

## **THE BAR COUNCIL as a DESIGNATED LOCAL REGULATORY AUTHORITY**

The *Legal Profession Uniform Law (NSW)* confers powers and functions on *designated local regulatory authorities*.

Section 6 of the *Legal Profession Uniform Law* defines designated local regulatory authority as:

*a person or body specified or described in a law of this jurisdiction for the purposes of a provision, or part of a provision, of this Law in which the term is used.*

The designation of local regulatory authorities is set out in the *Legal Profession Uniform Law Application Act 2014* (the NSW Application Act), in section 11.

The Council of the New South Wales Bar Association is the designated local regulatory authority for purposes including –

- investigating and instigating proceedings in respect of unqualified legal practice (s.14);
- recommending the removal of the name of a person from the Roll of the Supreme Court(s.23);
- practising certificates – including grant, renewal, imposition of conditions, variation, suspension and cancellation and show cause events (Chapter 3);
- compliance audits and management system directions (ss. 257 and 258);
- appointment of a manager for a barrister's law practice (Part 6.4);
- investigatory powers except those provisions relating to complaint investigations (Chapter 7);
- exchanging information (ss. 436 and 437);
- evidentiary certificates (s. 446); and
- applying for an injunction to restrain contraventions of the *Legal Profession Uniform Law* and the *Uniform Rules* (ss. 447 – 449).

The Law Society Council and the New South Wales Legal Services Commissioner are also prescribed as designated local regulatory authorities for many of the above provisions.

### **Delegation of functions under the Legal Profession Uniform Law**

The Bar Council, as a local regulatory authority, may delegate its functions under the *Legal Profession Uniform Law* (s. 406).

Each designated local regulatory authority is required to maintain register of delegations under the *Legal Profession Law* (s. 413).

**REGISTER OF DELEGATIONS MADE BY THE BAR COUNCIL,AS**  
**DESIGNATED LOCAL REGULATORY AUTHORITY UNDER THE LEGAL**  
**PROFESSION UNIFORM LAW (NSW)**

<i>item</i>	<i>date</i>	<i>provisions under which functions delegated</i>
<b>1.</b>	<b>25.06.2015</b>	<b>various</b>
<b>2.</b>	<b>10.09.2015</b>	<b>section 95</b> (amendment to item 1)
<b>3.</b>	<b>12.05.2016</b>	<b>section 74</b> (partial)
<b>4.</b>	<b>27.04.2017</b>	<b>section 83</b> (partial) <b>&amp; 95</b> (partial)
<b>5.</b>	<b>11.05.2017</b>	<b>section 44 &amp; 45</b> (partial)
<b>6.</b>	<b>08.06.2017</b>	<b>various &amp; section 44 &amp; 45</b> (partial)
<b>7.</b>	<b>28.02.2019</b>	<b>section 44 &amp; 45</b> (partial)
<b>8.</b>	<b>02.05.2019</b>	<b>section 44 &amp; 45</b> (partial)
<b>9.</b>	<b>14.05.2020</b>	<b>section 45</b> (partial)

Note: in New South Wales the designated local regulatory authority in respect of complaints functions (Chapter 5 of the Legal Profession Uniform Law) and complaint investigations (Chapter 7) is the NSW Legal Services Commissioner.

The register of delegations made by the Commissioner is available on the OLSC website.

Consequent upon an Instrument of Delegation and Direction to the Bar Council made by the NSW Legal Services Commissioner dated 30 September 2020, the Bar Council on 6 October 2020 made delegations in the same terms as previously, namely items 1-9 above. Some of those delegations have been revised since that time to remove redundant or obsolete position titles and substitute the current position title for the functions described in the relevant delegation.

The text of the Bar Council's delegations is attached, updated and last modified on 14 March 2022.

