

**LEGAL PROFESSION
PROPOSED ADMISSION RULES**

Explanatory Paper

November 2014

EXPLANATORY PAPER
for
PROPOSED ADMISSION RULES

1. INTRODUCTION

Each Australian State and Territory has rules that set out the qualifications that a person who wants to practise law must obtain, before being admitted to the legal profession by the Supreme Court in that State or Territory. Such "Admission Rules" also set out the various documents that must accompany any application for admission, and the procedures to be followed.

This Explanatory Paper sets out how the proposed Admission Rules to be made under the Legal Profession Uniform Law were developed and explains the background to, and drafting of, each proposed rule.

The proposed Admission Rules were developed as a result of an initial meeting between representatives of the New South Wales Legal Profession Admission Board (**LPAB**) and the Victorian Council of Legal Education (**COLE**) held in Sydney on 15 November 2013 (**joint meeting**). The joint meeting was convened primarily to discuss the practices respectively adopted in each jurisdiction relating to monitoring and re-accreditation of law schools, PLT providers, academic and PLT courses and subjects, for admission purposes, with a view to reaching agreement on the sort of principles and procedures that ought to be incorporated into any future Admission Rules to apply in both jurisdictions.

The meeting agreed that, if common proposals could be developed about those matters that ought to be included in Admission Rules, and those that might appropriately be dealt with between jurisdictions as administrative matters, the task of developing Admission Rules under the *Legal Profession Uniform Law* might be simplified, and the prospects of obtaining Rules appropriate to the accumulated experience in both jurisdictions enhanced.

The principal draftsman of this Explanatory Paper and the proposed Admission Rules was Professor S.D.Clark, Chair of the Legal Services Council Admissions Committee. He is also Chairman of the Law Admissions Consultative Committee (**LACC**), a member of the COLE, and was the principal draftsman of the Legal Profession (Admission) Rules 2008 (Vic).

The proposed Admission Rules were considered and amended at further meetings between representatives of the LPAB and COLE on 20 June and 28 October 2014.

An earlier version of this Explanatory Paper was considered by the Council of Chief Justices, the LACC and the COLE. Each of these bodies also considered two successive versions of the proposed Admission Rules; and suggestions made by COLE and LACC members incorporated into the draft Admission Rules considered by the Admissions Committee and endorsed for the purposes of public consultation, at its meeting on 20 November 2014.

At the date of this document (24 November 2014), no version of this Explanatory Paper or of the Proposed Admission Rules has yet been formally considered by a meeting of the LPAB.

2. TOWARDS COMMON ADMISSION RULES¹

2.1 The first steps

The attempt to develop and adopt uniform admission requirements commenced when Sir Laurence Street, as Chief Justice of NSW, convened the predecessor of the LACC. That body adopted a number of principles as early as 1984, which were adopted and commenced to operate in Victoria in early 1985, although the Academic Requirements suggested by LACC's predecessor were increased from 5 to 11 areas of knowledge. Thereafter, "Victoria sought to apply the recommendations of the Consultative Committee as best it could, in the expectation that other jurisdictions would follow suite".²

In the event, not all other Admitting Authorities did follow suite, and the efforts of the Consultative Committee lapsed.

2.2 Subsequent developments

LACC's predecessor was reinvigorated under the chairmanship of Justice L.J. Priestley. Building on the experience acquired in Victoria since 1985, in April 1992 the Committee released a *Uniform Admissions Requirements: Discussion Paper and Recommendations*. It set out a proposed framework for *Uniform Admission Rules* and seven specific recommendations, including a proposal to establish and fund a National Appraisal Committee to take over many of the functions that would otherwise have to be undertaken by an Admitting Authority in each jurisdiction.

In the light of responses received to that *Discussion Paper*, LACC's predecessor, following consultation with all Admitting Authorities, prepared and published *Uniform Admission Rules* in 1993. The introduction stated:

"The rules are designed for the guidance of the Boards and other authorities administering the requirements for admission to practise in each jurisdiction and were recommended for adoption in each jurisdiction."

These Rules set out, in general terms, the prevailing academic and PLT requirements for admitting local, New Zealand and other overseas applicants. Appendix A set out a description of the 11 Academic Requirements in the same terms as they now presently appear – with the exception of "Professional Conduct (including basic Trust Accounting)" which has now been replaced by "Ethics and Professional Responsibility".

