

Legal Profession Admission Rules

Submission made by:

Victorian Legal Services
BOARD + COMMISSIONER

to the Legal Services Council – Admissions Committee
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Michael McGarvie
Legal Services Commissioner (Victoria) and CEO Legal Services Board (Victoria)

Admission Rule Number	Rule Name	Comments
General Comment	Objectives (missing)	An objectives section (similar to the current Victorian Admission Rules provision s 1.01) should be included in the preliminary part of the Rules. This would clearly state the purpose and objectives of the Rules and set the framework for the provisions contained in the Rules.
3	Definitions	The term Board or Boards should not be used in the Rules. The term 'designated local regulatory authority' (DLRA) should be used instead. This is consistent with the terms used in the Uniform Law as well as other Rules made pursuant to the Uniform Law. DLRA is already defined in the Uniform Law and there is no need to add a further term (ie Board).
3	Definitions	'Committee' should be included in the definitions section as it is referred to as Admissions Committee and Committee respectively in different parts of the Rules. Once defined that term should be consistently applied throughout the Rules.
3	Definitions	The term 'legal profession body' should be changed to 'local professional association' (for consistency) which is the term used in the Uniform Law. This terminology is used throughout the Rules and should be amended.
4(1)	Specified Academic Qualifications Prerequisite	<p>The phrase '<i>or otherwise determined by the Admissions Committee on the joint recommendation of the Boards</i>' at the end of rule 4(1) should be removed. We believe that there may be a validity issue with this rule if it exists in its current form. Once the Rules and standards are approved by the Standing Committee (who has the authority under the Uniform Law) it would seem contrary to the purpose of the legislation for the Admissions Committee to be able to decide something different.</p> <p>We appreciate that flexibility may be required, however the best way to achieve this is to use the Rule making powers of the Uniform Law (to amend rules or make rules in certain urgent circumstances) as opposed to bypass those and have a Rule giving a body power to essentially make or amend rules that the Uniform Law has not contemplated.</p>
5(1)	Specified Practical Legal Training Prerequisite	As above for rule 4(1)

Admission Rule Number	Rule Name	Comments
9	Determining whether someone is a fit and proper person	<p>Section 45(2) and section (45)(3) outline the matters that the designated local regulatory authority may have regard to in determining whether a person is fit and proper to hold a practising certificate. The matters are to be specified in the Uniform Rules.</p> <p>We would encourage the Legal Services Council and the Admissions Committee to ensure that both sets of Rules are consistent and use consistent language. While we appreciate the requirements and matters to be taken into account are for different purposes (admission and practising certificates) the fitness and propriety requirements should be consistent.</p> <p>Currently in Victoria there is one set of suitability matters that applies in both the admissions and licensing contexts. This was also the approach taken in the original draft of the COAG Legal Profession National Rules. Notwithstanding that separate suitability matters are permissible under the structure of the Uniform Law – we have some concerns that establishing two sets of suitability matters is inconsistent with the spirit of the reform and its emphasis on greater consistency.</p> <p>Further with regard to fitness and propriety, the proposed rules for admission do not specify disciplinary action relating to academic course or PLT regardless of the outcome. This requirement should be included (this resulted in the leading common law case in Victoria of <i>Re OG, a lawyer</i> VSC 520).</p> <p>The Rules (or related policies) should specify as many relevant matters as practicable so that applicants know what is expected of them. The Legal Services Board in Victoria has published a Fit and Proper Person Policy to help minimise uncertainty in a similar area (attached below for your information).</p>
13	Application for readmission	<p>Rule 13(2) is unclear. It seems to suggest that a copy of the readmission application should be provided to each local professional association.</p> <p>It is unclear why a copy of a readmission application would be provided to a local professional association (in Victoria being the LIV or VicBar). In Victoria, these bodies perform delegated functions for the regulator. We are not clear on the policy intent of this clause. If it is to alert the regulator to the readmission application then the term 'local professional body' should be replaced with 'designated local regulatory authority responsible for issuing practising certificates in this jurisdiction'.</p>

