

INFORMATION FROM THE LEGAL PRACTICE BOARD

INTRODUCTION OF A PRACTICE MANAGEMENT COURSE FOR PRINCIPALS OF A LEGAL PRACTICE

Amendments to the *Legal Profession Rules 2009 (Rules)* were gazetted on 19 February 2016. Division 2A, *Condition on local practising certificate: practise as principal of law practice*, has been inserted into the Rules.

Division 2A of the Rules requires a local legal practitioner to have successfully completed an approved Practice Management Course (**PMC**) or to have obtained an exemption from completion of the PMC, and to give notice to the Legal Practice Board (**Board**), before practising as a principal of a law practice.

A copy of the amendments can be found on the attached link:

[http://slp.wa.gov.au/gazette/gazette.nsf/lookup/2016-29/\\$file/gg029.pdf](http://slp.wa.gov.au/gazette/gazette.nsf/lookup/2016-29/$file/gg029.pdf)

In 2015 amendments to the Rules regarding the continuing professional development (**CPD**) scheme were introduced that established a mandatory category of Practice Management as one of the four mandatory CPD categories required to be undertaken by local legal practitioners each year.

On 18 February 2015 the Board's Professional Development Committee (**PDC**) resolved that:

- A recommendation be referred to the Board for the introduction of a PMC;
- The PDC proceeds with the development of criteria for the curriculum and delivery of the PMC;
- The PDC proceeds with the development of criteria for the approval of providers of the PMC; and
- The PDC proceeds with the development of the necessary rules and amendments to the Rules to enable the imposition of the condition on practising certificates requiring the completion of the PMC.

On 8 April 2015 the Board endorsed the recommendations of the PDC to introduce a PMC.

Introduction of a Condition

Consideration was given as to the best method to introduce a mandatory PMC requirement.

Rather than introducing additional categories of practising certificates it was decided that the most effective and easiest application of the requirement would be through the imposition of a condition on local practising certificates held by practitioners who do not practise in the capacity of:

- a sole practitioner;
- a principal of a practice;

- a legal practitioner director of an incorporated legal practice; or
- a partner in a multi-disciplinary practice;

stipulating that the practitioner cannot practise in those capacities until the successful completion of an approved PMC and the removal of the condition from the holder's local practising certificate.

Content of the PMC

Analysis was undertaken and stakeholders were consulted and invited to provide input on the content of a PMC. Arising from that analysis and consultation, course content has been developed and agreed.

Delivery of the PMC

As the provision and delivery of the PMC is of primary importance to ensure that it achieves its planned objectives of improved practice management, it is essential to ensure that only properly qualified and accredited organisations are approved for the provision of the PMC. It is also important that in granting approval to be a PMC provider the Board is satisfied that the provider is established, competent and capable to deliver the PMC to the highest possible standards.

'Criteria for Approval as a Provider of a Practice Management Course' has been developed.

To further assist prospective providers of the PMC the following documentation has been developed:

- 'Guidelines for the Development of a Practice Management Course', read together with 'Guidance Notes for the Content of a Practice Management Course'; and
- 'Application for Approval as a Service Provider of a Practice Management Course and Approval of a Practice Management Course'.

PMC Providers

The Board called for Expressions of Interest from providers for delivery of the PMC.

On 16 March 2016 the PDC resolved to approve an application from the College of Law (WA) for the delivery of a PMC.

Details of the curriculum and programs of the PMC to be offered by the College of Law (WA) can be obtained by requesting a course brochure from the College, or by contacting Michael Cole on Tel: 9214 0202.

Parties required to undertake the PMC

A decision was made to identify who would be required to undertake and satisfactorily complete the PMC, or be exempted from completing the PMC.

There are many practitioners already in the work place who act in the role of a principal, including:

- sole practitioners;
- principals of law firms;
- legal practitioner directors of incorporated legal practices;
- legal practitioner partners of multi-disciplinary practices; and
- practitioners coming into Western Australia from other Australian jurisdictions who will have acted as a principal in those other jurisdictions.

It is not realistic to enforce attendance and completion of the PMC on these practitioners.

However, additionally there will be:

- practitioners coming into Western Australia from international jurisdictions who will have acted as a principal in those other jurisdictions;
- leaders of in-house legal teams;
- leaders of legal teams within government agencies;
- leaders of community legal centres; and
- leaders within the Aboriginal Legal Service.

and who wish to act in the capacity of a principal in this state.

The grant of a revocation or variation on the PMC condition on the practising certificate of those practitioners will be considered on an individual basis upon application.

Practitioners who had not previously held an unrestricted practising certificate but had acted, for example, as a legal team leader in a government agency, would need to provide a case for exemption from both the period of unrestricted practice (by application to the Board) and then from the requirement to complete the PMC (by application to the Board) before they could become a principal outside their government working context.

