

Policy

Supervised Legal Practice

Introduction	1.1	<p>This policy explains supervised legal practice (SLP) requirements and outlines the conditions under which the Victorian Legal Services Board (the Board) will remove, or grant an exemption from, the statutory condition obliging Australian practising certificate holders to only engage in SLP for a specified mandatory period.</p>
Background	2.1	<p>Section 49(1) of the Legal Profession Uniform Law (Uniform Law) makes it a statutory condition of an Australian practising certificate that the certificate holder engage in SLP solely until they have completed a mandatory period of SLP.</p> <p>The length of the mandatory period is:</p> <ul style="list-style-type: none">a) 18 months if, in order to qualify for admission, the lawyer completed practical legal training principally under the supervision of an Australian lawyer (e.g. supervised workplace training); orb) 2 years if, in order to qualify for admission, the lawyer completed other practical legal training (e.g. a Graduate Diploma in Legal Practice) <p>The statutory condition to engage in SLP does not apply to an Australian practising certificate with a condition that the certificate holder is authorised to practise as a barrister: section 49(3).</p> <p>Section 49(4) allows the Board to exempt a person or class of persons from the requirement to undertake SLP, or alternatively to reduce their required SLP period. For further detail about SLP exemptions and reductions see paragraphs 3.8 and 3.9 of this policy.</p>
	2.2	<p>“Supervised legal practice” is defined in section 6 of the Uniform Law to mean legal practice by a person who is an Australian legal practitioner:</p> <ul style="list-style-type: none">a) as an employee of, or other person working under supervision in, a law practice, where at least one lawyer associate of the law practice is an authorised principal and the person engages in legal practice under the supervision of that authorised principal; orb) 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; orc) as a corporate or government lawyer, 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; ord) in a capacity or in circumstances specified in the Uniform Rules. <p>Rule 7 of the Legal Profession Uniform General Rules 2015 (Uniform Rules) expands the definition of “supervised legal practice” by providing</p>

Policy

Supervised Legal Practice

that it includes legal practice by a person who is an Australian legal practitioner:

- e) 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 employee of the practice who holds an Australian practising certificate authorising the holder to supervise legal practice by others; or
- f) as an employee of a law practice engaged in legal work for a client of the practice, or in legal work for a community legal service, under the supervision of either a lawyer who is an authorised principal, or a lawyer who holds, or is exempt or not required to hold, an Australian practising certificate, where their supervision is adequate in the circumstances and not less than supervision they would have received from an authorised principal.

2.3 Rule 14 of the Uniform Rules provides guidance about to how the SLP period is calculated. A lawyer 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.

2.4 Under section 169(4) of the *Legal Profession Uniform Application Act 2014* (Vic) (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.

2.5 Lawyers 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).

Policy

Applying to the Board to remove the statutory condition

- 3.1 Lawyers may apply to have their statutory conditions removed if they:
- a) have completed of the required period of SLP (refer s.49(1) of the Uniform Law); or
 - b) are eligible for a total or partial exemption from SLP (refer s.49(4) of the Uniform Law).

As a barrister's practising certificate does not carry the statutory SLP condition, the SLP condition will be removed when a lawyer goes to the Bar. If a barrister subsequently applies for a solicitor's practising certificate, a certificate will be issued with the SLP condition, unless the barrister was previously exempted from – or not subject to – the SLP condition. Their time practising as a barrister may count towards their time engaged in legal practice for the purposes of applying for an exemption from SLP.

3.2 Applications to the Board must be made in writing, and should include both a statutory declaration made by the supervised lawyer, and a letter from the applicant's supervisor(s).

The applicant's statutory declaration seeking removal of an SLP condition should:

- a) set out the relevant place(s) of legal practice, position(s) held and type of legal practice engaged in; and
- b) provide the name of their supervising lawyer(s) and details of their supervisor(s) 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
- c) 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.

The letter from the applicant's supervisor(s) must be completed on letterhead of their firm, and confirm the information contained within the applicant's statutory declaration.

A template application for removal of a supervised legal practice condition can be found [here](#).

Providing false or misleading information in an application for the removal of an SLP condition may result in the lawyer being considered to not be a fit and proper person to hold a practising certificate.

When the Board will remove a statutory condition

3.3 The Board will remove a statutory condition if satisfied that an applicant has completed the period of SLP required by 49(1) in accordance with rule 14 of the Uniform General Rules.

3.4 The Board may, at its discretion, request any further information or evidence it requires in order to determine whether to remove an SLP condition from an applicant's practising certificate. Section 31 of the *Legal Profession Uniform Law Application Act 2014* (Application Act) confers on the Board all powers necessary to perform its functions and achieve its objectives. These functions and objectives include:

- a) confirming that a lawyer is an eligible and suitable person to hold an unrestricted practising certificate – per section 42(a) of the Uniform Law; and
- b) ensuring that a lawyer has complied with their SLP condition – per section 54 of the Uniform Law.

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

Requirement to continue to practice under supervision until SLP condition removed

- 3.6 Lawyers with an SLP condition on their practising certificate must continue to only provide legal services under supervision until such time as:
- a) they have completed their required period of SLP; **and**
 - b) they have applied to the Board to have their SLP condition removed; **and**
 - c) the Board has notified the applicant of their decision to remove the SLP condition from the practising certificate of the applicant.

Lawyers who are eligible to have their SLP conditions removed, but who have not yet applied to the Board to remove those conditions, or have not yet received notice from the Board that their SLP condition will be removed, must continue to be supervised, and may not supervise other lawyers.

