

Policy

Lay Associate Guidelines

Introduction & Legislative Framework	1.1	This document provides guidance on the Board's power to approve a practitioner or practice having a lay associate known to be a disqualified person or a person who has been convicted of a serious offence.
	1.2	Part 3.9, Division 2 of the Legal Profession Uniform Law (Vic) (the Uniform Law – all subsequent references to provisions are to the Uniform Law) imposes prohibitions on certain associates. A 'lay associate' is any person employed by a law practice that is not an Australian legal practitioner.
	1.3	Section 121(1) provides that "a law practice contravenes this subsection if the law practice has a lay associate whom any principal or other legal practitioner associate of the law practice knows to be: <ul style="list-style-type: none"> a) a disqualified person; or b) a person who has been convicted of a serious offence - unless the lay associate is approved by the Board under s.121(2).
	1.4	Section 121(2) enables the Board to approve a lay associate for the purposes of s.121(1) generally, or for a particular position or category of positions with a particular law practice, or for a particular category of positions with any law practice. Section 121(4) enables the Board to grant approval unconditionally or subject to specified conditions.
Key definitions	2.1	Disqualified person (section 6) means: <ul style="list-style-type: none"> a) a person whose name has been removed from a Supreme Court roll and who has not subsequently been admitted or re-admitted by the Supreme Court of any jurisdiction; or b) a person who has been refused the grant or renewal of an Australian practising certificate and who has not been granted an Australian practising certificate at a later time; or c) a person whose Australian practising certificate is suspended (for the period of the suspension); or d) a person whose Australian practising certificate has been cancelled and who has not been granted an Australian practising certificate at a later time; or e) a person who is the subject of a decision under s.94 that the person is not entitled to apply for a certificate for a specified period; or f) a person who disqualified under s.119.
	2.2	Lay associate (section 6) of a law practice means a person who is not an Australian legal practitioner and who is: <ul style="list-style-type: none"> a) an associate of the law practice; or b) a consultant to the law practice (however described) who provides services related to legal services to the law practice, other than services of a kind specified in the Uniform Rules for the purposes of this definition; or c) a person who shares the receipts, revenue or other income arising from the law practice.

Policy

Lay Associate Guidelines

- 2.3 **Serious offence** (section 6) means:
- a) an indictable offence against a law of the Commonwealth, a State or a Territory; or
 - b) an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth, a State or a Territory if committed in Australia.

Guidelines

3.1 **The Board may approve a lay associate**

The Board may, on application, approve a lay associate for the purposes of s.121(1) (s.121(2)).

3.2 **How to apply to the Board?**

An application for approval of a lay associate under s.121 should be in writing and include the following information:

- a) Background
 - detail the nature and circumstances of the person's disqualification or conviction,
 - if applicable, detail any characteristics or matters pertaining to the lay associate that may have contributed to the conduct that led to their disqualification.
- b) Supervision and proposed work
 - detail the type of work it is proposed that the lay associate will undertake,
 - detail how the practitioner or practice proposes to supervise the lay associate,
 - detail the requirements and responsibilities of the arrangement or kind of arrangement under which the person is seeking to be employed or otherwise involved,
 - detail the degree of connection between the person's disqualification or conviction and the requirements and responsibilities of the arrangement or kind of arrangement,
 - detail why the lay associate would be a suitable person to work with the practitioner or practice,
 - if applicable, detail how the lay associate has addressed any issues which may have contributed to the conduct that led to their becoming a disqualified person or their being convicted of a serious offence.

It is recommended that all relevant information be attached to the application. This may include a copy of the court/tribunal order or decision disqualifying the lay associate; medical reports; and feedback from personal or professional mentors.

3.3 How will the Board make its decision?

The Board will review all the information provided by the applicant and offer the applicant the opportunity to make submissions, prior to making its decision. The Board will have particular reference to the matters listed in s.121(3).

The Board will also undertake its own enquiries to check the background of the lay associate, which may include a criminal record check; a review of the disciplinary register; and liaising with other regulators.

3.4 Conditional Approval

If the Board approves the practitioner or practice having the lay associate, the Board may impose conditions, under s.121(4), on that approval. For example the Board may, among other things, impose a condition that the practitioner or practice report back to the Board about the supervision of the lay associate at specified intervals.

3.5 Penalties

Lay Associate

A disqualified person, or a person convicted of a serious offence, must not become or seek to become a lay associate of a law practice, unless the person first informs the practice of the disqualification or conviction (civil penalty of 100 penalty units applies).

Legal Practitioner or Law Practice

A law practice which has a lay associate whom any principal or other legal practitioner associate of the law practice knows to be a disqualified person or person convicted of a serious offence, without approval by the Board, contravenes s.121(1) (civil penalty of 100 penalty units applies).

Australian Legal Practitioner

Conduct of an Australian legal practitioner who provides legal services on behalf of a disqualified entity in the capacity of an associate of the entity is capable of constituting unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the entity is a disqualified entity.