

This guideline sets out what the Society will consider in deciding an application for an exemption from, or to reduce the statutory period of supervised legal practice upon on a local practising certificate. The power to make such an exemption or reduction is at s56(3) of the *Legal Profession Act 2007* (the Act).

Section 56 imposes a statutory condition upon a solicitor's practising certificate, that the certificate holder must engage in supervised legal practice until they have completed a period of supervised legal practice between 18 and 24 months depending upon the nature of legal training undertaken 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, under Section 56(3) grant exemptions from or reduce the relevant period of supervised legal practice where an applicant can demonstrate a period of legal practice in a similar jurisdiction. The Society may in exercising the discretion take into account only the length and nature of legal practice in which the applicant has previously engaged. Account will be taken of the similarities of the legal system in which the applicant has previously practiced to that of Queensland.

The Act does not define legal practice. The Society will have regard to the principles set out in *Legal Services Commissioner v Walter* [2011] QSC 132 at paragraphs 11 – 21. In short engaging in legal practice is :-

- to advise upon the legal rights and obligations of persons and other entities and to act on their behalf to exercise and protect those rights and obligations;
- when licensed, or entitled as a government lawyer, to conduct legal practice, subject to the professional and fiduciary duties of a legal practitioner.

Section 56 requires 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. The prescribed period of such supervised legal practice should only be departed from when the particular facts of a case justify it.

It will be rare that s56(3) is exercised to grant an exemption in the absence of a period of previous legal practice equal to the required period under s56(1) or to reduce the total period of supervised legal practice to below that required period. Conversely it would be rare that an applicant:-

- who has undertaken blemish free legal practice in a common law jurisdiction that exceeds the requirements of s56(1); or
- has undertaken blemish free legal practice as a government lawyer that exceeds the requirements of s56(1)

would be refused an exemption or reduction.

The Society will not consider as legal practice:

- Working as a paralegal in a law practice or elsewhere no matter how long the period
- Working as a Judge's associate
- Policy work
- Working as a conveyancer
- Working as a migration agent
- Working as a tax agent

An application for exemption or reduction should be made by statutory declaration annexing all relevant supporting documentation, including documentation relating to previous legal practice, 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

Barristers converting to a solicitors practising certificate

Barristers seeking to transfer to a solicitors practising certificate will be assessed in accordance with the above criteria.

In the usual case an exemption will be granted if the applicant has completed readership and been in practice at the private bar for two years or more. Employed barristers will be assessed in accordance with the legal practice they have undertaken.

