

**LEGAL PROFESSION
PROPOSED ADMISSION RULES**

Consultation Draft

November 2014

Admission Rules
under the
Legal Profession Uniform Law
November 2014

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ADMISSION RULES

PART 1 - PRELIMINARY

1. AUTHORISING PROVISION

These Rules are made by the Legal Services Council under section 419 of the *Legal Profession Uniform Law*.

2. COMMENCEMENT

These Rules succeed the *Legal Profession Admission Rules 2005* (NSW) and the *Legal Profession (Admission) Rules 2008* (Vic), with effect from 1 July 2015.

3. DEFINITIONS

- (1) In these Rules, unless the context or subject matter otherwise indicates or requires –

application for a compliance certificate means an application made under subrule 11(1) or rule 13;

Board means the local regulatory authority designated for the purposes of Part 2.2 of the Law;

Boards means the Boards designated for New South Wales and Victoria, respectively;

Law means the Legal Profession Uniform Law;

legal profession body means –

- (a) in the case of New South Wales, the Council of the Law Society of New South Wales and the Council of the New South Wales Bar Association; and
- (b) in the case of Victoria, the Law Institute of Victoria Limited and the Victorian Bar Inc.

- (2) Terms defined in the Law have the same meaning in these Rules.

PART 2 – QUALIFICATIONS AND TRAINING REQUIRED FOR ADMISSION

4. SPECIFIED ACADEMIC QUALIFICATIONS PREREQUISITE

- (1) For the purposes of section 17(1)(a) of the Law, subject to these Rules, the specified academic qualifications prerequisite is successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which includes the equivalent of at least 3 years' full-time study of law, is accredited by the Board, and which the Board determines will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee on the joint recommendation of the Boards.
- (2) If an applicant has attained the specified academic qualifications prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board may, after assessing the applicant's academic qualifications and any other relevant experience, require the applicant either or both to undertake further academic subjects and pass such further examinations as the Board may determine.

5. SPECIFIED PRACTICAL LEGAL TRAINING PREREQUISITE

- (1) For the purposes of section 17(1)(b) of the Law, subject to these Rules, the specified practical legal training prerequisite is acquiring and demonstrating an appropriate understanding and competence in each element of the skills, values and practice areas set out in Schedule 2, or otherwise determined by the Committee on the joint recommendation of the Boards.
- (2) The requirement may be satisfied by successfully completing either -
 - (a) a practical legal training course conducted by a practical legal training provider accredited by the Board; or
 - (b) supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of subrule (1).
- (3) A person is eligible to commence training referred to in sub-rule (2) in the circumstances set out in item 3.2 of Schedule 2, or when otherwise determined by the Board.
- (4) If an applicant has completed the specified practical legal training prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board may, after assessing the applicant's practical legal training qualifications and any other relevant experience, require the applicant to undertake such further practical legal training as the Board may determine.

6. ACCREDITING LAW COURSES AND PRACTICAL LEGAL TRAINING PROVIDERS

- (1) For the purposes of section 29 of the Law, the Board may, from time-to-time in accordance with this rule, accredit or reaccredit -
 - (a) a law course for the purpose of providing the academic qualifications prerequisite specified in subrule 4(1);
 - (b) a practical legal training provider for the purpose of providing the practical legal training prerequisite specified in subrule 5(1).
- (2) In considering whether to accredit a course or provider referred to in subrule (1), the Board -
 - (a) must take into account any appraisal criteria for such courses or providers from time-to-time endorsed for use in other Australian jurisdictions; and
 - (b) may have regard to any other matter it considers material.
- (3) The Board may accredit a course or provider referred to in subrule (1) on such conditions as it may specify, including without limitation any condition relating to the duration of accreditation.
- (4) Unless the Board determines otherwise, any law course or practical legal training provider that is recognised by another Australian jurisdiction as -
 - (a) satisfying either or both the academic requirements and the practical legal training requirements for admission in that jurisdiction; and

- (b) requiring a student successfully to complete either or both of the academic qualifications prerequisite specified in subrule 4(1) and the practical legal training prerequisite specified in subrule 5(1),

is deemed respectively to be accredited by the Board under this rule.

