

An Update on the Legal Practice Board Practice Management Course Condition

From 1 July 2016 all practitioners who are not Principals of a law practice will have the practice management course condition (**PMC Condition**) imposed on their local practising certificate.

Since the inception of the PMC Condition the Legal Practice Board (**Board**) has been managing and considering applications by practitioners for the revocation or variation of the condition.

The Board's Professional Development Committee (**PDC**) would like to provide information and clarification to the profession on a range of issues that may arise in the administration of the PMC Condition.

Grand-parented Principals Changing Status

A Principal of a law practice (**Principal**) who has been grand-parented, and hence does not have the PMC Condition imposed on their practising certificate, may in future cease to act in the capacity as a Principal for extended periods of time. If they then choose to re-enter practice as a Principal and do not lodge a Form 11 (Notice of Intention to Commence as a Principal) the Board may not become aware of that change of status until and/or unless the change was disclosed in the practitioner's practising certificate (**PC**) renewal application.

In those circumstances, when the PDC becomes aware of the practitioner's change of status and is of the view that the PMC Condition (in part or whole) should be imposed (due to prolonged absence from Principal status), the Board can:

1. renew the certificate with the PMC Condition imposed: section 47(1)(a) of the *Legal Profession Act 2008* (the **Act**); or
2. if during the certificate's currency, seek consent from the practitioner to impose the PMC Condition (see section 47(3)(i) of the Act). In the absence of that consent, the Board will give notice to the practitioner of its intention to impose a condition under the provisions of sections 52 and 56 of the Act and provide opportunity for submissions from the practitioner.

In most such cases a varied form of the PMC Condition allowing the practitioner to continue in the role as Principal, but requiring completion of the PMC within a stipulated time, will be used.

It should be noted that rule 6 of the *Legal Profession Rules 2009* (the **Rules**) requires practitioners to notify the Board of a change of status, and rule 18C of the Rules requires practitioners to advise the Board, in the approved Form (Form 11), of their intention to become a Principal. These rules apply despite decisions made in regard to the PMC Condition status of practitioners.

The PDC takes a general position that if previous Principals have been out of Principal status for a period of 5 years or more then their individual suitability

to not have the PMC Condition imposed will be considered; and these matters will be dealt with on an individual basis and as they arise, either by delegated authority by the Executive Director or Deputy Executive Director of the Board, or by referral to the PMC for consideration.

Other Principals Changing Status

For practitioners who have not been grand-parented but who have had the PMC Condition removed after either completing the PMC or demonstrating experience justifying revocation or variation, the PDC also takes the general position that following a prolonged absence from Principal status individual suitability to not have the PMC Condition imposed will be considered. These matters will be dealt with on an individual basis and as they arise, either by delegated authority by the Executive Director or Deputy Executive Director of the Board, or by referral to the PDC for consideration.

Grand-parented Barristers Moving to the Amalgam

When a grand-parented Barrister decides to go, or return, to the amalgam they will be doing so without the PMC Condition imposed on their then current local practising certificate.

In those circumstances, when the PDC becomes aware of the change of status and if it is of the view that the PMC (in part or whole) should be imposed, as set out above, the Board can renew the certificate with the PMC Condition imposed or seek consent from the practitioner to impose the PMC Condition. Again, in the absence of that consent, the Board will give notice to the practitioner of its intention to impose a condition under the provisions of section 52 and 56 of the Act and provide opportunity for submissions from the practitioner.

The circumstances of grand-parented barristers going to or returning to the amalgam may vary greatly, from those who have previously had no practice management experience, to others who have had considerable experience over many years. As there is currently no PMC Condition on the practising certificates of grand-parented barristers, the imposition of a PMC Condition would have to be done at renewal, by consent or by giving notice as set out above.

These matters will be dealt with on an individual basis and as they arise, either by delegated authority by the Executive Director or Deputy Executive Director of the Board, or by referral to the PDC for consideration.

Other Barristers Moving to the Amalgam

For barristers who have not been grand-parented but who have had the PMC Condition varied to permit them to practice as a barrister without completing the PMC, the PMC Condition continues to apply and would require completion of the PMC prior to commencing as a Principal in the amalgam.

Appointment of External Interveners

In certain circumstances, the Board's Professional Affairs Committee (**PAC**) has (and will in the future) see fit to appoint practitioners who are not Principals as, amongst other things, a Manager under the provisions of Part 14 of the Act to firms that are under PAC scrutiny and management. Such appointees may have the PMC Condition imposed on their practising certificate.

Clearly, the PAC are of the view that practitioners appointed as Managers have the requisite skills to act in the capacity of a Principal and to manage the firms under which they accept the appointment. However, those practitioners are not intending to commence as a Principal in their own right and hence will not, as a matter of course, lodge a Form 11 (Notice of Intention to Commence as a Principal) or Form 12 (Request to Revoke the Condition on a Local Practising Certificate).