Another exception to the imposition of the PMC condition is the holder of a practising certificate subject to a period of supervised legal practice pursuant to section 50 of the *Legal Profession Act 2008*.

The PMC condition will not be imposed on a local practising certificate if the holder is still subject to a period of supervised legal practice (see rule 18C(2)). As a restricted practitioner is eligible to be a principal, as a partner in a law practice, it is not practicable to have the PMC condition imposed on the holder's local practising certificate, and the holder be required to comply with the PMC condition prior to completing a period of supervised legal practice. At the conclusion of the restricted practitioner's period of supervised legal practice, the PMC condition will be imposed on the local practising certificate held.

It is also not realistic to enforce attendance and completion of the PMC on practitioners practising solely in the manner of a Barrister. All current Barristers act in the role of a principal as a sole practitioner and will benefit from the exception in that regard (see rule 18C(2)). However, incoming Barristers may seek to vary the PMC condition to make its effect nugatory while the practitioner practises as a Barrister, has the '*Barrister only*' condition imposed on the practitioner's local practising certificate and has completed, or has undertaken to complete, a suitable course for practise as a Barrister that is approved by the WA Bar Association or equivalent within a specified period of time, or the practitioner has the skills or experience to practise as a Barrister (see rule 18F(2)).

Rule 18D(2) provides that an application for revocation or variation from the PMC must be in the approved form. The approved forms referred to in rule 18D(2) are:

- Revocation: LPB Form 12 *Request to Revoke the Condition on a Local Practising Certificate: Practice Management, imposed pursuant to rule 18C(1) of the Legal Profession Rules 2009.*
- Variation: LPB Form 13 *Request to Vary the Condition on a Local Practising Certificate: Practice Management, imposed pursuant to rule 18C(1) of the Legal Profession Rules 2009.*

The above forms are available for download from the Board's website.

An additional utilisation of the PMC and the modules within the PMC will be to grant powers to the Board and its delegated committees, and to the Legal Profession Complaints Committee, to impose sanctions and direct that part or all of the PMC be undertaken and successfully completed by practitioners in circumstances that it is deemed appropriate for them to do so. Such sanctions would be implemented through the imposition of a condition on the practitioner's local practising certificate.

By having an imposed sanction condition on the holder's local practising certificate, the practitioner would not be entitled to apply for removal of the primary condition to complete a PMC, or for any other exemption in regard to the PMC, until the sanction condition requirements had been satisfied and the condition removed from the local practising certificate.

Promotion of PMC through CPD Incentives

As there will be a large cohort of practitioners who are not yet eligible, or will not be required, to undertake the PMC, all practitioners are encouraged to undertake the PMC by offering CPD incentives to do so.

The Board agreed that if a practitioner undertakes and successfully completes the PMC the practitioner will be credited with having fulfilled the full 10 point CPD requirement for the CPD year during which the PMC was undertaken.

Timing and Transitional Arrangements

As a general principle, the holder of a local practising certificate imposed with the PMC condition cannot commence practise as principal until they have:

- Been granted an exemption to successfully complete the PMC; or

- Successfully completed the PMC; and
- Have applied for and been granted approval for the removal of the condition to successfully complete the PMC from their local practising certificate; and
- Have notified the Board of the intention to commence practise as a principal.

However, the availability and timing of the delivery of the PMC may not enable a practitioner to undertake the PMC prior to the planned commencement date as a principal. In such circumstances some flexibility will be needed in allowing time for completion of the PMC condition.

The Board agreed that in circumstances where the availability and timing of the delivery of the PMC may not enable a practitioner to undertake the PMC prior to the planned commencement date as a principal the PMC condition be amended, upon application, to require completion of the PMC within a stipulated time (see rule 18D(1)(b) and LPB Form 13).

Notice to commence as a principal

To enable the Board to monitor the requirements for the meeting of the PMC condition on practising certificates it is part of the PMC condition that a practitioner intending to commence practise in the capacity of a principal must provide notice to the Board of the practitioner's intention to do so and to advise on the planned commencement date (see rule 18C(1)(b)).

The form referred to in rule 18C(1)(b) is LPB Form 11 *Notice of a Practitioner's Intention to Commence as a Principal of a Law Practice*. LPB Form 11 is available for download from the Board's website.

Should further information be required, please contact Mr Graeme Geldart, Executive Director of the Board at (08) 6211 3600 (telephone), (08) 9325 2743 (facsimile) or email general@lpbwa.com.

