

FAQs – Prohibited Lay Associates

This information sheet addresses the frequently asked questions relating to prohibited lay associates.

INFORMATION FOR LAWYERS AND CONSUMERS

Who is a lay associate?

Any associate of, consultant to, or person who shares the receipts, revenue or other income arising from, a law practice who is not an Australian legal practitioner (lawyer with a current practising certificate) is a lay associate.

What is a law practice?

A law practice is

- a sole practitioner;
- a law firm;
- an unincorporated legal practice;
- an incorporated legal practice; or
- a community legal service.

Who is a prohibited lay associate?

A prohibited lay associate is

- a disqualified person; or
- a person convicted of a “serious offence”.

Who is a disqualified person?

A disqualified person is a lawyer who has had their practising certificate suspended, cancelled or not renewed, whose name has been removed from the roll of legal practitioners, or who is the subject of a disqualification order.

The Victorian Legal Services Board maintains a [register of disciplinary action](#) taken against lawyers. It can be used to check the status of lawyers or ex-lawyers.

The Board also maintain a [list of non-lawyers](#) who have been listed as disqualified persons by order of the Victorian Civil Administrative Tribunal or a court. These

persons are prohibited from working in a law practice without the prior approval of the Board.

What is a serious offence?

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

If a lawyer has been refused a practising certificate, or refused renewal of a practising certificate, are they considered to be a lay associate?

Yes. Any person who does not hold a current practising certificate and is paid by or in connection with a law practice is a lay associate.

Is a trainee lawyer or an intern a lay associate?

Yes. A trainee lawyer or an intern who does not hold a practising certificate and is paid by or in connection with a law practice is a lay associate.

Do lawyers within the firm need to undergo “checks” to determine whether or not they are a prohibited lay associate?

No. A lawyer with a current practising certificate is not a lay associate and is therefore not covered by the prohibitions regarding lay associates.

Do temporary and agency staff or consultants need to undergo “checks”?

The Legal Profession Uniform Law provides an inclusive definition of lay associate and expressly includes “a consultant to the law practice”. This means that temporary and agency staff or consultants are likely to be covered by the law regarding prohibited lay associates.

Should the employer fully inform prospective employees about why they are being asked to disclose certain offences?

Yes. Given that there is a specific legal requirement for lay associates to disclose their status as a disqualified person or person convicted of a serious offence, it would seem only fair to do so. An easy way to do this is to provide or direct the person to a copy of the Board's [Prohibited Lay Associate Guidelines](#).

Is it sufficient for a law practice to obtain a verbal statement from existing employees about whether or not they have been found guilty of a relevant offence?

The way in which the law practice requests this disclosure and is satisfied of the response it receives is up to the law practice. It may be that a verbal statement is sufficient in some low risk circumstances but insufficient in other high risk circumstances (e.g. staff dealing with trust money).

If an employee has indicated they have not been convicted of a serious offence, can the law practice accept this or is further investigation required?

Generally it will be sufficient for a law practice to rely on a person's statement that they are not a disqualified person and have not been convicted of a serious offence without further investigation.

Is there any obligation on recruitment agencies to ask candidates about these disclosure matters?

No. There is no legal obligation on recruitment agencies to ask candidates about such matters. However, it would assist law practices to achieve and demonstrate compliance with the legal obligations regarding prohibited lay associates if they did ask.

How long does it take for the Board to make a decision regarding the application for approval to employ a prohibited lay associate?

While the Board is required to make a decision within 90 days, the Board is aware of the restricted time requirements in relation to employing new staff and will therefore consider applications as fast as possible.

What information would assist the Board in deciding on an application to employ a prohibited lay associate?

The Board will require background information about the reasons why the person is considered to be a prohibited lay associate (e.g. what offence has been committed or how the person falls within the definition of a disqualified person). Information about the role the person is to occupy within the law practice, the work they will undertake, and how they will be supervised should also be included with an application. A position description

would also assist the Board to understand the prospective role, and determine if any conditions should be imposed on his/her employment.

Can an employee who has been convicted of a serious offence continue to work with the law practice pending approval being sought from the Board?

No. The Uniform Law provides that a law practice must not have a prohibited lay associate unless he/she is approved by the Board.

If the Board does not grant approval for a law practice to employ a prohibited lay associate, does this constitute unlawful discrimination?

No. The Uniform Law specifically authorises the Board to make such a decision.

Is an employee who has participated in a diversion program, or who has received an official warning or caution required to disclose this information?

No. These are not serious offences in and of themselves but rather penalties for an offence. Unless the underlying offence is a "serious offence" for which the person has been convicted, there is no obligation on an employee to disclose the offence/penalty to the law practice.

Further information

Contact the Victorian Legal Services Board

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