## Delegations

The current delegations made by the Council of the New South Wales Bar Association as designated local regulatory authority, pursuant to section 30 of the *Legal Profession Uniform Law Application Act 2014 (NSW) (Application Act)*, are set out below:

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### Item 1

- A.** To each of the Professional Conduct Committees as constituted from time to time:
- i. all powers and functions contained in section 14, Part 2.1 of the *Legal Profession Uniform Law (NSW) (Uniform Law)* (unqualified practice);
  - ii. all powers and functions contained in Part 3.3 Division 2 of the *Uniform Law* (Australian practising certificates);
  - iii. all of its powers contained in Chapter 3 Part 3.5 Divisions 4 and 5 of the *Uniform Law* in relation to **show cause events** (as defined in section 85 of the *Uniform Law* save and except the power to refuse to grant or renew, vary (amend), suspend, cancel or impose conditions on a local practising certificate);
  - iv. all powers and functions contained in Part 3.9 of the *Uniform Law* (disqualifications).
- B.** To the Executive Director, the Director, Professional Conduct, and each of the Lawyers, Professional Conduct, the power to issue notices which may be, or are required to be, issued under the *Uniform Law* and the *Application Act*.
- C.** To the Bar Council Executive, the authority to require a barrister and/or an applicant for the grant of an Australian practising certificate as a barrister to be medically examined pursuant to section 95(1)(b) of the *Uniform Law*.
- The Executive is to use this authority only where it was not reasonably practicable for the Council to make such a requirement, and on the basis that any such requirement made by the Executive be put before the next meeting of the Council.
- [*this delegation has been amended – see Item 2 below*]
- D.** To the Executive Director:
- i. authority to issue practising certificates on behalf of the Bar Council;
  - ii. the power under rule 12(3) of the *Legal Profession Uniform General Rules 2015 (Uniform Rules)* to require an applicant for the grant or renewal of a local practising certificate to provide further relevant information;
  - iii. the power under section 45(1) of the *Uniform Law* to refuse to renew a local practising certificate where the applicant has not obtained professional indemnity insurance in accordance with the *Uniform Law* and *Uniform Rules* on or before 30 June in the relevant renewal period;

- iv. the power under section 45 of the *Uniform Law* and rule 13(3) of the *Uniform Rules* to refuse to grant a local practising certificate if the applicant has not successfully completed the Bar Exams;
- v. the function of specifying classes or descriptions of barristers for the purposes of section 45(2) of the Application Act and clause 23 of the *Legal Profession Uniform Law Application Regulation 2015 (Application Regulation)*;
- vi. the power under section 89 of the *Uniform Law* to determine automatic show cause events disclosed by applicants for a practising certificate by deciding that the applicant is a fit and proper person to hold a local practising certificate, but only in respect of an automatic show cause event:
  - a. being a conviction for common assault, provided that a custodial sentence was not imposed in respect of the conviction; or
  - b. falling within paragraph (a) of the definition of automatic show cause event in section 86 of the *Uniform Law*, provided that the Australian Taxation Office is not the petitioning creditor or a substantial creditor;
  - c. which has been disclosed to the relevant admission authority and any relevant body responsible for issuing practising certificates;
- vii. the powers granted to and the functions which the Council may exercise under Chapter 3 Part 3.5 Division 4 Subdivision 2 of the *Uniform Law* with respect to disclosures:
  - a. made under section 51 of the *Uniform Law* by holders of local practising certificates; or
  - b. made by applicants for renewal of local practising certificates
 in respect of convictions for any offence, other than a serious offence or a tax offence, save and except for the powers of and functions of making a determination under the *Uniform Law* to refuse to grant or renew, to vary (amend), suspend, cancel or impose conditions on a local practising certificate;
- viii. the authority to approve, subject to consultation with members of the Bar Council Executive and, where appropriate PCC chairs, financial and medical experts nominated by barristers for the purposes of financial management and/or medical conditions being attached to their local practising certificates;
- ix. in respect of compliance with conditions attached to local practising certificates, the authority to make determinations as to:
  - a. whether time for compliance with a condition is extended;
  - b. whether a barrister has satisfactorily complied with a condition; and
  - c. whether the nature and extent of any non-compliance with a condition is such that there is no requirement for it to be brought to the attention of the Bar Council;
- x. in exercising the delegations in paragraphs vii to ix the Executive Director consider whether before making a determination whether the matter should be discussed with a member of the Bar Council Executive, Professional Conduct Committee chair or relevant financial and medical experts;
- xi. the power to issue a certificate under section 446 of the *Uniform Law*.