Appointed Managers in these circumstances are encouraged to seek revocation or variation of the PMC Condition. In circumstances where the management appointment is on a restricted or very short term basis, the Manager is encouraged to seek a variation to the PMC Condition. Managers appointed by the Board are *prima facie* seen to be able to act in the capacity of a Principal. In such circumstances, and upon application, appropriate revocation or variation of the PMC Condition will be granted.

The Situation for Locums

When a firm wishes to appoint a locum for a stipulated period of time, that locum practitioner may at that time have the PMC Condition imposed on their practising certificate.

Once again, those practitioners are not intending to commence as a Principal in their own right and hence will not, as a matter of course, lodge a Form 11 (Notice of Intention to Commence as a Principal) or Form 12 (Request to Revoke the Condition on a Local Practising Certificate).

It may be that the locum will not be taking on any of the responsibilities associated with being a Principal, and will be acting as an employed practitioner and in contact with the true Principal during the absence. In these circumstances, a simple notification is required as the locum's status has no implication on the PMC Condition.

However, if acting in the capacity of a Principal, locums should seek revocation or variation of the PMC Condition. In circumstances where the locum arrangement is on a restricted or very short term basis, the locum should seek a variation to the PMC Condition.

Practitioners as 'Acting Principal'

Circumstances may arise where a practitioner with the PMC Condition imposed on their practising certificate is asked to be an 'Acting Principal' during a period of absence (for example on leave) of their Principal.

Again, these practitioners are not intending to commence as a Principal in their own right and hence will not, as a matter of course, lodge a Form 11 (Notice of Intention to Commence as a Principal) or Form 12 (Request to Revoke the Condition on a Local Practising Certificate).

As with some locums, it may be that the 'Acting Principal' will not truly be taking on any of the responsibilities associated with being a Principal, and will be acting as an employed practitioner and in contact with the true Principal during the absence. In these circumstances, a simple notification is required as the practitioner's status has no implication on the PMC Condition.

However, true 'Acting Principals' should either comply with the PMC Condition, or seek revocation or variation of the PMC Condition. In circumstances where the 'Acting Principal' arrangement is on a restricted or very short term basis, the practitioner should seek a variation to the PMC Condition.

As a general principle, 'Acting Principals' need to comply with the PMC Condition and should seek a revocation or variation of the PMC Condition and demonstrate their capability to act as a Principal.

Another example is where the Board may, if it thinks it appropriate, appoint a practitioner (who might be an employee of an incorporated legal practice, or otherwise subject to the PMC Condition) to exercise the functions of the legal practitioner director (as Principal) in the absence of the existing legal practitioner director. In this situation, as with external interveners, the Board would not make such an appointment if the practitioner did not have the requisite skills or experience to practice as a Principal. Appointed practitioners in these circumstances are encouraged to seek revocation or variation of the PMC Condition. In circumstances where the management appointment is on a restricted or very short term basis, the appointee is encouraged to seek a variation to the PMC Condition.

Practitioners with a Second Place of Practice

Circumstances may arise where a practitioner may have the PMC Condition imposed on their practising certificate which is appropriate for their working situation, but who may wish to act as a sole practitioner for limited matters outside their normal working position.

In these circumstances the practitioner is effectively acting as a sole practitioner and Principal, but may not be intending to practice solely in that capacity and hence will not, as a matter of course, lodge a Form 11 (Notice of

Intention to Commence as a Principal) or Form 12 (Request to Revoke the Condition on a Local Practising Certificate).

In these circumstances, practitioners with a second place of practice need to be aware that the PMC Condition should be complied with and they should either comply with the condition, or seek revocation or variation of the PMC Condition. In circumstances where the second place of practice arrangement is on a restricted or very short term basis, the practitioner should seek a variation to the PMC Condition.

Practitioners with a second place of practice need to comply with the PMC Condition and seek a revocation or variation of the PMC Condition demonstrating their capability to act as a Principal.

In summary:

- if previous Principals have been out of Principal status for a period of 5 years or more then their individual suitability to not have the PMC Condition imposed will be considered on an individual basis and as they arise;
- when barristers are going to or are returning to the amalgam they will either have the PMC Condition imposed on their practising certificate or have the PMC Condition revoked based on their demonstrated capability to act as a Principal; and
- practitioners with the PMC Condition imposed and who seek to take a position that would equate to Principal status (whether as external interveners, locums, locums or as a second place of practice) need to comply with the PMC Condition, and should seek a revocation or variation of the PMC Condition and demonstrate their capability to act as a Principal.

Practitioners who have enquires regarding the operation and administration of the PMC Condition on local practising certificates should see the Legal practice Board Website (<https://www.lpbwa.org.au/Legal-Profession/Practice-Management>), or contact the Board on general@lpbwa.com or 6211 3600.