- (5) The Board must publish on its website the name of each course or provider from time-to-time accredited by it under subrule (1).
- (6) The Board may accredit any law course or practical legal training provider that provides either or both of the specified academic qualifications prerequisite or the specified practical legal training prerequisite wholly or partly on-line.
- (7) The Board may, as the Board thinks fit, by notice in writing to a law course provider or a practical legal training provider –
 - (a) in the case of a law course provider, withdraw the accreditation of any law course offered by that provider; or
 - (b) in the case of a practical legal training provider, withdraw the accreditation of that provider; or
 - (c) impose or vary any condition attached to that accreditation.
- (8) It is a condition of the accreditation of any law course, or practical legal training provider that, unless the Board determines otherwise, the costs of any accreditation, monitoring, review or reaccreditation shall be borne by the relevant provider.

7. **MONITORING AND REVIEWING ACCREDITED LAW COURSES AND PRACTICAL LEGAL TRAINING PROVIDERS**

- (1) The Board must monitor and may periodically review any aspect of the performance of –
 - (a) an accredited law course in providing the specified academic qualifications prerequisite; and
 - (b) an accredited practical legal training provider in providing the specified practical legal training prerequisite.
- (2) The Board may, after consulting the relevant provider of a law course or practical legal training course –
 - (a) appoint one or more persons to conduct a review referred to in subrule (1); and
 - (b) determine the terms of reference for such a review.
- (3) A review conducted under subrule (1) –
 - (a) must take into account any appraisal criteria for law courses, practical legal training courses or practical legal training providers from time-to-time endorsed for use in other Australian jurisdictions; and
 - (b) may have regard to any other matter it considers material.
- (4) The provider of a law course referred to in paragraph (1)(a) or a practical legal training provider referred to in paragraph (1)(b) must, at its cost, provide such

information to the Board or its reviewer as the Board or reviewer may require for the purpose of any monitoring or review carried out under this rule.

- (5) The Board –
- (a) must give a copy of any report received by it as a result of a review conducted under subrule (1) to the relevant provider conducting the law course or practical legal training course; and
 - (b) may publish a copy or summary of that report on the Board's website.

8. **SUPERVISED LEGAL TRAINING**

- (1) The Board may determine whether supervised legal training may be undertaken for the purposes of rule 5(2)(b) in this jurisdiction.
- (2) If the Board makes a determination under subrule (1), Schedule 3 applies.

9. **DETERMINING WHETHER SOMEONE IS A FIT AND PROPER PERSON**

- (1) For the purposes of section 17(2)(b) of the Law, the following matters are specified as matters to which the Board must have regard –
 - (a) any statutory declaration as to the person's character, referred to in rule 15;
 - (b) any disclosure or statement made by the person under rule 16;
 - (c) any police report provided under rule 17;
 - (d) any student conduct report provided under rule 18;
 - (e) any certificate of good standing provided under rule 19;
 - (f) whether the person is currently of good fame and character;
 - (g) whether the person is or has been a bankrupt or subject to an arrangement under Part 10 of the **Bankruptcy Act 1966** (Cth) or has been an officer of a corporation that has been wound up in insolvency or under external administration;
 - (h) whether the person has been found guilty of an offence including a spent offence in Australia or in a foreign country, and if so –
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed;
 - (i) whether the person has been the subject of any disciplinary action, howsoever expressed, in any profession or occupation in Australia or in a foreign country;
 - (j) whether the person has been the subject of disciplinary action, howsoever expressed, in any profession or occupation that involved a finding adverse to the person;
 - (k) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner;

- (l) whether the person has a sufficient knowledge of written and spoken English to engage in legal practice in this jurisdiction.
- (2) The Board may require a person to pass an examination, and at a level, specified by the Board for the purposes of subrule (1)(l).

10. DIRECTIONS ABOUT QUALIFICATIONS

- (1) A person who has completed the academic requirements for admission in a foreign jurisdiction may apply to the Board for a direction about what additional academic qualifications must be acquired by that person in order to meet the requirements of rule 4.
- (2) A person who has completed the practical legal training requirements for admission and has been admitted in a foreign jurisdiction may apply to the Board for a direction about what additional practical legal training understanding and competence must be acquired by that person in order to meet the requirements of rule 5.
- (3) The Board must take into account—
 - (a) before making a direction under subrule (1), the extent to which the academic qualification in law leading to legal practice in a foreign jurisdiction completed by the applicant is substantially equivalent to the academic qualifications prerequisite specified in subrule 4(1);
 - (b) before making a direction under subrule (2), the extent to which any practical legal training in the foreign jurisdiction completed by the applicant is substantially equivalent to the practical legal training prerequisite specified in subrule 5(1); and
 - (c) before making a direction under either subrule (1) or (2), any principles for assessing the qualifications of overseas applicants for admission from time-to-time endorsed for use in other Australian jurisdictions.
- (4) The Board may give a direction under subrule (1) or (2) in such terms, and subject to such conditions as it thinks appropriate, including without limitation that the applicant must –
 - (a) pass an examination referred to in subrule 9(2); and
 - (b) complete any other requirements directed by the Board; and
 - (d) apply for a compliance certificate within such period as the Board determines.

