

Supervised Legal Practice Guidelines

It is a legislative requirement that following admission and the obtaining of a practising certificate, a local legal practitioner can only engage in the practice of law if supervised by a legal practitioner holding an unrestricted practising certificate, in a capacity prescribed in s.50 of the *Legal Profession Act 2008 (Act)*. This is to enable the newly admitted practitioner to obtain relevant experience in the practice of law before he or she is able to practice unsupervised or on their own account.

Additionally, the Board has power to impose a condition on the grant of a practising certificate¹, requiring the holder to complete a period of supervised legal practice². The Board is likely to impose a 12 month supervised legal practice condition on the grant of a practising certificate if a practitioner has not held an Australian practising certificate in the past 5 years.

A practitioner may apply for the amendment of their practising certificate to remove a supervised legal practice condition when the practitioner has completed the required period of supervised legal practice.

It is the responsibility of the practitioner to ensure compliance with the restricted practice requirements of s.50(4) of the Act. However, the Legal Practice Board of WA (**Board**) provides the following guidance.

What is the meaning of “supervised legal practice” and “restricted legal practice” under the Act?

The Act requires that a local legal practitioner who does not have the “required experience” must engage in “restricted legal practice only”³. “Required experience” is defined as a period of “supervised legal practice”⁴. The meaning of “supervised legal practice” in s.3 of the Act is slightly narrower than the meaning of “restricted legal practice” in the Act. In these Guidelines the term “supervised legal practice” is used interchangeably to refer to either definition.

In s.50(1) of the Act “restricted legal practice” means legal practice by a person who is an Australian legal practitioner -

- (a) As an employee of a law practice if –
 - (i) at least one partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and
 - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or
- (b) As a partner in a law firm if –

¹ Refer s.47 of the Act, in particular s.47(3)(a).

² “Supervised legal practice” is defined in s.3 of the Act. In these Guidelines, the term supervised legal practice is used interchangeably to refer to “restricted legal practice” as defined in s.50(1) of the Act or “supervised legal practice” defined in s.3 of the Act.

³ Refer s.50(4), as affected by s.50(1) of the Act.

⁴ Refer s.50(1) of the Act and the definition of “supervised legal practice” in s.3 of the Act.

- (i) at least one other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and
- (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or
- (c) As a WA government lawyer;
- (d) As an interstate government lawyer; or
- (e) As an employee of a body that carries on a business other than the practice of law if the person engages in legal practice under the supervision of an Australian legal practitioner who holds an unrestricted practising certificate; or
- (f) In a capacity approved for the purpose of this paragraph under a legal profession rule.⁵

Not all “restricted legal practice” is included in the definition of “supervised legal practice”. However a practitioner who is currently practising in Western Australia in one of the capacities listed above, may use LPB Form 5 to satisfy the Board that the statutory required experience has been completed, or to apply for an exemption from the requirement to engage in restricted legal practice only⁶, if applicable.

What is “required experience”?

“Required experience” is defined in s.50(1) of the Act. The practical interpretation of this provision is:

- The “required experience” for a lawyer who completed 12 months formal articles of clerkship registered with the Board (or a 12 month supervised workplace training contract formally registered with another Australian admission board) will be 18 months.
- The default position for all other lawyers is that the “required experience” will be 2 years. This includes all lawyers who completed an approved practical legal training (PLT) course prior to admission, lawyers who were employed as supervised law graduates or paralegals prior to admission, and lawyers who completed training contracts overseas.
- Some lawyers who have completed periods of post-admission legal practice under supervision in some overseas jurisdictions, may be able to apply under s.50(7) of the Act, for a reduction in the required period to 12 months (refer below).

In these Guidelines the term “required period” is used interchangeably to refer to:

- the required experience as defined above, or
- a period of supervised legal practice that has been imposed by the Board, or
- a period of supervised legal practice on which the practitioner is relying for an exemption from the requirement to engage in restricted legal practice only.

What periods of supervised legal practice can be counted towards the required period?

Work that is quasi-legal in nature will not count towards the required period, e.g.:

- Paralegal work;
- Working as a judge’s associate;

⁵ Rule 3A of the *Legal Profession Rules 2009 (Rules)*, as affected by rule 19 of the Rules.

⁶ Refer s.50(4) of the Act as affected by s.50(1) and s.50(7) of the Act.

- Policy work;
- Working as a settlement agent;
- Working as a migration agent;
- Working as a tax agent.

Supervised legal practice completed on a full-time basis in Australia can count towards the required period. Periods of part-time legal practice will only count towards the required period if approved by the Board⁷ as described in these Guidelines.

