

# Practising certificates – whose responsibility is it?

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A practising certificate (PC) is an essential tool of the trade for a legal practitioner. Engaging in legal practice whilst not holding a current PC can carry serious consequences. It is an offence which carries a maximum penalty of 500 penalty units.<sup>1</sup> It may also amount to conduct constituting unsatisfactory professional conduct or professional misconduct<sup>2</sup> and result in disciplinary consequences for a lawyer.

## Personal responsibility

Given the personal consequences of practising without one, the responsibility to ensure that a PC has been issued ultimately rests with the lawyer. It is not sufficient to hand the application form to someone else to deal with administratively and assume that a PC will just automatically issue. A lawyer should satisfy themselves that a PC has **actually** been issued to them before commencing practice.

It is critical that applications for a PC are made in a timely fashion—at least two weeks before the desired start date for a new PC and by 31 May for renewals, particularly to avoid the late fee.

Use the Society's checklist to verify that all the required supporting documents are submitted with the application form—this will assist with processing and reduce the chances of an application being delayed due to missing requirements. If in doubt about what needs to be submitted with an application contact the Society's Licensing Officer.

## Principal's responsibility

The responsibility to ensure an employed solicitor has a PC doesn't belong only to the individual lawyer. Responsibility

also rests with the principal or principals of the law firm. A principal has a duty to ensure competent and qualified persons are providing advice to the clients of the law firm. That a legal adviser holds a current PC before providing legal advice or representation is a fundamental requirement to meet this obligation. There are potential consequences to the law firm for failing to meet this duty. Aside from an increased risk of exposure to a professional indemnity insurance claim, a client can refuse to pay or seek to recover fees paid for work done when a person didn't have a current PC.<sup>3</sup>

When employing a legal practitioner during a PC year (1 July to 30 June), a principal should satisfy themselves that the new employee has a current PC, it hasn't been cancelled or surrendered and whether there are any special conditions attached to the PC. It is prudent for principals to sight the employee's original PC and retain a copy. Double checking to ensure it hasn't been cancelled or otherwise dealt with by the issuing authority is also wise.

## How to check for a current PC

Aside from receiving an original PC from the Society, a lawyer or principal can check whether or not a person has a current PC by checking the online register of current legal practitioners.<sup>4</sup> If the person is holding an interstate PC enquiries would need to be made with the issuing body. There is no central register of PC holders in Australia. The issuing bodies in each jurisdiction maintain an online register on their website which can be checked, otherwise an email or telephone enquiry can be made.

During the renewal period it is prudent for a practitioner and a principal to make appropriate enquiries with administration or support staff to ensure that applications



have been physically submitted to the Society (the original signed application form is required for the Society to process an application) as well as payment of the necessary fees. To avoid a late fee the application, payment and all supporting documents (including evidence of professional indemnity insurance) must be received by the Society no later than 31 May.

Finally an enquiry can be made by email to the Society's Licensing Officer to confirm if a PC has issued for a person. Email confirmation can be provided if a PC has been approved to be granted, the effective date (i.e. when practice under the PC can commence) and the likely date the original PC will be sent. During the renewal period the Society may not be able to respond to individual enquiries. Updates will be provided in The Practitioner e-newsletter about distribution of renewed PCs. An email is generally also sent toward the end of June to all renewed practitioners confirming their PC has been renewed and sent to them.

Practitioners should diarise to check with the Society no later than the last week of June if they haven't received the

renewed PC. The Society endeavours to communicate with practitioners about compliance during the renewal process but in the end the responsibility rests with the practitioner to ensure that they have their licence to practise.

Don't leave it to the last minute to apply for a PC or to check if a PC has issued—the consequences of not receiving a PC in time or practising without one can be serious and easily avoided with a little bit of forward planning.

1 Legal Profession Act 2006 (NT), section 18(1)

2 Ibid, sections 23 and 466(1)(a)

3 Ibid, sub-sections 18(4) and (5)

4 This can be found via links on the Society's website, either on the Home page or under 'Directories & Links'. The lists of current NT practitioners are usually updated each Monday.

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