PART 3 – ADMISSION PROCEDURE

11. APPLICATION FOR A COMPLIANCE CERTIFICATE

- (1) A person may apply to the Board for a compliance certificate to be issued and provided to the Supreme Court.
- (2) An application made under subrule (1) must –
 - (a) be made by statutory declaration in such form as the Board may determine; and

- (b) attach such of the documents referred to in rules 14, 15 16, 17, 18 and 19 as apply to the applicant's circumstances.

12. **ADMISSION OF NEW ZEALAND PRACTITIONERS IN VICTORIA**

- (1) In this rule –

New Zealand practitioner means a person who is admitted, and at the time of seeking registration in Victoria under the mutual recognition legislation, is entitled or eligible to practise as a legal practitioner in New Zealand;

mutual recognition legislation means the *Trans-Tasman Mutual Recognition Act 1997* (Cth) as adopted in Victoria.

- (2) If the Supreme Court of Victoria advises the Board that a person who is a New Zealand practitioner is seeking registration in Victoria under the mutual recognition legislation, the Board may make any enquiries it sees fit concerning that person's proposed registration.
- (3) If the Board is satisfied that such documents as are provided to the Board by the Supreme Court comply with the mutual recognition legislation, it must issue a compliance certificate, in such form as the Board may determine, stating that the New Zealand practitioner appears to be entitled to be admitted to the legal profession in Victoria.
- (4) If the Board is not satisfied of the matters referred to in sub-rule (3) it must refer the notice and accompanying documents to the Supreme Court for determination, in accordance with the mutual recognition legislation.

13. **APPLICATION FOR READMISSION**

- (1) An application for a compliance certificate by a person whose name has previously been removed from the Supreme Court roll must, in addition to meeting the requirements of rule 11, set out –
 - (a) the circumstances which led to the applicant's name being removed from the Supreme Court roll;
 - (b) the applicant's views about those circumstances and the decision to remove the applicant's name from the roll;
 - (c) events which tend to re-establish the applicant's good fame and character;
 - (d) the applicant's law-related experience since the applicant's name was removed from the roll;
 - (e) other matters that the applicant considers relevant to the application.
- (2) A copy of any application made under subrule (1) must be provided to each legal profession body in this jurisdiction.
- (3) If the Board issues a compliance certificate to a person referred to in subrule (1), it may provide a written report to the Supreme Court setting out the nature of the application and the Board's reasons for issuing the certificate

14. **EVIDENCE OF QUALIFICATIONS**

- (1) Every application for a compliance certificate must attach –

- (a) an original academic transcript setting out the results obtained by the applicant in the academic qualification upon which the applicant relies as complying with the requirements of subrule 4(1);
 - (b) an original certificate of successful completion of any practical legal training course upon which the applicant relies as complying with the requirements of subrule 5(1).
- (2) Where an applicant relies on supervised legal training as complying with the requirements of subrule 5(1), the application must attach –
- (a) a statutory declaration by the person who executed the applicant's training plan on behalf of the trainee's employer, or that person's nominee;
 - (b) the work diary kept by the trainee pursuant to paragraph 6(1)(d) of Schedule 3, certified as being correct by the person referred to in paragraph (a) and by the applicant;
 - (c) an original certificate by an institution or body referred to in paragraph 6(1)(c) of Schedule 3 that the applicant has successfully completed assessment in the elements referred to in that paragraph; and
 - (d) a statutory declaration by each person who acted as a supervisor of the applicant, and by the applicant.

15. EVIDENCE OF CHARACTER

- (1) An application for a compliance certificate must attach two statutory declarations as to the applicant's character made by persons who are not related to the applicant by blood, marriage or other domestic relationship.
- (2) An application for a compliance certificate by any person who is or has been a legal practitioner in a foreign jurisdiction must attach two statutory declarations as to the applicant's character made by persons with whom the applicant has been associated in legal practice in that jurisdiction
- (3) Unless the Board determines some other period, a person making a statutory declaration under this rule must have known the applicant for a period of at least two years.
- (4) A person making a statutory declaration under this rule must –
 - (a) have read any disclosure made by the applicant under subrule 16(1); and
 - (b) attest to that fact in the statutory declaration.
- (5) Subrule (4) does not apply to any disclosure made under subrule 16(4).

16. DISCLOSURE STATEMENT

- (1) An application for a compliance certificate must attach a statutory declaration by the applicant disclosing any matter which a reasonable applicant would consider that the Board might regard as not being favourable to the applicant when considering whether the applicant is currently of good fame and character and a fit and proper person to be admitted to the Australian legal profession.
- (2) It is the duty of every applicant to make a full and complete disclosure of every matter referred to in subrule (1).

- (3) Any application to which a statutory declaration under subrule (1) is attached must also attach original or certified copies of any available documentary evidence relating to any matter disclosed.
- (4) A person may make any disclosure relating to that person's capacity in a separate statutory declaration from that referred to in subrule (1).
- (5) The Boards may jointly determine Disclosure Guidelines for applicants for admission relating to matters to be disclosed under this rule.
- (6) If Disclosure Guidelines have been determined under subrule (5), any statutory declaration made under subrule (1) or (4) must include a statement that the applicant has read and understood those Disclosure Guidelines.
- (7) If Disclosure Guidelines have been determined under subrule (5), an applicant who does not make a statutory declaration under subrule (1) or (4) must include the following statement in any application for a compliance certificate –

I have read and understood the Disclosure Guidelines for applicants for admission. I further state that I am and always have been of good fame and character. I am not aware of any matter or circumstance that might affect my suitability to be admitted as an Australian lawyer and an officer of the Court.

17. **POLICE REPORTS**

The Board may choose to require, either generally or in a particular case, an application for a compliance certificate to attach –

- (a) in the case of an applicant who relies on qualifications obtained in Australia, a report from the police in Australia on the applicant's criminal record in Australia (if any) prepared within six months before the application is made;
- (b) in the case of an applicant who relies on qualifications obtained in, or who has been admitted to the legal profession in, a foreign jurisdiction, a report from the police in that jurisdiction and in any jurisdiction in which the applicant has previously resided, on the applicant's criminal record (if any) prepared within six months before the application is made;
- (c) in the case of an applicant referred to in paragraph (b) who has lived in Australia for more than three months in the past two years before the application is made, a report from the police in Australia on the applicant's criminal record in Australia (if any) prepared within six months before the application is made.

18. **STUDENT CONDUCT REPORTS**

- (1) An application for a compliance certificate must attach a report by any tertiary academic institution and any practical legal training provider attended by the applicant, about the conduct of the applicant, which reveals whether or not the applicant was the subject of any disciplinary action, howsoever described, taken by the institution or the provider and the outcome of any such disciplinary action, prepared within six months before the application is made.
- (2) If the Board so requests in writing, the applicant must cause the institution or practical legal training provider referred to in subrule (1) to provide for inspection or copying by the Board any documents that are relevant to the Board's consideration of any disciplinary action referred to in subrule (1).

19. **CERTIFICATE OF GOOD STANDING**

An application for a compliance certificate made by a person who has been admitted to the legal profession in another Australian jurisdiction or a foreign jurisdiction must attach a statement by the relevant professional body in that jurisdiction that the applicant is a member of the legal profession in good standing and is not subject to any current or pending disciplinary matters, made within two months before the application is made.

20. **EARLY ASSESSMENT OF SUITABILITY**

- (1) Every application made under section 21(1) of the Law must comply with the requirements of rule 11, as if it were an application for a compliance certificate.
- (2) Any declaration made by the Board under section 21(2) of the Law is limited to the matters and circumstances set out in the application.

21. **FURTHER INQUIRIES AND HEARINGS**

- (1) For the purposes of determining whether an applicant for admission –
 - (a) has complied with these Rules; or
 - (b) is a fit and proper person to be admitted to the Australian legal profession, the Board may –
 - (c) in addition to information referred to in section 437 of the Law, seek and obtain any further information it may require from an institution providing the specified academic qualifications prerequisite or specified practical legal training prerequisite to the applicant, upon which the applicant relies; and
 - (d) require the applicant to appear in person before the Board, or a committee of the Board.
- (2) In any application for a compliance certificate the applicant must authorise the Board to obtain the further information referred to in paragraph (1)(c), in such terms as the Board may determine.

22. **HEALTH ASSESSMENTS**

- (1) If there is material before the Board to suggest, on reasonable grounds, that an applicant for a compliance certificate may be currently unable, for reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner, the Board may, if it considers it appropriate to do so, require the applicant by a date nominated by the Board to provide a health report to the Board from a registered medical practitioner as to the applicant's ability satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner.
- (2) If either –
 - (a) a report referred to in sub-rule (1) is not provided by the date nominated by the Board; or
 - (b) the Board reasonably considers that any health report provided by the applicant is insufficient for the Board to form a view whether or not the applicant is currently unable, for reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner,

the Board may, if it considers it appropriate to do so –

- (c) require the applicant to undergo a health assessment;
- (d) appoint one or more appropriately-qualified persons (one of whom must be a registered medical practitioner) as a health assessor to conduct all or part of that health assessment.

(3) The Board –

- (a) must inform the applicant in writing if a health assessment is required, setting out –
 - (i) the name and qualifications of the health assessor; and
 - (ii) the date (at least 28 days after the date of the written notice), time and place for the assessment, each of which must be reasonable having regard to the circumstances of the applicant, as known to the Board;
- (b) may disclose to the health assessor any information in the Board's possession that the Board considers relevant to the health assessment, including any documents attached to the application for a compliance certificate.

23. **HEALTH ASSESSMENT REPORTS**

- (1) A requirement under subrule 22(2) to undergo a health assessment will not be satisfied unless the health assessor conducting the assessment–
 - (a) prepares a report setting out the health assessor's findings as to whether, and to what extent, the applicant is currently unable, for reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner;
 - (b) gives a copy of the report to the Board;
 - (c) where the health assessor considers that disclosing to the applicant the information set out in the report is unlikely to be prejudicial to the applicant's health or wellbeing, gives a copy of the report to the applicant;
 - (d) where the health assessor considers that disclosing the information to the applicant is likely to be prejudicial, gives a copy of the report to a registered medical practitioner nominated by the applicant.
- (2) A report prepared under this rule, or evidence about a report or its contents, is confidential and may not be disclosed to any person except under compulsion of law or with the consent of the applicant.

24. **DOCUMENTS TO BE PROVIDED DIRECTLY**

If the Board so requires, a person applying for a compliance certificate must cause any document or certificate to be provided to the Board by a third person under these Rules, to be provided directly to the Board.

25. **COMPLIANCE CERTIFICATES**

If the Board approves an application for a compliance certificate it shall issue and provide to the Supreme Court a compliance certificate relating to the applicant, setting out any

matters required by section 19(3), section 20(1) and by any other provision of the Law, in such form as is jointly determined by the Boards.

PART 4 - GENERAL

26. DISPENSING POWER

Subject to section 18 of the Law, the Board may, either generally or in a particular case and subject to such conditions as it thinks fit, dispense with or vary any requirement of these Rules if the Board is satisfied that to do so will not materially detract from –

- (a) any of the prerequisites for the issue of a compliance certificate set out in section 17 of the Law; or
- (b) any other requirement of the Law or these Rules relating to the issue of a compliance certificate.

27. DOCUMENTS

Subject to the Law and these Rules, the Board may determine the form and required content of any application or other document to be provided to the Board under these Rules.

28. REVIEW OF DECISIONS

The Board may review, vary or set aside any decision of the Board, or of any committee, sub-committee or delegate of the Board, or anything done under the authority of any of them, in such circumstances and in such manner as the Board determines.

29. COMMITTEES

The Board may establish, and determine the terms of reference of, such committees and sub-committees as it may determine and may, if the Act applying the Law in this jurisdiction so allows, delegate any function of the Board to a committee or sub-committee.

30. ACTING ON THE ADVICE OF OTHERS

The Board may –

- (a) in determining whether a law course or practical legal training course complies with the requirements of subrule 4(1) or 5(1), act on a certificate relating to that matter provided by the head of a law course or of a practical legal training provider respectively accredited under these Rules for the purpose of subrule 4(1) or 5(1), as the case requires;
- (b) in determining any matter under these Rules, act on the report of a committee of the Board.

PART 5 – TRANSITIONAL AND SAVINGS PROVISIONS

31. TRANSITIONAL AND SAVINGS PROVISIONS

- (1) In this rule, **former rules** means either the *Legal Profession Admission Rules 2005* (NSW) or the *Legal Profession (Admission) Rules 2008* (Vic), as the case requires.
- (2) Anything done by the Legal Profession Admission Board, the Council of Legal Education, the Board of Examiners or by any of their respective committees, sub-

committees or delegates, or under the authority of any of them, under the former rules –

- (a) continues to have effect as if the former rules have not ceased to have effect;
- (b) insofar as the thing could be done by the Board under these Rules, has effect as if it had been done by the Board and may be varied or set aside by the Board.

(3) Without limiting subrule (2) –

- (a) the course for the Diploma in Law granted under rule 80 and the course for any law degree accredited under Part 6 of the New South Wales former rules is each accredited under subrule 6(1)(a) for the purposes of subrule 4(1);
- (b) any course of study approved under rule 2.04 of the Victorian former rules is accredited under subrule 6(1)(a) as a course for the purposes of subrule 4(1);
- (c) any practical legal training provider conducting a practical legal training course set out in the Fourth Schedule to the New South Wales former rules is accredited under subrule 6(1) as a practical legal training provider for the purposes of paragraph 5(2)(a), conducting that practical legal training course;
- (d) any PLT provider approved under subrule 3.02(1) of the Victorian former rules is accredited as a practical legal training provider under subrule 6(1) for the purposes of subrule 5(2)(a);
- (e) any training course approved under subrule 3.04(1) of the Victorian former rules must be taken to be a practical legal training course conducted by an accredited practical legal training provider for the purposes of paragraph 5(2)(a).

(4) The Board may make any determination or direction it considers necessary to resolve any issue arising as a result of these Rules operating to succeed the former rules.

SCHEDULE 1

ACADEMIC AREAS OF KNOWLEDGE

[This Schedule will take in the contents of the *Prescribed Academic Areas of Knowledge* (November 2009), which can be found on the Law Admissions Consultative Committee Website, under the tab relating to Documents about Present Admissions Policy:

<http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCPrescribedAcademicAreasofKnowledge-June2008.pdf>]

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SCHEDULE 2

PRACTICAL LEGAL TRAINING COMPETENCIES FOR ENTRY-LEVEL LAWYERS

[This Schedule will take in the contents of the *PLT Competency Standards for Entry-level Lawyers* (January 2015), which can be found on the Law Admissions Consultative Committee Website, under the tab relating to Documents about Present Admissions Policy:

<http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCCompetencyStandardsforEntryLevelLawyers-Jan2015.pdf>]

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SCHEDULE 3

SUPERVISED LEGAL TRAINING

1. Definitions

In this Schedule –

clause means a clause of this Schedule;

supervisor means a person who is eligible under clause 2 to be a supervisor of a trainee;

training means supervised legal training undertaken by a trainee under this Schedule;

trainee means a person who undertakes training in accordance with a training plan;

training plan means a training plan executed in accordance with clause 8.

2. Persons eligible to be a supervisor

(1) A person may supervise a trainee if the person is an Australian lawyer engaged –

- (a) in legal practice; or
- (b) as a government, corporate, commercial or community legal officer –

working principally in this jurisdiction, who has worked as, or in the manner of, either or both a practising solicitor and a practising barrister for a total of at least five years, of which the last three years were in practise as a solicitor, or working in the manner of a solicitor.

(2) The Board may approve, either generally or in relation to a particular trainee –

- (a) a judge of the High Court, the Federal Court, the Supreme Court of this jurisdiction, or, as the case requires, either the County Court of Victoria or the District Court of New South Wales; or
- (b) any Australian lawyer, other than a person referred to in subclause (1), who has worked as, or in the manner of, either or both a practising solicitor and a practising barrister for a total of at least five years, of which the last three years were in practice as a solicitor, or working in the manner of a solicitor –

whom the Board considers to have appropriate qualifications and experience to be a supervisor, and to be able to provide the trainee with appropriate training.

(3) If a person referred to in subclause (1) or paragraph (2)(b) has not been engaged in legal practice within the last five years, the person will not be eligible to be a supervisor until the person has engaged in legal practice for at least one further year.

