

## Supervised Legal Practice Guidelines

It is a statutory condition that following admission and the obtaining of a practising certificate, an Australian legal practitioner can only engage in legal practice if supervised by an Australian legal practitioner in a capacity prescribed under the meaning of *supervised legal practice* in sections 6(1) of the *Legal Profession Uniform Law (WA)* (**Uniform Law**) and rule 7 of the *Legal Profession Uniform General Rules 2015* (**Rules**)<sup>1</sup>. This is to enable the newly admitted practitioner to obtain relevant experience in the practice of law before the practitioner is able to practice unsupervised or on their own account.

Additionally, the Legal Practice Board (**Board**) has power to impose a discretionary condition on a practising certificate<sup>2</sup>, requiring the holder to complete a period of supervised legal practice<sup>3</sup>. 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 an Australian 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 section 49 of the Uniform Law. However, the Board provides the following guidance.

### What is the meaning of “supervised legal practice” under the Uniform Law?

The Uniform Law requires that an Australian legal practitioner who has not completed the required period of supervised legal practice must engage in supervised legal practice only<sup>4</sup>.

Under section 6(1) of the Uniform Law *supervised legal practice* means legal practice by a person who is an Australian legal practitioner -

- (a) as an employee of, or other person working under supervision in, a law practice, where—
  - (i) at least one legal practitioner associate of the law practice is an authorised principal; and
  - (ii) the person engages in legal practice under the supervision of an authorised principal referred to in subparagraph (i); or
- (b) as a principal of a law practice (other than a community legal service), where the person engages in legal practice under the supervision of an authorised principal of the law practice; or

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<sup>1</sup> Section 49 of the Uniform Law

<sup>2</sup> Refer section 53 of the Uniform Law, read with rule 16(b)(iii) of the Rules.

<sup>3</sup> “Supervised legal practice” is defined in section 6 of the Uniform Law, including the meaning under rule 7 of the Rules..

<sup>4</sup> Section 49(1).

- (c) as a corporate legal practitioner or government legal practitioner, where the person engages in legal practice under the supervision of a person who holds, or is eligible to hold but is exempted from holding, an Australian practising certificate authorising the holder to supervise legal practice by others; or
- (d) in a capacity or in circumstances specified in the Uniform Rules for the purposes of this definition.

Section 7 of the Rules provides that:

- (1) For the purposes of paragraph (d) of the definition of **supervised legal practice** in section 6(1) of the Uniform Law, supervised legal practice in the case of an Australian legal practitioner who is an employee of a law practice (or who, though not an employee of the law practice, is working under supervision in a law practice) includes supervision by an employee of the law practice who holds an Australian practising certificate authorising the holder to supervise legal practice by others.
- (2) For the purposes of paragraph (d) of the definition of **supervised legal practice** in section 6(1) of the Uniform Law, supervised legal practice in the case of an Australian legal practitioner who is an employee of a law practice, and who is engaged in legal work for a client of the law practice, or in legal work for a community legal service, otherwise than under the supervision of an authorised principal of the law practice, includes supervision by an Australian lawyer (the **supervising lawyer**), where—
  - (a) the supervising lawyer—
    - (i) holds an Australian practising certificate authorising the holder to supervise legal practice by others, or
    - (ii) is exempt from holding or otherwise not required to hold such an Australian practising certificate by or under the Uniform Law, jurisdictional legislation or legislation of the Commonwealth, and
  - (b) the supervision is adequate in the circumstances and not less than the supervision that the employee would have received from an authorised principal of the law practice.
- (3) Subrule (2) applies in relation to legal work engaged in by an employee of a legal practice during the whole or any part of the period starting on 1 July 2015 and ending immediately before the date of commencement of that subrule, as well as to legal work engaged in on or after that date.<sup>5</sup>

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 only<sup>6</sup>, if applicable.

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<sup>5</sup> In Western Australia commencement day is 1 July 2022

<sup>6</sup> Section 49(4) of the Uniform Law as affected by sections 55 and 74 of the Uniform Law.

In these Guidelines the term ***supervised legal practice*** is used to refer to:

- the required period of supervised legal practice 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 supervised legal practice only.

### **What will satisfy the requirement to engage in supervised legal practice only?**

The practical interpretation of section 49(1) is:

- For a practitioner who completed 12 months formal articles of clerkship registered with the Board (or a supervised workplace training contract formally registered with another Australian admission board) will be 18 months.
- The default position for all other practitioners will be 2 years. This includes all practitioners 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 practitioners who have completed periods of post-admission legal practice under supervision in some overseas jurisdictions, may be able to apply under section 49(4) of the Uniform Law, for a reduction in the required period (refer below).

### **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;
- 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 or part-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 Board 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 section 53 of the Uniform Law if relevant and reasonable to do so.

When the primary supervising practitioner changes, or if the supervised practitioner ceases employment, the supervised 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 supervised practitioner did not take leave in excess of usual entitlements during that period.
- If the supervising practitioner was not an Australian 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 supervised practitioner applies to the Board for removal of the supervised legal practice condition from a practising certificate.

### **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 Board; 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 may not count towards the required period.

### **Special Circumstances:**

#### **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 service within the meaning of section 6(1) of the Uniform Law;
- 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 supervised practitioner employed by the law practice to the offices of an in-house corporation, the supervised practitioner may be supervised by:

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

The supervised 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.

### **Supervised practitioners employed by sole practitioners or incorporated legal practices with only one legal practitioner director:**

A supervised 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.

### **Government Lawyers and Interstate Government Lawyers:**

Legal practice as a government lawyer or interstate government lawyer (including a Commonwealth government lawyer) is included in the meaning of supervised legal practice in section 49 of the Uniform Law.

Notwithstanding that supervised legal practice by some government lawyers and interstate government lawyers has not been recognized in Western Australia, 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; 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 section 49(2) for a reduction in the required period 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 section 49(2) of the Uniform Law are considered on a case-by-case basis on their merits.

## **Practical guidance to supervision?**

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 supervised 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 supervised practitioner.
- Similarly, other Australian legal practitioners are not precluded from assisting with the supervision and instruction of the supervised 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 supervised practitioner for the purpose of review, guidance and instruction;
- Any legal advice or assistance provided by the supervised 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 supervised practitioner.

To prevent an inadvertent breach of the Uniform Law, 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 supervised 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 an Australian legal practitioner apply for their practising certificate to be amended to remove the supervised legal practice condition, or apply for an exemption from the requirement to engage in supervised legal practice only?**

An Australian 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.

*You can contact the Board on (08) 6211 3600, or by fax on (08) 6211 3650 or via email to [info@lpbwa.com](mailto:info@lpbwa.com).*

*These Guidelines were approved by the Admissions and Registration Committee of the Legal Practice Board on 3 August 2022.*