



Government Lawyers

Consequences of practising as a Government lawyer without being admitted to practice in NSW, post July 2018.

What has changed?

Prior to the commencement of the *Legal Profession Uniform Law (NSW)* on 1 July 2015, corporate and government lawyers in NSW were exempt from the requirement to be admitted or to hold a practising certificate in order to engage in legal practice.

There is no equivalent exemption under the *Legal Profession Uniform Law (NSW)*. This means that some government lawyers in NSW will soon be required to become admitted and to hold a practising certificate (including some Australian Government and local government lawyers).

The intention behind this change is to regulate all persons engaged in legal practice and ensure they comply with regulatory obligations such as continuing professional development (CPD).

The Uniform Law requirements for practising certificates also make it easier for legal practitioners to move between private, in-house and government practice.

The NSW Government has introduced transitional arrangements which will help to manage the impact of this change.

Permanent exemption

If you were employed as a government lawyer in the 12 months prior to the commencement of the Uniform Law on 1 July 2015, and you were not admitted to the legal profession as at 1 July 2015, you will be permanently exempt from the requirement to become admitted and to hold a

practising certificate, while you continue to work as a government lawyer.

Transitional exemptions

If you commenced work as a government lawyer after 1 July 2015, you will be exempt from the requirement to become admitted and to hold a practising certificate **until 1 July 2018**.

These exemptions are set out in clause 19 of the Legal Profession Uniform Law Application Regulation 2015.

What do I need to do?

If you are currently working as a government lawyer and are not seeking to rely of the exemption above, you must ensure that you apply for a NSW practising certificate prior to **1 July 2018**, or cease working as a government lawyer until you have been admitted to practice in NSW.

Consequences of continuing to practice

Continuing to practice as lawyer without being admitted to practice is expressly prohibited pursuant to Section 10 of the Uniform Law. The rationale for the prohibition of unauthorised practice is directed to protecting the public.

Practising without being admitted to practice in NSW could also result in a finding of professional misconduct such as in the recent cases of *Council of the New South Wales Bar Association v Dwyer* [2015] NSWCA 302 and in the case of *Council of the New South Wales Bar Association v Biscoe* [2017] NSWCA 286 where there was a finding of professional misconduct for legal practitioners



practicing without a valid practising certificate in NSW.

Applying for admission as a lawyer

An application to become admitted to the Australian legal profession in NSW must be made to the LPAB. The LPAB publishes a comprehensive 'Guide for Applicants for Admission as a Lawyer in NSW', which can be downloaded from www.lpab.justice.nsw.gov.au.

You should prepare to apply for admission sooner rather than later (and not delay until 2018) if you:

- completed an academic qualification in law in a foreign jurisdiction (outside Australia), or
- completed practical legal training requirements for admission and have been admitted in a foreign jurisdiction (outside Australia), or
- completed an academic qualification in law in Australia, or practical legal training in Australia, more than 5 years before you apply for admission.

This is because, in each of the above circumstances, you may need to obtain an assessment of your academic qualification and/or your practical legal training and work experience, before you can apply for admission.

You should allow up to three months for the assessment process. You should also take into account that, depending on your particular circumstances, you may be required to undertake further academic study or training before you can apply for admission. Details about how to obtain these assessments are in Sections 5 and 7 of the 'Guide for Applicants for Admission as a Lawyer in NSW'.

Applying for a practising certificate

Admission to the legal profession does not of itself entitle a person to engage in legal practice, but is a prerequisite for being able to apply for an

Under the Uniform Law, 'government lawyer' means a person who engages in legal practice only: a) as an officer or employee of a government authority; or b) as the holder of a statutory office of the Commonwealth or of a jurisdiction; or c) in another category specified in the Uniform Rules. A government authority includes a Minister, government department or public authority. 'Engaging in legal practice' does not include policy work, such as developing or commenting on legal policy. 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. Further detail is in the Legal Services Council's information sheet 'Government Lawyers' at www.legalservicescouncil.org.au

Australian practising certificate, which entitles the holder to engage in legal practice.

An application for a practising certificate in NSW must be made either to the Law Society of NSW (to practise as a solicitor) or the NSW Bar Association (to practise as a barrister).

Enquiries

Should you have any further questions regarding these issues, please contact the Board on +612 9338 3500 or send an email to lpab@justice.nsw.gov.au

The Legal Service Commission has also produced an information sheet targeted at government lawyers on the issues and the implications of continuing to practice without a valid NSW practising certificate. This information can be accessed at:

www.legalservicescouncil.org.au/Documents/information-res/government-lawyers.pdf

Useful links

Notice of practice pursuant to exemption

(to LPAB, if not admitted when exemption commenced)
www.lpab.justice.nsw.gov.au/clause19notice

(to Law Society Council)
www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory/index.htm

Admission as a lawyer in NSW

www.lpab.justice.nsw.gov.au

Practising certificates (solicitor)

www.lawsociety.com.au

Practising certificates (barrister)

www.nswbar.asn.au

About the Uniform Law

www.legalservicescouncil.org.au

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