Also in 1993, LACC's predecessor proposed 12 practical legal training topics which a practitioner should have studied before obtaining an unrestricted right to practise. These became known as the "Priestley 12" and were subsequently endorsed by both the Council of Chief Justices and the Law Council of Australia in its *Blueprint for the Structure of the Legal Profession: a National Market for Legal Services*, 1994.

In due course, the Priestley 12 were superseded by the national *PLT Competency Standards for Entry-level Lawyers*, jointly developed by the Australian Professional Legal Education Council (**APLEC**) and LACC and adopted by all Admitting Authorities in 2002. The most recent version of this document, approved by the Council of Chief Justices and all Admitting Authorities, will come into effect on 1 January 2015.

¹ A more detailed *Background Paper on Admission Requirements*, prepared in 2010, is set out on the Law Admissions Consultative Committee's website. Most of the documents referred to in this item also appear in the Historical Documents section of that website.

² Consultative Committee of State and Territorial Law Admitting Authorities, *Uniform Admission Requirements: Discussion Paper and Recommendations* 1992, at p. 2.

2.3 **More recent developments**

Subsequently, with an eye to accommodating both the newly-approved *PLT Competency Standards* and new mutual recognition arrangements, LACC, with the consent of Admitting Authorities, adopted *Towards a National Legal Profession: Revised Uniform Admission Rules* in February 2002.

In 2008, the *Uniform Admission Rules* were further revised to make appropriate provision for:

- (a) accrediting, reviewing and re-accrediting both academic and PLT courses and institutions, in the light of the concurrent development of the *CALD Standards for Australian Law Schools*;
- (b) supervised legal training, which replaced articles of clerkship and may be undertaken instead of a PLT course in both Queensland and Victoria; and
- (c) the administration of the IELTS test of English language proficiency, in certain cases.

Further, in order to ensure that maximum uniformity is attained in assessing the qualifications of overseas applicants for admission, the LPAB in NSW now assesses all such applications received for admission in the Northern Territory and the Victorian COLE assesses all such applications received in South Australia and Tasmania.

2.4 **The present situation**

(a) *Agreement on procedural requirements for determining suitability*

In 2011, LACC approved a submission to the SCAG Working Group on National Legal Profession Reform that recorded the existing practices in each Australian jurisdiction about 13 matters relating to the procedural requirements related to determining suitability of an applicant for admission to the legal profession. This submission set out agreed recommendations relating to each of those matters, for the purpose of including them in any new national Admission Rules: see LACC, *Submission to SCAG Working Group on Legal Profession Reform, Suitability for Admission Procedural Requirements*, March 2011.

(b) *Agreement on Disclosure Guidelines*

In 2013, following more than six years' consultations with Admitting Authorities, CALD and the Council of Chief Justices, LACC adopted *Disclosure Guidelines for Applicants to the Legal Profession* that are now disseminated to all law schools by Admitting Authorities. In both NSW and Victoria, each applicant for admission is required to state that the applicant has read and understood those Disclosure Guidelines, which set out matters which an applicant needs to disclose when applying for admission.

The proposed Admission Rules take account of this development.

(c) *Further revision of Uniform Admission Rules*

Most recently, the *Uniform Admission Rules* were again revised in 2014, with the approval of the Council of Chief Justices and all Admitting Authorities, to incorporate:

- (i) the proposed revised *PLT Competency Standards* to operate from 1 January 2015;
- (ii) revised rules about English language competence; and

- (iii) new principles, proposed by the NSW LPAB, to deal with stale qualifications, where people do not apply for admission until some time after they have completed both the Academic and PLT Requirements for admission.

(d) *Guidelines for reviewing institutions and courses*

At its meeting on 20 June 2014, LACC agreed to investigate the possibility of developing agreed guidelines about processes to be followed by Admitting Authorities when conducting in-depth reviews of both academic and PLT providers, courses and subjects for the purposes of accreditation or reaccreditation. While LACC has previously encouraged the development and use of the *CALD Standards for Australian Law Schools* and the *COLE Standards for PLT Providers and Courses* to assist in reviewing institutions and courses, it has been suggested that Admitting Authorities might find it helpful to have agreed guidelines to assist them in conducting reviews in ways that are consistent throughout Australia.

