

Ethics matters

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Failure to complete your annual CPD obligation is a disciplinary matter

It is a standard condition of all practising certificates issued by the Law Society that the holder must complete 10 CPD points and submit an Annual CPD Certificate before the end of the CPD year (the CPD year runs from 1 April to 31 March): section 70 of the *Legal Profession Act*, reg 11 and clause 16 of Schedule 2 of the *Legal Profession Regulations*. A breach of a condition of your practising certificate is a suitability matter under section 11 of the *Legal Profession Act* and as such it must be declared on all applications for a practising certificate. Under section 47 of the Act, the breach of a condition may be taken into account when the Society is considering whether you are a fit and proper person to hold a practising certificate; a breach of a condition of your practising certificate will also be noted on any certificate of fitness issued by the Law Society to another jurisdiction.

Who owns the legal file?

The Society regularly receives complaints from members of the public whose former legal practitioner has insisted on charging a photocopying fee to provide a copy of their legal file. In fact, unless (a) the legal practitioner claims a lien over the client's legal file for unpaid legal fees, or (b) a document was not prepared by the legal practitioner for the client or predominantly for the purposes of the client, all documents on the client's legal file belongs to the client: Rule 6 of the *Rules of Professional Conduct and Practice*. Therefore, where a client or former client requests to be provided with their legal file, the legal practitioner must provide it free of charge and may only charge the former client to copy documents on the file which were not prepared by the legal practitioner for the client or predominantly for the purposes of the client: Rule 6.5 of the *Rules of Professional Conduct and Practice*. If a legal practitioner wishes to retain a copy of the client's file for risk management purposes, it must be done at the legal practitioner's expense.

Overcharging can constitute a disciplinary matter

Section 466(1)(b) of the *Legal Profession Act* provides that the charging of excessive legal costs in connection with the practice of law is capable of constituting unsatisfactory professional conduct or professional misconduct.

When a legal practitioner is entitled to terminate a retainer

Under rule 5.1 of the *Rules of Professional Conduct and Practice*, a legal practitioner must complete the work required by the practitioner's retainer unless the practitioner and client have otherwise agreed, the practitioner is discharged from the retainer, or the practitioner terminates the retainer for just cause and on reasonable notice to the client.

What can I call myself?

If you hold a current practising certificate and engage in legal practice in the manner of a solicitor, you can call yourself a lawyer, legal practitioner, barrister and solicitor, solicitor and barrister, solicitor, attorney or counsel: reg 4 and Schedule 1 of the *Legal Profession Regulations*.

If you are admitted to practice but do not hold a current practising certificate, you can call yourself a lawyer or an Australian lawyer: section 5(a) of the *Legal Profession Act* and reg 4 and Schedule 1 of the *Legal Profession Regulations*. However, care should be taken when referring to oneself as a lawyer in circumstances where it might lead to the impression that you are entitled to engage in legal practice. Unless an exception applies under the *Legal Profession Act*, a person may not engage in legal practice whilst not being the holder of a current practising certificate: section 18 of the Act.