

Corporate Lawyers

The Uniform Law and Uniform Rules apply in Victoria and NSW from 1 July 2015. Under the Uniform Law, corporate legal practitioners are required to hold a practising certificate.

Prohibition against unqualified legal practice

Under the Uniform Law a person who 'engages in legal practice' must be admitted to practice and have a practising certificate.¹ This requirement applies to corporate lawyers in both NSW and Victoria. The transitional arrangements explained below do not apply in Victoria, where corporate lawyers were required to hold a practising certificate under pre-Uniform Law arrangements.

The penalty for breaching the prohibition against unqualified legal practice is 250 penalty units or imprisonment for two years or both.²

Corporate lawyers

A corporate legal practitioner is defined as a person who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or related entity.³

A related entity means:

- a related body corporate within s 50 of the *Corporations Act 2001* (Cth) if the first person is a company within the meaning of that Act; or
- a person specified or described in the Uniform Rules if the first person is not a company.⁴

Transitional arrangements

In NSW, the following transitional arrangements apply to corporate lawyers:

- **Admitted:** A corporate lawyer who is admitted to practice is exempt from holding a practising certificate for two years until **30 June 2017**.⁵ Anyone relying on this exemption must notify the Law Society of NSW or The Bar Council within six months of engaging in legal practice pursuant to the exemption.⁶

- **Not admitted:** A corporate lawyer who, on 1 July 2015 was not admitted to practice but had been employed as a corporate lawyer any time in the 12 months prior to 1 July 2015, or commences work after 1 July 2015, is exempt from the requirement to have a practising certificate until **1 July 2018**.⁷ Anyone relying on this exemption must notify the Legal Professional Admission Board within 12 months of engaging in legal practice pursuant to the exemption.⁸

A corporate lawyer practising under an exemption may choose to gain admission and apply for a practising certificate.⁹

Applying for a practising certificate

Practising certificates may authorise the holder to engage in legal practice as a:

- principal or employee of a law practice;
- corporate legal practitioner;
- government legal practitioner;
- barrister only; or
- volunteer at a community legal service and otherwise on a pro bono basis only.¹⁰

Supervised legal practice

A corporate lawyer granted a practising certificate is required to engage in a period of supervised legal practice.¹¹ In NSW, any period of legal practice engaged in before 1 July 2015 or pursuant to one of the transitional provisions outlined above, whether supervised or not, will be counted toward the statutory period of supervised legal practice.¹² The legal practice is not restricted to legal practice as a corporate lawyer.

The statutory periods of supervised legal practice depend on the nature of the practical legal training undertaken to qualify for admission:

- under the supervision of an Australian lawyer – 18 months;¹³
- otherwise – two years.¹⁴

Private, corporate and government legal practice

Until an Australian practising certificate is renewed, a person whose practising certificate authorises them to practice only as:

- a corporate legal practitioner, may also work as a government legal practitioner.¹⁵
- a government legal practitioner, may also work as a corporate legal practitioner.¹⁶

An employee of a law practice may also work as a corporate or government legal practitioner.¹⁷

This will assist lawyers in the corporate sector to move to government legal practice. It will also assist lawyers to move from private practice to corporate and government legal practice without having to immediately vary their practising certificate.

Pro bono work

An Australian legal practitioner may engage in legal practice as a volunteer at a community legal service or otherwise on a pro bono basis on any 'type' of practising certificate.¹⁸ A corporate lawyer, who does not hold a practising certificate, can apply for a practising certificate that authorises legal practice both as a volunteer at a community legal service and otherwise on a pro bono basis, only.¹⁹ To provide such services, a corporate lawyer must be covered by an approved professional indemnity insurance policy for the work performed on that basis.²⁰

Uniform Law and Uniform Rules

A corporate legal practitioner is bound by the Uniform Law and Uniform Rules, including Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules. This means that corporate legal practitioners are:

- subject to the complaints mechanisms of the local jurisdiction; and
- must complete ten continuing professional development points each year.²¹

Fidelity Fund

Holders of corporate practising certificates are not required to make fidelity fund contributions.²²

Professional Indemnity Insurance (PII)

Corporate lawyers are not required to hold or be covered by professional indemnity insurance unless it is needed to cover volunteer work at a community legal services or other pro bono work.²³

This does not affect the requirement to hold a practising certificate to engage in legal practice as a principal and hold or be covered by PII when engaging in legal practice on the practitioner's own account.²⁴

For more information

www.legalservicescouncil.org.au

- 1 Legal Profession Uniform Law, s 10
- 2 Above, note 1 s 10(1)
- 3 Above, note 1 s 6
- 4 Above, note 1 s 6 the Uniform Rules do not specify or describe related entities if the employer is not a company within the meaning of the Corporations Act 2001(Cth)
- 5 Clause 19(1)(c), Legal Professional Uniform Law Application Regulation 2015 (NSW)
- 6 Above, note 5 cl 21(3)
- 7 Above, note 5 cl 19(1)(a)(b)
- 8 Above, note 5 cl 21(2),(3)
- 9 Above, note 5 cl 20
- 10 Above, note 1 s 47(1)
- 11 Above, note 1 s 49
- 12 Above, note 5 cl 22
- 13 Above, note 1 s 49(1)(a)
- 14 Above, note 1 s 49(1)(b)
- 15 Above, note 1 s 47 (4)(b)
- 16 Above, note 1 s 47(4)(c)
- 17 Above, note 1 s 47(4)(a)
- 18 Above, note 1 s 47(5)
- 19 Above, note 1 s 47(1)(c)
- 20 Above, note 1 s 211, Uniform General Rule 82(2)(b))
- 21 Uniform Continuing Professional Development Rules (Solicitors) 2015, r 6
- 22 Above, note 1 s 225(4)(c)
- 23 Uniform General Rules, r 82 (1)(a)(2)(b)
- 24 Above, note 20 r 82 (2)(a)