LACC also agreed to explore with Admitting Authorities whether:

- (i) establishing a national register of reviews conducted by Admitting Authorities might be both helpful and appropriate, in the light of the consequences of mutual recognition; and
- (ii) it might be possible, in appropriate cases, to conduct reviews of certain institutions and courses on a national basis, and thereby satisfy the requirements of several Admitting Authorities at the same time.

2.5 **Summary**

- (a) Over the past 30 years, much has been done to promote and achieve uniform principles and practices relating to admission to the legal profession in all Australian jurisdictions. The progress already made is reflected in the proposed Admission Rules.
- (b) It seems that all jurisdictions now generally comply with all of the principles that underlie the *Uniform Admission Rules*, as they have been revised since 2002. However, they do so in a wide variety of ways.
- (c) The possibility that all jurisdictions might eventually have identical Admission Rules may be enhanced by the fact that the proposed Admission Rules have been drafted in a way that:
 - (i) accurately reflects the principles set out in the current version of the *Uniform Admission Rules*; and
 - (ii) allows the proposed Admission Rules either to be readily adopted or adapted by other jurisdictions, should they choose to do so.
- (d) The proposed Admission Rules will not interrupt arrangements whereby New South Wales assesses the qualifications of overseas applicants for admission on behalf of the Northern Territory, and Victoria assesses such applicants for South Australia and Tasmania.
- (e) The proposed Admission Rules also incorporate the Suitability for Admission Procedural Requirements agreed to by all Admitting Authorities and LACC and submitted to the SCAG Working Group in March 2011. This, again, may enhance the possibility that similar Admission Rules might eventually be adopted by other Australian jurisdictions.

- (f) The proposed Admission Rules also take into account the Disclosure Guidelines, and provide for their adaptation to the circumstances of the LPUL, in ways agreed between the designated local authorities.
- (g) Further, the proposed Admission Rules are drafted in a way which allows a resolution of the designated local authority:
 - (i) to accredit new law courses and PLT providers in that jurisdiction, as occasion demands; and
 - (ii) to attach conditions to the operation, or remove accreditation, of such courses and PLT providers, when required.

2.6 Other considerations

Each Australian jurisdiction has developed its own processes and procedures for undertaking the various tasks of an Admitting Authority. These are often partly determined by available resources, which vary significantly between jurisdictions. Further, where co-operation between Admitting Authorities is required, this occurs through informal administrative processes, rather than as a result of regulatory requirements.

While the NSW Rules sometimes prescribe in considerable detail the sequential tasks to be undertaken by specified committees and the LPAB, and precise time-lines which each must observe, no similarly prescriptive provisions appear in the Victorian Rules. There, the COLE relies on broad statutory powers to establish committees and their terms of reference, and to delegate its powers to those committees. The necessary administrative processes are established by those terms of reference and instruments of delegation, which can easily be altered by resolution, without the need to amend subordinate legislation.

The proposed Admission Rules are similarly facilitative, rather than prescriptive in their tenor. While the Rules establish principles, many matters of detail are left to be agreed between jurisdictions, as and when required. They may then be established by administrative, rather than regulatory, means.

The Legal Profession Uniform Law (**LPUL**) contemplates such an approach. Section 419(4) allows the Uniform Rules (of which the proposed Admission Rules are a species: see section 420(1)(a)) to:

authorise any matter to be determined, approved, or regulated, from time-to-time, by any specified body.

The proposed Admission Rules thus provide for the designated local regulatory authority in each State to determine many matters administratively.

3. AUTHORISING PROVISIONS

Section 419(1) of the LPUL empowers the Legal Services Council to make Legal Profession Uniform Rules, which include Admission Rules (section 420(1)(a)), the possible content of which is prescribed by section 421. Section 426 prescribes a sedate process for developing and making Admission Rules which, by section 419(8) must also be followed to amend or repeal those Rules. Experience shows that sometimes changes to certain elements need to be made more expeditiously than the prescribed process would allow. Accordingly, sections 429 and 430 provide accelerated processes for minor or urgent amendments.

One other way of allowing expeditious action when required, is for the Admission Rules to confer power on each designated local regulatory authority to determine certain things administratively. This is possible because section 419(4) of the LPUL provides:

The Uniform Rules may authorise any matter to be determined, applied or regulated, from time-to-time, by any specified person or body.

