

INSTRUMENT OF DELEGATION

Preamble: the role of the Council of the Law Society of New South Wales under the *Legal Profession Uniform Law (NSW)*

The Council of the Law Society of New South Wales (**Law Society Council**) is a designated local regulatory authority under the *Legal Profession Uniform Law (NSW)* (**Uniform Law**).

A designated local regulatory authority means “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” (s6 of the Uniform Law).

The Uniform Law confers powers and functions on designated local regulatory authorities.

Section 11 of the *Legal Profession Uniform Law Application Act* (**Application Act**) sets out the provisions under the Uniform Law for which the Law Society Council is the designated local regulatory authority such as Chapters 2 to 4 and 6 to 8.

The Council of the Bar Association of New South Wales and the New South Wales Legal Services Commissioner (**NSW Commissioner**) are also prescribed as designated local regulatory authorities under the Uniform Law.

The NSW Commissioner is the designated local regulatory authority in relation to complaints about lawyers (Chapter 5) and complaint investigations (Chapter 7). The NSW Commissioner has delegated functions to the Law Society Council including by an Instrument of Delegation and Direction dated 30 September 2020.

Section 28 and 32 of the Application Act allows the Law Society Council to delegate its powers and functions including:

- i. functions under Chapter 5 of the Uniform Law as delegated by the NSW Commissioner to the Law Society Council under section 28 of the Application Act;
- ii. functions under the Uniform Law (other than under Chapter 5), or within the instruments made under that Act, in respect of which the Law Society Council is the designated local regulatory authority;
- iii. functions under the Application Act, or within the instruments made under that Act, in respect of which the Law Society Council is the designated local regulatory authority.

INSTRUMENT OF DELEGATION AND GUIDELINE UNDER SECTION 408

1. In this instrument:

- (i) Terms used in the *Legal Profession Uniform Law (NSW)* (**Uniform Law**) or in the *Legal Profession Uniform Law Application Act 2014 (NSW)* (**Application Act**) or any subordinate instrument have the same meaning in this instrument as they have in those laws.
- (ii) Provisions means sections, rules, regulations or clauses.

2. Pursuant to section 32 of the Application Act and section 406 of the Uniform Law, the Council of the Law Society of New South Wales (**Law Society Council**) hereby delegates the powers and functions in the provisions specified in Column A and described in Column B of Schedule 1 to:

- (i) the Committee or Committees of the Law Society Council established pursuant to a resolution of the Council, or pursuant to a Constitution in respect of that Committee adopted by resolution of the Council, as specified in Column C; and/or
- (ii) the person or persons for the time being holding, acting in, or performing the duties of the position or positions specified in Column C, being employees of the Law Society of New South Wales.

Note: Headings used in Schedule 1 do not form part of the delegations

- 3. For the avoidance of doubt, and unless otherwise stated, the powers and functions delegated are all powers and functions exercisable under each provision specified in Column A.
- 4. The descriptions in Column B do not limit the scope of the powers and functions delegated in Column A.
- 5. Pursuant to s 408 of the Uniform Law, the Law Society Council may issue guidelines to its delegates about the exercise of functions under the Uniform Law or the Legal Profession Uniform Rules made under Part 9.2 of the Uniform Law. In the exercise of that power, the Law Society Council hereby issues the guidelines in Column D to the delegates specified in Column C, in respect of the exercise of any power or function specified in Column A.
- 6. This instrument does not affect the validity of any past act or past exercise of powers or functions exercised or performed in accordance with previous delegations or directions.

SCHEDULE 1 – Table of Delegations

A	B	C	D
Legal Profession Uniform Law Application Act 2014			
<i>Part 4 – Practising certificates and registration certificates</i>			
Section 37(3)	Rejection of applications for renewal made outside the specified time periods	Director, Licensing and Registry Company Secretary/Secretary of the Law Society Director, Legal Regulation	Nil
Section 38(3)	Waiver of fees in respect of local practising certificates	Director, Licensing and Registry	Nil
Section 39(2)	Requirement to pay a late fee	Director, Licensing and Registry	Nil
Section 40(2)	Requirement to pay a late fee where the practising certificate was allowed to lapse	Director, Licensing and Registry	Nil
Section 42(4)	Waiver of fees in respect of Australian registration certificates	Director, Licensing and Registry	Nil
<i>Part 12 – Registers and publicising disciplinary action</i>			
Sections 149 and 150	Keeping and maintaining the register of local practising certificates and local registration certificates	Director, Licensing and Registry	Nil
Sections 151, 152, 153 and 154	Register of disqualification orders Register of disciplinary action	Director, Legal Regulation Deputy Director, Litigation and External Intervention Deputy Director, Investigations	Nil

