria made provision for costs disputes, limited to legal costs not exceeding \$25,000 in Victoria, but regulators were unable to make determinations in relation to those matters. The previous legislation in Western Australia did not make provision for costs disputes.

- **Alternative dispute resolution** – Under the Uniform Law, regulators must attempt to resolve a consumer matter by informal means and may order mediation in relation to a consumer matter. Under the previous legislation in New South Wales, the regulator could suggest or require mediation of a consumer dispute, or a costs dispute could be referred by the client to the regulator for mediation if the amount in dispute was less than \$10,000. In Victoria, the regulator was required to attempt to resolve a consumer matter and could refer a consumer matter for mediation or arrange for a non-binding assessment of legal costs in a costs dispute. In Western Australia, the regulator could suggest mediation for disciplinary matters.
- **Disciplinary matters** – Under the Uniform Law, regulators may determine a disciplinary matter in relation to unsatisfactory professional conduct, as was the case under the previous legislation in New South Wales and Victoria and, in certain circumstances including where the practitioner consented, in Western Australia. However, the range of remedies available under the Uniform Law is broader than under the previous legislation.

INTENDED BENEFITS OF CONSUMER REMEDIES

The Attorney-General of Victoria highlighted the intended benefits of consumer remedies when introducing the Uniform Law to Parliament, as did the Attorneys General of New South Wales and Western Australia in their second reading speeches:¹⁹

The framework seeks to facilitate the timely and efficient resolution of consumer disputes, while still providing a rigorous framework for dealing with serious disciplinary matters.

The uniform law provides for new powers for the local regulatory authority administering complaints handling, which for Victoria will be the legal services commissioner, to make binding determinations in resolution of consumer matters, including the power to make compensation orders of up to [\$25 000].

The commissioner will also have expanded jurisdiction to deal with costs disputes in matters where the costs in dispute are up to [\$100 000]. The commissioner's jurisdiction will provide an inexpensive alternative to a formal costs assessment. The commissioner will have a new power to make a determination about costs that are payable in relation to matters where the costs in dispute are up to [\$10 000].

The uniform law also establishes a determinative power to facilitate the efficient resolution of certain low-level disciplinary complaints without recourse to a lengthy and potentially costly process through a court or tribunal. The commissioner will be empowered to make findings of unsatisfactory professional conduct, which is the lesser of two conduct findings, the more serious being professional misconduct.

¹⁹ Hansard, Legislative Assembly, Victoria, 12 December 2013.

Some of these benefits had been recognised in Victoria much earlier. During the second reading debate on the Legal Practice Bill 1996 (Vic), it was noted that:²⁰

Part 5 details the manner of dealing with disputes between practitioners and clients, and the discipline of practitioners. A distinction is quite properly drawn in that part between the resolution of disputes between practitioners and their clients on the one hand and the discipline of practitioners on the other hand. A dispute resolution process is created which it is anticipated will be cheap, effective and rapid.

... It should be stressed that the difference between a dispute, for example, about legal costs is somewhat different from a complaint against the conduct of a practitioner...

In its 1992 discussion paper on the scrutiny of the legal profession, the New South Wales Law Reform Commission suggested that more use should be made of consensual dispute resolution techniques to settle complaints against lawyers which are of a “consumer complaint” type (footnotes omitted):²¹

4.29 In the area of conflicts between lawyers and their clients, there is certainly room for and advantage in the use of additional dispute resolution techniques, such as mediation and conciliation. The preponderance of complaints by clients relate to problems of delay, poor communications, discourtesy, and disputes over fees. Many of the allegations, even if true, will not amount to “unsatisfactory professional conduct” or “professional misconduct” within the meaning of the Act. Few of these disputes require, or would profit from, a formal hearing. Most of these disputes would no doubt be resolved quickly and effectively, from the client’s point of view, by mediation, so long as there is not an implicit assumption that “mediation” means that “each party has to give a little bit”.

4.30 However, a smaller proportion of complaints, which raise questions about the character, honesty or competence of the lawyer involved, will still require a formal hearing (instead of or in addition to mediation) so that disciplinary action may be considered. Other complaints may raise issues in which there is a general public interest beyond the resolution of the particular dispute, and these also should be referred back into the system so that general issue may be ventilated. For example, it may be that the lawyer involved has acted in accordance with standard practice, but the practice itself is open to question.

