

Leo Cussen Centre for Law

Submissions relating to the Legal Profession Proposed Admission Rules

January 2015

2 February 2015

Legal Services Council
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By Email: submissions@legalservicescouncil.org.au

Introduction

Leo Cussen Centre for Law (Leo Cussen) has conducted Practical Legal Training (PLT) for law graduates and others¹ seeking admission to the legal profession in Victoria for over 40 years.

For much of that time, and increasingly in the last 20 years, some of the staff at Leo Cussen (acting on a pro bono basis), have supported hundreds of Leo Cussen PLT students seeking admission to the Supreme Court of Victoria. This has given Leo Cussen a unique insight into the process of admission as applied by the Board of Examiners in Victoria.

Papers relating to admission procedure have been presented at conferences of the Australasian Professional Legal Education Council (APLEC) in 2006, 2011, 2012 and 2014.

Leo Cussen now welcomes this opportunity to make submissions in relation to the November 2014 Consultation Draft Legal Profession Admission Rules (Admission Rules) Part 3 ADMISSION PROCEDURE and Part 4 GENERAL.

Summary

Submissions in summary are :

1. Include a rule requiring the Board to accord natural justice to applicants.
2. Expand Rule 22(2) to allow the Board, of its own motion, to require an independent health report
3. Substitute the term "attach" which is used extensively throughout Part 3 for the words "supported by".
4. Clarify Rule 20 of the Admission Rules so that an early application to determine suitability is read as separate from an application to be admitted.
5. It is generally desirable that the admission procedure adopted by the Boards be consistent; and be proportionate, transparent, just, and effective.

¹ For example, overseas practitioners or local practitioners wishing to update their knowledge after a period out of practice.

1. The Board must accord natural justice to applicants

In the mid 2000s, the Department of Justice in Victoria commissioned a review of legal education (pre-admission and continuing legal education) from the late Professor Susan Campbell.

Professor Campbell produced her Review of Legal Education Report in 2006 (Campbell Report). Part of her Report dealt specifically with recommendations to restructure and appropriately finance the Council of Legal Education and Board of Examiners in Victoria to enable them to effectively oversee admission requirements.

On page 73 of the Campbell Report, Professor Campbell recommended that the Victorian Legal Profession Act 2004 (the Act) be amended to require natural justice be accorded to applicants in their admissions process. Professor Campbell wrote :

"We further recommend that the Act be amended to require that the Board, in its meetings and hearings, accord natural justice to applicants".

We submit that the following rule be inserted into the Admission Rules as Rule 31 (after Rule 30: Acting on the advice of others).

ACCORDING NATURAL JUSTICE

Rule 31: In carrying out its functions, the Board will accord natural justice to applicants.

Renumber the existing Rule 31 about Transitional and Saving provisions as Rule 32.

2. Rule 22(2) allow the Board of its own motion to require a health report.

Amend Rule 22 (2) to make it clear that the Board may refer an applicant to a Board appointed, appropriately qualified, person where the Board considers it would be assisted by such a report. Thus, the power of referral is not limited to where the applicant fails to supply such a report or where such a report is provided but is insufficient.

There have been times when the Board's concern about an applicant's capacity to practice has been satisfied by a report on the applicant provided by a psychiatrist appointed by the Board.

So amend Rule 22 (2) to read

Rule 22(2) : If –

- (a) A report referred to in sub rule (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 reasons of health, satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner; or
- (c) **The Board considers on reasonable grounds that it would be assisted by a health report in relation to the applicant provided independently ,**

Then the Board may if it considers it appropriate to do so –

- (d) require the applicant to undergo a health assessment and
- (e) 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. Replace “attach” with words “supported by” for clarification

Many of the rules refer to documents that must be “attached to the application”. Leo Cussen assumes the intention of the rules is that the documents be filed with the application generally, rather than specifically annexed to the first document lodged to begin the application for admission.

