

Policy Grant of a Principal Practising Certificate

Purpose 1.1 This policy outlines the Victorian Legal Services Board and Commissioner’s (VLSB+C) approach to granting an Australian practising certificate that enables the holder to engage in legal practice as a principal of a law practice, with or without authorisation to receive trust money.¹

This policy sets out how an applicant lawyer may demonstrate the necessary skills and expertise to guide the Victorian Legal Services Board’s (the Board) discretion to grant an Australian practising certificate authorising the applicant to engage in legal practice as a principal of a law practice. The policy applies to all applications for a principal practising certificate, where a grant of, or a variation to, a principal practising certificate is to commence in operation on or after 1 January 2019. The policy does not apply to the renewal of an existing principal practising certificate.

Introduction 2.1 The legal profession plays a critical role in our society, with legal practitioners helping their clients navigate the complex sets of rules upon which our society is based.

The requirement to hold a practising certificate is a key consumer protection measure aimed at ensuring that those who engage in legal practice in Victoria are competent and can meet the high ethical and professional standards demanded of those who provide legal services.

Clients rely on their legal practitioners to explain what is expected of them in order to comply with the law and to perform actions or create documents on their behalf that assist them in meeting their obligations or furthering their interests. Legal practitioners have a great deal of power in this relationship as they hold or have access to complex information that their clients lack. As a result, when a client engages a legal practitioner they do not always have the necessary means to determine whether they are receiving an appropriate standard of service. Often a client is engaging a legal practitioner to assist them with complex or difficult matters that may have serious impacts for their finances, reputation or in some cases personal freedom. Therefore, when a legal practitioner is incompetent or acts unethically this can have significant ramifications for the particular client and has flow through effects by undermining general confidence in the legal profession and of the administration of justice.

The VLSB+C are responsible for ensuring lawyers are competent and maintain high ethical and professional standards such that both clients of law practices and the public generally are protected. The VLSB+C’s powers to regulate the legal profession in Victoria, including the power to issue and revoke practising certificates, are derived from the provisions of the *Legal Profession Uniform Law Application Act (Victoria) 2014* (the Act) and the *Legal Profession Uniform Law (Uniform Law)* which is set out in Schedule 1 to the Act.

The Board, as the designated local regulatory authority under the Act, may grant Australian practising certificates at its discretion and may have regard to matters relevant to the exercise of that discretion including the competency, expertise, knowledge and experience of the lawyer applying to hold a particular type of practising certificate.

All principals of law practices are accorded unique responsibilities, obligations and liabilities under the Uniform Law, designed to ensure the provision of legal services by the law practice is carried out in a competent, diligent and honest manner and that all legal practitioner associates of the law practice also meet their professional obligations.

¹ Applicants also applying for trust authorisation for the first time also need to comply with the VLSB+C Grant of Trust Authorisation Policy

Policy

Grant of a Principal Practising Certificate

In addition to its ethical obligations, for a law practice to operate successfully its principal legal practitioner must possess skills and expertise in the practical management of a business. Some of the skills and expertise required to manage a legal practice extend beyond traditional legal skills and include skills in financial administration, governance and risk management, supervision and development of employees, process and systems management, business planning, strategy and leadership. All these skills make up the framework that supports the competent delivery of legal services which in turn provides the appropriate levels of consumer protection and advances the administration of justice.

It is, therefore, a relevant consideration for the Board to have regard to whether an applicant seeking to become a principal of a law practice possesses the necessary skills and expertise. This policy sets out the skills and expertise to which the Board will have regard in considering whether an Australian practising certificate will be granted to authorise an applicant lawyer to engage in legal practice as a principal of a law practice.

Legislative Framework 3.1

Part 3.3 of the Uniform Law – Australian legal practitioners

Part 3.3 of the Uniform Law establishes the legislative framework for the grant and renewal of Australian practising certificates for eligible and suitable persons who are already admitted to the Australian legal profession. The holders of Australian practising certificates are entitled to call themselves Australian legal practitioners.

The Uniform Law establishes that an Australian legal practitioner is entitled to engage in legal practice. However, the entitlement to engage in legal practice is subject to the requirements of the Uniform Law, the Rules and any conditions imposed on the practitioner's practising certificate.

