

This policy provides guidance and outlines the conditions under which the Society will grant an exemption from, or reduce the relevant period relating to the statutory condition of supervised legal practice on a local practising certificate in accordance with Section 56(3) of the *Legal Profession Act 2007* (the Act).

Section 56 places a statutory condition upon a practising certificate for a solicitor that the certificate holder must engage in supervised legal practice until that certificate holder has completed a period of supervised legal practice between 18 and 24 months depending upon the nature of legal training undertaken by the certificate holder to qualify for admission.

“Supervised legal practice” as defined in the dictionary to the Act (Schedule 2) means:

Legal practice by a person who is an Australian legal practitioner—

- (a) as an employee of a law practice if—
 - (i) at least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and
 - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or
- (b) as a partner in a law firm if—
 - (i) at least 1 other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and
 - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or
- (c) in a capacity approved under administration rules.

Additionally rule 23(2) of the Queensland Law Society Administration Rules 2005 provides:

Supervised legal practice as defined in schedule 2 of the Act shall include legal practice by a person who is an Australian legal practitioner as:

- (a) an employee of, or other person working under supervision in, a body corporate;
- (b) a government legal officer as set out in section 12 of the Act; or
- (c) an employee of any person who is not an Australian legal practitioner where the person engages in legal practice under the supervision of a person who—
 - (i) holds an unrestricted practicing certificate, or
 - (ii) holds, or is eligible to hold, an Australian practicing certificate and that person has completed the required period of supervised legal practice set out in subsections 56(1)(a) or (b) of the Act or the equivalent provision of a corresponding law.

A person may make an application to have the supervised legal practice condition removed when the required period of supervised legal practice is undertaken or where the person may be eligible for a total or partial exemption. This guideline does not discuss the removal of the condition when the required period of supervised legal practice has been completed.

Applications for Exemptions or Reductions

The Society may exercise its power under Section 56(3) to grant exemptions to persons, or to reduce the relevant period of supervised legal practice, where they are able to demonstrate a substantial and recent period of legal practice in a similar jurisdiction. The Society will decide whether or not it is appropriate to grant an exemption from the requirements or reduce the relevant period and may impose any conditions on an exemption it considers appropriate (see Section 56(4) of the Act).

An application for exemption or for a reduction of the relevant period of supervised legal practice should be made by statutory declaration annexing all relevant supporting documentation, including documentation relating to previous employers, supervisors or overseas authorities. Without limiting the matters that should be addressed the application and supporting documentation should outline:

- The dates the applicant engaged in legal practice;
- The length and nature of the legal practice 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 the legal practice was engaged in, including its similarity to legal practice in Queensland; and
- Any other matters considered relevant to the application.

Section 56(3) provides that the Society may exempt the person from supervised legal practice or reduce the period of supervised legal practice 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 or the supervisors. The Act does not define legal practice. The Society will consider legal practice with regard to the principles set out in *Legal Services Commissioner v Walter* [2011] QSC 132 at paragraphs 11 – 21.

The Society will consider the following types of work to be indicative of legal practice:

- Giving legal advice;
- Interpreting legislation or case law;
- Drafting contracts

Legal practice will generally involve consideration and application of broad areas of the law, the obligations of legal practitioners in regard to risk and fiduciary duty in the context of managing files and providing advice to clients.

The Society will not usually consider as legal practice:

- Paralegal work
- Working as a Judge's associate
- Policy work
- Working as a conveyancer
- Working as a migration agent
- Working as a tax agent

Applicants should recognise that the Society interprets Section 56 as requiring the prescribed period of supervised legal practice as a necessary step in the education of a solicitor for the protection of the public and maintenance of professional standards and the prescribed period of such supervised legal practice should only be departed from when the particular facts of a case justify it.

The consideration of barristers converting to a solicitors practising certificate

Barristers seeking to transfer to a solicitors practising certificate should act on the basis that they will be required to undertake the standard period of supervised legal practice (usually two years). The practising certificate when obtained would allow the barrister to work either as an employee or as a supervised partner within a legal practice undertaking supervised legal practice. If the barrister was to obtain a supervised principals certificate that certificate would be subject to a condition they undertake and complete a Practice Management Course within a specified period of time.

If the barrister intends to practice as a sole practitioner, unsupervised partner, legal practitioner director or as an unsupervised solicitor on the record for a corporation they would require an unrestricted practising certificate and would need to submit an application for exemption in accordance with the *Legal Profession Act 2007*.

Such an application would need to be considered by the Council of the Queensland Law Society and would be considered on its merits.

If such a certificate is granted it will usually be on the condition that the Practice Management Course is undertaken within a period of 6 months.

If the barrister has less than 3 years' experience as a legal practitioner and has not already completed supervised or practical legal training as defined in the Supreme Court (Admissions) Rules 2004 then in addition to being required to undertake supervised legal practice, a further condition of completing additional training courses which form part of that legal training may be imposed upon the practising certificate dependent upon the facts of each case.