In its 1993 final report, the New South Wales Law Reform Commission recommended that:²²

16. If a complaint does involve an issue (or issues) of unsatisfactory professional conduct or professional misconduct, but also involves a consumer dispute which is capable of consensual dispute resolution (such as where an apology or compensation is called for), it should be open to refer the latter aspect for mediation or conciliation, while the disciplinary aspect proceeds through the formal disciplinary system. In such cases, the

²⁰ Hansard, Legislative Council, Victoria, 15 October 1996.

²¹ New South Wales Law Reform Commission: Discussion Paper 26 – Scrutiny of the Legal Profession, 1992.

²² New South Wales Law Reform Commission: Report 70 – Scrutiny of the Legal Profession: Complaints Against Lawyers, 1993.

dispute resolution process should not have to wait for the disciplinary proceedings to conclude.

Part 10 of the *Legal Profession Act 1987* (NSW) implemented the recommendations in the New South Wales Law Reform Commission's final report. Part 10 was inserted by the *Legal Profession Reform Act 1993* (NSW) and commenced on 1 July 1994.

In its 2000 interim report on the review of Part 10 of the *Legal Profession Act 1987* (NSW), the New South Wales Law Reform Commission recommended that formal mediation of consumer disputes should continue to be permitted and that the Legal Services Commissioner should be able to order mediation in appropriate cases.²³

More recently, in its 2020 report on the handling of complaints by the Western Australian regulator, the Ombudsman WA referred to the Uniform Law complaints provisions, which were to take effect in Western Australia on 1 July 2022 (footnotes omitted):²⁴

3.2.4 Early and informal resolution of complaints

In the resolution of complaints, the research literature advocates the use of informal means, including alternative dispute resolution approaches (for example, mediation) where possible and appropriate. The research literature further indicates that alternative dispute resolution approaches may be particularly beneficial for people experiencing disadvantage. The informal resolution of complaints can simply involve the complaint handling body calling the legal practitioner to see if a matter can be resolved quickly without proceeding to a formal investigation. Robert Brittan describes this approach as a highly efficient in resolving many complaints:

When an inquiry is received which suggests that it can be addressed promptly and informally without the need for written complaint, it is handled by the commission's dispute resolution team (DRT) ... The DRT uses direct discussions with the lawyer and the consumer over the phone, in person or by email, to resolve the dispute. For example, in August alone we handled 305 of this type of inquiry...

We believe that there is nothing to be gained by asking people who ring or contact us online or by email to complain about a lawyer to go to the trouble of opening a complaint file and commencing a formal investigation if we are able to resolve them informally and perhaps with a few quick telephone calls.

This saves costs, limits inconvenience to all parties to that process, and lessens anxiety.

The triaging of complaints and use of informal complaint resolution approaches is prescribed in legislation to varying extents, with the research literature indicating that the Uniform Law is a considerable improvement on previous legislation. The Uniform Law

²³ *New South Wales Law Reform Commission: Report 99 – Complaints against lawyers: an interim report, 2000. Complaints Against Lawyers, 1993.*

²⁴ *Ombudsman Western Australia report, Investigation into the handling of complaints by the Legal Profession Complaints Committee, 2020.*

demarcates 'consumer matters' and 'disciplinary matters' and provides mechanisms for the efficient resolution of consumer matters through informal means, including through mediation. Importantly, where mediation fails, the regulatory body is empowered to make a determination that may include orders cautioning a legal practitioner, requiring an apology, the redoing of work, a reduction in fees, the undertaking of training or a compensation order. Determinative powers are also available for cost disputes (up to prescribed amounts) and unsatisfactory professional conduct. These mechanisms promote flexible, proportionate and informal approaches to the resolution of complaints and are described by John Briton as sparing those involved:

...considerable time and trouble and cost, not least in the case of respondent lawyers the costs of defending themselves in a hearing before a disciplinary body, costs which not infrequently exceed any financial penalty that is ultimately imposed.

Finally, where a complaint involves a combination of consumer matters and more serious disciplinary matters, the research literature indicates that these matters should be considered separately, with the resolution of consumer matters not to be held up by any investigation into disciplinary matters. This good practice is a prescribed requirement under the Uniform Law.

Overall, the research literature indicates that complaints should be resolved in a manner that is efficient and proportionate to the severity of the allegations. This will involve the assessment and triaging of complaints, the use of informal, alternative dispute resolution techniques where possible and appropriate to do so and the separate consideration of complaints involving a mixture of consumer matters and more serious disciplinary matters.