In our submission, “attached” carries connotations of being “annexed” or “exhibited” to another document. We submit that the words “supported by” be used in place of “attached” wherever the word “attached” is used in the rules to list supporting documents that must be provided to complete the requirements of the application for admission.

4. Clarify Rule 20: Early application to determine suitability

The heading for Rule 20 indicates that an applicant may make an early application to the Board to determine their suitability for admission. Is this rule to permit a person to apply to the Board for a determination as to their suitability before applying for admission generally?

If that is the intention, then Rule 20 should not refer to rule 21(1) which appears to relate to further inquiries and hearings generally before the Board rather than to early assessment of suitability.

Rule 20 (1) should be clarified to read independently of Rule 21(1) and to make it clear that only those documents that relate to the applicant’s particular circumstances and request for early assessment of suitability, and not all the documents listed in rule 11

need be produced. This would make it clear that an applicant who is still undergoing their PLT could apply for an early assessment of suitability. The dispensing power in Rule 26 may not cover this aspect.

Rule 20 (1) : Every application made under this sub rule must comply with the requirements of rule 11 so far as those requirements relate to the applicant's matters and circumstances of the application for early assessment of suitability.

5. Desirability that the admission procedure adopted by the Boards be consistent, proportionate, transparent, just and effective.

In 2006, Professor Campbell wrote *"With the advent of a national profession it is essential that the standards required for admission to the profession be consistent."* (See Page 19 of the Campbell Report).

The admissions procedures adopted by the Boards of Victoria and New South Wales are very different.

The Explanatory Paper relating to the Legal Profession Proposed Admission Rules November 2014 (Explanatory Paper) acknowledges this in Section 2.6 of the Explanatory Paper, and provides on page 6 that

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

It is to be hoped that the Admissions Committee is able in time to influence the Boards so that administrative processes and procedures adopted by each of the participating jurisdictions (currently New South Wales and Victoria) are standardised, and that the procedure is the same irrespective of in which State the applicant applies for admission.

This would include a consistent approach on the following matters:

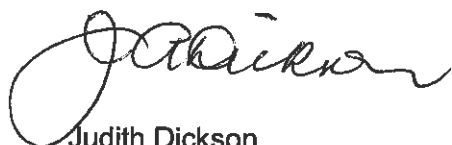
- 5.1 The LACC Disclosures Guidelines for Applicants to the Legal Profession are applied consistently across all participating jurisdictions.
- 5.2 The form of the disclosure statement is the same in each participating jurisdiction ie either in the form of a statutory declaration or of an affidavit or of a statement.
- 5.3 A disclosure statement is required only from an applicant who is making a disclosure
- 5.4 Student conduct reports and police checks, are required only where the Board considers it relevant; and not routinely. (See page 72 of the Campbell Report when, referring to the Board having the power to require tertiary education reports, it states "Such powers would be utilised only rarely").

We submit that a student conduct report be required only where the applicant has been the subject of disciplinary action.

- 5.5 An applicant with no disclosure to make will comply with Rule 16(7) of the Admission Rules swearing in effect that they have read the Disclosure Guidelines, are of good fame and character, and are not aware of anything that might affect their suitability. They will not otherwise be required to make a separate disclosure statement to the effect that they have no disclosure to make.
- 5.6 A disclosure as to a person's capacity is required only where the applicant is currently unable for reasons of health to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner. Past ill health, or ill health that is adequately managed does not have to be disclosed.
- 5.7 The admission process is transparent and accords natural justice
- 5.8 The procedures for admission are proportionate to the requirement to protect the consumers of legal services (the public).
- 5.9 The procedures do not have the unintended effect of unfairly targetting those applicants who seek to fulfil their obligations in disclosing everything the Board might consider as relevant to suitability, whilst applicants who choose not to disclose "slip through the system".

Leo Cussen strongly supports the development and implementation of Uniform Admission Rules. These submissions are made to contribute practical knowledge and experience of the admissions process and to assist the Legal Services Council in the development of effective and consistent Rules governing admission to the legal profession in Australia.

Yours sincerely,



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