Section 421 prescribes the content of the Admission Rules in the following terms.

- (1) The Admission Rules may make provision with respect to any aspect of admission.
- (2) Without limitation, the Admission Rules may make provision with respect to the following –
 - (a) the prerequisites for the issue of a compliance certificate, as referred to in section 17;
 - (b) without limiting paragraph (a), the accreditation, monitoring and reaccréditation of law courses and providers of practical legal training (in connection with those prerequisites);
 - (c) the making and assessment of applications for compliance certificates;
 - (d) the issue of compliance certificates;
 - (e) declarations of early assessment of suitability for a compliance certificate;
 - (f) applications for, and the giving of, directions by the designated local regulatory authority as to –
 - (i) the sufficiency of qualifications or training obtained overseas; and
 - (ii) guidance as to the need (if any) to obtain further qualifications or training;
 - (g) conditions on admission that may be applied in the case of foreign lawyers.
- (3) The Admission Rules may require the disclosure of matters that may affect consideration of the suitability of an applicant for admission, or affect consideration of the question whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed.

4. **PROPOSED RULES AND EXPLANATORY NOTES**

The Attachment sets out the proposed Admission Rules. They are based on the principles mentioned previously and the accumulated experience of all Australian Admitting Authorities. They are also consistent with the *Uniform Admission Rules* mentioned in item 2.4(c) above.

Where appropriate, matters that are better established by administrative means than by regulatory provisions are noted.

In several places, it is proposed that significant matters should be determined administratively by, or agreed between, the LPAB and the VLAB as the relevant designated local authorities. It is possible that some or all of these matters can be agreed before the new Admission Rules come into effect. In order to prevent any failure to reach agreement on all of these matters delaying the drafting or commencement of the proposed new Rules, it is preferable not to try to deal with these matters of detail in the body of the Rules.

References are also given to corresponding provisions of the :

Legal Profession Uniform Law (**LPUL**)

Uniform Admission Rules 2014 (**Uniform Rules**)

<http://www1.lawcouncil.asn.au/LACC/images/pdfs/Uniform_Admission_Rules_2014_-_June2014.pdf>

Legal Profession Admission Rules 2005 (NSW) (**NSW Rules**)

Legal Profession (Admission) Rules 2008 (Vic) (**Vic Rules**)

Submission to SCAG Working Group on Legal Profession Reform, Suitability for Admission Procedural Requirements, March 2011 (**Agreed Suitability Procedures**)

<<http://www1.lawcouncil.asn.au/LACC/images/pdfs/20110309-LACCsubmissiontoSCAG-NationalLegalProfessionReform-SuitabilityforadmissionProceduralRequirements.pdf>>

Disclosure Guidelines for Applicants to the Legal Profession (**Disclosure Guidelines**)

<<http://www1.lawcouncil.asn.au/LACC/images/pdfs/DisclosureGuidelinesforApplicantsforAdmissiontotheLegalProfession.pdf>>

ATTACHMENT

PROPOSED ADMISSION RULES WITH NOTES

1. AUTHORISING PROVISION

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

See:

LPUL, section 419, 421.

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.

Note

The Legal Services Council does not have power to revoke the former rules in either jurisdiction. They will presumably both cease to operate when the empowering legislation is repealed in each State. Subrule (3) is thus, at the most, declaratory but may be useful information for some readers.

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.

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.

(Schedule 1 will set out the November 2009 version of the Prescribed Academic Areas of Knowledge which can be found on the Law Admissions Consultative Committee website, under the tab relating to Documents about Present Admission Policy:

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

See:

LPUL sections 17(1)(a), 419(4).

Uniform Rules, rule 2.

NSW Rules, rule 95(1).

Vic Rules, rule 2.01(1).

Administrative Matters

- (a) *Duration of Legal Studies*

With the agreement of all Admitting Authorities, in 2012 LACC adopted a Statement on the Duration of Legal Studies. It explained that all Admitting Authorities consider that the expression "the equivalent of 3 years' full-time study of law":

refers to 3 calendar years. A law course that can be completed in fewer than 3 years may be accredited, however, if the relevant law school satisfies the Admitting Authority that the course is, indeed, the equivalent of a 3 calendar year full-time course undertaken at the relevant law school, in terms of the breadth and depth of its content, the teaching methods to be employed and the assessment criteria and methodology.

