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Supervised legal practice policy statement – v1.0

Purpose

1. The purpose of this policy statement is to provide an interpretation of relevant legislative provisions administered by the Board.
2. The policy statement represents the Board’s interpretation of the supervised legal practice requirements in the *Legal Profession Act* 2004 (Vic) (“the Act”). It has no formal legal status or effect, but is intended to guide practitioners as to the types of arrangements that the Board regards to be compliant with the requirements.

Background

3. Section 2.4.18 of the Act places a statutory condition on a local practising certificate that prohibits the holder from engaging in legal practice other than “supervised legal practice” for a specified period after the practitioner’s first practising certificate is granted. Section 2.4.35 imposes a similar statutory condition upon the practising certificates of interstate legal practitioners who engage in legal practice in Victoria.
4. The statutory condition is not applicable to barristers or any person who held an Australian practising certificate at any time before 12 December 2005.
5. Practitioners are subject to supervised legal practice for **18 months** if, in order to qualify for admission, the practitioner completed practical legal training principally under the supervision of an Australian legal practitioner (e.g. Articles of Clerkship). If the practitioner completed other practical legal training to qualify for admission, the supervised legal practice period is **two years**.
6. The *Legal Profession Regulations* 2005 (“the regulations”) outline how the supervised legal practice 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, on either a full or part-time basis, equivalent to the required period.
7. “Supervised legal practice” as defined in section 1.2.1 of the Act and the *Supervised Legal Practice Rules* 2006 (“the rules”), means legal practice by an Australian legal practitioner:
 - as employee of a law practice, under the supervision of a principal or other employee of the practice holding a principal practising certificate;
 - as a partner in a law firm, under the supervision of another partner of the law firm holding a principal practising certificate; and
 - in any other capacity (i.e. other than as an employee of a law

practice or a partner in a law firm) under the supervision of a person holding, or eligible but not required to hold, a practising certificate not subject to s 2.4.18 of the Act or any corresponding requirement interstate.

8. “Supervision” and “legal practice” are not further defined by the Act.
9. The concept of “legal practice” is governed by the common law. The leading Victorian authority in relation to acting or practising as a solicitor is *Cornall v Nagle* [1995] 2 VR 188. In *Cornall*, the Supreme Court held that there are three principles to take into consideration 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.
10. The meaning and requirements of “supervision” of a legal practitioner have not been judicially considered.

Application

11. The Board has the following functions and powers which require the consideration of the concept of supervised legal practice:
 - The Board may grant and renew local practising certificates under Part 2.4 of the Act, subject to (inter alia) any condition imposed by the Act, including the statutory condition relating to supervised legal practice;
 - The Board may amend a local practising certificate, pursuant to section 2.4.24 of the Act, by removing the statutory condition when it no longer applies (i.e. when satisfied that the condition has been fulfilled in accordance with the Act, its regulations and the rules);
 - Pursuant to section 2.4.20 of the Act, it is a ground to amend, cancel or suspend a local practising certificate if a condition of the certificate is that the holder is limited to legal practice specified in the certificate, and the holder is or has been engaging in legal practice that they are not entitled to engage in under the certificate. Under sections 2.4.21 and 2.4.22 of the Act, the Board may amend, cancel or suspend a local practising certificate where it believes a ground exists to do so.
 - Pursuant to sections 4.4.5 and 4.4.6 of the Act, failure by an Australian legal practitioner to comply with a condition of his or her practising certificate constitutes unsatisfactory professional

conduct and wilful or reckless failure to comply with a condition of his or her practising certificate constitutes professional misconduct. Under section 7.2.14 of the Act, the Board may disclose information to the Legal Services Commissioner or another local or interstate regulatory authority about any matter relating to or the Act (including apparent or potential unsatisfactory professional conduct or professional misconduct). Under section 4.2.4 of the Act, any person (including the Board) may make a disciplinary complaint to the Legal Services Commissioner about the conduct of an Australian legal practitioner (that the conduct, if established, would amount to unsatisfactory professional conduct or professional misconduct).

12. Pursuant to section 6.2.19 and clause 8.14 of Schedule 2 of the Act, the Board has delegated its functions set out above to the Law Institute of Victoria to exercise in relation to local legal practitioners other than barristers. The functions must be exercised in accordance with any applicable Board policies. The delegation does not prevent the exercise of the function by the Board.

Policy

13. The Board has the view that supervision of legal practice, for the purposes of section 2.4.18 of the Act, will generally have the features outlined in this policy statement.
14. The Board takes a pragmatic approach to supervision, recognising that a wide variety of practice environments and styles of supervision will meet the requirements.
15. Supervision is the process of managing, directing or overseeing the output of the supervised practitioner. The supervisor must:
- Be appropriately experienced;
 - Provide regular support and feedback session;
 - Have authority in respect of the legal work performed by the supervised practitioner and be able to direct, amend, override or intervene in relation to the legal work performed in appropriate circumstances.
16. While on secondment or while working temporarily in another place of practice, the legal practitioner shall continue to be supervised by an Australian legal practitioner.
17. If a practitioner has commenced to engage in supervised legal practice 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 supervised legal practice.
18. The Board may, at its discretion, investigate the supervision of a legal practitioner where specific circumstances make further enquiry
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appropriate.

19. An interstate practitioner wishing to obtain a practising certificate in Victoria who has undertaken supervised legal practice in another jurisdiction, but has not undertaken the full 18 month or two year period of supervised legal practice set out in the Act, will be required to finish the period set out in the Act before being eligible for a practising certificate that is not subject to the supervised legal practice statutory condition under s.2.4.18 of the Act.

Policy management / implementation

20. The policy statement is complemented by the following policies and procedures of the Board:
- Board policy LSB010 (Supervised legal practice – completion of period) which deals with the material required from practitioners to satisfy the Board that the period has been completed;
 - Board policy LSB002 (Exemptions pursuant to section 2.4.18) which deals with applications to the Board for exemption from supervised legal practice requirements; and
 - Any Board business processes which describes the Board's procedures in relation to the imposition and removal of the statutory condition in relation to supervised legal practice or any related compliance functions.
21. The policy statement will be applied by the Board and its delegates in the performance of functions listed in paragraph 10.
22. Specific management or reporting functions on the part of the Board or its delegates may arise in relation to the specific function being performed.
23. This policy statement is not to be applied inflexibly.
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