

RPA News

Regulation. Protection. Action.

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

Bulletin No. 38

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Employing lay associates who have been convicted of serious offences

Recently this office dealt with a matter in which a law practice employed a paralegal who had a conviction for a serious offence. The law practice had not sought the Board's approval to employ the person and as a result committed a breach of the Legal Profession Uniform Law.

While the law practice was aware that the old *Legal Profession Act 2004* included restrictions on employing a person who had been found guilty of a *relevant offence*¹, they were not aware that the restriction had been expanded to *serious offence* with the introduction of the Uniform Law.

Broader disclosure required under the Uniform Law

Under the Uniform Law, if a law practice wishes to hire an employee who has been found guilty of a serious offence, it must first seek the approval of the Victorian Legal Services Board (as the designated regulatory authority) to do so (see s. 121 of the Uniform Law).

A serious offence is one that is either an indictable offence under Commonwealth, State or Territory law, or an offence against a law of a foreign country that, if committed in Australia, would be an indictable offence against Commonwealth, State or Territory law.

Prospective employees must disclose to the employer

Section 122 of the Uniform Law states a person who has been convicted of a serious offence must not seek to become a lay associate² of a law practice unless they first inform the law practice of their conviction.

Responsibilities of principals

Each law practice principal is responsible for ensuring that these obligations are fulfilled, so that the law practice complies with the Uniform Law. Failing to uphold this responsibility may constitute unsatisfactory professional conduct or professional misconduct³.

Principals should consider:

- whether there are any current lay associates employed at the law practice who have been convicted of a serious offence;
- what steps the law practice takes to ensure that its lay associates are properly informed and assisted with their obligations to disclose convictions for a serious offence; and

¹ A 'relevant offence' was defined as an offence against Division 2 of Part 1 of the *Crimes Act 1958*.

² A lay associate is defined at section 6 of the Uniform Law as a person who is not an Australian Legal Practitioner and who is an associate, consultant or person who receives income from the law practice.

³ See s. 34 of the Uniform Law.

- what procedures are in place when engaging lay associates who have a prior conviction to ensure that the law practice seeks the approval of the Board.

For further information, download the [FAQs – Prohibited Lay Associates](#) fact sheet.

For more information on your obligations under the Uniform Law, refer to the [Legal Services Council website](#).

Clarification on [RPA News bulletin #37](#): Changes affecting how executors claim commission

The Board and Commissioner wish to clarify that section 65D of the *Administration and Probate Act 1958* now requires **all** executors to provide cost disclosure to the beneficiaries of an estate. This applies whenever an executor seeks to be paid, even under a pre-existing charging clause, not just to executors who have sought fully informed consent from beneficiaries to claim a commission from the estate. An executor who contravenes this section is therefore not entitled to payment from the estate.

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