A	B	C	D
Part 13 – Miscellaneous			
Section 162	Approval of forms	Director, Licensing and Registry Company Secretary/Secretary of the Law Society Director, Legal Regulation	Nil
Legal Profession Uniform Law (NSW)			
Part 2.1 – Unqualified legal practice			
Section 14(a)	Take any steps that may be necessary or proper for or with respect to the investigation of any question as to conduct by any entity (whether or not an Australian lawyer) that is, or may be, a contravention of a provision of Part 2.2	Professional Conduct Committee 1 (PCC1) Director, Legal Regulation Deputy Director, Investigations, PSD Deputy Director, Litigation and External Intervention, PSD Team Leaders, PSD Persons appointed to conduct complaints investigations under s 282 of the Uniform Law	Nil
Section 14(b)	Institute prosecutions and other proceedings for the contravention of a provision of this Part by any entity (whether or not an Australian lawyer).	PCC1	Nil

A	B	C	D
Part 3.3 – Australian legal practitioners			
All functions under Part 3.3	Functions relating to the grant, renewal, refusal and variation of Australian practising certificates	Licensing Committee Disclosure Committee Director, Legal Regulation Director, Licensing and Registry Company Secretary/Secretary of the Law Society	<p>A delegate that is considering refusing to grant or refusing to renew a practising certificate under Part 3.3 should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p> <p>A delegate (other than the Licensing Committee or the Disclosure Committee) that is considering imposing discretionary conditions of a kind referred to in rule 16(c) and 16(d) of the <i>Legal Profession Uniform General Rules 2015 (General Rules)</i> should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p> <p>Any delegate (other than the Disclosure Committee) that is considering imposing discretionary conditions of a kind referred to in rule 16(e) to 16(g) of the General Rules should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p>

A	B	C	D
Part 3.4 – Foreign lawyers			
All functions under Part 3.4	Functions relating to the regulation of foreign lawyers	Licensing Committee Disclosure Committee Director, Legal Regulation Director, Licensing and Registry Company Secretary/Secretary of the Law Society	<p>A delegate that is considering refusing to grant or refusing to renew a registration certificate under Part 3.4 should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p> <p>A delegate (other than the Licensing Committee or the Disclosure Committee) that is considering imposing discretionary conditions under Rule 22(b) of the General Rules on a Registration Certificate, which is of a kind that many be imposed on a Practising Certificate under Rule 16(d) of the General Rules but excluding and conditions imposed pursuant to section 67(3) of the Uniform Law, should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p> <p>Any delegate (other than the Disclosure Committee) that is considering imposing discretionary conditions under Rule 22(b) of the General Rules on a Registration Certificate, which is of a kind that many be imposed on a Practising Certificate under Rules 16(e) to 16(g) of the General Rules should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise</p>

A	B	C	D
			the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.
<i>Part 3.5 – Variation, suspension and cancellation of, or refusal to renew, certificates</i>			
Section 74	Variation, suspension, or cancellation for minor matters, or at request or with concurrence	PCC1 Professional Conduct Committee 2 (PCC2) Professional Conduct Committee 3 (PCC3) Licensing Committee Disclosure Committee Director, Licensing and Registry Director, Legal Regulation Company Secretary/Secretary of the Law Society	Nil
Section 75	Variation, suspension or cancellation at direction of the designated tribunal	PCC1 PCC2 PCC3 Licensing Committee Director, Licensing and Registry Director, Legal Regulation	Nil

A	B	C	D
		Company Secretary/Secretary of the Law Society	
Section 76, and all functions under Division 3, Division 4, and Division 5	<p>Variation, suspension of, cancellation of a practising certificate on specific grounds under Division 3</p> <p>Show cause procedure for variation, suspension or cancellation of, or refusal to renew, certificates under Division 4</p> <p>Miscellaneous functions under Division 5</p>	<p>PCC 1 PCC 2 PCC 3</p> <p>Licensing Committee (Divisions 3 and 5 only).</p> <p>Disclosure Committee</p>	A delegate that is considering suspending or cancelling a practising certificate, or refusing to renew a certificate, or a related recommendation under s94 of the Uniform Law should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.
Section 78	Lifting of suspension and renewal during suspension	Director, Legal Regulation	Nil
Section 95	<p>Power to require an applicant or holder:</p> <ul style="list-style-type: none"> i. to give specified documents or information; ii. to be medically examined by a medical practitioner nominated by the designated local regulatory authority; or iii. to provide a report from a Commissioner of Police as to whether the applicant or 	<p>PCC1 PCC2 PCC3</p> <p>Company Secretary/Secretary of the Law Society</p> <p>Director, Legal Regulation</p> <p>Director, Licensing and Registry</p>	Nil