Students who aspire to be admitted to the legal profession in Australia are advised to take this into account when planning their law course – particularly if they plan to undertake a post-graduate JD or equivalent qualification.

Both Boards should agree to continue to apply these principles by administrative means. No further regulatory statement appears necessary.

- (b) *List of accredited courses*

Rule 6 provides for the accrediting of courses.

While the Second Schedule of the NSW Rules sets out a list of accredited law schools and courses, rule 2.02 of the Victorian Rules sets out a list of approved academic institutions. Both are subject to amendments which are not set out in, or discoverable from, the relevant Rules.

To avoid the need for frequent amendment to the Rules or the risk that any list will become inaccurate as courses change, it would be better for each Board to maintain a list of accredited courses on its website: compare LPUL section 418(1).

The transitional provisions in rule 31 operate to preserve the existing arrangements in each jurisdiction. It is unnecessary for the new Rules to set out a list of present arrangements in each jurisdiction.

(c) *Stale qualifications*

In relation to subrule 4(2), rules 2(3) and 3(3) of the Uniform Rules expressly authorise an Admitting Authority, when assessing an applicant's qualifications attained more than 5 years earlier, to take into consideration a number of "Common Considerations" set out in Schedule 3 of those Rules.

As those Common Considerations are imprecise and may need to be refined in the light of accumulated experience of other Admitting Authorities in applying them, it will be preferable for the Boards to agree to adopt the Common Considerations administratively, rather than specifying them in the Rules: see LPUL section 440(1). It may be appropriate for each Board to publish the agreed Common Considerations on its website.

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 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.

(Schedule 2 will set out the version of the *PLT Competency Standards for Entry-level Lawyers* that is to come into effect on 1 January 2015. Item 3.2 of that document sets out when a person may commence a PLT course or supervised legal training. It can be found on the Law Admissions Consultative Website, under the tab relating to Documents about Present Admissions Policy:

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

- (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.

See:

LPUL sections 17(1)(b), 419(4).

Uniform Rules, rule 3.

NSW Rules, rule 96.

Victorian Rules, rule 3.01(1).

Notes

(a) Supervised Legal Training

Rule 5(2)(b) is drafted in a way that will allow Victoria to continue to permit applicants to undertake supervised legal training. Rule 8 will also allow the New South Wales Board to authorise applicants to undertake supervised legal training, if it so chooses.

Similarly, if Queensland subsequently becomes a participating jurisdiction, it will be able to continue to allow supervised legal training under the proposed Admission Rules.

6. ACCREDITING 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 prerequisite and the 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.
- (9) 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.

See:

LPUL sections 421(1), 421(2)(b) and 440(1).

Uniform Rules, rule 4.

NSW Rules, rule 43, 44, 45B.

Vic Rules, rule 2.02, 2.04, 3.02, 3.04.

Notes

Rule 6 allows for the accreditation of both law courses and practical legal training providers. Subrule (4) provides recognition for interstate academic and PLT qualifications.

The transitional provisions in rule 31 operate to preserve the existing accreditations in each jurisdiction. It is unnecessary for the new Rules to set out a list of the present accreditation arrangements in each jurisdiction.

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.

See:

LPUL, section 421(2)(b).

Uniform Rules, rule 4(4) - (6).

NSW Rules, rule 44, 45B.

Vic Rules, rule 2.03, 3.03.

Administrative matters

(a) *Frequency of reviews*

The NSW Rules presently provide for a detailed annual process of reporting, committee deliberation and annual confirmation of accreditation of degrees and PLT courses on the basis of information provided by each law school by 30 June in every year. The NSW Rules do not presently seem to provide for more extensive reviews as envisaged by rule 4(4) of the *Uniform Admission Rules* and rule 2.03 and 3.03 of the Victorian Rules.

In recent years, LACC has encouraged Admitting Authorities to follow the practice adopted in Victoria of undertaking major periodic reviews of institutions and courses in ways and at times that are integrated with other reviews of those institutions for other accreditation purposes.

The joint meeting considered that, while each law school might appropriately be required to report annually on any material change to a law course or subject, the obligation to do so, and the deadlines for any such reporting, could be established administratively to suit the circumstances of each Board, rather than being specified in the Rules. To achieve this, the Rules need only confer on a Board a power to monitor (rule 7(1)) and a duty to supply information when requested (rule 7(4)).

