

Supervised legal practice – An overview for legal practitioners under supervision

This fact sheet covers information supervised legal practitioners need to complete their supervised legal practice.

THE SUPERVISION CONDITION

The Legal Profession Uniform Law¹ requires that the first Australian practising certificate issued to a lawyer in Victoria must carry a supervision condition.

If you hold a practising certificate that carries this condition you may only engage in legal practice if you are supervised by a properly qualified supervisor. This condition will remain on your practising certificate until you apply to have it removed.

The supervision condition also applies if you are an interstate or international legal practitioner (including from New Zealand) and hold a Victorian practising certificate, however you may be eligible to apply for an exemption (see page 3 below).

The supervised legal practice condition *does not apply* to barristers or foreign lawyers that only practice foreign law in Victoria.

How long does the required period of supervised legal practice last?

Your supervised legal practice commences from the date of your first practising certificate and runs for a minimum duration calculated as follows²:

- If you qualified for admission by undertaking workplace training under the supervision of an Australian lawyer (including articles of clerkship), you must complete the equivalent of 18 months full-time supervised legal practice.
- If you qualified for admission by undertaking other practical training, such as a course provided by the

Leo Cussen Institute or the College of Law, you must complete the equivalent of 2 years full-time supervised legal practice.

If you have undertaken supervised legal practice on a part-time basis, the equivalent period is calculated on a *pro rata* basis.

What is legal practice?

In order to complete your supervision period, you must be engaging in legal practice. This is particularly relevant for government legal employment where there may be a mix of legal and non-legal work.

The terms '*engage in legal practice*' and '*legal services*' are defined in the Uniform Law³. While there is no legislative guidance on the meaning of legal practice, further guidance is provided by case law⁴.

We consider the following types of work to be examples of legal practice:

- giving legal advice;
- interpreting and applying legislation or case law for use of a client, whether or not for fee; or
- drafting legal documents.

The following examples of work are generally not considered to be legal practice:

- paralegal work;
- working as a judge's associate;
- policy work, including legal policy work;
- working as a conveyancer;
- working as a migration agent;

¹ See s. 49(1) of the Uniform Law.

² See s. 49 of the Uniform Law and rule 14 of the *Legal Profession Uniform General Rules 2015*

³ See s. 6 of the Uniform Law

⁴ See for example *Cornell v Nagle* [1995] 2 VR 188

- working as a tax agent; and
- working as a patent attorney.

Although the above professions work extensively with legislation, and often provide advice, they are either not considered to be engaging in legal practice or are specifically exempted by legislation. For example, policy work is expressly excluded from the definition of *engage in legal practice* under the Uniform Law.

If you are unsure whether the work you are doing is legal practice, ask yourself:

- Does an Act of Parliament or rules of a court require the work to be done by a legal practitioner?
- Is the work normally done by a legal practitioner?
- Does the work require training or expertise in the law?
- Who is the client?

What does supervision involve?

Supervision involves monitoring the legal work of a supervised legal practitioner as they begin their legal practice. The focus during the supervised period is on teaching new legal skills and guiding the practitioner. The role of the supervisor also involves training in the broader administrative skills required in legal practice, such as time management, interpersonal relationships and prioritisation, all of which are vital for junior practitioners.

The Uniform Law defines⁵ supervised legal practice as legal practice by a person who is an Australian legal practitioner and who is supervised by an appropriately authorised person. The definition is expanded by [rule 7 of the General Rules](#).

If you work in a law practice

As a supervised legal practitioner, you are required to hold an Australian practising certificate. Supervision should be provided by another practitioner who works at the same law practice and who holds an Australian practising certificate that is not subject to the statutory supervision condition or a discretionary condition that prohibits the supervision of others.

If you work at a different law practice to your supervisor, you are required to notify us and submit a remote supervision plan for approval.

If you do not work in a law practice

If you are undertaking legal practice as a corporate or government practitioner, you must be supervised by a person who either holds, or is eligible to hold but exempted from holding, an Australian practising certificate which authorises them to supervise others.

Who can be your supervisor?

When making supervised legal practice arrangements it is important to consider the position, qualifications and experience of potential supervisors.

An appropriate supervisor will:

- not be subject to supervised legal practice restrictions;
- be appropriately experienced;
- provide regular support and feedback sessions; and
- have authority in respect of the legal work you will perform and be able to direct, amend, override or intervene in your legal work.