Admission Rule Number	Rule Name	Comments
17 18(1)	Police Reports Student Conduct Reports	The two Rules appear to be inconsistent in the sense that Rule 17 relating to police reports is discretionary (the Board 'may' choose to require) as opposed to rule 18(1) where the applicant must attach a report by the institution. It is unclear why rule 17 is discretionary and rule 18 is mandatory. We do appreciate however, that there may be a policy intent for the difference that we are not aware of.
18(2)	Student Conduct Reports	Rule 18(2) seems to place a burden on the applicant that is necessarily out of their control. It requires that the applicant 'must' cause the institution or provider to provide documents for inspection to the Board. This Rule could be amended to read that the applicant 'must take all reasonable steps'. In the alternative, this Rule may be better expressed to require the institution or provider to provide documents etc. upon receiving a request from the Board, rather than placing the onus on the applicant.
19	Certificate of Good Standing	<p>The reference in this rule to 'another Australian jurisdiction' should read 'another non-participating Australian jurisdiction'. This would be consistent with the Uniform Law which only requires (allows) admission in one Australian jurisdiction.</p> <p>The term 'by the relevant professional body' is unclear. We recommend replacing that term with 'designated local regulatory authority responsible for issuing practising certificates in this jurisdiction' if this is what the policy intent is. This would make it clear to the applicant from whom the statement is required to come from.</p>
21	Further Inquiries and Hearings	We are supportive of this rule. Particularly the ability for the Board to request further information if required, but also the ability to call an applicant to appear in person before the Board if required.

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22	Health Assessments	<p>This rule provides for a medical practitioner to make an assessment about an applicant's ability to carry out the 'inherent requirements of practice as an Australian legal practitioner'. We suggest that some guidance may be required in order for a medical practitioner to adequately be able to make this assessment especially as the Board then has the power to consider such an assessment as inadequate and order a further assessment be conducted.</p> <p>If no guidance regarding 'inherent requirements' is provided it may lead to applicants having gone through one assessment and then be required to go through another one at the request of the Board. There is also no guidance as to who will bear the costs of these assessments as they can often be expensive, particularly psychiatrist/psychologist reports. This may place an excessive burden on the applicant.</p> <p>There are also minor drafting variations between equivalent criteria, eg, 'currently unable <u>satisfactorily to carry out</u> the inherent requirements of practice as an Australian legal practitioner' (Admission Rules) vs 'currently unable <u>to carry out satisfactorily</u>' (General Rules), which are unnecessary and should be eliminated.</p>
23	Health Assessment Reports	<p>Rather than the term 'compulsion of law' this should read 'permitted by law'. This would take into account information sharing provisions between regulators and others but still require the exchange to be permitted by the law.</p>
24	Documents to be provided Directly	<p>This rule seems to place a burden on the applicant that is necessarily out of their control. It requires that the applicant 'must' cause documents to be provided to the Board. This Rule could be amended to read that the applicant 'must take all reasonable steps'. In the alternative, this rule may be better expressed to require the holder or owner of the documents, upon receiving a request from the Board, rather than placing the onus on the applicant.</p>
26	Dispensing power	<p>The words 'either generally or' should be removed. Section 18 of the Uniform Law gives a dispensing power to the designated local regulatory authority to 'exempt a person'. This implies that the power must be carried out on a case by case basis as opposed to a rule that would allow the dispensing power to be used 'generally'.</p>

Admission Rule Number	Rule Name	Comments
Schedule 1 Schedule 2	Academic Areas of Knowledge Practical Legal Training Competencies for Entry-Level Lawyers	<p>These schedules contain links to the LACC website. We suggest that it would be better to include the content into the schedules. This would make it easier for applicants to access all the information in one location. Also it would mean that it would be clear what is being approved by the Standing Committee and the Legal Services Council at a given point in time.</p> <p>If the links remain there is a risk that the documents could be altered at any time without going through the rule approval process contemplated by the Uniform Law. This would then potentially result in the schedule being invalid.</p>
Schedule 3	Supervised Legal Training	<p>It is suggested that the Admissions Committee provide more guidance to the profession about workplace training, either by way of rules, guidelines or policies, so that employers and trainees know what is expected of them. If there is uncertainty, employers may be reluctant to take on the administrative and financial burden. This might disadvantage providers of niche legal services such as Legal Aid & CLCs; Government Departments; and Corporates.</p> <p>In Victoria, the LIV has produced a '<i>Supervised Workplace Training Guide and Workbook</i>' as a resource. Something similar should be produced by the Admissions Committee or the Council which would cover all participating jurisdictions.</p>

