

Regulatory Approach Statement

July 2022

Acknowledgement of Country

The Legal Practice Board acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past and present.

Introduction

About Us

The Legal Practice Board (**Board**) has the statutory responsibility for the regulation of the provision of legal services in Western Australia.

The Board's mission is to be an effective, efficient, and innovative regulator of legal services in Western Australia, with the purpose of advancing the administration of justice and protect the public by:

- regulating the competence and behaviour of legal practitioners in Western Australia; and
- enabling the effective operation of the Board and its committees.

Underpinning everything we do are our core values:

- Competence;
- Integrity; and
- Empathetic Engagement.

Legislative Reform

On 1 July 2022, Western Australia joined the Legal Profession Uniform Law scheme (**Uniform Law**). This scheme designates the Board as the Local Regulatory Authority, the Principal Registrar of the Supreme Court as the Local Roll Authority, the State Administrative Tribunal as the Tribunal, and the Legal Contribution Trust as the Fidelity Authority. The Uniform Law came into operation in Victoria and New South Wales on 1 July 2015, and Western Australia joining is an important step towards a national legal profession.

The Uniform Law harmonises regulation of the legal profession, cuts red tape and creates a single system to govern legal practice. The scheme also promotes informed consumer choice and has strong consumer protection measures.

The objective of the Uniform Law is to promote the administration of justice and an efficient and effective Australian legal profession by:

- inter-jurisdictional consistency in the law applying to the Australian legal profession;
- ensuring legal practitioners are competent and maintain high ethical and professional standards;
- enhancing the protection of clients and the public;
- empowering clients to make informed choices about their legal options;
- efficient, effective, targeted and proportionate regulation; and
- a co-regulatory framework with an appropriate level of independence for the legal profession.

As a result of the legislative reform, legal services in Western Australia are no longer regulated in accordance with the *Legal Profession Act 2008* and its subsidiary legislation.

From 1 July 2022, the regulatory framework for legal services in Western Australia is in accordance with the:

- Uniform Law, made up of the:
 - *Legal Profession Uniform Law Application Act 2022*
 - *Legal Profession Uniform Law Application Act 2014 (Victoria) Schedule 1*
- The shared Uniform Rules, made up of the:
 - *Legal Profession Uniform Law General Rules 2015*
 - *Legal Profession Uniform Law Admission Rules 2015*

- *Legal Profession Uniform Conduct (Barristers) Rules 2015*
 - *Legal Profession Uniform Conduct (Solicitors) Rules 2015*
 - *Legal Profession Uniform Legal Practice (Solicitors) Rules 2015*
 - *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015*
 - *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015*
- The Western Australian rules and regulations, made up of the:
- *Legal Profession Uniform Law Application Regulations 2022*
 - *Legal Profession Uniform Law Application (Accreditation) Rules 2022*

Purpose of this Regulatory Approach Statement

The purpose of this Regulatory Approach Statement is to provide an overview of how we, the Board, intend to perform our role as the regulator of legal services in Western Australia under Uniform Law. It highlights our approach to delivering on our legislative responsibilities by explaining our regulatory activities, how we will set regulatory priorities, make resource allocation decisions and apply the range of regulatory tools at our disposal.

This Statement is also intended to help the legal profession in Western Australia further understand our role as a regulator and develop a strong compliance culture.

The Importance of Collaboration

The Uniform Law scheme encourages collaboration between the Legal Services Council, the Commissioner for Uniform Legal Services Regulation and each participating jurisdiction's Designated Local Regulatory Authority, to identify and promote best practice and continuous improvement for the benefit of the legal profession and the broader community. We will seek opportunities to work with our Uniform Law partners, in particular when setting our regulatory priorities, to maximise consistency.

In addition to our Uniform Law partners, we will collaborate with key Western Australian stakeholders, such as the Law Society of Western Australia and the Western Australian Bar Association. We respect their expertise and we will work closely with them on activities that benefit the legal profession.

The Importance of Compliance

Each legal practitioner is ultimately responsible for complying with their obligations under the regulatory framework. Proactive steps by legal practitioners to identify and address potential or actual non-compliance avoids the need for us to take action.

We are eager to work with the legal profession, provide them with clear guidance on the regulatory framework and support their endeavours to comply with their obligations, to ensure Western Australia has an engaged, active, competent and ethical legal profession.