Section 47(1) of the Uniform Law empowers the Board to grant an Australian practising certificate subject to the condition that the holder is authorised to engage in legal practice as a principal. Pursuant to sub-sections 47(3) and (5) the holder of a principal practising certificate may engage in legal practice in other classes including as a government, corporate or employee practitioner, as a volunteer at a community legal service and on a pro bono basis. However reflective of the elevated responsibilities of a principal, holders of other classes of practising certificate are not authorised to also engage in legal practice as a principal pursuant to section 47(4).

Section 34 and 35 of the Uniform Law set out the special responsibilities and obligations of principals in respect of their law practice as follows:

34 Responsibilities of principals

(1) *Each principal of a law practice is responsible for ensuring that reasonable steps are taken to ensure that—*

(a) *all legal practitioner associates of the law practice comply with their obligations under this Law and the Uniform Rules and their other professional obligations; and*

(b) *the legal services provided by the law practice are provided in accordance with this Law, the Uniform Rules and other professional obligations.*

(2) *A failure to uphold that responsibility is capable of constituting unsatisfactory professional conduct or professional misconduct.*

35 Liability of principals

(1) *If a law practice contravenes, whether by act or omission, any provision of this Law*

Policy

Grant of a Principal Practising Certificate

or the Uniform Rules imposing an obligation on the law practice, a principal of the law practice is taken to have contravened the same provision, if—

- (a) the principal knowingly authorised or permitted the contravention; or
 - (b) the principal was in, or ought reasonably to have been in, a position to influence the conduct of the law practice in relation to its contravention of the provision and failed to take reasonable steps to prevent the contravention by the law practice.
- (2) A contravention by a principal arising under subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct by the principal.
- (3) Neither subsection (1) nor (2) affects any liability of the law practice or any other person for the contravention.

There are further responsibilities and obligations imposed throughout the Uniform Law and the Uniform Rules.²

Key definitions

4.1

Terms used in this policy have the same meaning as contained in section 6 of the Uniform Law unless otherwise stated in this section. Given the centrality of the definition of a principal of a law practice it is reproduced here as it appears in section 6;

Principal of a law practice

“principal of a law practice is an Australian legal practitioner who—

- (a) in the case of a sole practitioner—is the sole practitioner; or
- (b) in the case of a law firm—is a partner in the firm; or
- (c) in the case of a community legal service—is a supervising legal practitioner of the service referred to in section 117; or
- (d) in the case of an incorporated legal practice or an unincorporated legal practice—
 - (i) holds an Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice; and
 - (ii) is—
 - (A) if the law practice is a company within the meaning of the Corporations Act—a validly appointed director of the company; or
 - (B) if the law practice is a partnership—a partner in the partnership; or
 - (C) if the law practice is neither—in a relationship with the law practice that is of a kind approved by the Council under section 40 or specified in the Uniform Rules for the purposes of this definition;”

Practice Management course means a course that meets the Board’s Guidelines as published on the website of the VLSB+C.

Applicant lawyer means a lawyer who is an applicant for an Australian practising certificate as a principal as a new grant or variation from a certificate type that is not a principal.

² The Uniform Law contains a number of sets of rules for both barristers and solicitors, including relevantly for this Policy, the *Legal Profession Uniform General Rules 2015* and the *Legal Profession Uniform Solicitors Conduct Rules 2015*, all of which are subordinate legislation and make up the Uniform Law Framework.

Policy

Grant of a Principal Practising Certificate

Skills, experience and competency criteria for grant or variation to principal practising certificate

5.1

Criteria to be met for a grant of any practising certificate type

Section 45 of the Uniform Law sets out the prerequisites for a grant of any Australian practising certificate, specifically that the Board must refuse a grant where it considers an applicant is not a fit and proper person to hold that certificate. Rule 13 of the *Legal Profession General Rules 2015* (Uniform Rules) sets out the matters to which the Board may have regard when assessing an applicant lawyer's fitness and propriety. All applicants for Australian practising certificates, including those applying for a principal practising certificate, must notify the Board of certain events under section 51 of the Uniform Law.

In addition to declaring any fit and proper matters at grant or renewal, a lawyer who is an applicant for or the holder of a practising certificate must notify the Board of a show cause event, as described in Division 4 sections 85 - 92 of the Uniform Law. There are two kinds of show cause events:

- Automatic Show Cause events; or
- Designated Show Cause events.

In relation to Automatic Show Cause events, the Board must determine whether the lawyer concerned is a fit and proper person to hold a certificate.

These requirements must be met by all applicants annually including applicant lawyers seeking a grant of or variation to a principal practising certificate. Information on the Board's approach to the above matters is contained in the VLSB+C's Fit and Proper Person Policy also available on the VLSB+C website.