(4) Training may be undertaken under the successive supervision of different supervisors, only if the proposed arrangements are –

- (a) set out in the training plan; or
- (b) approved in advance by the Board; or

subsequently set out in the statutory declaration referred to in subrule 14(2)(a).

- (5) The Board may give approval under subclause (4) subject to such conditions as it may determine.

3. **Where training must occur**

- (1) Subject to subclause (2) training must take place in this jurisdiction.
- (2) Training may take place elsewhere in Australia if the proposed location of that training is –
 - (a) set out in the training plan; or
 - (b) approved in advance by the Board; or
 - (c) subsequently set out in the statutory declaration referred to in subrule 14(2)(a).
- (3) The Board may, either generally or in a particular case, give approval for some or all of a trainee's training to take place –
 - (a) elsewhere in Australia; or
 - (b) outside Australia –
subject to such conditions as it may determine.
- (4) A trainee who undertakes training outside this jurisdiction must comply with all requirements of clause 6 of this Schedule.

4. **Obligations of a trainee's employer**

- (1) The employer of a trainee must –
 - (a) implement a training plan for each employee that –
 - (i) provides for the matters set out in clause 9; and
 - (ii) is executed on behalf of the employer and by the trainee; and
 - (iii) is executed by each supervisor nominated in the training plan; and
 - (b) subject to subclause 11(3), is given to the Board by the trainee in accordance with clause 10; and
 - (c) ensure that the trainee has appropriate opportunities to carry out the trainee's obligations under the training plan, in the course of the trainee's employment; and
 - (d) ensure that the trainee is appropriately supervised by a supervisor, throughout the trainee's training.
- (2) Unless the Board determines otherwise, a trainee's employer must meet the cost of any training relevant to –
 - (a) a trainee's supervision; and
 - (b) a trainee meeting the requirements of subrule 5(1).

5. Number of trainees

- (1) Subject to subclause (2), an employer must not engage more trainees to undertake training at the same time, than the number of eligible supervisors available at the workplace at that time.
- (2) The Board may determine the maximum number of trainees either generally or in a particular case, which an employer or class of employer may engage to undertake training at the same time.
- (3) A supervisor may not supervise more than one trainee at the same time without the Board's prior approval.

6. What training requires

- (1) A trainee must –
 - (a) complete at least 12 months' training, worked out in accordance with this Schedule and any guidelines determined by the Board, under the supervision of an eligible supervisor; and
 - (b) subject to paragraphs (c) and (d), meet the requirements set out in subrule 5(1); and
 - (c) acquire an appropriate understanding of, and competency in, and satisfactorily complete assessment in –
 - (i) each element of Ethics and Professional Responsibility and of Lawyers Skills; and
 - (ii) the Risk Management element of Work Management and Business Skills –
as set out in Schedule 2 or otherwise determined under subrule 5(1), through a course of instruction and assessment conducted by:
 - (iii) an institution accredited under subrule 6(1) for the purposes of subrule 5(1); or
 - (iv) another body approved by the Board for the purpose of providing such a course of instruction and assessment; and
 - (d) keep a work diary in a form determined by the Board throughout the period of training.
- (2) A course of instruction referred to in paragraph (1)(c) must be equivalent in content and depth, and the relevant assessment must be as rigorous, as for comparable elements of a course accredited under subrule 6(1) for the purpose of subrule 5(1).

7. Employment during training

- (1) A trainee must not engage in any paid work while undertaking training without first obtaining the consent of the person who executed the trainee's training plan on behalf of the employer, except –
 - (a) in the business conducted by that employer; or
 - (b) in accordance with the relevant training plan.

8. **Leave of absence**

- (1) Subject to any applicable award or law relating to leave of absence, during a period of training, a trainee may be allowed leave of absence –
 - (a) on all days that are public holidays in this jurisdiction; and
 - (b) in the case of illness or injury, for a period not exceeding 10 days; and
 - (c) for a further period not exceeding 20 days.
- (2) Any day on which the employer's office is not open for business (other than a Saturday, Sunday or public holiday) must be counted when calculating the period referred to in paragraph (1)(c).
- (3) An employee must, during a trainee's employment and training, allow the trainee sufficient time to prepare for, travel to and from and attend any course and any assessment referred to in paragraph 6(1)(c) of this Schedule.

