

Reform Proposals - *Legal Profession Uniform Law Application Act 2014*

1. Classification of offences as indictable

Issue

Section 148 of the Legal Profession Uniform Law (LPUL) provides that it is an offence to cause a deficiency in a trust account or trust account ledger or fail to pay or deliver any trust money. Section 353 of the LPUL provides that it is an offence for a person to destroy, remove, conceal or deliver into the possession or control of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed. Both offences prescribe a maximum penalty of 500 penalty units or 5 years imprisonment or both.

The construction of these offences under section 112 of the *Sentencing Act 1991* (Vic) means that these offences are classified as summary offences. In contrast, policy development documents for the LPUL indicate that these offences were intended to be classified as indictable. Section 165A of the *Legal Profession Uniform Law Application Act 2014* (NSW Application Act) also provides that section 148 and 353 are indictable offences.

The classification of these are offences as summary offences means that any proceedings must be commenced within 12 months after the date on which the offence is alleged to have been committed. This has created a practical impediment to the prosecution of these matters as there is often a significant delay in detecting complex trust account deficiencies or the mishandling of regulated property.

Furthermore, the classification of sections 148 and 353 as summary offences places these offences within the jurisdiction of the Magistrates' Court. This jurisdiction limits the intended operation of these provisions as the prescribed maximum penalty is above the Court's jurisdiction of 2 years for a single offence.

Summary of the reform proposal

1. The reforms will commence on the day after Royal Assent.
2. Insert a new provision in the *Legal Profession Uniform Law Application Act 2014* (Application Act) clarifying sections 148 and 353 are indictable offences.
3. Amend Schedule 2 to the *Criminal Procedure Act 2009* to include sections 148 and 353. This provision will ensure that these matters may still be heard and determined summarily.
4. Insert transitional measures providing that:
 - a. conduct relating to an offence against sections 148 and 353 that occurs prior to commencement will be treated as a summary offence.
 - b. Conduct relating to an offence against sections 148 and 353 that occurs after commencement will be treated as an indictable offence.

Benefits

The classification of sections 148 and 353 as indictable offences will increase uniformity, strengthen consumer protections, ensure penalties are commensurate with the conduct and provide an effective disincentive.

2. Register of Disciplinary Action

Issue

Part 9A, division 2 of the Application Act provides the legislative framework for the register of disciplinary action (RODA). The Victorian Legal Services Board (VLSB) is responsible for keeping the RODA. Disciplinary action is defined in section 150A of the Application Act and includes action taken by a court, tribunal, or local regulatory authority for or following a finding of unsatisfactory conduct or professional misconduct.

Presently, the VLSB is unable to publish details on the RODA of any disciplinary action taken following a finding by the local regulatory authority of unsatisfactory professional conduct under section 299 of the LPUL because:

- section 150E of the Application Act provides that the VLSB must not publish information on the RODA until the time limit for any appeal or review has expired; and
- there is no time limit specified in the LPUL, the Application Act, or elsewhere for an appeal of a determination made by the Commissioner under section 299.

Both the NSW Application Act and the *Legal Profession Uniform Law Application Act 2022 (WA)* (WA Application Act) provide for similar registers. However, in contrast, section 154 of the NSW Application Act and section 223 of the WA Application Act permit the local regulatory authority to immediately record determinations on the RODA without waiting for any time period for an appeal or review to expire. However, information must be removed if a determination is quashed on appeal or review.

Summary of the reform proposal

1. The reforms will commence on the day after Royal Assent.
2. Amend the Application Act by:
 - inserting a new provision providing a 28-day time limit for appealing determinations under section 299 of LPUL,
 - inserting a new provision validating the previous publication of section 299 determinations,
 - repealing section 150E, and
 - inserting a new provision providing that disciplinary action is quashed on appeal, the details must be removed from the RODA.
3. Insert transitional measures providing that:
 - any determinations made in the 3 months prior to commencement have an additional 28 days from commencement to lodge an appeal or review.
 - any determinations made more than 3 months prior to commencement have exhausted their right to appeal or review.
 - determinations made after commencement are subject to the requirement to lodge an appeal or review within 28 days of notification.

Benefits

It is anticipated that the reform will provide clarity for the profession, strengthen consumer protections and support greater uniformity across jurisdictions.