5.2

Additional skills and expertise criteria required for a principal practising certificate

In exercising its discretion to grant or vary an Australian practising certificate to one authorising the holder to engage in legal practice as a principal of a law practice, the Board will consider whether the applicant lawyer has demonstrated the necessary skills and expertise to ethically, competently and diligently manage a law practice. The Board will consider all applications for principal practising certificates on a case by case basis and may seek further information from an applicant under rule 12(3) of the Uniform Rules before determining an application.

The Board, in considering the skills and expertise of an applicant, will have regard to whether the applicant has applied for the removal of any supervised legal practice condition. In general, the Board considers that the responsibilities and obligations of principals under the Uniform Law as set out under section 3.1 of this policy are unlikely to support practitioners subject to supervision holding principal practising certificates. However, the Board may grant a principal practising certificate subject to supervised legal practice where the person engages in legal practice under the supervision of an authorised principal of the law practice.

5.3 **Practice management courses**

The Board has determined that one way an applicant may demonstrate that he or she has the necessary skills and expertise to hold a principal practising certificate is by providing evidence of the successful completion of a practice management course.

The Board has produced guidelines detailing the topics, duration, mode of delivery and assessment criteria for a practice management course to provide the required level of skills and expertise to satisfy the Board's requirements.

An applicant lawyer will need to meet the requirements set out in section 5.1 of this policy. In meeting the additional requirements under section 5.2, the Board has determined that an applicant lawyer who has successfully completed a practice management course which has been assessed as meeting the Board's requirements (as set out in the guidelines) will have the necessary skills and expertise to hold a principal practising certificate.

The applicant lawyer must provide the Board with proof of completion as part of the application process. This can be provided directly by a provider of a practice management course. A list and contact points for practice management courses in Victoria that have been assessed as compliant with the Board's guidelines is provided on the VLSB+C website.

Procedure

The Board considers that a practice management course which meets the Board's requirements (as set out in its guidelines) provides the skills and expertise necessary to manage a law practice in a competent, diligent and successful manner.

An applicant lawyer must complete a practice management course that has been assessed as meeting the Board's requirements within 3 years prior to applying for a grant of a practising certificate authorising engagement in legal practice as a principal. Once the Board has been notified of the successful completion of the course, an applicant lawyer may then go to *LSB Online* to complete his or her application.

5.4 **Alternatives to completion of a practice management course**

The Board considers the successful completion of a practice management course that has been assessed as meeting the Board's requirements (as set out in its guidelines) to be the primary way for an applicant lawyer to demonstrate the skills and expertise necessary to manage a law practice competently, diligently and successfully.

The Board recognises however, that there may be lawyers who may demonstrate these skills and expertise and have experience equivalent to that provided by completion of a practice management course.

Although not an exhaustive list of what the Board may consider, the following is intended as a guide.

An applicant lawyer may be considered to possess the necessary skills and expertise if he or she has:

- Within the last three years has completed a legal practice management course of comparable length and subject matter, which is a prerequisite for obtaining a principal practising certificate in another jurisdiction of Australia or comparable common law jurisdiction; or

Policy

Grant of a Principal Practising Certificate

- can demonstrate a reasonable length and level of experience as a principal legal practitioner of a law practice with comparable responsibilities and obligations to those contained within the Uniform Law, in another jurisdiction of Australia or comparable common law jurisdiction.

Procedure

An applicant lawyer who seeks to demonstrate possession of the skills and expertise that meet the Board’s requirements, other than by completion of a practice management course, should provide sufficient documentary evidence of their skills, expertise and experience directly to the Board. Applicant lawyers are encouraged to provide as much information as possible such that the Board may be equipped to make its decision expeditiously.

The Board will consider the material provided by the applicant lawyer and advise of its determination within a reasonable time.

The Board may ask for further information or verification of the material provided from the applicant lawyer or a third party.

Failure to meet skills, competency and experience criteria	6.1	Applicant lawyers who do not demonstrate the necessary skills and expertise will not be granted a principal practising certificate, and will not be permitted to practice as the principal of a law practice.
---	-----	---

Related policy and other documents	7.1	Other policies and documents related to this policy include the following: <ul style="list-style-type: none"> • VLSB+C Compliance & Enforcement Policy. • VLSB+C Fit & Proper Person Policy. • VLSB+C Grant of Trust Authorisation Policy. • VLSB+C Practice Management Course Guidelines for Victoria.
---	-----	---