Our Regulatory Activities

Our core activities under the regulatory framework are to:

- receive and assess applications for admission of local, interstate and foreign legal practitioners
- receive and assess applications for the grant or renewal of an Australian practising certificate in this jurisdiction
- monitor the non-renewal of Australian practising certificates in this jurisdiction
- monitor the continuing professional development obligations
- accredit providers of continuing professional development activities
- oversee professional indemnity insurance obligations
- monitor legal practice structures
- monitor, audit, and investigate or inspect, law practices and their trust accounts
- receive and assess enquiries and complaints about legal practitioners, legal practice structures and unqualified legal practice, and to conduct investigations and disciplinary processes where appropriate
- resolve disputes between legal practitioners and consumers of legal services
- educate the legal profession

Setting Our Regulatory Priorities

The legal profession and the broader Western Australian community expect that we will be an efficient and effective regulator of legal services. To meet this expectation, we will target our regulatory resources towards activities that address the areas of greatest potential harm to consumers of legal services. In doing so, we aim to strike a balance between responding to immediate issues and identifying emerging areas of concern.

Immediate Issues

One of our core regulatory activities is responding to immediate issues identified from information we receive through enquiries and complaints. When resourcing these immediate issues, we will aim to prioritise issues of high risk while looking for ways to streamline our response to lower the risk of harm.

Emerging Issues

We will use data collected from our core regulatory activities to identify and monitor future trends, as well as design programs of regulatory work that proactively address emerging issues.

Our Guiding Principles

We will use a set of principles to guide the way we approach our work, as well as our aspirations for continuous improvement. Our principles signal to our partners in regulation, the legal profession and the Western Australian community, what they should expect from us.

Principles

Collaborative	<p>We will:</p> <ul style="list-style-type: none"> ■ build and maintain good relationships with our Uniform Law partners and work together to achieve positive outcomes for the legal profession and consumers; and ■ seek to engage with our Western Australian stakeholders as we respect their expertise.
Proportionate	<p>We will:</p> <ul style="list-style-type: none"> ■ provide regulatory responses that are appropriate to the potential harm; and ■ allocate resources based on the consequences, benefits and strategic regulatory objectives involved.
Consistent	<p>We will:</p> <ul style="list-style-type: none"> ■ operate as one organisation as our teams and directorates are intrinsically connected, to ensure consumers and the legal profession receive consistent messages from us; ■ work across our organisation to ensure our regulatory tools are consistently applied; and ■ leverage our policies and procedures to ensure we provide the same advice and service.
Transparent	<p>We will:</p> <ul style="list-style-type: none"> ■ present information in a way that is easily understood and clearly explains our reasoning; and ■ publish information on our regulatory activities.
Consumer Focused	<p>We will:</p> <ul style="list-style-type: none"> ■ seek to understand consumer interests and needs with respect to legal services; and ■ use an empathetic approach in our interactions with consumers.
Informed by Data	<p>We will:</p> <ul style="list-style-type: none"> ■ capture meaningful data from a variety of sources including legal practitioners, complaints, external examiner reports, investigations, audits and stakeholder feedback; and ■ use insights from data to make informed decisions.

Our Regulatory Tools

Immediate Issues

We have a range of regulatory tools we can employ to address immediate and emerging issues.

In determining which tools to use, we will assess the impact of the conduct we are seeking to prevent or mitigate, and apply an appropriate tool in a way that is consistent with our guiding principles.

Regulatory Tools – Low Impact Conduct

Negotiated Outcomes	<p>We may seek to negotiate with a legal practitioner if there is evidence of a possible low risk breach or service concern that can be addressed by the legal practitioner agreeing to certain actions to come into compliance.</p> <p>Negotiated sanctions may include seeking an undertaking or imposing or varying conditions on a practising certificate with the legal practitioner's consent.</p>
Warning	<p>We may issue a warning if a possible breach is low risk and there are mitigating factors like previous good performance that indicates the legal practitioner is unlikely to re-offend. For example, a legal practitioner may be asked to correct and improve costs disclosure and billing practices.</p>
Dispute Resolution – Minor Issues	<p>We may seek to resolve disputes between legal practitioners and consumers that may not amount to a breach, but would benefit from informal resolution, mediation or an informal agreement. Common examples of disputes include costs, poor service and communication issues. A warning about certain practices, for example in relation to billing and disclosure, may be given as part of the resolution.</p>

Regulatory Tools – High Impact Conduct

Compliance audits and management system directions	<p>Where there is an indication of systemic problems in the management of a law practice, we may audit a law practice to assist the legal practitioner in correcting these issues. In the event the issues are not satisfactorily dealt with, we may give a management system direction to a law practice (or a class of law practices) if we consider it reasonable to do so to ensure that appropriate business and practice management systems are implemented and maintained.</p> <p>A management system direction may also be made as a result of issues in a complaint or a trust account investigation.</p>
External Intervention	<p>We may intervene in the business and professional affairs of a law practice where there is a need to protect the interests of the clients of the law practice, the law practice and its employees, and the general public.</p> <p>The intervention may range from the appointment of a supervisor of trust money, the appointment of a manager or a recommendation to the Supreme Court for the appointment of a receiver.</p>

