

RPA News

Regulation. Protection. Action.

News update for all practitioners from the Victorian Legal Services Board + Commissioner

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Engaging in legal practice without a current practising certificate

Each year the Victorian Legal Services Board becomes aware of practitioners who have forgotten or neglected to renew their practising certificate, yet continue to engage in legal practice after their certificate expires. This is most common among newer practitioners, but not exclusive to that group. Often they will explain that they assumed their firm would have assisted them in securing or renewing their practising certificate.

Unqualified legal practice

A practitioner who engages in legal practice without a valid practising certificate is engaging in unqualified legal practice. Unqualified legal practice is a serious matter. Section 10 of the Legal Profession Uniform Law (Victoria)⁽¹⁾ prohibits an entity from engaging in legal practice in Victoria unless it is *qualified* to do so.

Consequences for a breach of the Uniform Law

The penalty for a breach of this provision can potentially involve a heavy fine or even gaol. Invariably the regulator will forgive an unintended mistake, but the consequences for the law practice are quite significant, although not often appreciated by partners or managers.

Pay clients back

Section 10(2) of the Uniform Law states that an entity is not entitled to recover any amount, and must repay any amount received, in respect of anything the entity did if it was not qualified to engage in legal practice. This may have grave consequences for a law practice. It means when a solicitor has operated unlicensed for months or longer, all client fees charged by the firm at a solicitor rate must be returned to clients or at least adjusted downwards. In addition to the cost and the embarrassment to the practice, the client may also seek advice in negligence about their legal affairs having been handled by unqualified persons.

Responsibility

Inexperience, unfamiliarity with conventions or a simple oversight are not valid reasons for a practitioner failing to apply for or renew a practising certificate. It is incumbent on all practitioners to ensure that they renew their practising certificate if they intend to practise law in the coming financial year.

Partners and law practice managers can help ensure their junior practitioner employees – indeed all employees – are not in breach of the law by reminding them to renew their practising certificate and checking that they have done so.

Michael McGarvie

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¹ The Legal Profession Uniform Law (Victoria) forms Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic)