

# RPA News

## Regulation. Protection. Action.

*This bulletin was issued by the Victorian Legal Services Board + Commissioner to all practitioners with a 'Supervised legal practice' statutory condition on their practising certificate.*

Bulletin No. 35

Issued September 2017

### Supervised legal practice – Statutory condition

I have noticed that some lawyers are not aware they are subject to a statutory condition on their practising certificate which requires them to be supervised by a more experienced lawyer. There are currently 4,727 lawyers on record in Victoria who carry this statutory condition. You are receiving this particular RPA News bulletin because the Board's records show your practising certificate carries this condition. You will see this statutory condition on the face of your practising certificate.

As your certificate currently carries this condition, you **must only engage in supervised legal practice**. If you are practising without being supervised as required by this condition, you will be acting outside a condition of your practising certificate, which could potentially disqualify you under the [Legal Profession Uniform Law \(Victoria\)](#)<sup>1</sup>.

### **Supervised legal practice requirements**

Section 49 of the Uniform Law imposes a statutory condition on an Australian practising certificate that requires the holder to engage in supervised legal practice only, until the holder has completed a requisite period of supervised legal practice. The requisite periods are:

- 18 months for lawyers who completed practical legal training principally under the supervision of another lawyer to qualify for admission (e.g. supervised workplace training); or
- 2 years for lawyers who completed other practical legal training to qualify for admission (e.g. a Graduate Diploma in Legal Practice).

### **Removing the condition**

The supervised legal practice statutory condition **is not automatically removed** from practising certificates after the requisite period passes. To have the condition removed lawyers who have completed the requisite period of supervised legal practice must apply to the Board.

Of the 4,727 certificates carrying the condition, we are aware that only 1,371 lawyers are actually required to maintain their supervised arrangements. This means 3,356 lawyers remain under supervision in circumstances where they could have the condition removed.

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<sup>1</sup> The Legal Profession Uniform Law (Victoria) forms Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic)

The Board is also considering updating the [Register of Legal Practitioners and Law Practices](#) to include the supervised legal practice statutory condition (where applicable) on the lawyer's record. If you are eligible to have the condition removed, you may wish to do so before any update to this Register occurs.

### **Supervised lawyers cannot supervise**

Of greater concern is that some supervised lawyers, who are themselves still subject to the statutory condition, are formally listed as supervising others in legal practice.

A lawyer who is subject to the supervised legal practice statutory condition **cannot** act as a supervisor.

Supervisors are required to actively supervise. They are expected to provide regular support and feedback sessions, have authority over work performed by the supervised lawyer and be able to direct, amend, override or intervene in relation to the legal work performed.

Supervisors are subject to legal and professional obligations to act with all due skill and diligence.<sup>2</sup>

There is nothing in the law relating to supervised legal practice preventing the setting up of working arrangements involving *any* person being asked to oversee a team, or even an individual in the discharge of a team or group project. It must be noted, however, that only the nominated supervisor may formally supervise the legal services delivered by a lawyer who is required to be supervised. There are serious consequences for failing to comply with the supervised legal practice statutory condition.

### **Recommended Action**

If you are eligible to have your supervised legal practice statutory condition removed, you are encouraged to complete the [Template statutory declaration and template supervisor's letter](#).

I have heard that some employers appear to be actively discouraging lawyers from applying to remove the statutory condition when they are eligible to apply, and some supervisors have been unwilling to provide a letter in support of an application for removal of the condition. The Board expects supervisors to provide a letter in support of an application for removal of the condition if the conditions of supervision have been met. If you find yourself in this situation, please complete the [template statutory declaration](#) and contact the Board via the Practitioner Services Team.

You can find further detailed information on supervised legal practice in the Board's [Supervised Legal Practice Policy](#) and [on our website](#).

### **Michael McGarvie**

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#### **Contact Us**

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<sup>2</sup> See paragraphs 3.13 and 3.14 of the Victorian Legal Services Board Supervised Legal Practice Policy