The joint meeting also considered that, while each Board should have power to add conditions or withdraw accreditation if the annual report of a law school reveals a need to do so (subrule 7(a)), given the forward commitments and planning

required for a law school to operate, a system of annual accreditation apparently envisaged by the NSW rules is probably no longer appropriate.

While annual monitoring remains appropriate, the joint committee considered that more extensive and comprehensive reviews, which may lead to withdrawal of accreditation or re-accreditation, might be more appropriately conducted at five-yearly intervals. The precise timing and arrangements for such major reviews can be arranged administratively (rules 7(1) and (2)).

(b) *Appraisal criteria*

At the request of the Council of Chief Justices, LACC has encouraged the development of both the CALD *Standards for Australian Law Schools* and the COLE *Standards for PLT Courses and Providers* and recommended their deployment to all Admitting Authorities, with a view to ensuring that similar standards are used in the accreditation and review of all Australian courses and PLT providers. For this reason, rules 6(2)(a) and 7(3)(a) require each Board to have regard to such documents as may, from time-to-time be endorsed for use in other Australian jurisdictions, but does not limit a Board's discretion to consider other matters.

8. **SUPERVISED LEGAL TRAINING**

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

See:

LPUL section 419(4).

Uniform Rules, para 3(2)(b), rule 5.

Notes

Schedule 3

This Schedule sets out detailed rules about how supervised legal training must be supervised and conducted, the preparation and approval of training plans and rules about leave and termination, which are based on the present Victorian rules 3.05 -3.15.

Supervised legal training will continue to be undertaken in Victoria and Queensland. It may be adopted in other jurisdictions in due course. As it will not necessarily apply in all jurisdictions, and as the relevant provisions are moderately complex, it seems sensible to place the detailed rules for this form of PLT in a Schedule.

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).

See:

LPUL sections 17(1)(3), 17(2), 45(3).

Uniform Rules, para 6(c).

NSW Rules, rule 94(c).

Vic Rules, rule 4.01(1)(e),(2), 4.03(1)(b) and (2).

Notes

(a) Authorising provisions

Section 17(2)(b) of the LPUL envisages that the Admission Rules will specify certain matters that the Board will consider in determining whether a person is a fit and proper person. The Board may, however, have regard to any matter relevant to a person's eligibility or suitability other than those specified in the Rules: section 17(2)(a).

(b) Existing differences

Many of the provisions of section 1.2.6 of the *Legal Profession Act 2004* (Vic) and the *Legal Profession Act 2004* (NSW) section 9 which specify "suitability matters" are more relevant to whether someone is a fit and proper person to hold a practising certificate.

They are not matters which are relevant to a person seeking admission to the legal profession for the first time.

The proposed rule therefore mandates that the Board must consider certain information which must be attached to an application for admission, together with those elements of the present "suitability matters" that seem applicable to someone seeking admission, rather than a practising certificate. The latter type of matter can be dealt with in the Legal Practice Rules or Legal Profession Conduct Rules referred to in LPUL sections 422 and 423.

The proposed paragraph (1)(k) adopts the NSW provision about an applicant's capacity. In Victoria, the comparable paragraph refers to whether a person "currently has a material mental impairment". The NSW provision appears to be preferable.

(d) *English language competence*

Rule 94(3) of the NSW Rules makes passing an English test prescribed by the NSW Board a *condition of eligibility* for admission for all applicants. In Victoria, rules 4.01(1)(c) and 4.03(1)(b) make English competence an *academic qualification* for overseas applicants for admission.

Section 17 of the LPUL, in specifying the pre-requisite for a compliance certificate, does not refer to English language competence. Instead, it lists specified academic and PLT pre-requisites, and a requirement that the person "is a fit and proper person to be admitted to the Australian legal profession".

If English language competence is to be a pre-requisite for admission, it therefore necessary to add paragraph (l) to subrule (1) and to give the Board express power to require an examination: see subrule (2).

The requirement actually applied by all Admitting Authorities is completion of the IELTS test at certain specified standards, where required. The agreed circumstances for administering the test are set out in item 6 of the *Uniform Principles for Assessing the Qualifications of Overseas Applicants*. These requirements can continue to be specified by administrative means.

