

## Community Legal Service Practitioners and the Legal Profession Uniform Law

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

### What is a Community Legal Service (CLS)?

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

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

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

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

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

### Uniform Law and Uniform Rules

A CLS and the Australian legal practitioners who engage in legal practice for or on behalf of a CLS are bound by the Uniform Law and Uniform Rules<sup>4</sup>, including: General Uniform Rules, Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules.

This includes the requirements to:

- appoint a supervising legal practitioner;
- hold a relevant practising certificate;
- hold or be covered by professional indemnity insurance;

- undertake at least ten continuing professional development points per year; and
- maintain standards of professional conduct.

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

### Supervising legal practitioner requirement

The Uniform Law requires that a CLS or its governing body must have at least one supervising legal practitioner. The supervising legal practitioner is the principal of the service<sup>5</sup> and must be:

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

A failure to have a supervising legal practitioner for a period exceeding seven days is a contravention of the Uniform Law.<sup>7</sup> Criminal penalty: 250 penalty units.<sup>8</sup>

### Practising certificates

Many legal practitioners deliver legal services to their local community free of charge by volunteering at a CLS, or providing pro bono services to the clients of CLSs.<sup>9</sup> If you are an Australian legal practitioner you can volunteer at a CLS with any type of practising certificate.<sup>10</sup>

The Uniform Law also provides for a specific volunteer practising certificate to enable practitioners, who do not otherwise hold a practising certificate, to engage in legal practice for or on behalf of a CLS on a voluntary basis.<sup>11</sup> For example, many government lawyers are authorised to practice under Commonwealth or State law and do not require a practising certificate for their official duties. Such a person may apply for and be granted a volunteer practising certificate provided he or she is otherwise appropriately qualified.<sup>12</sup>

The Uniform Law prohibits unqualified legal practice and this includes engaging in legal practice for or on behalf of a CLS on a paid or unpaid basis.<sup>13</sup> The penalty for breaching the prohibition is 250 penalty units or imprisonment for two years or both.<sup>14</sup>

In Victoria, no fee or surcharge is payable for an Australian practising certificate that authorises the holder to engage in legal practice only as a volunteer at a CLS or otherwise on a pro bono basis.<sup>15</sup>

In NSW, the fee for the 2015-2016 financial year has been waived for an Australian practising certificate that authorises the holder engage in legal practice only as a volunteer at a CLS or otherwise on a pro bono basis approved by the Council of the NSW Law Society. The Council will only grant volunteer certificates to practitioners who are either volunteering at an insured CLS, or through a project insured by the Australian Pro Bono Centre.<sup>16</sup>

## Professional indemnity insurance policy (PII)

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

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

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

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

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

## Exemptions<sup>20</sup>

Under Uniform General Rule 82(1)(d) a CLS may be exempted from the requirement to hold or be covered by the PII of their home jurisdiction. In Victoria, a CLS that holds, or proposes to hold, PII under a policy other than the approved National Association of Community Legal Centres and Victorian Managed Insurance Authority policies, must apply to the Board for approval of the policy terms and conditions, prior to commencing legal practice in Victoria.

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

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

- engaging in legal practice as a volunteer at a CLS or otherwise on a pro bono basis; or
- engaging in legal practice on the practitioner's own account.<sup>21</sup>

## For information

[www.legalservicescouncil.org.au](http://www.legalservicescouncil.org.au)

- 1 Legal Profession Uniform Law, s 6
- 2 Above, note 1 s 6 This definition applies, whether or not a CLS is a member of a State or Territory association of Community Legal Centres, or accredited or certified by the National Association of Community Legal Centres
- 3 Above, note 1 s 116
- 4 The Uniform Rules may provide specifically for CLSs, above note 1 s 118
- 5 Above, note 1 s 6
- 6 Above, note 1 s 117(1)
- 7 Above, note 1 s 117(2)
- 8 Above, note 1 s 451
- 9 Above, note 1 s 8(a)(i)(ii), (b)(c) pro bono work is defined as the provision of legal services without fee, gain or reward or at a reduced fee to a client who would not otherwise have access to legal services or where the client's case raises a public interest issue. It also includes free 'community legal education or law reform' or free legal advice or representation to charitable and community organisations
- 10 Above, note 1 s 47(5) an Australian registered foreign lawyer may also practice foreign law as a volunteer at a CLS and otherwise on a pro bono basis; s 70(1)(c)
- 11 Above, note 1 s 47(1)(c), note that the pro bono element is new but the CLS volunteer practicing certificate previously existed under the Legal Profession Act 2004 (Vic) s 2.4.3(3)(b)(iii)
- 12 Above, note 1 s 45(1)(a)
- 13 Above, note 1 s 10
- 14 Above, note 1 s 10(1)
- 15 Legal Profession Uniform Law Application Act 2014 (Vic), s 73(5)
- 16 Correspondence, 17 July 2015.
- 17 Above, note 1 s 213(1)(2)
- 18 Above, note 1 s 213(1)
- 19 Above, note 1 s 213(2)
- 20 Above, note 1 s 215(8) and r 82
- 21 Above, note 1 s 215(8), above, note 18 r 82(2)(a)(b)