ATTACHMENT A - COMPARISON OF COMPLAINT PROVISIONS TO DEAL WITH CONSUMER MATTERS

Please note that this comparison provides a summary only, and any references should be checked in the relevant legislation.

Overview (current at 24 May 2024)

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
Uniform Law	Yes	Yes – total bill less than \$185,460 or total costs in dispute less than \$18,550	Yes – consumer matters including costs disputes	Yes	Yes – order less than \$18,550	Yes – unsatisfactory professional conduct
NSW (pre-UL)	Yes	Yes	Yes – consumer matters and costs disputes	No	No	Yes – unsatisfactory professional conduct
Vic (pre-UL)	Yes	Yes – legal costs not exceeding \$25,000	Yes – consumer disputes including costs disputes	No – parties may apply to tribunal	No – parties may apply to tribunal	Yes – unsatisfactory professional conduct (limited orders)
WA (pre-UL)	No	No	Yes	No	No	Yes – unsatisfactory professional conduct (with practitioner's consent)

Complaints provisions to deal with consumer matters (current at 24 May 2024)

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
<p>NSW, Vic, WA</p> <p>Legal Profession Uniform Law</p>	<ul style="list-style-type: none"> Consumer matter = so much of a complaint about a lawyer or law practice that relates to the provision of legal services to the complainant and as the regulator determines should be resolved by the exercise of functions relating to consumer matters²⁵ Where a complaint involves both a consumer and disciplinary matter, priority may be given to resolving 	<ul style="list-style-type: none"> Costs dispute = consumer matter involving a dispute about legal costs payable on a solicitor-client basis between a lawyer or law practice and a client or third party payer²⁷ 	<ul style="list-style-type: none"> At least one of the parties must have made a reasonable (but unsuccessful) attempt to resolve a consumer matter before the regulator takes action to resolve (unless it is unreasonable to expect the complainant to be involved in such an attempt)²⁸ The regulator must attempt to resolve a consumer matter by informal means as soon as practicable²⁹ The regulator may order mediation in 	<ul style="list-style-type: none"> The regulator may resolve a consumer matter by making a determination that is fair and reasonable in all the circumstances³¹ <ul style="list-style-type: none"> caution apology redo the work waive or reduce fees training, education, counselling or supervision compensation order up to \$46,365 	<ul style="list-style-type: none"> The regulator is to deal with a costs dispute in the same manner as other consumer matters if the total bill is less than \$185,460 or the total costs in dispute is less than \$18,550³² The regulator may make a binding determination where it can't resolve a costs dispute and the total amount still in dispute is less than \$18,550³³ <ul style="list-style-type: none"> the amount ordered as payable must 	<ul style="list-style-type: none"> The regulator may determine a disciplinary matter where it finds there is unsatisfactory professional conduct³⁴ <ul style="list-style-type: none"> caution reprimand apology redo the work waive or reduce fees training, education, counselling or supervision fine up to \$25,000 recommend specified PC condition

²⁵ 269
²⁷ 269
²⁸ 286
²⁹ 287
³¹ 290
³² 291
³³ 292
³⁴ 299

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
	the consumer matter ²⁶		relation to a consumer matter ³⁰		<ul style="list-style-type: none"> ○ be less than \$18,550 ○ the determination is based on what is fair and reasonable in all the circumstances, including by reference to the factors to be considered in a costs assessment 	
NSW (pre-UL) <i>Legal Profession Act 2004 (NSW)</i> as at repeal	<ul style="list-style-type: none"> • Consumer dispute = dispute between a person and an Australian legal practitioner about conduct of the practitioner to the extent that the dispute does not involve an issue of 	<ul style="list-style-type: none"> • Costs dispute = dispute between a client and an Australian legal practitioner concerning a bill, and includes a dispute over an amount claimed to 	<ul style="list-style-type: none"> • The regulator may suggest or require mediation of a consumer dispute, and may facilitate mediation³⁷ • Client may refer costs dispute to the regulator for mediation if the 		<ul style="list-style-type: none"> • The regulator may refer a matter for costs assessment⁴⁰ 	<ul style="list-style-type: none"> • The regulator may determine a disciplinary matter where satisfied the tribunal would make a finding of unsatisfactory professional conduct, the practitioner is