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
 - (c) apply for a compliance certificate within such period as the Board determines.

See:

LPUL, section 421(2)(f)

Uniform Rules, subrules 7(2) and (3), rule 8.

Vic Rules, rules 4.02, 4.04, 4.05 and 4.06.

Administrative matters

(a) Form of application

The NSW Rules do not appear directly to provide for such applications for a direction, but deal with such matters under the exemptions powers. The Victorian Rules, on the other hand, expressly provide at some length, the form of, and the material which must accompany, such applications – see rules 4.02(2)(a) – (d), 4.04(2)(a)-(i)

It would seem preferable to allow each Board to determine the appropriate form of these applications and to set out the appropriate information on its website.

(b) Uniform Principles for Assessing the Qualifications of Overseas Applicants

The Victorian subrule 4.05(3) presently requires the COLE to have regard to the *Uniform Principles* adopted by the LACC. As all Admitting Authorities have decided to apply them, it seems appropriate to require such principles to be taken into account, however they may be endorsed from time-to-time: see paragraph (3)(c).

11. APPLICATION FOR A COMPLIANCE CERTIFICATE

- (1) A person may apply to the Board for a compliance certificate to be issued and provided by 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.

See:

LPUL, sections 19(1), 421(1)(c).

NSW Rules, rule 99.

Vic Rules, rules 5.01 – 5.05.

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.

Note

In Victoria, applications for admission pursuant to the mutual recognition legislation are dealt with under the Victorian Rules. In NSW, however, such applications are dealt with under the Supreme Court Rules. For this reason rule 12 applies only to Victoria.

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.

See:

NSW Rules, Form 12

Notes

The NSW Rules presently require matters similar to those specified above to be dealt with in an application for readmission. No similar provisions exist in the Victorian Rules.

In addition to the matters set out above, the relevant form in NSW requires applicants to state a number of other matters, such as whether –

- (i) the applicant has previously been admitted or refused admission as a lawyer in any other Australian or foreign jurisdiction;
- (ii) the applicant is, or has ever been, an insolvent under administration;
- (iii) the applicant has ever been convicted of an offence in Australia or elsewhere;
- (iv) the applicant has ever engaged in legal practice in Australia when not admitted or in contravention of any condition of admission, or when not holding a practising certificate;
- (v) the applicant has ever engaged in legal practice in a foreign jurisdiction when not permitted to do so under a law of that jurisdiction, or contrary to any condition of permission to practise;
- (vi) the applicant is or has been the subject of any disciplinary action, howsoever expressed, in another profession or occupation in Australia or elsewhere, and whether any such disciplinary action involved a finding adverse to the applicant;
- (vii) the applicant's name has been removed from the Supreme Court roll in any other Australian jurisdiction, or from any foreign roll;
- (viii) the applicant has ever contravened a law about trust money or trust accounts in Australia or elsewhere;
- (ix) a supervisor, manager or receiver has ever been appointed in relation to any legal practice in which the applicant has been engaged;
- (x) the applicant is currently unable, for reasons of health, to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner;
- (xi) the applicant is aware of any circumstances, other than those referred to in subparagraph (a)(i) that the Board may 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.

The proposed rule 12 is drafted in a way that requires an applicant for readmission also to comply with the requirements of rule 11, including the obligation to prepare a disclosure statement. In view of this, it seems unnecessary specifically to enumerate matters such as those mentioned in (i) – (xi) above.

As readmission is a matter for the inherent jurisdiction for each Supreme Court, it is prudent to allow the Board to report to the Court on the circumstances leading to the grant of a certificate: see subrule (3).

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.

See:

NSW Rules, rule 99, Form 10.

Vic Rules, rule 5.02(1)(c).

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 15(1); and
 - (b) attest to that fact in the statutory declaration.
- (5) Subrule (4) does not apply to any disclosure made under subrule 15(4).

See:

NSW Rules, rules 99(2) and (4).

Vic Rules, rules 5.02(1)(c)(vi), 5.03(2)(b)(viii), 5.05(1)(b).

Agreed Suitability Procedures, item 5.3.

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.

See:

LPUL, section 421(3).

NSW Rules, Form 10, item 6.2, 6.11, 6.12 (for example).

Vic Rules, rule 5.02(1)(b), 5.03(2)(b), 5.05(1)(c).