A	B	C	D
	holder has been convicted or found guilty of an offence in Australia; or iv. to cooperate with any inquiries by the designated local regulatory authority.	Deputy Director, Investigations Deputy Director, Litigation and External Intervention	
Part 3.6 – Appeal or review about certificates			
Section 100(5)	Making submissions regarding the imposition of conditions on an Australian practising certificate	Director, Legal Regulation Deputy Director, Litigation and External Intervention	Nil
Section 101(5)	Making submissions regarding the imposition of conditions on an Australian registration certificate	Director, Legal Regulation Deputy Director, Litigation and External Intervention	Nil
Part 3.7 – Incorporated and unincorporated legal practices			
Section 108	Right to intervene in proceedings relating to external administration	Director, Legal Regulation Director, Litigation and External Intervention	The delegate should consult with the President of the Law Society before intervening in proceedings.
Section 109	Right to intervene in proceedings relating to external administration and receivership	Director Legal Regulation Deputy Director, Litigation and External Intervention	The delegate should consult with the President of the Law Society before intervening in proceedings.
Part 3.9 – Disqualifications			

A	B	C	D
Section 121	Approval of lay associates that would otherwise be disqualified from working in a law practice	PCC1 PCC2 PCC3	Nil
Part 4.2 – Trust money and trust accounts			
Section 149	Receipt of reports from ADIs	Chief Trust Account Investigator	Nil
Section 151	Receipt of notifications relating to the disclosure of accounts used to hold money	Chief Trust Account Investigator	Nil
Section 154	Receipt of notice of irregularities and believed irregularities	Chief Trust Account Investigator Director, Legal Regulation	Nil
Section 155	Appointment of an external examiner to examine trust records	Chief Trust Account Investigator Company Secretary/Secretary of the Law Society Director Legal Regulation	Nil
Section 159	Receipt of reports from external examiners	Chief Trust Account Investigator	Nil
Section 163	External investigations	Chief Trust Account Investigator	Nil
Section 165	Receipt of reports from external investigators	Chief Trust Account Investigator Director, Legal Regulation	Nil

A	B	C	D
All functions under Division 4	Appointment of an external investigator, external investigations, and recovery of costs	PCC1 PCC2 PCC3	Nil
Part 4.4 – Business practice and professional conduct			
Section 215	Exemptions from the requirement to obtain an approved insurance policy and related functions	Director, Licensing and Registry Company Secretary/Secretary of the Law Society	Nil
Part 4.6 – Business management and control			
All functions under Part 4.6	Compliance audits and the giving of management system directions	PCC1 PCC2 PCC3	Nil
Chapter 5 – Dispute resolution and professional discipline			
All functions delegated by the Commissioner under Chapter 5 (except for functions under Part 5.2)	Provisions relating to the making of and determination of complaints including determination of unsatisfactory professional conduct under s299 and initiation and prosecution of proceedings in a designated Tribunal under section 300.	PCC1 PCC2 PCC3	If PCC2 or PCC3 is considering commencing proceedings under s 300 of the Uniform Law, the delegate should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.
Part 5.2 – Complaints			

A	B	C	D
All functions delegated by the Commissioner under Part 5.2, except sections 272 and 278	Complaints handling including the initiation of investigations	PCC1 PCC2 PCC3 Director, Legal Regulation Deputy Director, Investigations Team Leaders, Investigations	<p>The appointment by a delegate of a suitably qualified person to conduct a particular complaints investigation should only be made if the person has been appointed generally under s282(3) by the Law Society Council.</p> <p>If the Deputy Director Investigations or a Team Leader, Investigations is considering closing a complaint under s 277 on any ground, the delegate should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p> <p>If the Director Legal Regulation is considering closing a complaint following preliminary assessment on the grounds set out in ss 277(1)(a), (f), (g) or (j), the delegate should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.</p>
Section 272	Waiving the time requirement for the making of a complaint	PCC1 PCC2 PCC3	Nil
Section 278	Recommending to the DLRA that an Australian practising certificate	PCC1	Nil

A	B	C	D
	or Australian registration certificate be immediately suspended where a complaint has been made about an Australian legal practitioner		
Chapter 6 – External intervention			
All functions under Chapter 6, except sections 334 and 341	The appointment and termination of managers, trust supervisors and receivers, and related miscellaneous functions	PCC ₁	
All functions under Chapter 6, except sections 341 and 365	The appointment and termination of managers, trust supervisors and receivers, and related miscellaneous functions	Director, Legal Regulation	Where the delegate is considering making an initial appointment (being an appointment where there has not been an appointment to the law practice in the previous 6 months) as supervisor of trust money or as manager of a law practice, the delegate should give notice to the Law Society Council for the Law Society Council upon receipt of the notice to decide whether to exercise the power under s 411(1) of the Uniform Law to takeover responsibility for the matter.
Section 331(3)	Approval of forms for supervisors of trust money	Chief Trust Account Investigator Deputy Director, Litigation and External Intervention	Nil
Section 336(3)	Approval of forms for managers	Chief Trust Account Investigator	Nil

