

Government Lawyers

The Uniform Law and Uniform Rules have applied in Victoria and NSW since 1 July 2015. This information sheet explains how the Uniform Law applies to government lawyers.

Prohibition against unqualified legal practice

Under the Uniform Law a person who 'engages in legal practice' must generally be admitted to practice and have a practising certificate.¹ From 1 July 2015, this requirement also applies to many government lawyers in NSW and Victoria.²

- The Uniform Law makes clear that engaging in legal practice does not include developing or commenting policy.³
- People engaging in legal practice under the authority of the Commonwealth or local law do not need a practising certificate.⁴

The penalty for breaching the prohibition against unqualified legal practice is 250 penalty units or imprisonment for two years or both.⁵

Definition of government lawyer and government authority

Under the Uniform Law, a government lawyer is defined as a person who engages in legal practice only as:

- an officer or employee of a government authority;
- a statutory officer holder of the Commonwealth or an Australian jurisdiction; or
- another category specified in the Uniform Rules.⁶

A government authority includes a Minister, government department or public authority.⁷

For the purpose of the transitional arrangements, NSW defines 'government lawyer' as a government lawyer with official functions in NSW, in the Commonwealth or in any other jurisdiction.⁸ The NSW regulations also clarify that legal practice engaged in as a statutory Crown law officer is legal practice as a barrister.

This applies to government lawyers, such as the Solicitor General, Crown Advocate, or counsel assisting those officials, parliamentary counsel, a Crown prosecutor, and public defender.⁹

Limited exemptions

In both Victoria and NSW, a person employed as a government lawyer any time in the twelve months prior to 1 July 2015 does not need to seek admission or hold a practising certificate to engage in legal practice as a government lawyer.¹⁰ A person in this category may still choose to become admitted and apply for an Australian practising certificate.¹¹ This exemption does not apply to persons employed in the future as government lawyers, subject to the following transitional arrangements.

Admitted to practice – transition

In NSW, from **30 June 2017**, a person employed as a government lawyer who is admitted to practice will need to hold a practising certificate.¹²

In Victoria, from **1 October 2015**, a person employed as a government lawyer who is admitted to practice must generally hold a practising certificate.¹³

Not admitted to practice – transition

In NSW, there is a transitional period for those who are not admitted and commence work as a government lawyer after 1 July 2015. In this case, government lawyers have three years, until **30 June 2018**, to gain admission and obtain a practising certificate.¹⁴

In Victoria, a government lawyer in this situation will generally need to hold a practising certificate to engage in legal practice. This arrangement has applied from **1 October 2015**.¹⁵

Giving notice of reliance on the exemption

In NSW, government lawyers practising under an exemption must notify the appropriate body:

- **Not admitted:** Legal Professional Admission Board - within 12 months of engaging in legal practice pursuant to the exemption.¹⁶
- **Admitted:** Bar Council or Law Society Council (NSW) – within six months of engaging in legal practice pursuant to the exemption.

An exempt government lawyer, namely, a lawyer who was not admitted on 1 July 2015 and was a government lawyer at any time within 12 months before 1 July 2015, is not required to notify the Legal Professional Admission Board.¹⁷

Supervised legal practice

A government lawyer granted a practising certificate will be required to engage in a period of supervised legal practice.¹⁸

In NSW, any period of legal practice before 1 July 2015 (whether supervised or not) will be counted towards the statutory period of supervised legal practice. The deeming provision also covers any legal practice engaged in pursuant to a transitional provision.¹⁹

In Victoria, any period of legal practice before 1 October 2015 (whether supervised or not) will be counted toward the statutory period.²⁰

For the purpose of these arrangements, legal practice is not restricted to legal practice as a government lawyer.

Applying for a practising certificate

Practising certificates may authorise the holder to engage in legal practice in one or more of the following categories:

- principal or employee of a law practice;
- corporate legal practitioner;
- government legal practitioner;
- barrister only; or
- both as a volunteer at a community legal service and otherwise on a pro bono basis only.²¹

Private, government and corporate legal practice

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

- an employee of a law practice, may also work as a corporate or government legal practitioner;²²
- a government legal practitioner, may also work as a corporate legal practitioner; and
- a corporate legal practitioner may also work as a government lawyer.²³

This will assist lawyers in the private sector to move to government or corporate legal practice. It will also assist lawyers to move between government and corporate 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.²⁴