The role of a supervisor is fundamentally important, given that the supervisor will be introducing and assisting you in the development of your legal skills and knowledge, your client and file management skills as well as your understanding of your ethical obligations. Ideally the supervisor will:

- proactively supervise you;
- engage in regular, detailed discussions with you about the nature of the work to be undertaken;
- devote sufficient time to reviewing any work prepared to ensure that the work has been properly carried out;
- not be a consultant who is not an employee or partner of the law practice that employs you;
- not be a legal practitioner employed by a different law practice, unless you are under secondment to that law practice. Appropriate supervision includes discussion of clients and matters which will be impacted by legal professional privilege; and
- not be based at another location, unless you can demonstrate that you are being adequately supervised (see our fact sheet on [Remote Supervision Arrangements](#)).

It is important to remember that during a period of supervision, wider legal profession obligations still apply, such as legal professional privilege and privacy. Supervised legal practice arrangements should not prejudice these obligations.

Supervisor qualifications are set out in:

- section 6(1) of the Uniform Law;
- section 47(6) of the Uniform Law; and
- rule 7 of the General Rules.

⁵ See s. 6(1) of the Uniform Law

Termination of supervision arrangements

If your supervision is terminated or cannot be provided and you are unable to arrange alternative supervision, you must cease to engage in legal practice.

Penalties may apply if you engage in legal practice outside the terms of your practising certificate⁶.

Removal of the supervised legal practice condition

Once the prescribed period of supervised legal practice has been completed, you must apply to us to have the statutory condition removed. The condition will not be automatically removed.

You will need to make an application by statutory declaration and accompanied by supporting letters from your relevant supervisor(s). The letter from your supervisor should be on the law practice or employer letterhead, and attached to your signed statutory declaration. Download the [template statutory declaration and template supervisor's letter](#) to apply for the removal of a supervised legal practice condition.

If you do not have the supervised legal practice condition removed

The supervised legal practice statutory condition remains current until we receive your application for removal, and determine that the condition can be removed. The condition will otherwise continue to apply indefinitely, meaning you *must continue to be supervised until the condition is removed*, even if you have completed the requisite supervision period.

This also means that you will not be able to supervise another legal practitioner until the condition has been removed. If you supervise another practitioner while your practising certificate is still subject to the supervised condition, the person you are supervising will not be able to claim this time towards their supervised legal practice.

Exemption from supervised legal practice

We have the discretion to grant lawyers an exemption from complying with the statutory supervision condition on the basis of their prior legal practice or to reduce the period of supervised legal practice. You may apply to have previous legal practice considered for exemption or reduction in the requirement. We may impose conditions that we consider appropriate if we grant an exemption.

For further information and to apply for an exemption, download the [fact sheet and template statutory declaration for exemption from supervised legal practice](#).

Applications for exemption will be considered with regard to our [Supervised Legal Practice Policy](#).

Failure to comply with your supervised legal practice obligations

Breaching the supervision statutory condition may result in a fine, disciplinary sanctions or other regulatory action including the variation, suspension, or cancellation of the practising certificate, pursuant to Parts 3.3 and 3.5, and Chapter 5 of the Uniform Law.

For more information on arrangements that we regard to be compliant with the supervised legal practice requirements of the Act, download the [Supervised Legal Practice Policy](#).

Transitional provisions for government lawyers

The Uniform Law provides a transitional provision⁷ that applies to supervised legal practice for government lawyers. It states that for any period of legal practice during which section 2.2.2(2) of the *Legal Profession Act 2004* (Vic) exempted them from being required to hold a practising certificate. This legal practice will be deemed to be supervised legal practice.

When applying for removal of the supervision condition, a government lawyer that is affected by this provision should use the same template statutory declaration (see '**Removal of the supervised legal practice condition**' above). For the periods that the transitional provision applies, the statutory declaration need only provide particulars of *legal practice* (not supervision) and supporting letter(s) from their employer, confirming the period they engaged in legal practice.

Further information

Should you require any further information or clarification regarding who can supervise you and the nature of supervision, please contact us:

Tel: 9678 8000

Email: registry@lsbc.vic.gov.au

⁶ See s. 54, 77, 82 and 90 of the Uniform Law.

⁷ See s. 169(4) of the Uniform Law