Lawyers who supervise another lawyer, or who provide unsupervised legal services, while they still have an SLP condition on their practising certificate are in breach of section 54 of the Uniform Law and accordingly expose themselves to disciplinary action.

The Board therefore encourages lawyers to apply for SLP condition removal as soon as feasible, to avoid unintentionally breaching their legislative obligations.

Inability to provide evidence from supervising lawyer

- 3.7 If a lawyer has completed their SLP period, but is unable to provide evidence from their supervisor(s) that this period has been completed, lawyers can contact the Board for further direction.

Statutory condition exemptions and reductions

- 3.8 As noted in paragraph 2.1 of this policy, the Board may also exercise its power under section 49(4)-(5) of the Uniform Law to:
- a) exempt a person or class of persons from the statutory condition to complete the mandatory period of SLP; or
 - b) reduce the mandatory period of SLP 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 appropriate.

Policy

Supervised Legal Practice

- 3.9 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.
- 3.10 An application should outline:
- a) the dates the applicant has engaged in legal practice;
 - b) the length/nature of legal practice previously engaged in;
 - c) whether there was any supervision while the applicant was engaging in legal practice;
 - d) if supervision was provided, the name and qualifications of the supervisor and the nature and duration of the supervision;
 - e) the jurisdiction in which legal practice was engaged in, including its similarity to legal practice in Victoria; and
 - f) any other matters relevant to the application.
- 3.11 Further guidance on these issues is outlined below.
- The meaning of 'legal practice'**
- 3.12 Section 49(4) allows the Board to 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. As the Uniform Law does not define 'legal practice', when considering applications for removal or exemption, the Board will consider relevant legislative and common law principles regarding the nature of legal practice. Quasi-legal work will not be recognised.
- 3.13 In particular, 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:
- a) 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;
 - b) by doing something that is positively proscribed by an Act or by the rules of Court unless done by a duly qualified lawyer; or
 - c) 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.

Policy

Supervised Legal Practice

- 3.14 Based on previous experience, the Board will consider the following types of work to be indicative of legal practice:
- a) giving legal advice;
 - b) interpreting legislation or case law; and
 - c) drafting contracts.
- 3.15 Additionally, legal practice will generally involve consideration and application of broader areas of law, the obligations of lawyers and regard to risk and fiduciary duties in the context of providing advice.
- 3.16 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:
- a) paralegal work;
 - b) working as a judge's associate;
 - c) policy work;
 - d) working as a conveyancer;
 - e) working as a migration agent; and
 - f) working as a tax agent.
- The role of supervisors**
- 3.17 Under section 47(6)(a) of the Uniform Law, supervising lawyers must not be subject to SLP restrictions or any discretionary condition which prevents them from acting as a supervisor.
- The Uniform Law does not specify what it means to work "under the supervision" of another lawyer, however when considering this issue, the Board will consider an appropriate supervisor to:
- be appropriately experienced;
 - provide regular support and feedback sessions; and
 - have authority in respect of work performed by the supervised lawyer and be able to direct, amend, override or intervene in relation to the legal work performed.
- 3.18 While the SLP condition is imposed on the lawyer, supervisors should note that they are themselves subject to legal and professional obligations to act with all due skill and diligence.
- 3.19 While on secondment, lawyers with an SLP condition will need to continue to be supervised by an Australian lawyer.
- 3.20 If a lawyer has commenced to engage in SLP but supervision is terminated or cannot be provided for any reason, the lawyer must cease to engage in

Policy

Supervised Legal Practice

work that is “legal practice”. Administrative or paralegal work undertaken during that time will not count towards the required period of SLP.

- 3.21 A lawyer 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 section 49 (this requirement is set out in clause 2 of schedule 3 to the Application Act).

Length of legal practice

- 3.22 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.
- 3.23 Where a lawyer engaged in legal practice full-time during their supervised legal practice period, ordinary periods of leave do not need to be deducted from the period of supervised legal practice completed.

Any additional leave periods such as long service leave, unpaid leave and parental leave will not contribute to the period of supervised legal practice completed.

Similar jurisdiction

- 3.24 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.
- 3.25 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.

Remote supervision

- 3.26 Lawyers who are supervised by a lawyer from a separate entity must submit a Remote Supervision Plan to the Board for approval. The Board must approve this Plan before supervised lawyers commence their supervision with a lawyer from a separate entity.

Remote supervision plans are expected to cover:

- how contact will occur between the supervisor and supervised lawyer, including how regularly one-on-one meetings will be conducted, and

Policy

Supervised Legal Practice

how the supervised lawyer can contact their supervisor outside of formal meeting times; **and**

- how the supervisor will manage the supervised lawyer's workflow; **and**
- how correspondence and advice drafted by the supervised lawyer will be reviewed and how feedback will be provided, as well as how frequently this review and feedback will occur; **and**
- how the supervisor will access the supervised lawyer's files and documents to review their work, considering client confidentiality; **and**
- the experience of the supervisor in the areas of legal practice that the supervised lawyer will be working in.

Supervision during hybrid or working from home arrangements

3.27

Lawyers who work in the same entity as their supervisor do not need to submit a Remote Supervision Plan to the Board for approval. Similarly, lawyers who have a hybrid working or working-from-home arrangement with their employers but who work for the same employer as their supervisor will not need to submit a Remote Supervision Plan.

Policy

Supervised Legal Practice

Document Control

(Internal use only)

Responsible for review and update

Manager, Policy and Regulatory Strategy Team

Approved/Endorsed by

Victorian Legal Services Board CEO and Commissioner

Next review

March 2024