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- Introduction**
- 1.1 This policy is intended to provide guidance on the matters that should be disclosed to the Legal Services Board (Board) as well as the issues that decision-makers may consider in deciding whether a person is a fit and proper person to hold a practising certificate.
 - 1.2 This policy includes guidance on suitability matters. Section 1.2.6 of the Legal Profession Act 2004 sets out these matters which the Board may take into account in considering whether a person is a fit and proper person to hold a practising certificate.
 - 1.3 The relevant case law affirms that honesty, open candour and frankness are particularly relevant to legal practise. Accordingly, in considering a person's fitness to hold a practising certificate where a suitability matter is disclosed, the Board may give consideration to the honesty, open candour and frankness demonstrated by that person. Open and frank disclosure is likely to be viewed favourably, while a failure to disclose may adversely reflect on a person's fitness to practise.
 - 1.4 Where disclosures are made to the Board, this policy reflects the Board's obligations to treat disclosed information confidentially and to perform its functions without discrimination. Disclosure will not necessarily result in a finding that a person is not fit and proper to practise.
 - 1.5 As guidance material, this policy does not impose binding obligations or rights. This policy clarifies the position of fit and proper person and suitability under existing legislation and case law. Any obligations noted in this policy are drawn from the relevant primary and secondary legislation.
 - 1.6 This policy complements the Board's Mental Health Policy to the extent that it deals with suitability matters other than whether the person currently has a material mental impairment.

Legislative Framework

Grant or renew a practising certificate

- 2.1 The following Board functions involve considerations of 'fit and proper person' and 'suitability'.
- 2.2 Under s.2.4.3, the Board may grant a practising certificate. Subsection 2.4.7(1) provides that the Board must not grant a practising certificate unless it is satisfied that the applicant is a fit and proper person to hold the certificate.
- 2.3 Subsection 2.4.7(2) provides that the Board must not renew a practising certificate if it is satisfied that the applicant is not a fit and proper person to continue to hold the certificate.
- 2.4 Subsection 2.4.4(1) provides that the Board, in considering whether or not the person is, or is no longer, a fit and proper person to hold a practising certificate, may take into account, amongst other matters, any suitability matter relating to the person.
- 2.5 Suitability matters are listed in s.1.2.6. This policy provides guidance on all suitability matters other than whether the person currently has a material

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- mental impairment.
- 2.6 This policy also provides guidance on the other matters listed in s.2.4.4(1).

Matters previously disclosed

- 2.7 Subsection 2.4.4(3) specifies that matters that have been previously disclosed in an application for admission to the legal profession and were determined not to be sufficient for refusing admission cannot be taken into account as a ground for refusing to grant or cancelling a practising certificate unless later disclosures demonstrate the matter is part of a course of conduct that may warrant refusal or cancellation.

Amend, suspend or cancel a practising certificate

- 2.8 Under ss 2.4.21 and 2.4.22, the Board may amend, suspend or cancel a practising certificate where it believes a ground exists to do so. Under s. 2.4.20(a) it is a ground that the holder is no longer a fit and proper person to hold the certificate.

Refusal to grant or renew, or amendment, suspension or cancellation of a practising certificate where a show cause event has happened

- 2.9 Under s.2.4.28(1), the Board may refuse to grant or renew or may amend, suspend or cancel a practising certificate where a show cause event (see s.1.2.1) has happened and the certificate holder has failed to show why they are a fit and proper person to hold a practising certificate despite that event.
- 2.10 Show cause events must be disclosed to the Board.
- 2.11 The Board may require the applicant or holder to provide any further information or documents, and to verify the information or documents by statutory declaration or another manner, specified by the Board.

Ask for a criminal record check

- 2.12 Under s.2.5.3, the Board may ask the Chief Commissioner of Police to perform a criminal record check if it believes on reasonable grounds that a person has been found guilty of an offence that may result in them not being a fit and proper person to engage in legal practise.

