

Engaging in Legal Practice

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The introduction of the *Legal Profession Act 2006*(NT) and similar “model legislation” around Australia removed previous barriers to legal practitioners moving freely between jurisdictions to practise.

The effect of the model legislation is that any Australian legal practitioner is required to only be admitted in one jurisdiction, and is only permitted to hold a practising certificate from his or her “home jurisdiction” at any given time.

The practical implications of the legislation still prompt many questions, and the Society regularly encounters instances of practitioners failing to hold the correct practising certificate or any certificate at all, as well as problems with insurance coverage.

The *Legal Profession Act* makes it an offence carrying a fine of up to 500 penalty units to engage in legal practice unless a person is “an Australian legal practitioner” [s.18]. An “Australian legal practitioner” is a person holding a current local or interstate practising certificate.

The obligation to be properly licensed falls on the individual practitioner. In addition to being an offence under the Act for which the Society can impose fines, practising while unlicensed can be a professional conduct issue.

In relation to insurance, the *Legal Profession Act* places all law practices in the Northern Territory under an obligation to ensure that

they have an approved policy of professional indemnity insurance covering the civil liability of the law practice and each legal practitioner who is or has been working in the practice [s.376].

It is essential that intending legal practitioners in the Northern Territory, and the law practices that employ them, take the following steps **before** the practitioner commences carrying out any legal work:-

1. Check that the practitioner has a current practising certificate that is appropriate for the work that will be undertaken. An interstate practising certificate can be relied upon up to 30 June in the financial year it is issued, but if there are limitations or conditions on the certificate the practitioner can only work within those limits; for example, a certificate that allows a person to work as a volunteer at a community legal centre will not be sufficient if the person intends to engage in paid employment in any legal practice.
2. Make sure that the practitioner is added to the practice’s list of employees for Professional Indemnity Insurance. The addition of practitioners to a firm’s insurance certificate needs to be done by contacting the Society’s broker, Marsh or the relevant insurer (if not insured under the Society’s scheme). If you are entering into sole practice or practising

as counsel you will need to arrange your own insurance directly.

3. If the practitioner needs to obtain a Northern Territory practising certificate straight away (for instance if their interstate certificate is insufficient, or they are newly admitted and have never held another practising certificate) then the application supported by all necessary documents (certificates of fitness and prior admission certificates where relevant, evidence of insurance) and payment needs to be lodged with the Society and approved for issue **before** the practitioner commences his or her employment.

Please contact the Society’s Licensing Officer or Manager of Regulatory Services if you need any clarification on practising certificate and insurance requirements.

The following questions and answers are intended to address a number of common scenarios on which the Society receives enquiries and which give rise to problems for practitioners and law practices.

How do I obtain a Northern Territory practising certificate?

If you have recently been admitted in the Northern Territory (as your only place of admission), then you

A Guide for Lawyers and Law Practices in the Northern Territory

will need to complete the application for a practising certificate, pay the relevant fee and provide evidence of your PII coverage.

If you are admitted in another jurisdiction or jurisdictions, but not the Northern Territory, then in addition to the application form, fee and PII coverage, you will need provide:-

- An original certificate of fitness from each jurisdiction in which you have been admitted; and
- A certified copy of your admission certificate from each jurisdiction in which you have been admitted.

Forms and information are available on the Society's website at www.lawsocietynt.asn.au/legal-practice/practising-certificates-and-insurance/practising-certificates

Note that the issuing of certificates of fitness by an interstate regulatory authority (Law Society, Bar Association, Legal Practice Board or similar) can sometimes take several weeks so you will need to apply for any certificates required well in advance.

Also, be aware that when making application to an interstate regulatory authority for a certificate of fitness, you may be asked by that body to surrender your existing interstate practising certificate before the certificate of fitness will be issued. If you do surrender your interstate certificate then you will not be able to practise until your Northern Territory certificate is issued.

I have a current interstate practising certificate valid until 30 June, and am moving to the Northern Territory on 1 January to commence work; can I continue to use my interstate practising certificate until it expires?

Yes. If you are going to then remain working in the Northern Territory after your interstate practising certificate expires you will need to apply for a Northern Territory practising certificate for the next practising certificate year.

Please note

If you are working on an interstate certificate, **you cannot work outside the certificate type and any restrictions or conditions imposed by that certificate** (for example, you cannot work in private practice if your interstate certificate is a corporate lawyer certificate, or do unsupervised legal work if your interstate certificate requires you to be supervised). If your interstate certificate is not suitable for the work you are going to be doing in the Northern Territory, you will need to apply for a Northern Territory certificate immediately and surrender your interstate certificate.

To ensure you are included in the Law Society's mail-out of practising certificate applications (and any other important information) please ensure you notify the Society of your details on commencing work, and we will note you as being in practice in the Northern Territory on an interstate certificate.

Do I need Professional Indemnity Insurance (PII) in the Northern Territory?