<p>Determination to Resolve a Dispute</p>	<p>We may make a determination to resolve a dispute about services, legal costs or order compensation for consumer loss if, in our view, it is fair and reasonable to do so.</p> <p>A determination may order that a legal practitioner:</p> <ul style="list-style-type: none"> ■ reduces or refunds legal costs to the consumer; ■ apologises; ■ be cautioned; ■ redo work; ■ undertakes training, education, counselling or supervision; or ■ pay compensation to a consumer.
<p>Determination for Unsatisfactory Professional Conduct</p>	<p>We may make a determination if we are satisfied that a legal practitioner’s conduct amounts to unsatisfactory professional conduct.</p> <p>A determination may caution or reprimand a legal practitioner or may order the legal practitioner to take actions, including:</p> <ul style="list-style-type: none"> ■ apologise; ■ redo work; ■ undertake training; or ■ pay a fine.
<p>Variation of Practising Certificate</p>	<p>We may vary a practising certificate for the same general reasons as suspending or cancelling a practising certificate, where the conduct does not justify that extreme action. Conditions we may impose include:</p> <ul style="list-style-type: none"> ■ whether the holder should be authorised to receive trust money; ■ restrictions on the type of practising certificate a legal practitioner may hold (i.e. restricted to employee practising certificate); ■ undertaking specific or continuing legal education; ■ requirements to undergo counselling or medical treatment, and to act in accordance with medical advice; ■ requirements on the legal practitioner to use the services of an accountant or book-keeper; and ■ restrictions on the legal practitioner’s ability to supervise other legal practitioners.
<p>SAT Orders</p>	<p>We may apply to the State Administrative Tribunal (SAT) for an order against a legal practitioner if we are satisfied that the conduct may amount to:</p> <ul style="list-style-type: none"> ■ professional misconduct; or ■ unsatisfactory professional conduct. <p>The SAT may make a range of orders, including to suspend or cancel a practising certificate, impose a fine, impose conditions, issue a reprimand or require a legal practitioner undertake additional training.</p>
<p>Criminal Prosecutions and Other Court Based Responses</p>	<p>Criminal investigations / prosecutions can be undertaken for:</p> <ul style="list-style-type: none"> ■ the indictable offence of causing a deficiency in a trust account; or ■ the summary offence of engaging in legal practice when not entitled to do so. <p>In addition, powers are available to restrain actual or likely breaches of the Uniform Law and to take action to impose civil penalties.</p>

Suspension and / or Cancellation of Practising Certificate	<p>We may immediately suspend a practising certificate where it is considered necessary in the public interest.</p> <p>We may suspend or cancel a practising certificate if we are satisfied a legal practitioner is no longer fit and proper because, for example, they:</p> <ul style="list-style-type: none"> ■ have been charged with or convicted of certain offences; ■ are unable to fulfil the inherent requirements of legal practice; or ■ failed to comply with certain requirements under the Uniform Law. <p>In addition, we must suspend or cancel a practising certificate at the direction of the SAT.</p>
Removal from the Supreme Court Roll (strike-off)	<p>We may seek to have a legal practitioner's name removed from the Supreme Court Roll if, for example, a legal practitioner has:</p> <ul style="list-style-type: none"> ■ been found guilty of an indictable offence, principally involving dishonesty; ■ a history of serious adverse conduct that demonstrates they are no longer fit and proper to be a legal practitioner; or ■ been removed from an interstate roll.

Emerging Issues

We have a number of tools we can utilise on an ongoing basis to identify and address emerging issues in a way that is consistent with our guiding principles.

Ongoing Regulatory Tools

Monitoring Compliance	<ul style="list-style-type: none"> ■ We may carry out specific compliance audits or investigations, or both, in response to complaints and other notifications about individual legal practitioners as part of compliance monitoring. ■ We may carry out specific compliance audits in relation to continuing professional development obligations in response to notifications and information received as part of compliance monitoring. ■ We may monitor risks of harm by conducting planned programs of trust account investigations, or compliance audits, or both. We require annual independent examinations of trust records to be conducted by external examiners and we assess the results.
Setting Standards	<ul style="list-style-type: none"> ■ We will assess each legal practitioner's eligibility and suitability to ensure a fit and proper legal profession. ■ We will ensure each legal practitioner is either issued, or not issued, an appropriate practising certificate based on their eligibility and suitability assessment.
Education and Information	<ul style="list-style-type: none"> ■ We will provide general information to raise awareness of the regulatory requirements for legal practitioners and our role. ■ We may target specific groups or classes of legal practitioners with education and information to address identified issues or concerns.