VICTORIAN LEGAL ADMISSIONS BOARD

17 February 2020

Ms Cora Groenewegen
Principal Policy Officer
Legal Services Council

By email: [redacted]

Dear Cora

PROPOSED AMENDMENT TO THE LEGAL PROFESSION UNIFORM LAW RULES 2015 RELATING TO THE REMOVAL OF THE WORD 'FAME'

Thank you for the letter dated 28 November 2019 regarding the above matter. Thank you also for the short paper, which was useful in seeking to understand the background to the proposed rule amendment. I confirm that your materials and this response were considered by the Victorian Legal Admissions Board (VLAB) at its meeting on 10 February 2020.

VLAB questions the need for the proposed amendment, which is intended to remove reference to "good fame and character" from the Uniform Admission Rules (UAR). It appears that the rule change is predicated on the comments of the Basten & Meagher JJA of the NSW Court of Appeal in *Council of the Law Society of New South Wales v Parente* [2019] NSWCA 33 in paragraphs 9 to 13 of the reasons for judgment. VLAB has three observations to make about those paragraphs.

First, their Honours affirm that reference to 'fame' has the benefit of drawing attention to the need to maintain public confidence in the integrity and honesty of the legal profession and, as such, questions of reputation remain relevant. Secondly, their Honours' characterisation of the 'older terminology' as 'imprecise' and 'requiring care in its application' was made in the context of disciplinary proceedings against practising solicitors, not in assessing the suitability of applicants to be admitted to the Australian legal profession. Thirdly, their Honours' admonition that the 'old language' should be put aside is, upon reading the whole of paragraph 13, confined to consideration of a declaratory order sought by the NSW Law Society that the respondent was not a person of good fame and character. The Court held that such an order was without purpose but proceeded to find a declaration that the respondent was not a fit and proper person was an appropriate order to seek in the circumstances.

In fact, VLAB notes that their Honours at paragraph 49 stated:

> ... the protective jurisdiction is concerned with more than protection of clients and other members of the profession; it is also concerned with protection of the reputation of the profession and the maintenance of public confidence in it. It is for that reason that the *good fame and character of an applicant is a relevant consideration on an application for admission.* (emphasis added)

Their Honours went on to observe that 'good fame and character' has a twofold aspect: 'fame' referring to a person's reputation in the relevant community, and 'character' to the person's actual nature.

It appears to VLAB that the second branch of an inquiry into 'good fame and character', being an applicant's actual character, would not necessarily be preserved in rule 10 of the UAR if the amendment was proceeded with. Only the first element, a person's reputation in a relevant community, would appear to be maintained in substituted sub-items (f) and (m).

VLAB notes that subsequent decisions of the New South Wales Court of Appeal have invoked 'good fame and character'. In *Council of the Law Society of New South Wales v Michael Arthur Hislop* [2019] NSWCA 302 , for example, Bell ACJ, Brereton JA and Barrett AJA said at paragraph 43:

> It is of course clear that unfitness may be manifested by conduct not directly connected with professional practice, because such conduct may show that the practitioner lacks requisite personal qualities for membership of the profession, including that a lawyer be of "good fame and character". Conviction for a serious offence, particularly if accompanied by a sentence of imprisonment, is often incompatible with "good fame and character".

VLAB recognises that the position would be quite different if the High Court had rejected the use of 'good fame and character' and had done so in unequivocal terms. However, VLAB does not consider the comments of Basten & Meagher JJA in *Parente* to be directive in nature and of enough certitude to warrant a rule amendment being made in reliance on them.

VLAB also considers that there is benefit in retaining the terminology 'good fame and character'. These include but are not limited to:

- avoiding potential disruption to the application of important earlier decisions such as *Prothonotary of the Supreme Court of NSW v P* [2003] NSWCA 320;
- avoiding the need for judicial pronouncements on key concepts such as "appropriate" ethical and professional standards and the meaning of "satisfactorily"; and
- maintaining legislative and jurisprudential consistency between the uniform and non-uniform law states.

Accordingly, in the absence of compelling juridical need and in the interests of stability and consistency, VLAB does not support the proposed rule amendment.

Yours sincerely

Deborah Jones
CEO