Agreed Suitability Procedures, item 6.3.

LACC Disclosure Guidelines.

Administrative matters

The LACC Disclosure Guidelines, in their present form, refer to the relevant provisions of the *Legal Profession Act 2004* of NSW and Victoria and set out the suitability matters as defined in those Acts. These references will need to be altered to accommodate the LPUL and in the light of the proposed rule 9 above.

For this reason, sub-rule 16(5) gives the Boards power to determine Disclosure Guidelines jointly, and sub-rules (6) and (7) are conditional on such Disclosure Guidelines being adopted.

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.

See:

LPUL, section 17(1)(c), (2), 421(2)(c).

Vic Rules, rule 5.02(1)(c)(iv), 5.03(2)(c)(v) and (vi), 5.05(1)(e).

Agreed Suitability Procedures, items 7.3, 8.3(b) and (c).

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).

See:

LPUL, section 17(1)(c), (2).

Legal Profession Act 2004 (Vic), sections 2.3.3(3) and (4).

Vic Rules, rule 5.03(2)(c)(vii).

Agreed Suitability Procedures, item 9.3.

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.

See:

LPUL, section 17(1)(c), 17(2), 419(4).

Agreed Suitability Procedures, item 8.3.

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.

See:

LPUL, section 17(1)(c), 17(2), 21, 421(2)(e).

Agreed Suitability Procedures, item 10.3.

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.

LPUL, sections 17(1), 17(2), 19(2), 436 and 437.

NSW Rules, rule 89.

Vic Rules, rule 5.06(3).

Note:

As section 19(2) of the LPUL empowers a Board to require an applicant to supply further information to it within a specified time, there is no need for the Rules to make a similar provision.

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 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 subrule (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 reason 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.

See:

Legal Profession Act 2004 (Vic), sections 2.54 – 2.58.

Note

Although comparable provisions exist in the Acts of Victoria and some other Australian jurisdictions, there appears to be no similar provision in the NSW legislation. In Victoria's experience, the provision has been useful in some cases. As the provision only confers a discretionary power, the NSW Board may choose not to exercise it.

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.

See:

Vic Rules, subrules 5.02(2), 5.03(3).

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.

See:

LPUL, sections 19(3), 20(1), 419.

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.

See:

NSW Rules, rule 115.

Vic Rules, rule 5.07.

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.

See:

LPUL, section 419(4).

NSW Rules, First Schedule, Forms 1-17.

Vic Rules, Schedules 4 – 15.

Administrative matters

The LPUL sometimes prescribes the content of documents: see for example section 19(3). Similarly, the Rules sometimes provide that the form and content of a document must be agreed by the Boards: see, for example, subrule 16(5) and rule 25.

Both jurisdictions already have established forms relating to the various applications and documents, which are set out in Schedules to the present rules. To require the new Boards to agree on the future form and content of all documents is likely to delay the making and implementation of the new Rules. It is thus preferable to allow each Board to establish the form and required content of various documents, except where it seems important that both Boards should agree – as with the Disclosure Guidelines referred to in subrule 16(5).

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.

See:

LPUL, sections 26, 27.

NSW Rules, subrules 97(11), 98(8).

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.

Note:

Section 27(1) of the Victorian Application Act authorises VLAB to delegate any function to the members of a committee. Section 27(2) allows persons who are not members of the Board to serve on a committee to which functions are delegated. It does not appear to allow such people to be members of a committee with purely advisory functions, for section 27(2) only applies to committees to which functions have been delegated under section 27(1). Whether the VLAB has power to create purely advisory committees thus

remains open to doubt. Subclause 27(3) empowers the Board to determine the procedures of a committee referred to in subclause 27(1).

The NSW Application Act does not appear expressly to grant, a power to create committees. It is, however, possible that the grant of "all the powers necessary to perform its functions", conferred by section 20(2) of that Act would include a power of the Board to create committees.

Further, by section 163 of the NSW Application Act, the LPAB will only be able to delegate functions to a committee if so-called "local regulations" confer a power of delegation on the Board.

In view of these difficulties, it seems prudent to express rule 29 in guarded terms.

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.

See:

Vic Rules, rule 6.02

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 paragraph 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 paragraph 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 paragraph 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>]

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>]

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
 - (c) 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 the 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 working 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 9, 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.