

## Information Sheet – Overseas based practitioners

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*Attachments (forms)*

### Information for Victorian practitioners who are practising overseas

#### About this information sheet

You should read this information sheet if you:

- Live or work overseas or intend to live or work overseas AND
- Wish to maintain a Victorian practising certificate whilst overseas.

This information sheet sets out the steps to ensuring you obtain or maintain the appropriate practising certificate and comply with your related obligations.

#### Background

The *Legal Profession Act 2004 (Vic)* (“the Act”) commenced in December 2005. The Act governs the grant and renewal of Victorian practising certificates.

The Act provides that lawyers may still be eligible for Victorian practising certificates without a place of residence in Australia.

#### Type of practising certificate

All practising certificates carry a condition regarding the type of practise that is authorised by the certificate. Two practising certificate conditions are relevant for practitioners who wish to practice overseas – practising certificates with a condition authorising legal practise as a corporate legal practitioner (“corporate practising certificates”) and those that authorise legal practise as a principal (“principal practising certificates”).

##### *Corporate Practising Certificates*

You may hold a corporate practising certificate if:

1. you provide legal services only to and for the purposes of your employer; and
2. your employer is not an Australian legal practitioner, Australian-registered foreign lawyer or law practice.

This might apply, for example, if you are employed as an in-house lawyer by a government agency or corporation that is not a law practice. You may not hold a practising certificate if you offer legal services to the public, for example, if you are employed by a law practice.

##### *Principal Practising Certificates*

In most other circumstances you will be treated as a sole practitioner in Victoria. This is the case if:

1. you are not a corporate practitioner; and
2. you are not practising in the course of your employment for a Victorian law practice.

If you fall within this category, you may only hold a practising certificate that authorises legal practice as a principal.

You will be required to hold a principal certificate and will be regarded as a sole practitioner in Victoria even if you are engaged as an employee solicitor in an overseas law practice.

Please note that it is not appropriate under the Act for this class of practitioners to hold employee practising certificates. These certificates carry the condition that the holder is authorised to engage in legal practice only as an “employee of a law practice”. “Law practices” are defined in the Act as partnerships consisting only of Australian legal practitioners or otherwise by reference to their engagement in the provision of legal services in this jurisdiction.

## Step 1

Apply for, or apply to vary to, the appropriate practising certificate: corporate or principal.

You can do this by completing the Application/Variation of Practising Certificate form and lodging with the Board’s relevant delegate, the Law Institute of Victoria or the Victorian Bar.

The form is available from the Board’s website or by contacting the Board.

## Step 2

If you are applying for a principal practising certificate, notify the Board of your sole practice.

You can do this by completing the Notification of new law practice (other than ILP or MDP) form and returning it to the Board (i.e. not the Law Institute or the Victorian Bar).

The form is available from the Board’s website or by contacting the Board.

*Please note that there is no requirement that your address for service be a Victorian address.*

## Professional indemnity insurance requirements

A corporate legal practitioner does not have to maintain professional indemnity insurance.

Any law practice (including a sole practitioner) that engages in legal practice in Victoria is required to obtain and maintain professional indemnity insurance with the Legal Practitioners Liability Committee (“the Liability Committee”), unless exempted by the Board. That insurance is required to cover each principal and employee of the law practice, and the Board is required to confirm that there is appropriate insurance in place in respect of each practitioner that applies for renewal of a practising certificate.

However, the Board has resolved that a sole practitioner may satisfy the Board that he or she does not engage in legal practice in this jurisdiction, and therefore is not required to obtain professional indemnity insurance with the Liability Committee, by providing an undertaking to that effect, in a specified form (see below).

In the alternative, if you intend to engage in legal practice in Victoria, you will be required to obtain professional indemnity insurance with the Liability Committee, unless you have been exempted from that requirement by the Board. If you wish to apply for an exemption, you should first obtain a copy of the Board’s policy in relation to applications for exemption.

Step 3: Either (A) or (B):

- (A) If you do not intend to engage in legal practice in Victoria for the duration of the practising certificate, supply an undertaking to the Board in the following form, so that you will not be required to obtain professional indemnity insurance in this jurisdiction:

*I [name] undertake to the Board, in respect of the period [insert period of practising certificate sought], that I will not engage in legal practice in Victoria, unless I:*

*(a) provide notice to the Board of my intention to engage in legal practice in Victoria; and*

*(b) before commencing to engage in legal practice in Victoria obtain, and at all times whilst engaged in legal practice in Victoria maintain, professional indemnity insurance as required by s 3.5.2 of the Legal Profession Act 2004.*

You may submit the undertaking to the Board (appropriately signed and dated) by facsimile, but you should also send the original undertaking to the Board.

- (B) If you do intend to engage in legal practice in Victoria:

- (i) obtain professional indemnity insurance from the Liability Committee;  
OR
- (ii) obtain an exemption from the requirement to hold professional indemnity insurance, or the requirement to hold professional indemnity insurance with the Liability Committee, from the Board. You may do this by obtaining a copy of the Board's policy in relation to professional indemnity insurance exemptions from the Board and applying in writing to the Board addressing the policy. You should only apply for an exemption if you are not able to supply the undertaking above.

### Notes about undertakings

If you choose to supply the undertaking above, you should be aware that an undertaking is a serious professional obligation. You should note that the Professional Practice and Conduct rules require that a practitioner comply with any personal undertaking to the Board. The Act states that contravention of a legal profession rule may be capable of constituting unsatisfactory professional conduct or professional misconduct. Section 4.4.6 also provides that wilful or reckless failure to comply with an undertaking given to the Board constitutes professional misconduct.

It is your responsibility to ensure you comply with requirements of legal practice in the overseas jurisdiction in which you practise, including any professional indemnity insurance requirements in that jurisdiction.

### Supervised legal practice requirements

If you have not held an Australian practising certificate before 12 December 2005, or been exempted from the requirement by the Board, any practising certificate you are issued will carry the condition that you only engage in supervised legal practice, until you have completed the requisite period of supervision (18

months or two years' full time equivalent). Supervised legal practice is defined in the Act and the Supervised Legal Practice Rules 2006.

The Board may exempt a practitioner from supervised legal practice, having regard to the length and nature of any previous practice engaged in by the person, and by any person who supervised them (if any).

It is your responsibility to ensure you comply with any requirements of practice in the jurisdiction in which you practise.

## **Documentation – what to do if you decide to maintain your practising certificate whilst overseas**

Complete steps 1-3 as applicable.

If you have any questions regarding the documentation required, please contact the Board.

You should be also aware that, while you maintain a Victorian practising certificate, you are required to comply with your obligations as a local legal practitioner. Significantly, you are required to notify the Board if there is any change in the information recorded on the register, within 14 days after the change occurs. The Act imposes a penalty of 10 penalty units on failure to do so. Details included on the register are a practitioner's:

- Name;
- Date of Birth;
- Date of Admission to the legal profession;
- Address for service; and
- Any business names under which the practitioner engages in practice (if a sole practitioner).