

14 February 2020

Admissions Committee
C/O Ms Cora Groenewegen
Principal Policy Officer
Legal Services Council
Level 3, 19 O'Connell Street
Sydney NSW 2000

By email:

Dear Cora

Proposed amendments to the Legal Profession Uniform Admission Rules – removal of phrase ‘fame and character’

Thank you for your letter dated 28 November 2019. We appreciate the opportunity to comment on the Admissions Committee’s proposal to amend the *Legal Profession Uniform Admission Rules* 2015 (Admission Rules).

The VLSB+C is not the DLRA with respect to the Admissions Rules, therefore in making this submission, we have consulted with our colleagues at the Victorian Legal Admissions Board (VLAB). We support their submission.

The proposal put forward by the Admissions Committee is to remove references to an applicant’s ‘good fame and character’ and, in one instance, the applicant’s ‘fame’ from the Admission Rules. The Admissions Committee has also requested stakeholder consideration of new wording to replace some of the existing references to good fame and character. We understand this wording was developed by the Office of Parliamentary Counsel of NSW (Parliamentary Counsel) to better reflect the objectives of the Uniform Law. The Admissions Committee determined to request the wording change based on the comments of Basten and Meagher JJA in the Supreme Court of NSW Court of Appeal, in the decision of *Council of the Law Society of NSW v Parente* [2019] NSWCA 33 (*Parente*).

Their Honours in *Parente* noted the phrase ‘good fame and character’ has been a long-standing feature of NSW’s legal profession legislation but now only appears in subordinate legislation made under the Uniform Law. Their Honours suggested that the concept is imprecise terminology and is to be ‘put aside’ in relation to disciplinary matters. We understand this latter point is the rationale supporting the proposal to remove the phrase from the Admission Rules.

Although we appreciate that it does not appear in the Uniform Law, we do not believe that the phrase ‘good fame and character’ is currently creating problems for the DLRA’s charged with making determinations under the Admission Rules, requiring its removal and replacement. We would have preferred informal consultation with DLRA’s and other relevant stakeholders concerning the comments in *Parente* prior to engagement with Parliamentary Counsel, to better confirm the existence of any problem and explore potential consequences of a wording change.

In relation to the proposed new words themselves, we submit that consulting on specific words to replace ‘good fame and character’ may unnecessarily limit an examination of the utility of the current phrase and any unintended consequences of the proposed new words. If broader consultation on the proposed wording change proceeds, stakeholders should be directed by particular questions to consider these issues. More specifically in relation to the

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proposed new wording, we note that it will difficult for a person applying for admission to the profession (who may have little or no experience in legal workplaces) to demonstrate satisfactorily the 'professional standards' appropriate for an Australian lawyer.

A footnote in the consultation paper indicates the Legal Services Council (LSC) has also determined to consult on the phrase being removed from the *Legal Profession Uniform General Rules 2015* as well, where it appears in rule 13. This rule sets out factors to which the VLSB+C as the DLRA may have regard when determining whether an applicant or holder of a practising certificate is a fit and proper person to hold that certificate. These factors are also relevant where a DLRA or designated tribunal is considering disciplinary action against a lawyer. The definition of professional misconduct at section 297 directs the decision maker to have regard to the matters that would be considered if the lawyer were an applicant for admission, including their fame and character. As acknowledged in the *Parente* judgement, a practitioner's reputation amongst their peers is still an important consideration in these decisions.

We urge the LSC to take note of our comments and VLAB's submission before progressing this matter further.

The person responsible for this matter in my office is Ms Natalie Neal, Senior Policy Officer.

Yours sincerely

Fiona McLeay
Board CEO & Commissioner