A	B	C	D
		Deputy Director, Litigation and External Intervention	
Section 343(6)	Approval of forms for receivers	Chief Trust Account Investigator Deputy Director, Litigation and External Intervention	Nil
Chapter 7 – Investigatory powers			
All functions	Powers to approve forms and authorise entry to residential premises	Director, Legal Regulation Deputy Director, Investigations	Nil
Chapter 9 – Miscellaneous			
Part 9.4 – Cooperative and other arrangements			
All functions under Part 9.4 (except section 436)	Various powers and duties to communicate with other designated local regulatory authorities, ASIC and other jurisdictions (other than the power to enter into MOUs to disclose information and mutual recognition of foreign qualifications and practical legal training)	Director Licensing and Registry Company Secretary/Secretary of the Law Society Director, Legal Regulation	Nil
Part 9.5 – Notices and evidentiary matters			
Section 446	Certification of matters relating to practising certificates	Director, Licensing and Registry	Nil

A	B	C	D
		Company Secretary/Secretary of the Law Society Director, Legal Regulation	
Part 9.6 – Injunctions			
All functions under Part 9.6	Initiating and prosecuting applications for injunctions to restrain a breach of the Act	PCC1	Nil
Part 9.7 – Criminal and civil penalties			
Section 453	Initiating civil penalty proceedings	PCC1	Nil
Part 9.9 – General			
Section 465	Duty to report suspected criminal offences to the Police	PCC1 PCC2 PCC3 Disclosure Committee Director, Legal Regulation	Nil
Section 466(7)	Recommending to the DLRA that an Australian practising certificate or Australian registration certificate be suspended while a failure by the holder to comply with a requirement under s 466(1) continues	PCC1 PCC2 PCC3 Disclosure Committee Director, Legal Regulation	Nil

A	B	C	D
Section 473(2)	Approval of forms	Director, Licensing and Registry Company Secretary/Secretary of the Law Society Director, Legal Regulation	Nil

Legal Profession Uniform General Rules 2015

Part 3.3 – Australian Legal Practitioners

Rule 12	Require the applicant to address matters under subclause (1) and seek further information under subclause (3)	Director Legal Regulation Director Licensing and Registry	Nil
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Part 3.4 – Foreign Lawyers

Rule 20	Require the applicant to address matters under subclause (1), seek further information under subclause (3) and requirement payment of expenses (4)	Director Legal Regulation Director Licensing and Registry	Nil
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Part 4.2 – Trust money and trust accounts

Rule 50	Notification requirements concerning general trust accounts	Chief Trust Account Investigator	Nil
Rule 51	Law practice closing down, closing office or ceasing to receive or hold trust money	Chief Trust Account Investigator	Nil
Rule 54	Statements regarding receipt or holding of trust money	Chief Trust Account Investigator	Nil
Rule 57	Receive notifications pursuant to rule 57	Chief Trust Account Investigator	Nil
Rule 65A	All functions, including disqualification and termination of appointment of a person to act as an external examiner, and revocation of such disqualification	Chief Trust Account Investigator Director, Legal Regulation	Nil
Rule 66	All functions, including approving termination of	Chief Trust Account Investigator	Nil

	appointment, and requiring evidence to be provided	Director, Legal Regulation Administration Manager, Trust Accounts Department	
Rule 67	Standard form reports by external examiners	Chief Trust Account Investigator	Nil
Rule 68	Final external examination (receipt of reports)	Chief Trust Account Investigator	Nil
Rule 69	Receipt of external examiner's report	Chief Trust Account Investigator	Nil
<i>Part 4.4 – Professional Indemnity Insurance</i>			
Rule 81	Power to require submission of professional indemnity insurance policy for assessment as to compliance	Director Legal Regulation Director Licensing and Registry Company Secretary	Nil
Rule 82(1)	Power to exempt community legal services from the requirement to hold or be covered by an approved insurance policy	Director Legal Regulation Director Licensing and Registry Company Secretary	Nil
<i>Part 6.6 – General</i>			
Rule 103(2)	Power to apply for taxation or assessment of fees, costs or expenses of an account of an external examiner	Director Legal Regulation Deputy Director, Litigation and External Intervention	Nil

Rule 104	Power to require reports from external intervenor	Director Legal Regulation Deputy Director, Litigation and External Intervention	Nil
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Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015

Part 3.3 – Australian Legal Practitioners

Rule 14	Verification of CPD activities	Licensing Committee Director Licensing and Registry	Nil
Rule 15	Rectification of non-compliance	Licensing Committee Director Licensing and Registry	Nil
Rule 16	Exemptions	Licensing Committee Director Licensing and Registry	Nil