

Policy

Supervised Legal Practice

Introduction	1.1	This policy provides guidance on supervised legal practice requirements and outlines the conditions under which the Victorian Legal Services Board (the Board) will remove, or grant an exemption from, the statutory condition on an Australian practising certificate, in accordance with s.49 of the Legal Profession Uniform Law (Uniform Law).
Background	2.1	The Uniform Law places a statutory condition on an Australian practising certificate that prohibits the holder from engaging in legal practice other than “supervised legal practice” (SLP) for a specified period, unless the holder of an Australian practising certificate: <ul style="list-style-type: none"> • is a barrister; or • has been granted an exemption from the requirement for SLP by the Board.
	2.2	Practitioners are subject to SLP for 18 months if, in order to qualify for admission, the practitioner completed practical legal training principally under the supervision of an Australian lawyer (e.g. supervised workplace training). If the practitioner completed other practical legal training to qualify for admission (e.g. a Graduate Diploma in Legal Practice), the SLP period is two years.
	2.3	Under section 169(4) of the <i>Legal Profession Uniform Application Act 2014 (Vic)</i> (the Application Act) any period of legal practice engaged in by a government lawyer before the Uniform Law came into operation, whether SLP or not, is taken to be a period of SLP, and will be subtracted from the period of SLP required.
	2.4	Rule 14 of the <i>Legal Profession Uniform General Rules 2015</i> (the Uniform General Rules) provides guidance as to how the SLP period is calculated. A practitioner may satisfy the requirements by engaging in practice on a continuous full-time basis for the required period, or by completing one or more periods, either full or part-time, equivalent to the required period.
	2.5	Practitioners who have previously practised in non-participating Australian jurisdictions are required to have engaged in a period of SLP (refer clause 2 of schedule 3 to the Application Act).
	2.6	“Supervised legal practice”, as defined in s.6 of the Uniform Law and r.7 of the Uniform General Rules, means legal practice by a person who is an Australian legal practitioner: <ul style="list-style-type: none"> • as an employee of, or other person working under supervision in, a law practice, where at least one legal practitioner associate of the law practice is an authorised principal and the person engages in legal practice under the supervision of that authorised principal; or • 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 • as a corporate 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 • as an employee of a law practice (or who, though not an employee of the law practice, is working under supervision in the practice) under the supervision of an

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employee of the practice who holds an Australian practising certificate authorising the holder to supervise legal practice by others; or

- as an employee of a law practice engaged in legal work for a client of the practice (or for a community legal service) under the supervision of a supervising lawyer where the supervision is adequate in the circumstances and not less than the supervision the employee would have received from an authorised principal of the law practice.

2.7 There are two circumstances in which a person may make an application to have the SLP condition removed:

- 1) completion of the required period of SLP (refer s.49(1) of the Uniform Law); or
- 2) where a person may be eligible for a total or partial exemption from SLP (refer s.49(4) of the Uniform Law).

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Removal of statutory condition (completion of period)

3.1 The Board will remove the statutory condition regarding SLP from a practising certificate when a practitioner completes the required period of SLP in accordance with s.49(1) and r.14 of the Uniform General Rules, upon application in writing ("the application"), or when the Board is notified by the Victorian Bar that a practitioner has gone to the Bar.

3.2 Applications should be made by statutory declaration, attaching a letter on relevant letterhead from the applicant's supervisor(s) confirming the information contained within the declaration. The applicant's statutory declaration should:

- set out the relevant place(s) of legal practice, position(s) held and type of legal practice engaged in;
- provide the name of the supervising practitioner(s) and details of their qualification to supervise, (e.g. type of practising certificate held) or, if not required to hold a practising certificate, eligibility to hold a practising certificate not subject to SLP; and
- set out the relevant period(s) of legal practice, including relevant dates and ordinary hours of work, demonstrating how the period is equal or equivalent to the required period.

3.3 The Board will give the applicant written notice if it intends to refuse the application.

Removal of statutory condition (exemption)

3.4 The Board may also exercise its power under s.49(4)-(5) to:

- (a) exempt a person or class of persons from the statutory condition; or
 - (b) reduce a period referred to in the condition for a person or class of persons –
- if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to the length and nature of any legal practice previously engaged in by the person or persons.

The Board will decide whether or not it is appropriate to grant a total or partial exemption from the requirements and may impose any conditions it considers

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appropriate.