Prohibit multi-disciplinary partnership with certain persons

- 2.13 Under s.2.7.50(2)(a), the Board may apply to the Supreme Court for an order prohibiting a multi-disciplinary partnership from having a partner who is not a fit and proper person to be a partner.

Refuse to grant or renew registration as a foreign lawyer

- 2.14 Under ss 2.8.23(4) and (5), the Board may refuse to grant or renew registration as a foreign lawyer if the Board is satisfied that the applicant is not a fit and proper person, after considering prior offences.

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Professional misconduct

2.15 Under s. 4.4.3(1)(b) conduct of an Australian legal practitioner that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice constitutes professional misconduct (see s.4.4.4).

Policy

3.1 When considering whether a person is a fit and proper person to hold a practising certificate and/or engage in legal practice, the Board will have regard to all relevant matters, including but not limited to the matters listed below.

Legal Profession Act considerations

3.2 Any relevant provisions of the Act, including:

- the matters raised in clauses 2.1 to 2.15 above.
- the objectives of the Board relating to the effective regulation of the legal profession, the maintenance of professional standards and consumer protection (see s.6.2.3).

Case law considerations

3.3 Any relevant cases from Victorian, interstate or related common law jurisdictions considering 'fit and proper person', 'suitability' or similar terms, including:

- cases about practising certificates, disciplinary issues and admission to or removal from the roll of practitioners.
- cases arising under the Legal Profession Act 2004 or corresponding interstate laws.
- cases arising under previous legal profession regulation legislation.
- cases about other relevant professions.

Board policies and guidelines

3.4 Any relevant Board policies and guidelines, including the guidelines set out in this document.

Application for grant of a practising certificate

3.5 When applying for the granting of a practising certificate, the applicant should disclose to the Board everything that will allow the Board to satisfy itself as to whether the applicant is a fit and proper person to hold a practising certificate.

3.6 Relevant matters include those that have previously been disclosed to an admission body in this or another jurisdiction and to a regulatory authority in another jurisdiction.

Application for renewal of a practising certificate

3.7 When applying for the renewal or variation of a practising certificate, the applicant should disclose to the Board any matters that have not previously been disclosed to the Board, Law Institute of Victoria or Victorian Bar.

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Confidentiality and Privacy

3.8 Information provided to the Board is handled under the Board's Privacy Policy and in accordance with the Information Privacy Act 2000 and the Health Records Act 2001 as well as the Legal Profession Act 2004. The Board and Commissioner may delegate certain functions or activities to authorised bodies and, as a result, will share information with those bodies in relation to those delegated functions or activities.

Non-discrimination

3.9 The Board complies with all relevant human rights and non-discrimination requirements including, but not limited to, those contained in the Equal Opportunity Act 2010 and the Charter of Human Rights and Responsibilities Act 2006.

Guidelines

4.1 Each decision will depend on the individual facts and circumstances of each case. In applying this policy, the Board or delegate may consider the guidelines set out below. Drawn from case law, these guidelines reflect existing judicial consideration of 'fit and proper' and 'suitability' matters. They are not intended to be applied inflexibly.

General principles

- 4.2 Any matter which may adversely reflect on a person's fame or character or might bring into question a person's fitness to practise should be disclosed to the Board. Where there is uncertainty disclosure is recommended, since a person's failure to disclose a matter that may be relevant to fitness could adversely reflect on that person's fitness to hold a practising certificate.
- 4.3 Where a disclosed suitability matter is determined by the Board or delegate not to adversely reflect on a person's fitness to practise, no further action will be taken in relation to their application for renewal of a practising certificate.
- 4.4 Disclosures remain confidential and private (see clause 3.8)
- 4.5 In considering any disclosed suitability matter that is determined by the Board to adversely reflect on a person's fitness to engage in legal practice and/or hold a practising certificate, the Board will consider a range of options including placing conditions or restrictions on, refusing, cancelling or suspending a practising certificate.
- 4.6 The Board will generally consider that a person is not a fit and proper person to engage in legal practice and/or hold a practising certificate in circumstances:
 - involving dishonesty.
 - involving prior history of similar offences or other relevant conduct indicating a disregard for the law.
 - indicating a material risk of harm to consumers of legal services.**unless there are mitigating circumstances.**

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4.7 Past actions may be considered indicative of future behaviour, unless that inference is rebutted by other relevant circumstances.