In addition:

- “Normal periods of leave” are interpreted by the Board as 20 days annual leave and up to 10 days sick leave in any 12 month period of full-time employment. Practitioners are entitled to take normal periods of leave but cannot have regard to untaken leave when calculating the supervised legal practice completed, and must email the Board to advise of any leave taken in excess of usual entitlements and make up those extra days before applying for removal of the condition from the practising certificate.
- The Board calculates full-time employment on the basis of 37.5 hours per week.
- Supervised legal practice undertaken in excess of 37.5 hours per week, or undertaken outside of normal business hours/and or on weekends, is not taken into account.
- Part-time arrangements of more than 20 hours per week that have been approved by the Board are calculated as: the number of full weeks in the period, multiplied by the number of hours per week approved by the Board, divided by 37.5. The result, rounded down to the nearest round number, is the equivalent of full-time supervised legal practice completed during that period.
- Consecutive periods of supervised legal practice will count towards the required period, notwithstanding that there may be absences from legal practice in between those periods. However, the Board has the power to impose additional periods of supervised legal practice under s.47 of the Act if relevant and reasonable to do so.⁸

When the primary supervising practitioner changes, or if the restricted practitioner ceases employment, the restricted practitioner should obtain a letter from the supervising practitioner that details:

- Details the period the practitioner was employed under supervision,
- Describes whether the employment was full-time or part-time, and
- Confirms that the restricted practitioner did not take leave in excess of usual entitlements during that period.
- If the supervising practitioner was not a local legal practitioner during the relevant period, evidence that the supervising practitioner was an unrestricted Australian legal practitioner during the relevant period.

The letter will be required when the restricted practitioner applies to the Board for removal of the supervised legal practice condition from a practising certificate.

⁷ Regulation 7 of the *Legal Profession Regulations 2009*

⁸ Refer s.47 of the Act.

How do I apply for part-time periods of supervised legal practice to count towards the required period?

Supervised legal practice worked on a part-time basis may count towards your period of supervised legal practice if:

- it is approved by the Board⁹; and
- it is equivalent to the required experience worked on a full-time basis.

Please note that practitioners are expected to seek prior approval for part-time employment to count towards the required period, although retrospective approval may be given in some circumstances.

Applications to the Board for approval can be made by letter or email.

The Board's policy regarding part-time supervised legal practice is:

- Supervised legal practice may be undertaken on a part-time basis if a practitioner attends at the office of their employer on at least 3 separate days per week, for a period of not less than 20 hours in total. Up to 4 hours of the required 20 hours can be worked remotely in a 'virtual office' setting and those maximum 4 remote hours can amount to the required third day 'at the office' if worked on a separate day.
- Absent exceptional circumstances, this policy will be strictly adhered to.

The above policy does not prevent a restricted practitioner from practising on an ad-hoc, casual, or part-time basis of less than 20 hours per week. However, that employment will not count towards the required period.

Special Circumstances¹⁰:

Pro Bono and volunteer legal work:

A restricted practitioner can only engage in legal work on a volunteer or pro bono basis for:

- a) a community legal centre within the meaning of s.388(1) of the Act;
- b) the Aboriginal Legal Service of Western Australia (Inc.);
- c) the Legal Aid Commission of Western Australia; or
- d) a local charitable or not-for-profit body, if approved by the Board to do so.

It is the practitioner's responsibility to comply with professional indemnity insurance requirements and employment law that applies to any volunteer or pro bono legal practice.

Secondment of restricted practitioners:

If a law practice intends to second a restricted practitioner employed by the law practice to the offices of an in-house corporation, the restricted practitioner may be supervised by:

- an unrestricted Australian legal practitioner who is a partner, legal practitioner director or employee of the law practice, or

⁹ Refer reg. 7 of the Regulations.

¹⁰ Refer s.50 of the Act and rule 19 of the Rules for the legislative basis for the following statements.

- an unrestricted Australian legal practitioner who is an employee of the in-house corporation.

The restricted practitioner should notify the Board by email of any periods of secondment, with details of the supervision arrangements that will be in place during the secondment. Secondments overseas will not count towards the required period unless the practitioner is primarily engaged in the practice of Australian law under the supervision of an unrestricted Australian legal practitioner whilst based overseas, and the Board has given approval for the period to count.

Restricted practitioners employed by sole practitioners or incorporated legal practices with only one legal practitioner director:

A restricted practitioner employed by a law practice at which there is only one unrestricted Australian legal practitioner (**the sole practitioner**), may be supervised during periods of the sole practitioner's absence, by another unrestricted Australian legal practitioner. Requests for approval should describe the proposed supervision arrangements and be signed by both the sole practitioner and the proposed supervising practitioner. The supervision arrangements must be approved by the Board. Alternatively the sole practitioner can email the Board to advise of the absence and confirm that the restricted practitioner will not engage in legal practice during that period, or describe the arrangements under which the sole practitioner will continue to supervise the restricted practitioner during that period.