A government lawyer who is admitted but does not hold a practising certificate may apply for a practising certificate that authorises legal practice as a volunteer at a community legal service and otherwise on a pro bono basis only.²⁵ To provide such services the person must be covered by an approved professional indemnity insurance policy.²⁶

Uniform Law and Uniform Rules

A government lawyer 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 government lawyers are:

- subject to the complaints mechanisms of the local jurisdiction;²⁷ and
- must complete 10 continuing professional development points per year.²⁸

Government Lawyers

Fidelity Fund and Professional Indemnity Insurance (PII)

Government lawyers/legal practitioners are not required to make contributions to a fidelity fund or hold or be covered by PII unless it is needed to cover volunteer work at a community legal service or other pro bono work.²⁹

The exemption does not affect the requirement for an Australian legal practitioner (including a government lawyer) to hold a practising certificate to engage in legal practice as a principal, and hold or be covered by PII when practising on their own account.³⁰

Exemptions

An individual who is engaged in legal practice under the authority of the law of the Commonwealth or otherwise authorised under a law of NSW or Victoria (other than the Uniform Law) is considered to be a 'qualified entity' for the purposes of the Uniform Law. For example, a government lawyer employed by the Australian Government Solicitor may practice as a solicitor or barrister in any court pursuant to the *Judiciary Act 1903* (Cth).³¹

The Uniform Rules also exempt persons acting in an official capacity undertaking certain work. Some examples are:

- the drawing of instruments (but not parliamentary/legislative counsel and legislative drafters);³²
- appearing in court or tribunal as authorised by jurisdictional or Commonwealth law;³³
- preparing wills or related services or work related or involving the administration of trusts, estates of living and deceased persons, or affairs of living persons.³⁴

- 1 Legal Profession Uniform Law, s 10(1)
- 2 Above, note 1 s 56
- 3 Above, note 1 s 6, this exclusion also applies to policy work conducted outside of government
- 4 In these circumstances the person is defined as a 'qualified entity' under the Uniform Law, s 6
- 5 Above, note 1 s 10(1)
- 6 Above, note 1 s 6
- 7 Above, note 1 s 6
- 8 Clause 17, Legal Profession Uniform Law Application Regulation 2015 (NSW)
- 9 Above, note 8 cl 23(1),(2)
- 10 Legal Profession Application Act (Vic) (2014), s 169(1)(2)(a)(b); above, note 8 cl 19(1)(a)
- 11 Above, note 8 cl 20
- 12 Above, note 8 cl 19(1)(c)
- 13 Clause 6(1)(a)(b),(2), Legal Profession Uniform Law Application (Savings and Transitional) Regulation 2015 (Vic)
- 14 Above, note 8 cl 19(1)(b)
- 15 Above, note 12 cl 6(1)(b),(2)
- 16 Above, note 8 cl 21(2)(3)
- 17 Above, note 8 cl 21(1)(7)
- 18 Above, note 1 s 49
- 19 Above, note 8 cl 22(1)(2)
- 20 Above, note 12 cl 7 (a)(b)
- 21 Above, note 1 s 47
- 22 Above, note 1 s 47(4)(a)
- 23 Above, note 1 s 47(4)(a)(b)(c)
- 24 Above, note 1 s 47(5)
- 25 Above, note 1 s 47(1)(c)
- 26 Above, note 1 s 211, Legal Profession Uniform General Rules, r 82(2)(b)
- 27 Above, note 1 s 263(4) Chapter 5 Consumer Matters, does not apply to the executive or administrative functions under legislation of a government lawyer who is not required to hold a practising certificate
- 28 Continuing Professional Development Rules (Solicitors) 2015, r 6; Continuing Professional Development Rules (Barristers) 2015, r 8
- 29 Above, note 1 s 225(4)(b), above, note 25v r 82 (1)(a),(2)(b)
- 30 Above, note 26 r 82(2)(a)
- 31 Definition of qualified entity, above, note 1 s 6; Judiciary Act 1903 (Cth), s 55E(2)
- 32 Above, note 26 r 10(1) (c)
- 33 Above, note 26 r 10(1)(d)
- 34 Above, note 26 r 10(1)(e) – this applies to a public trustee (however named) and any officer, employee or staff of the public trustee or company that performs the functions of the public trustee itself or on behalf of the government of the jurisdiction

For more information

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