Convictions, charges and pending criminal proceedings

4.8 Criminal convictions, charges and pending criminal proceedings (as set out in s. 2.4.16) should be disclosed. Serious offences (as defined in s. 1.2.1) fall under the definition of show cause event at s. 1.2.1 and therefore must be disclosed.

4.9 The Board will generally disregard conduct related to convictions and charges where:

- the charges were subsequently withdrawn.
- the person was acquitted of the charges.
- the conviction was subsequently quashed.
- the conviction is now a spent conviction.

unless conduct related to the convictions or charges might reasonably be taken to indicate dishonesty, disregard for the law or a risk to consumers or the community more broadly.

Traffic offences

4.10 Minor traffic offences such as speeding do not need to be disclosed unless the circumstances or frequency of the offence(s) indicates a disregard for the law and/or are part of a course of conduct that might reasonably be taken to indicate dishonesty, disregard for the law or a risk to consumers or the community more broadly.

Infringement offences

4.11 Infringement offences that may be expiated by payment of an administrative penalty do not need to be disclosed, including:

- parking offences.
- minor traffic offences.
- public transport offences.

unless the frequency or number of offences or failure to pay penalties indicates a disregard for the law and/or are part of a course of conduct that might reasonably be taken to indicate dishonesty, disregard for the law or a risk to consumers or the community more broadly.

Social security and tax mispayments

4.12 The Board will usually disregard tax penalties and social security overpayments unless they occurred in circumstances that might reasonably be taken to indicate dishonesty, disregard for the law or a risk to consumers or the community more broadly.

Misconduct

4.13 Academic misconduct, including plagiarism, collusion and cheating, should

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be disclosed.

4.14 General misconduct, which may reflect on a person's fitness to hold a practising certificate, should be disclosed.

Administration of justice offences

4.15 Administration of justice offences should be disclosed. The Board will generally consider that a person is not a fit and proper person to engage in legal practice and/or hold a practising certificate if the person has been found guilty of:

- contempt of court (whether civil or criminal).
- an offence or series of offences that indicate serious disregard for the law or the administration of justice.
- an offence or series of offences that harms the integrity of the legal profession.

unless there are mitigating circumstances.

Insolvency

4.16 Insolvency falls under the definition of show cause event at s. 1.2.1 and must therefore be disclosed. The Board will generally not refuse to grant or renew, or cancel or suspend a practising certificate because a person is 'insolvent under administration' (s.1.2.1) unless:

- the circumstances indicate a lack of honesty or integrity.
- the circumstances involve tax evasion.
- the insolvency relates to the practitioner's legal practice or a related incorporated legal practice.

4.17 However, the Board may refuse to grant or renew a local practising certificate with trust authorisation during the relevant period.

Contravention of a disciplinary order

4.18 Contraventions of disciplinary orders should be disclosed. The Board or delegate will generally send a notice to a person who has not complied with a disciplinary order of the tribunal or a court, requiring compliance within a reasonable period.

4.19 If the person has not complied at the expiration of that period, the Board will not generally be satisfied that a person is fit and proper to hold a practising certificate, unless:

- the disciplinary order involves payment of money and the person enters into, and continues to comply with, a payment scheme of payments acceptable to the Board; or
- there are other relevant circumstances.

Legal Services **BOARD**

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Policy management / implementation

- 5.1 This policy is complemented by the following policies, procedures and forms of the Board:
- application for/variation of practising certificate form
 - renewal of practising certificate form
 - notice of show cause event form
 - privacy policy
 - mental health policy
 - recovery of fines policy
 - foreign lawyer registration policy
- 5.2 The policy will be communicated to relevant employees of the Legal Services Commissioner, Law Institute of Victoria and Victorian Bar and further training will be available if required.
- 5.3 The Board and its delegates will ensure that their relevant employees have access to current legislation, case law and relevant Board policies and guidelines.