²⁶ 271

³⁰ 288

³⁷ 515, 516, 517, 518

⁴⁰ 533

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
	unsatisfactory professional conduct or professional misconduct ³⁵	be payable under a cost agreement ³⁶	amount in dispute is less than \$10,000 (may also be referred by the costs assessor) ³⁸ <ul style="list-style-type: none"> Mediation is not limited to formal procedures and extends to preliminary assistance in dispute resolution and informal advice³⁹ 			generally competent and diligent and the action is justified in all the circumstances of the case ⁴¹ <ul style="list-style-type: none"> caution reprimand compensation up to \$10,000 (more if agreed by complainant and practitioner) specified PC condition
Vic (pre-UL) <i>Legal Profession Act 2004</i>	<ul style="list-style-type: none"> Civil complaint = a complaint about conduct to which Chapter 4 applies, to the extent that the complaint 	<ul style="list-style-type: none"> Costs dispute⁴⁴ = a dispute in relation to legal costs not exceeding \$25,000 in respect of any one matter between a law practice or an 	<ul style="list-style-type: none"> The regulator must attempt to resolve a civil dispute and may take any action considered necessary to assist the parties to reach agreement (unless 	<ul style="list-style-type: none"> If the civil dispute cannot be resolved, the parties may apply to the tribunal for resolution (orders include compensation up to \$25,000, payment 	<ul style="list-style-type: none"> If the civil dispute cannot be resolved, the parties may apply to the tribunal for resolution (orders include compensation up to \$25,000, payment 	<ul style="list-style-type: none"> The regulator may determine a disciplinary matter where satisfied the tribunal would make a finding of unsatisfactory

³⁵ 514
³⁶ 335
³⁸ 336
³⁹ 336, 519
⁴¹ 540
⁴⁴ 4.2.2

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
(Vic) as at repeal	<p>involves a civil dispute⁴²</p> <ul style="list-style-type: none"> • Civil dispute⁴³ = <ul style="list-style-type: none"> ○ a costs dispute ○ a claim of pecuniary loss by act or omission of a law practice or practitioner (where there is no claim against the fidelity fund) ○ any other genuine dispute between a person and a law practice or practitioner arising from provision of legal services to the person 	<p>Australian legal practitioner and</p> <ul style="list-style-type: none"> ○ a client or third party payer or ○ a beneficiary under a will or trust in relation to which legal services have been provided 	<p>the dispute is unlikely to be resolved or is not suitable for resolution by the regulator)⁴⁵</p> <ul style="list-style-type: none"> ○ the regulator may refer a civil dispute for mediation ○ the regulator may arrange a non-binding assessment of legal costs in a costs dispute 	<p>or reduction of legal costs in a costs dispute, waive or repay legal costs, do work free of charge, any order the tribunal thinks fit)⁴⁶</p>	<p>or reduction of legal costs in a costs dispute, waive or repay legal costs, do work free of charge, any order the tribunal thinks fit)⁴⁷</p>	<p>professional conduct⁴⁸</p> <ul style="list-style-type: none"> ○ reprimand or caution (with practitioner consent) ○ compensation (as a condition of deciding not to make an application to the tribunal) ○ apply to tribunal for other orders

⁴² 4.2.2

⁴³ 4.2.2

⁴⁵ 4.3.5

⁴⁶ 4.3.6, 4.3.7, 4.3.15, 4.3.17

⁴⁷ 4.3.6, 4.3.7, 4.3.15, 4.3.17

⁴⁸ 4.4.13

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
<p>WA (pre-UL)</p> <p><i>Legal Profession Act 2008 (WA)</i> as at repeal</p>			<ul style="list-style-type: none"> The regulator may suggest mediation unless it considers the tribunal would likely find professional misconduct, and may facilitate mediation⁴⁹ 		<ul style="list-style-type: none"> The regulator may refer a matter for costs assessment⁵⁰ 	<ul style="list-style-type: none"> The regulator may determine a disciplinary matter where satisfied the tribunal would make a finding of unsatisfactory professional conduct, the practitioner is generally competent and diligent and the action is justified in all the circumstances of the case and the practitioner consents⁵¹ <ul style="list-style-type: none"> public reprimand or private reprimand (special circumstances) fine up to \$2,500

⁴⁹ 417, 418

⁵⁰ 423

⁵¹ 426, 428

Jurisdiction	Provision for consumer matters	Provision for costs disputes	Alternative dispute resolution	Determination of consumer matters	Determination of costs disputes	Determination of disciplinary matters
						<ul style="list-style-type: none"> ○ seek and implement advice about management of the practice ○ compensation up to \$10,000 (more if agreed by complainant and practitioner) or waive/repay fees or discharge lien on documents