Frequently asked questions

The approved forms for PMC notifications are:

- LPB Form 11 *Notice of a Practitioner's Intention to Commence as a Principal of a Law Practice;*
- LPB Form 12 *Request to Revoke the Condition on a Local Practising Certificate: Practice Management, imposed pursuant to rule 18C(1) of the Legal Profession Rules 2009;* and
- LPB Form 13 *Request to Vary the Condition on a Local Practising Certificate: Practice Management, imposed pursuant to rule 18C(1) of the Legal Profession Rules 2009.*

The above forms are available on the Board's website.

I am already the principal of a law practice. Do I need to complete the PMC?

No. Practitioners acting in the capacity of a principal, other than a restricted practitioner, immediately before 1 July 2016 will not have the PMC condition imposed, unless it is subsequently imposed by the Board or the Legal Profession Complaints Committee as a remedial sanction.

This includes Barristers practising solely in the manner of a Barrister and who have a local practising certificate imposed with the '*Barrister only*' condition.

There is no need to complete an LPB Form 11. The Board's records should have already identified you as a principal.

I am starting my own practice after 1 July 2016. Do I need to complete the PMC?

Unless you are already practising as a principal, yes. The PMC condition comes into force on and from 1 July 2016. All practitioners holding an unrestricted practising certificate will not be able to practise as a principal until the PMC condition has been removed.

You will need to complete LPB Form 11 and LPB Form 12.

I am not going to operate a trust account. Do I need to do the PMC to practise as a principal?

Yes, unless you can satisfy the Board that you have the skills or experience to practise as the principal of a law practice. You will need to complete LPB Form 11 and LPB Form 12.

I want to start my own practice and act as a principal, but I cannot do the PMC course for another 6 months?

You can seek a variation to the PMC condition to enable you to commence as a principal and complete the PMC within a specified time frame. You will need to complete LPB Form 11 and LPB Form 13:

I was the principal of a law practice in another state. Do I need to do the PMC?

Possibly not. The Board may be satisfied that you have the skills or experience to practise as the principal of a law practice if you held a practising certificate in another jurisdiction allowing you to practise as a principal.

You will need to complete LPB Form 11 and LPB Form 12.

I did a PMC course interstate. Do I need to do a PMC course approved by the Board?

Possibly not. The Board may be satisfied that you have the skills or experience to practise as the principal of a law practice if you have successfully completed a qualification that the Board considers is at least equivalent to an approved PMC.

You will need to complete LPB Form 11 and LPB Form 12.

I have other qualifications and experience that enable me to run a practice. Do I need to complete the PMC?

Possibly not. The Board may be satisfied that you have the skills or experience to practise as the principal of a law practice if you have prior learning experience that, in the opinion of the Board, demonstrates that you are suitable to practise as the principal of a law practice.

You will need to complete LPB Form 11 and LPB Form 12.

I am going to commence practising solely as a Barrister. Do I need to complete the PMC?

You may complete an approved PMC. However, practitioners practising solely as a Barrister can seek a variation to the PMC condition if:

- The practitioner holds a local practising certificate imposed with the “*Barrister only*” condition; and
- The practitioner has successfully completed a course in respect of practise as a Barrister that has been approved by the WA Bar Association; or
- The practitioner has given the Board a written undertaking that the practitioner will complete a Bar Readers Course within the period of 2 years or a further period allowed by the Board; or
- The Board is satisfied that the practitioner should not be required to undertake a Bar Readers Course because the practitioner has the skills or experience to practise as a barrister.

You will need to complete LPB Form 11 and LPB Form 13.

Can I do the PMC even if I do not intend to practise as a principal?

Yes. Further, when you first complete the PMC you will be credited with having fulfilled the full 10 point CPD requirement for the CPD year.

Once I have completed the PMC, do I have to do it again?

No, not unless the Board imposes specific conditions on your practising certificate that you complete all or part of the PMC.

Do all partners of my firm have to complete the PMC?

All partners, principals, commencing will need to complete the PMC to have the PMC condition removed.

Do I have to pay a fee to submit the approved forms LPB Form 11, 12 or 13?

No.

I am a restricted practitioner. Can I do the PMC?

Yes. However, the Board will consider if you have the skills or experience to practise as a principal once you notify the Board you wish to practise as a principal. That is, if you completed the PMC now, and then relied upon that course to become a principal some years later, your request to have the PMC condition revoked would be subject to Board approval. The Board would then take into account the period of time since you completed the PMC, your experience and whether you are a fit and proper person.

Who is providing the PMC?

There will be a list of approved providers published on the Board's website. All questions in regard to the cost of the PMC and schedule of courses should be forwarded to the approved providers directly.

Currently there is one approved PMC provider – the College of Law (WA). Details of the curriculum and programs of the PMC can be obtained by requesting a course brochure from the College, or by contacting Michael Cole on Tel: 9214 0202.