Yes. It is a compulsory requirement of practising as either a solicitor or barrister in the Northern Territory that you have current PII covering you for work in the Northern Territory.

If you are commencing legal practice in the Northern Territory then you will need to take out a new policy of insurance applicable to practice in the Northern Territory, or ensure your firm arranges for you to be included on its insurance certificate before you starting carrying out any legal work.

The Law Society runs a PII scheme for solicitors, currently underwritten by QBE. If you need information on this scheme, contact the Society, or its broker, Cheryl Richardson at Marsh Pty Ltd, Darwin (ph 08 8943 4471).

The Northern Territory Bar Association has a general exemption from the Law Society scheme



and sources barrister-specific PII cover, currently with Suncorp. For information on this scheme, contact the Northern Territory Bar Association (secretary Simon Lee) at William Forster Chambers on 08 8982 4700.

If you are **not** moving to the Northern Territory but are carrying out one-off or limited work in the Northern Territory while remaining based in another jurisdiction, you need to ensure by checking with your local PII provider that the policy covers you for work done outside your home jurisdiction.

What fees are payable for a practising certificate and Law Society membership?

The fees for a practising certificate vary according to the type of certificate you are applying for. The application form shows the current fee payable (including pro-rata fees when the application is made during the financial year) for each certificate type.

In addition to the fee, applicants for a certificate the category **Unrestricted** (with the exception of government lawyers as defined in s.90 and regulation 17) are required to pay a contribution to the Legal Practitioners Fidelity Fund, which is currently set at \$200.00.

There is no additional fee for membership of the Law Society.

I have completed my law degree and practical legal training requirements in another state, but have not been admitted, can I be admitted in the Northern Territory?

Yes. As soon as you have fulfilled all the Australian educational requirements for admission to legal practice (a law degree and approved period of practical legal training), you can choose which jurisdiction you wish to be admitted in.

The Legal Practitioners' Admission Board considers and approves applications for admission to the Supreme Court of the Northern Territory.

For information on applying for admission in the Northern Territory, please contact the Registrar of the Supreme Court and Secretary of the Admission Board, Ms Margaret Rischbieth, on 08 8999 6574 or refer to the Supreme Court website at www.supremecourt.nt.gov.au/lawyers/index.htm.

I have been admitted as a practitioner in another jurisdiction, and I am moving to the Northern Territory, do I need to get admitted in the Northern Territory?

No, you do not need to get admitted in the Northern Territory.

Some practitioners still regard it as a mark of respect to their new "home" jurisdiction to obtain admission here as well. You are entitled to do this if you wish but it is not a legal requirement for practice.

Admission in the Northern Territory for a lawyer already admitted in another jurisdiction is carried out administratively under the Mutual Recognition Act. Further information and pro-forma application documents can be found on the Supreme Court website at www.supremecourt.nt.gov.au/lawyers/index.htm.

I have been working on a restricted practising certificate (either in the Northern Territory or interstate), and have less than 18 months



of supervised legal experience. When can I get an unrestricted Northern Territory practising certificate?

Section 73 of the *LPA* states that you must engage in **supervised legal practice only** until you have completed a period or periods equivalent to 18 months supervised legal practice after the first day your first practising certificate was granted.

The 18 months can be made up of a number of separate periods, and does not have to all be undertaken in the Northern Territory. If your supervised practice has been in several different places and/or in broken periods, the Society will need to see evidence (by statutory declaration from your supervisors) that you have completed the equivalent of 18 months supervised legal practice.

I want to obtain a practising certificate as a barrister only, but I have not been in legal practice for 18 months yet; is this possible?

No. Practise as a barrister is necessarily unsupervised practice, because you are not carrying out your legal practice as an employee, or under the supervision, of a person with an unrestricted practising certificate.

Until you complete your 18 months of supervised legal practice as required by s.73, you cannot obtain a barrister's practising certificate.

I am leaving legal practice in the Northern Territory; must I surrender my Northern

Territory practising certificate?

If you are taking up legal practice interstate on a permanent basis, you may be told by that state's Law Society or Bar Association that you need to surrender your Northern Territory certificate straight away.

In most cases, assuming you are going to practise in the same capacity or under the same conditions as apply to your Northern Territory certificate, you can continue to use your Northern Territory certificate until it expires on 30 June, and then obtain a new certificate from your new home jurisdiction. Talk to your new Law Society or Bar Association about this.

If you need to obtain a different type of certificate immediately in your new home jurisdiction, contact our licensing officer to arrange surrender of your Northern Territory certificate (email licenseofficer@lawsocnt.asn.au). ●

Information Resources

Applying for admission in the Northern Territory and Pro-forma application documents
www.supremecourt.nt.gov.au/lawyers/index.htm

Practising certificate and insurance requirements or surrender of your Northern Territory certificate
(email licenseofficer@lawsocnt.asn.au)