

25 February 2020



Cora Groenewegen
Admissions Committee
Legal Services Council

By email:

submissions@legalservicescouncil.org.au; cora.groenewegen@legalservicescouncil.org.au

Dear Colleagues,

Re: Proposed Amendment to the Legal Profession Uniform Admission Rules 2015 (NSW) – Removal of the word ‘fame’

1. The Legal Services Council’s Admissions Committee has called for submissions about its recommendation that the text of the *Legal Profession Uniform Admission Rules 2015 (Uniform Admission Rules)* be amended to reflect the language of the *Legal Profession Uniform Law 2014 (LPUL)*. The specific amendment would see the removal of the words “good fame and character” from rules 10(f), 14(1)(c), 17(1) and (7), and the removal of the word “fame” from clause 16(6).
2. The Bar Association of Queensland (**the Association**) does not support the recommendation of the Admissions Committee; for the simple reason that to do so would be inconsistent with the statutory regime regulating legal professionals in Queensland.
3. Legal practitioners in Queensland are regulated by the *Legal Profession Act 2007 (Qld) (LPA)*. The State has not adopted either the Uniform Admission Rules or the LPUL.
4. The requirements for admission as a legal practitioner in Queensland are set out in Division 2 of Part 2.3 of the LPA. Specifically, s 31 provides:
 - (1) A person is suitable for admission to the legal profession under this Act only if the person is a fit and proper person to be admitted.
 - (2) In deciding if the person is a fit and proper person to be admitted, the Supreme Court must consider—
 - (a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and
 - (b) other matters that the Supreme Court considers relevant.

BAR ASSOCIATION
OF QUEENSLAND
ABN 78 009 717 739
Ground Floor
Inns of Court
107 North Quay
Brisbane Qld 4000

Tel: 07 3238 5100
Fax: 07 3236 1180

DX: 905
www.qldbar.asn.au

(3) However, the Supreme Court may consider a person to be a fit and proper person to be admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter.

5. The term “suitability matters” is defined in s 9(1). It specifically includes, s 9(1)(a), “whether the person is currently of good fame and character.”
6. The Supreme Court of Queensland is the admitting authority in this State. Each person who seeks admission makes an application to the Supreme Court and the court must hear and decide that application, s 35. If an applicant is successful then the court makes an order admitting a person to the legal profession under the LPA, s 37(3).
7. In making an order admitting a person as a legal practitioner, the Supreme Court in effect makes a finding that an applicant for admission is a fit and proper person and, necessarily, that the person is currently of good fame and character.
8. In this task it is assisted by the Legal Practitioners Admission Board (**the board**). The board performs an independent, but critical role, by making recommendations about each application for admission. As part of this the board must consider whether each applicant for admission is a fit and proper person having regard to all suitability matters.
9. In these circumstances, to support the abandonment of good fame and character from the Uniform Admission Rules would be inconsistent with the LPA and for that reason cannot be supported.
10. The inconsistency is not limited to the admission of legal practitioners.
11. While it is accepted that admission in Queensland via the *Mutual Recognition (Queensland) Act 1992* is no longer required, the satisfaction that a practitioner is fit and proper, and thus currently of good fame and character, is relevant to practising certificates.
12. Indeed, suitability matters also perform a critical role in both the annual renewal of practising certificates and the continued fitness to hold an existing practising certificate. The granting and renewing of practising certificate is regulated by Part 2.4 of the LPA.
13. It is necessary for legal practitioners who engage in legal practice solely or principally in this jurisdiction to hold a local practising certificate. Obtaining a practising certificate is a process which requires an application to the relevant regulatory authority (the law society or bar association) in the manner prescribed in s 50 of the LPA. There is no power in the regulatory authority to grant a practising certificate other than upon an application. An approved form is used for this process. That form may (and in practice does) require an applicant to disclose

matters relevant to whether the applicant is a fit and proper person to hold a practising certificate, s 50(2).

14. Once an application for a practising certificate is made, subsection 51(1) of the LPA requires the respondent, as regulatory authority, to consider the application, and confers power upon it to grant or refuse to grant, or renew or refuse to renew, the certificate.
15. In making a decision to grant or renew (or not) the regulatory authority is required to satisfy itself of certain matters. For the grant of a certificate subsection 51(4) of the LPA states that regulatory authority must not grant a certificate unless satisfied that the applicant was eligible to apply for the grant when the application was made, and, is a fit and proper person to hold the certificate. The matters which the regulatory authority must be satisfied of for the renewal of a certificate are set out in subsection 51(5). They are similar to those applicable to the grant of a certificate: the regulatory authority must not renew a practising certificate unless it is satisfied that the applicant was not eligible to apply for the renewal of the certificate and is not a fit and proper person.
16. The regulatory authority must be satisfied of this on an annual basis. This is because the granting or renewal of a practising certificate is not, *ex facie*, in perpetuity. A practising certificate's tenure is limited to not more than one year, calculated by reference to a financial year. Indeed, the LPA expressly contemplates that practising certificates have a limited duration and must be applied for annually. This is the combined effect of subsections 47(1) and (2) of the LPA. Together, these provisions provide that a practising certificate, granted or renewed under the LPA, remains in force commencing on the date stated in the certificate until the end of the financial year in which it is granted, unless sooner suspended or cancelled.
17. The effect of this statutory regime means that suitability matters, which includes whether a person is currently of good fame and character, are matters which as a matter of statute are relevant to the grant and renewal of practising certificates.
18. For these additional reasons, the removal of the word "fame" and phrase "fame and character" would be inconsistent with the LPA and therefore the proposal cannot be supported.

Yours faithfully

Rebecca Treston QC
President