## Item 2

Amend the instrument of delegation made on 25 June 2015 by adding the words underlined below so that the delegation [at Item 1, point C above] reads:

To the Bar Council Executive, the authority to require a barrister and/or an applicant for the grant of an Australian practising certificate as a barrister to be medically examined pursuant to section 95(1)(b) of the Uniform Law.

The Executive is to use this authority only where it was not reasonably practicable for the Council to make such a requirement, and on the basis that any such requirement made by the Executive be put before the next meeting of the Council.

## Item 3

To delegate to the Executive Director all powers and functions contained in section 74(1) of the *Legal Profession Uniform Law (NSW)*.

To delegate to the Executive Director, the powers and functions contained in section 74(2) of the *Legal Profession Uniform Law (NSW)* to vary, suspend or cancel a certificate at the request of the holder.

## Item 4

1. To the Bar Council Executive, the power to serve a written notice on a barrister pursuant to section 83 of the *Legal Profession Uniform Law (NSW)* stating that the Bar Council proposes to cancel the barristers Australian practising certificate, limited to the ground that the barrister has contravened a condition of the practising certificate.

Any written submissions made by the barrister in response to the section 83 notice and the making of the decision as to whether any action is to be taken pursuant to section 84 of the *Legal Profession Uniform Law (NSW)* are to be referred to, and determined by, the Bar Council itself.

2. To the Bar Council Executive, the authority to require a barrister and/or an applicant for the grant of an Australian practising certificate as a barrister to:
  - (i) give the Bar Council specified documents or information pursuant to section 95(1) of the *Legal Profession Uniform Law (NSW)*; and
  - (ii) co-operate with any inquiries by the Bar Council that it considers appropriate pursuant to section 95(1)(d) of the *Legal Profession Uniform Law (NSW)*.

The Executive is to use this authority only where it was not reasonably practicable for the Bar Council to make such a requirement, and on the basis that any such requirement made by the Executive be put before the next meeting of the Bar Council.

### **Item 5**

To the Executive Director the powers and functions of the Bar Council in relation to determining that an applicant for the grant or renewal of a practising certificate who discloses a matter referred to in rule 13(1) of the *Legal Profession Uniform General Rules 2015* is a fit and proper person to hold a practising certificate.

### **Item 6**

To the Executive Director the powers and functions of the Bar Council in relation to determining whether an applicant for the grant or renewal of a practising certificate who has contravened clause 15 of the Legal Profession Uniform Law Application Regulation 2015, where the contravention is considered minor, is a fit and proper person to hold a practising certificate. This delegation is to be exercised in consultation with the President of the Bar Council.

### **Item 7**

To such persons as are appointed to hold the position of Certification and Regulatory Lawyer, the authority to issue practising certificates on behalf of the Bar Council, where such applications contain no issues relating to an applicant's fitness and propriety to hold a practising certificate.

### **Item 8**

To the Executive Director, the powers and functions of the Bar Council in relation to determining whether an applicant for the grant or renewal of a practising certificate who has disclosed a minor matter relevant to rule 13(1) of the *Legal Profession Uniform General Rules 2015*, is a fit and proper person to hold a practising certificate.

### **Item 9**

To the Director, Professional Conduct, the powers and functions of the Bar Council in relation to determining whether an applicant for the grant or renewal of a practising certificate who has disclosed a minor matter relevant to rule 13(1) of the *Legal Profession Uniform General Rules 2015*, is a fit and proper person to hold a practising certificate.

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