9. **Content of training plan**

A training plan, in a form determined by the Board, must be executed on behalf of the employer and by the trainee and must set out –

- (a) the period of training which the trainee will undertake; and
- (b) other parties will ensure that the trainee will acquire and demonstrate the understanding and competence referred to in subrule 5(1); and
- (c) who will supervise the trainee and for what part of the training;
- (d) the name of the relevant institution or body referred to in paragraph 6(1)(c)(iii) or (iv) of this Schedule;
- (e) undertakings by the person executing the training plan on behalf of the employer, given on behalf of that employer, and each supervisor nominated in the training plan, that the employer and supervisor respectively will use their best endeavours to ensure that –
 - (i) the trainee is properly and thoroughly instructed in the practice and profession of a legal practitioner;
 - (ii) the trainee gains practical experience in the legal business transacted in the legal practice or business of the employer;
 - (iii) the trainee is given every opportunity to participate, under appropriate supervision, in giving legal advice and in drafting such legal documents as are given or drafted in the legal practice or business of the employer;
 - (iv) if the trainee has properly performed the obligations referred to in paragraph (f), and is qualified to be admitted to the legal profession, the trainee is issued with a compliance certificate; and
- (f) an undertaking by the trainee to undertake the responsibilities and tasks given by or on behalf of the employer and any supervisor nominated in the training plan, consistently with the training plan, diligently and in good faith, to the best of the trainee's ability; and

- (g) a provision that, to the extent that any terms of an employment contract otherwise entered into between the employer and the trainee are inconsistent with the training plan, the terms are void and of no effect; and
- (h) any other matters which the Board may determine.

10. Required information

- (1) Within one month after executing a training plan, a trainee must provide the Board with –
 - (a) a copy of the executed training plan;
 - (b) a statutory declaration by the person executing the training plan on behalf of the employer, verifying the training plan in a form determined by the Board;
 - (c) evidence that the trainee has obtained the academic qualification referred to in subrule 4(1);
 - (d) any other information that the Board may generally require trainees to provide.
- (2) The trainee must provide the Board with any further evidence that the Board may require that the training provided for in the training plan is appropriate and sufficient in the trainee's case.

11. Approval of training and training plan

- (1) After considering the information referred to in clause 10, the Board must approve a trainee's training and training plan if it is satisfied that –
 - (a) the trainee's employer is able to provide the trainee with training in accordance with these Rules;
 - (b) each person nominated as a supervisor in the training plan is eligible to be a supervisor;
 - (c) proper provision has been made for the trainee to meet the requirements of clause 6;
 - (d) the training plan complies with these Rules and has been properly executed by the parties.
- (2) Subject to subclause (3), the Board must refuse to approve the training and the training plan if it is not satisfied of the matters in subclause (1).
- (3) The Board may permit a trainee to withdraw and resubmit an amended training plan within a period determined by the Board, if the Board is not satisfied of the matters in subclause (1).
- (4) The Board may approve an amended training plan resubmitted in accordance with subclause (3) if the amended training plan has been duly executed by both parties and the Board is satisfied of the matters in subclause (1).
- (5) If the Board approves an amended training plan under subclause (4), any period of training undertaken before the Board gives its approval must be taken to be training for the purposes of this Schedule.

- (6) The Board may retrospectively approve any departure from, or alteration to, a training plan set out in a statutory declaration made under subrule 14(2), if the Board considers that the departure or alteration did not prevent the trainee from satisfying any of the requirements of subrule 5(1).

12. Termination of training plan

- (1) If at any time during a period of training the Board considers that –
- (a) a trainee is not receiving appropriate supervision or training;
 - (b) a training plan is not being complied with; or
 - (c) a trainee is not deriving substantial benefit from the training; or
 - (d) for any other reason, it is appropriate to do so,
- the Board may either –
- (e) terminate the training; or
 - (f) approve another appropriate employer and one or more eligible supervisors to provide the balance of the training, under a revised training plan.
- (2) The Board may act under subclause (1) –
- (a) on the application of one or more of the trainee, the trainee's employer or a supervisor nominated in the training plan; or
 - (b) on its own initiative.
- (3) Where the Board acts under subclause (1), it may disqualify –
- (a) the relevant employer from offering training; or
 - (b) a supervisor nominated in the training plan from acting as a trainee's supervisor,
- either permanently, or for such period as the Board determines.