WA Government Lawyers and Interstate Government Lawyers:

Legal practice as a WA government lawyer or interstate government lawyer (including a Commonwealth government lawyer) is included in the meaning of "restricted legal practice" in s.50 of the Act. However, only specified government lawyers are included in the definition of "supervised legal practice" in s.3 of the Act, being Australian legal practitioners engaging in legal practice under the supervision of:

- (a) the State Solicitor;
- (b) Director of Legal Aid;
- (c) Director of Public Prosecutions;
- (d) a Director of the Australian Government Solicitor;
- (e) the Regional Commissioner, a General Counsel or Regional Counsel of the Australian Securities and Investment Commission in Western Australia; or
- (f) the Deputy Director, Perth Office of the Director of Public Prosecutions (Cwlth).

Notwithstanding that restricted legal practice by some WA government lawyers and interstate government lawyers is not "supervised legal practice" as defined in s.3 of the Act, those practitioners can follow the principles described in these Guidelines, and lodge an LPB Form 5 when they have completed the required period, if they are currently practising in Western Australia.

Can a person who has practised overseas apply for a reduction in the required period of supervised legal practice?

A lawyer who has previously been admitted and practised overseas in New Zealand, England, Wales, Northern Ireland, Ireland, Scotland, South Africa, Canada, the United States of America, Hong Kong, Israel, the Philippines, Sri Lanka, Singapore or Malaysia, may apply for a reduction in the required period to 12 months when applying for the grant of a practising certificate to commence employment, if the applicant has more than two years:

- post admission experience in their home jurisdiction; and/or

- in an Australian law practice under supervision whilst meeting admission requirements,
and has not been absent from legal work of that nature for more than two years preceding the application.

An application made under s.50(7) for a reduction in the required period to 12 months should be in the form of a statutory declaration including:

- The dates the applicant has engaged in legal practice or been employed in an Australian law practice working under supervision, and whether the legal practice or employment was on a full-time or part-time basis;
- The name of the employer or law practice, the capacity in which employed and the nature of the legal work undertaken;
- Details of any supervision arrangements, including the name and qualifications of the supervisor, and the nature of the supervision.

The application should include letter/s from the relevant supervising/practitioners confirming the information in the application.

Applications under s.50(7) of the Act are considered on a case-by-case basis on their merits.

What does “engage in legal practice under the supervision of” mean?

The Act does not define or provide guidance as to the meaning of the phrase “engage in legal practice under the supervision of”.

The objectives of the supervision requirements include the following.

- At least one person (i.e. the supervisor) must accept responsibility for the supervision of the restricted practitioner during the period of supervised legal practice.
- The period of supervised legal practice can be overseen by more than one supervisor, consecutively, provided that there is continuity of direct supervision over the entire period of supervised legal practice.
- The supervision requirement does not preclude any other Australian legal practitioner employed within the same organisation from settling or supervising work of the restricted practitioner.
- Similarly, other Australian legal practitioners are not precluded from assisting with the supervision and instruction of the restricted practitioner.

The Board’s policy in relation to supervised legal practice is that the following minimum arrangements be put in place:

- Daily contact between the supervising practitioner and the restricted practitioner for the purpose of review, guidance and instruction;
- Any legal advice or assistance provided by the restricted practitioner (verbal or written) to a client has been approved by the supervising practitioner before it is provided to the client; and
- The supervising practitioner scrutinises and signs-off on correspondence and other documents prepared by the restricted practitioner.

To prevent an inadvertent breach of the Act, prior approval from the Board should be sought if it is proposed that the supervising practitioner will not be physically located at the same office as the restricted practitioner; or if any other unusual circumstances apply.

The supervising practitioner should provide a signed letter detailing the proposed supervision arrangements. The arrangements should include face-to-face contact at least once every 3 months if the proposed supervising practitioner is based outside of Western Australia.

How does a local legal practitioner apply for their practising certificate to be amended to remove the supervised legal practice condition and/or apply for an exemption from the requirement to engage in restricted legal practice only¹¹?

A local legal practitioner is required to lodge a “Form 5: Application to Remove Supervised Legal Practice Condition from Practising Certificate” on completion of the required period. The Form 5 can be downloaded from the Board’s website: <http://www.lpbwa.org.au/>. The practitioner can email a scanned copy of the Form 5 and attachments in the first instance, however the original Form 5, original current local practising certificate and attachments must be posted or delivered to the Board.

Legal Practice Board’s Contact Details

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These Guidelines were approved by the Admissions and Registration Committee of the Legal Practice Board on 28 February 2018.

¹¹ Refer s.50(4) of the Act, as affected by s. 50(1) of the Act, the definition of “supervised legal practice” in s.3 of the Act, s.50(7) of the Act and s.59(1)(a) of the Act.