- 3.5 Applications for an exemption should be made by statutory declaration annexing all relevant supporting documentation, including documentation relating to previous employers, supervisors or overseas authorities.
- 3.6 An application should outline:
- the dates the applicant has engaged in legal practice;
 - the length/nature of legal practice previously engaged in;
 - whether there was any supervision while the applicant was engaging in legal practice;
 - if supervision was provided, the name and qualifications of the supervisor and the nature and duration of the supervision;
 - the jurisdiction in which legal practice was engaged in, including its similarity to legal practice in Victoria; and
 - any other matters relevant to the application.
- 3.7 Further guidance on these issues is outlined below; however nothing in this policy will restrict the Board from exercising its discretion to grant an exemption from SLP.

Legal Practice – further guidance

- 3.8 When considering the nature of legal practice outlined in applications for an exemption, the Board will consider relevant legislative and common law principles. Quasi-legal work will not be recognised.
- 3.9 Section 49(4) provides that the Board may exempt a person from SLP or reduce the period of SLP if satisfied that either course of action is appropriate, having regard to the length and nature of any legal practice previously engaged in by the person. The Uniform Law does not define 'legal practice'. The Board will consider 'legal practice' with regard to the common law principles in *Law Institute of Victoria Ltd v Maric & Anor* [2008] VSCA 46 (19 March 2008) and *Cornall v Nagle* [1995] 2 VR 188. In the matter of *Cornall*, the Supreme Court held that there are three principles to consider when assessing whether someone is acting as a solicitor, namely:
- by doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person was doing it as a solicitor;
 - by doing something that is positively proscribed by an Act or by the rules of Court unless done by a duly qualified legal practitioner; or
 - by doing something which, in order that the public might be adequately protected, is required to be done only by those who have the necessary training and expertise in the law, such as giving legal advice as part of a course of conduct and for reward.

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- 3.10 Based on previous experience, the Board will consider the following types of work to be indicative of legal practice:
- giving legal advice;
 - interpreting legislation or case law; and
 - drafting contracts.
- 3.11 Additionally, legal practice will generally involve consideration and application of broader areas of law, the obligations of legal practitioners and regard to risk and fiduciary duties in the context of providing advice.
- 3.12 The types of work listed below are considered by the Board to be quasi-legal in nature and will not usually be considered legal practice:
- paralegal work;
 - working as a judge’s associate;
 - policy work;
 - working as a conveyancer;
 - working as a migration agent; and
 - working as a tax agent.
- Supervision – further guidance**
- 3.13 The Uniform Law does not define “supervision”, however when considering the issue of supervision, the Board will consider an appropriate supervisor will:
- be appropriately experienced;
 - not be subject to supervised legal practice restrictions;
 - provide regular support and feedback sessions; and
 - have authority in respect of work performed by the supervised practitioner and be able to direct, amend, override or intervene in relation to the legal work performed.
- 3.14 While the SLP requirement is imposed on the practitioner, supervisors should note that they are themselves subject to legal and professional obligations to act with all due skill and diligence.
- 3.15 While on secondment, the legal practitioner will continue to be supervised by an Australian legal practitioner.
- 3.16 If a practitioner has commenced to engage in SLP but supervision is terminated or cannot be provided for any reason, the practitioner should cease to engage in work that is “legal practice”. Administrative or paralegal work undertaken during that time will not count towards the required period of SLP.
- 3.17 The Board may, at its discretion, investigate the supervision arrangements of a legal practitioner.

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3.18 A practitioner from a non-participating jurisdiction wishing to obtain a practising certificate in Victoria who has undertaken SLP in the non-participating jurisdiction, but has not undertaken the full 18 month or two year period of SLP set out in the Uniform Law, will be required to complete the period set out in the Uniform Law before being able to apply for the removal of the SLP statutory condition under s.49 (this requirement is set out in clause 2 of schedule 3 to the Application Act).

Length of Legal Practice

3.19 When considering the length outlined in applications for an exemption, the Board will consider the required period of SLP outlined in the Uniform General Rules.

Similar Jurisdiction

3.20 When considering the similarity of the jurisdiction of legal practice identified in the exemption application, the Board will have regard to similarities in the legal and judicial system and the use of common law.

3.21 Applicants who have undertaken a period of legal practice in a jurisdiction which is not in a common law jurisdiction should outline the similarities in legal practice, and indicate any bridging study they have undertaken in seeking admission in Australia.

Document Control

(Internal use only)

Responsible for review and update

Manager, Policy and Regulation

Approved/Endorsed by

Victorian Legal Services Board CEO and Commissioner

Next review

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